

1 NEW MOTOR VEHICLE BOARD
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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Protest of
12 McCONNELL CHEVROLET BUICK, INC.,
13 Protestant,
14 v.
15 GENERAL MOTORS, LLC,
16 Respondent.

Protest Nos. PR-2382-14 and PR-2383-14

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTESTS FOR LACK OF
JURISDICTION**

17
18 To: Kent Steffes
In Pro Per for Protestant
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1 8. On February 14, 2014, Protestant filed two separate protests (one for Buick and one for
2 Chevrolet) pursuant to the provisions of Vehicle Code section 3060.⁴

3 9. By order dated March 3, 2014, the protests were consolidated for purposes of hearing.

4 **Protest Nos. PR-2369-13 and PR-2370-13 - Prior Protests**

5 10. The termination of the two McConnell franchises has been before the Board in prior
6 proceedings bearing Protest Nos. PR-2369-13 and PR-2370-13. These protests were the subject of an
7 evidentiary hearing on their merits conducted before ALJ Diana Woodward Hagle.

8 11. These prior proceedings came before the Board when GM, by letter dated June 18, 2013,
9 GM gave notice to Protestant pursuant to Section 3060 of GM's intention to terminate the Chevrolet and
10 Buick franchises of Protestant.⁵ In error, this letter referred to both Protestant's franchises for the
11 Chevrolet and Buick line-makes. On June 25, 2013, GM corrected the mistake and mailed two separate
12 termination letters to Protestant, one for Buick and one for Chevrolet.

13 12. On June 27, 2013, Protestant filed a timely protest.⁶ On July 1, 2013, Protestant filed an
14 Amended Protest (PR-2369-13) and a new Protest (PR-2370-13). Protest No. PR-2369-13, as amended
15 then related only to Protestant's Chevrolet franchise and Protest No. PR-2370-13 to its Buick franchise.

16 13. On July 12, 2013, Protest Nos. PR-2369-13 and PR-2370-13 were ordered consolidated
17 for purposes of hearing.

18 14. A hearing on the merits of the consolidated protests was held on October 22, 2013, before
19 Administrative Law Judge Diana Woodward Hagle.

20 15. At the November 12, 2013, Special Meeting, the Public Members of the Board adopted the
21 Proposed Decision overruling Protest Nos. PR-2369-13 and PR-2370-13, and found that GM had "...
22 sustained its burden of proof of establishing 'good cause' to terminate the Chevrolet and Buick franchises
23 of McConnell Chevrolet Buick, Inc. ...". (Board Decision dated November 12, 2013)

24 **The New Protests Presently Before The Board**

25 16. The protests presently before the Board (PR-2382-14 and PR-2383-14) bear the exact
26

27 ⁴ Unless otherwise indicated, all statutory references are to the California Vehicle Code.

28 ⁵ Such notice is required whenever a franchisor seeks to terminate an existing motor vehicle franchise. (Section 3060(a))

⁶ Reflecting the error in Respondent's initial termination letter, the protest covered the franchises for both line-makes.

1 same caption as did the prior protests (PR-2369-13 and PR-2370-13), that is all four protests are
2 “McConnell Chevrolet Buick, Inc. v. General Motors, LLC”, with PR-2369-13 and PR-2383-14 for the
3 Chevrolet franchise, and PR-2370-13 and PR-2382-14 for the Buick franchise.

4 17. Among the differences between the two Buick protests and the two Chevrolet protests are
5 that the prior two protests (from June and July 2013) were filed by the “Carter Law Office” and
6 contained statements that, “Protestant is represented in this matter by the John Jeffery Carter Law Office,
7 whose address is P.O. Box 3606, Chico, California...”⁷, whereas the two new protests (filed over six
8 months later, on February 14, 2014) were filed by “Kent Steffes” and contained statements that,
9 “Protestant is represented in this matter In Pro Per by Kent Steffes, the President and Chairman of the
10 Board of McConnell Chevrolet Buick, Inc., whose address is 366 N. Skyewiy Rd. Los Angeles,
11 California, 90049...”⁸

12 18. In response to the two new protests, on February 28, 2014, Respondent filed a “Motion to
13 Consolidate and Dismiss Protests for Lack of Jurisdiction, and for an Award of Sanctions”. The Motion
14 was filed with Respondent’s notices of appearance.

15 19. As the caption of the Motion indicates, there are three motions contained within the
16 pleading.

- 17 (a) The first is the “Motion to Consolidate” the new protests.⁹
18 (b) The second is the Motion to Dismiss for Lack of Jurisdiction.
19 (c) The third is the Motion for An Award of Sanctions.

20 **THE MOTION TO DISMISS FOR LACK OF JURISDICTION**

21 20. This portion of Respondent’s Motion asserts that, since the Board already “found that GM
22 had demonstrated that there was ‘good cause’ for termination”, GM terminated McConnell’s dealer
23 agreements on November 14, 2013. (Motion, p. 2) Therefore, Respondent contends that the new protests
24

25 ⁷ See Amended Protest PR-2369-13, page 1, lines 26-28.

26 ⁸ See Protest PR-2382-14, page 2, lines 1-3. Prior to the filing of the protests, Mr. Steffes (and perhaps McConnell Chevrolet
27 Buick, Inc.) was represented by Donald F. Woods, Jr., Esq. of the law firm of McKool Smith Hennigan LLC, 865 South
28 Figueroa Street, Suite 2900, Los Angeles, California 90017, with phone calls, e-mails and letters between counsel for GM and
Mr. Woods.

⁹ No Board action is needed at this time as, on March 3, 2014, prior to the hearing of this motion, the Board’s Executive
Director had already issued an order consolidating these two protests.

1 “improperly seek to challenge the termination of Dealer Agreements *that already have been terminated*
2 *pursuant to a final decision of the Board.* Whether by reason of the fact that the Dealer Agreements are
3 no longer in effect or by reason of the res judicata bar created by the Board’s Decision, or both, the Board
4 has no jurisdiction of (sic) the New Protests and must dismiss them.” (Motion, p. 2, italics in original)

5 21. Although the new protests contend that Protestant “*is a new motor vehicle dealer selling*
6 *Chevrolets, Buicks, and Pontiacs and is located at 1646 Hwy 99E, Gridley, California...*” GM contends
7 in its motion that the McConnell dealership:

- 8 ■ is not a Chevrolet or Buick dealership because its franchises were terminated for those line-
9 makes in 2013;
- 10 ■ has not conducted business operations at 1646 Hwy 99E since its eviction six months ago;
- 11 ■ according to the DMV Occupational Licensing website, the McConnell dealership closed on
12 July 31, 2013 and its dealership license is no longer valid;
- 13 ■ is not “transacting an adequate amount of sales and service business”;
- 14 ■ has not “fulfilled its warranty obligations”; and,
- 15 ■ “does not have *any*, let alone ‘adequate,’ ‘motor vehicle sales and service facilities, equipment,
16 vehicle parts and qualified service personnel.”

17 (Motion, pp. 4-5, bold in original; Exhibit D to Motion; Protest Nos. PR-2382-14, p. 2 and PR-2383-14,
18 p. 2)

19 22. For these reasons and out of respect for the integrity and finality of Board proceedings,
20 GM argues that the new protests are “‘totally without merit’ and that their filing and continuing
21 prosecution constitute a ‘failure to comply with a lawful order or ruling of the board,’ *i.e.*, the final
22 Decision in the prior protests that permitted GM to terminate the Dealer Agreements.” (Motion, p. 5,
23 lines 19-33)

24 **PROTESTANT’S OPPOSITION TO RESPONDENT’S**
25 **MOTION TO DISMISS FOR LACK OF JURISDICTION**

26 23. On March 12, 2014, Protestant filed its “Opposition to Respondent’s Motion to Dismiss for
27 Lack of Jurisdiction”.

28 24. Protestant’s Opposition states the following unsupported conclusions: That the Board does

1 have jurisdiction "...pursuant to Vehicle Code Section 3050"; That "Section 3060 entitles McConnell
2 Chevrolet to file Protests to prevent its termination; and, V.C. Section 3066 entitles it to a merits hearing
3 on such Protests." (Opposition, page 1, lines 24-25; page 2, lines 3-6)

4 25. After stating that the above "adequately addressed the issue of jurisdiction" (Opposition,
5 page 3, lines 11-15), Protestant then makes the following assertions:¹⁰

6 (a) GM had unreasonably withheld approval for a change of ownership of Protestant and that
7 GM's conduct of injecting itself into a minor shareholder dispute "was the proximate cause of the failure
8 of the Dealership and the destruction of corporate value." (Opposition, page 3, lines 16-22)

9 (b) Protestant "believes that notice of termination was improperly delivered or not delivered at
10 all" and that the termination proceedings "should rightly proceed under Veh. Code §3060(a)(1)(B)(i)",
11 rather than "§3060(a)(1)(B)(v)"¹¹ (Opposition, page 3, lines 24-27)

12 (c) GM was made aware of various transfers of stock ownership and control of the corporation
13 during the time period from January 2013 through April 2013, and that "GM denied Protestant's Change
14 Request". (Opposition, page 5, lines 3-22)

15 (d) Sometime after April 10, 2013, GM refused to deal with the new shareholders and that
16 "...GM would only 'deal' with the Dealer Operator Michael McConnell instead of the authorized Officers
17 and Directors of the Dealer Company" even though the franchise stated that the "... Dealer Company is
18 the only party to the Dealer Agreement with GM." (Opposition, page 6, lines 8-22)

19 (e) The initial notices of termination (that resulted in Protest Nos. PR-2369-13 and PR-2370-
20 13 and the Board Decision of November 12, 2013 finding good cause for termination of the franchises):

- 21 ▪ "[were] not properly served on Protestant"; and,
- 22 ▪ "GM improperly filed notice under Vehicle Code §3060(a)(1)(B)(v) when they should

23
24 ¹⁰ These assertions, to be discussed later, are apparently being made in support of the claims that, as to the intended
25 termination, GM should have been dealing with and giving notices to the new shareholders personally.

26 ¹¹ Vehicle Code section 3060(a)(1)(B)(i)-(v) provides the grounds for issuing a 15-day notice of termination, as follows:

27 (i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent
28 shall not be unreasonably withheld.

(v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary
hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor
that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of
the motor vehicle dealer or by order of the department.

1 have been filed under Vehicle Code §3060(a)(1)(B)(i)”; (Opposition, page 7, lines 1-6)

2 (f) “It is improper that GM’s failure to perform under the **Dealer Sales & Service Agreement**
3 that directly led to the financial crisis at Protestant would allow them to terminate the franchise agreement
4 on the basis of the financial state of Protestant which GM had caused.” (Bold in original; Opposition,
5 page 7, lines 6-10)

6 (g) On January 17, 2014, Protestant received a letter from Respondent’s attorney stating
7 “...that Protestant’s Dealer Agreement had been terminated. Although improperly noticed, in order to
8 protect our rights, Protestant filed a timely Protest on February 14, 2014.” (Opposition, page 7, lines 16-
9 20; see footnote 3)

10 **RESPONDENT’S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE AND DISMISS**
11 **PROTESTS FOR LACK OF JURISDICTION, AND FOR AN AWARD OF SANCTIONS**

12 26. On March 14, 2014, GM filed its “Reply In Support of Motion...to Dismiss Protests for
13 Lack of Jurisdiction...” Respondent alleges that “... it remains undisputed that:”

14 (1) GM “... gave¹² the required registered mail¹³ notice *last summer* that it intended to
15 terminate the McConnell dealership’s Chevrolet and Buick Dealer Agreements;

16 (2) The McConnell dealership [the franchisee] timely invoked the Board’s jurisdiction by
17 filing two termination protests pursuant to Veh. Code § 3060;

18 (3) On October 23, 2013, representatives of GM and the McConnell dealership appeared at a
19 hearing on the protests that Administrative Law Judge Diana Woodward Hagle conducted in accordance
20 with the Board’s normal procedures;

21 (4) Judge Hagle subsequently prepared a proposed Decision overruling the protests;

22 (5) The Board considered and adopted Judge Hagle’s proposed Decision as the Board’s final
23 Decision at its regular meeting on November 12, 2013; and

24 (6) Two days later, on November 14, 2013, GM terminated the McConnell dealership’s
25

26 ¹² As discussed, Section 3060 requires that the notices not just be “given” but that they be “received” by the franchisee.

27 ¹³ The notices, at the top of the first page, each contain language indicating they were sent “CERTIFIED MAIL” “RETURN
28 RECEIPT REQUESTED”, rather than “registered mail”, as stated in the pleadings and as pointed out by Protestant. However,
as there is no requirement that the notices be sent by either method, whether they were sent by certified mail or registered mail
is not material. So long as the notice is “received”, the manner of transmission, whether by mail or by hand delivery, is not
material.

1 Chevrolet and Buick Dealer Agreements.” (Italics in original; Reply, page 1, line 28; page 2, lines 1-14)

2 27. Respondent agrees that the Board has jurisdiction to hear termination protests pursuant to
3 Section 3060 but “*the present protests are not authorized by section 3060 because GM already has*
4 *terminated the Dealer Agreements in question as permitted by a final decision of the Board.*” (Italics,
5 bold, and underline in original) “Without more, the Board lacks jurisdiction to proceed. A contrary
6 ruling disregarding the Board’s Decision would affront the most elementary principles of finality under
7 the salutary doctrine of res judicata.” (Reply, page 2, lines 15-20)

8 28. Respondent characterizes Mr. Steffes’ assertion that GM failed to give proper notice to
9 Protestant as “unsubstantiated” and “flies in the fact of judicially noticeable documents showing that the
10 address to which GM’s termination notices were delivered by registered mail was the authorized
11 Department of Motor Vehicles address for Protestant.” (Reply, page 2, lines 21-15; Motion, Exhibit D;
12 and Golusin Declaration, paragraph 3)

13 29. The address to which the notices from GM were sent “also is the same dealership address
14 given by Mr. Steffes in the current protests.” (Reply to Opposition, page 2, lines 25-26)

15 30. “And, while [Mr. Steffes] says ‘Protestant will offer proofs and testimony that statutory
16 notice was not properly served on Protestant’ ..., [Mr. Steffes] has failed conspicuously to present any
17 such evidence to the Board and does not even hint what alleged ‘proofs and testimony’ he might be
18 talking about.” (Reply, page 2, lines 26-28; page 3, line 1)

19 31. Respondent also asserts that Mr. Steffes cites no authority for “holding that GM in serving
20 termination notices last summer had a duty to look behind the terms of the Dealer Agreements, including
21 the designation of Mr. McConnell as the dealership’s sole owner and Dealer-Operator, or to provide
22 additional or different notices to Mr. Steffes or other people that Veh. Code §3060 does not require.”
23 (Reply, page 3, lines 2-5)

24 32. Respondent asserts that Mr. Steffes “knew about the prior Board proceedings long before
25 the October 22, 2013 hearing before Judge Hagle” and could have intervened or taken other action to
26 advise the Board of his position. Instead Mr. Steffes chose to do nothing and now seeks to relitigate an
27 “adverse decision” after “the time for seeking judicial review has expired.” (Reply, page 3, lines 13-21)

28 33. In addition, Respondent asserts that relitigation would not “serve any purpose or permit

1 any different result” as the “McConnell dealerships *had-past tense-been closed for months* and therefore
2 did not and could not conduct customary sales and service operations in violation of Article 14.5.3 of the
3 Dealer Agreement.” (Italics in original; Reply, page 3, lines 22-26) This constitutes “a historical fact”
4 that cannot be cured. Even though Mr. Steffes now claims the dealership could be re-opened he admits
5 the dealership has been closed and remains closed. (Reply, page 4, lines 3-7)

6 34. Respondent disputes the assertion that it wrongfully denied approval of several proposed
7 purchasers of the McConnell dealership and that even if Respondent had, this issue is not only not before
8 the Board but the Board has no jurisdiction over such disputes. “... to be effective any such changes in
9 dealership ownership would have required written approval of GM under Article 12.2 of the Dealer
10 Agreements, which GM never gave. In fact, only the third proposed change was ever even submitted to
11 GM. ***GM declined to approve that change because it did not receive complete and accurate***
12 ***information concerning the proposed share owners and their proposed share ownings.*** Specifically,
13 the proposal sought approval for the sale of 55 percent of the dealership to Mr. Marker and 30 percent to
14 Mr. Steffes, yet GM was informed by Mr. Libbon that he still owned 25 percent. Thus, together with Mr.
15 McConnell’s retained 15 percent interest, the purported owners together claimed to own 125 percent of
16 the dealership! Under these circumstances Mr. Steffes’ claim that GM unreasonably declined approval is
17 just silly.” (Bold, underline and italic in original; Reply, page 4, lines 23-28; page 5, lines 1-6)

18 35. Respondent also points out that Mr. Steffes’ claim that GM should not have relied upon
19 Section 3060 (a)(1)(B)(v) (the closure of the dealership) but rather could have sought to terminate the
20 Dealer Agreements pursuant to Section 3060(a)(1)(B)(i) (the unauthorized change of ownership) is an
21 acknowledgment of the right to terminate the Dealer Agreements for violation of Article 12.2.1 of the
22 Dealer Agreements. However, GM’s decision to terminate the Dealer Agreements due to closure of the
23 dealership (in violation of Article 14.5.3) means that “any issue about the purported change in ownership
24 without GM’s approval is simply moot.” (Reply, page 5, lines 7-18)

25 **ISSUES RE: JURISDICTION OF THE BOARD**

26 36. There are two major issues that relate to the jurisdiction of the Board over the protests
27 presently before the Board. These are:

28 A. The legal significance of the Board’s Decision of November 12, 2013, that overruled the

1 prior protests and permitted the termination of the two franchises; and,

2 B. Even if the Board's Decision of November 12, 2013, is of no legal significance, whether
3 the new protests were timely filed.¹⁴

4 A.

5 **The Legal Significance of the Board's Decision of November 12, 2013,**
6 **that Overruled the Prior Protests and Permitted the Termination of the Two Franchises**

7 37. In order to determine the legal significance of the Board's Decision regarding the prior
8 protests it will be necessary to determine if the requirements of the Vehicle Code were met as to the
9 notices required to be provided by GM, and then, whether the prior protests were properly before the
10 Board.

11 38. This will require an examination of the applicable statutes starting with Section 3050 and
12 Section 3060 and continuing with other statutes that are relevant. Specific terms contained in these
13 statutes will be highlighted in bold and underlined as deemed necessary and may be further defined
14 and/or discussed.

15 39. As will be seen from the statutes, the "Board" is empowered to hear a protest presented by
16 a "franchisee" and, as to this situation, the notices of termination are required from GM only if there is a
17 "franchise" in existence under which GM is the "franchisor" and McConnell Buick Chevrolet, Inc. is the
18 "franchisee".

19 40. As the statutes will indicate, the crucial terms are "franchise", "franchisee" and
20 "franchisor".

21 41. Section 3050 provides in applicable part:

22 3050. The **board**¹⁵ shall do all of the following:

23 (d) Hear and decide, within the limitations and in accordance with the procedure
24 provided, a protest presented by a **franchisee** pursuant to **Section 3060**, ...

25 42. Section 3060 states in part:

26 _____
27 ¹⁴ If a protest is not timely filed the Board would not have jurisdiction to act upon it. As this is a jurisdictional issue, it may be
28 raised by a court, or in this case, the Board, on its own volition.

¹⁵ Section 232 defines the "board" as the New Motor Vehicle Board.

1 3060. (a) Notwithstanding... the terms of any **franchise**, no **franchisor** shall terminate or
2 refuse to continue any **existing franchise** unless all of the following conditions are met:

(1) The **franchisee** and the **board** have **received** written notice from the **franchisor** as
3 follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for
4 termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with
5 respect to any of the following:

**(i) Transfer of any ownership or interest in the franchise without the consent of the
6 franchisor, which consent shall not be unreasonably withheld.**

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee
7 under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

**(v) Failure of the motor vehicle dealer to conduct its customary sales and service
8 operations during its customary hours of business for seven consecutive business days,
9 giving rise to a good faith belief on the part of the franchisor that the motor vehicle
10 dealer is in fact going out of business, except for circumstances beyond the
11 direct control of the motor vehicle dealer or by order of the department.**

...
12 (2) ...The **franchisee may file a protest with the board** within 30 days after receiving a
13 60-day notice, satisfying the requirements of this section, or within 30 days after the end of
14 any appeal procedure provided by the franchisor, or **within 10 days after receiving a 15-**
15 **day notice**, satisfying the requirements of this section, or within 10 days after the end of
16 any appeal procedure provided by the franchisor. When a protest is filed, the board shall
17 advise the franchisor that **a timely protest has been filed**, that a hearing is required
18 pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue
19 until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate
20 period for filing a protest has elapsed.

...

17 43. Section 331.1 defines a franchisee as "...any **person**¹⁶ who, pursuant to a **franchise**,
18 receives new motor vehicles...from the **franchisor** and who offers for sale or lease, or sells or leases the
19 vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to
20 perform any combination of these activities.

21 44. Section 331 defines a franchise as follows:

22 (a) A "franchise" is a **written agreement** between two or more **persons** having all of the
23 following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The **franchisee** is granted the right to offer for sale or lease, or to sell or lease at
24 retail new motor vehicles...manufactured or distributed by the **franchisor** or the right to
25 perform authorized warranty repairs and service, or the right to perform any combination
26 of these activities.

...

27 ¹⁶ Under this statute, one cannot be a "franchisee" unless one has the status of a "person". Although McConnell Chevrolet
28 Buick, Inc. is not a "natural person" it is a "person" as defined in Section 470 of the Vehicle Code which states that a "person"
includes a natural person, firm, copartnership, association, limited liability company, or corporation."

1 45. It is undisputed that at the time the prior protests were filed, there was a Chevrolet
2 “franchise” and a Buick “franchise” in existence between McConnell Chevrolet Buick, Inc., the
3 “franchisee”, and GM the “franchisor”. Under the definitions above, it is clear that the only “franchisee”
4 was McConnell Chevrolet Buick, Inc. and the only “person” that would have needed to have “received”
5 notice of the termination of the franchises was the “franchisee”, McConnell Chevrolet Buick, Inc. It is
6 also clear that the Board would have the power to hear and consider any protests that were timely and
7 properly filed by or in behalf of McConnell Chevrolet Buick, Inc. if there were any “franchises” in
8 existence.

9 46. Thus, if the requirements of Sections 3050 and 3060 were satisfied, the Board’s Decision
10 dated November 12, 2013, resulted in the right of GM to terminate both the Chevrolet and Buick
11 franchises of McConnell Chevrolet Buick, Inc.

12 47. It was determined in the Board’s Decision of November 12, 2013, that the notices of
13 termination from Respondent had been received by Protestant, the franchisee (as admitted in the protests
14 themselves), that the protests were timely filed, and that Respondent had established good cause for the
15 termination.

16 48. As a result thereof, both the Chevrolet franchise and the Buick franchise were legally and
17 effectively terminated shortly thereafter, on November 14, 2013, as stated by Respondent.

18 **The Effect of the Termination of the Franchises in November 2013**

19 49. The legally effective termination of the franchises in November 2013, leads to the legal
20 conclusion that the “franchise(s)” (as defined in Section 331) ceased to exist. Thus, McConnell
21 Chevrolet Buick was no longer a “franchisee” of Respondent.

22 **As to the Second Set of Protests Filed on February 14, 2014 and Presently Before the Board**

23 50. Respondent was not obligated to again give notice of termination pursuant to Section 3060
24 for two reasons:

- 25 1) There was no franchise to terminate; and,
- 26 2) McConnell Chevrolet Buick was no longer a franchisee.

27 51. Thus there is no right in McConnell Chevrolet Buick Inc. to file a protest pursuant to
28 Section 3060.

1 52. And, the Board has no jurisdiction pursuant to Section 3050(d) to conduct a hearing on the
2 protests that were filed in behalf of McConnell Chevrolet Buick, Inc. on February 14, 2014.

3 53. As the Chevrolet and Buick franchises had terminated on November 14, 2013, as of
4 February 14, 2014, when the new protests were submitted by Mr. Steffes in behalf of McConnell
5 Chevrolet Buick, Inc., there was no longer a “franchise” in existence between McConnell Chevrolet
6 Buick Inc. and GM. Although McConnell Chevrolet Buick Inc., may remain a “person”, it would no
7 longer be a “franchisee”, as defined in the Vehicle Code and required by Sections 3050 and 3060.
8 McConnell Chevrolet Buick, Inc. would not have the right to file a protest challenging whether there is
9 good cause to terminate the franchises that no longer exist. The franchises had already been terminated.
10 Thus, when the new protests were filed (on February 14, 2014) the Board would be without power to
11 notify Respondent that it could not terminate the franchises until a hearing was held and the Board would
12 be without power to conduct a hearing on the protests.

13 54. However, the contention has been made by Mr. Steffes, in bringing the new protests
14 before the Board, that (as to the notices of termination dated June, 2013) “Protestant believes that notice
15 of the termination was improperly delivered or not delivered at all and Protestant will argue that the
16 proceedings should rightly proceed under Veh. Code 3060(a)(1)(B)(i).” (Opposition, page 3, lines 24-
17 27)

18 55. Although Mr. Steffes did not, either in his pleadings or in the telephonic hearing on the
19 motion to dismiss, present any factual information as to the reasons for what are stated above as
20 “Protestant believes...”, it is necessary to evaluate whether as a matter of law, Respondent has
21 established that the protests should be dismissed. In this case, the claim of Respondent is that the
22 franchises had already been properly terminated in compliance with the Vehicle Code requirements.

23 56. Again, it is noted that Section 3060 provides in part:

24 3060. (a) Notwithstanding...the terms of any franchise, no franchisor shall terminate or
25 refuse to continue any existing franchise unless all of the following conditions are met:

26
26 (1) The franchisee and the board have **received** written notice from the franchisor as
follows: ... (Bold and underline added.)

27 57. Thus, it must first be determined whether the notices of termination dated June 25, 2013,
28 had been “received” by the franchisor, McConnell Chevrolet Buick, Inc.

1 58. The Vehicle Code does not define the term "received". However, there are definitions in
2 the California Uniform Commercial Code ("UCC").¹⁷ UCC section 1202 provides in part:

- 3 ...
- 4 (e) Subject to subdivision (f), a person¹⁸ "receives" a notice or notification when:
5 (1) it comes to that person's attention; or
6 (2) it is duly delivered in a form reasonable under the circumstances at the place of
7 business through which the contract was made or at another location held out by that
8 person as the place for receipt of such communications.

9 59. It is undisputed that the notices dated June 18, 2013 and June 25, 2013 were sent to the
10 franchisee at that time, McConnell Chevrolet Buick, Inc., and that they were sent to 1646 Hwy 99 E,
11 Gridley, CA 95948. This is the business address of the franchisee and is the address shown in the Dealer
12 Sales and Service Agreement (the franchise). The records of the DMV Occupational Licensing show the
13 licensee "main location" to be 1646 Hwy 99, Gridley, CA 95948 (without the word "East"). (Exhibit D
14 to motion)

15 60. Mr. Steffes, in the protests submitted by him, also states that Protestant is located at "1646
16 Hwy 99E, Gridley, California 95948-2611". (Protests, page 1, lines 21-23)

17 61. The notice dated June 25, 2013, for the Chevrolet franchise, contains on the first page the
18 following:

19 CERTIFIED MAIL: 7002 2410 0006 5390 9341¹⁹

20 RETURN RECEIPT REQUESTED

21 (Similar information is contained on the notice regarding the Buick franchise.)

22 62. The prior protests filed on July 1, 2013, in behalf of McConnell Chevrolet Buick, Inc.

23 ¹⁷ The franchises at issue are contracts for the sale of goods and would likely come within Division 2 of the California Uniform
24 Commercial Code ("UCC"), and thus the definitions in Article 1 of the UCC would be applicable. Even if the UCC is found
25 not to apply to these contracts, the definitions contained in Article 1 are persuasive even if not mandatory that they be applied
26 here.

27 ¹⁸ "Person" is defined in UCC section 1201(b)(27) as follows:

28 (27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company,
association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or
any other legal or commercial entity."

As is the case with the Vehicle Code, the definition includes a corporation.

¹⁹ Mr. Steffes points out that the information from GM submitted in connection with this motion indicates that the notices were
sent "registered mail". (Declaration of Milan Golusin, page 2, lines 6-8) Whether they were sent certified or registered is
irrelevant. The Vehicle Code does not require a manner of sending. The only requirement is that the notice be received.

1 expressly state that the notices of termination were “received” by the franchisee. These first protests
2 were filed by the “Carter Law Office”, stated that “Protestant is represented by the John Jeffrey Carter
3 Law Office”, and were signed by Maximilian G. Barteau, Attorney for Protestant, with the date of June
4 28, 2012. The protests expressly state that the notices were “received” in the following language:

5 “4. On or about June 19, 2013, **Protestant received** from Respondent written notice that
6 Respondent intended to terminate its franchise agreement to sell Chevrolet [Buick] vehicles with
7 Protestant effective 15 days from Protestant’s receipt of said notice. **A copy of this notice is attached as**
8 **Exhibit “A”**.” (Emphasis added; Protest Nos. PR-2369-13 and PR-2370-13, page 2, lines 1-4)

9 63. There is sufficient evidence to conclude as a matter of law that the notices required by
10 Section 3060 were received in June (or July) by the franchisee, McConnell Chevrolet Buick, Inc.
11 There was no issue raised in the prior proceedings before the Board and there was no claim to the
12 contrary until the unsupported claim of Mr. Steffes, in the Opposition to the Motion to Dismiss, dated
13 March 12, 2014.

14 64. To the extent that Mr. Steffes is claiming that the notices should have been directed to him
15 or the Board of Directors or other shareholders, or that the notices were “not properly served on
16 Protestant”, his position is unfounded. As Mr. Steffes has stated, the franchisee was the corporate entity.
17 (Opposition, page 6, lines 8-22) Service is not required. All that is needed is that the “franchisee”
18 “receive” the notice.

19 65. The proper notices were sent to and received at the address of the corporate entity (the
20 franchisee), in June and July 2013. To the extent that there had been a change in the ownership of the
21 stock of the entity, with new natural persons in control, does not change the fact that the “franchisee” is
22 McConnell Chevrolet Buick, Inc. It would be up to those individuals claiming to be in control of the
23 corporation to take steps to be sure they were aware of what communications were being received by the
24 corporate entity that they allegedly controlled.

25 66. GM, by statute, was required only to be certain that the notices mandated by Section 3060
26 were “received by the franchisee”, which was McConnell Chevrolet Buick, Inc. This GM had done.

27 67. Thereafter there was a hearing before an ALJ of the Board. At that hearing, McConnell
28 Chevrolet Buick, Inc. was represented by John Jeffrey Carter, Esq., of the law firm that had filed the

1 protests in behalf of Protestant. Also present during the hearing was Mr. Michael A. McConnell, the
2 dealer operator named as such under the franchise, and Mr. Bill Marker, a shareholder of the corporation.

3 68. Even though Mr. Steffes, as of at least October 7, 2013 (or perhaps earlier) had actual
4 knowledge of the upcoming hearing on the merits of the termination (held on October 22, 2013), there
5 was no appearance by Mr. Steffes or anyone representing him. Nor was there any claim made by anyone
6 asserting that Mr. Carter was not authorized to represent the corporate entity that was the franchisee.
7 (See Exhibit B to Motion, and Declaration of Gregory R. Oxford)

8 **B.**

9 **Even if the Board's Decision of November 12, 2013 is of No Legal Significance,**
10 **the New Protests were Not Effective as they were Not Timely Filed**

11 69. Vehicle Code section 3060 states in part that:

12 (2) ...The franchisee may file a protest with the board ,...within 10 days after receiving a
13 15-day notice, satisfying the requirements of this section, or within 10 days after the end
14 of any appeal procedure provided by the franchisor. When a protest is filed, the board shall
15 advise the franchisor that a timely protest has been filed, that a hearing is required pursuant
16 to Section 3066, and that the franchisor may not terminate or refuse to continue until the
17 board makes its findings.

18 ...
19 70. The notices of termination here (received by McConnell Chevrolet Buick, Inc. in June and
20 July 2013) gave reasons that are specifically included among those within Section 3060(A)(1)(b). This
21 gives rise to what are called "15-day notice(s)", meaning that the franchises could terminate after 15 days
22 unless McConnell Chevrolet Buick, Inc. filed its protests within only 10 days from receipt of the
23 notices.²⁰

24 71. Respondent has raised this as an issue in its motion where it states: "Also, of course, the
25 right to file a protest is triggered by statutory notices of termination that were given in this case in June
26 2013; to invoke the Board's jurisdiction under Veh. Code §3060(a)(1)(B)(v), a dealership must file a
27 protest within fifteen (sic) days of receiving the termination notice, which Mr. Steffes obviously did not
28

26 ²⁰ The grounds for termination were within Section 3060(A)(1)(b)(v). Mr. Steffes has asserted that GM should have utilized
27 Section 3060(A)(1)(b)(i). (See paragraph 42) There are two problems with this assertion: (1) GM is free to choose whichever
28 basis for termination exists and could have chosen both; and (2) Mr. Steffes' contention is akin to an admission that there was
good cause to terminate the franchises due to the unauthorized transfers of "any ownership or interest...without the consent of
the franchisor."

1 do here.” (Motion, page 2, lines 15-19)

2 72. It has been found that the notices of termination were “received” by the “franchisee” in
3 June and July 2013. Mr. Steffes did not file the second set of protests until February 14, 2014, which is
4 certainly not within 10 days of when the notices were received by McConnell Chevrolet Buick, Inc.
5 February 14, 2014 is more than 7 months from the time when McConnell Chevrolet Buick, Inc. received
6 them.

7 73. Contrary to the above, Mr. Steffes stated in the new protests that:

8 “4. On or about January 17, 2014, Protestant received from Respondent a notice that
9 Respondent intends to terminate its existing franchise agreement to sell Buick [Chevrolet] vehicles.”

10 74. However, there is nothing before the Board to indicate such notices were sent by
11 Respondent and counsel for GM is unaware of any such notices. Mr. Steffes, in the Opposition, did
12 include as Attachment H, a letter from GM’s counsel, Mr. Oxford, dated January 16, 2014, to Mr.
13 Woods, the attorney then representing Mr. Steffes. This letter indicates it was received by Mr. Woods on
14 January 17, 2004, but, as stated earlier, it addresses the possible buy-back of parts in connection with the
15 terminations that had already occurred. It is inconceivable that GM or its counsel would send out
16 “notices of termination” in January 2014 when from their perspective the franchises had been legally and
17 effectively terminated in November 2013 after a finding by the Board of good cause to terminate both
18 franchises. In addition, it is difficult to understand how one could refer to the letter identified in
19 Attachment H as a “notice of termination” even though it was characterized by Mr. Steffes as
20 “improperly noticed”.

21 75. If Mr. Steffes is correct that Mr. Carter was not authorized to represent McConnell
22 Chevrolet Buick, Inc., the result must be that the protests filed by Mr. Carter were not authorized.
23 However, if the only authorized protests are those filed by Mr. Steffes on February 14, 2014, as Mr.
24 Steffes now contends, these protests were filed long after the 10-day time period from when the notices
25 were received by the “franchisee” in June and July 2013. This would bring into operation the language
26 of Section 3060(a)(3) which permits termination of a franchise without a hearing before the Board if “the
27 appropriate period for filing a protest has elapsed.”

28 76. Mr. Steffes’ contentions that GM should have been dealing with the new shareholders or

1 the Directors of the corporation are not well taken. The only “franchisee” is the corporate entity,
2 McConnell Chevrolet Buick, Inc. and the Vehicle Code requires only that notices be “received” by the
3 “franchisee”.

4 77. GM is not required to be certain that the shareholders or directors of a franchisee
5 corporation receive the notices of termination. The difficulties and impracticability of doing so have
6 been recognized by the legislature. The statutes require only that the notices be “received” by the
7 “franchisee”, not its officers, not its directors, not its shareholders. Due delivery at the proper address of
8 the franchisee could satisfy the requirement that the notices were “received” as of that time, whether
9 anyone in control of the dealership read the notices or was even aware of their existence.

10 78. Clearly the legislature intended to allocate to the franchisor the risks inherent in the
11 transmission of notices to the franchisee. The risks of delay in delivery or loss of the notices prior to
12 their receipt has been allocated to the franchisor. This is evident in the statutes as the notices will not be
13 effective until the notices are “received” by the franchisee. However, the legislature has allocated to the
14 franchisee the risk of a failure to “read the mail”. Under the circumstances here, a franchisee has only 10
15 days from the time the notice is “received” to file a protest. The statutes clearly indicate that, once the
16 notices have been “received”, any delay in reading them, or even loss of them, is a risk allocated to the
17 franchisee, with the consequence being that the franchisee will lose the right to file a protest with the
18 Board.

19 CONCLUSIONS

20 79. It is concluded that:

- 21 ▪ The prior protests (Protest Nos. PR-2369-13 and PR-2370-13) were properly before the
22 Board, as the notices of termination were received by the franchisee at that time,
23 McConnell Chevrolet Buick, Inc.;
- 24 ▪ The Board’s Decision of November 12, 2013, overruled these protests and permitted the
25 Chevrolet franchise and the Buick franchise of McConnell Chevrolet Buick, Inc. to be
26 terminated;
- 27 ▪ The Chevrolet franchise and the Buick franchise of McConnell Chevrolet Buick, Inc.
28 terminated on or about November 14, 2013;

- 1 ▪ As of the date of termination, there was no longer a “franchise” relationship between
- 2 McConnell Chevrolet Buick, Inc. and General Motors, LLC;
- 3 ▪ When the new protests (Protest Nos. PR-2382-14 and PR-2383-14) were filed on February
- 4 14, 2014, McConnell Chevrolet Buick, Inc. was no longer a “franchisee” of General
- 5 Motors, LLC. and General Motors, LLC was not a “franchisor” of McConnell Chevrolet
- 6 Buick, Inc. There was no “franchise” in existence between them; and,
- 7 ▪ As there is no “franchise” between the parties and because McConnell Chevrolet Buick,
- 8 Inc. is no longer a “franchisee”, the Board lacks jurisdiction to hear Protest No. PR-2382-
- 9 14 and Protest No. PR-2383-14.

RECOMMENDATION

11 80. It is recommended that Protest Nos. PR-2382-14 and. PR-2383-14 be dismissed with
12 prejudice but that the order of dismissal be held in abeyance pending resolution of Respondent’s Motion
13 for an Award of Sanctions.

14 81. For the reasons stated below, there is no present recommendation from the ALJ regarding
15 the Motion for an Award of Sanctions.

RESPONDENT’S MOTION FOR AN AWARD OF SANCTIONS

17 82. Respondent’s Motion for an Award of Sanctions is based upon the Board’s regulation
18 which states as follows:

Section 551.21 Sanctions - Bad Faith Actions

20 (a) The ALJ may recommend ordering a party, a party's representative or both, to pay
21 reasonable sanctions, including attorney's fees and costs, incurred by another party as a
22 result of bad faith actions or tactics that are frivolous or solely intended to cause
23 unnecessary delay.

24 (1) “Actions or tactics” include, but are not limited to, the making or opposing of motions
25 or the failure to comply with a lawful order or ruling of the board.

26 (2) “Frivolous” means:

27 (A) Totally without merit; or

28 (B) For the sole purpose of harassing an opposing party.

 (b) The ALJ shall not recommend an award of sanctions without providing notice and an
opportunity to be heard.

 (c) Whether there has been bad faith by a party shall be determined by the ALJ based upon
testimony under oath or other evidence. Any proposed order recommending sanctions by the
ALJ shall be on the record, or in writing, setting forth the factual findings on which the
sanctions are based, as well as setting forth the factual findings as to the reasonableness of
the amount(s) to be paid.

 (d) A proposed order recommending an award of sanctions shall be considered by the

1 board members at their next regularly scheduled meeting. A determination not to award
2 sanctions is not considered by the board members and is final upon issuance by the ALJ.

3 (e) The board members' consideration to affirm, reject or modify the ALJ's award of
4 sanctions does not alone constitute grounds for continuance of any previously scheduled
5 dates in the proceeding.

6 83. During the hearing on the Motion, the ALJ stated the following concerns regarding the
7 application of this regulation to what was a "law and motion" proceeding during which no testimony was
8 being taken.

9 84. The above section allows an ALJ to recommend sanctions be imposed if the ALJ finds
10 that the moving party has incurred attorney's fees or costs "...as a result of bad faith actions or tactics
11 that are frivolous or solely intended to cause unnecessary delay."

12 85. Subsection (a) of the regulation can be interpreted to apply to three classes of conduct:

- 13 1) "bad faith actions" or
- 14 2) "tactics that are frivolous" or
- 15 3) "tactics ... solely intended to cause unnecessary delay"

16 There are no commas in the regulation.

17 86. The regulation could also be interpreted to be limited to two situations, so that it applies
18 to:

- 19 1) "bad faith actions or tactics that are frivolous" or
- 20 2) "bad faith actions or tactics that are ... solely intended to cause unnecessary delay".

21 If these latter two interpretations are correct, then "bad faith" is a necessary element of either of them.

22 87. Some examples of "actions or tactics" are provided in the regulation as is a definition of
23 what is "frivolous". However, there is no guidance as to what standard should be applied for evaluating
24 the "bad faith" (or the absence of good faith) of a party.

25 88. In addition, subsection (b) of the regulation prohibits an ALJ from making a
26 recommendation for an award of sanctions "without providing notice and an opportunity to be heard."
27 This provision may require more than just the notice of the hearing.

28 89. And, somewhat tangentially tied to the need for "notice and an opportunity to be heard"
under (b) is the language in (c) which states:

///

1 (c) Whether there has been bad faith by a party shall be determined by the ALJ based upon
2 testimony under oath or other evidence. Any proposed order recommending sanctions by the
3 ALJ shall be on the record, or in writing, setting forth the factual findings on which the
sanctions are based, as well as setting forth the factual findings as to the reasonableness of
the amount(s) to be paid. (Underline added.)

4 90. As can be seen from the underlined portion of the first sentence, if “bad faith” is at issue,
5 there must be an opportunity for the presentation of “testimony under oath” (which was not available in
6 the hearing on the motion). And, the second sentence requires that “Any proposed order...” (whether
7 there has been “bad faith” or not?) must contain two sets of factual findings (presumed to be based on the
8 “testimony under oath or other evidence”). These factual findings must be as to both the basis for the
9 awarding of the sanctions as well as the reasonableness of the amounts of the sanctions recommended.
10 Neither of these could have been accomplished during or as a result of the hearing on the motion held
11 before the ALJ on March 17, 2014. If nothing else, Mr. Steffes did not have an opportunity to address
12 the reasonableness of the amounts of the sanctions sought by GM as the amounts were not mentioned
13 until the Reply had been filed on the Friday before the Monday hearing.

14 91. There is also the possibility of interpreting that portion of the language in (c) as requiring
15 “testimony under oath or other evidence” only if the claim is that there has been “bad faith” but not if the
16 claim is that the “action or tactics” were “frivolous or solely intended to cause unnecessary delay”. This
17 could be so as the language in (c) expressly states “whether there has been bad faith...” but makes no
18 reference to the need for “testimony under oath or other evidence” if the claim is that of “frivolous or
19 solely intended to cause unnecessary delay.” Of course, “bad faith” could be implicitly included in either
20 of these situations.

21 92. Complicating things somewhat further is the possibility of interpreting the regulation to
22 determine if the monetary sanctions sought should be limited to the fees and costs incurred solely in
23 bringing the motion to dismiss the protests (that GM asserts was “totally without merit” and thus
24 “frivolous”) or whether the monetary sanctions sought should also include the fees and costs incurred in
25 bringing the motion for sanctions and doing so in compliance with the requirements of the regulation.

26 93. It may well be that the attorney’s fees and costs incurred in pursuing the claim for
27 monetary sanctions will be significantly greater than the claim for attorney’s fees and costs in seeking to
28 obtain dismissal of the protests. GM’s claim for attorney’s fees and costs incurred in connection seeking

1 dismissal of the protests is in the amount of \$6,745 which includes 17 hours of attorney's fees and a \$200
2 filing fee. It is quite possible that, due to the emphasis on "live testimony" and the need for two sets of
3 findings of facts, that, in pursuing the claim for monetary sanctions, there will be the need for discovery
4 (including depositions). The additional attorney's fees and costs for pursuing the claim for monetary
5 sanctions could greatly exceed \$6,745.

6 94. Whether an award of sanctions can or cannot include the costs of pursuing the motion for
7 sanctions may be a major factor in any decision of the parties to continue to pursue the claim or continue
8 to defend against the claim.

9 95. The ALJ stated that, based upon what was before him as of the time of the hearing, he was
10 of the opinion GM had established prima facie that the filing of the two protests was "totally without
11 merit" and therefore would be "frivolous" within the definition contained in Section 551.21 of the
12 regulation. However, the ALJ is not permitted to make such a recommendation to the Board as there
13 must first be an opportunity for both sides, and especially Protestant and Mr. Steffes, to introduce
14 evidence as to the decision to file the new protests. And, in addition, the ALJ cannot make a
15 recommendation without specific "factual findings on which the sanctions are based" along with specific
16 "factual findings as to the reasonableness of the amount(s) to be paid." (13 CCR § 551.21(c))

17 96. In support of the likelihood that sanctions may be appropriate here are that rather than
18 waiting for months prior to filing these new protests, there was ample opportunity for Mr. Steffes and the
19 others claiming an ownership interest in the franchisee to seek to be heard before the hearing on the
20 merits of the prior protests, or during the hearing on the merits of the protest, or even before the Board
21 when it was considering the Proposed Decision.

22 97. Mr. Steffes had knowledge of the prior protests, and the upcoming hearing on them, no
23 later than October 7, 2013, approximately two weeks prior to the hearing held on October 22, 2013,
24 before ALJ Hagle.

25 98. Mr. Steffes could have filed a motion to intervene pursuant to Section 551.13 of the
26 Board's regulations. If granted, Mr. Steffes may have been permitted to engage in discovery as well as
27 putting on evidence and cross-examination of witnesses, perhaps participating in settlement negotiations,
28 and including the filing of an amicus curiae brief.

1 99. And, Mr. Steffes may have sought to present evidence before ALJ Hagle, both oral and
2 documented, as "other interested individuals and groups" as stated in Section 3066.

3 100. In addition, Mr. Steffes could have sought to make an appearance before the Board itself
4 when it was considering the Proposed Decision of ALJ Hagle on November 12, 2013.

5 101. It is difficult to believe that Mr. Steffes was not aware of the Decision of the Board issued
6 on November 12, 2013 at some time far in advance of February 14, 2013, when he filed the two new
7 protests. Although Mr. Steffes filed the new protests on February 14, 2014, in pro per, as stated earlier,
8 Mr. Steffes had been represented by counsel who had exchanged communications with counsel for
9 Respondent.

10 **RECOMMENDATION AS TO THE MOTION FOR AN AWARD OF SANCTIONS**

11 102. It is recommended that this portion of the Motion be remanded to an ALJ of the Board for
12 further consideration taking into account the language of the Board's regulation.

13 **PROPOSED ORDER OF REMAND REGARDING THE**
14 **MOTION FOR AWARD OF SANCTIONS**

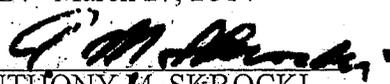
15 It is hereby ordered that the portion of the motion seeking an award of sanctions is remanded to
16 an ALJ of the Board for further proceedings in accordance with the provisions of 13 CCR § 551.21.

17 **PROPOSED ORDER ADOPTING THE RECOMMENDATION REGARDING**
18 **THE MOTION TO DISMISS THE PROTESTS**

19 It is hereby determined that the portion of the motion regarding dismissal of the protests shall be
20 adopted and orders of dismissal be issued upon the determination by the Board of the issues regarding
21 that portion of the motion seeking an award of sanctions.

22 I hereby submit the foregoing which constitutes my
23 proposed order in the above-entitled matters, as the
24 result of a hearing before me, and I recommend this
25 proposed order be adopted as the decision of the
26 New Motor Vehicle Board.

27 DATED: March 27, 2014

28 By: 

ANTHONY M. SKROCKI
Administrative Law Judge

Jean Shiomoto, Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV