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6 Attorneys for Respondents
Nissan North America, Inc.

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

11 In The Matter Of The Protest Of:
12 STOCKTON AUTOMOTIVE
DEVELOPMENT LLC dba STOCKTON
13 NISSAN,
14 Protestant,
15 v.
16 NISSAN NORTH AMERICA, INC.,
17 Respondent.

Protest No. PR-2351-12

**RESPONDENT NISSAN NORTH
AMERICA, INC.'S REPLY TO ORDER
TO SHOW CAUSE RE DISMISSAL
AND PROTESTANT'S RESPONSE TO
ORDER TO SHOW CAUSE RE
DISMISSAL; DECLARATION OF
CHAD FILIAULT IN SUPPORT
THEREOF**

18
19 Respondent, Nissan North America, Inc. ("Respondent," "Nissan" or "NNA") hereby
20 submits its Reply to the Response filed by Protestant, Stockton Automotive Development, LLC
21 dba Stockton Nissan ("Protestant" or "Stockton") to the Board's Order to Show Cause Why the
22 Protest Should Not Be Dismissed for Lack of Jurisdiction.

23 Protestant's Response included a recitation of dates of and of the types of filings made by
24 the parties with the Board, which are not disputed here. Protestant further admits that,

25 The Board never held a hearing or made any determinations or
26 findings of fact concerning Nissan's allegations, nor Protestant's
27 denials of those allegations, nor did the parties stipulate to any
28 facts or reach any agreement regarding Nissan's allegations or
Protestant's denials of those allegations.

1 Protestant's Response, page 2, lines 11 – 15. Respondent agrees that the Board and the parties
2 never did those things, and in fact, the Board has never made any findings of fact whatsoever in
3 this matter. Therefore, any findings made by the Board must be limited to undisputed facts which
4 are contained in the declarations submitted by the parties.

5 That is precisely the problem with Protestant's position and with its request that the Board
6 issue an Order of Dismissal which, "sets forth on its face, in sufficient detail, the background and
7 context of the Order of Dismissal...." Response, p. 4, lines 4 – 8. Since the Board has never held
8 an evidentiary hearing allowing it to make factual findings on these issues, and since the parties
9 have never stipulated to any facts, the Board is powerless to make any such findings in its Order
10 of Dismissal, except for undisputed facts which are contained in the declarations submitted by the
11 parties. Board findings of fact must be supported by substantial evidence. *Kawasaki Motors*
12 *Corp. v. Superior Court (Saba)* (2000) 85 Cal. App. 4th 200, 205; *British Motor Car Distributors,*
13 *Ltd. v. New Motor Vehicle Board* (1987) 194 Cal. App. 3d 81, 90.

14 Protestant further informs the Board that Respondent "continues to refuse to withdraw its
15 Notice of Termination." Protestant's Response, page 3, lines 11 – 15. Protestant cites to no
16 authority which requires that the Notice of Termination be withdrawn in these circumstances.
17 Further, just as Protestant is concerned that an unexplained Order of Dismissal of the Protest
18 could be misinterpreted, a silent withdrawal of the Notice of Termination could similarly be
19 misinterpreted. Respondent is confident that the Notice of Termination was properly issued and
20 there is no need for it to be withdrawn. Rather, it would seem, Protestant has consented to the
21 termination of the Nissan franchise after receipt of the Notice of Termination, as set forth in
22 Vehicle Code section 3060(a)(3). Thus, the Board lacks jurisdiction to continue with the Protest
23 in this matter, as Protestant is no longer a Nissan franchisee. See Declaration of Chad Filiault,
24 attached hereto.

25 In order to resolve these ambiguities, Respondent offered to enter into a Settlement
26 Agreement and Release with Protestant, wherein all of the issues could be fully explained.
27 Further, the contentious relationship of the parties, which has included a lawsuit and an
28 arbitration in addition to the instant Protest, could be fully and finally resolved. As Protestant has

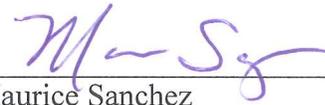
1 stated in its Response, it refuses to enter into a Settlement Agreement and Release with NNA.
2 Response, p. 3, lines 13 – 17. Absent a Settlement Agreement and Release, further litigation
3 between the parties remains a possibility. It is not unreasonable for NNA to want to protect itself
4 in this manner and to seek to negotiate a withdrawal of the Notice of Termination in exchange for
5 a Settlement Agreement and Release. Of course, Protestant is not required to enter into this
6 arrangement.

7 **CONCLUSION**

8 For all of the above reasons, the Board cannot issue an Order of Dismissal, which contains
9 any facts other than undisputed facts contained in the declarations submitted by the Parties.
10 Respondent submits that the Board’s Order should simply read, as do all such Orders of
11 Dismissal, simply, “Dismissed.”

12
13 Dated: November 18, 2013

BAKER & HOSTETLER LLP

14
15 By: 
16 Maurice Sanchez
Lisa Gibson

17 Attorneys for Respondent
18 Nissan North America, Inc.

1 DECLARATION OF CHAD FILIAULT

2 I, Chad Filiault, declare and state as follows:

3 1. I am an employee of Respondent, Nissan North America, Inc. (“NNA”) and am
4 the Area General Manager, West Region. In my capacity as Area General Manager of NNA, I
5 am responsible for oversight of the Nissan dealers in the West Region’s San Francisco Area. I
6 make this declaration in support of NNA’s Reply to Order to Show Cause re Dismissal and
7 Protestant’s Response to Order to Show Cause re Dismissal. I have personal knowledge of the
8 following facts and if called as a witness, I could and would competently testify to the facts set
9 forth in this declaration.

10 2. Stockton, California is located within my scope of responsibility for NNA.
11 Stockton Automotive Development LLC, dba Stockton Nissan, Protestant in this matter, was
12 previously NNA’s authorized dealer in Stockton, California.

13 3. On or about October 1, 2013 the Nissan Dealer Sales and Service Agreement
14 between Stockton Automotive Development LLC, dba Stockton Nissan and NNA was voluntarily
15 terminated in accordance with the terms of the letter dated October 1, 2013, a copy of which is
16 attached to the previously filed declaration of Michael L. Rosvold, Principal Owner of Stockton
17 Nissan, in this matter. A Nissan Dealer Sales and Service Agreement with a successor dealer was
18 entered into on October 1, 2013. There are no other “franchise” agreements as defined in
19 California Vehicle Code section 331 between Protestant and Respondent in this matter.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed this 18th day of November, 2013, at Pleasanton, California.

23
24
25
26 _____/s/_____
Chad Filiault

27
28 [See next page for executed copy of Declaration.]

DECLARATION OF CHAD FILIAULT

I, Chad Filiault, declare and state as follows:

1. I am an employee of Respondent, Nissan North America, Inc. ("NNA") and am the Area General Manager, West Region. In my capacity as Area General Manager of NNA, I am responsible for oversight of the Nissan dealers in the West Region's San Francisco Area. I make this declaration in support of NNA's Reply to Order to Show Cause re Dismissal and Protestant's Response to Order to Show Cause re Dismissal. I have personal knowledge of the following facts and if called as a witness, I could and would competently testify to the facts set forth in this declaration.

2. Stockton, California is located within my scope of responsibility for NNA. Stockton Automotive Development LLC, dba Stockton Nissan. Protestant in this matter, was previously NNA's authorized dealer in Stockton, California.

3. On or about October 1, 2013 the Nissan Dealer Sales and Service Agreement between Stockton Automotive Development LLC, dba Stockton Nissan and NNA was voluntarily terminated in accordance with the terms of the letter dated October 1, 2013, a copy of which is attached to the previously filed declaration of Michael L. Rosvold, Principal Owner of Stockton Nissan, in this matter. A Nissan Dealer Sales and Service Agreement with a successor dealer was entered into on October 1, 2013. There are no other "franchise" agreements as defined in California Vehicle Code section 331 between Protestant and Respondent in this matter.

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

Executed this 18TH day of November, 2013, at Pleasanton, California.


Chad Filiault

PROOF OF SERVICE

I, Lorraine Moore, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On November 18, 2013, I served a copy of the within document(s):

RESPONDENT NISSAN NORTH AMERICA, INC.'S REPLY TO ORDER TO SHOW CAUSE RE DISMISSAL AND PROTESTANT'S RESPONSE TO ORDER TO SHOW CAUSE RE DISMISSAL; DECLARATION OF CHAD FILIAULT IN SUPPORT THEREOF

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- following ordinary business practices, the envelope was sealed and placed for collection by Overnite Express on this date, and would, in the ordinary course of business, be retrieved by Overnite Express for overnight delivery on this date.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

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 Gavin M. Hughes, Esq.
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Counsel for Protestant

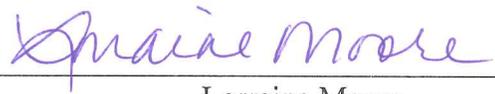
BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
COSTA MESA

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I am readily familiar with the firm's practice of 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 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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 18, 2013, at Costa Mesa, California.



Lorraine Moore