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9 VOLKSWAGEN OF AMERICA, INC.

10 **STATE OF CALIFORNIA**  
11 **NEW MOTOR VEHICLE BOARD**

12 In the Matter of the Protest of:

Protest No. PR-2265-10

13 SHAYCO, INC., dba ONTARIO  
14 VOLKSWAGEN,

15 Protestant,

16 v.

17 VOLKSWAGEN OF AMERICA, INC.,

18 Respondent.

**DECLARATION OF CHARLES KIM ON  
REMAND FROM THE SUPERIOR  
COURT**

19 I, Charles Kim, declare as follows:

20 1. I am the General Manager of Dealer Network Development, Pacific Region, for  
21 Respondent Volkswagen of America, Inc. ("VWoA"). The facts set forth herein are within my  
22 personal knowledge based on information contained within the books, records, data and reports of  
23 VWoA as maintained in the ordinary course of business, and if called as a witness I could and would  
24 testify competently to them.

25 2. As General Manager of Dealer Network Development for the Pacific Region, I am  
26 familiar with the details of VWoA's dealer network in Riverside and San Bernardino counties, as  
27 well as California as a whole and VWoA's Pacific Region which includes both California and other  
28 states.

1           3.       At the time of the hearing in this matter in January 2011, the territory identified as the  
2 Riverside-San Bernardino Market (“Riverside-San Bernardino Market”) consisted of five Primary  
3 Areas of Influence, or “PAI’s” -- Montclair, Protestant in Ontario, Riverside Volkswagen in  
4 Riverside, Cardinale Way in Corona, and Redlands). Two of these five PAI’s -- Montclair and  
5 Redlands -- were considered “open points” at the time of the hearing. This means that the census  
6 tracts contained within those two open point PAI’s were unassigned to any existing dealer.

7           4.       Like virtually all motor vehicle distributors, VWoA regularly updates its network  
8 development plans based on changes in the local markets, opportunities with particular dealer  
9 candidates, and actions taken by our competitors. After the close of evidence in this matter in 2011,  
10 VWoA entered into a letter of intent with a dealer candidate to open a Volkswagen dealership in the  
11 Moreno Valley Auto Mall, which lies east of Riverside in Riverside County. That dealership opened  
12 in September, 2011.

13           5.       As a result of the establishment of the Moreno Valley dealership, VWoA in  
14 accordance with its standard dealer network practices reconfigured the Redlands open point PAI in  
15 the eastern portion of the Riverside-San Bernardino Market. A portion of that former Redlands PAI  
16 became part of the new Moreno Valley PAI. That new Moreno Valley PAI also includes census  
17 tracts previously assigned to a neighboring open point PAI in Hemet, California, outside of the  
18 Riverside-San Bernardino Market.

19           6.       The remaining census tracts within the former Redlands PAI were assigned to a new  
20 open point centered roughly in San Bernardino, California. In April 2012, VWoA entered into a  
21 letter of intent with Mr. David Wilson of Wilson Automotive Group to establish an exclusive  
22 Volkswagen dealership in the San Bernardino Auto Mall to fill this open point. Mr. Wilson recently  
23 began construction on an exclusive “White Frame” Volkswagen facility at this location, which is  
24 expected to open in November 2013.

25           7.       The Board's initial decision in December 2011 sustained this protest. In view of the  
26 Board's initial ruling that VWoA could not establish the proposed new dealer in Montclair, VWoA  
27 eliminated the Montclair PAI as an “open point” until this matter is finally resolved, and reassigned  
28 the Montclair census tracts to the surrounding PAI’s in accordance with VWoA’s standard network

1 planning policies and procedures. Some of these former Montclair census tracts were assigned to  
2 Protestant, and others were assigned to Bozzani Volkswagen in Covina, California.

3 8. It is my understanding that Mr. Bozzani testified in the hearing in this matter, and that  
4 his testimony is included within the record. During the hearing, Mr. Bozzani testified as follows:

5 Q. Do you have a rough idea of how much of your business in new  
6 sales, used sales, service comes from the Montclair PAI?

7 A. Without sighting a specific number or percentage, **I would say that**  
8 **a good amount of our business does come from there and continues**  
9 **to come from there, because we deal with natural traffic patterns**  
10 **and natural marketing throw.** We find we draw more from those  
11 communes that are located farther east of our location as opposed to  
12 those located west of our location. The general -- the general pattern of  
13 our consumers, it seems to be that they have tendency to drive with the  
14 premise that they're driving closer to the city, closer into town, and the  
15 perception could be that they're getting a better deal. I don't know, but  
16 it just seems that's what happens. **We draw from the east, which as**  
17 **you can see from that circle, the majority of where the proposed**  
18 **circle is, is right in the middle of my eastern area there.**<sup>1</sup>

13 9. Mr. Bozzani further testified:

14 Q. Do you have an opinion on whether or not the proposed point in  
15 Montclair should be established at this time?

16 A. At this time, I feel as though it would be a detriment to my business,  
17 okay. If, in fact, at a later date, Volkswagen has products that are  
18 competing on a broader range in the marketplace in Southern  
19 California, and the Southern California marketplace comes back, then  
20 it could be revisited, but at this time, I think not.<sup>2</sup>

21 10. Since VWoA reassigned a portion of the Montclair open point PAI to Bozzani,  
22 however, Mr. Bozzani has made it clear to me and to VWoA that he does *not* believe that his  
23 dealership can serve customers in the Montclair area if a Montclair Volkswagen dealership is not  
24 established, and has insisted that his dealership should not be held responsible for serving any  
25 customers or potential customers within the former Montclair PAI.

26 11. For example, on May 30, 2012, Mr. Bozzani sent a letter to VWoA, a true and correct  
27 copy of which is attached hereto as Exhibit A (without attached exhibits).

28 <sup>1</sup> This testimony is found at pages 118-119 of the January 11, 2011 Hearing Transcript.

<sup>2</sup> This testimony is found at pages 138-139 of the January 11, 2011 Hearing Transcript.

1           12.     In this letter, Mr. Bozzani states:

2                     “[a] small mountain range called Kellogg Hill exists that acts as a  
3                     physical and mental barrier for customers of all walks of life **and they**  
4                     **tend to stay within the Montclair region of the Inland Empire**  
5                     **directly east of me.** The extent to which I have sold into that area is a  
6                     product of my longstanding, positive reputation, **but the increase in**  
7                     **sales Volkswagen is asking me to pick up in this new area [i.e., the**  
8                     **Montclair RMA] is almost certainly an insurmountable task.”**  
9                     (emphasis added)

10                    “The proposed dealership location [in Montclair] was slated to be  
11                    outside my area of protest (10 mile rule) yet corporate has decided to  
12                    burden me with the additional responsibility of sales penetration when  
13                    I had no influence in the decision rendered by the board. Aside from an  
14                    addition of a dealership to the south of me, my PAI has remained  
15                    unchanged for the past 15 years and would have remained as such had  
16                    the proposed dealership successfully been awarded ... **there now**  
17                    **exists no additional location and I am just expected to pick up the**  
18                    **slack in an area where Volkswagen was unsuccessful in securing its**  
19                    **desired market interest. I refuse to accept this.”**

20           13.     Mr. Bozzani concluded his letter by requesting, in part, that “[a]ny and all areas of the  
21           Montclair PAI that were reassigned to enlarge the Covina PAI be removed from the latter and not  
22           used to calculate any reports or bonus payments.”

23           14.     During the hearing in this matter in 2011 and again during the remand proceedings in  
24           2011, Protestant made reference to the Victorville PAI, which was and remains an open point  
25           centered approximately 40-50 miles to the northeast of the Montclair RMA. To date, VWoA still has  
26           not identified any viable candidates to fill that point, much less entered into a letter of intent with any  
27           potential candidate to establish a Volkswagen dealership in the Victorville open point PAI.  
28           Furthermore, VWoA has no plans at this time to add a dealership in Victorville until at least 2014-15  
29           or later.

30           15.     Finally, in its recent Motion Requesting the Board Remand Protest to a Board ALJ to  
31           Take Additional Evidence Pursuant to Gov't Code Section 11517(C)(2)(D), Protestant alleged that  
32           “Volkswagen dealer profitability is down.” This statement was apparently based on a statement  
33           made during a webinar with Pacific Region dealers which took place earlier this year, in which  
34           VWoA noted that the average return on sales for Pacific Region dealers in the month of January  
35           2013 declined to 1.1% from 2.3% in January 2012. However, that statement reflected only one  
36           month’s worth of data, and the primary causes of this decline stemmed from higher floor plan

1 expenses, and an incorrect booking of below-the-line income (booking income when credits are  
2 received versus when vehicle is actually sold). Operationally, dealers were relatively flat year-over-  
3 year otherwise (return on sales for the year-end 2012 was 2.4% versus 2.5% for 2011). In addition,  
4 return on sales in 2011 was significantly higher than 2010, when return on sales was 2.0%.

5 16. Moreover, average dealer profitability for Pacific Region dealers *increased* from  
6 \$1.035 million in 2011 to \$1.100 million in 2012. In 2010, the average profitability for dealers in the  
7 Western Region (the predecessor to the current Pacific Region configuration) was \$665,000. Thus,  
8 profitability for dealers in this area is up considerably from 2010.

9 17. This increase in average dealer profitability is due in large part to the dealers'  
10 increased sales and service business over the past few years. While the Pacific Region dealership  
11 count has increased since 2010 (104 dealers in January 2011, 106 dealers in January 2012, and 112  
12 dealers in January 2013), the average new vehicle sales throughput per dealership increased from 610  
13 in 2011, to 742 in 2012, to a projected 870 in 2013.

14 I declare under penalty of perjury under the laws of the United States of America and the  
15 State of California that the foregoing is true and correct, and that this declaration is executed on April  
16 12, 2013, at Woodland Hills, California.



\_\_\_\_\_  
Charles Kim

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES**

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7<sup>th</sup> Floor, Los Angeles, California 90067.

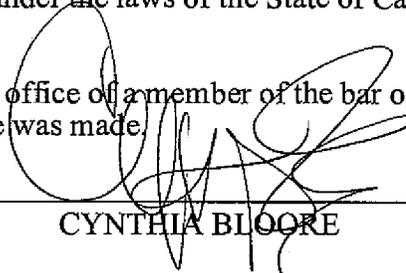
On April 12, 2013, I served the document(s) described as **DECLARATION OF CHARLES KIM ON REMAND FROM THE SUPERIOR COURT** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Michael J. Flanagan, Esq.  
Gavin M. Hughes, Esq.  
Law Offices of Michael J. Flanagan  
2277 Fair Oaks Blvd., Suite 450  
Sacramento, CA 95825  
Email: [lawmjf@msn.com](mailto:lawmjf@msn.com)

- (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY E-MAIL OR ELECTRONIC TRANSMISSION) I transmitted the above-described document by email in PDF format to the persons listed on the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on April 12, 2013, at Los Angeles, California.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
\_\_\_\_\_  
CYNTHIA BLOORE