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11
12 **STATE OF CALIFORNIA**
13 **NEW MOTOR VEHICLE BOARD**

15 WEST COVINA MOTORS, INC., dba
16 CLIPPINGER CHEVROLET,

Protestant,

v.

18 GENERAL MOTORS LLC

19 Respondent.

Protest No. PR-2213-10

**DECLARATION OF DALE SULLIVAN
IN RESPONSE TO OPENING BRIEF
OF PROTESTANT WEST COVINA
MOTORS, INC., dba CLIPPINGER
CHEVROLET**

Hearing Date: May 17, 2012
Time: 10:00 a.m.
Honorable Lonnie Carlson

21 I, Dale Sullivan, declare and state:

22 1. I am employed by respondent General Motors LLC ("GM") as Regional
23 Director of Business Operations for the Western Region. I have personal knowledge of
24 the matters contained herein and could and would competently testify thereto under oath.

25 2. Protestant West Covina Motors, Inc., dba Clippinger Chevrolet ("WCM")
26 formerly was a party to a General Motors Dealer Sales and Service Agreement ("Dealer
27 Agreement") that authorized it to operate a Chevrolet dealership in the City of West
28 Covina. WCM's Dealer-Operator named in the Dealer Agreement was Ziad Alhassen. A

Declaration of Dale Sullivan

1 true and correct copy of the Standard Provisions of WCM's Dealer Agreement is Exhibit
2 A in GM's accompanying Exhibit Appendix.

3 3. On or about December 1, 2011, GM received notice from General Motors
4 Acceptance Corporation ("GMAC") that it had suspended the line of floor plan financing
5 ("Flooring") that it previously had made available to WCM to purchase new vehicle
6 inventory from GM. A true and correct copy of this notice, showing a copy to WCM, is
7 Exhibit B in GM's Exhibit Appendix.

8 4. On December 23, 2011, GM did what it normally does when a dealership
9 loses its Flooring. It sent WCM what GM refers to internally as a "serious concern" letter
10 spelling out the adverse operational consequences to the dealership of the loss of Flooring,
11 including the inability to "fill[] sold orders and impair[ment of] Dealer's ability to order a
12 selection of product for display and sale to potential customers." A true and correct copy
13 of the "serious concern" letter is Exhibit C in GM's Exhibit Appendix. The letter also
14 included a concise summary of section 2.3 of the Settlement and Deferred Termination
15 Agreement and Release between GM and WCM.

16 5. On or about January 27, 2012, GM received an executed "buy-sell"
17 agreement between WCM and an entity owned and/or controlled by Carlos Hidalgo, the
18 Dealer-Operator of a GM dealership in Northern California. Also included in this
19 submission was a proposed but unsigned lease between the proposed purchaser and
20 Hassen Imports Partnership ("HIP"), which I understand is the debtor in a Chapter 11
21 bankruptcy case pending in the United States Bankruptcy Court for the Central District of
22 California. A true and correct copy of this submission is Exhibit D in GM's Exhibit
23 Appendix. The submission did not include an application for a GM Dealer Agreement, a
24 source of funds statement, a signed lease or binding lease commitment or the sales and
25 financial projections and other information that GM requires before evaluating and
26 deciding whether or not to approve a proposed buy-sell proposal. It was not, therefore, a
27 "complete proposal," and despite repeated contacts between GM's Dealer Contractual
28 Group and WCM, on the one hand, and Mr. Hidalgo's organization, on the other hand,

1 requesting the additional information needed to complete the proposal, GM did not
2 receive any additional information concerning the purchaser or the proposed transaction
3 within ninety days of December 1, 2011, the date that WCM lost its Flooring.

4 6. Since GM had not received any of the additional information necessary to
5 review the proposed change in ownership, it returned the “buy-sell” agreement to WCM
6 on March 19, 2012 under cover of a letter noting that deficiency and sent a copy of the
7 letter to the proposed purchaser (“West Covina C,” a company formed or to be formed by
8 Mr. Hidalgo). A true and correct copy of this letter is Exhibit E in GM’s Exhibit
9 Appendix.

10 7. On March 22, 2012, GM sent its normal “termination mechanics” letter to
11 WCM, a true and correct copy of which is Exhibit F in GM’s Exhibit Index.

12 8. Exhibit G in GM’s Exhibit Appendix includes true and correct copies of
13 GM business records showing WCM’s retail sales performance for 2009 and 2010, years
14 in which WCM had available Flooring only for a few short months, and for 2011, during
15 most of which it had Flooring available but failed to fully utilize it. These documents
16 calculated WCM’s new vehicle retail sales index, which in all cases was far short of the
17 retail sales index of 100 required by Article 9 of the Dealer Agreement:

<u>Year</u>	<u>Expected Sales</u>	<u>Actual Sales</u>	<u>Retail Sales Index</u>	<u>Rating</u>
19 2009:	259	145	55.98	Unsatisfactory
20 2010:	269	21	7.81	Unsatisfactory
21 2011:	441	101	22.90	Unsatisfactory

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct and that this declaration was executed this 2d day of May,
24 2012.

25 _____
26 *[s] Dale Sullivan*
27 Dale Sullivan
28

1 **PROOF OF SERVICE**

2
3 I am employed in the county of Los Angeles, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is 21515
5 Hawthorne Blvd., Suite 950, Torrance, California 90503.

6 **VIA FEDERAL EXPRESS OVERNIGHT DELIVERY** on
7 May 4, 2012, I served the foregoing document described as **DECLARATION OF**
8 **DALE SULLIVAN IN RESPONSE TO OPENING BRIEF OF**
9 **PROTESTANT WEST COVINA MOTORS, INC., dba CLIPPINGER**
10 **CHEVROLET** on the parties in this action by, by placing a true copy thereof
11 enclosed in an envelope or package designated by the express service carrier for
12 overnight delivery with delivery fees provided for, and deposited in a box or other
13 facility regularly maintained by the express service carrier on May 4, 2012, which
envelope or package was addressed as follows:

14 **VIA ELECTRONIC MAIL** on May 4, 2012 I served the
15 foregoing documents described as **DECLARATION OF DALE SULLIVAN IN**
16 **RESPONSE TO OPENING BRIEF OF PROTESTANT WEST COVINA**
17 **MOTORS, INC., dba CLIPPINGER CHEVROLET** on the parties in this action
18 by electronic mail to the electronic mailing addresses listed below.

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Michael J. Flanagan Law Offices of Michael J Flanagan 2277 Fair Oaks Boulevard., Suite 450 Sacramento, CA 95825 LAWMJF@msn.com		
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23 Executed on May 4, 2012 at Torrance, California. I declare under penalty of perjury
24 under the laws of the State of California that the above is true and correct.

25
26 *[s] Gwendolyn Oxford*

27 Gwendolyn Oxford