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12 STATE OF CALIFORNIA
13 NEW MOTOR VEHICLE BOARD

14
15 In the Matter of the Protests of
16 MCCONNELL CHEVROLET BUICK,
INC.

17 Protestant,

18 v.

19 GENERAL MOTORS LLC,

20 Respondent.
21

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

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

Hearing Date: March 17, 2014

Time: 10:00 a.m.

ALJ: Anthony M. Skrocki

22 Respondent General Motors LLC respectfully submits this memorandum in reply
23 to Protestant's Opposition to Respondent's Motion To Dismiss for Lack of Jurisdiction
24 ("Opp.") filed by Mr. Steffes on behalf of Protestant McConnell Chevrolet Buick, Inc.
25 ("Protestant" or "the McConnell dealership").

26 **I. THE MOTION TO DISMISS SHOULD BE GRANTED**

27 For all its sound and fury Protestant's Opposition does not refute – indeed, does not
28 even address – the grounds for GM's motion. Specifically, it remains undisputed that:

- 1 (1) Respondent General Motors LLC (“GM”) gave the required registered mail notice
2 *last summer* that it intended to terminate the McConnell dealership’s Chevrolet and
3 Buick Dealer Agreements;
- 4 (2) The McConnell dealership timely invoked the Board’s jurisdiction by filing two
5 termination protests pursuant to Veh. Code § 3060;
- 6 (3) On October 22, 2013, representatives of GM and the McConnell dealership
7 appeared at a hearing on the protests that Administrative Law Judge Diana
8 Woodward Hagle conducted in accordance with the Board’s normal procedures;
- 9 (4) Judge Hagle subsequently prepared a proposed Decision overruling the protests;
- 10 (5) The Board considered and adopted Judge Hagle’s proposed Decision as the
11 Board’s final Decision at its regular meeting on November 12, 2013; and
- 12 (6) Two days later, on November 14, 2013, GM terminated the McConnell
13 dealership’s Chevrolet and Buick Dealer Agreements. *See* Declaration of Milan
14 Golusin, ¶ 4.

15 Thus, while Mr. Steffes is correct that the Board has jurisdiction of termination protests
16 authorized by Veh. Code § 3060 (Opp., pp. 1-2), ***the present protests are not authorized***
17 ***by section 3060 because GM already has terminated the Dealer Agreements in question***
18 ***as permitted by a final decision of the Board.*** Without more, the Board lacks jurisdiction
19 to proceed. A contrary ruling disregarding the Board’s Decision would affront the most
20 elementary principles of finality under the salutary doctrine of res judicata.

21 Mr. Steffes’ unsubstantiated assertion that GM failed to give proper notice to
22 Protestant (Opp., p. 3) flies in the face of judicially noticeable documents showing that the
23 address to which GM’s termination notices were delivered by registered mail was the
24 authorized Department of Motor Vehicles address for Protestant. *See* Motion, Exh. D;
25 Golusin Decl., ¶ 3. This also is the same dealership address given by Mr. Steffes in the
26 current protests (¶ 1). And while he says “Protestant will offer proofs and testimony that
27 statutory notice was not properly served on Protestant” (Opp., p. 7), he has failed
28 conspicuously to present any such evidence to the Board and does not even hint what

1 alleged “proofs and testimony” he might be talking about. Finally, he cites no authority –
2 because there is none – holding that GM in serving termination notices last summer had a
3 duty to look behind the terms of the Dealer Agreements, including the designation of Mr.
4 McConnell as the dealership’s sole owner and Dealer-Operator, or to provide additional or
5 different notices to Mr. Steffes or other people that Veh. Code § 3060 does not require.

6 The fact that there was an internal dispute among a surfeit of purported owners of
7 the McConnell dealership is irrelevant to the sole issue presented here: whether the Board
8 has jurisdiction to entertain Mr. Steffes’ attempt to relitigate issues already settled by a
9 final Board decision. If, in fact, Mr. Steffes somehow did not receive proper notice of the
10 prior proceedings from other parties with an interest in the McConnell dealership, he may
11 have a claim against those parties, but he does not have a claim against GM, let alone one
12 that is cognizable within the Board’s limited protest jurisdiction.

13 In any event, Mr. Steffes cannot plausibly deny that he knew about the prior Board
14 proceedings long before the October 22, 2013 hearing before Judge Hagle. *See Oxford*
15 *Decl.*, ¶ 2 & Exh. A. If he had any doubt about the ability or authority of Mr. McConnell
16 and Mr. Carter to represent Protestant before the Board, it was incumbent upon him to
17 intervene in the proceedings or take some other action to advise the Board of his position.
18 Instead, he did nothing. It cannot be the law that an interested individual with actual
19 notice of the Board proceedings may decline to participate and then assert the right to
20 relitigate after the Board enters an adverse decision and the time for seeking judicial
21 review has expired.

22 Nor would relitigation serve any purpose or permit any different result in these
23 proceedings. The ground for termination of the Dealer Agreements that the Board
24 accepted was that the McConnell dealership *had—past tense—been closed for months* and
25 therefore did not and could not conduct customary sales and service operations in
26 violation of Article 14.5.3 of the Dealer Agreement. That violation is a historical fact,
27 found by the Board in a final and binding Decision, that cannot be changed. *Cf. In re*
28 *Claremont Acquisition Corp.*, 113 F.3d 1029, 1033 (9th Cir.1997) (*held*, violation of

1 Article 14.5.3 of the GM Dealer Agreement was “a ‘historical fact’ that, by definition,
2 cannot be cured” so as to permit debtor to assume and assign the Dealer Agreement under
3 section 365 of the Bankruptcy Code). It therefore is simply beside the point that Mr.
4 Steffes claims he *now* has the facilities, parts, etc. needed to operate a dealership. As he
5 implicitly admits, the dealership currently *remains closed*. See Opp., p. 3 (“*Turn on the*
6 *lights and you could sell cars tomorrow*” – *i.e.*, the lights currently are *off* and no cars are
7 being sold) (emphasis added). The Dealer Agreements, lawfully terminated last year, may
8 not be resuscitated by the belated filing of unauthorized protests and promises to re-open
9 in adequate facilities if they somehow are sustained.

10 Mr. Steffes complains at length that GM declined to approve several proposed
11 purchasers of the McConnell dealership and engaged in other alleged misconduct. GM
12 vehemently disputes Mr. Steffes’ claims, but his rambling allegations in any event have
13 nothing to do with the only issue presented here: whether the Board has jurisdiction to
14 adjudicate the present protests. It does not. Indeed, binding precedent holds that the
15 Board lacks any kind of jurisdiction to resolve civil disputes between manufacturers and
16 actual or prospective dealers, specifically including but not limited to disputes involving
17 allegedly unreasonable refusals to approve potential dealership purchasers. Mazda Motor
18 America, Inc. v. New Motor Vehicle Board, 110 Cal.App.4th 1451 (2003).

19 Mr. Steffes also alleges several transactions in which Mr. McConnell (1) assertedly
20 entered into an oral agreement in 2011 to sell 25 percent of the dealership to Mr. Terry
21 Libbon, (2) agreed in 2012 to sell 90 percent of the dealership to Mr. Marker (later
22 amended to 85 percent) and (3) agreed in 2013 to transfer 55 percent of the dealership
23 stock to Mr. Marker and 30 percent to Mr. Steffes. Mr. Steffes claims that GM “was
24 informed of the transfer of ownership and control” of the dealership. Opp., pp. 4-5. Yet
25 to be effective any such changes in dealership ownership would have required written
26 approval by GM under Article 12.2 of the Dealer Agreements, which GM never gave. In
27 fact, only the third proposed change was ever even submitted to GM. ***GM declined to***
28 ***approve that change because it did not receive complete and accurate information***

1 *concerning the proposed share owners and their proposed share ownings.* Specifically,
2 the proposal sought approval for the sale of 55 percent of the dealership to Mr. Marker
3 and 30 percent to Mr. Steffes, yet GM was informed by Mr. Libbon that he still owned 25
4 percent. Thus, together with Mr. McConnell's retained 15 percent interest, the purported
5 owners together claimed to own 125 percent of the dealership! Under these circumstances
6 Mr. Steffes' claim (Opp., pp. 5-6) that GM unreasonably declined approval is just silly.

7 Finally, as Mr. Steffes acknowledges (Opp., p. 3), GM could have sought to
8 terminate the Dealer Agreements under Veh. Code § 3060(a)(1)(B)(i), based on the
9 alleged ownership changes without GM's approval in violation of the express prohibition
10 of such changes in Article 12.2.1 of the Dealer Agreements:

11 "Dealer Agrees to give General Motors prior written notice of any proposed
12 change or transfer [of ownership]. Dealer understands that if any such
13 change is made prior to General Motors approval, termination of this
agreement will be warranted and General Motors will have no further
obligation to consider Dealer's proposal."

14 Opp., Exh. F, p. 2. But GM chose instead to base termination on the dealership's
15 violation of Article 14.5.3, so any issue about the purported change in ownership
16 without GM's approval is simply moot.

17 Therefore, GM respectfully urges that the Board consolidate the present protests
18 and dismiss them on the ground that the Board lacks jurisdiction.

19 **II. PROTESTANT AND ITS REPRESENTATIVE SHOULD BE REQUIRED**
20 **TO PAY GM'S COSTS AND ATTORNEYS FEES INCURRED HEREIN**

21 The present protests are a direct affront to the integrity and finality of Board
22 proceedings. Further, the record is clear that the affront is deliberate. Mr. Steffes' former
23 counsel and presumably his client were aware of the Board proceedings even before the
24 October 22, 2013 hearing, *see* Oxford Decl., Exh. A, and Mr. Steffes was aware of the
25 Board's final Decision no later than December 10, 2013, long before he filed the present
26 protests, *see* Golusin Decl., ¶ 5 & Exh. A. Moreover, before filing the motion to dismiss,
27 GM's undersigned counsel advised Mr. Steffes in writing of the Board proceedings,
28 provided him with a copy of the Board's final Decision and demanded that he voluntarily

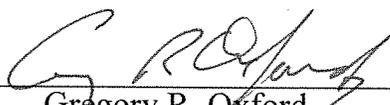
1 dismiss the protests. Motion, Exh. B. Mr. Steffes declined to do so and instead proposed
2 an unspecified “settlement.” *Id.*, Exh. C.

3 Under these circumstances it cannot be disputed that these protests are “totally
4 without merit” within the meaning of section 551.21 of the Board’s regulations, that Mr.
5 Steffes has had ample opportunity to reconsider and dismiss the unauthorized protests and
6 that he has made a deliberate decision not to do so. GM therefore urges that the Board
7 award sanctions against Protestant and Mr. Steffes, jointly and severally, in the form of an
8 order requiring payment of GM’s attorney’s fees and costs incurred herein in the total
9 amount of \$ 6,745.00. *See* Oxford Decl., ¶ 3.

10 Dated: March 14, 2014

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11
12 Of Counsel
13 Brian K. Cullin
General Motors LLC

By: 

Gregory R. Oxford
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PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

- ✓ **VIA FEDERAL EXPRESS OVERNIGHT DELIVERY** on March 14, 2014, I served the foregoing document described as **RESPONDENT'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE AND DISMISS PROTESTS FOR LACK OF JURISDICTION, AND FOR AN AWARD OF SANCTIONS** on the parties in this action by, by placing a true copy thereof enclosed in an envelope or package designated by the express service carrier for overnight delivery with delivery fees provided for, and deposited in a box or other facility regularly maintained by the express service carrier on March 14, 2014, which envelope or package was addressed as follows:

Kent Steffes
366 N. Skyewiay Road
Los Angeles, California 90049
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Executed on March 14, 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