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5 ATTORNEYS FOR PROTESTANT

6  
7 **STATE OF CALIFORNIA**  
8 **NEW MOTOR VEHICLE BOARD**

9 In the Matter of the Protest of:

10  
11 HC Automotive, Inc., dba HOOMAN  
CHRYSLER JEEP DODGE RAM,

12 Protestant,

13 v.

14 FIAT CHRYSLER AUTOMOBILES,

15 Respondent.  
16

**PROTEST NO: PR-2429-15, PR-2430-15,  
PR-2431-15, PR-2432-15**

**PROTESTANT’S PROPOSED FINDINGS  
OF FACT AND PROPOSED DECISION**

17  
18 **I. PROCEDURAL BACKGROUND**

19 **A. Statement of the Case**

20 1. On or about August 15, 2015, by letter dated August 13, 2015, FCA US, LLC. (“FCA” or  
21 “Respondent”) sent Protestant, HC Automotive, Inc., dba Hooman Chrysler Jeep Dodge Ram  
22 (“Hooman” or “Protestant”) a proposed sales incentive chargeback in the amount of \$283,445.00 that  
23 did not comply with the timing or substance of Vehicle Code section 3065.1.<sup>1</sup>

24 2. On September 9, 2015, Hooman filed timely Protests pursuant to Vehicle Code section  
25 3065.1; the Protests were properly amended on April 22, 2016.

26 3. A hearing was held before Administrative Law Judge (“ALJ”) Diana Woodward-Hagle on  
27 May 16, 2016 through May 20, 2016.

28 <sup>1</sup> All statutory references are to the Vehicle Code unless otherwise indicated.

1 **B. Parties and Counsel**

2 4. Protestant is an authorized Chrysler “franchisee” within the meaning of Vehicle Code  
3 sections 331.1 and 3065.1. Protestant was represented by Gavin M. Hughes, Esq. of the Law Offices  
4 of Gavin M. Hughes. Protestant is licensed to sell new FCA motor vehicles and is a corporation in  
5 good standing in the state of California. (Exh 133.)

6 5. Respondent is a “franchisor” within the meaning of sections 331.2 and 3065.1. FCA was  
7 represented by Mark T. Clouatre, Esq., John P. Streelman, Esq., and Benjamin Kapnik, Esq. of  
8 Wheeler Trigg O’Donnel LLP.

9 **C. Summary of Witness’ Testimony and Exhibits Introduced**

10 6. Respondent, FCA, called the following witnesses: Hooman Nissani, Dealer Principal of  
11 Hooman (as an adverse witness under Evidence Code section 776); Julio Sebastiani, Chrysler Dodge  
12 Brand Marketing Manager for the Northeast Region; Matthew Gabel, Dealer Auditor at FCA; William  
13 Danforth, Dealer Audit Manager at FCA; Geoffrey Edmonds, Manager of Dealer Relations at FCA;  
14 and Chris Glenn, Director of U.S. Dealer Relations and Retail Strategies at FCA.

15 7. Protestant, Hooman, called the following witness: Hooman Nissani, Dealer Principal of  
16 Hooman.

17 8. Prior to commencement of the hearing, Protestant filed a Motion in Limine. Protestant’s  
18 Motion in Limine objected to the use of rental agreement information as irrelevant. Protestant’s  
19 Motion was denied.

20 9. The parties agreed to a Joint Glossary of Non-Controversial Terms.

21 10. The parties agreed to a Joint Stipulation of Facts.

22 11. The parties offered over 60 exhibits at the hearing.

23 12. Respondent, by oral motions during the hearing, moved to dismiss the Protests on the  
24 ground that Hooman had abandoned the Protests and moved for a directed verdict. Respondent’s  
25 motions to dismiss the Protests were denied.

26 **II. ISSUES PRESENTED**

27 13. Has Respondent demonstrated that it complied with Vehicle Code Section 3065.1 in  
28 pursuing a chargeback of \$283,445.00 of sales incentive claims against Protestant?

1           14. Pursuant to Vehicle Code section 3065.1, in order to chargeback Protestant after a sales  
2 incentive audit, the Respondent must comply with the terms of 3065.1(g):

3                   (1) Audits of franchisee incentive records may be conducted by the franchisor  
4 on a reasonable basis, and for a period of nine months after a claim is paid or credit  
5 issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a  
6 punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no  
7 more than one random audit of a franchisee in a nine-month period. The franchisor's  
8 notification to the franchisee of any additional audit within a nine-month period shall be  
9 accompanied by written disclosure of the basis for that additional audit.

10                   (2) Previously approved claims shall not be disapproved and charged back  
11 unless the claim is false or fraudulent, the claim is ineligible under the terms of the  
12 incentive program as previously communicated to the franchisee, or for material  
13 noncompliance with reasonable and nondiscriminatory documentation and  
14 administrative claims submission requirements. A franchisor shall not disapprove a  
15 claim or chargeback a claim based upon an extrapolation from a sample of claims,  
16 unless the sample of claims is selected randomly and the extrapolation is performed in a  
17 reasonable and statistically valid manner.

18                   (3) If the franchisor disapproves of a previously approved claim following an  
19 audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a  
20 written disapproval notice stating the specific grounds upon which the claim is  
21 disapproved. The franchisor shall provide a reasonable appeal process allowing the  
22 franchisee a reasonable period of not less than 30 days after receipt of the written  
23 disapproval notice to respond to any disapproval with additional supporting  
24 documentation or information rebutting the disapproval and to cure any material  
25 noncompliance, with the period to be commensurate with the volume of claims under  
26 consideration. If the franchisee rebuts any disapproval and cures any material  
27 noncompliance relating to a claim before the applicable deadline, the franchisor shall  
28 not chargeback the franchisee for that claim.

1 (4) If the franchisee provides additional supporting documentation or  
2 information purporting to rebut the disapproval, attempts to cure noncompliance  
3 relating to the claim, or otherwise appeals denial of the claim, and the franchisor  
4 continues to deny the claim, the franchisor shall provide the franchisee with a written  
5 notification of the final denial within 30 days of completion of the appeal process,  
6 which shall conspicuously state "Final Denial" on the first page.

7 (5) The franchisor shall not chargeback the franchisee until 45 days after the  
8 franchisee receives the written notice described in paragraph (3) or (4), whichever is  
9 later. If the franchisee cures any material noncompliance relating to a claim, the  
10 franchisor shall not chargeback the dealer for that claim. Any chargeback to a  
11 franchisee for incentive program compensation shall be made within 90 days after the  
12 franchisee receives that written notice. If the board sustains the chargeback or the  
13 protest is dismissed, the franchisor shall have 90 days following issuance of the final  
14 order or the dismissal to make the chargeback, unless otherwise provided in a settlement  
15 agreement.

16 (6) Within six months after either receipt of the written notice described in  
17 paragraph (3) or (4), a franchisee may file a protest with the board for determination of  
18 whether the franchisor complied with this subdivision. If the franchisee files a protest  
19 pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the  
20 franchisor shall not offset or otherwise undertake to collect the chargeback until the  
21 board issues a final order on the protest. In any protest pursuant to this subdivision, the  
22 franchisor shall have the burden of proof.

23 Under this statute, Respondent has the burden to prove that the proposed chargeback based on a  
24 sales incentive audit complies with section 3065.1(g). (Veh. Code § 3065.1(g)(6).)

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26 **III. PROTESTANT'S CONTENTIONS**

27 15. Protestant contends that the proposed chargeback is prohibited pursuant to Vehicle Code  
28 section 3065.1(g) in at least the following ways:

1 (1) Respondent failed to provide Protestant written notification of the final denial of its  
2 audit appeal within 30 days of completion of the appeal process, which shall  
3 conspicuously state "Final Denial" on the first page. (Veh. Code § 3065.1(g)(4).)

4 (2) Respondent failed to previously “communicate” the terms of Respondent’s incentive  
5 program that required contracts and titles at the time of sale in Respondent’s “Gold  
6 Book” and Dealer Policy Manual for sales of vehicles Protestant made to itself for  
7 loaner car purposes. (Veh. Code § 3065.1(g)(2).)

8 (a) At no time before the December 2014 Incentives Audit began did FCA  
9 communicate the terms of the “Gold Book” or Chrysler Policy Manual that  
10 purport to require Protestant to create contracts with itself or title vehicles at the  
11 time of sale in regard to vehicles sold to Protestant. (Veh. Code § 3065.1(g)(2).)

12 (b) Even if the Board finds that Exhibit 204<sup>2</sup> was a sufficient substitute for the  
13 “communication” of the terms of Respondent’s incentive program, Exhibit 204  
14 should be considered superseded and canceled by Exhibit 202’s merger clause  
15 and because it is an unenforceable contract of adhesion. (*See, e.g., Graham v.*  
16 *Scissor-Tail, Inc.* (1981) 28 Cal.3d 807 (describing two grounds on which  
17 contracts of adhesion have been found unenforceable).)

18 (3) Respondent’s requirement that Protestant create contracts with itself is  
19 unreasonable. (Veh. Code § 3065.1(g)(2).)

20 (4) Since these sales were from the dealership to the dealership, a contract was not  
21 applicable because there were no “parties capable of contracting” and any “contract”  
22 created from the dealership to the dealership would be unenforceable. (Cal. Civ. Code  
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24 <sup>2</sup> Respondent has argued that it makes “available” the Dealer Policy Manual (Exh 206 (a)) and the  
25 Incentives Manual (Exhs 207 (a) and (b) (also referred to as the “Gold Book”)). Respondent has  
26 further argued that Hooman “Acknowledged Receipt of the Incentives Manual.” For this argument  
27 that Hooman acknowledged receipt of the Manual, Respondent has generally cited Exhibit 204. (Exh  
28 204.) However, Exhibit 204 instead purports to require Hooman to access, read, and thoroughly  
understand the Incentive Manual “upon receiving access to the CG DealerCONNECT website.” (Exh  
204.) Exhibit 204 is dated 10/15/2013, but the testimony during the Hearing described that Hooman  
first gained access to DealerCONNECT in mid to late January 2014. (Hearing Transcript (“RT” –  
cited in the format “RT Vol. #, page#:line#”) RT Vol. 4, 265:0008-0013.)

1 § 1550.) Moreover Respondent’s incentive manual does not require contracts when a  
2 dealer sells a vehicle to itself – using the language “if applicable” with regard to  
3 contracts. (Exhs 206(a):0042, 207(a):0016, 207(b):0016.)

4 (5) Protestant cured “any material noncompliance” with the terms of Respondent’s  
5 incentive program or Respondent’s reasonable and nondiscriminatory documentation  
6 and administrative claims submission requirements. (Veh. Code § 3065.1(g)(3).)

7 (6) Respondent failed to provide a reasonable appeals process.

8 16. Respondent failed to meet its burden in establishing FCA complied with Vehicle Code  
9 section 3065.1(g) for at least the foregoing reasons when pursuing a chargeback on items D, H, and K  
10 on its audit report. (Exh 264:0005.) Respondent failed to establish that all or another specific amount  
11 of items D, H, and K in Respondent’s audit report complied with section 3065.1(g). The proposed  
12 chargeback of \$283,455.00 is prohibited by Section 3065.1 and Respondent failed to meet its burden to  
13 establish otherwise.

14 **IV. RESPONDENT’S CONTENTIONS**

15 17. Respondent contends the following:

16 (1) Protestant was required to create and retain contracts and title vehicles it sold to  
17 itself as of the date of sale and could not cure this defect by obtaining title or creating  
18 contracts any time after the date of sale.

19 (2) The terms of Respondent’s incentive program were clear.

20 (3) Hooman acknowledged receipt of the incentives manual.

21 (4) The process of not titling a vehicle upon sale enabled Hooman to subsequently sell  
22 vehicles as “new” a second time.

23 (5) A vehicle that was sold as “new” a second time would provide a customer a  
24 shortened warranty period.

25 (6) The majority of vehicles subject to the audit were not titled until after the audit  
26 began.

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1 (7) Respondent “substantially complied” with California Vehicle Code § 3065.1(g)(4)  
2 (requiring that the document closing the audit appeal “shall conspicuously state "Final  
3 Denial" on the first page”).

4 (8) For the foregoing reasons, Respondent complied with California Vehicle Code  
5 section 3065.1(g) when pursuing a chargeback of \$283,455.00 against Protestant.

6 **V. FINDINGS OF FACT**

7 **A. PRELIMINARY FINDINGS**

8 18. Protestant, has operated as a FCA franchisee in Inglewood, California since January 2014.  
9 Protestant temporarily operates this FCA dealership out of a Hyundai dealership at or around 333  
10 Hindry Ave. Inglewood, CA 90301 and several other locations. (RT Vol. 1, 62:1-25.)

11 **B. JOINT STIPULATIONS OF FACT**

12 19. The parties agreed to the following Stipulated Facts:

13 (1) Hooman is a new motor vehicle dealer located at 333 Hindry Avenue, Inglewood,  
14 California 90301.

15 (2) FCA is the United States distributor of Chrysler, Jeep, Dodge, and Ram vehicles  
16 and products.

17 (3) Hooman entered into a Term Sales and Service Agreement (“TSSA”) with Chrysler  
18 Group LLC. Chrysler Group is now known as FCA US. Exhibit 202 is a true and  
19 correct copy of the Term Sales and Service Agreement.

20 (4) The TSSA incorporates the Sales and Service Agreement Additional Terms and  
21 Provisions. Exhibit 203 is a true and correct copy of the Sales and Service Agreement  
22 Additional Terms and Provisions.

23 (5) Matthew Gabel, on behalf of FCA, began a sales incentive audit of Hooman on  
24 December 1, 2014.

25 (6) Mr. William Danforth conducted an Audit Manager Review of the chargeback of  
26 Hooman. The review resulted in no change to the audit chargeback.

27 (7) On March 2, 2015, Mr. William Danforth sent Mr. Hooman Nissani the final results  
28 of the Audit Manager Review of the proposed chargeback to Hooman.

1 (8) On March 20, 2015, Mr. Hooman Nissani emailed Mr. William Danforth a letter  
2 requesting an appeal of the sales incentive audit.

3 (9) A Sales Incentive Audit Appeal meeting was held on July 9, 2015.

4 (10) FCA has conducted no other audits of Hooman, aside from the sales incentive  
5 audit that began on December 1, 2014.

6 (11) FCA has not collected nor completed the chargeback of Hooman.

7 **C. FINDINGS RELATED TO THE FAILURE OF FCA TO ISSUE A DOCUMENT WITH THE WORDS**  
8 **“FINAL DENIAL” TO CLOSE THE SALES INCENTIVE AUDIT APPEAL**

9 20. Exhibit 264 is a letter from Christopher Glenn to Hooman Nissani with supporting  
10 attachments. (Exh 264.) Nowhere on the first page of Exhibit 264 does it state the words “Final  
11 Denial.” (Exh 264:0001.)

12 21. FCA closed the audit appeal for Hooman’s sales incentive audit as of the August 13, 2015  
13 letter. (Exh 264:0001.) The letter describes that the appeal is closed and that the chargeback will be  
14 processed. (*Id.*)

15 22. In a follow-up e-mail exchange dated August 19, 2015 Geoffrey Edmonds from FCA  
16 informed Hooman that FCA would not accept any further documentation to reverse the chargeback.  
17 (Exh 265:0001.) Nowhere in Geoffrey Edmonds’ e-mail does he use the words “Final Denial.” (*Id.*)

18 23. In a further follow-up e-mail exchange dated August 21, 2015 Christopher Glenn from  
19 FCA informed Hooman that FCA would not reconsider or make further adjustments to the chargeback.  
20 (Exh 266:0001.) Nowhere in Christopher Glenn’s e-mail does he use the words “Final Denial.” (*Id.*)

21 24. FCA did not offer any other written notifications from FCA to Hooman that used the words  
22 “Final Denial.” At no time did FCA introduce any evidence showing a written communication with  
23 the words “Final Denial” was sent to Hooman.

24 25. FCA never provided Hooman a written notification of the completion of the audit appeal  
25 process on which FCA stated the words “Final Denial.” (*See* Exhs 264:0001, 265:0001, 266:0001; *see*  
26 *also* RT Vol. 4, 169:24-170:3, 182:25-183:13, 215:16-216:2.)

27 26. Hooman offered to resend documentation for all the loaner vehicles after FCA had closed  
28 the audit appeal on August 13, 2015. (*See* Exh 265:0001; *see also* RT Vol. 5, 21:11-25.) FCA refused

1 to accept any additional documentation as it considered the appeal closed. (Exhs 265:0001, 266:0001;  
2 RT Vol. 5, 21:15-25.)

3 **D. FINDINGS RELATED TO THE COMMUNICATION OF THE INCENTIVE PROGRAM TERMS IN THE**  
4 **DEALER POLICY MANUAL AND INCENTIVE MANUAL TO HOOMAN**

5 27. Hooman Nissani is the co-president and owner of Hooman. (RT Vol. 1, 38:20-39:1.)

6 28. Hooman Nissani is the owner and operator of six vehicle dealerships and a Volvo  
7 dealership opening in the near future. (RT Vol. 1, 38:10-14.) Hooman Nissani owns and operates  
8 Toyota; Nissan; Chrysler, Jeep, Dodge, and Ram; Acura; Chevy; and Hyundai franchises. (RT Vol. 1,  
9 37:21-38:9.) Hooman Nissani also owns a Volvo dealership that is not operational yet but the  
10 dealership will be coming on line in the future. (RT Vol. 1, 38:10-14.)

11 29. The Dealer Policy Manual and Incentive Rules Manual (“Gold Book”) describe the rules  
12 and procedures for incentives as set forth by FCA. (Exhs 206(a), 207(a), 207(b).) The Dealer Policy  
13 Manual says that a dealer must maintain documents for each vehicle that the dealer wishes to claim  
14 incentives on. (Exh 206(a):0042.) Among those documents, it lists “Lease Agreement/Contract (if  
15 applicable), Title and Registration Documents, and Signed Buyer’s Order/Purchase Contract.” (*Id.*)  
16 Moreover, the Incentive Rules Manual, also known as the “Gold Book,” says that a dealer must  
17 maintain documents for each vehicle that the dealer wishes to claim incentives on. (Exhs 207(a):0016,  
18 207(b):0016.) Among those documents, it lists “Lease Agreement/Contract (if applicable), Title and  
19 Registration Documents including a copy of the actual title and/or official state confirmation thereof,  
20 and Signed Buyer’s Order/Purchase Contract.” (*Id.*) Both Manuals are silent as to whether a dealer  
21 must title a vehicle when the vehicle is reported sold to the dealership from the dealership’s own sales  
22 stock. (*See* Exhs 206(a), 207(a), 207(b).)

23 30. The Dealer Policy Manual and Incentive Rules Manual are “made available” to FCA  
24 Dealers electronically on DealerCONNECT. (RT Vol. 3, 123:16-124:6.) A dealer must be given  
25 access to DealerCONNECT by FCA and this typically happens when a dealer is put into business –  
26 either when they sign paperwork or when they are ready to open the doors of the business. (RT Vol. 4,  
27 190:22-191:3.) Access to DealerCONNECT requires a username and password (RT Vol. 3, 49:13-15).

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1           31. Hooman never received a hard copy of the Dealer Policy Manual or the Incentive Rules  
2 Manual. (RT Vol. 1, 106:18-19.) FCA never provided nor communicated the Manuals in hard copy or  
3 other format to Hooman. (RT Vol. 1, 106:18-19; RT Vol. 3, 48:3-15.)

4           32. In order to access the manuals, Hooman would have needed to log onto DealerCONNECT  
5 and view the manuals online. (RT Vol. 1, 106:18-19; RT Vol. 3, 48:3-15.) Prior to the Audit, FCA  
6 did not instruct Hooman about where to find the manuals on DealerCONNECT. (RT Vol. 1, 106:18-  
7 19; RT Vol. 3, 48:3-15; *see also* Exh 204.) Protestant did not have access to DealerCONNECT until  
8 mid to late January 2014 when it received a password for DealerCONNECT. (RT Vol. 4, 265:8-13;  
9 RT Vol. 5, 6:17-7:8.)

10           33. Individual program rules were provided to Protestant by e-mail or in person. (RT Vol. 1,  
11 113:21-114:7.) These Program Rules communicated the specific terms for individual programs such  
12 as the Volume Growth Program for July and described, among other things, which vehicles would  
13 “count” toward the program and how long the program would run. (*See* Exh 283.) The Program Rules  
14 say, “Refer to the latest version of the Incentive Program Rules Manual (referred to as the Gold Book)  
15 and incentive Summary Communication.” (Exh 283:0001.)

16           34. The Program Rules do not describe documents that Hooman was required to keep upon  
17 sale of a vehicle; the Program Rules also do not describe that Hooman was required to title vehicles  
18 upon sale or to create contracts for sales to the dealership. (Exh 283.)

19           35. Julio Sebastiani trained staff at Hooman on *Program Rules* available on DealerCONNECT  
20 and how to get specific incentives paid for customer incentives. (RT Vol. 1, 181:8-23.) Julio  
21 Sebastiani testified he told Rayan Nissani that the Dealership had to title vehicles that were placed in  
22 the loaner program, but his testimony is not credible. (*See* RT Vol. 1, 200:5-10.) Additionally, the  
23 training he provided to Hooman was focused on claiming incentives that were automatically rejected  
24 by FCA’s incentive system and not incentives subject to audits. (*See* RT Vol. 1, 160:23-161:6.)

25           36. Julio Sebastiani testified that he never, at any time, discussed or talked to anyone at the  
26 dealership regarding the Gold Book and its requirements. (RT Vol. 1, 181:24-182:3.)

27           37. Moreover, Mr. Hooman Nissani’s testimony that he repeatedly asked Mr. Sebastiani for  
28 details about the process for ordering and reporting loaner vehicles purchased by the dealership and

1 that Mr. Sebastiani was unable to provide any answers is more credible than Mr. Sebastiani's claim that  
2 he informed Hooman that it was required to title all vehicles sold to the dealership. (RT Vol. 5, 36:21-  
3 38:16.)

4 38. Hooman Nissani signed several documents under hurried circumstances prior to becoming  
5 an FCA franchisee; he had limited time to review the documents before he signed them. (RT Vol. 1,  
6 103:3-10, 55:6-8.) Among those documents was a document titled "Dealer Acknowledgement of  
7 Receipt of Chrysler Group LLC Incentive Program Rules Manual." (Exh 204.) Exhibit 204 does not,  
8 however, acknowledge receipt of the Incentive Program Rules Manual (Gold Book); Exhibit 204  
9 instead describes and purports to require that Hooman "upon receiving access to the CG  
10 DealerCONNECT website it is [his] responsibility to read and thoroughly understand the contents of  
11 the Manual." (*Id.*) The document is dated October 15, 2013. (*Id.*) This document is insufficient to  
12 establish the terms of the incentives involved in the proposed chargeback were previously  
13 communicated to Protestant.

14 39. Hooman did not execute a franchise agreement to become an FCA dealer until November  
15 19, 2013. (Exh 202:0005.) Hooman did not commence Dealer operations until mid to late January  
16 2014. (RT Vol. 4, 265:8-13; RT Vol. 5, 6:17-7:8.)

17 40. At no time prior to the Audit did any FCA representative present and review the Dealer  
18 Policy Manual and Incentive Rules Manual with Hooman. (*See* Exh 204, RT Vol. 1, 112:19-23.) In  
19 Hooman Nissani's experience with six other manufacturers, information contained in the Dealer Policy  
20 Manual and Incentive Rules Manual is usually gone over by manufacturers when a dealer first  
21 becomes a franchisee. (RT Vol. 1, 113:6-9.)

22 41. Moreover, Exhibit 202, the Hooman and FCA Dealer Agreement (the "Term Sales and  
23 Service Agreement") includes a merger clause at item number 6. (Exh 202:0002-0003.) Exhibit 202  
24 was executed on November 19, 2013. (Exh 202:0005.) The merger clause cancels and supersedes all  
25 earlier written agreements between FCA and Hooman relating to the purchase of FCA vehicles for  
26 resale. (Exh 202:0005.) This includes understandings related to FCA's rules regarding incentive  
27 payments. (*Id.*) Exhibit 204, executed on October 15, 2013, is therefore included in the documents to

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1 be canceled and superseded unless contained explicitly in Exhibit 202. (*See* Exhs 202:0002-0003,  
2 204.)

3 42. Exhibit 202 is not included in Hooman and FCA’s Dealer Agreement (Exhibit 204) and it  
4 is therefore canceled and superseded by the merger clause in the Dealer Agreement. (Exh 204.)

5 43. Only FCA dealers can sell and cause the registration and title of a new FCA vehicle. (RT  
6 Vol. 4, 195:5-9.)

7 44. Hooman reports vehicles as sold in DealerCONNECT through Reynolds and Reynolds.  
8 (RT Vol. 5, 102:13-24.) Reynolds and Reynolds is one of two dealership data management programs  
9 FCA requires its Dealers to use. (RT Vol. 5, 57:13-14, 59:20-23.)

10 45. Hooman pays an additional monthly fee to integrate its Reynolds and Reynolds program  
11 with DealerCONNECT. (RT Vol. 5, 103:21-24.) Hooman employees confirm deals reported from  
12 Reynolds and Reynolds to DealerCONNECT by logging in to DealerCONNECT and confirming a  
13 queue. (RT Vol. 5, 104:3-10.) Hooman cannot access Exhibits 206 or 207 (the Dealer Policy Manual  
14 and Incentive Rules Manual) through Reynolds and Reynolds. (RT Vol. 5, 105:13-16, 106:2-5.)

15 **E. FINDINGS RELATED TO THE LAYOUT AND OPERATION OF THE HOOMAN DEALERSHIP**

16 46. Hooman Nissani signed a series of agreements necessary to become an FCA franchisee  
17 between October 2013 and November 2014. (RT Vol. 1, 42:6-8.) Hooman did not begin operations as  
18 a FCA dealership until January 2014. (RT Vol. 1, 61:12-15.)

19 47. Hooman is currently spread out over several locations. (RT Vol. 1, 62:17-19.) The  
20 business address of 333 Hindry has ten or eleven lifts and four or five small offices. (RT Vol. 1, 64:9-  
21 13.) The dealership also operates, at least in part, out of a Hyundai showroom. (RT Vol. 1, 64:18-19.)  
22 When Hooman began operations, the prior dealership did not have a building, business office, or  
23 showroom. (RT Vol. 4, 231:16-232:17; *see also* RT Vol. 1, 61:1-5.)

24 48. Hooman replaced LAX Chrysler Dodge Jeep, which operated without its own building,  
25 business office, or showroom – LAX operated out of a trailer with two desks. (RT Vol. 4, 231:16-22.)  
26 From the beginning, Hooman Nissani planned to relocate the dealership to an auto center that Hooman  
27 Nissani is constructing from the ground up. (RT Vol. 1, 66:6-14; RT Vol. 4, 233:19-234:19.) Hooman

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1 has made efforts to serve customers at the current location as best it can. (See RT Vol. 1, 66:1-5; RT  
2 Vol. 4, 232:7-233:18.)

3 49. Sales documents for Hooman vehicle customers were distributed to different locations  
4 during the Audit period because of the limited space at the sales location. (RT Vol. 4, 233:5-18.) All  
5 the documents dealing with a customer’s transaction were separated into multiple files in different  
6 locations. (RT Vol. 1, 60:14-61:8.)

7 50. At all times, Hooman was selling vehicles to public customers in compliance with FCA’s  
8 policies; it titled all customer sales at the time of sale and created sales contracts for these sales. (RT  
9 Vol. 1, 127:15-18.) Mr. Sebastiani explained the customer sales process to Protestant’s employees, but  
10 he did not to instruct any Hooman employee on the requirement to title vehicles purchased by the  
11 dealership. (RT Vol. 1, 127:11-18; RT Vol. 4, 263:10-17.)

12 **F. FINDINGS RELATED TO THE TWO DIFFERENT ACTS OF TEMPORARY REGISTRATION VERSUS**  
13 **REGISTERING AND TITLING A VEHICLE WITH DMV**

14 51. There are two acts of registration for new vehicle sales that were described during the  
15 hearing. (RT Vol. 2, 178:8-20.)

16 52. The first occurs when a dealer issues a temporary registration for a vehicle (“temporary  
17 registration”). (RT Vol. 1, 82:22-83:12.) A temporary registration enables a vehicle to be legally  
18 driven on U.S. roads until a permanent title and registration are issued by DMV; temporary  
19 registrations are issued by dealers. (RT Vol. 1, 82:22-83:2; RT Vol. 5, 237:3-6.)

20 53. The second is when the registration of a vehicle is submitted to the DMV and a title is  
21 issued (“registration”). (RT Vol. 2, 179:2-180:8.) In order to get the title for a vehicle, the vehicle  
22 must be registered with DMV. (RT Vol. 4, 92:8-16.) The titling and registration of a new vehicle sale  
23 must necessarily be contemporaneous. (RT Vol. 4, 236:9-10; RT Vol. 5, 91:15-18.)

24 54. An MSO is a Manufacturer’s Statement of Origin. (RT Vol. 4, 89:19-20.) Hooman held  
25 MSO’s for the loaner vehicles at issue in the audit (“Audit Vehicles”), as it holds MSO’s for any other  
26 vehicle in its inventory. (RT Vol. 4, 89:13-90:7.)

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1 55. When an MSO is submitted to DMV, it becomes the title for a vehicle. (RT Vol. 4, 89:18-  
2 25.) Hooman’s possession of an MSO for a vehicle shows that FCA was paid for the vehicle and  
3 indicates the dealership’s ownership of the vehicle. (*See* RT Vol. 4, 94:20-23.)

4 56. The words “Title,” “Ownership Certificate,” and “Pink Slip” in California all mean the  
5 same thing. All three words refer to the titling or indication of ownership for a vehicle. (RT Vol. 5,  
6 90:20-91:3.)

7 **G. FINDINGS RELATED TO THE USE OF VEHICLES PURCHASED BY HOOMAN AS LOANER**  
8 **VEHICLES, THE ASSOCIATED REDUCTION IN CHARGEBACK AMOUNT, AND THE HOOMAN VIP**  
9 **PROGRAM**

10 57. None of the chargebacks that are the basis of this Protest involve an incentive program that  
11 required the use of the vehicles as loaners. (RT Vol. 3, 12:9.)

12 58. Respondent did not have a loaner program during or before the Hooman Audit. (RT Vol.  
13 1, 185:11-19.) Respondent also did not provide a separate allocation stream for loaner vehicles. (*See*  
14 RT Vol. 4, 230:19-231:1.) Therefore to build a loaner fleet, Hooman was required to acquire loaner  
15 vehicles from its FCA sales inventory. (RT Vol. 4, 230:19-231:1.)

16 59. FCA did not institute a service loaner program until the third quarter of 2015. (RT Vol. 1,  
17 185: 11-19.) Prior to 2015, FCA did not have a service loaner program with separate policies and  
18 procedures available to dealers that specifically described the acquisition of service loaner vehicles.  
19 (RT Vol. 1, 185:11-19; RT Vol. 5, 37:17-25.) The FCA loaner program now provides dealers with  
20 Program Rules detailing the process for loaner vehicle purchases by the dealership. (RT Vol. 1,  
21 186:20.)

22 60. Hooman and Hooman Nissani’s other dealerships offer a VIP Program to their customers.  
23 (RT Vol. 4, 225:17-23; Ex. 102: HOOM 00053-00060.) An essential component of the VIP program  
24 requires Hooman to provide loaner vehicles to service customers. (*Id.*)

25 61. Hooman operated this program at its other dealerships before becoming an FCA franchisee  
26 and instituted the same program for FCA customers. (RT Vol. 4, 225:17-23; Ex. 102: HOOM 00053-  
27 00060.) Hooman Nissani’s dealerships run some of the largest loaner fleets among other dealerships  
28 of the same brand. (RT Vol. 5, 15:14-20.) Hooman provides its FCA customers free service loaner

1 vehicles under a variety of circumstances. (RT Vol. 5, 33:3-8; RT Vol. 1, 88:6-8; Exh 102:HOOM  
2 00060.) Hooman’s policy is to provide loaner vehicles for up to two days, but given the delays at the  
3 service center, Hooman regularly provides loaner vehicles for longer periods of time. (RT Vol. 5,  
4 33:3-8; Exh 102:HOOM 00060.)

5 62. Providing loaner vehicles benefits Hooman’s customers and incentivizes new vehicle  
6 purchases from the Hooman dealership. (*See* RT Vol. 1, 174:13-15, 185:6-10; *see also* Exh  
7 102:HOOM 00060.)

8 63. The prior FCA dealer, LAX Chrysler Dodge Jeep (“LAX”), did not have a loaner fleet  
9 larger than one vehicle. (RT Vol. 4, 229:24-230:5.)

10 64. Hooman incrementally stocked its loaner fleet starting from its first month of operations in  
11 January 2015. (RT Vol. 4, 230:6-9, 230:19-21.) It was important that Hooman provide service loaners  
12 to customers because of service delays at the fragmented Hooman dealership. (RT Vol. 4, 226:24-  
13 227:6, 230:8-11.)

14 65. Hooman purchases and pays FCA for all the vehicles it receives; Hooman pays FCA a few  
15 weeks before the new vehicles are delivered. (RT Vol. 4, 238:11-15.) Hooman selects vehicles from  
16 its sales inventory to transfer to its loaner pool. (RT Vol. 4, 239:6-18.) Each of the Audit Vehicles  
17 was purchased by Hooman and FCA had already received payment for these vehicles before Hooman  
18 transitioned the vehicles to the dealership’s loaner pool. (*See* RT Vol. 4, 239:6-18, 241:3-8.)

19 66. Hooman Nissani specifically asked Julio Sebastiani about the process for transitioning a  
20 vehicle into Hooman’s loaner fleet, but Mr. Sebastiani did not provide specific information about any  
21 loaner vehicle program or process—because it did not exist. (RT Vol. 5, 37:7-25.) FCA did not  
22 provide dealers a loaner program during the nine months of the audit. (RT Vol. 1, 185:11-19; RT Vol.  
23 5, 37:23-25.) Other manufacturers, in Hooman Nissani’s experience, treat loaner vehicles differently  
24 than customer sales. (*See* RT Vol. 5, 38:1-16.) Specifically, other manufacturers, or their finance  
25 arms, hold title to vehicles added to the dealership’s loaner fleet. (RT Vol. 1, 126:14-17.)

26 67. On or about July 13, 2015, after the audit appeal meeting, FCA asked Hooman to provide  
27 evidence that the Audit Vehicles were actually placed into Hooman’s loaner fleet. (Exh 246; RT Vol.  
28 4, 154:16-22.) The committee stated that it would only consider a reduction of the chargeback amount

1 if Hooman provided evidence that the Audit Vehicles were used as loaner vehicles. (Exh 246.)  
2 Specifically, FCA requested that Hooman provide “the first [rental/loaner] agreement and then the four  
3 most recent [rental/loaner] agreements for each vehicle” and “if you have a usage log please provide  
4 that, too.” (Exh 246.)

5 68. In response, Hooman provided rental agreements on or about July 17, 2015 and “rental  
6 log” printouts from Hooman’s “TSD” rental software on or about July 20, 2015. (RT Vol. 5, 27:21-23,  
7 47:6-9; RT Vol. 3, 185:13-25; *see also* Exh 284:0001-0003.) The “TSD” rental software is rental car  
8 software that is used to track all the vehicles in Hooman’s loaner fleet and maintain billing records.  
9 (RT Vol. 5, 28:1-6.)

10 69. The printouts from the TSD software that Hooman provided are two page documents.  
11 (Exh 248:0002-0003.) The first page of each printout shows the VIN and unit number. (Exh 248:2.)  
12 The second page correlates to the first page based on the unit number. (Exh 248:0003.) Under the  
13 column labeled “R/As,” the printouts showed the number of times each individual vehicle was rented  
14 to a customer. (Exh 248:0003; RT Vol. 5, 49:12-17.)

15 70. In one instance, the vehicle with a VIN number 1C4PJLAB5EW199726 is shown to have  
16 been rented on 50 occasions. (Exh 248:0002-0003.) However, the chart prepared by FCA analyzing  
17 the number of rentals of the vehicle with VIN 1C4PJLAB5EW199726 shows that after review of  
18 Hooman’s TSD rental log, FCA incorrectly determined that the vehicle had never been rented. (*See*  
19 Exh 264:0002.)

20 71. William Danforth, who prepared Exhibit 264 pages two through four on behalf of FCA,  
21 was unaware of what the column labeled “R/As” in Exhibit 248 meant and never asked Hooman what  
22 the column labeled “R/As” meant. (RT Vol. 4, 34:18-19, 35:5-8.) FCA failed to correctly understand  
23 the information it was provided and failed to make reasonable attempts to do so.

24 72. Hooman also provided further information at FCA’s request on or about July 31, 2015.  
25 (*See* Exh 251, RT Vol. 5, 23:18-22.) Hooman provided FCA with signed contracts, driver’s licenses,  
26 and insurance cards from customers who had received loaner vehicles for the 10 VINs requested. (Exh  
27 251-258; RT Vol. 5, 24:2-7, 39:19-40:8.)

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1           73. When FCA requested the additional information, including signed contracts, driver's  
2 licenses, and insurance cards, Jeffrey Edmonds did not inform Hooman that FCA had not received all  
3 the rental agreements the appeals committee had requested. (RT Vol. 4, 102:18-20, 121:2-10.)  
4 Specifically, while speaking with Hooman on or about July 27, 2015, Jeffrey Edmonds never  
5 mentioned FCA's claim that the audit appeal committee did not receive all the information requested.  
6 (See RT Vol. 4, 119:12-20, 121:7-10; RT Vol. 5, 19:11-14; see also Exh 250.)

7           74. Each loaner vehicle Protestant provided customers was covered by insurance when driven  
8 and was legally driven on California roads. (See RT Vol. 5, 63:9-64:9.) Hooman required customers  
9 to provide evidence of insurance at the time of rental. (RT Vol. 5, 26:4-7.) Vehicles driven by  
10 customers with insurance were covered by the customer's insurance. (RT Vol. 5, 63:9-64:9.)  
11 Moreover, the vehicles were covered by Hooman's \$25 million umbrella policy. (RT Vol. 5, 63:9-  
12 64:9.) Further, Hooman issued temporary registrations for each vehicle in its loaner fleet to permit the  
13 vehicle to be legally driven on the roads of California. (RT Vol. 1, 82:24-83:7.)

14 **H. FINDINGS RELATED TO HOOMAN TITLING THE LOANER VEHICLES BEFORE THE CLOSE OF**  
15 **THE AUDIT**

16           75. FCA, through the auditor Matthew Gabel, conducted a sales incentive audit of Hooman  
17 starting on or about December 1, 2014 ("Audit"). (Exh 210:0001, 213:0002.) Mr. Gabel closed the  
18 Audit on January 14, 2015. (Exh 223:0001.) The Audit identified approximately 93 vehicles that were  
19 reported sold to Hooman, but had not been titled to Hooman at the time of reported sale ("Audit  
20 Vehicles"). (See Exhs 213:0002, 264:0001.)

21           76. On or about February 12, 2015 Hooman requested an Audit Manager Review of the  
22 Audit's findings. (Exh 232.) William Danforth conducted the Audit Manager Review. (Exh 236.)  
23 The Audit Manager Review maintained the initial chargeback based solely on the failure to title the  
24 vehicles at the time of sale. (Exh 236:0003.)

25           77. Hooman Nissani also requested an Audit Appeal on or about March 20, 2015 ("Appeal").  
26 (Exh 238.) An Appeal Meeting was scheduled for June 4, 2015, but was rescheduled to July 9, 2015.  
27 (Exh 243:0001,0004.) On or about August 13, 2015, FCA notified Hooman that it would reverse

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1 \$101,660 of the proposed chargebacks leaving the remaining \$283,445 in chargebacks; FCA based its  
2 decision on Hooman's alleged failure to provide rental agreements as requested. (Exh 264:0001.)

3 78. FCA asserts the VGP (Volume Growth Program) incentives should be charged back  
4 because the Audit Vehicles were not titled at the time of sale. (RT Vol. 2, 132:4-8; RT Vol. 3, 137:22-  
5 25; *see* Exhs 206(a):0042, 207(a):0016, 207(b):0016.)

6 79. Hooman was unaware of FCA's requirement to title the vehicles at the time of sale. (RT  
7 Vol. 1, 125:21-24; RT Vol. 2, 187:9-11.) There is no evidence FCA communicated this requirement to  
8 Protestant. (*See* RT Vol. 1, 128:19-24; RT Vol. 1, 106:18-19; RT Vol. 3, 48:3-15.) The evidence does  
9 show that Protestant is now aware of the titling requirement and that it currently complies with FCA's  
10 policy. (RT Vol. 5, 95:19-22.)

11 80. On December 5, 2014, Mr. Gabel issued a preliminary audit report that found \$385,115 in  
12 proposed chargebacks. (Exh 213:0001.) He also requested that Hooman provide him with any  
13 additional evidence to reverse the chargebacks. (*Id.*)

14 81. Upon being told by Mr. Gabel that the Audit Vehicles needed to be titled, Hooman  
15 immediately registered and titled the vehicles to the dealership. (RT Vol. 2, 190:2-15.) The vehicles  
16 were registered with the date of sale Hooman had reported to FCA. (RT Vol. 2, 194:3-5; RT Vol. 4,  
17 255:18-256:11; RT Vol. 5, 99:5-12.) Protestant paid all fees and that would have been due at the time  
18 of reported sale as well as associated late fees and penalties. (RT Vol. 5, 97:7-14.)

19 82. Hooman titled the majority of the Audit Vehicles before the close of the audit. (RT Vol. 1,  
20 125:7-24; RT Vol. 4, 125:3-12, 146:13-20.) Hooman titled most of the vehicles on or before  
21 December 24, 2014. (Exh 264:0002-0004.)

22 83. Mr. Gabel was aware that Protestant intended to title the Audit Vehicles to the dealership  
23 and provide proof of this prior to the close of the audit in order to cure the alleged noncompliance. (RT  
24 Vol. 3, 25:19-30:22, 31:4-33:21.)

25 84. Not only did Mr. Gabel receive evidence that the Audit Vehicles had been registered to  
26 Protestant, he also confirmed this fact through his own source – Auto Check. (RT Vol. 2, 167:6-21.)

27 85. Hooman provided FCA evidence that it titled the Audit Vehicles when it submitted  
28 DMVdesk reports. (RT Vol. 4, 257:2-4; Exh 217:0003.) DMVdesk is a software used by dealers to

1 access DMV records. (RT Vol. 4, 257:15-20.) The DMVdesk records indicate when a vehicle is  
2 titled. (RT Vol. 4, 261:10-262:12; RT Vol. 5, 90:20-91:3; Exh 217:0003 (indicating “Date of Latest  
3 Ownership Certificate”).) Ownership Certificate means the same thing as title. (RT Vol. 5, 90:22-25,  
4 101:8-18.) Hooman submitted the DMVdesk records to FCA on at least three separate occasions:  
5 January 9, 2015; February 12, 2015; and March 20, 2015 – once during the Audit, once before the  
6 Audit Manager Review, and once before the Appeal. (Exhs 217, 232, 238.)

7 86. FCA’s Matthew Gabel and William Danforth each determined the DMVdesk documents  
8 did not indicate when a vehicle was titled, but they made no attempt to discuss these documents with  
9 Hooman or identify what deficiencies may have existed in the documents provided. (RT Vol. 2, 121:2-  
10 4; RT Vol. 3, 61:8-21, 140:3-10; *see also* Exh 217.) Matthew Gabel issued a final audit report on  
11 January 14, 2015 for the full chargeback amount of \$385,115. (Exh 223) William Danforth issued an  
12 Audit Manager Review report that refused to reverse any portion of the chargeback amount on or about  
13 March 2, 2015. (Exh 236:0002-0006)

14 87. FCA continued to deny that Hooman submitted evidence it had titled the Audit Vehicles  
15 even after it independently verified these vehicles had been titled prior to the close of the Audit. (RT  
16 Vol. 2, 133:1-20, 167:6-21; RT Vol. 3, 19:21-23, 159:9-17; *see also* Exhs 234, 236:0004-0006,  
17 259:0003-0005, 264:0002-0004.)

18 88. FCA acknowledged during the Audit Appeal Meeting that the Audit Vehicles were now  
19 titled to the dealership. (RT Vol. 4, 146:3-8.) The Appeal instead focused on the details of Hooman’s  
20 VIP program. (RT Vol. 4, 152:20-153:12; RT Vol. 5, 14:7-16.) It is disingenuous for FCA to claim  
21 the documentation submitted by Protestant failed to demonstrate the vehicles had been titled,  
22 especially when FCA confirmed the veracity of these documents through independent means. (*See* RT  
23 Vol. 2, 133:1-20, 167:6-21; RT Vol. 3, 19:21-23, 159:9-17.)

24 **I. FINDINGS RELATED TO WHETHER FCA’S REQUIREMENT THAT PROTESTANT PRODUCE**  
25 **CONTRACTS FOR THE VEHICLES SOLD TO ITSELF IS REASONABLE**

26 89. FCA also argues that the VGP incentives should be charged back because Protestant did  
27 not create contracts with itself. (RT Vol. 1, 162:2-4; *see* Exhs 206(a):0042, 207(a):0016, 207(b):0016.)  
28 This requirement is unreasonable because a party cannot contract with itself and Hooman provided

1 evidence sufficient to evidence a sale to the dealership and the same information that would be  
2 included in a sales contract. (Cal. Civ. Code § 1550; Exh 221:0005, 238:0093-0094; RT Vol. 4,  
3 250:23-251:1.)

4 90. FCA did not demonstrate any policy concern that would justify the requirement that a  
5 dealer create a contract with itself for sales to the dealership. (*See, e.g.*, RT Vol. 2, 185:11-24 (instead  
6 focusing on the titling concern).) Moreover, the FCA Manuals describe “Lease Agreement/Contract  
7 (if applicable).” (Exhs 206(a):0042, 207(a):0016, 207(b):0016.)

8 91. Matt Gabel did not know why the Manuals included the language “if applicable” and  
9 offered the explanation “if they’re applying for incentives, then it would be applicable.” (RT Vol. 2,  
10 197:15-23.) This language is in a record retention section of the manuals that only applies when a  
11 dealer is claiming incentives. (Exhs 206(a):0042, 207(a):0016, 207(b):0015.) The words “if  
12 applicable” are also used the following ways: “Customer Certificate/Coupon (if applicable),” “Proof of  
13 customer eligibility for incentive program (if applicable),” “Finance Contract (if applicable),” and  
14 “Lease/Short-term Finance Worksheets (if applicable).” (Exhs 206(a):0042, 207(a):0016,  
15 207(b):0015.)

16 92. It cannot be said that FCA *communicated* to Protestant the requirement to create a retail  
17 contract with itself upon sale to the dealership. (*See* RT Vol. 1, 106:18-19; RT Vol. 3, 48:3-15.) FCA  
18 never provided Hooman a hard copy or any other format of the Gold Book. (RT Vol. 1, 106:18-19, RT  
19 Vol. 3, 48:3-15.) Moreover, Exhibit 204, the DAP-27 acknowledgment form agreement, is canceled  
20 and superseded by Exhibit 202’s merger clause. (*See* Exh 202:0002-0003.) Additionally, Exhibit 204  
21 does not acknowledge receipt of the Gold Book. (Exh 204.)

22 93. Before the Audit, Hooman did not print retail contracts from itself to itself when it  
23 transitioned a vehicle from its sales stock to its loaner pool. (RT Vol. 1, 72:3-6.) Hooman did not  
24 believe it was necessary to print sales contracts for vehicles it sold to itself. (*Id.*) Protestant considered  
25 it a waste of time and resources to create an unenforceable contract with itself. (*See* RT Vol. 2,  
26 132:17-21.)

27 94. The retail contract discloses information regarding legal protections and disclosures from  
28 the dealer to public customers; moreover, the retail contract requires disputes between the buyer and

1 seller to be settled through arbitration. (RT Vol. 1, 72:7-15.) These consumer advisements are not  
2 applicable to dealer sales to itself.

3 95. Hooman provided FCA with what were referred to as screen shots during the proceedings.  
4 (See Exh 221:0005, 238:0093-0094; RT Vol. 4, 250:23-251:1.) These documents were also referred to  
5 as deal worksheets or the front screen. (RT Vol. 4, 250:12-15.) The documents include the same  
6 information that would be printed on a sales contract. (RT Vol. 4, 253:6-13.) When Hooman prints  
7 contracts, the contract is populated with the same information. (RT Vol. 4, 254:13-16.)

8 96. When the front screen is printed, it prints in the form of a sales contract. (RT Vol. 5,  
9 74:17-75:2.) To the extent it was reasonable to require Protestant to provide FCA documentation  
10 evidencing an internal transaction at the dealership, the submitted documents were sufficient to  
11 demonstrate this information. (See *Id.*) Further, because it is beyond dispute that the Audit Vehicles  
12 were titled to the dealership, it must be presumed the vehicles were sold to the dealership. (RT Vol. 4,  
13 146:3-8.)

14 97. Upon receiving the screen shots from Hooman, FCA claimed it did not understand what  
15 information the documents contained, yet no FCA representative made any effort to determine what  
16 information was contained in the documents or inquire why they were provided. (RT Vol. 3, 67:20-  
17 24.)

18 **J. FINDINGS RELATED TO THE FCA POLICY REASONS FOR TITLING A VEHICLE UPON SALE AND**  
19 **FOR CONTRACTS CREATED FOR INTERNAL SALES AS WELL AS EVIDENCE OF A CURE OF ANY**  
20 **VIOLATION OF FCA'S INCENTIVE PROGRAM REQUIREMENTS**

21 98. FCA claims there are some policy considerations behind its requirement that vehicles be  
22 titled on sale, as set forth in its Policy Manual. (RT Vol. 3, 162:21-24; RT Vol. 4, 41:1-13; *see also*  
23 RT Vol. 2, 107:11-23; RT Vol. 3, 162:11-20; RT Vol. 4, 41:1-4; RT Vol. 3, 162:13-16; RT Vol. 4,  
24 41:10-13; RT Vol. 3, 162:16-20; RT Vol. 4, 41:5-9; RT Vol. 2, 116:4-7; RT Vol. 4, 86:1-12.) FCA  
25 also claims that failure to title a vehicle at the time of sale is an incurable act of noncompliance with its  
26 incentive programs. (RT Vol. 3, 18:11-19; *see also* RT Vol. 3, 118:14-18 (describing that an incentive  
27 must be complied with at the time of the incentive).)

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1 99. FCA suggested the following reasons to justify its requirement of titling on sale: titling on  
2 sale prevents a vehicle from being sold a second time as new despite having a shortened warranty  
3 period (RT Vol. 2, 107:11-23; RT Vol. 3, 162:11-20; RT Vol. 4, 41:1-4), maintaining consistency  
4 between dealers (RT Vol. 3, 162:13-16; RT Vol. 4, 41:10-13), preventing brokering by stopping  
5 brokers from reselling a vehicle as new (RT Vol. 3, 162:16-20; RT Vol. 4, 41:5-9), aiming to prevent  
6 illegal operation on the road (RT Vol. 2, 116:4-7), and preventing a dealer from hitting his objectives  
7 every month without “truly” selling the vehicle and “falsifying their sales” (RT Vol. 4, 86:1-12).  
8 Respondent failed to show any meaningful relationship between its titling requirement and these  
9 concerns that would justify its refusal to permit Protestant to cure the failure to title the vehicles at the  
10 time of sale. Evidence this defect is curable is demonstrated by the fact that each of Respondent’s  
11 concerns ceased to exist after Protestant titled the Audit Vehicles. (RT Vol. 3, 162:21-24; RT Vol. 4,  
12 41:1-13; *see also* RT Vol. 2, 107:11-23; RT Vol. 3, 162:11-20; RT Vol. 4, 41:1-4; RT Vol. 3, 162:13-  
13 16; RT Vol. 4, 41:10-13; RT Vol. 3, 162:16-20; RT Vol. 4, 41:5-9; RT Vol. 2, 116:4-7; RT Vol. 4,  
14 86:1-12.)

15 100. When Hooman registered and titled the Audit Vehicles, it did so with the same sale date  
16 as Hooman reported to Chrysler. (RT Vol. 2, 194:3-5; RT Vol. 5, 99:5-12.)

17 101. When Hooman titled the Audit vehicles, they could no longer be sold as new, their value  
18 decreased, and the warranty period continued to run as of the date of sale. (*See* RT Vol. 2, 106:23-  
19 107:3.)

20 102. The concern that the vehicles could be sold as new by a broker was no longer a concern  
21 after the vehicles were titled. (*See* RT Vol. 4, 47:2-6.) Further, Respondent did not show evidence of  
22 any correlation between broker sales and the requirement to title upon sale in light of the fact that only  
23 FCA dealers can sell and cause the registration of a new FCA vehicle. (RT Vol. 4, 195:5-9.)

24 103. The concern customers might receive a shortened warranty period on new vehicle sales  
25 was never a legitimate concern. (*See* RT Vol. 2, 118:17-23; *see also* RT Vol. 2, 157:11-12, RT Vol. 5,  
26 108:22-109:2.) A new FCA vehicle can only have one report of sale date. (RT Vol. 4, 196:10-14.)  
27 Any subsequent report of sale for a particular vehicle requires the first report of sale be unwound. (RT

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1 Vol. 5, 42:18-43:10.) The new report of sale starts the warranty period anew. (RT Vol. 4, 48:13-16,  
2 199:18-20.)

3 104. A dealer is only able to receive sales incentives once for each individual vehicle; “a sale  
4 can only count once.” (RT Vol. 4, 196:10-14.) “You cannot report a car twice to Chrysler.” (RT Vol.  
5 5, 68:14-15.)

6 105. Even if some of FCA’s policy concerns might have existed during the period of time  
7 between the date of sale and the date each Audit Vehicle was titled, those concerns ceased as soon as  
8 the vehicles were titled to the Hooman dealership. (*See* RT Vol. 3, 166:20-25; *see also* RT Vol. 3,  
9 33:4-11.)

10 106. Hooman paid FCA for the Audit Vehicles before the vehicles arrived at the dealership.  
11 (RT Vol. 4, 238:11-15.) Hooman does not pay off the flooring loan for a vehicle until the vehicle  
12 leaves Hooman’s possession. (RT Vol. 5, 93:14-24.)

13 107. Hooman carried a \$25 million dollar umbrella insurance policy that covered the loaner  
14 vehicles provided to customers. (RT Vol. 4, 263:3-6.) Hooman “always had insurance on the  
15 vehicles.” (RT Vol. 5, 64:5-6.)

16 108. Only FCA dealers can sell and issue the original title for a new Chrysler vehicle. (RT  
17 Vol. 4, 195:8-9.)

18 109. There is no set form FCA requires its dealers to use in order to prove titling and the  
19 presence of a buyer’s contract. (RT Vol. 3, 167:18-19.)

20 110. Julio Sebastiani advised Hooman that one of the “levers” that Hooman could “pull” in  
21 order to increase monthly sales was to consider reporting loaner vehicle sales. (RT Vol. 1, 168:12-19.)  
22 This advice was intended to help the dealership achieve its monthly VGP objectives as needed. (RT  
23 Vol. 1, 168:20-22.) The means by which a dealer places a vehicle into its loaner fleet and gets credit  
24 for the sale is by reporting the transition to FCA. (RT Vol. 1, 194:21-195:1.) Julio Sebastiani would  
25 advise dealers about transitioning vehicles to their loaner fleets at the ends of each month. (RT Vol. 1,  
26 190:22-25.)

27 111. Julio Sebastiani personally benefited when dealerships met their monthly sales objectives.  
28 (RT Vol. 1, 168:25-169:2.) Julio Sebastiani would remind dealers, including Hooman, about the

1 option to place vehicles into its loaner program at the end of each month. (RT Vol. 1, 199:7-9.)  
2 Placing a vehicle into a dealership's loaner program is a dealership's only guarantee of an immediate  
3 additional sale at month's end. (RT Vol. 1, 203:8-12.)

4 112. A conquest sale or specific customer incentive sale and a VGP (Volume Growth  
5 Program) sale are distinct. (See RT Vol. 3, 17:3-18:19.) A conquest sale, for example, must have a  
6 qualifying customer on the day of the sale. (RT Vol. 3, 17:3-8.) A VGP sale is a monthly incentive  
7 and a vehicle qualifies for the program as long as it is sold during that month. (RT Vol. 3, 17:9-14.)

8 113. A dealer must sell a certain number of vehicles, set by FCA, to qualify for VGP incentive  
9 payments. (RT Vol. 3, 122:6-16.) From month to month, FCA changes the number of sales necessary  
10 for a VGP incentive payment and the payment it makes per sale; it communicates these changes to  
11 dealers monthly. (*Id.*)

12 114. There are two forms of incentive program for FCA: customer based and dealer based  
13 incentives. A customer based incentive is met through the eligibility of the customer. (RT Vol. 3,  
14 118:25-119:7.) If a dealer does not obtain the proof of customer qualification at the time of sale,  
15 FCA's policy permits the dealer to acquire evidence of the qualification after the audit. (RT Vol. 3,  
16 121:3-14.)

17 115. A dealer incentive, including the Volume Growth Program, requires certain numbers of  
18 sales in a given period of time – this is the only substantive requirement; any other requirement goes to  
19 an administrative claims submission requirement. (RT Vol. 3, 121:21-122:16.)

20 116. As long as a dealer sells a certain number of vehicles or more during set periods of time,  
21 the dealer meets the requirements for the Volume Growth Program. (RT Vol. 3, 122:21-25.) The  
22 contract and title at the time of sale requirements are document retention policies that are set forth in  
23 the Incentive Rules Manual and additional to the base requirement of the Volume Growth Program to  
24 sell a certain number of vehicles in a given time period. (RT Vol. 3, 123:6-15.)

25 **K. FINDINGS RELATED TO THE UNWINDING OF VEHICLES AS IT RELATES TO REYNOLDS &**  
26 **REYNOLDS AND DEALERCONNECT**

27 117. Unwinding a vehicle results in the chargeback of any prior sale and resets the warranty  
28 period. (RT Vol. 2, 118:17-23.) FCA auditor Matt Gabel admitted that the second sale to Ms.

1 Hernandez was appropriate, but it makes the first sale inappropriate and subject to being unwound and  
2 charged back. (RT Vol. 2, 157:11-12.)

3 118. Maria Hernandez did not receive a shortened warranty period for her vehicle because  
4 Hooman sold her a new vehicle in the Reynolds and Reynolds system which does not allow a dealer to  
5 sell a vehicle a second time unless the first sale is unwound. (RT Vol. 5, 42:18-43:10.) Reynolds and  
6 Reynolds then communicates the unwind to DealerCONNECT. (RT Vol. 5, 54:4-17.)

7 119. Hooman could not have sold vehicles to customers as new without unwinding any other  
8 previous sale to itself in the dealership's Reynolds and Reynolds system. (RT Vol. 5, 108:22-109:2.)

9 120. Hooman cannot access Exhibits 206 or 207 (the Dealer Policy Manual and Incentive  
10 Rules Manual) through Reynolds and Reynolds. (RT Vol. 5, 105:13-16, 106:2-5.)

11 **L. FINDINGS RELATED TO THE AMOUNT OF MONEY TO BE CHARGED BACK IN THE INSTANT**  
12 **PROTEST**

13 121. FCA claimed that the Audit Vehicles should be charged back because they were not titled  
14 at the time of sale and there were no contracts made regarding the sales. (Exh 222; *see also* RT Vol. 2,  
15 168:2-19; RT Vol. 3, 137:22-25, 138:8-18.)

16 122. FCA intends to collect a chargeback of \$283,445 based on the Audit. (Exh 264:0001)  
17 FCA issued a revised Dealer Audit Report to reflect this chargeback amount. (Exh 264:0001, 0005;  
18 RT Vol. 4, 171:7-14.) This amount consists of \$44,424 for reason code D, \$3,631 for reason code K,  
19 \$231,900 for reason code H, and \$3,500 for reason code P. (Exh 264:0005.)

20 123. Reason code H is the value for FCA's objective program (VGP) that the dealership is  
21 being charged back because FCA asserts the vehicles are ineligible for incentives if they do not meet  
22 reason codes D and K. (RT Vol. 2, 48:25-49:7; *see also* Exh 213:0002-0045.) Reason code D was  
23 applied because the Hooman loaner vehicles were not titled at the time of sale and because contracts  
24 for the vehicle sales were not created. (RT Vol. 2, 71:20-25.) Reason Code K was applied because a  
25 deal file could not be located. (Exh 213:0022-0024.)

26 124. Because FCA did not comply with the requirements of Section 3065.1 of the California  
27 Vehicle Code by failing to include the words "Final Denial" in its final audit decision, it cannot  
28 proceed with the proposed chargeback. (*See* Exh 264:0001.)

1           125. Hooman cured the noncompliance identified in the Audit and remedied the entirety of  
2 reason codes D and K by providing documentation curing any defect with respect to titling at the time  
3 of sale and creating a contract at the time of sale. (*See, supra*, Parts H, I, and J.) The chargeback  
4 subject to reason code H is dependent on the chargebacks for reason codes D and K. (RT Vol. 2,  
5 48:25-49:7; *see also* Exh 213:0002-0045.)

6 **M. FINDINGS RELATED TO WHETHER RESPONDENT PROVIDED A REASONABLE APPEALS PROCESS**

7           126. On or about February 12, 2015, Protestant requested a review of the Audit and the  
8 proposed chargebacks. (Exh 232.) FCA conducted an Audit Manager Review and confirmed that  
9 Hooman had titled the Audit Vehicles to the dealership. (RT Vol. 2, 133:1-20; RT Vol. 3, 19:21-23,  
10 159:9-17; *see also* Exhs 234, 236:0004-0006, 259:0003-0005, 264:0002-00004.) Nevertheless, FCA  
11 refused to accept the subsequent titling and registration of these vehicles as evidence of cure for the  
12 alleged noncompliance. (Exh 236:0002-0006.)

13           127. On March 20, 2016, Hooman requested an appeal of the Audit. (Exh 238.) FCA  
14 conducted an Audit Appeal Meeting (“Appeal”) on July 9, 2015 at FCA’s corporate headquarters in  
15 Detroit, Michigan. (Exh 243:0001.) At this point, it is clear FCA was satisfied Hooman had titled and  
16 registered the Audit Vehicles to the dealership. (*See* RT Vol. 4, 146:3-8.) However, the focus of the  
17 Appeal was almost exclusively on the scope of Hooman’s VIP program and its extensive customer  
18 loaner fleet. (RT Vol. 4, 152:20-153:12; RT Vol.5, 14:7-16.) Despite conclusive evidence the Audit  
19 Vehicles were purchased by and titled to Protestant, the Audit Appeal committee determined it would  
20 require Hooman to provide evidence of loaner vehicle use by customers as a condition to reversing the  
21 proposed chargebacks identified in the Audit. (Exh 246; RT Vol. 4, 154:16-22.) It is undisputed and  
22 important to note that the Audit did *not* involve a single incentive program that required evidence of  
23 loaner vehicle use. (RT Vol. 3, 12:9.)

24           128. On or about July 13, 2015, FCA asked Hooman to provide copies of actual rental/loaner  
25 agreements for the Audit vehicles. (Exh 246.) Specifically, FCA asked Protestant to provide the first  
26 and four most recent customer agreements and a usage log if available. (*Id.*) Again, none of the  
27 incentives identified in the Audit required evidence of loaner vehicle use by customers. (RT Vol. 3,  
28 12:9.) The VGP program does not provide incentives specifically for vehicles used in a dealer’s loaner

1 fleet. (*Id.*; *see also* RT Vol. 3, 17:9-14.) Nevertheless, Protestant provided the requested information  
2 on July 17, 2015 and July 20, 2015. (RT Vol. 5, 27:21-23, 47:6-9; RT Vol. 3, 185:13-25; *see also* Exh  
3 284:0001-0003.)

4 129. On or about July 27, 2015, FCA's Geoff Edmonds contacted Hooman Nissani and asked  
5 what additional documentation he might be able to provide to demonstrate customer use of the Audit  
6 Vehicles. (Exh 250; *see also* RT Vol. 4, 119:12-20, 121:7-10, RT Vol. 5, 19:11-14.) Protestant  
7 offered that it might have copies of California Drivers Licenses and proofs of insurance. (Exh 250, RT  
8 Vol. 5, 19:25-20:22.) Mr. Edmonds sent a follow up email requesting this information for ten vehicles.  
9 (Exh 250.) Hooman provided this information on July 31, 2015. (Exhs 251-258; RT Vol. 5, 39:20-  
10 40:8.)

11 130. By letter dated August 13, 2015, Respondent notified Hooman that FCA received  
12 sufficient information for only 53 of the 97 Audit Vehicles. (Exh 264:0001.) Respondent informed  
13 Protestant that it would chargeback the remaining amount of \$283,445. (*Id.*)

14 131. Respondent's appeals process was unreasonable for two reasons. First, Respondent was  
15 unreasonable in its request that Protestant submit documentation to demonstrate customer loaner  
16 vehicle usage because this information could not be used to satisfy any term of the incentives that were  
17 the basis for the proposed chargeback. Second, Respondent was unreasonable in its consideration of  
18 the loaner vehicle information Protestant provided.

19 132. Respondent claimed it did not receive the evidence of loaner vehicle usage, but the  
20 evidence suggests Respondent did not provide good faith consideration of the information and failed to  
21 make reasonable attempts to understand the information and documentation Hooman provided.  
22 Further, it was unreasonable for Respondent to fail to advise Protestant of its belief that it did not  
23 receive the full complement of rental vehicle information it requested. Nevertheless, this is a moot  
24 point because it was unreasonable for Respondent to consider this information as part of the appeals  
25 process it was required to provide.

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1 VI. CONCLUSIONS/ANALYSIS

2 **A. Whether Respondent provided Protestant written notification of the final denial of its**  
3 **audit appeal within 30 days of completion which stated “Final Denial” on the first page.**

4 133. Respondent failed to establish it provided Protestant written notification of the final  
5 denial of its audit appeal as required by Section 3065.1.

6 **B. Whether Respondent provided evidence that it “communicated” the terms of**  
7 **Respondent’s incentive program that required titling and a contract on sale to Protestant.**

8 134. Respondent did not establish it communicated the requirement that Protestant title sales to  
9 the dealership at the time of sale. At no time did Respondent provide Protestant with Respondent’s  
10 Dealer Policy Manual and Incentive Rules Manual. Merely advising Protestant where these documents  
11 might be located does not establish that Respondent communicated the terms of its incentive program  
12 to Protestant. Moreover, the DAP-27 form acknowledgment has no legal effect because it was  
13 canceled and superseded by the merger clause in of the Dealer Agreement.

14 **C. Whether the requiring that Protestant create contracts with itself for each vehicle it**  
15 **purchased is a reasonable requirement for the VGP incentive.**

16 135. Respondent has not established it was reasonable to require Protestant to create a contract  
17 with itself. As a matter of law, a party cannot contract with itself. Moreover, Protestant provided all  
18 the applicable information in a sales contract to Respondent.

19 **D. Whether Respondent’s Incentive Manual requires a contract to be created after a sale**  
20 **from Protestant to Protestant.**

21 136. Respondent’s Incentive Manual states Protestant must retain a “Lease  
22 Agreement/Contract (if applicable).” Even if this language were considered to have been  
23 communicated to Protestant, it is not sufficiently clear that it would require Protestant to create an  
24 unenforceable contract with itself.

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1 **E. Whether Protestant cured “any material noncompliance” with the terms of Respondent’s**  
2 **incentive program or Respondent’s reasonable and nondiscriminatory documentation and**  
3 **administrative claims submission requirement.**

4 137. Protestant cured “any material noncompliance” by providing proof that the subject  
5 vehicles were subsequently registered and titled to the dealership and that all state tax, licensing,  
6 registration fees, including DMV late fees and penalties, were paid.

7 **F. Whether Respondent provided a reasonable appeals process.**

8 138. Respondent failed to establish it provided Protestant a reasonable appeals process and  
9 opportunity to submit information and documentation to rebut any alleged noncompliance and to cure  
10 the same.

11 **VII. DETERMINATION OF ISSUES**

12 139. Respondent has not sustained its burden under Section 3065.1.

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1 **VIII. PROPOSED DECISION**

2 Protest Nos. PR-2429-15, PR-2430-15, PR-2431-15, and PR-2432-15 are hereby sustained.  
3 Respondent has not met its burden under Vehicle Code section 3065.1(g) that it has complied with the  
4 requirements necessary to proceed with the proposed chargeback. The Proposed chargeback is  
5 unlawful and shall not be permitted.

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8 Dated: July 1, 2016

NEW MOTOR VEHICLE BOARD

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11 By: \_\_\_\_\_  
12 DIANA WOODWARD-HAGLE  
13 Administrative Law Judge  
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