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10 STATE OF CALIFORNIA

11 NEW MOTOR VEHICLE BOARD

12 In the Matter of the Protest of:

13 SHAYCO, INC., dba  
14 ONTARIO VOLKSWAGEN,

15 Protestant,

16 v.

17 VOLKSWAGEN OF AMERICA, INC.,

18 Respondent.  
19 \_\_\_\_\_ /

20 **Protest No: PR-2265-10**

21 **PROTESTANT'S OBJECTIONS TO THE  
22 DECLARATION OF CHARLES KIM  
23 FOLLOWING REMAND**

24 Protestant, Shayco, Inc., dba Ontario Volkswagen, submits the following objections the  
25 Declaration of Charles Kim on Remand from the Superior Court:

26 1. The Declaration of Charles Kim in  
27 its entirety.

28 Protestant objects to Mr. Kim's declaration for a lack  
of foundation. The declaration contains no indication  
of when Mr. Kim was employed by Respondent or  
when he became the General Manager of Dealer  
Network Development, Pacific Region, for

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	<p>Respondent. Moreover, Mr. Kim was never designated as a witness pursuant to the Board's Pre-Hearing Conference Order and did not provide testimony at the hearing and Protestant has had no opportunity to challenge his credibility. Any and all evidence offered through Mr. Kim's declaration cannot be shown to be competent evidence.</p>
<p>2. ¶¶ 10, 11, 12 &amp; 13 of Kim Declaration.</p>	<p>Protestant objects to any and all statements attributed to Greg Bozzani as inadmissible hearsay. Mr. Bozzani testified at the hearing and the record reflects his <i>actual</i> testimony. It would be clear error for the Board to admit hearsay evidence concerning statements purportedly made by a witness that has already testified at the hearing.</p>
<p>3. ¶ 14 OF Kim Declaration.</p>	<p>Protestant objects to the statements contained in this paragraph as false and misleading and therefore not competent evidence for the Board's consideration. Protestant further Objects to the lack of foundation for the statements in this paragraph. Mr. Kim describes Victorville as "an open point centered approximately 40-50 miles to the northeast of the Montclair RMA." This is false. While the geographic center of the PAI may be 40 to 50 miles away, there is little population or registrations in the northern portion of that PAI. The evidence in the record demonstrates that the vast majority of the population resides in the southwest portion of that PAI. A measurement centered on population would put the PAI within 20 miles of RMA</p>

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	boundaries.
4. ¶ 15 Kim Declaration.	<p>Protestant objects to the statements contained in Paragraph 15 of Mr. Kim's declaration as speculative, lacking foundation and unsupported by any evidence in the record or attached to the declaration. Moreover, no documents that might support Mr. Kim's statements have been provided to Protestant. Mr. Kim states without evidentiary basis that the primary causes of the decline in Volkswagen dealer profitability stemmed from higher floor plan expenses and incorrect booking of below-the-line income (booking income when credits are received versus when vehicles are actually sold). Mr. Kim's implication that these purported reasons for declining dealer profitability should not be cause for concern is without support in the record. Higher floor plan expense indicates that Volkswagen dealers are forced to hold their inventories longer. Either way relative to the prior period there was a substantial decrease. Facts relative to this issue were reported April 19, 2013, in the <i>Automotive News</i> website in an article entitled <u>VW lays off 500 in Chattanooga as Passat sales fall short</u>. Given the Board's strong interest in basing its decision on current data and existing circumstances, Protestant urges the Board to review the <i>Automotive News</i> article. Protestant believes this to be important under the circumstances as it tends to impeach Mr.</p>

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	Kim's credibility and the statements in his declaration.
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Dated: April 19, 2013

LAW OFFICES OF  
MICHAEL J. FLANAGAN

By:   
Gavin M. Hughes  
Attorneys for Protestant

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**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Boulevard., Suite 450, Sacramento, California, 95825.

I declare that on April 19, 2013 I caused to be served a true and complete copy of:

***PROTESTANT'S OBJECTIONS  
TO THE DECLARATION OF  
CHARLES KIM FOLLOWING REMAND***

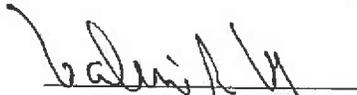
***Ontario Volkswagen v Volkswagen  
Protest No. PR-2265-10***

By Electronic Mail:

Allen Resnick  
Mathew D. Hinks  
Ryan Mauck  
JEFFER, MANGLES, BUTLER & MARMARO  
1900 Avenue Of The Stars  
Seventh Floor  
Los Angeles CA 90067-4308

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 April 2013, at Sacramento, California.

  
Valerie A. Coffey

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17 VOLKSWAGEN OF AMERICA, INC.,

18 Respondent.  
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20 **Protest No: PR-2265-10**

21 **PROTESTANT'S OBJECTIONS TO THE  
22 DECLARATION OF SHARIF FARHAT  
23 ON REMAND FROM THE SUPERIOR  
24 COURT**

25 Protestant, Shayco, Inc., dba Ontario Volkswagen, submits the following objections the  
26 Declaration of Sharif Farhat on Remand from the Superior Court:

27 1. The entirety of the declaration  
28 of Sharif Farhat and all attached  
evidence.

Protestant objects to Mr. Farhat's declaration as  
argumentative, mischaracterizes the actual evidence and  
data and is based upon data *never* produced to Protestant.  
Moreover, Protestant has been denied any opportunity to  
question or challenge Mr. Farhat's findings and analysis.

<p>1 2. ¶¶ 1-4 Farhat Declaration.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>Protestant objects to paragraphs 1-4 as argumentative, speculative, lacking foundation and contrary to the Board's direction. The Board made it clear that no further briefing would be permitted and that the declarations were for the purpose of introducing evidence concerning any changed circumstances.</p>
<p>7 3. ¶ 14 Farhat Declaration.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p>Protestant objects to Mr. Farhat's mischaracterization of the evidence in the record. At Page 6, Paragraph 14, lines 6 &amp; 7 state: "I understand that my projections for increased Volkswagen sales opportunities was criticized by Ontario VW as being unreliable "pie in the sky" projections." This is a gross misstatement of the record. The "pie in the sky" criticism was directed towards Volkswagen's goal of hitting the 800,000 vehicle mark in the United States, a level of sales Volkswagen has never achieved and is still far from achieving. (See page 121-123 of January 12th 2011 Roesner testimony) Mr. Farhat was present for Mr. Roesner's testimony and has now misrepresented the record and Mr. Roesner's testimony in an attempt to discredit Mr. Roesner's analysis. The goal of 800,000 remains "pie in the sky."</p>
<p>22 4. ¶ 29 Farhat Declaration</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Protestant objects to Mr. Farhat's statements in this paragraph as argumentative, and because they assume facts not in evidence. Mr. Farhat's credibility concerning the statements in this paragraph is questionable at best. Paragraph 29, at lines 15-16, reads: "Gross loss is the appropriate methodology because net loss incorrectly assumes consistent performance throughout a geographic</p>

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	<p>area.” This statement is false and contrary to the evidence in the record. It is gross loss that assumes every census tract should be at or above average. Net loss recognizes that not all census tracts perform exactly the same and that any measurement is for the area and not every census tract.</p>
<p>5. ¶¶ 40-43 Farhat Declaration.</p>	<p>Protestant objects to Paragraphs 40-43 as argumentative, assumes facts not in evidence, misstates the evidence in the record and the statements lack a proper foundation for consideration as competent evidence by the Board. Mr. Farhat, in regard to demographic factors having an influence on the Ontario and Montclair PAIs states: “At the time, I presented data which showed that, for each of these theories, the other markets in the California containing similar populations obtained much better registration effectiveness than the Ontario and Montclair PAIs. Thus, there was no data to support the notion that the extremely poor Volkswagen performance in the Ontario and Montclair PAIs was due to, for example, to large Hispanic populations.” This is argument by selective observation. He ignores that, in California, there is a strong negative correlation between Hispanic population and Volkswagen performance. He ignores the evidence presented relating to the strong negative correlation between educational attainment and Volkswagen market share. He ignores that his own analysis shows that areas with similar median incomes as Ontario and Montclair are below California average.</p>

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6. ¶ 47 Farhat Declaration.	Protestant objects to the statements made and the evidence sought to be introduced because they misstate the evidence in the record, and are a misleading characterization of the data, lack foundation, assume facts not in evidence and are argumentative. At Page 14, Paragraph 47 states: “As reflected on page A-22 in 2010 and 2011, Volkswagen’s registration effectiveness in what is now the Moreno Valley PAI was well below average – between 51.5% and 53%. In 2012, the first full year in which the Moreno Valley dealership was open, registration effectiveness dramatically increased to 73.4%. This increase is the result of the new dealership.” First, Mr. Farhat has manipulated the data to increase the extent of the increase. In 2010, 2011 & 2012, VW did not offer a Compact Sedan with a hybrid option. Volkswagen’s own documentation directs “Do_Not_Use” hybrid models in the Compact Sedan segment. These had been excluded by Mr. Farhat in past cases and his prior analysis in the current Protest. By including these models in this analysis he is able to display an increase from 53% to 73.4% instead of the 56.6% to 68.3% he would have shown without manipulation. Second, Mr. Farhat’s statement that the increase was a result of the new dealership is argumentative, lacks foundation, speculative and assumes facts not in evidence. Industry sales were up across the state and U.S.
7. ¶¶ 49, 50 & 51 Farhat Declaration.	Protestant objects to the evidence offered at Page 15, Paragraphs 49, 50 & 51 of Mr. Farhat’s Declaration on the

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	<p>grounds that the evidence offered is misleading, incomplete, misstates prior evidence, is argumentative, lacks foundation and is based upon data concerning the opening of a dealership that occurred <i>after</i> the closing of the record for which Protestant has been denied the opportunity to conduct discovery. Mr. Farhat states: “As reflected on A-24, each of the four dealers in the Riverside-San Bernardino Market significantly increased its sales to customers in the market between 2010 (before the Moreno Valley dealership opened) and 2012.” (lines 4-6) He later states: “This data supports my initial conclusion, particularly in the Riverside-San Bernardino Market, that the establishment of a new dealer will not cannibalize sales from the existing dealers or cause Ontario VW to “lose” all of its current sales in the Montclair PAI.” (lines 17-20) Mr. Farhat manipulated the information to make his point excluding information from his exhibit A-24 that he would normally include, as he did in his prior submissions. A comparison of A-24 from this report to A-67 &amp; A-76 of his December 2010 report shows that he has excluded the line “Expected In PAI” from this exhibit. The foundation to his assertion that additional representation is needed in this market is that the market has not kept up with California average. Yet, when measuring if existing dealers’ sales were cannibalized, he decides to not show the Board his “Expected Registrations.”</p>
8. ¶¶ 52-56 Farhat Declaration.	Protestant objects to the statements made and evidence

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	<p>offered at Pages 15-17, Paragraphs 52-56, as lacking foundation, speculative, based upon facts not in evidence, misstates evidence in the record, lacking personal knowledge by declarant and argumentative. Mr. Farhat claims that even though his previous analysis suggested that there needs to be 4 dealers in the Riverside-San Bernardino Market (meaning one additional dealer at the time of hearing), after the Moreno Valley dealer having been added and the San Bernardino dealer to open in November 2013, <b>for a total of 6 dealers</b>, the RSB Market <b>now</b> needs yet another dealer in Montclair. He states: “Again, this analysis was based on market conditions as of 2010, and did not reflect the significant growth in both industry and Volkswagen’s market share since that time.” However, Mr. Farhat offers this statement as evidence despite having failed to perform <b>any</b> analysis based on current data.</p>
9. ¶¶ 58 Farhat Declaration.	<p>Protestant objects to the statements and evidence offered in Paragraph 58 as misleading, based upon incomplete evidence, lacking proper foundation and fails to account for current existing circumstances reported in the Automotive News relative to the elimination of 500 jobs at its Tennessee factory where the Passat is made, in order to slow production. Protestant did not have time to submit evidence concerning this fact. Nor did Protestant have an opportunity to seek discovery from respondent on this matter. The article can be found on the <i>Automotive News</i> web site and is entitled <u>VW lays off 500 in Chattanooga as</u></p>

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	<p><u>Passat sales fall short</u>. In addition, Page 17, Paragraph 58, lines 20-22 Mr. Farhat states: “Volkswagen introduced its redesigned Passat in late 2011. As reflected on page A-26, Passat registrations in California in 2012 increased an incredible 871% from 2010.” Mr. Farhat’s declaration fails to acknowledge that Respondent <i>did not even build a</i> 2011 model- year Passat. The only Passat models sold and registered in California in 2010 and 2011 were the prior model year vehicles. Mr. Farhat’s mischaracterization of the increase as “incredible” is misleading and therefore cannot be considered competent evidence.</p>
10. ¶¶ 65 & 66 Farhat Declaration.	Protestant objects to the statements and evidence offered at Pages 19 & 20, Paragraphs 65 & 66 as misleading and incomplete. Mr. Farhat uses sales data from Automotive News to tout Volkswagen’s increasing sales and market share. The Automotive News sales data includes fleet sales. Use of this data rather than retail only masks the fact that Volkswagen’s gains in 2012 were exaggerated by the increasing reliance on fleet sales.
11. Exhibit A, Page A-26 to Farhat Declaration.	Protestant objects to Page A-26 due to a lack of foundation and the fact that Respondent failed to provide Protestant with the back-up data used for page A-26 of the Farhat Declaration. The data purportedly used is Volkswagen Passat Retail and Fleet Registrations for the state of California from R. L. Polk and Co. for 2010, 2011, and 2012. Respondent must not be permitted to introduce evidence that has not been produced to Protestant.
12. Exhibit A, Page A-27 to	Protestant objects to introduction of page A-27 of the

<p>1 Farhat Declaration.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>Farhat Declaration due to a lack of foundation and the fact that the back-up data has not been produced to Protestant. The unproduced data includes 2012 Volkswagen Passat Retail and Fleet Sales in California by Driver Name using USAI and Volkswagen RDR data.</p>
<p>6 13. Exhibit A, Page C-3 to Farhat</p> <p>7 Declaration.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>Protestant objects to the introduction of Page C-3 as lacking foundation and the fact that it is based upon data not produced to Protestant in this matter. The data used was 2009, 2010, and 2011 Detail Registrations in 2010 census tracts for the Riverside-San Bernardino Market. In a footnote at the bottom of page 6 of his Declaration, Mr. Farhat acknowledges that data was available in both 2000 and 2010 census tract versions. Nevertheless, both versions used by Mr. Farhat were withheld from Protestant.</p>
<p>16 14. Exhibit A, Pages A-22 through</p> <p>17 A-25 to Farhat Declaration.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>Protestant objects to introduction of Pages A-22 through A-25 of the Farhat Declaration for lack of foundation and the fact that the evidence offered is based upon data not produced to Protestant in this matter. The data not provided includes 2010 and 2011 Detail Registrations and Detail Dealer Registrations (Cross-Sell) in 2010 census tracts for the Riverside-San Bernardino Market with the Moreno Valley Market. In addition, Summary Registration data for California Represented based on 2010 census tracts were not provided for years 2009 through 2012.</p>
<p>27 15. Exhibit A, Page A-17 to</p> <p>28 Farhat Declaration.</p>	<p>Protestant objects to the introduction of Page A-17 based upon a lack of proper foundation and the fact that the</p>

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	back-up data to this page has not been produced to protestant. The unproduced data is for the RAND Foreclosure data used in Mr. Farhat's report.
15. ¶¶ 44-51 Farhat Declaration; Exhibit A, Pages A-20 through A-21 to Farhat Declaration.	Protestant objects to the misleading methodology and data applied by Mr. Frahat in his analysis of the "Riverside-San Bernardino with Moreno Valley" calculations because it is misleading. In these calculations Mr. Farhat utilizes Registration data using 2010 census tracts for all time frames 2010-2012. However, In all other calculations in his Declaration, Mr. Farhat utilizes 2010-tract data for 2012 only. These inconsistencies render his analysis misleading and unreliable and not competent evidence for the Board's consideration. Moreover, Protestant has not been provided an opportunity to challenge Mr. Farhat's current analysis through deposition, cross-examination or even through written argument.

Dated: April 19, 2013

LAW OFFICES OF  
MICHAEL J. FLANAGAN

By:   
Gavin M. Hughes  
Attorneys for Protestant

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**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Boulevard., Suite 450, Sacramento, California, 95825.

I declare that on April 19, 2013 I caused to be served a true and complete copy of:

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SHARIF FARIAT FOLLOWING REMAND***

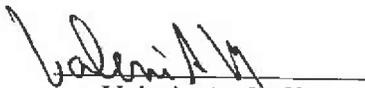
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By Electronic Mail:

Allen Resnick  
Mathew D. Hinks  
Ryan Mauck  
JEFFER, MANGLES, BUTLER & MARMARO  
1900 Avenue Of The Stars  
Seventh Floor  
Los Angeles CA 90067-4308

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 April 2013, at Sacramento, California.

  
Valerie A. Coffey

PROOF OF SERVICE