

David Berlusconi

From: NSW Subpoena Response <noreply@justice.nsw.gov.au>
Sent: Friday, 5 July 2019 8:40 AM
To: David Berlusconi
Subject: Confirmation of receipt



NSW Subpoena Response

We have received your NSW Subpoena Response items

Confirmation number: 341002153

Date of submission: 05 Jul 2019

This is an automatically generated email. Please do not reply.

This is to confirm we have received the NSW Subpoena Response items you uploaded in response to the following subpoena.

[View the items you returned online.](#)

This response is now an official court record. If you need to amend any of the details below [contact the court listed on your subpoena](#).

Subpoena details

Case number: 201900110928

Issue date: 13 Jun 2019

Return date: 05 Jul 2019

Contact details

Organisation: Australian Automotive Group Pty Limited

Contact name: David Berlusconi

Contact phone: 0417293398

Contact email: dberlusconi@aag.com.au

Uploaded files

You have consented to the following files being inspected by any legal representative involved in the case.

ESI-0002 doc19553420190705083329.pdf

Thanks,

The NSW Subpoena Response team

This email has been sent to dberlusconi@aag.com.au by NSW Subpoena Response. If received in error, please email subpoenaresponse@justice.nsw.gov.au and delete this message. You may not disclose, copy or use this email if you are not the intended recipient.

Use of the NSW Subpoena Response account is subject to our [Terms and conditions](#) and [Privacy policy](#).

Message protected by DealerGuard: e-mail anti-virus, anti-spam and content filtering.
<http://www.pentanasolutions.com>

[Report this message as spam](#)

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Scanned by Australian Automotive Group UTM

Friday, 5 July 2019

The Registrar
Supreme Court of NSW
184 Phillip Street
Sydney, NSW, 2000

To whom it may concern:

REFERENCE: Col Crawford Pty Ltd & Illiad Pty Ltd v Nissan Motor Co (Australia) Pty Ltd in the Supreme Court of New South Wales Proceedings No. 2019/110928

I write in regards to the above matter specifically, a *Subpoena to produce with and Early Date* that was served on our organisation.

I can confirm the Australian Automotive Group Pty Limited conducted a search with the relevant officers (within the business) and was unable to locate any documents as specified in the subpoena that were created or dated during the period 1 October 2017 to 30 April 2018 that refer to any of the following parties listed in Schedule 1 (a) – (f) of the subpoena.

Yours Faithfully



David Berlusconi
Human Resources Manager



Filed: 13 June 2019 4:35 PM



D0001584H3

Form 26A
UCPR 33.3

SUBPOENA TO PRODUCE WITH EARLY RETURN DATE

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00110928

TITLE OF PROCEEDINGS

First Plaintiff	COL CRAWFORD PTY LTD ABN 27001798081
Second Plaintiff	Illiad Pty Ltd
First Defendant	Nissan Motor Co. (Australia) Pty Ltd ACN 004663156

ISSUING DETAILS

Issued at request of	COL CRAWFORD PTY LTD, Plaintiff 1 Illiad Pty Ltd, Plaintiff 2
Legal representative	Evan Stents
Legal representative reference	
Telephone	(03)86443509
Address for service	Level 26 530 Collins Street MELBOURNE VIC 3000
Your reference	EAS:CT:882259

DATE TIME AND PLACE AT WHICH YOU MUST ATTEND TO PRODUCE THE SUBPOENA OR A COPY OF IT AND DOCUMENTS OR THINGS

Refer to date, time and place in the attached subpoena.

ORDER TO THE SUBPOENA RECIPIENT

Name	The Proper Officer - Australian Automotive Group Pty Limited (ACN 088 817 912)
Address	60 O'Riordan Street ALEXANDRIA NSW 2015
Court Item ID	1904241

You must comply with this subpoena:

- by uploading documents at NSW Subpoena Response (<https://subpoenaresponse.justice.nsw.gov.au>).
- by attending to produce this subpoena or a copy of it and the documents or things in the Schedule to the place at the date and time specified in the attached subpoena
- by delivering or sending this subpoena or a copy of it and the documents or things in the Schedule to the place specified in the attached subpoena not less than 2 clear days before the date for production. (See notes 5 - 9 in the attached subpoena)

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Subpoena for Production with early return date (e-Services), along with any other documents listed below, were filed by the Court.

Subpoena to Produce Items Before Hearing (UCPR 26A) (AAG .pdf)

[attach.]

Form 26A (version 4)
UCPR 33.3

**SUBPOENA TO PRODUCE
WITH SUBPOENA NOTICE AND DECLARATION**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General List
Registry	Sydney
Case number	2019/110928

TITLE OF PROCEEDINGS

First plaintiff	Col Crawford Pty Ltd ACN 001 798 081
Second plaintiff	Illiad Pty Ltd ACN 009 070 777

First defendant	Nissan Motor Co (Australia) Pty Ltd ACN 004 663 156
-----------------	--

ISSUING DETAILS

Issued at request of	Col Crawford Pty Ltd & Illiad Pty Ltd, plaintiffs
Legal representative	Evan Anthony Stents HWL Ebsworth Lawyers
Legal representative reference	Ref: EAS:CT:882259
Contact name and telephone	Evan Anthony Stents Tel. (03) 8644 3509
Contact email	estents@hwle.com.au
Address for service	C/- HWL EBSWORTH LAWYERS Level 26, 530 Collins Street, Melbourne VIC 3000

ORDER TO THE SUBPOENA RECIPIENT

Name: The Proper Officer, Australian Automotive Group Pty Limited (ACN 088 817 912)

Address: 60 O'Riordan Street, Alexandria NSW 2015

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule to the court.

PROPOSED ACCESS ORDER

Access granted to all parties

NOTICE TO THE SUBPOENA RECIPIENT

1. Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.
2. The last day for service of this subpoena is 21 June 2019 (see note 1).
3. Please read notes 1 to 15 included in this document.
4. You must complete the Declaration appearing on the last page of this document and attach it to the subpoena or copy of the subpoena that accompanies the documents or things produced to the Court under the subpoena.

Any enquiries concerning compliance with the subpoena should be directed to the Contact person named above.

HOW TO RESPOND

You must comply with this subpoena:

- by uploading documents specified in the Schedule below to NSW Subpoena Response (<https://subpoenaresponse.justice.nsw.gov.au>) so that they are received before the time and date specified for production, or
- by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below to the address below at the time, date and place specified for production, or
- by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the address below so that they are received not less than 2 clear days before the date specified for production.
(See notes 5 - 9.)

DATE, TIME AND PLACE AT WHICH YOU MUST ATTEND TO PRODUCE THE SUBPOENA OR A COPY OF IT AND DOCUMENTS OR THINGS

Date: 5 July 2019

Time: 10.00am

Place: Supreme Court of NSW, Level 4, Law Courts Building, Queens
Square, 184 Phillip Street, Sydney NSW 2000

Our Ref: EAS:CT:882259

18 June 2019

The Proper Officer
Australian Automotive Group Pty Limited
(ACN 088 817 912)
60 O'Riordan Street
Alexandria NSW 2015

To the Proper Officer,

**Col Crawford Pty Ltd & Illiad Pty Ltd v Nissan Motor Co (Australia) Pty Ltd in the
Supreme Court of New South Wales Proceedings No. 2019/110928**

We act for Col Crawford Pty Ltd and Illiad Pty Ltd, the Plaintiffs in the referenced proceedings, and enclose **by way of service** a Subpoena to Produce with Subpoena Notice and Declaration (**Subpoena**).

The Subpoena is limited to the production of documents which are specified on page 3 of the Subpoena. The date by which you must produce the documents and the address to which you must deliver the documents are set out on pages 2 and 3 of the Subpoena.

Yours faithfully



Evan Stents
Partner
HWL Ebsworth Lawyers

+61 3 8644 3509
estents@hwle.com.au

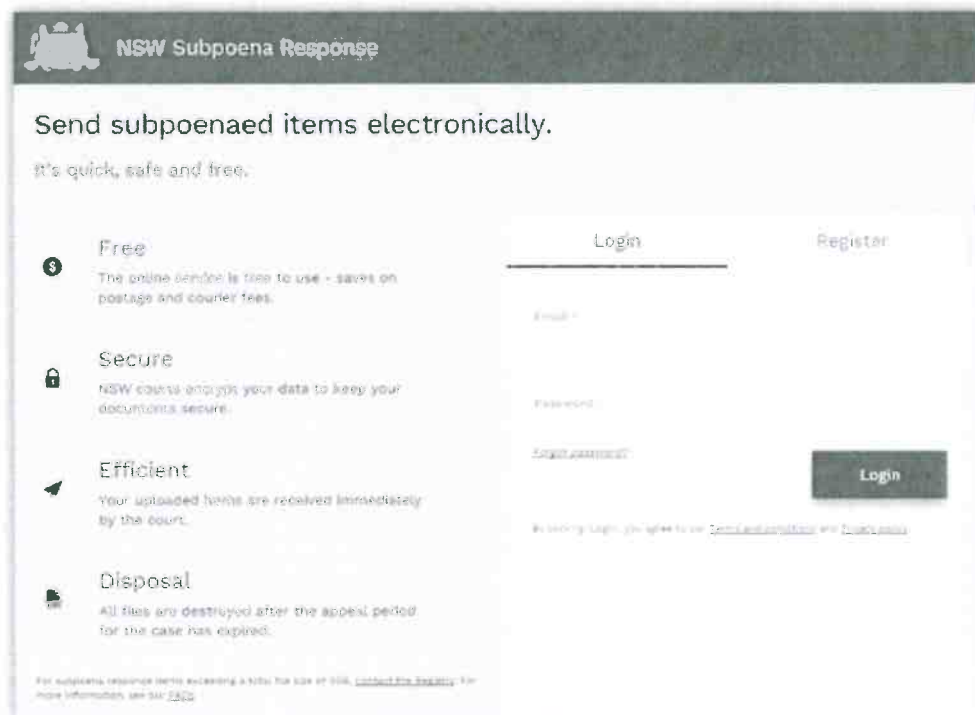
Christian Teese
Senior Associate
HWL Ebsworth Lawyers

+61 3 8644 3446
cteese@hwle.com.au

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Instructions for the producer to respond to subpoenas electronically:

You can now submit subpoena responses online



The screenshot shows the 'NSW Subpoena Response' website. At the top, there's a dark header with the NSW coat of arms and the title 'NSW Subpoena Response'. Below the header, a light grey box contains the text 'Send subpoenaed items electronically. It's quick, safe and free.' To the left of the login/register area, there are four bullet points with icons: 'Free' (dollar sign), 'Secure' (lock), 'Efficient' (arrow), and 'Disposal' (trash can). To the right, there's a 'Login' section with fields for 'Email' and 'Password', a 'Forgot password?' link, and a 'Login' button. A 'Register' link is also present. At the bottom of the login section, there's a small text line: 'By logging in, you agree to our Terms and conditions and Privacy policy.' At the very bottom of the page, there's a small disclaimer: 'For subpoena response items exceeding a total file size of 500, contact the Registry for more information. See SAR 2(22)'.

<https://subpoenaresponse.justice.nsw.gov.au>

- Create an account in seconds to respond
- Support for different file types and sizes
- Email acknowledgement for all documents submitted
- Ability to indicate if you are unable to respond to request

This page left intentionally blank

ADDRESS TO WHICH THE SUBPOENA (OR COPY) AND DOCUMENTS OR THINGS MAY BE DELIVERED OR POSTED

The Registrar, Supreme Court of NSW

SCHEDULE

The documents or things you must produce are as follows:

1. All documents created or dated during the period 1 October 2017 to 30 April 2018 that refer to any of the following:
 - (a) Col Crawford or Col Crawford Pty Ltd;
 - (b) Stephen Crawford;
 - (c) Chad Davies;
 - (d) Brookvale Nissan;
 - (e) CKD or CKD Automotive or CKD Automotive Pty Ltd; or
 - (f) Tony Hilliger.

Without limiting the generality of the meaning of the word 'documents', where that word appears in this notice it includes letters, correspondence, electronic mails, email calendar entries, mobile phone text messages, facsimile transmissions, file notes, memoranda, accounting records, statements, order forms, invoices, receipts, drawings, plans and specifications, minutes of meetings and notes of meetings, deeds, dealings, authorities, consents and anything from which sounds, images or text can be reproduced with or without the aid of anything else.

NOTES

Last day for service

- 1 You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for serving the subpoena.

Informal service

- 2 Even if this subpoena has not been served personally on you in accordance with the rules, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

- 3 If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

- 4 You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date on which your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

- 5 In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified in the subpoena for the purpose, or if more than one address is so specified, to any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.
- 6 If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the registrar in writing of your objection and of the grounds of your objection.
- 7 Unless the court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

- 8 If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.

Production of copy instead of original

- 9 If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.

- 9A The copy of a document may be:
- (a) a photocopy; or
 - (b) in any electronic form that the issuing party has indicated will be acceptable.
- 10 You must complete the Declaration appearing on the last page of this document and attach it to the subpoena or copy of the subpoena that accompanies the documents or things produced to the Court under the subpoena.
- 11 If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of a period of four months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.
- 12 If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

Applications in relation to subpoena

- 13 You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena, and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

- 14 If you are not a party to the proceeding, you may apply to the court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Failure to comply with subpoena – arrest

- 15 Failure to comply with a subpoena without lawful excuse:
- (a) is a contempt of court and may be dealt with accordingly.
 - (b) may lead to your arrest under section 97 Civil Procedure Act or under rules of the court to enforce compliance with a subpoena.

DECLARATION BY SUBPOENA RECIPIENT

[Tick the relevant option below, (provide your address as appropriate), sign and date]

- ☒ **All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.
- ☐ **Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address:

Address at which produced items
should be returned (if applicable)

Signature of subpoena recipient

Name of subpoena recipient

Date of signature

David Berlusconi

From: Michael Clements
Sent: Thursday, 4 July 2019 10:36 AM
To: David Berlusconi
Cc: John Austin
Subject: RE: Subpoena - Nissan

David,

We have been subpoena'd and need to comply -- I assume we have had wholesale dealings with them?

I spoke to Mark Janus who I believe received the subpoena and told him the same

Regards,

Michael Clements
Director – Operations
Australian Automotive Group Pty Ltd

Telephone: 02 9332 8102
Mobile: 0403 242 102

From: David Berlusconi
Sent: Thursday, 4 July 2019 10:19 AM
To: Michael Clements
Cc: John Austin
Subject: RE: Subpoena - Nissan

Hi Michael,

When I spoke to Mark, he said he had already spoken to you about this so I am guessing you don't have anything on this?

Regards,

David Berlusconi
Human Resources Manager
Australian Automotive Group Pty Limited
60 O'Riordan Street Alexandria NSW 2015
P | +61 2 9332 8167 F | +61 2 9360 5375 M | +61 417 293 398
E | dberlusconi@austautogroup.com.au



From: John Austin
Sent: Thursday, 4 July 2019 10:06 AM
To: David Berlusconi

Cc: Michael Clements
Subject: RE: Subpoena - Nissan

OK. This has nothing to do with Ryde Nissan.

This will have something to do with negotiating over the Brookvale franchise of Nissan.

If anyone has anything it will be Michael.

Regards

John Austin
Dealer Principal Brad Garlick Ford/Ryde Hyundai/Ryde Isuzu Ute
Australian Automotive Group Pty. Limited
Phone (02) 9807 2933
Mobile 0418 600 561
Email jaustin@austautogroup.com.au

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From: David Berlusconi
Sent: Thursday, 4 July 2019 9:50 AM
To: Matthew Davis; John Austin
Subject: RE: Subpoena - Nissan

Hi All,

Sorry guys the below image didn't attach to my original email.

The documents or things you must produce are as follows:

1. All documents created or dated during the period 1 October 2018 that refer to any of the following:
 - (a) Col Crawford or Col Crawford Pty Ltd;
 - (b) Stephen Crawford;
 - (c) Chad Davies;
 - (d) Brookvale Nissan;
 - (e) CKD or CKD Automotive or CKD Automotive Finance;
 - (f) Tony Hilliger.

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Regards.

David Berlusconi
Human Resources Manager
Australian Automotive Group Pty Limited
60 O'Riordan Street Alexandria NSW 2015

P | +61 2 9332 8167 F | +61 2 9360 5375 M | +61 417 293 398
E | dberlusconi@austautogroup.com.au

-----Original Message-----

From: David Berlusconi
Sent: Thursday, 4 July 2019 9:44 AM
To: Matthew Davis; John Austin
Subject: FW: Subpoena - Nissan

Hi Guys,

Can I ask If you have any correspondence pertaining to this subpoena? I only got this late Tuesday afternoon and Mark J suggested you may have something. Apparently this was sent to all Nissan franchises (at least from what Mark said) so it wouldn't surprise me if we had nothing. If you can get back to me by COB today, it would appreciated.

Regards.

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E | dberlusconi@austautogroup.com.au

-----Original Message-----

From: Omar Mokahal
Sent: Thursday, 4 July 2019 9:06 AM
To: David Berlusconi
Subject: FW: Subpoena - Nissan

Kind Regards

cityford

SYDNEY

Omar Mokahal CPA
Financial Controller |
60 O'riordan Street, Alexandria, NSW 2015
T: (02) 9332 8310 | F: (02) 9332 8182 omokahal@cityford.com.au | cityford.com.au

-----Original Message-----

From: Mark Janus
Sent: Wednesday, 19 June 2019 12:16 PM
To: Omar Mokahal
Subject: Subpoena - Nissan

Hi Omar,

Mike C suggested I send this to you.

Rgds MJ

Mark Janus
Dealer Principal

Australian Automotive Group
City Ford Sydney

60 O'Riordan St, Alexandria, NSW 2015
T: (02) 9331 5000
D: (02) 9332 8126

mjanus@cityford.com.au
www.cityford.com.au

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-----Original Message-----

From: info@cityford.com.au [mailto:info@cityford.com.au]
Sent: Wednesday, 19 June 2019 12:12 PM
To: Mark Janus
Subject: Scan from City Ford Sydney

Scan from City Ford Sydney

David Berlusconi

From: Mark Janus
Sent: Thursday, 4 July 2019 12:05 PM
To: David Berlusconi
Cc: Michael Clements; John Austin; Matthew Davis
Subject: Re: Subpoena - Nissan

David,

I had nothing to do with our Nissan Franchise. Perhaps Michael or John can assist, or Matthew Davis.

Rgds Mark

Sent from my iPhone
Mark Janus 0412432666

On 4 Jul 2019, at 11:52 am, David Berlusconi <dberlusconi@aag.com.au> wrote:

Hi Mark,

Did we have any wholesale dealings with Nissan or those listed in the subpoena (within the period below) which would cause us to have any documentation that you know off? John A, Michael C and Matthew D all said they did not.

I will send the Court information tomorrow simply saying we were unable to locate anything otherwise.

<image001.jpg>

Regards,

David Berlusconi
Human Resources Manager
Australian Automotive Group Pty Limited
60 O'Riordan Street Alexandria NSW 2015
P | +61 2 9332 8167 F | +61 2 9360 5375 M | +61 417 293 398
E | dberlusconi@austautogroup.com.au

<image003.png>

From: Michael Clements
Sent: Thursday, 4 July 2019 10:36 AM
To: David Berlusconi
Cc: John Austin
Subject: RE: Subpoena - Nissan

David,

We have been subpoena'd and need to comply – I assume we have had wholesale dealings with them?

I spoke to Mark Janus who I believe received the subpoena and told him the same

Regards

Michael Clements
Director – Operations
Australian Automotive Group Pty Ltd

Telephone: 02 9332 8102
Mobile: 0403 242 102

From: David Berlusconi
Sent: Thursday, 4 July 2019 10:19 AM
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Hi Michael,

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Regards

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Human Resources Manager
Australian Automotive Group Pty Limited
60 Clifford Street Alexandria NSW 2015
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<image003.png>

From: John Austin
Sent: Thursday, 4 July 2019 10:06 AM
To: David Berlusconi
Cc: Michael Clements
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If anyone has anything it will be Michael.

Regards

John Austin

Dealer Principal Brad Garlick Ford/Ryde Hyundai/Ryde Isuzu Ute

Australian Automotive Group Pty. Limited

Phone (02) 9807 2933

Mobile 0418 600 561

Email jaustin@austautogroup.com.au

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From: David Berlusconi

Sent: Thursday, 4 July 2019 9:50 AM

To: Matthew Davis; John Austin

Subject: RE: Subpoena - Nissan

Hi All,

Sorry guys the below image didn't attach to my original email.

David Berlusconi

From: Matthew Davis
Sent: Thursday, 4 July 2019 11:32 AM
To: David Berlusconi; John Austin
Subject: RE: Subpoena - Nissan

Hi David,

I have nothing relevant to this proceeding.

Regards,

Matthew

From: David Berlusconi
Sent: Thursday, 4 July 2019 9:50 AM
To: Matthew Davis; John Austin
Subject: RE: Subpoena - Nissan

Hi All,

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-----Original Message-----

From: Omar Mokahal
Sent: Thursday, 4 July 2019 9:06 AM
To: David Berlusconi
Subject: FW: Subpoena - Nissan

Kind Regards

cityford

SYDNEY
Omar Mokahal CPA
Financial Controller |
60 O'riordan Street, Alexandria, NSW 2015
T: (02) 9332 8310 | F: (02) 9332 8182 omokahal@cityford.com.au | cityford.com.au

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Sent: Wednesday, 19 June 2019 12:16 PM
To: Omar Mokahal
Subject: Subpoena - Nissan

Hi Omar,

Mike C suggested I send this to you.

Rgds MJ

Mark Janus
Dealer Principal

Australian Automotive Group
City Ford Sydney

60 O'Riordan St, Alexandria, NSW 2015
T: (02) 9331 5000
D: (02) 9332 8126

mjanus@cityford.com.au
www.cityford.com.au

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From: info@cityford.com.au [mailto:info@cityford.com.au]
Sent: Wednesday, 19 June 2019 12:12 PM
To: Mark Janus
Subject: Scan from City Ford Sydney

Scan from City Ford Sydney
