

1 GREGORY R. OXFORD (S.B. #62333)  
2 ISAACS CLOUSE CROSE & OXFORD LLP  
3 21515 Hawthorne Boulevard, Suite 950  
4 Torrance, California 90503  
5 goxford@icclawfirm.com  
6 Telephone: (310) 316-1990  
7 Facsimile: (310) 316-1330

8 Attorneys for Respondent  
9 General Motors LLC

10 Of Counsel  
11 BRIAN K. CULLIN  
12 GENERAL MOTORS LLC  
13 Mail Code 482-028-205  
14 400 Renaissance Center  
15 P.O. Box 400  
16 Detroit, Michigan 48265-4000  
17 Telephone: (313) 665-7494  
18 Facsimile: (248) 267-4304

19 STATE OF CALIFORNIA  
20 NEW MOTOR VEHICLE BOARD

21 In the Matter of the Protests of  
22 MCCONNELL CHEVROLET BUICK,  
23 INC.

24 Protestant,

25 v.

26 GENERAL MOTORS LLC,

27 Respondent.

28 Protest Nos.: PR 2369-13  
PR 2370-13

**PRE-HEARING MEMORANDUM OF  
RESPONDENT GENERAL MOTORS  
LLC**

Hearing Date: October 22, 2013  
Time: 10:00 a.m.  
Honorable Diana Woodward Hagle

Respondent General Motors LLC ("GM") respectfully submits this memorandum summarizing and discussing its evidence to be presented at the hearing in this matter.

**OVERVIEW**

Protestant McConnell Chevrolet Buick, Inc. formerly operated an authorized Chevrolet and Buick dealership pursuant to a General Motors Dealer Sales and Service Agreement ("Dealer Agreement"). Exhibit 1. Pursuant to Article 2 of the Dealer Agreement (*id.*, p. 2), Protestant's Dealer-Operator is Michael A. McConnell, who

1 according to the Dealer Statement of Ownership annexed to the Dealer Agreement owns  
2 100 percent of the outstanding stock of Protestant. Exhibit 2. The Location and Premises  
3 Addendum of the Dealer Agreement authorizes Protestant to conduct Dealership  
4 Operations at 1646 HWY 99-E, Gridley, California (“Dealership Premises”). Exhibit 3.

5 Article 5.1 of the Dealer Agreement requires Protestant “to effectively, ethically  
6 and lawfully sell and promote the purchase, lease and use of [GM] Products,” including  
7 new Chevrolet and Buick vehicles, and to “maintain an adequate staff of trained sales  
8 personnel.” Exhibit 1, p. 6.

9 Article 5.2 of the Dealer Agreement obligates Protestant “to maximize customer  
10 satisfaction by providing courteous, convenient, prompt, efficient and quality service to  
11 owners of [GM] Motor Vehicles....” Exhibit 1 p. 8. Article 5.2.2 obligates Protestant “to  
12 maintain an adequate service and parts organization....” *Id.*

13 Article 10.2, entitled “*Wholesale Floorplan*” requires Protestant “to have and  
14 maintain a separate line of credit from a creditworthy financial institution reasonably  
15 acceptable to General Motors and available to finance the Dealer’s purchase of new  
16 vehicles in conformance with the policies and procedures established by General Motors.”  
17 Exhibit 1, pp. 17-18.

18 As discussed in more detail below, Protestant for an extended period of time has  
19 not complied with its obligations under Articles 5.1, 5.2 and 10.2 and, further, is in default  
20 under Article 14.5 of the Dealer Agreement which provides in pertinent part as follows:

21 If General Motors learns that any of the following has occurred, it may  
22 terminate this Agreement by giving Dealer written notice of termination.  
23 Termination will be effective on the date specified in the notice....

24 ...  
25 **14.5.3** Failure of Dealer to conduct customary sales and service operations  
26 during customary business hours for seven consecutive business days.

27 Exhibit 1, p. 27.

28 Beginning no later than early May 2013, Protestant ceased to conduct customary  
sales and service operations during customary business hours. Exhibits 6, 7, 8, 9. GM  
subsequently served Protestant with notices of termination of the Chevrolet and Buick

1 Dealer Agreements, as required by Article 14.5 of the Dealer Agreement and Vehicle  
2 Code § 3060. Exhibits 4 and 5.

3 Protestant never resumed customary dealership sales and service operations and by  
4 early August 2013 had vacated the Dealership Premises. Exhibit 20. On August 21,  
5 2013, Protestant was formally evicted from the Dealership Premises. Exhibit 21.

### 6 CHRONOLOGY OF RELEVANT EVENTS

7 On March 20, 2013, GM received notice that Protestant's floorplan credit line had  
8 been suspended. Exhibit 10. As a result, Protestant could not make wholesale purchases  
9 of new Chevrolet or Buick vehicles from GM for sale or lease to retail customers. GM  
10 subsequently sent two letters requesting that Protestant re-establish a satisfactory line of  
11 floorplan credit as required by Article 10.2 of the Dealer Agreement. Exhibits 11 and 12.  
12 Protestant did not do so.

13 On May 2, 3, 4, 6, 7, 8, 9 and 10 (Sunday, May 5 was not a customary business  
14 day), GM representatives visited the dealership to observe and document the status of  
15 dealership operations. In a nutshell, they determined that vehicle service business other  
16 than routine "lube, oil and filter" changes was not being performed in Protestant's service  
17 department but instead was being referred to other dealers, and that on several days and on  
18 most of these days no service technicians were even present at the dealership. The  
19 dealership records showed at the time that the last warranty repair had been performed  
20 more than one month earlier, on or about April 1, 2013. The dealership was "like a ghost  
21 town" with a few employees standing around with no assigned tasks. Normal service  
22 technician tools were not observed. The dealership appeared to be closed. Video and  
23 photographic evidence confirms these observations. Exhibits 6, 7, 8 and 9. Further,  
24 GM's warranty records show that Protestant performed no warranty or policy work of any  
25 kind after April 1, 2013. Exhibits 13, 14.

26 Review of GM's sales records and Protestant's monthly Operating Reports for  
27 January and February 2013 show that Protestant sold not more than one new Buick  
28 vehicle and no more than six new Chevrolet vehicles to retail customers during 2012.

1 Exhibit 19. This compares with approximately 35 new vehicles that Protestant reported  
2 selling or leasing to retail customers during 2012. Exhibit 18. Protestant last ordered a  
3 new vehicle for wholesale purchase from GM on February 7, 2013, and last sold a vehicle  
4 to a retail customer on March 6, 2013. Exhibits 13.

5 On August 6, 2013, GM District Manager Saul Escalante visited the dealership and  
6 found it vacant. He documented this observation in a series of photographs that are  
7 included in Exhibit 20.

8 On August 22, 2013, Mr. Escalante again visited the vacant dealership and found a  
9 formal eviction notice attached to Dealership Premises dated August 21, 2013 and signed  
10 by the Butte County Sheriff's Office, a copy of which is included in Mr. Escalante's  
11 photographs taken that day. Exhibit 21.

12 In sum, for all practical purposes, this dealership has ceased to exist.

### 13 ANALYSIS OF GOOD CAUSE FACTORS

14 **(a) Amount of business transacted by the franchisee, as compared to the**  
15 **business available to the franchisee.**

16 Protestant has sold no new vehicles to retail customers since March 2013 and has  
17 done no warranty or customer pay service work (other than routine maintenance such as  
18 lube, oil and filter service) since April 1, 2013. Further, Protestant currently is incapable  
19 of conducting *any* customary dealership sales or service operations because it has no  
20 dealership facility.

21 **(b) Investment necessarily made and obligations incurred by the franchisee**  
22 **to perform its part of the franchise.**

23 **(c) Permanency of the investment.**

24 Protestant currently has no dealership facility and therefore is *not* performing *any*  
25 of its contractual obligations under the Dealer Agreement. There is no evidence of any  
26 investment made (permanent or otherwise) or obligations incurred by Protestant following  
27 its eviction from the Dealership Premises.

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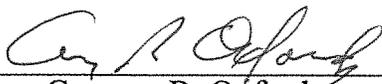


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Dated: October 21, 2013

GREGORY R. OXFORD  
ISAACS CLOUSE CROSE & OXFORD LLP

Of Counsel  
Brian K. Cullin  
General Motors LLC

By:   
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Gregory R. Oxford  
Attorneys for Respondent  
General Motors LLC

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**PROOF OF SERVICE**

I am employed in the 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 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

X **VIA ELECTRONIC MAIL** on October 21, 2013 I served the foregoing documents described as **PRE-HEARING MEMORANDUM OF RESPONDENT GENERAL MOTORS LLC** on the parties in this action by electronic mail to the electronic mailing addresses listed below.

Jeffery Carter, Esq. <a href="mailto:jeff@jjcarterlaw.com">jeff@jjcarterlaw.com</a>
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Executed on October 21, 2013 at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Gwendolyn Oxford