

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
20
21
22
23
24
25
26
27
28
STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of
MCCONNELL CHEVROLET BUICK,
INC.

Protestant,

v.

GENERAL MOTORS LLC,
Respondent.

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

**RESPONDENT'S MOTION TO
CONSOLIDATE AND DISMISS
PROTESTS FOR LACK OF
JURISDICTION, AND FOR AN
AWARD OF SANCTIONS**

Hearing Date: To be determined
Time: To be determined

Respondent General Motors LLC ("GM") respectfully moves the Board for an order consolidating the present protests purportedly filed on behalf of McConnell Chevrolet Buick, Inc., dismissing them on the ground that the Board lacks jurisdiction, and requiring Protestant and its representative to pay GM's costs and attorney's fees.

PRELIMINARY STATEMENT

These protests are purportedly filed on behalf of McConnell Chevrolet Buick, Inc. (the "McConnell Dealership"), which formerly operated an authorized Chevrolet and

1 Buick dealership in Gridley, California pursuant to General Motors Dealer Sales and
2 Service Agreements (“Dealer Agreements”). Protestant is represented “in pro per” by
3 Kent Steffes, who claims to be its President and Chairman of the Board. Protests, ¶ 3.

4 Two previous termination protests filed on behalf of the McConnell Dealership,
5 Nos. PR-2369-13 and PR-2370-13, were overruled after a hearing before Administrative
6 Law Judge Diana Woodward Hagle on October 22, 2013. The November 12, 2013
7 Decision by which the public members of the Board adopted Judge Hagle’s Proposed
8 Decision is Exhibit A hereto. In the Decision Judge Hagle and the Board found that GM
9 had demonstrated there was “good cause” for termination, and GM accordingly
10 terminated the McConnell Dealership’s Dealer Agreements on November 14, 2013.

11 Thus, the present protests (“New Protests”) improperly seek to challenge the
12 termination of Dealer Agreements *that already have been terminated pursuant to a final*
13 *decision of the Board*. Whether by reason of the fact that the Dealer Agreements are no
14 longer in effect or by reason of the res judicata bar created by the Board’s Decision, or
15 both, the Board has no jurisdiction of the New Protests and must dismiss them. Also, of
16 course, the right to file a protest is triggered by statutory notices of termination that were
17 given in this case in June 2013; to invoke the Board’s jurisdiction under Veh. Code §
18 3060(a)(1)(B)(v), a dealership must file a protest within fifteen days of receiving the
19 termination notice, which Mr. Steffes obviously did not do here.

20 Prior to the filing of this motion, Mr. Steffes was placed on notice of the Board’s
21 lack of jurisdiction in the form of a letter from Respondent’s counsel demanding that he
22 withdraw the New Protests. *See* attached Exhibit B. The letter included a copy of the
23 Board’s Decision for Mr. Steffes’ review. In an e-mail to Respondent’s counsel, Exhibit
24 C hereto, Mr. Steffes has declined to dismiss the New Protests and inquired about GM’s
25 interest in “settlement.” There is nothing to “settle,” however, as the New Protests are
26 frivolous and warrant imposition of sanctions on Protestant and its “representative,” Mr.
27 Steffes, under the Board’s regulations. 13 Cal. Code of Regs. § 551.21.

28

1 ARGUMENT

2 **I. THE BOARD LACKS JURISDICTION OF THE NEW PROTESTS**

3 In June 2013, in compliance with section 3060 of the California Vehicle Code, GM
4 served notices of its intent to terminate the Dealer Agreements by certified mail delivered
5 to the McConnell Dealership at its address of record with both GM and the Department of
6 Motor Vehicles, to wit: 1646 Hwy 99E, Gridley, California 95948. The basis for the
7 termination notices was the dealership's persistent failure starting in the spring of 2013 to
8 conduct customary sales and service operations in violation of Article 14.5.3 of the Dealer
9 Agreements. Indeed, following service of the termination notices, the McConnell
10 Dealership ceased to conduct business altogether and was evicted from the Dealership
11 Premises in August 2013. *See* Decision, ¶¶ 1-7, 17-19, 27-29.

12 In response to the termination notices, the McConnell Dealership's counsel, Jeff
13 Carter, filed termination protests with the Board pursuant to Veh. Code § 3060, Nos. PR-
14 2369-13 and PR-2370-13. Pursuant to the Board's normal procedures, these protests were
15 set for hearing and were heard by Judge Hagle on October 22, 2013. Representatives of
16 both GM and the McConnell Dealership attended the hearing along with their respective
17 counsel. Neither Mr. Steffes nor his former counsel, attended the hearing or sought at any
18 time or in any manner to present evidence or argument to Judge Hagle or the Board,
19 despite e-mail exchanges with GM and its counsel showing they were fully aware of the
20 Board proceedings.

21 On November 6, 2013, Judge Hagle issued her Proposed Decision overruling the
22 protests after finding that GM had carried its burden to demonstrate "good cause" for
23 termination of the Dealer Agreements. Under the its normal procedures, the Board
24 considered the Proposed Decision at its regular meeting on November 12, 2013. Neither
25 Mr. Steffes nor any other representative of the McConnell Dealership attended the Board
26 meeting or otherwise sought to oppose adoption of the Proposed Decision. Following
27 deliberation in executive session the Board adopted the Proposed Decision as its final
28 Decision. Then, on November 14, 2013, GM terminated the Dealer Agreements.

1 It is a flat misrepresentation, therefore, to state—as the New Protests do—that the
2 McConnell Dealership “*is* a new motor vehicle dealer selling Chevrolets, Buicks, and
3 Pontiacs and *is located at 1646 Hwy 99E, Gridley, California 95948-2611.*” Protests, ¶ 1
4 (emphasis added). The McConnell Dealership *is not* a Chevrolet or Buick dealership
5 because its Dealer Agreements for those line-makes were terminated last year. The
6 McConnell Dealership also is *not* “located at 1646 Hwy 99E”; to the contrary, it has not
7 conducted business operations at that location since its eviction six months ago.
8 According to the Department of Motor Vehicles Occupational Licensing website, the
9 McConnell Dealership closed on July 31, 2013 and its dealership license is no longer
10 valid. *See* attached Exhibit D.

11 Veh. Code § 3060 obviously does not permit a terminated and shuttered dealership
12 to protest franchise terminations that already have occurred in accordance with a final
13 decision of the Board overruling prior protests. Elementary principles of *res judicata* also
14 bar such improper re-litigation of matters already decided adversely to Protestant. The
15 Board therefore lacks jurisdiction of the New Protests and must dismiss them.

16 **II. PROTESTANT AND ITS REPRESENTATIVE SHOULD BE REQUIRED**
17 **TO PAY GM’S COSTS AND ATTORNEYS FEES INCURRED HEREIN**

18 As recited in Exhibit B, Mr. Steffes and his counsel were aware *prior to the*
19 *hearing before Judge Hagle* that Mr. Carter had filed protests with the Board, yet took no
20 action to intervene or otherwise present evidence or argument to the Board. Nor did they
21 or any other representative of the McConnell Dealership appear at the Board meeting of
22 November 12, 2013 at which the public members adopted the Proposed Decision. Thus, it
23 is truly beyond the pale for Mr. Steffes, who has been fully aware of the Board’s Decision
24 and franchise terminations since at least early December, to suddenly appear two months
25 later and ask the Board, in effect, to ignore its Decision and “start over.”

26 Moreover, Mr. Steffes does not and cannot have any reason to believe that the
27 result of such an unauthorized and pointless proceeding would be any different now than
28 it was last year. The McConnell Dealership has been closed for more than six months.

1 Thus, contrary to his flagrant misrepresentations in the New Protests, Mr. Steffes cannot
2 dispute that it is *not* “transacting an adequate amount of sales and service business,” has
3 *not* “fulfilled its warranty obligations,” and does not have *any*, let alone “adequate,”
4 “motor vehicle sales and service facilities, equipment, vehicle parts and qualified service
5 personnel.” Protests, ¶¶ (6(a), 6(b), 6(e).

6 Under these outrageous circumstances, respect for the integrity and finality of
7 Board proceedings requires that appropriate action be taken against Mr. Steffes,
8 particularly in light of his sworn representation in seeking a waiver of the Board’s \$200
9 filing fee that Protestant itself lacks funds to pay that fee. 13 Cal. Code of Regs. § 551.21
10 provides in pertinent part as follows:

11 (a) The [Administrative Law Judge] may recommend ordering a party, *a*
12 *party's representative* or both, to pay reasonable sanctions, *including*
13 *attorney's fees and costs*, incurred by another party as a result of bad faith
actions or tactics that are frivolous or solely intended to cause unnecessary
delay.

14 (1) "Actions or tactics" include, but are not limited to, the making or
15 opposing of motions *or the failure to comply with a lawful order or ruling of*
the board.

16 (2) "Frivolous" means:

17 (A) *Totally without merit*; or

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

19 For the reasons set forth above, it is manifest that the New Protests are “totally without
20 merit” and that their filing and continuing prosecution constitute a “failure to comply with
21 a lawful order or ruling of the board,” *i.e.*, the final Decision in the prior protests that
22 permitted GM to terminate the Dealer Agreements.

23 GM therefore respectfully moves the Board for an order

24 (1) consolidating the New Protests;

25 (2) dismissing the New Protests with prejudice for lack of jurisdiction; and

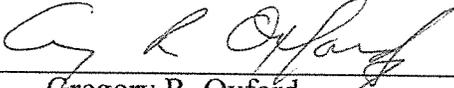
26 (3) awarding sanctions against Mr. Steffes in the amount of GM’s costs and
27 attorney’s fees herein incurred, subject to an appropriate “prove up.”
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: February 28, 2014

Of Counsel
Brian K. Cullin
General Motors LLC

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: 

Gregory R. Oxford
Attorneys for Respondent
General Motors LLC

EXHIBIT A

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

MCCONNELL CHEVROLET BUICK, INC.,

Protestant,

v.

GENERAL MOTORS, LLC,

Respondent.

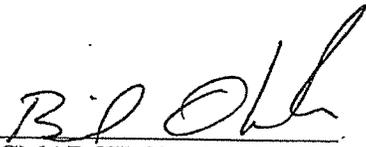
**Protest Nos. PR-2369-13 and
PR-2370-13**

DECISION

At its regularly scheduled meeting of November 12, 2013, the Public Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER 2013.


BISMARCK OBANDO
President
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1507 – 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
3
4
5

6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD
8

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

Protest Nos. PR-2369-13 and PR-2370-13

PROPOSED DECISION

16
17 **PROCEDURAL BACKGROUND**

18 **Statement of the Case**

19 1. By letter dated June 18, 2013, General Motors, LLC gave notice to McConnell Chevrolet
20 Buick, Inc. pursuant to California Vehicle Code section 3060¹ of its intention to terminate the Chevrolet
21 and Buick franchises of McConnell Chevrolet Buick, Inc.² In error, this letter referred to both protestant's
22 line-makes, Chevrolet and Buick. On June 25, 2013, General Motors, LLC corrected the mistake and
23 mailed two separate termination letters to protestant, Exhibit 4 (Buick) and Exhibit 5 (Chevrolet), both of
24 which contained the same substantive language as the earlier letter. (RT 49:21-51:17)

25 2. The New Motor Vehicle Board (hereinafter sometimes "Board") received the initial
26 termination notice on June 19, 2013.
27

28 ¹ Unless otherwise indicated, all statutory references are to the California Vehicle Code.

² Such notice is required whenever a franchisor seeks to terminate an existing motor vehicle franchise. [Section 3060(a)]

1 (e) Whether the franchisee has adequate motor vehicle sales and service facilities,
2 equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of
3 consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate
4 services to the public.

5 (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to
6 be performed by the franchisee.

7 (g) Extent of franchisee's failure to comply with the terms of the franchise.

8 **PROTESTANT'S CONTENTIONS**

9 16. No material challenges were made by protestant to respondent's contentions.⁸

10 **RESPONDENT'S CONTENTIONS**

11 17. In the Spring of 2013, McConnell "ceased to conduct customary sales and service
12 operations". On March 20, it had lost its floorplan financing for both line-makes and therefore its ability
13 to order inventory from GM. It had made few sales of new vehicles even before losing its wholesale
14 financing.

15 18. The last warranty work performed by McConnell was on March 26. On seven
16 consecutive business days in May (excluding Sunday), when GM representatives visited the dealership,
17 only routine "lube, oil and filter" ("LOF's") changes were being performed and warranty work was
18 being referred to other dealers. On several days, no technicians were present at the dealership.

19 19. On or about August 21, 2013 (after the filing of the protests), protestant was served with
20 an eviction notice regarding the dealership premises.

21 **FINDINGS OF FACT⁹**

22 **Preliminary Findings**

23 20. Effective June 14, 2012, McConnell and GM executed a "Dealer Sales and Service
24 Agreement" ("Dealer Agreement") authorizing McConnell to sell "Chevrolet Passenger Vehicles and
25

26 ⁸ See footnote 4, *supra*.

27 ⁹ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding
and are not intended to be all-inclusive.

28 Findings of Fact are organized under topical headings for readability only and are not to be considered relative to only the
particular topic under which they appear, but rather may apply to any of the "existing circumstances" or "good cause" factors
of section 3061.

1 Light Duty Trucks [and]...Buick Motor Vehicles” at its dealership on Highway 99 E in Gridley. The
2 Agreement would “...expire October 31, 2015, unless earlier terminated”. Michael A. McConnell was
3 stated to be “Dealer Operator and Dealer Owner” and holder of 100% of the ownership interest of
4 protestant. (Exhs 1:0857, 2, 3, 102; RT 18:12-20:3; 21:6-21)

5 21. The Dealer Agreement required the dealer to “sell and promote ... [GM motor vehicles,
6 parts and accessories]” and to “maintain an adequate staff of trained sales personnel” to do so. (Exh
7 1:0866, 0900; RT 21:22-22:7) The dealer promised to provide “...quality service to [GM] owners” and
8 to maintain “an adequate service and parts organization”. (Exh 1:0868; RT 22:8-16)

9 22. The dealer was also required by the Dealer Agreement to have and maintain a wholesale
10 floorplan “...available to finance the [d]ealer’s purchase of new vehicles...”. (Exh 1:0877; RT 22:17-
11 23:14) Floor plan financing is a third party line of credit which a dealership obtains to purchase vehicles
12 at wholesale from the manufacturer for retail sale to customers and, without such financing, it is difficult
13 for a dealership to purchase inventory. (RT 22:25-23:14)

14 23. Article 14 of the Dealer Agreement (“Termination of Agreement”) provided, among
15 other things, the following:

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

18

19 “14.5.3 Failure of Dealer to conduct customary sales and service operations during
20 customary business hours for seven consecutive business days.” (Exh 1:0886-0887; RT
21 23:15-24:7)

21 24. On February 7, 2013, McConnell placed its final order for a vehicle from GM. (Exh 13;
22 RT 41:21-42:2)

23 25. “ALLY [Financial], the dealers financing source” notified GM that protestant’s
24 wholesale floor plan had been suspended, effective March 20, 2013. The suspension related to both
25 line-makes, Chevrolet and Buick. (Exh 10; RT 27:6-17, 70:12-71:3)

26 26. On March 26, 2013 and May 8, 2013, GM sent letters to protestant advising that its loss
27 of floorplan financing subjected its franchises to termination under the Dealer Agreement. McConnell
28 never did reestablish a wholesale floorplan line of credit. (Exhs 11, 12; RT 27:18-29:16)

1 27. In April, 2013, Saul Escalante visited the dealership and saw that no service personnel
2 were on hand and that customers coming in for service were being referred to other dealers. General
3 Manager Bill Marker told Mr. Escalante that the dealership could not hire service staff because of
4 financial difficulties. (RT 24:16-26:9)

5 28. Between May 2, 2013 and May 10, 2013, GM representatives made daily (except
6 Sunday, May 5) visits to protestant's dealership (Exh 6:0038-0040, 1113-1116; RT 30:17-23, 34:5-20),
7 as follows:

8 A. On May 2, 2013, Saul Escalante observed no regular day-to-day business activities being
9 conducted. The Sales and Service Managers were loitering in the office with no assigned tasks. The
10 dealership was not scheduling Chevrolet or Buick vehicle service (warranty or customer pay) and
11 instead was referring service customers to other dealerships. No service technicians were present and
12 the service department appeared closed. No vehicle sales activity was observed. (Exh 6:0038, 1115)

13 B. On May 3, 2013, Saul Escalante observed that the Sales and Service Managers were just
14 "hanging out", as before. Service customers again were being referred to other dealerships. No service
15 technicians were present and the service department appeared closed. Saul Escalante advised General
16 Manager Bill Marker that it was important to make sure that the dealership was servicing all warranty
17 types of repair as outlined in the Dealer Agreement. Bill Marker responded that, as he had previously
18 advised Mr. Escalante, the dealership had "limited financial resources" to operate the dealership as
19 expected by GM. (Exh 6:0038, 1115; RT 37:7-14)

20 C. On Saturday, May 4, 2013, Saul Escalante telephoned the dealership several times
21 throughout the day. At that time, protestant's website stated that the dealership was open Saturdays until
22 6 PM, but closed on Sundays. None of these calls were answered. (Exhs 6:0038, 1115, 7; RT 24:8-15,
23 40:11-22)

24 D. On May 6, 2013, GM District Manager Leonard Deprez visited the dealership. He
25 observed no business activity, although two employees in the service department were talking on cell
26 phones. Mr. Deprez asked about getting an oil change and was referred to Wittmeier Chevrolet in
27 Chico. He was further advised that the dealership was going through an ownership change and was
28 unable to perform any service work. (Exh 6:0038, 1115; Exh 8; RT 35:6-16)

1 E. On May 7, 2013, Saul Escalante visited the dealership. An employee (Pat) was in the
2 service department but said that they were not yet taking appointments; no service technicians were
3 present. Michael McConnell said that the dealership was planning to hire a new service technician who
4 would begin work the next day. (Exh 6:0038-0039, 1115)

5 F. On May 8, 2013, Saul Escalante observed that no service technician was present. He was
6 told that the new technician's start date had been delayed by a day. General Manager Bill Marker said
7 that the dealership would be taking appointments for minor jobs and, "a back-up tech...can come in if
8 anything major is requested...[but he] did not want to jeopardize [his] unemployment payments...".
9 (Exh 6:0039, 1115)

10 G. On May 9, 2013, GM District Manager George Kovacs observed that the service
11 department "looked like a ghost town". An unnamed person at the dealership told Mr. Kovacs that the
12 technician had left for lunch, and referred him to Wheeler Chevrolet and Dow Lewis GMC for an
13 intermittent engine light. (Exh 6:0039, 1115; Exh 9; RT 36:5-14)

14 H. Saul Escalante visited the dealership on May 10, 2013; Michael McConnell and Bill
15 Marker were present. Saul Escalante reported the following:

16 (1) He observed one service technician on duty (Chris). However, the only available
17 tools in the service area were for routine LOF's---he did not see any tools of the sort required for
18 warranty and other non-routine repairs (Exh 6:0039-0058, 1115-1116);

19 (2) Michael McConnell and Bill Marker told him that service work was limited to
20 LOF changes and tire rotations and that none of the dealership's former technicians could be
21 called back to work until the dealership obtained further funding. (Exh 6:0039-0058, 1115-
22 1116)

23 (3) In reviewing the dealership's service records, he determined that the last warranty
24 repair had been performed on March 26, 2013 (a fact which he confirmed with GM's Global
25 Warranty Management database which tracks warranty claims submitted by GM dealers) and
26 that other than LOF changes, the last dealership repair order was dated April 1, 2013. (Exhs
27 6:0058, 14; RT 31:11-32:16)

28 ///

1 28. On August 6, 2013, Saul Escalante visited the dealership, which appeared to be vacant.
2 No vehicle inventory was parked outside the dealership building where formerly GM trucks and Buicks
3 had been displayed. (Exh 20:0413-0417; RT 51:21-24, 52:17-53:6);

4 29. On August 22, 2013, Saul Escalante visited the dealership, finding an eviction notice
5 posted the day before by the Butte County Sheriff's Office. The building was locked and no vehicles
6 were on the lot. (Exh 21:0421-0424; RT 53:20-23, 60:14-23, 61:13-22, 62:13-23)

7 **Findings Relating to Amount of Business Transacted by the Franchisee, as Compared to the**
8 **Business Available to the Franchisee [Section 3061(a)]**

9 30. McConnell has sold no new vehicles since March 6, 2013 and has done no warranty
10 service work since March 26, 2013. (Exhs 6:0058, 13; RT 31:11-32:16, 43:22-44:10)

11 31. During the first three months of 2013, McConnell sold only 5 Chevrolet trucks and one
12 Buick car, a sales performance considered "unsatisfactory" by GM.¹⁰ (Exh 19:0979; RT 44:15-46:10)

13 **Findings Relating to Investment Necessarily Made and Obligations Incurred by the**
14 **Franchisee to Perform Its Part of the Franchise [Section 3061(b)]**

15 32. McConnell was initially appointed a GM dealer on September 7, 1994 when it was
16 "Gridley Country Chevrolet, Olds, Pontiac, Buick & Geo, Inc.". (Exhs 19:0980; 101)

17 33. In June, 2012 (when the Dealer Agreement was signed) the value of Michael
18 McConnell's 100% ownership interest in the dealership was stated to be \$533,985. (Exh 2)

19 34. At the time the current Dealer Agreement was signed, McConnell was leasing its
20 premises, devoted exclusively to the General Motors dealership; a large freestanding sign identified
21 McConnell as a Chevrolet and Buick dealer. The total building area was 25,494 square feet, with room
22 to display five new vehicles as well as a total of 23 "productive service" (mechanical and body) stalls.
23 The lot was an additional 86,890 square feet, with 65 new vehicle display stalls, 70 used vehicle display
24 stalls, 76 new vehicle storage stalls, plus 67 other parking spaces. The total dealership size was 112,384
25 square feet. (Exhs 3:0914-0915, 9:0014)

26 ///

27 _____
28 ¹⁰ There was a slight discrepancy in the figures compared with Exhibit 13, which stated that 6 Chevrolets and no Buicks were sold; although the total was the same, apparently the Buick sale was retracted for an unknown reason. (RT 47:15-48:23)

1 **Findings Relating to the Permanency of the Investment [Section 3061(c)]**

2 35. After the filing of the protest, McConnell was evicted from the dealership premises. (Exh
3 21) No evidence was presented that McConnell is currently in business. (RT 62:17-20)

4 **Findings Relating to Whether it is Injurious or Beneficial to the Public Welfare for the Franchise**
5 **to be Modified or Replaced or the Business of the Franchisee Disrupted [Section 3061(d)]**

6 36. It would be beneficial to the public welfare to terminate protestant's Chevrolet and Buick
7 franchises. There was no evidence presented that McConnell is providing any services to the public as a
8 General Motors dealership.

9 **Findings Relating to Whether the Franchisee has Adequate Motor Vehicle Sales and Service**
10 **Facilities, Equipment, Vehicle Parts, and Qualified Service Personnel to Reasonably Provide for**
11 **the Needs of the Consumers for the Motor Vehicles Handled by the Franchisee and has been and**
12 **is Rendering Adequate Services to the Public [Section 3061(e)]**

13 37. No evidence was presented that McConnell currently has any sales and service facilities,
14 new vehicle inventory, equipment, vehicle parts, sales personnel or qualified service technicians to
15 provide for the needs of its GM customers.

16 38. Between May 2 and May 10, 2013, GM representatives observed "no activity to speak of
17 in the service department" and the only service tools available were those to perform LOF's and tire
18 rotations. (Exh 6:0038-0039, 1115-1116; RT 36:22-37:6)

19 39. Moreover, McConnell has not been rendering adequate services to the public since the
20 Spring of 2013. It lost its wholesale flooring plan on March 20 (which foreclosed it from making
21 purchases of new inventory from GM) and, in the first several months of 2013, has only sold six
22 Chevrolets and no Buicks. It has performed no warranty service for its customers since March 26.
23 Between May 2 and May 10, during the visits to the dealership by GM personnel, a technician was
24 observed at the dealership on only one day, and the GM representatives noted the lack of tools to
25 perform repairs and service other than routine LOF's. (Exhs 6:0038-0039, 1115-1116, 10, 13, 14; RT
26 27:6-17, 41:21-42:271)

27 ///

28 ///

 ///

1 **Findings Relating to Whether the Franchisee Fails to Fulfill the Warranty Obligations of the**
2 **Franchisor to be Performed by the Franchisee [Section 3061(f)]**

3 40. Since at least March 26, 2013, McConnell has not fulfilled a warranty obligation, and
4 there is no evidence that it has the ability (in terms of a service facility, technicians, equipment and
5 parts) to service and repair vehicles under warranty. (Exh 14; RT 43:22-44:10, 91:10-92:4)

6 **Findings Relating to the Extent of Franchisee's Failure to Comply with**
7 **the Terms of the Franchise [Section 3061(g)]**

8 41. Effective March 20, 2013, when ALLY suspended its wholesale flooring line for both the
9 Chevrolet and Buick line-makes, McConnell was in violation of Article 13.1.11 of the Dealer
10 Agreement requiring it to maintain a line of credit, a "material breach" under the agreement. (Exh
11 1:0877, 0884-0885)

12 42. Article 14.5.3 of the Dealer Agreement provides that GM may terminate the agreement if
13 the dealer fails "...to conduct customary sales and service operations during customary business hours
14 for seven consecutive business days." (Exh 1:0886-0887) During the seven business days between May
15 2 and May 10, 2013, protestant's business operation was moribund and fell far short of "customary sales
16 and service operations" (RT 93:19-94:20), as follows:

17 Its service department only had the ability to perform routine LOF's and tire rotations and, for
18 most of those days, no service technician was present and tools were limited to those used for LOF's.
19 (Previous technicians were said to have taken their tools with them.) No warranty work had been
20 performed since March 26, 2013. On two occasions, GM representatives were directed to other GM
21 dealerships for service. There was no activity in the dealership's parts room and the parts annex, which
22 contained "only miscellaneous/scattered parts" and was a "pretty barren shop". (Exhs 6:0038-0039, 14;
23 RT 43:22-44:10, 91:10-92:4)

24 A. McConnell last ordered a new vehicle for wholesale purchase from GM on February 7,
25 2013, and last sold a vehicle to a retail customer on March 6, 2013. (Exh 13)

26 B. On Saturday, May 4, 2013, no one answered the telephone at the dealership, even though
27 its website said it was open on Saturdays. (Exhs 6:0038, 1115, 7; RT 24:8-15, 40:11-22)

28 C. The dealership appeared closed because of lack of displayed inventory and customer

1 activity. (RT 93:19-94:20)

2 43. No evidence has been offered that protestant is conducting business at the present time.

3 **DETERMINATION OF ISSUES**

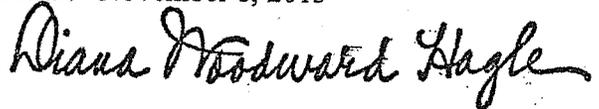
4 44. Respondent General Motors, LLC has sustained its burden of proof of establishing "good
5 cause" to terminate the Chevrolet and Buick franchises of McConnell Chevrolet Buick, Inc. [Vehicle
6 Code Sections 3061, 3066(b)]

7 **PROPOSED DECISION**

8 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the
9 Protests in *McConnell Chevrolet Buick, Inc. v. General Motors, LLC*, Protest Nos. PR-2369-13 and PR-
10 2370-13 are overruled.

11
12 I hereby submit the foregoing which constitutes my
13 Proposed Decision in the above-entitled matters, as
14 the result of a hearing before me, and I recommend
15 this Proposed Decision be adopted as the Decision of
16 the New Motor Vehicle Board.

17 DATED: November 6, 2013

18 

19 By: _____
20 DIANA WOODWARD HAGLE
21 Administrative Law Judge

22
23
24
25
26
27 Jean Shiimoto, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

EXHIBIT B

LAW FIRM OF
ISAACS CLOUSE CROSE & OXFORD LLP

21515 HAWTHORNE BLVD
SUITE 950
TORRANCE, CA 90503

TELEPHONE (310) 316-1990
FACSIMILE (310) 316-1330

February 24, 2014

VIA ELECTRONIC AND U.S. MAIL

Kent Steffes
kent@kentsteffes.com
366 N. Skyewiay Road
Los Angeles, California 90049

Re: Demand for Withdrawal of Improper Termination Protests

Dear Kent:

As you know from our recent telephone conversation, this firm represents General Motors LLC ("GM") in connection with the termination of the former General Motors Dealer Sales and Service Agreements for Chevrolet and Buick between McConnell Chevrolet Buick, Inc. ("McConnell Dealership") and GM ("Dealer Agreements").

Based on an e-mail I received on October 7, 2013 from your counsel, Donald F. Woods, Jr. of McCool Smith Hennigan LLC, I know that you were aware at that time of the New Motor Vehicle Board ("Board") proceedings in the prior termination protests filed on behalf of the McConnell Dealership. Based on an e-mail that GM received from you on December 10, 2013, you also have long been aware of the Board's final Decision in those proceedings that permitted GM to terminate the McConnell Dealership's Dealer Agreements in November 2013. The detailed chronology is set forth below.

In June 2013, in compliance with section 3060 of the California Vehicle Code, GM served notices of its intent to terminate the Dealer Agreements by certified mail delivered to the McConnell Dealership at its address of record with both GM and the dealership licensing authority, the California Department of Motor Vehicles, to wit: 1646 Hwy 99E, Gridley, California 95948 ("Dealership Premises"). The basis for the termination notices was the dealership's persistent failure starting in the spring of 2013 to conduct customary sales and service operations in violation of Article 14.5.3 of the Dealer Agreements. Indeed, following service of the termination notices, the McConnell Dealership ceased to conduct business altogether and was evicted from the Dealership Premises in August 2013.

In response to the termination notices, the McConnell Dealership's counsel, Jeff Carter, filed termination protests with the Board pursuant to Veh. Code § 3060, Nos. PR-2369-13 and PR-2370-13. Pursuant to the Board's normal procedures, these protests were set for hearing and were heard by Administrative Law Judge Diana Woodward Hagle on October 22, 2013. Representatives of both GM and the McConnell Dealership attended the hearing along with their respective counsel. Neither you nor your former counsel, while fully aware of these proceedings, attended the hearing or sought at any time or in any manner to present evidence or argument to Judge Hagle or the Board.

On November 6, 2013, Judge Hagle issued a Proposed Decision overruling the protests after finding that GM had carried its burden to demonstrate "good cause" for termination of the Dealer Agreements. Under the Board's regular procedures, the Board considered the Proposed Decision at its regular meeting on November 12, 2013. Neither you nor any representative of the McConnell Dealership attended the Board meeting or otherwise sought to oppose adoption of the Proposed Decision. Following deliberation in executive session the Board unanimously adopted the Proposed Decision as its final Decision. GM then terminated the Dealer Agreements. A copy of the Board's final Decision is enclosed for your review.

Then, just last week, you filed two new termination protests with the Board, Nos. PR-2382-14 and PR-2383-14, purportedly on behalf of the McConnell Dealership ("New Protests"). The New Protests state, incorrectly, that the McConnell Dealership "*is a new motor vehicle dealer selling Chevrolets, Buicks, and Pontiacs and is located at 1646 Hwy 99E, Gridley, California 95948-2611.*" Protests, ¶ 1 (emphasis added). The McConnell Dealership *is not* a Chevrolet or Buick dealership because its Dealer Agreements for those line-makes was terminated last year. The McConnell Dealership also is *not* "located at 1646 Hwy 99E"; to the contrary, it has not conducted business operations at that location since its eviction six months ago. According to the Department of Motor Vehicles, the McConnell Dealership closed on July 31, 2013 and its dealership license is no longer valid.

As a result of the Board's final Decision permitting termination of the Dealer Agreements, neither the McConnell Dealership nor you as its claimed representative has any right under Veh. Code § 3060 to "protest" termination of the Dealer Agreements, and the Board therefore lacks jurisdiction to consider the New Protests.

GM therefore demands that you immediately – within 48 hours of your receipt of this letter – dismiss the New Protests and provide satisfactory evidence that you have done so. Otherwise, GM has instructed me to move the Board for an order dismissing the New Protests and awarding sanctions against you as the purported representative of the McConnell Dealership under 13 Cal. Code of Regs. § 551.21, which provides in pertinent part as follows (emphasis added):

(a) The [Administrative Law Judge] may recommend ordering a party, *a party's representative* or both, to pay reasonable sanctions, *including attorney's fees and costs*, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

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

(2) "Frivolous" means:

(A) *Totally without merit*; or

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

The New Protests are "totally without merit" and further prosecution of them would constitute a "failure to comply with a lawful order or ruling of the board," *i.e.*, the final Decision in the prior protests that permitted termination of the Dealer Agreements.

Please let me know if you have any questions.

Very Truly Yours,



Gregory R. Oxford

Isaacs Clouse Crose & Oxford LLP

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
MCCONNELL CHEVROLET BUICK, INC.,
Protestant,
v.
GENERAL MOTORS, LLC,
Respondent.

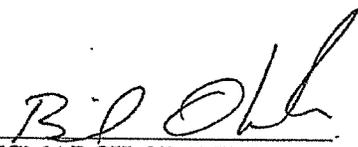
Protest Nos. PR-2369-13 and
PR-2370-13

DECISION.

At its regularly scheduled meeting of November 12, 2013, the Public Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER 2013.


BISMARCK OBANDO
President
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
3
4
5

6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD
8

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

Protest Nos. PR-2369-13 and PR-2370-13

PROPOSED DECISION

15
16
17 **PROCEDURAL BACKGROUND**

18 **Statement of the Case**

19 1. By letter dated June 18, 2013, General Motors, LLC gave notice to McConnell Chevrolet
20 Buick, Inc. pursuant to California Vehicle Code section 3060¹ of its intention to terminate the Chevrolet
21 and Buick franchises of McConnell Chevrolet Buick, Inc.² In error, this letter referred to both protestant's
22 line-makes, Chevrolet and Buick. On June 25, 2013, General Motors, LLC corrected the mistake and
23 mailed two separate termination letters to protestant, Exhibit 4 (Buick) and Exhibit 5 (Chevrolet), both of
24 which contained the same substantive language as the earlier letter. (RT 49:21-51:17)

25 2. The New Motor Vehicle Board (hereinafter sometimes "Board") received the initial
26 termination notice on June 19, 2013.

27
28 ¹ Unless otherwise indicated, all statutory references are to the California Vehicle Code.

² Such notice is required whenever a franchisor seeks to terminate an existing motor vehicle franchise. [Section 3060(a)]

1 Summary of Witness's Testimony and Exhibits Introduced at Hearing

2 Protestant's Exhibits

3 11. Protestant offered corporate documents in evidence, but called no witnesses. (Exhs 100-
4 104; RT 10:3-6)⁵.

5 Respondent's Witness's Testimony and Exhibits⁶

6 12. GM District Manager Saul Escalante identified the GM-McConnell Dealer Agreement
7 and other documents, photos and a video. He testified to his observations and the observations of other
8 GM employees of the McConnell dealership in April and from May 2, 2013 to May 10, 2013.⁷ (RT
9 14:9-78:15, 89:23-92:4)

10 13. Respondent's exhibits included the GM-McConnell Dealer Agreement, photographs and
11 a video of the dealership, and documents (letters and emails).

12 ISSUE PRESENTED

13 14. Has respondent GM sustained its burden of proof of showing "good cause" under section
14 3066(b) to terminate protestant McConnell's Chevrolet and Buick franchises?

15 15. In determining whether good cause has been established for terminating a franchise,
16 section 3061 requires the Board to take into consideration the existing circumstances including, but not
17 limited to, all of the following:

18 (a) Amount of business transacted by the franchisee, as compared to the business
19 available to the franchisee.

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

22 (c) Permanency of the investment.

23 (d) Whether it is injurious or beneficial to the public welfare for the franchise to be
24 modified or replaced or the business of the franchisee disrupted.

25 _____
26 ⁵ References herein to "RT" are to the transcript of the hearing. References to "Exh" are to Exhibits; references to pages within
27 Exhibits are to the last four digits of the page number and exclude the preceding zeros.

28 ⁶ Note discussion on the record regarding presentation of the testimony of Mr. Escalante and the introduction into evidence of
documents offered by respondent. (RT 63:9-65:19)

⁷ It is noted that uncontradicted testimony may be disbelieved. That, however, is not the case here.

1 (e) Whether the franchisee has adequate motor vehicle sales and service facilities,
2 equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of
3 consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate
4 services to the public.

5 (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to
6 be performed by the franchisee.

7 (g) Extent of franchisee's failure to comply with the terms of the franchise.

8 **PROTESTANT'S CONTENTIONS**

9 16. No material challenges were made by protestant to respondent's contentions.⁸

10 **RESPONDENT'S CONTENTIONS**

11 17. In the Spring of 2013, McConnell "ceased to conduct customary sales and service
12 operations". On March 20, it had lost its floorplan financing for both line-makes and therefore its ability
13 to order inventory from GM. It had made few sales of new vehicles even before losing its wholesale
14 financing.

15 18. The last warranty work performed by McConnell was on March 26. On seven
16 consecutive business days in May (excluding Sunday), when GM representatives visited the dealership,
17 only routine "lube, oil and filter" ("LOF's") changes were being performed and warranty work was
18 being referred to other dealers. On several days, no technicians were present at the dealership.

19 19. On or about August 21, 2013 (after the filing of the protests), protestant was served with
20 an eviction notice regarding the dealership premises.

21 **FINDINGS OF FACT⁹**

22 **Preliminary Findings**

23 20. Effective June 14, 2012, McConnell and GM executed a "Dealer Sales and Service
24 Agreement" ("Dealer Agreement") authorizing McConnell to sell "Chevrolet Passenger Vehicles and
25

26 ⁸ See footnote 4, *supra*.

27 ⁹ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding
and are not intended to be all-inclusive.

28 Findings of Fact are organized under topical headings for readability only and are not to be considered relative to only the
particular topic under which they appear, but rather may apply to any of the "existing circumstances" or "good cause" factors
of section 3061.

1 Light Duty Trucks [and]...Buick Motor Vehicles” at its dealership on Highway 99 E in Gridley. The
2 Agreement would “...expire October 31, 2015, unless earlier terminated”. Michael A. McConnell was
3 stated to be “Dealer Operator and Dealer Owner” and holder of 100% of the ownership interest of
4 protestant. (Exhs 1:0857, 2, 3, 102; RT 18:12-20:3; 21:6-21)

5 21. The Dealer Agreement required the dealer to “sell and promote ... [GM motor vehicles,
6 parts and accessories]” and to “maintain an adequate staff of trained sales personnel” to do so. (Exh
7 1:0866, 0900; RT 21:22-22:7) The dealer promised to provide “...quality service to [GM] owners” and
8 to maintain “an adequate service and parts organization”. (Exh 1:0868; RT 22:8-16)

9 22. The dealer was also required by the Dealer Agreement to have and maintain a wholesale
10 floorplan “...available to finance the [d]ealer’s purchase of new vehicles...”. (Exh 1:0877; RT 22:17-
11 23:14) Floor plan financing is a third party line of credit which a dealership obtains to purchase vehicles
12 at wholesale from the manufacturer for retail sale to customers and, without such financing, it is difficult
13 for a dealership to purchase inventory. (RT 22:25-23:14)

14 23. Article 14 of the Dealer Agreement (“Termination of Agreement”) provided, among
15 other things, the following:

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

18

19 “14.5.3 Failure of Dealer to conduct customary sales and service operations during
20 customary business hours for seven consecutive business days.” (Exh 1:0886-0887; RT
21 23:15-24:7)

22 24. On February 7, 2013, McConnell placed its final order for a vehicle from GM. (Exh 13;
23 RT 41:21-42:2)

24 25. “ALLY [Financial], the dealers financing source” notified GM that protestant’s
25 wholesale floor plan had been suspended, effective March 20, 2013. The suspension related to both
26 line-makes, Chevrolet and Buick. (Exh 10; RT 27:6-17, 70:12-71:3)

27 26. On March 26, 2013 and May 8, 2013, GM sent letters to protestant advising that its loss
28 of floorplan financing subjected its franchises to termination under the Dealer Agreement. McConnell
never did reestablish a wholesale floorplan line of credit. (Exhs 11, 12; RT 27:18-29:16)

1 27. In April, 2013, Saul Escalante visited the dealership and saw that no service personnel
2 were on hand and that customers coming in for service were being referred to other dealers. General
3 Manager Bill Marker told Mr. Escalante that the dealership could not hire service staff because of
4 financial difficulties. (RT 24:16-26:9)

5 28. Between May 2, 2013 and May 10, 2013, GM representatives made daily (except
6 Sunday, May 5) visits to protestant's dealership (Exh 6:0038-0040, 1113-1116; RT 30:17-23, 34:5-20),
7 as follows:

8 A. On May 2, 2013, Saul Escalante observed no regular day-to-day business activities being
9 conducted. The Sales and Service Managers were loitering in the office with no assigned tasks. The
10 dealership was not scheduling Chevrolet or Buick vehicle service (warranty or customer pay) and
11 instead was referring service customers to other dealerships. No service technicians were present and
12 the service department appeared closed. No vehicle sales activity was observed. (Exh 6:0038, 1115)

13 B. On May 3, 2013, Saul Escalante observed that the Sales and Service Managers were just
14 "hanging out", as before. Service customers again were being referred to other dealerships. No service
15 technicians were present and the service department appeared closed. Saul Escalante advised General
16 Manager Bill Marker that it was important to make sure that the dealership was servicing all warranty
17 types of repair as outlined in the Dealer Agreement. Bill Marker responded that, as he had previously
18 advised Mr. Escalante, the dealership had "limited financial resources" to operate the dealership as
19 expected by GM. (Exh 6:0038, 1115; RT 37:7-14)

20 C. On Saturday, May 4, 2013, Saul Escalante telephoned the dealership several times
21 throughout the day. At that time, protestant's website stated that the dealership was open Saturdays until
22 6 PM, but closed on Sundays. None of these calls were answered. (Exhs 6:0038, 1115, 7; RT 24:8-15,
23 40:11-22)

24 D. On May 6, 2013, GM District Manager Leonard Deprez visited the dealership. He
25 observed no business activity, although two employees in the service department were talking on cell
26 phones. Mr. Deprez asked about getting an oil change and was referred to Wittmeier Chevrolet in
27 Chico. He was further advised that the dealership was going through an ownership change and was
28 unable to perform any service work. (Exh 6:0038, 1115; Exh 8; RT 35:6-16)

1 E. On May 7, 2013, Saul Escalante visited the dealership. An employee (Pat) was in the
2 service department but said that they were not yet taking appointments; no service technicians were
3 present. Michael McConnell said that the dealership was planning to hire a new service technician who
4 would begin work the next day. (Exh 6:0038-0039, 1115)

5 F. On May 8, 2013, Saul Escalante observed that no service technician was present. He was
6 told that the new technician's start date had been delayed by a day. General Manager Bill Marker said
7 that the dealership would be taking appointments for minor jobs and, "a back-up tech... can come in if
8 anything major is requested... [but he] did not want to jeopardize [his] unemployment payments...".
9 (Exh 6:0039, 1115)

10 G. On May 9, 2013, GM District Manager George Kovacs observed that the service
11 department "looked like a ghost town". An unnamed person at the dealership told Mr. Kovacs that the
12 technician had left for lunch, and referred him to Wheeler Chevrolet and Dow Lewis GMC for an
13 intermittent engine light. (Exh 6:0039, 1115; Exh 9; RT 36:5-14)

14 H. Saul Escalante visited the dealership on May 10, 2013; Michael McConnell and Bill
15 Marker were present. Saul Escalante reported the following:

16 (1) He observed one service technician on duty (Chris). However, the only available
17 tools in the service area were for routine LOF's---he did not see any tools of the sort required for
18 warranty and other non-routine repairs (Exh 6:0039-0058, 1115-1116);

19 (2) Michael McConnell and Bill Marker told him that service work was limited to
20 LOF changes and tire rotations and that none of the dealership's former technicians could be
21 called back to work until the dealership obtained further funding. (Exh 6:0039-0058, 1115-
22 1116)

23 (3) In reviewing the dealership's service records, he determined that the last warranty
24 repair had been performed on March 26, 2013 (a fact which he confirmed with GM's Global
25 Warranty Management database which tracks warranty claims submitted by GM dealers) and
26 that other than LOF changes, the last dealership repair order was dated April 1, 2013. (Exhs
27 6:0058, 14; RT 31:11-32:16)

28 ///

1 28. On August 6, 2013, Saul Escalante visited the dealership, which appeared to be vacant.
2 No vehicle inventory was parked outside the dealership building where formerly GM trucks and Buicks
3 had been displayed. (Exh 20:0413-0417; RT 51:21-24, 52:17-53:6);

4 29. On August 22, 2013, Saul Escalante visited the dealership, finding an eviction notice
5 posted the day before by the Butte County Sheriff's Office. The building was locked and no vehicles
6 were on the lot. (Exh 21:0421-0424; RT 53:20-23, 60:14-23, 61:13-22, 62:13-23)

7 **Findings Relating to Amount of Business Transacted by the Franchisee, as Compared to the**
8 **Business Available to the Franchisee [Section 3061(a)]**

9 30. McConnell has sold no new vehicles since March 6, 2013 and has done no warranty
10 service work since March 26, 2013. (Exhs 6:0058, 13; RT 31:11-32:16, 43:22-44:10)

11 31. During the first three months of 2013, McConnell sold only 5 Chevrolet trucks and one
12 Buick car, a sales performance considered "unsatisfactory" by GM.¹⁰ (Exh 19:0979; RT 44:15-46:10)

13 **Findings Relating to Investment Necessarily Made and Obligations Incurred by the**
14 **Franchisee to Perform Its Part of the Franchise [Section 3061(b)]**

15 32. McConnell was initially appointed a GM dealer on September 7, 1994 when it was
16 "Gridley Country Chevrolet, Olds, Pontiac, Buick & Geo, Inc.". (Exhs 19:0980; 101)

17 33. In June, 2012 (when the Dealer Agreement was signed) the value of Michael
18 McConnell's 100% ownership interest in the dealership was stated to be \$533,985. (Exh 2)

19 34. At the time the current Dealer Agreement was signed, McConnell was leasing its
20 premises, devoted exclusively to the General Motors dealership; a large freestanding sign identified
21 McConnell as a Chevrolet and Buick dealer. The total building area was 25,494 square feet, with room
22 to display five new vehicles as well as a total of 23 "productive service" (mechanical and body) stalls.
23 The lot was an additional 86,890 square feet, with 65 new vehicle display stalls, 70 used vehicle display
24 stalls, 76 new vehicle storage stalls, plus 67 other parking spaces. The total dealership size was 112,384
25 square feet. (Exhs 3:0914-0915, 9:0014)

26 ///

27 _____
28 ¹⁰ There was a slight discrepancy in the figures compared with Exhibit 13, which stated that 6 Chevrolets and no Buicks were sold; although the total was the same, apparently the Buick sale was retracted for an unknown reason. (RT 47:15-48:23)

1 Findings Relating to the Permanency of the Investment [Section 3061(c)]

2 35. After the filing of the protest, McConnell was evicted from the dealership premises. (Exh
3 21) No evidence was presented that McConnell is currently in business. (RT 62:17-20)

4 Findings Relating to Whether it is Injurious or Beneficial to the Public Welfare for the Franchise
5 to be Modified or Replaced or the Business of the Franchisee Disrupted [Section 3061(d)]

6 36. It would be beneficial to the public welfare to terminate protestant's Chevrolet and Buick
7 franchises. There was no evidence presented that McConnell is providing any services to the public as a
8 General Motors dealership.

9 Findings Relating to Whether the Franchisee has Adequate Motor Vehicle Sales and Service
10 Facilities, Equipment, Vehicle Parts, and Qualified Service Personnel to Reasonably Provide for
11 the Needs of the Consumers for the Motor Vehicles Handled by the Franchisee and has been and
12 is Rendering Adequate Services to the Public [Section 3061(e)]

13 37. No evidence was presented that McConnell currently has any sales and service facilities,
14 new vehicle inventory, equipment, vehicle parts, sales personnel or qualified service technicians to
15 provide for the needs of its GM customers.

16 38. Between May 2 and May 10, 2013, GM representatives observed "no activity to speak of
17 in the service department" and the only service tools available were those to perform LOF's and tire
18 rotations. (Exh 6:0038-0039, 1115-1116; RT 36:22-37:6)

19 39. Moreover, McConnell has not been rendering adequate services to the public since the
20 Spring of 2013. It lost its wholesale flooring plan on March 20 (which foreclosed it from making
21 purchases of new inventory from GM) and, in the first several months of 2013, has only sold six
22 Chevrolets and no Buicks. It has performed no warranty service for its customers since March 26.
23 Between May 2 and May 10, during the visits to the dealership by GM personnel, a technician was
24 observed at the dealership on only one day, and the GM representatives noted the lack of tools to
25 perform repairs and service other than routine LOF's. (Exhs 6:0038-0039, 1115-1116, 10, 13, 14; RT
26 27:6-17, 41:21-42:271)

27 ///

28 ///

 ///

1 Findings Relating to Whether the Franchisee Fails to Fulfill the Warranty Obligations of the
2 Franchisor to be Performed by the Franchisee [Section 3061(f)]

3 40. Since at least March 26, 2013, McConnell has not fulfilled a warranty obligation, and
4 there is no evidence that it has the ability (in terms of a service facility, technicians, equipment and
5 parts) to service and repair vehicles under warranty. (Exh 14; RT 43:22-44:10, 91:10-92:4)

6 Findings Relating to the Extent of Franchisee's Failure to Comply with
7 the Terms of the Franchise [Section 3061(g)]

8 41. Effective March 20, 2013, when ALLY suspended its wholesale flooring line for both the
9 Chevrolet and Buick line-makes, McConnell was in violation of Article 13.1.11 of the Dealer
10 Agreement requiring it to maintain a line of credit, a "material breach" under the agreement. (Exh
11 1:0877, 0884-0885)

12 42. Article 14.5.3 of the Dealer Agreement provides that GM may terminate the agreement if
13 the dealer fails "...to conduct customary sales and service operations during customary business hours
14 for seven consecutive business days." (Exh 1:0886-0887) During the seven business days between May
15 2 and May 10, 2013, protestant's business operation was moribund and fell far short of "customary sales
16 and service operations" (RT 93:19-94:20), as follows:

17 Its service department only had the ability to perform routine LOF's and tire rotations and, for
18 most of those days, no service technician was present and tools were limited to those used for LOF's.
19 (Previous technicians were said to have taken their tools with them.) No warranty work had been
20 performed since March 26, 2013. On two occasions, GM representatives were directed to other GM
21 dealerships for service. There was no activity in the dealership's parts room and the parts annex, which
22 contained "only miscellaneous/scattered parts" and was a "pretty barren shop". (Exhs 6:0038-0039, 14;
23 RT 43:22-44:10, 91:10-92:4)

24 A. McConnell last ordered a new vehicle for wholesale purchase from GM on February 7,
25 2013, and last sold a vehicle to a retail customer on March 6, 2013. (Exh 13)

26 B. On Saturday, May 4, 2013, no one answered the telephone at the dealership, even though
27 its website said it was open on Saturdays. (Exhs 6:0038, 1115, 7; RT 24:8-15, 40:11-22)

28 C. The dealership appeared closed because of lack of displayed inventory and customer

1 activity. (RT 93:19-94:20)

2 43. No evidence has been offered that protestant is conducting business at the present time.

3 DETERMINATION OF ISSUES

4 44. Respondent General Motors, LLC has sustained its burden of proof of establishing "good
5 cause" to terminate the Chevrolet and Buick franchises of McConnell Chevrolet Buick, Inc. [Vehicle
6 Code Sections 3061, 3066(b)]

7 PROPOSED DECISION

8 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the
9 Protests in *McConnell Chevrolet Buick, Inc. v. General Motors, LLC*, Protest Nos. PR-2369-13 and PR-
10 2370-13 are overruled.

11
12 I hereby submit the foregoing which constitutes my
13 Proposed Decision in the above-entitled matters, as
14 the result of a hearing before me, and I recommend
15 this Proposed Decision be adopted as the Decision of
16 the New Motor Vehicle Board.

17 DATED: November 6, 2013

18 *Diana Woodward Hagle*

19 By: _____
20 DIANA WOODWARD HAGLE
21 Administrative Law Judge

22
23
24
25
26
27 Jean Shiomoto, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

EXHIBIT C

Gwendolyn Oxford

From: kent@kentsteffes.com
Sent: Tuesday, February 25, 2014 10:21 AM
To: 'Greg Oxford'
Subject: FW: GM- McConnell
Attachments: Letter to Kent Steffes.pdf

Mr. Oxford,

I am in receipt of your letter and at this time we will respectfully decline your request. We are however open to a settlement if that is something GM is interested in.

Regards,

Kent

From: Gwendolyn Oxford [mailto:gwenoxford@icclawfirm.com]
Sent: Monday, February 24, 2014 2:37 PM
To: kent@kentsteffes.com
Subject: GM- McConnell

Hello Mr. Steffes,

Please see the attached letter.

Thank you,
Gwen

Gwen Oxford
Office Manager/ Legal Assistant
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Blvd., Suite 950
Torrance, CA 90503
Tel: (310) 316-1990
Fax: (310) 316-1330

EXHIBIT D



You have 0 items in your shopping cart

Occupational License Status Information System

Following is the result of your search

Main Location Information

MCCONNELL CHEVROLET PONTIAC BUICK INC
1646 HWY 99
GRIDLEY CA 95948
Tel: (530)846-2000

Location Opened : 09/09/1994

Location Closed: 07/31/2013

Licensed to Provide, Offer or Sell: New Auto/Commercial Vehicle Dealer.

License Information

License No.: 24543

License First Issued: 09/09/1994

Operator or Contact:

Owner of Business: MCCONNELL CHEVROLET PONTIAC

Mailing Address:

Other Business Name: GRIDLEY COUNTRY CHEVROLET

License Information

Status of License
Not Valid

Current Admin Actions
None

Prior Admin Actions
None

Administrative Action Definitions

Identity Management Portal

LOGIN/REGISTER

[Login Here](#)

[Register Here](#)

[DMV Homepage](#)

Additional Info:

- [Info Request Forms](#)
- [Complaint Forms](#)
- [License Requirements](#)

CAUTION!



[Security Awareness \(PDF\)](#)



Help us improve our online services. Please take a moment to complete a brief Survey.

[Start a New Search](#)

[Modify Your Search](#)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 U.S. MAIL and ELECTRONIC MAIL on February 28, 2014 I served the foregoing documents described as **RESPONDENT'S MOTION TO CONSOLIDATE AND DISMISS PROTESTS FOR LACK OF JURISDICTION AND FOR AN AWARD OF SANCTIONS** on the parties in this action by electronic mail to the electronic mailing addresses listed below.

Kent Steffes 366 N. Skyewiay Road Los Angeles, California 90049 kent@kentsteffes.com

Executed on February 28, 2014 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