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

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

Protestant,

17 v.

18 GENERAL MOTORS LLC

19 Respondent.

Protest No. PR-2213-10

**RESPONSE OF RESPONDENT  
GENERAL MOTORS LLC 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 Respondent General Motors LLC (“GM”) submits this memorandum in response to  
22 the Opening Brief of protestant West Covina Motors, Inc. dba Clippinger Chevrolet  
23 (“WCM”) pursuant to section 4.6 of the parties’ Settlement and Deferred Termination  
24 Agreement (“Settlement Agreement”) that the Board adopted on December 15, 2010 as a  
25 Stipulated Decision pursuant to Veh. Code § 3050.7 (“Stipulated Decision”). Under  
26 section 2.3 of the Settlement Agreement, WCM agreed to voluntary termination of its  
27 General Motors Dealer Sales and Service Agreement (“Dealer Agreement”) unless it met  
28 certain conditions. It did not, and the Dealer Agreement therefore has been terminated.

1 WCM disputes the termination, but its position rests entirely on a false premise. It  
2 claims that section 2.3 of the Settlement Agreement required GM to give a redundant  
3 notice to WCM's counsel advising of the loss of its floor plan financing that WCM used  
4 to purchase new vehicle inventory from GM ("Flooring") – an event WCM already knew  
5 about. Section 2.3, however, does not contain any notice provision. Instead, section 2.3 is  
6 *self-executing* and required WCM within ninety days of the loss of its Flooring either to  
7 obtain replacement financing or to submit a complete "buy-sell" proposal. After WCM  
8 failed to satisfy either of these conditions within ninety days of December 1, 2011, the  
9 date on which Ally suspended the dealership's Flooring, WCM's agreement in section 2.3  
10 to voluntarily terminate its Dealer Agreement took effect and the Dealer Agreement  
11 terminated automatically thirty days after expiration of the prescribed ninety-day period.

#### 12 **STATEMENT OF FACTS**

13 WCM is a licensed new motor vehicle dealer that was authorized until recently to  
14 operate a Chevrolet dealership in West Covina, California under a GM Dealer Agreement.  
15 Stipulated Decision, ¶ 1. A true and correct copy of the applicable Standard Provisions of  
16 the Dealer Agreement is Exhibit A in GM's accompanying Exhibit Appendix ("App.").

17 Article 10.2 of the Standard Provisions requires dealers to maintain sufficient  
18 Flooring to meet their new vehicle inventory-stocking and retail sales obligations under  
19 Articles 5.5.1, 6.4 and 9 of the Standard Provisions.

20 In late 2008, General Motors Acceptance Corporation ("GMAC") suspended  
21 WCM's Flooring. In May 2009, WCM obtained new Flooring from GMAC, but GMAC  
22 withdrew WCM's Flooring again on September 15, 2009. Thereafter, WCM was not able  
23 to purchase from GM, or sell to retail customers, enough new Chevrolets to meet its  
24 obligations under the Dealer Agreement. Stipulated Decision, ¶ 3.

25 Based on WCM's extended history of non-compliance with Article 10.2, GM in  
26 January 2010 gave notice of its intent to terminate WCM's Dealer Agreement. WCM  
27 filed a protest pursuant to Vehicle Code § 3060. The protest hearing was scheduled to  
28 begin on November 15, 2010. Stipulated Decision, ¶ 4.

1 About three weeks before the protest hearing, WCM delivered to GM's counsel a  
2 new Flooring commitment from GMAC. Given WCM's extended lack of Flooring,  
3 stretching back to 2008 with the exception of a brief period in mid-2009, GM was  
4 concerned that Flooring could again lapse, resulting in still another lengthy period in  
5 which WCM could not perform its key inventory-stocking and sales obligations under the  
6 Dealer Agreement. To address this concern while obviating the need for a hearing on the  
7 termination protest, GM and WCM negotiated the Settlement Agreement and requested  
8 that the Board adopt it as a Stipulated Decision pursuant to Vehicle Code § 3050.7.  
9 Stipulated Decision, ¶ 5. The Board did so by Order dated December 15, 2010.

10 On November 30, Ally, GMAC's successor, notified GM and WCM that it was  
11 suspending WCM's flooring again, effective within 24 hours. Sullivan Decl., ¶ 2; App.,  
12 Exh. B. WCM's opening brief admits it lost its Flooring on December 1, 2011.

13 On December 23, 2011, independent of the Settlement Agreement, GM did what it  
14 normally does when a dealership loses its flooring. It sent WCM what GM refers to  
15 internally as a "serious concern" letter spelling out the adverse operational consequences  
16 of the loss of Flooring to the dealership, including the inability to "fill[] sold orders and  
17 impair[ment of] Dealer's ability to order a selection of product for display and sale to  
18 potential customers." Sullivan Decl., ¶ 4; App., Exh. C. Although the Settlement  
19 Agreement did not require it to do so, GM included in the letter a concise reminder of the  
20 provisions of section 2.3 of the Settlement Agreement in which WCM had agreed to  
21 terminate its Dealer Agreement voluntarily if it did not either obtain replacement Flooring  
22 or submit a complete "buy-sell" proposal to GM within ninety days of the date (December  
23 1, 2011) that WCM lost its Flooring. *Id.*

24 Subsequently WCM did not obtain replacement Flooring, but it did submit a "buy-  
25 sell" agreement to GM in late January 2011. WCM did not, however, submit the  
26 "complete proposal" required by section 2.3 of the Settlement Agreement within the  
27 prescribed ninety-day period. Among other things, it did not submit an application from  
28 the buyer, source of funds information, a signed lease or binding lease commitment, or the

1 sales and financial projections that GM normally requires as part of the proposed  
2 purchaser's application; it only submitted the buy-sell agreement. Sullivan Decl., ¶ 5;  
3 App., Exh. D. As a result, GM on March 19, 2012 returned the buy-sell agreement to  
4 WCM under cover of a letter stating that it had not received sufficient information to  
5 evaluate the proposed buy-sell transaction. Sullivan Decl., ¶ 6; App., Exh. E.

6 WCM does not dispute that it failed to satisfy either of the two conditions set forth  
7 in section 2.3 within ninety days after it lost its Flooring. Thus, its agreement to terminate  
8 its Dealer Agreement voluntarily became effective automatically thirty days after the  
9 ninety-day period expired. Accordingly, GM on March 22, 2012 sent its normal voluntary  
10 termination letter to WCM spelling out the mechanics of termination and setting April 3,  
11 2012 as the administrative termination date. Sullivan Decl., ¶ 7; App., Exh. F. WCM  
12 now attempts to dispute its termination under the dispute resolution procedure of section  
13 4.6 of the Settlement Agreement, but its arguments are entirely unavailing.<sup>1</sup>

## 14 **ARGUMENT**

### 15 **I. WCM HAS VOLUNTARILY TERMINATED ITS DEALER AGREEMENT**

16 Floor plan financing is the lifeblood of a new car dealership. Without Flooring, the  
17 dealership cannot meet its obligations to stock an adequate inventory of new vehicles, as  
18 Article 6.4 of the Dealer Agreement specifically requires:

19 Dealer recognizes that customers expect Dealer to have a reasonable  
20 quantity and variety of current model Motor Vehicles in inventory.  
21 Accordingly, Dealer agrees to purchase and stock ... a mix of models and series  
of Motor Vehicles ... in quantities adequate to enable Dealer to fulfill its  
obligations in its Area of Primary Responsibility.

22 Because WCM could not purchase adequate new vehicle inventory from GM without  
23 Flooring, it could not meet its new vehicle sales obligations under Article 5.1.1 of the  
24 Dealer Agreement: "Dealer agrees to effectively, ethically and lawfully sell and promote  
25 the purchase, lease, and use of Products [a defined term that includes the term "Motor  
26

27 <sup>1</sup> GM believes that WCM's Dealer Agreement already has been terminated by operation  
28 of law. Pending the Board's resolution of WCM's claims in this proceeding, however,  
GM has not yet taken the administrative steps that are necessary to effectuate termination  
of the Dealer Agreement, but reserves all of its rights in this respect.

1 Vehicles”] by consumers located in its Area of Primary Responsibility.” This is precisely  
2 why Article 10.2 of the Dealer Agreement requires the dealer “to have and maintain a  
3 separate line of credit from a creditworthy financial institution ... to finance Dealer’s  
4 purchase of new vehicles” in an amount “sufficient for Dealer to meet its [inventory-  
5 stocking] obligations under Article 6.4.” Simply put, without sufficient – or, in this case,  
6 *any* – Flooring a dealership like WCM cannot meet its retail sales obligations under  
7 Article 9 of the Dealer Agreement – maintenance of a retail sales index of 100 or more –  
8 because it can’t buy cars and trucks from GM for retail sale or lease to customers.

9 Except for a short period in mid-2009, WCM did not have any Flooring at all from  
10 late 2008 until October 2010, a period of nearly two years. Without consistent or – for the  
11 most part, any – Flooring, WCM’s new vehicle sales lagged far behind the required retail  
12 sales index of 100. Even when WCM obtained new Flooring in October 2010, it failed to  
13 utilize that financing to stock an adequate inventory of new Chevrolets and as a result it  
14 again fell far short of satisfying its retail new vehicle sales obligations in 2011. As  
15 calculated in GM’s annual retail new vehicle sales evaluations of WCM:

<u>Year</u>	<u>Expected Sales</u>	<u>Actual Sales</u>	<u>Retail Sales Index</u>	<u>Rating</u>
16 2009:	259	145	55.98	Unsatisfactory
17 2010:	269	21	7.81	Unsatisfactory
18 2011:	441	101	22.90	Unsatisfactory

19 Sullivan Decl., ¶ 8; App., Exh. G.

20  
21 As a result of WCM’s lack of available Flooring – or, during 2011, its decision not  
22 to utilize fully the Flooring that was available to it – Chevrolet from the standpoint of new  
23 vehicle sales has been essentially “out of business” in West Covina since 2008. While the  
24 dealership “operated” during this period, it was a virtual ghost town – an empty dealership  
25 building surrounded by acres of empty asphalt, doing minimal mechanical service work  
26 and used car sales.

27 Fearing that this unacceptable state of affairs could continue indefinitely, GM in  
28 exchange for withdrawing its 2010 termination notice settled WCM’s protest in exchange

1 for WCM’s agreement that the Dealer Agreement would terminate – thereby freeing GM  
2 to find another dealer to represent the Chevrolet line-make West Covina – unless WCM  
3 made good on its promise to maintain sufficient Flooring or, if it lost its Flooring again,  
4 unless it submitted a complete proposal for a “buy-sell” transaction with a purchaser not  
5 affiliated with WCM or its Dealer-Operator, Ziad Alhassen, within a short period of time.<sup>2</sup>

6 Specifically, section 2.3 of the Settlement Agreement provides in pertinent part as  
7 follows (emphasis added):

8 If at any time before November 30, 2012, WCM loses its Dedicated  
9 Chevrolet Flooring..., WCM shall have ninety days to either (a) provide  
10 written evidence of a commitment for replacement Dedicated Chevrolet  
11 Flooring in the amount of at least \$ 3 million from GMAC or another GM-  
12 approved financial institution or (b) present GM with a fully-executed "buy-  
13 sell" agreement **and complete proposal** for the transfer of the stock or assets of  
14 WCM to a person or entity not affiliated with WCM or Owner. ***If WCM does  
15 not satisfy either of these conditions (a) or (b) within ninety days of the date  
16 it loses its Dedicated Chevrolet..., WCM agrees that its Dealer Agreement  
17 will terminate voluntarily effective 30 days later (i.e., 120 days after the loss  
18 of the Dedicated Chevrolet Flooring....); ....***

14 WCM admits in its Opening Brief (p. 4) that it lost its flooring on December 1, 2011.  
15 Under the plain and unambiguous language of section 2.3, this event, without more,  
16 started the running of the ninety-day period.

17 Section 2.3 plainly did not require GM to provide a redundant notice to WCM of  
18 the dealership’s loss of Flooring, an event of which Ally already had advised WCM  
19 directly. *See App., Exh. B.* Thus, WCM’s whole argument misses the point. The event  
20 triggering the running of the ninety-day period was *the loss of Flooring itself*, not the  
21 receipt of any notice from GM, particularly given the fact that WCM already knew of the  
22 loss of its Flooring as the result of the notice it received from Ally. *App., Exh. B.*

23 Thus, neither the fact that GM did not provide another notice of the loss of  
24 Flooring to WCM nor the fact that GM later did not send a copy to WCM’s counsel of a

25 \_\_\_\_\_  
26 <sup>2</sup> The requirement that WCM submit a complete “buy-sell” proposal within a short period  
27 of time was intended to avoid precisely the situation in which GM now finds itself: for all  
28 practical purposes it has **no** dealer representation in a major retail market while the  
specifics omitted from the **incomplete** proposal are mired in inconclusive negotiations  
between WCM and third parties that are expected to continue indefinitely because, as  
explained below, one of those parties (HIP) does not have the unilateral right to execute  
an agreement, *i.e.*, the proposed lease, that is an essential ingredient of the proposed sale.

1 letter than warned WCM of the consequences of the lost Flooring has any relevance at all  
2 here. Section 2.3 on its face did not require GM to provide *any* notice to WCM, let alone  
3 to its counsel. In fact, the words “notice” or “notify” do not even appear in section 2.3.

4 It is undisputed that WCM did not obtain a commitment for replacement Flooring  
5 within the prescribed ninety-day period. And while GM did receive an executed buy-sell  
6 agreement, WCM did not submit the “complete proposal” required by section 2.3(b).  
7 WCM’s Opening Brief does not even argue that it did because, plainly, it didn’t. Instead,  
8 WCM’s position is based entirely on its bogus notice argument.

9 A “complete proposal” obviously means more than what GM received in this case:  
10 a bare buy-sell agreement and an unsigned exemplar of a lease with a lessor, Hassen  
11 Imports Partnership (“HIP”), that is the debtor in a Chapter 11 bankruptcy case and that  
12 could not sign such a lease without Bankruptcy Court approval. *See* Request for Judicial  
13 Notice, Exhibit 1 (HIP bankruptcy petition). Beyond the need for Bankruptcy Court  
14 approval, the need for further information before GM could evaluate the buy-sell proposal  
15 follows both from the text of the Dealer Agreement and from state law.

16 First, Article 12.2.2 of the Dealer Agreement obligates GM to consider a buy-sell  
17 proposal by

18 taking into account factors such as (a) the personal, business, and financial  
19 qualifications of the proposed dealer operator and owners, and (b) whether the  
20 proposed change is likely to result in a successful dealership operation with  
satisfactory sales, service, and facilities at an approved location....

21 Here there is no dispute that GM never received an application from the proposed  
22 purchaser at all, let alone the information necessary to evaluate the sources of the  
23 purchaser’s funding, confirm the availability of the funds, consider the *actual* lease terms  
24 (*i.e.*, as approved by the Bankruptcy Court) or assess the likelihood – based on the  
25 purchaser’s projected sales and the financial terms of the proposed buy-sell agreement and  
26 lease – that the purchaser could create a successful and financially viable dealership  
27 operation that “penciled” on a long-term basis. Specifically, beyond the lack of any  
28 application, GM most importantly did not receive a signed lease or binding lease

1 commitment or the sales and financial projections that GM requires as part of the buyer's  
2 application. Sullivan Decl., ¶ 5.

3 Second, Veh. Code § 11713.3(d)(2) *requires* the selling dealer as a condition of the  
4 manufacturer's obligation to evaluate a proposed buy-sell transaction to provide a notice  
5 of its intent to sell the dealership assets which includes at a minimum the following:

6 (ii) A copy of all the agreements relating to the sale, assignment, or  
7 transfer of the franchised business or assets.

8 (iii) The proposed transferee's application for approval to become the  
9 successor franchisee. The application shall include forms and related  
information generally utilized by the manufacturer ... in reviewing prospective  
franchisees, if those forms are readily made available to existing franchisees...."

10 Here, as noted above, GM during the prescribed ninety-day period did not receive any  
11 application from the proposed transferee, let alone the financial and other "information  
12 generally utilized by [GM] ... in reviewing prospective franchisees" that would have been  
13 necessary to complete the proposal. As a result, GM returned the buy-sell agreement to  
14 WCM on March 19, 2012 with a letter stating it had not received sufficient information to  
15 evaluate the proposed transaction. Sullivan Decl., ¶ 6; App., Exh. E.

16 Under the clear and unambiguous language of section 2.3, GM's obligation to  
17 consider and either approve or reject the proposed buy-sell transaction was never  
18 triggered. *See* Settlement Agreement, section 2.5 ("If prior to the expiration of 90 days  
19 after WCM loses the Dedicated Chevrolet Flooring..., WCM submits a fully- executed  
20 "buy-sell" agreement *and complete proposal* for the transfer of the stock or assets of the  
21 dealership to a person or entity not affiliated with WCM or Owner, GM will consider  
22 WCM's proposal pursuant to its normal business policies and respond with either an  
23 approval, a conditional approval or a rejection of the proposal within sixty days in  
24 accordance with its normal business practices") (emphasis added).

25 It is undisputed that WCM did not provide a replacement Flooring commitment or  
26 a complete buy-sell proposal within the prescribed ninety-day period, and it therefore did  
27 not satisfy either of the conditions set forth in section 2. As a result, and without more,  
28 WCM's agreement under section 2.3 of the Settlement Agreement to voluntarily terminate

1 its Dealer Agreement within thirty days of expiration of the ninety-day period became  
2 effective automatically.

## 3 **II. WCM'S NOTICE ARGUMENTS ARE WITHOUT MERIT**

4 WCM does not – because it cannot – argue that section 2.3 required GM to give  
5 notice of WCM's loss of Flooring before the prescribed ninety-day period began to run.  
6 Section 2.3 obviously contains no such provision. Instead, this section is straightforward  
7 and intentionally self-executing. WCM failed to satisfy condition (a) or condition (b)  
8 within ninety days of its loss of Flooring. As a result, and without the need for any notice  
9 by GM, WCM's voluntarily termination agreement became effective automatically.

10 The self-executing nature of section 2.3, approved by the Board in its Stipulated  
11 Decision, made perfect sense when that provision was negotiated given the fact that if  
12 WCM subsequently lost its Flooring it obviously would have knowledge of that event and  
13 also would know first-hand whether or not it had obtained new Flooring or submitted a  
14 complete buy-sell proposal to GM within the prescribed ninety-day period. Under the  
15 clear and unambiguous language of section 2.3, it simply makes no sense that GM would  
16 be required to provide notice to WCM of the triggering event – the December 1, 2011 loss  
17 of Flooring – of which WCM obviously received direct and immediate notice from Ally.

18 In a vain effort to dodge the self-executing provisions of section 2.3, WCM cites  
19 section 4.9 of the Settlement Agreement. That section, however, only specifies the  
20 manner of notice *when notice is required*. Here, as explained above, section 2.3 does not  
21 require GM to give any notice, so section 4.9 simply does not apply. Here is the language  
22 that WCM relies upon (emphasis added):

23 4.9 Notices. Any notice or other communication *to be given* to any  
24 of the Parties hereto shall be delivered personally, or by United States  
25 registered or certified mail, with signed receipt requested to the persons  
26 listed below at the addresses indicated. Any period specified in this  
Agreement shall not commence until the first day after personal delivery or  
the fifth business day after deposition in the United States mail, as the case  
may be.

27 In the first sentence, any notice or communication “to be given” plainly refers to a notice  
28 or communication that the Agreement *requires* “to be given.” Thus, for example, section

1 2.5 provides that GM, if it approves a proposed buy-sell transaction (after being provided  
2 with a “complete proposal”), must notify WCM of its decision in order to start the 30-day  
3 time period in which the transaction must close (emphasis added):

4 [If WCM submits an executed buy-sell agreement and complete  
5 proposal], GM will consider WCM’s proposal pursuant to its normal business  
6 policies and will respond with either an approval, a conditional approval or a  
7 rejection of the proposal in accordance with its normal business practices. If  
8 GM approves or conditionally approves the proposal, and the "buy-sell"  
9 transaction closes within thirty days *of the date that WCM is notified of such  
10 approval*, this Agreement shall be of no further force or effect. If GM rejects  
11 the proposal, WCM agrees that its Dealer Agreement will terminate voluntarily  
12 ... and that such termination shall be effective 150 days after the date it loses  
13 its Dedicated Chevrolet Flooring....

14 *See also* Settlement Agreement, section 2.7: “If a GM-approved ‘buy-sell’ transaction  
15 does not close within thirty days of GM's notifying WCM of the approval, then WCM  
16 agrees that its Dealer Agreement will terminate voluntarily ... and that said termination  
17 will be effective 150 days after the date it loses its Dedicated Chevrolet Flooring....”

18 Under these provisions, unlike section 2.3, GM must “respond,” *i.e.*, notify WCM  
19 of its decision. Then, if the decision is an approval, the 30-day time period in which the  
20 buy-sell transaction must close begins to run after the notice is given. This provision,  
21 unlike section 2.3, clearly contemplates notice “to be given,” and therefore, also unlike  
22 section 2.3, triggers the second sentence of section 4.9 providing that the prescribed thirty-  
23 day period only begins to run after notice is given.

24 The only other circumstance is which notice is “to be given” by the parties under  
25 the Settlement Agreement is when one of them invokes the dispute resolution procedure  
26 of section 4.6, as WCM has done here.<sup>3</sup> Otherwise, the notice requirements of section 4.9  
27 simply do not apply.

28 Independent of the Settlement Agreement, GM did what it normally does when a  
dealership loses its Flooring; it sent WCM what GM refers to internally as a “serious

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<sup>3</sup> Notably, WCM’s notice requesting that the Board activate the dispute resolution  
procedure of section 4.6 did not comply with the technical requirement of certified mail  
notice to GM, but of course GM cannot deny actual knowledge of this request any more  
than WCM can deny actual knowledge of its loss of Flooring or the clear provisions of  
section 2.3 that came into play on December 1, 2011.

1 concern” letter spelling out the adverse operational consequences to the dealership  
2 including the inability to “fill[] sold orders and impair[ment of] Dealer’s ability to order a  
3 selection of product for display and sale to potential customers.” Sullivan Decl., ¶ 4;  
4 App., Exh. C. Although it was not required to do so, GM included in the letter a concise  
5 explanation of the provisions of section 2.3 of the Settlement Agreement, as follows:

6 Finally, your attention is called to the provisions of that certain  
7 Settlement and Deferred Termination Agreement and Release which was  
8 executed as of November 8, 2010 and subsequently adopted as a Stipulated  
9 Decision of the New Motor Vehicle Board (the “Decision”).

10 *Under the Decision, the December 1, 2011 loss of the dealership’s*  
11 *\$3 million dedicated floor plan line of credit which it agreed to maintain for*  
12 *Chevrolet until November 30, 2012 (“Dedicated Floor plan”) triggered a*  
13 *ninety day period within which the dealership must either (1) reestablish*  
14 *the lost Dedicated Floor plan with a financial institution acceptable to GM*  
15 *or (2) submit a fully executed agreement to sell the dealership or its assets*  
16 *to an unaffiliated third party along with a complete “buy-sell” proposal for*  
17 *GM’s review. If neither of these conditions is satisfied at the end of 90*  
18 *days, i.e., by February 28, 2012, the Decision provides for termination of*  
19 *the Dealer Agreement effective thirty days later, i.e., by March 30, 2012....*

20 (Emphasis added.) Thus, beyond WCM’s indisputable knowledge of the provisions of  
21 section 2.3 when it signed the Settlement Agreement and its receipt of notice directly from  
22 Ally of the loss of its Flooring on December 1, 2011, WCM cannot deny that, regardless  
23 of GM’s lack of any obligation to provide any notice at all, WCM received an actual  
24 reminder of the provisions of section 2.3 from GM in the “serious concern” letter.

25 To suggest, as WCM’s brief does, that the fact that GM did not send a copy of the  
26 letter to WCM’s counsel when GM *was not required to send any notice to WCM itself*  
27 under section 2.3 somehow “tolls” the ninety-day period within which WCM was required  
28 to satisfy conditions (a) or (b) of section 2.3 finds no support in the language of the  
29 Agreement and, simply put, makes no sense.

30 Thus, without more, the Board should reject WCM’s contention that the prescribed  
31 90-day period did not begin to run on December 1, 2011 under the self-executing  
32 provisions of section 2.3 and, further, should confirm that WCM’s Dealer Agreement has  
33 been terminated voluntarily under that section.

1 **III. IN ANY EVENT, WCM’S NOTICE ARGUMENTS ARE MOOT**

2 WCM leases the Chevrolet dealership premises from Hassen Imports Partnership  
3 (“HIP”). HIP’s general partner is Hassen Imports, Inc. (“HII”). WCM’s Dealer-Operator,  
4 Ziad Alhassen, is the President of HII. Request for Judicial Notice (“RJN”), Exh. 2.

5 On July 27, 2011, after WCM and GM had negotiated the Settlement and the Board  
6 had adopted it as a Stipulated Decision, HIP filed a Chapter 11 bankruptcy case in the  
7 United States Bankruptcy Court for the Central District of California, and that case is still  
8 pending. RJN, Exh. 1. The proposed buy-sell agreement submitted to GM in January  
9 2012 includes a proposed but unsigned lease for the Chevrolet dealership premises  
10 between the proposed purchaser, West Covina C (owned or controlled by Mr. Hidalgo),  
11 and HIP. Sullivan Decl., ¶ 5; App., Exh. D. This proposed lease obviously would require  
12 approval by the Bankruptcy Court, as HIP has repeatedly acknowledged. *See, e.g.*, RJN,  
13 Exhibit 2 (Memorandum, p. 14).

14 In order to submit a “complete proposal” for GM’s review pursuant to the terms of  
15 section 2.3 of the Settlement Agreement and Article 12.2.2 of the Dealer Agreement,  
16 WCM assuming *arguendo* that section 4.9 applied, was required to submit (among other  
17 things) a signed lease or binding lease commitment for the proposed dealership premises  
18 no later than March 5, 2012 (ninety-five days after it lost its Flooring). Without this  
19 document, GM could not evaluate or approve the location of the dealership, as it was  
20 entitled – indeed, required – to do under both the Dealer Agreement (Article 12.2.2) and  
21 state law (Veh. Code § 11713.3(d)(2)(ii) & (iii)).<sup>4</sup>

22 \_\_\_\_\_  
23 <sup>4</sup> Article 12.2.2 provides that GM in evaluating a proposed buy-sell transaction must  
24 consider the likelihood that the proposed buy-sell transaction will “result in a successful  
25 dealership operation ... which will provide satisfactory sales, service, and facilities **at an**  
26 **approved location....**” (emphasis added). Section 11713.3(d)(2) requires the proposed  
27 purchaser to submit to GM for evaluation copies of “(ii) ... all of the agreements relating  
28 to the sale, assignment, or transfer of the franchised business or assets,” a category that  
plainly includes the lease for the dealership premises, and (iii) an “application” which  
“shall include forms and related information generally utilized by the manufacturer ... in  
reviewing prospective franchisees,” which also would include the signed lease or binding  
lease commitment. Without this information, GM would not have adequate information to  
evaluate the proposed transaction inasmuch as its approval under the Vehicle Code is site  
specific. *See, e.g.*, Veh. Code §§ 507, 3062(a), 3062(b)(1), 3062(b)(2), 11712, 11713.3(l).

1 The proposed buy-sell transaction (“Sale Transaction”) includes not only the  
2 Chevrolet dealership, but also Ford, Chrysler-Jeep-Dodge and Mazda dealerships owned  
3 by companies controlled by Mr. Alhassen which operate on real estate owned by HIP or  
4 other Alhassen entities. RJN, Exh. 2 (Memorandum, pp. 5, 12-14). In recent filings,  
5 HIP’s attorneys have stated that they intend at some unspecified time in the future to  
6 present the proposed buy-sell transaction (including the proposed lease for the Chevrolet  
7 dealership premises) to the Bankruptcy Court for approval. As HIP’s counsel told the  
8 Bankruptcy Court on March 21, 2012:

9 The Debtor will seek the Court's approval of the leases that the Debtor and  
10 Purchaser intend to enter into as part of the Sale Transaction.

\*\*\*\*\*

11 The pending Sale Transaction clearly paves the way for a successful  
12 reorganization, *but it is not yet ready to be formally presented to the Court at  
this time.*”

13 RJN, Exh. 2, pp. 14, 20 (emphasis added).

14 Thus, even assuming *arguendo* that GM had been required – contrary to the  
15 express language of section 2.3 – to provide WCM with a redundant notice that it had lost  
16 its Flooring on December 1, 2011, WCM would have been required under sections 2.3  
17 and 4.9 of the Settlement Agreement to submit a complete proposal, including a signed  
18 lease or binding lease commitment from HIP, no later than March 5, 2012 (ninety-five  
19 days after notice of the loss of its flooring).

20 Yet now, two months after that deadline, HIP still has not sought – let alone  
21 obtained – approval of the proposed lease and, indeed, HIP represented to the Bankruptcy  
22 Court *weeks after* the March 5, 2012 deadline for submitting a complete “buy-sell”  
23 proposal that a request for such approval would be premature. These facts stand as a flat  
24 and incontrovertible admission that the redundant notice that GM supposedly was  
25 required to provide to WCM would not have enabled it to submit a “complete proposal”  
26 within the period prescribed by section 2.3, let alone obtain the Bankruptcy Court’s  
27 approval to close the transaction within thirty days after GM’s approval (if it were to be  
28 given), as required by section 2.5 of the Settlement Agreement. In fact, WCM still cannot

1 submit a complete proposal because HIP has not obtained – or even requested –  
2 Bankruptcy Court approval of the proposed Sale Transaction or lease. Any claim based  
3 on GM’s alleged failure to give notice is therefore moot.

4 On April 23, 2012, HIP filed a Supplemental Opposition to a pending motion by  
5 the City of West Covina that seeks to convert HIP’s bankruptcy case from Chapter 11  
6 (reorganization) to Chapter 7 (liquidation); this filing included as an exhibit a draft plan  
7 for the reorganization of HIP. RJN, Exh. 3. So far, however, HIP based on the  
8 Bankruptcy Court’s docket has not formally filed the proposed plan or taken any of the  
9 steps that would be necessary to seek confirmation of the plan, including approval of the  
10 proposed lease between HIP and West Covina C, by the Bankruptcy Court. In its  
11 Supplemental Opposition, HIP admits that it could not enter into the proposed lease unless  
12 the City and its former redevelopment agency (collectively, the “City”) consent to  
13 subordinate their security interests in the underlying dealership property to the proposed  
14 lease or are required to do so by the proposed plan of reorganization, if it is later filed and  
15 at some future date confirmed by the Bankruptcy Court. RJN, Exh. 3, Memorandum, p. 7  
16 (“In the event that the requisite consent is not obtained for this subordination, the Debtor  
17 will request that the subordination be approved as part of the Debtor's Plan”). This  
18 admission convincingly underscores the fact that, assuming *arguendo* that WCM was  
19 entitled to redundant notice from GM of the loss of its Flooring on December 1, 2011,  
20 WCM still could not have submitted a binding lease commitment or “complete proposal”  
21 within the ninety-day period prescribed by section 2.3 of the Settlement Agreement. Once  
22 again, therefore, any claim based on the lack of such notice is obviously moot.

### 23 CONCLUSION

24 A principal objective of the Settlement Agreement when it was negotiated in late  
25 2010 was to afford GM a prompt and certain “exit” from its Dealer Agreement with  
26 WCM in the event that Mr. Alhassen’s dealership failed either to maintain the level of  
27 Flooring necessary to enable it to meet its inventory-stocking and retail sales obligations  
28 or to submit a proposal for prompt sale to a replacement dealership in West Covina, where

1 Chevrolet has been essentially “out of business” since 2008. At the time the Settlement  
2 Agreement was negotiated GM obviously did not contemplate that Mr. Alhassen’s real  
3 estate company, HIP, would file a bankruptcy case, and GM certainly did not agree to  
4 further prolong its absence from the West Covina retail automotive market until after HIP  
5 could seek and possibly obtain Bankruptcy Court approval to lease the existing dealership  
6 premises to a replacement dealership. To the contrary, under the clear and unambiguous  
7 terms of the Settlement Agreement, WCM has failed to submit a timely and complete  
8 buy-sell proposal and, as a result and without more, its Dealer Agreement has been  
9 terminated by operation of law, freeing GM to seek a replacement Chevrolet dealer in  
10 West Covina immediately.

11 For all of the foregoing reasons, therefore, GM respectfully urges that the Board  
12 reject WCM’s challenge to the voluntary termination of its Dealer Agreement and confirm  
13 the termination pursuant to section 2.3 of the Settlement Agreement and the Stipulated  
14 Decision of the Board.

15 DATED: May 4, 2012

ISAACS CLOUSE CROSE & OXFORD LLP

17 By: [s] Gregory R. Oxford  
18 Gregory R. Oxford  
19 Attorneys for Respondent  
20 General Motors LLC  
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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 **RESPONSE OF**  
8 **RESPONDENT GENERAL MOTORS LLC 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 **RESPONSE OF RESPONDENT GENERAL**  
16 **MOTORS LLC 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.

19 

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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22  
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