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9 ATTORNEYS FOR PROTESTANT

10 STATE OF CALIFORNIA

11 NEW MOTOR VEHICLE BOARD

12 In the Matter of the Protest of:

13 STOCKTON AUTOMOTIVE
14 DEVELOPMENT, LLC dba STOCKTON
15 NISSAN,

16 Protestant,

17 v.

18 NISSAN NORTH AMERICA, INC., a
19 California corporation,

20 Respondent.

21 **PROTEST NO: PR-2351-12**

22 **PROTESTANT'S RESPONSE TO
23 ORDER TO SHOW CAUSE**

24 On November 5, 2013, the New Motor Vehicle Board ("Board") issued an Order to
25 Show Cause Why the Protest Should Not Be Dismissed for Lack of Jurisdiction ("Order").

Protestant herewith submits its Response to that Order:

On or about October 19, 2013, Protestant, Stockton Nissan, through execution of an
Asset Purchase Agreement, finalized the sale of its Nissan franchise to Lithia Motors, Inc., and

1 in connection with the transfer of the franchise, Protestant executed a Voluntary
2 Termination letter, dated October 1, 2013, to be effective upon completion of the transfer of the
3 franchise (See Declaration of Michael Rosvold in Support of Response to Order to Show Cause
4 Why Protest Should Not Be Dismissed for Lack of Jurisdiction, and Exhibit A attached thereto).

5 At the time of the voluntary transfer of the franchise, there was pending before the
6 Board, and remains pending before the Board, a Protest captioned Stockton Automotive
7 Development LLC dba Stockton Nissan v. Nissan North America, Inc., PR-2351-2012,
8 ("Protest") filed on November 15, 2013, wherein Protestant denied there was good cause to
9 terminate its Nissan Franchise, and denied each and every alleged ground for such termination
10 contained in Nissan's Notice of Termination letter, dated November 7, 2012. The Board never
11 held a hearing or made any determinations or findings of fact concerning Nissans allegations,
12 nor Protestant's denials of those allegations, nor did the parties stipulate to any facts or reach any
13 agreement concerning Nissan's allegations or Protestant's denials of those allegations. (Rosvold
14 Declaration, para. 6).
15

16 The Voluntary Termination letter is a form letter, drafted by Nissan. It is also a
17 document required by Nissan to be executed by the seller in connection with the transfer of any
18 Nissan franchise (Rosvold Declaration, para. 5). The Voluntary Termination letter was executed
19 only as a requirement of completion of the franchise transfer. The transfer of the Nissan
20 franchise was not connected in any way to the Protest proceedings, nor was it a part of any effort
21 to settle the pending Protest (Rosvold Declaration, para. 4)
22

23 Subsequent to the transfer of the franchise, counsel for Respondent and counsel for
24 Protestant discussed with Board Senior Counsel, Robin Parker, Esq., by telephone, the means
25

1 by which the pending Protest should be dismissed. Counsel for Protestant offered to request
2 dismissal of the Protest with prejudice upon receipt from Nissan of a letter withdrawing its
3 Notice of Termination, copied to the Board. Protestant's counsel explained that if the matter
4 were dismissed without a withdrawal of the Notice of Termination, such dismissal could be
5 interpreted as an adverse termination based upon the allegations in the Notice of Termination, or
6 based upon some failure on the part of Protestant to file a proper and timely protest, or a failure
7 by Protestant to comply with Board orders while the Protest was pending. The importance of
8 this issue cannot be emphasized enough. Any dismissal of the Protest under the present
9 circumstances, without a full explanation of the reason for the dismissal could have severe
10 adverse consequences for Protestant should it attempt at any time to acquire an additional
11 franchise.

12
13 Through several subsequent telephone discussions and emails between counsel for the
14 parties, Respondent's counsel advised that Respondent would not withdraw its Notice of
15 Termination unless Protestant executed a Settlement Agreement and Release of All Claims.
16 Protestant refused those terms, explaining the matter was moot, there was nothing to settle and
17 no need for a release. Respondent continues to refuse to withdraw its Notice of Termination,
18 although there is clearly no need for a hearing and nothing left to be determined by the Board,
19 under the present circumstances.

20
21 On November 1, 2013, an informal conference call convened with Administrative Law
22 Judge Anthony Skrocki ("ALJ") at the suggestion of the Board's Senior Counsel. During that
23 discussion, the ALJ opined that he saw the matter as one that should be dismissed for lack of
24 Board jurisdiction, under the circumstances, and suggested that one path to resolution of the
25 dispute (about dismissal of the Protest) was that the Board should issue an Order to Show Cause

1 Why the Protest Should Not Be Dismissed for Lack of Jurisdiction, allowing the parties to
2 submit pleadings explaining their respective positions. The parties agreed to proceed
3 accordingly.

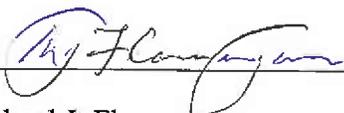
4 Protestant has no objection to an Order Dismissing the Protest for Lack of Jurisdiction,
5 so long as such order sets forth on its face, in sufficient detail, the background and context of the
6 Order of Dismissal, such that there can be no misinterpretation of the dismissal that might have
7 adverse consequences for Protestant, as explained above.
8

9 Protestant reserves its right to Reply to any Response submitted by Respondent.
10

11 Respectfully submitted this 8th day of November, 2013.

12 Dated: November 8, 2013

LAW OFFICES OF
MICHAEL J. FLANAGAN

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15 By: 
16 Michael J. Flanagan

17 Attorneys for Protestant
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19 California corporation,

20 Respondent.

21 **PROTEST NO: PR-2351-12**

22 **DECLARATION OF MICHAEL
23 ROSVOLD IN SUPPORT OF
24 PROTESTANT'S RESPONSE TO
25 ORDER TO SHOW CAUSE**

I, Michael Rosvold, declare as follows:

1) Until on or about October 1, 2013, I was the Principal Owner of a Nissan franchise known as Stockton Nissan. I have personal knowledge of the facts set forth herein, and if called upon to do so, I could and would give testimony under oath concerning them;

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\\

1 2) On or about June 19, 2013, I entered into a buy/sell agreement with Lithia
2 Corporation, transferring to that entity the Stockton Nissan franchise and other assets as set forth
3 in the buy/sell agreement itself, in exchange for good and valuable consideration;

4
5 3) At the time of the transfer of the Nissan franchise, a Protest, captioned *Stockton*
6 *Automotive Development LLC dba Stockton Nissan v Nissan North America, Inc., PR-2351-12,*
7 was pending before the New Motor Vehicle Board, denying in all respects that there was good
8 cause to terminate the Nissan franchise, and denying all of the allegations set forth in Nissan's
9 Notice of Termination;

10 4) The sale of the Nissan franchise was not connected in any way to the Protest
11 proceedings, or to any attempt to settle that matter. Rather, it resulted from a series of efforts
12 and opportunities to sell the franchise even before the Notice of Termination was received;

13
14 5) As a part of its ordinary procedures regarding the transfer of a Nissan franchise,
15 certain specified documents must be executed by the parties to the transfer. Among those
16 documents is a Voluntary Termination letter in which the seller agrees to terminate the franchise
17 (so the buyer can execute a new franchise in its own name). Attached hereto is a true and correct
18 copy of Stockton Nissan's Voluntary Termination of the Nissan franchise agreement, required
19 by Nissan to be executed by the seller in the ordinary course of any transfer of a Nissan
20 franchise;

21 6) The Voluntary Termination letter was executed at a time when none of Nissan's
22 allegations, nor the denials of those allegations, had been heard by the Board, and therefore
23 there has been no determination of those matters, either through stipulation, agreement, or
24 determinations and findings of fact by the Board.

1 I swear under penalty of perjury, under the laws of the State of California, that the
2 foregoing is true and correct. Executed this 8th day of November, 2013.

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6 Michael Rosvold, Declarant
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Exhibit A

NISSAN

STOCKTON NISSAN

3077 E. Hammer Lane
Stockton, CA 95212
P.O. Box 691180
Stockton, CA 95269-1180
Telephone: 209.956.6500
Fax: 209.475.0626
www.stocktonnissan.com

October 1, 2013

Nissan North America, Inc.
National Market Representation
One Nissan Way
Franklin, TN 37067

Dear Nissan North America,

Effective concurrent with Nissan North America, Inc.'s (Nissan") execution on a Nissan Dealer Sales and Service Agreement with Nissan of Stockton, the undersigned voluntarily elects to terminate and does hereby terminate in accordance with the terms thereof any and all agreements that the undersigned has at any time entered into with Nissan relating to the purchase and sale of Nissan motor vehicles, if and to the extent now in effect, including, without limitation, that certain Nissan Dealer Sales and Service Agreement currently in effect between Nissan and the undersigned.

Very Truly Yours,

Stockton Nissan



Michael L. Rosvold
Principal Owner

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20 Respondent.

21 **PROTEST NO: PR-2351-12**

22 **DECLARATION OF MICHAEL J.
23 FLANAGAN IN SUPPORT OF
24 PROTESTANT'S RESPONSE TO
25 ORDER TO SHOW CAUSE**

I, Michael J. Flanagan, declare as follows:

1) I am an Attorney at Law, licensed to practice before all courts in the State of California, and the owner of Law Offices of Michael J. Flanagan, counsel for Protestant, Stockton Nissan, in these proceedings. I have personal knowledge of the facts stated below, and if called upon to do so could and would give testimony under oath concerning same;

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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 November 8, 2013, I caused to be served a true and complete copy of:

***PROTESTANT'S RESPONSE TO ORDER TO SHOW CAUSE
Michael Rosvold Declaration
Michael J. Flanagan Declaration***

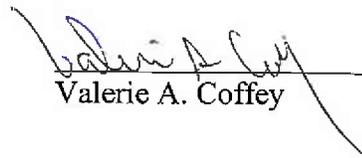
*Stockton Nissan v Nissan
Protest No. PR 2351-12*

by Electronic Mail:

Maurice Sanchez, Esq.
Kevin M. Colton, Esq.
BAKER & HOSTETLER
600 Anton Blvd St 900
Costa Mesa, CA 92626

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

Executed this 8 November 2013, at Sacramento, California.


Valerie A. Coffey