



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: December 27, 2021

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: SANTA MONICA MOTOR GROUP dba SANTA MONICA CHRYSLER JEEP DODGE RAM v. FCA US LLC

Protest Nos. PR-2652-20, PR-2653-20, PR-2654-20, and PR-2655-20

TYPE: Vehicle Code section 3065.1 Franchisor Incentive Program

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: January 10, 2020
- MOTIONS FILED:
 - Respondent FCA US LLC’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (denied)
 - Respondent’s Motion to Compel Production of Evidence (granted)
 - ALJ’s Order to Show Cause why “Protestant’s Post-Hearing Opening Brief” and “Proposed Findings of Fact and Proposed Decision” should not be Stricken (not stricken)
 - Protestant’s Motion to Strike Respondent FCA US LLC’s Brief in Response to Order to Show Cause (denied)
- HEARING: March 22-26, 29-30, April 1, 8-9, 12-14, 16, 2021 (14 days)
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Mark T. Clouatre, Esq.
John P. Streelman, Esq.
Blake A. Gansborg, Esq.
Crispin L. Collins, Esq.
Nelson Mullins Riley & Scarborough, LLP

EFFECT OF PROPOSED DECISION: The Proposed Decision overrules the protests.

SUMMARY OF PROPOSED DECISION:

- Protestant alleged that respondent violated Vehicle Code¹ section 3065.1 in regard to: (1) an October 2016 audit of sales incentive claims; (2) various expired, denied, ineligible or unsubmitted sales incentive claims on unknown dates;² and (3) various expired, denied,

¹ All statutory references are to the Vehicle Code unless noted otherwise.

² Protestant described this claim as “incentives not credited” and that description is adopted in the Proposed Decision.

ineligible or unsubmitted requests for reimbursement for advertising costs from respondent's Promotional Allowance Program (PAP) from 2016 to 2018.

- Neither section 3065.1 nor respondent's incentive rules and PAP guidance contemplate anything other than a "VIN-by-VIN" examination of franchisee challenges to unpaid incentives. However, protestant's strategy has been to present its incentives challenges collectively, then to argue not only that it was deprived of statutory rights section 3065.1 affords franchisees, but also claiming "rights" outside the contemplation of the statute.
- Presenting claims collectively has allowed protestant to misstate, misrepresent or conceal information of individual claims and how each claim relates to its allegations of respondent's lack of compliance with section 3065.1.
- Protestant's apparent intention has been to shift the burden of identifying, examining and evaluating each unpaid claim to respondent and to the Board while, at the same time, failing to identify transactions and unpaid incentives that it contests with sufficient particularity to allow respondent to respond. As a result, respondent has struggled to respond to inadequately identified and factually unsupported allegations.
- Protestant has executed its strategy by overwhelming this proceeding with innumerable contentions and massive numbers of documents. Its post-hearing briefs are burdened by the sheer weight of their verbiage, compounded by endless irrelevancies, lack of focus, and imprecise language. As an example, protestant stated no fewer than 23 different "issues presented" in its post-hearing brief.
- The result has been a lengthy and costly in-depth examination of every aspect of respondent's programs, whether or not relevant to an asserted claim. As an example, protestant's demand for PAP fund reimbursements of \$53,893.58 is an unsupported claim looking for evidence.

Burden of Proof

- In regard to each of protestant's allegations, respondent has sustained its burden of proof establishing that its franchisor incentive programs complied with section 3065.1.
- However, in regard to two novel arguments raised by protestant, protestant has the burden of proof (and the burden of producing evidence) to produce supporting evidence since it is substantially in command of the facts upon which it has based its arguments. Additionally, it must establish the nexus between each argument and its claim that respondent failed to comply with section 3065.1.
- Protestant's two arguments are the "Internet Explorer browser issue" (in challenging the audit results and in support of its "incentives not credited" claim) and the "Gordy Nevers delivery issue" (in support of its "incentives not credited" claim), as follows:
 - Protestant claimed that respondent violated section 3065.1 in that it did not disclose that protestant must use the Internet Explorer browser to submit incentive claims

and, as a result, protestant's claims were either unpaid or charged back. This being so, protestant argues, it was therefore entitled to statutory rights accorded to franchisees to cure defective submissions, to submit additional documentation or information in support of its submissions, and/or to appeal disapproved or denied claims, pursuant to section 3065.1(c).

- These section 3065.1(c) rights were accomplished, protestant argues, in its delivery of "probably" 500 pages of dealership records to respondent's employee Gordy Nevers on July 12, 2017. Protestant alleges that these papers served to cure late submissions and provided additional documentation or information in support of defective submissions, were responsive to disapproved claims, and served to appeal any denied incentive claims, pursuant to section 3065.1(c).
- Protestant failed to sustain its burden of proof and its burden of producing evidence in regard to these two arguments.

Protestant's allegation based on the October 2016 audit:

- Protestant claimed that respondent violated section 3065.1(g)³ in that as a result of the "Internet Explorer browser issue," 31 of its incentive claims (totaling \$154,100) were charged back following the audit. It argues that it was therefore entitled to the rights accorded franchisees in section 3065.1(g)(3).⁴ In fact, protestant's argument that an undisclosed browser issue precluded effective submission of incentive claims⁵ was inconsistent with the facts and with the purpose of an audit. The audit of protestant's customer records in order to verify previously-paid incentive claims reviews only those transactions where claims have been successfully submitted, received and paid. Chargebacks are only made if dealership records fail to support the payments where, as here, the evidence established that the chargebacks were justified.
- In the audit process, respondent had accorded protestant all rights under section 3065.1(g). When protestant failed to respond to the audit chargebacks within the time frame and in the manner stated in the statute (or at any other time) and pursuant to respondent's rules, respondent was under no obligation to take the actions set forth in subdivisions (g)(4) and (g)(5) of section 3065.1.

Protestant's allegation of "Incentives not Credited":

- Protestant made basically the same arguments based on the "Internet Explorer browser issue" as those described above, claiming that the browser issue impacted its timely submission of incentive claims and its non-response to claims disapproved by respondent, and that it was therefore entitled to the rights stated in section 3065.1(c) and to payment of \$252,42.72.

³ Subdivision (g) of section 3065.1 relates to audits only.

⁴ Subdivision (g)(3) of section 3065.1 states the same franchisee rights as subdivision (c) of section 3065.1, except that its language is tailored to audit chargebacks.

⁵ Findings in regard to the "browser issue" are more fully developed below.

- In fact, the evidence established that protestant knew---early in the franchise---the proper browser to use to submit incentive claims. A sale or lease to customer “Homayoon” on June 6, 2015, went through without a problem with incentives or rebates paid, as did a sale or lease to Farinaz Naimi, protestant’s corporate secretary, on December 1, 2015, with a \$675 rebate or incentive paid; and the October 2016 audit pulled successfully submitted and paid claims from January 2016 onwards. Between June 6, 2015 and May 31, 2016, there were no fewer than 56 transactions for which protestant received incentive and rebate payments. Protestant’s General Manager’s testimony that the “browser issue” was an ongoing problem was not credible, especially in light of evidence that he and 25 other dealership employees completed respondent’s Incentives Configurator Course, all but one finishing in 2016 or 2017.
- Moreover, protestant failed to establish a nexus between the “browser issue” and its allegation that respondent failed to comply with section 3065.1, as follows:
 - Protestant’s argument that it was entitled to the rights of franchisees in subdivision (c) of section 3065.1(c) is flawed because it ignores the explicit statutory language of the rights and responsibilities of the parties in the preceding subdivisions (a) and (b). Section 3065.1(c) cannot be viewed in isolation. Statutory construction starts with the “plain meaning rule”, which states that if the language of a statute is clear and unambiguous there is no need for construction. In subdivisions (a) through (f) of section 3065.1, the Legislature enacted a chronological process, with one action (or omission) building on a prior one and, at every step in the process, mandated the minimum or maximum number of days for both franchisors and franchisees to protect their rights and meet their responsibilities. The Legislature’s intent was to provide a clear procedure, and one with time constraints as well. Protestant failed to establish that respondent or its incentive rules failed to comply with section 3065.1.
 - The Incentive Configurator screen is an important tool for dealerships on respondent’s DealerCONNECT website. Dealerships use them when negotiating a sale or lease to see what incentives and rebates are available and then, after the transaction is complete, that website is used by dealers to submit incentives and rebates claims to respondent for payment. Respondent requires dealers to print the screens at critical times so that if there are questions or problems with submissions later, dealers have printed-out data to support their positions. However, in many cases, the Incentive Configurator screen print-outs which protestant relied upon to support its “incentives not credited” argument were not contemporaneous with transaction dates, but were printed years later. Protestant made no explanation for the missing contemporaneous print-outs. Protestant’s evidence was therefore unreliable.
 - Protestant misled respondent and the Board by including in its “incentives not credited” allegation unpaid claims which it stated or implied were entitled to payment when, in fact, 51 of protestant’s incentive claims totaling \$75,325.00, had transaction dates after July 12, 2017.⁶ There were no allegations in the protests that respondent

⁶ The date of the Gordy Nevers delivery.

failed to comply with section 3065.1 in regard to any transactions after July 12, 2017, nor may any be implied: no browser issue argument was made, and the delivery to Gordy Nevers had been completed. Therefore, these transactions were properly excluded from consideration in this proceeding.

- Protestant failed to produce reliable evidence of what was actually delivered to Gordy Nevers; however, it was established that the 500 pages lacked sufficient organization, identification and summarization to allow respondent to reasonably evaluate them, and that protestant failed or refused to provide a summary or a schedule needed by respondent to evaluate them, as well as a necessary cover letter from the Dealer Principal. Alternatively, the Board does not have jurisdiction of this issue: protestant's delivery of overaged incentive claims to Gordy Nevers bears no relationship to any rights of protestant pursuant to section 3065.1 or any responsibility of respondent.

Protestant's allegation based on respondent's Promotional Allowance Program (PAP):

- Protestant produced no evidence supporting its allegations of respondent's non-compliance with section 3065.1 in regard to PAP claim submissions and its claim for \$53,893.58. Alternatively, the Board is without jurisdiction in that PAP is not a franchisor incentive program within the meaning of section 3065.1. It differs in many different ways from respondent's sales incentive programs, and is administered by different personnel within the organization. Among other differences, it reimburses dealers for advertising monies already spent, whereas incentive programs are revenue-generating for dealers.

RELATED MATTERS:

- Related Case Law:
 - *EDC Associates, Ltd. v. Gutierrez* (1984) 153 Cal.App.3d 167, 171;
 - *Baker v. Wadsworth* (1970) 6 Cal.App.3d 253, 263;
 - *Lundgren v. Deukmejian* (1988) 45 Cal.3d 727, 735;
 - *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (2009) 171 Cal.App.4th 1088, 1093;
 - *Mazda Motor of America, Inc. v. California New Motor Vehicle Board* (2003) 110 Cal.App.4th 1451, 1456;
 - *Holmes v. Jones* (2000) 83 Cal.App.4th 882, 888;
 - *Sonoma Subaru, Inc. v. New Motor Vehicle Board* (1987) 189 Cal.App.3d 13, 20;
 - *People v. Dunbar* (2012) 209 Cal.App.4th 114, 117;
 - *Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corporation, U.S.A.* (2013) 221 Cal.App.4th 867, 878-879;
 - *Hardin Oldsmobile v. New Motor Vehicle Bd.* (1997) 52 Cal.App.4th 585, 598.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 331.2, 3050, 3065.1; Evidence Code section 550.

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CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of
12 SANTA MONICA MOTOR GROUP dba SANTA
MONICA CHRYSLER JEEP DODGE RAM,
13
14 v. Protestant,
15 FCA US LLC,
16 Respondent.

**Protest Nos. PR-2652-20, PR-2653-20,
PR-2654-20, and PR-2655-20**

PROPOSED DECISION

17
18 **PROCEDURAL BACKGROUND**¹

19 **Statement of the Case**

20 1. On January 10, 2020, Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge
21 RAM (herein "SMG", "Santa Monica Group" or "protestant") filed four protests against FCA US LLC
22 (herein "FCA" or "respondent") with the New Motor Vehicle Board (herein "Board") pursuant to Vehicle
23 Code section 3065.1² [Claims arising out of franchisor incentive program].

24 2. The protests relate to the following line-makes:

25 (a) Protest No. PR-2652-20 (Chrysler)

26
27 ¹ Citations throughout this Proposed Decision refer to oral testimony by reporter's transcript volume by Roman
Numeral, page, and line, and by exhibit number (Exh) and page(s). Other documents in the record are identified by
their titles, as specifically denoted in the text.

28 ² Hereinafter, unless otherwise indicated, all section references are to the Vehicle Code.

1 (b) Protest No. PR-2653-20 (Dodge)

2 (c) Protest No. PR-2654-20 (Jeep)

3 (d) Protest No. PR-2655-20 (RAM)

4 3. The protests alleged that FCA failed to comply with section 3065.1 in regard to: (1) an
5 October 2016 audit of sales incentive claims; (2) various expired, denied, ineligible or unsubmitted sales
6 incentive claims on unknown dates;³ and (3) various expired, denied, ineligible or unsubmitted requests
7 for reimbursement for advertising costs from FCA’s Promotional Allowance Program (PAP) from 2016
8 to 2018.

9 4. A hearing on the merits was held before Administrative Law Judge Diana Woodward
10 Hagle on March 22-26, 29-30, 2021, and April 1, 8-9, 12-14, 16, 2021.

11 5. After the parties filed supplemental briefs, the matter was submitted on November 23,
12 2021.

13 **Parties and Counsel**

14 6. Protestant is a Chrysler Jeep Dodge and RAM dealership located at 3219 Santa Monica
15 Boulevard, Santa Monica, California 90404. It is a “franchisee” of FCA within the meaning of sections
16 331.1⁴ and 3065.1.

17 7. Protestant is represented by the Law Offices of Gavin M. Hughes, by Gavin M. Hughes,
18 Esquire and Robert A. Mayville, Jr., Esquire, at 3436 American River Drive, Suite 10, Sacramento,
19 California 95864.

20 ///

21 ///

22 ///

23 _____
24 ³ Protestant knowingly misrepresented the inclusive dates of the VINs in this category, as more fully described
25 below in paragraphs 44 and 213-217. The Law and Motion ALJ assigned to this proceeding would not have known
26 of this misrepresentation.

27 Protestant’s General Manager Dave Maxwell testified that the incentives not credited claims were separate from
28 the audit claims, even though dates overlapped. [XIII 158:14-18]

⁴ Section 331.1 defines a franchisee as “any person who, pursuant to a franchise, receives new motor vehicles
subject to registration under this code ... from the franchisor and who offers for sale or lease, or sells or leases the
vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform
any combination of these activities.”

1 8. Respondent⁵ is a “franchisor” of protestant within the meaning of sections 331.2⁶ and
2 3065.1.

3 9. Respondent is represented by Nelson Mullins Riley & Scarborough LLP, by Mark T.
4 Clouatre, Esquire; John P. Streeleman, Esquire; and Blake A. Gansborg, Esquire (at 1400 Wewatta Street,
5 Suite 500, Denver, Colorado 80202), and by Crispin Collins, Esquire (at 19191 South Vermont Avenue,
6 Suite 900, Torrance, California 90502).

7 **APPLICABLE LAW**

8 **Franchisor Incentive Program (Vehicle Code section 3065.1)**

9 10. Section 3065.1 (Franchisor Incentive Program) governs incentive programs offered by
10 franchisors to franchisees in California. Audits conducted by franchisors to verify the *bona fides* of
11 franchisee incentive submissions, are treated separately in subdivision (g). Pertinent parts of the statute
12 are the following:

13 **Statutes Applicable to Incentive Programs (Other than Audits)**

14 11. Franchisee claims “for payment under the terms of a franchisor incentive program shall be
15 either approved or disapproved within 30 days after receipt by the franchisor.” If a claim is disapproved,
16 “the franchisee who submits it shall be notified in writing of [the] disapproval within the required period”
17 with a statement of the specific grounds of disapproval. If the claim is not “specifically” disapproved in
18 writing within the 30-day period, the claim shall be deemed approved. [Veh. Code § 3065.1(a)]

19 12. “All claims made by franchisees ... shall be paid within 30 days following approval.”
20 [Veh. Code § 3065.1(f)]

21 13. “Franchisee claims ... shall not be disapproved unless the claim is false or fraudulent, ...
22 ineligible under the terms of the incentive program as previously communicated to the franchisee, or for
23 material noncompliance with reasonable and nondiscriminatory documentation and administrative claims
24 submission requirements.” [Veh. Code § 3065.1(b)]

25 ⁵ FCA is now known as Stellantis and some witnesses identified themselves as employees of that company. FCA’s
26 predecessor was Chrysler Group LLC, and occasional references herein to Chrysler and Chrysler Group shall refer
27 to respondent. The PAP fund program was known as the Chrysler Promotional Allowance Program in 2015 and
users still refer to the program as “Chrysler.” [Exh 23; I 193:24-194:1]

28 ⁶ Section 331.2 defines a franchisor as “any person who manufactures, assembles, or distributes new motor
vehicles subject to registration under this code ... and who grants a franchise.”

1 stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a
2 reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after
3 receipt of the written disapproval notice to respond with additional supporting documentation or
4 information rebutting the disapproval and to cure any material noncompliance, with the period to be
5 commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval
6 and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor
7 shall not chargeback the franchisee for that claim.” [Veh. Code § 3065.1(g)(3)]

8 20. “If the franchisee provides additional supporting documentation or information purporting
9 to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals
10 denial of the claim, and the franchisor continues to deny the claim, the franchisor shall provide the
11 franchisee with a written notification of the final denial within 30 days of completion of the appeal
12 process, which shall conspicuously state ‘Final Denial’ on the first page.” [Veh. Code § 3065.1(g)(4)]

13 21. “The franchisor shall not chargeback the franchisee until 45 days after the franchisee
14 receives the written notice [of disapproval or denial] described in paragraph (3) or (4), whichever is later.
15 If the franchisee cures any material noncompliance relating to a claim, the franchisor shall not
16 chargeback the dealer for that claim. Any chargeback to a franchisee for incentive program compensation
17 shall be made within 90 days after the franchisee receives that written notice” [Veh. Code §
18 3065.1(g)(5)]

19 22. “Within six months after either receipt of the written notice described in paragraph (3) or
20 (4), a franchisee may file a protest with the board for determination of whether the franchisor complied
21 with [subdivision (g)] ... In any protest pursuant to this subdivision, the franchisor shall have the burden
22 of proof.” [Veh. Code § 3065.1(g)(6)]

ISSUES PRESENTED

23
24 23. Did respondent’s franchisor incentive programs, and its administration of those programs,
25 comply with section 3065.1?

26 24. Is FCA’s Promotional Allowance Program (PAP) a franchisor incentive program within
27 the meaning of section 3065.1(a) through (f)?

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BURDEN OF PROOF

25. In protests challenging franchisor incentive programs and the administration of those programs, the franchisor has the burden of proof. [Veh. Code §§ 3065.1(e), 3065.1(g)(6)]

26. The legislature assigned the burden of proof to franchisors in incentive protests, presumably because franchisors make and enforce the rules and hold the purse strings, as well as the disparate bargaining power between franchisor and franchisee. Franchisors are therefore statutorily responsible for justifying their rules and their administration of those rules.

27. Here, however, Santa Monica Group has made two novel arguments regarding its “incentives not credited”⁷ allegation, one of which it also relies on in challenging the audit chargebacks. They are the following:

- In support of incentives not credited, SMG alleged the following:

The “Internet Explorer browser issue.”⁸ SMG claims that “FCA’s DealerConnect website would only accurately accept incentive submissions if submitted using the Internet Explorer. FCA did not previously advise Santa Monica it must use Internet Explorer to submit incentive claims.” [Protest, p. 4:20-28]; and

The “Gordy Nevers delivery issue”. This limits SMG’s incentives not credited allegation to unpaid incentives prior to July 12, 2017: SMG claims that “[p]rotestant made multiple efforts to submit ... documentation [in rebuttal of disapprovals, to cure noncompliance, or to appeal denial of incentive claims by] hand delivering the supporting documents to FCA’s representative, Gordy Nevers,⁹ on July 12, 2017.” [Protest, pp. 4:9-10, 5:11-15]

- Regarding the October 2016 audit, SMG cites the “Internet Explorer browser issue”, claiming that “[a]ny alleged deficiency in the Audit claims was caused by FCA’s undisclosed requirement to use Internet Explorer when submitting claims.” [Protest, p. 3:27-28]

⁷ Incentives not credited” is protestant’s phrase. [Protest, p. 4:3]

⁸ Although not alleged in the protests, Dave Maxwell testified that the browser issue was also the cause of failed Promotional Allowance Program (PAP) submissions as late as 2018. [XII 200:20-201:2, XIII 19:11-24, 20:25-21:15]

⁹ Gordy Nevers was formerly FCA’s Head of Dealer Network at the California Business Center. He passed away and was not available as a witness. [I 26:17-27:1]

1 28. Having raised these issues, and being substantially in command of facts supporting them,
2 protestant has the burden of proof and the burden of producing evidence (discussed below) in regard to
3 them. (*See EDC Associates, Ltd. v. Gutierrez* (1984) 153 Cal.App.3d 167, 171; *Baker v. Wadsworth*
4 (1970) 6 Cal.App.3d 253, 263)

5 29. The standard is preponderance of the evidence, which is met if the proposition is more
6 likely to be true than not true---i.e., if there is greater than 50 percent chance that the proposition is true.

7 30. Since the issue of whether FCA’s Promotional Allowance Program is a franchisor
8 incentive program within the meaning of section 3065.1(a) through (f) was raised *sua sponte* by the
9 court, neither party bears the burden of proof on that issue.

10 **BURDEN OF PRODUCING EVIDENCE**

11 31. The burden of producing evidence is a different litigation burden: it is a party’s obligation
12 to come forward with sufficient evidence to support a particular proposition of fact. Satisfying this
13 burden means that a party has produced enough evidence on an issue to have it decided by the factfinder.

14 32. “The burden of producing evidence as to a particular fact is on the party against whom a
15 finding on that fact would be required in the absence of further evidence.” [Evid. Code § 550]

16 33. In this litigation, protestant has the burden of producing evidence to avoid a finding of fact
17 against it in regard to the Internet Explorer browser issue and the Gordy Nevers delivery issue.

18 34. When protestant alleged that these two issues related to respondent’s failure to comply
19 with section 3065.1, it assumed the burden of producing evidence of the following:

- 20 ■ Facts supporting its allegations regarding the Internet Explorer browser issue and the Gordy
21 Nevers delivery issue; and
- 22 ■ Facts showing the nexus between (1) the browser issue and the Gordy Nevers delivery issue;
23 and (2) FCA’s failure to comply with section 3065.1.

24 35. Mere allegations in a protest do not shift these responsibilities of producing evidence to
25 respondent.

26 **SUMMARY OF RESPONDENT’S CONTENTIONS**

27 36. FCA’s audit of protestant’s dealership records, the rules and guidance of its sales incentive
28 programs and its Promotional Allowance Program (PAP), and its administration of both the audit and its

1 programs, complied with section 3065.1.

2 37. FCA did not deny protestant any rights under section 3065.1, nor did it fail to meet any
3 responsibilities required of it pursuant to section 3065.1. All sales incentive and PAP claims it received
4 were processed in accordance with section 3065.1 and FCA's rules.

5 38. Santa Monica Group's own failures of organization and communication within the
6 dealership were the cause of unpaid incentive claims.

7 39. Protestant has failed to identify a "single, specific" PAP claim that was improperly denied.

8 **PROTESTANT'S CONTENTIONS**

9 **Summary of Protestant's Contentions**

10 40. FCA violated section 3065.1 in that it did not disclose that SMG must use the Internet
11 Explorer browser to submit incentive claims and, as a result, SMG's claims were unpaid or charged back
12 following the audit. SMG is therefore entitled to rights accorded to franchisees under section 3065.1 in
13 regard to those unpaid and charged back claims.

14 41. FCA violated subdivisions (a) through (e) of section 3065.1 in that when SMG submitted
15 untimely claims by delivery of papers to FCA's Gordy Nevers on July 12, 2017, thereby providing
16 documentation of claims, curing inadequate claims or otherwise appealing claims, FCA unreasonably
17 refused to consider those claims.

18 42. FCA failed to disapprove Promotional Allowance (PAP) requests for reimbursement of
19 advertising expenses within 30 days of receipt and, as a result, protestant's PAP claims are deemed
20 approved on the 30th day, per section 3065.1(a). Documents or information and later submissions of PAP
21 claims by protestant provided documentation of claims, cured inadequate claims or otherwise appealed
22 claims.

23 **Analysis of Protestant's Contentions**

24 43. If a franchisor's incentive rules, and its administration of them, comports with section
25 3065.1, franchisees have the responsibility of complying with them.

26 44. The statute is not a license for a franchisee to write its own rules or to re-write section
27 3065.1, as protestant has done in this proceeding, both before and after the filing of its protest:

- 28 ■ Neither section 3065.1 nor FCA's incentive rules and PAP guidance contemplate anything

1 other than a “VIN-by-VIN” examination of franchisee challenges to unpaid incentives.¹⁰
2 However, protestant’s strategy has been to present its incentives challenges collectively,¹¹
3 then to argue not only that it was deprived of statutory rights section 3065.1 affords
4 franchisees, but also claiming “rights” outside the contemplation of the statute (e.g., the Gordy
5 Nevers delivery issue referenced above), regardless of merit.

- 6 ■ Presenting claims collectively has allowed protestant to misstate, misrepresent or conceal
7 information of individual claims and how each claim relates to its allegations of FCA’s lack of
8 compliance with section 3065.1. In Exhibit 3¹² attached to the protest, for example, SMG
9 listed transactions inadequately identified only by VINs, Vehicles and Amounts Owed in
10 support of its “incentives not credited” claim of \$252,542.72:

- 11 ○ Protestant stated that “Exhibit 3 is a spreadsheet summarizing the VINs and claim
12 amounts FCA failed to pay Santa Monica based on documents submitted to FCA.
13 Protestant provided FCA with the documents supporting Exhibit 3 on or about July 12,
14 2017, when Gordy Nevers came to the dealership and took possession of the
15 documents.” [Protest, pp. 4:7-10, 5:11-15]
- 16 ○ This statement is untrue. In fact, Exhibit 3 was not as protestant represented: the list

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21 ¹⁰Any other interpretation of the statute would make no sense: section 3065.1 refers to “the claim”, “a claim” and
22 “it”; one of FCA’s rules states “[c]laims and inquiries [by dealers] concerning sales and incentive programs must
23 include customer name, validation number (if applicable), VIN (Vehicle Identification Number), vehicle delivery
date, and Program ID”; and FCA’s Help Desk can only deal with inquiries about individual VIN’s. [Exhs 20.016,
21.016]

24 ¹¹ This continues SMG’s strategy before the filing of the protests: (1) When SMG could have challenged any or all
25 of the audit chargebacks in 2016, it chose instead to write letters complaining generally about FCA’s poor support
and inadequate training, asking for “total relief” from the audit results; and (2) In regard to various expired, denied,
26 ineligible or unsubmitted sales incentive claims, unpaid by FCA, in 2017 SMG delivered to Gordy Nevers over
500 documents disputing non-payments of an unknown number of VINs, then failed or refused FCA requests for
27 spreadsheets of individual VINs, which would have made FCA’s examination possible.

28 ¹² Exhibit 3 (admitted into evidence as Exhibit 201.016-201.019), references documents in Exhibit 276 (569
pages). Exhibit 276 was not admitted into evidence; selected pages contained within the exhibit of individual
transactions were admitted into evidence.

1 included a substantial number of VINs with delivery dates after July 12, 2017.¹³ This
2 was not an inadvertent or inconsequential deception, since both the document and its
3 description were prepared by protestant.

- 4 ○ It was foreseeable that respondent and the Board would be misled; presumably to
5 ensure that the misrepresentation was not immediately apparent, protestant omitted
6 listing transaction dates in Exhibit 3, as well as other critical information (such as
7 incentive Program IDs).
- 8 ○ The statement is untrue because Exhibit 276 is not “similar” to the papers protestant
9 delivered to Gordy Nevers on July 12, 2017, as protestant described them during the
10 hearing.
- 11 ○ The statement is deceptive in that protestant failed to produce printouts of
12 contemporaneous Incentive Configurator screens supporting Exhibit 276 (required by
13 FCA incentive rules to be kept by the dealer in customer deal jackets), leading to the
14 inference that disclosure of those documents would be detrimental to protestant.
- 15 ○ The statement is deceptive in that protestant knew or should have known that it either
16 was unwilling or unable to produce reliable evidence of the papers it delivered to
17 Gordy Nevers on July 12, 2017.

18 45. Protestant stated that “Exhibit 3 is a spreadsheet summarizing the VINs and claim
19 amounts FCA failed to pay Santa Monica based on documents submitted to FCA.” [Protest, p. 4:7-9] In
20 stating that FCA “failed to pay”, protestant implies that FCA had a previously-established obligation to
21 pay SMG when, in fact, this is untrue. The statement is misleading in implying that protestant had timely
22 and successfully completed the validation and submission claim process in accordance with FCA rules
23 for each VIN listed, that FCA had received each claim, that each claim had complied with all incentive
24 rules (and, if not, that SMG had timely responded to any disapproval or denial), and that each was

25
26 ¹³ A break-out of the total number of VINs and amounts claimed by protestant of the portion of Exhibit 3 which
27 represented its claims after the July 2017 delivery to Gordy Nevers was undisclosed by protestant until after the
28 hearing was concluded, and then only in response to a direct request from the merits ALJ. (Protestant’s
Supplemental Chart of Incentives not Credited VINs with a Delivery Date after July 12, 2017 filed November 30,
2021)

1 entitled to payment. In fact, many, if not all, of the unpaid VINs listed in Exhibit 3 either had not been
2 received and therefore not reviewed by FCA or, if they had been received by FCA and reviewed, were
3 disapproved for payment under FCA’s incentive rules and section 3065.1 and had expired without SMG
4 responding to the disapprovals.

5 46. Protestant stated as a fact that “[a]ny alleged deficiency in the Audit claims was caused by
6 FCA’s undisclosed requirement to use Internet Explorer when submitting claims.” [Protest, pp. 3:27-4:2]
7 In fact, the audit reviewed only successfully submitted and paid incentive claims and charged back
8 previously paid incentive payments where the claim data SMG had provided to FCA to collect the
9 payments was not supported by facts in its own records.

10 47. Protestant’s apparent intention has been to shift the burden of identifying, examining and
11 evaluating each unpaid claim to respondent and to the Board while, at the same time, failing to identify
12 transactions and unpaid incentives that it contests with sufficient particularity to allow FCA to respond.
13 As a result, FCA has struggled to respond to inadequately identified and factually unsupported
14 allegations.

15 48. SMG has executed its strategy by overwhelming this proceeding with innumerable
16 contentions and massive numbers of documents. Its post-hearing briefs are burdened by the sheer weight
17 of their verbiage, compounded by endless irrelevancies, lack of focus, and imprecise language. As an
18 example, protestant stated no fewer than 23 different “issues presented” in its post-hearing brief.¹⁴

19 49. The result has been a lengthy and costly in-depth examination of every aspect of FCA’s
20 programs, whether or not relevant to an asserted claim. As an example, protestant’s demand for PAP fund
21 reimbursements of \$53,893.58 is an unsupported claim looking for evidence. [VIII 114:19-115:3, XII
22 201:13-206:3]

23 **IDENTIFICATION OF WITNESSES**

24 **Respondent’s Witnesses**

25 50. As a Network Placement Manager for respondent, John Tangeman is responsible for
26 finding and developing new dealers. He promoted Kayvan Naimi’s dealership to fill an open point in
27 _____

28 ¹⁴ “Protestant’s Proposed Findings of Fact and Proposed Decision” [pp. 6:16-8:4], filed August 4, 2021.

1 Santa Monica.¹⁵ His office is in FCA’s California Business Center (“CBC”) in Newport Beach,
2 California. [V 6:8-178:8]

3 51. Jeffrey Eschenbach is Head of Sales Operations, with an office at FCA’s CBC in Newport
4 Beach; he previously held this position until late 2015 (from 2015-2018, he was Director of the CBC).
5 His responsibility is sales in the western region (approximately 132 dealers), supervising area managers
6 (who have more day-to-day interactions with dealers). [IX 6:5-82:8]

7 52. Steve Weeks has been Area Sales Manager for FCA’s Los Angeles North area (13
8 dealerships) since July 2012 and has been with FCA since 1984. He works with dealers on sales-related
9 issues, including sales incentives problems dealers may be having, and has called on Santa Monica Group
10 since it opened in 2015. [VIII 124:23-203:13]

11 53. Matthew Gabel was employed by FCA as a Dealer Auditor from 2013 to 2019. He
12 conducted the October 2016 sales incentive audit of protestant’s dealership. [II 15:14-230:19; III 7:2-
13 220:2]

14 54. William Danforth, a Dealer Audit Manager for respondent, was Matthew Gabel’s audit
15 manager in regard to the October 2016 audit. He has been in his present position for 11 years, having
16 worked for respondent in various capacities for 36 years; his office is in Auburn Hills, Michigan, at
17 “Chrysler Headquarters”. [I 204:21-233:17; III 222:13-244:19; IV 84:23-200:18]

18 55. Christopher O’Hara is head of Retail Sales Promotions for FCA. He is responsible for
19 various marketing activities, one of which is FCA’s Promotional Allowance Program (PAP). [VIII 10:20-
20 123:18]

21 56. Danielle Gutierrez was Santa Monica Group’s Office Manager from July 2018 to
22 February 2021, reporting to Dave Maxwell. Her duties involved records management, posting rebates
23 and incentives, tracking receivables and reconciling bank statements. [IV 7:13-84:1, 200:2-245:4; VI
24 21:3-85:12]

25 57. Clay James was Santa Monica Group’s first General Manager. He was hired in March
26 2015 and resigned about four months later, in June or July 2015. [VI 88:14-158:24]

27 _____
28 ¹⁵ Kayvan Naimi is President/Director and Dealer Principal of Santa Monica Group.

1 58. Anne-Marie Prieur is Operations Manager at Concentrix, the third-party agent FCA has
2 contracted with to manage the “Incentives Help Desk”. [VI 160:9-238:11, VII 6:1-213:17]

3 59. Lisa Humphreys has been Manager of Dealer Payments for the U.S. market for Stellantis
4 (FCA) since September 2016. Ms. Humphreys’ system processes the payments for sales incentive claim
5 submissions (not PAP fund claims). [IX 83:1-230:3; X 6:6-220:18; XI 10:13-51:16]

6 **Protestant’s Witnesses**

7 60. Dave Maxwell has been General Manager (“GM”) of Santa Monica Group for about six
8 years. Initially hired by Clay James as General Sales Manager in May 2015, Kayvan Naimi promoted
9 him to GM about “seven or eight months” later, after Clay James had departed the dealership. He reports
10 directly to Kayvan Naimi. He has worked in the retail auto industry since 1984 and was previously the
11 GM at no fewer than two other dealerships. [I 61:7-197:14; XI 53:5-225:12; XII 7:4-217:23; XIII 6:18-
12 203:4]

13 61. Dealer Principal Kayvan Naimi is President/Director of Santa Monica Group. He and his
14 brother Kamran Naimi own a majority interest in the dealership, in equal shares, with remaining
15 ownership held by immediate family members. He is involved in the day-to-day operations of the
16 dealership. [XIII 203:17-247:12; XIV 6:22-50:24, 61:10-70:5]

17 62. Kamran Naimi is Vice President/Director of Santa Monica Group. He has not played an
18 active role in any aspect of SMG’s day-to-day operations since 2015, even though he signed the Term
19 Sales and Service Agreement (part of the franchise agreement), promising to FCA “active, substantial,
20 and continuing personal participation in the management of [SMG]...”. [Exh 7.005; XIV: 71:10-77:17]

21 **STIPULATIONS OF THE PARTIES**

22 63. The parties entered into a franchise agreement on April 10, 2015. Franchise documents
23 include, but may not be limited to, the following: “Chrysler Group LLC Term Sales and Service
24 Agreement”, with attachments; “Motor Vehicle Addendums” to the Agreement; and “Sales and Service
25 Agreement – Additional Terms and Provisions”. [Exh 7]

26 64. “A ‘web browser’ is software for accessing the World Wide Web. Examples of web
27 browsers are Google Chrome, Safari, Firefox, Microsoft Edge, and Internet Explorer. A web browser
28 displays content from a website on the user’s computer screen. An FCA ... dealership uses a web

1 browser to access FCA’s Incentive Configurator through the DealerConnect website.” [Email dated
2 4/9/21]

3 **FINDINGS OF FACT**¹⁶

4 **Protestant Santa Monica Group**

5 **Description of the Corporation**

6 65. Santa Monica Group is a California corporation in good standing. Corporate officers are
7 Kayvan Naimi, Chief Executive Officer and Director; Farinaz Shayan Naimi (wife of Kayvan),
8 Secretary; and Kamran Naimi (brother of Kayvan), Chief Financial Officer and Director. [Exh 202]

9 66. At all times herein, Santa Monica Group has also been a Mazda franchisee at the same
10 location. The Naimi family has been in the automotive retailing business for nearly 40 years, with
11 Hyundai in 1991, GM franchises in 1994, a Chevrolet agency beginning in 1996, and concluding a
12 franchise relationship with Infiniti in 2014. [Exhs 37.001, 38.002]

13 **The Dealership as a Franchisee of Respondent**

14 67. On April 10, 2015, Santa Monica Group with Kayvan Naimi as President, and Kamran
15 Naimi as Vice President, executed an agreement captioned Term Sales and Service Agreement (TSSA)
16 with John D. Tangeman, the National Dealer Placement Manager for Chrysler Group LLC that “Kayvan
17 Naimi is our dealer candidate for the CDJR franchise.” [Exh 16.001, .004-.006]

18 68. At the time of the agreement, Kayvan Naimi, his wife and brother Kamran Naimi owned
19 an Infiniti dealership at 3219 Santa Monica Boulevard in Santa Monica. Kayvan Naimi desired to replace
20 the Infiniti franchise because, among other things, he anticipated more business with a franchise offering
21 more line-makes than Infiniti. Respondent (then Chrysler Group) had an available open point in Santa
22 Monica, which protestant’s dealership filled. [Exh 16.004-.005; XIV 7:15-21]

23 69. Kayvan Naimi signed the Software License, Data Exchange and Electronic Commerce
24 _____

25 ¹⁶ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to
26 reach a finding and are not intended to be all-inclusive. 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.

27 Citations to the record are for convenience of the Board. The absence of a citation generally signifies that the
28 underlying facts are foundational or uncontested, that the finding is an ultimate fact finding of the Board based
upon other facts in the record and reasonable inferences therefrom, or that the facts are scattered throughout the
record.

1 Agreement on April 10, 2015 which provided, in part, that in all electronic contracts between the parties,
2 both “waive their rights to challenge the electronic contract based on an argument that it is not ‘signed’ or
3 ‘in writing’” [Exh 11.001, Section 1(e)]

4 70. Kamran Naimi stated that he had not participated in the management of the dealership
5 since 2015, even though he had signed the dealer agreements when the franchise was established. [XIV
6 72:4-21]

7 **THE OCTOBER 2016 SALES INCENTIVE AUDIT**

8 71. An FCA sales incentive audit reviews a dealership’s sales and customer records, looking
9 at those transactions where FCA has paid dealers for incentive programs in reliance on (1) information
10 supplied by the dealer supporting claims submitted using the Incentives Configurator, and (2) statements
11 of the delivery date the dealer has reported in its New Vehicle Delivery Reports (or NVDR) to qualify it
12 for Volume Growth Program (VGP) payments (unlike other incentive programs, FCA automatically pays
13 dealers when they hit a certain number of sales in a month---dealers do not submit claims). [X 131:1-22]

14 72. No sales incentive audits are performed of Promotional Allowance Program (PAP)
15 reimbursements to dealers. [Exhs 20.005, 21.005]

16 73. If the auditor finds transactions where claims are “found by Audits to be inaccurate,
17 ineligible or unsupported, [the VINs] will not be eligible for any further incentive payments.” [Exhs
18 20.004, 21.004]

19 **FCA’s Audit Process**

20 74. FCA’s Dealer Policy Manual (rev. 2/4/15) covers the Audit, the Audit Process, the Audit
21 Appeal Process, and Chargebacks. The Dealer Policy Manual is expressly part of the Sales and Service
22 Agreement attached to the Term Sales and Service Agreement signed by Kayvan Naimi and Kamran
23 Naimi on April 10, 2015. [Exhs 7.005, .030; 19.001-.015]

24 75. Dealers are required to keep and maintain files of all records (expansively defined)
25 relating to each sale or lease transaction in their possession for a minimum of two years from the date of
26 payment, or end of program, whichever is later, and to make them available for examination by FCA.
27 [Exhs 19.009, .042, .043, 20.017, 21.017, 34.004, 44.005]

28 ///

1 76. The Dealer Policy Manual and the Gold Book¹⁷---both available on the DealerCONNECT
2 website---list the “documents/records” of sales and leases that the dealer is required to maintain. (The
3 Sales Audit Results report an auditor prepares at the close of an audit also discusses the required items.)
4 Dealers typically keep these records in individual customer deal jackets.¹⁸ [II 34:6-7, XII 95:18-20; Exhs
5 19.008, .044; 20.017; 21.017; 34.004; 44.005]

6 77. Upon completing the initial audit work, the auditor will conduct a meeting with the dealer
7 and provide the Preliminary Audit Results (the detailed Sales Audit Results report), “answer any
8 questions” and give “suggestions for changes”. This Sales Audit Results report, given to dealers on the
9 final day of the auditor’s visit, is a “written disapproval notice” within the meaning of section
10 3065.1(g)(3) and complies with the statute by stating “the specific grounds upon which the claim is
11 disapproved”. [Exh 19.009-.010]

12 78. The auditor will conduct an audit review within 30 days following the dealer’s receipt of
13 the Sales Audit Results report. The Dealer Policy Manual states that “[t]his audit review is an appropriate
14 time for the [d]ealer ... and the auditor to review disputed exceptions, their underlying claims and the
15 reason(s) for their chargeback, along with any statements or documents the [d]ealer ... has that might
16 refute the chargeback. The auditor will then make any appropriate adjustment” and issue an Audit
17 Report. [Exh 19.010]

18 79. FCA’s audit review is “a reasonable appeal process” within the meaning of section
19 3065.1(g)(3). It is immaterial that the “audit review” is not called an “appeal.” The statute is clear that it
20 is the dealer’s opportunity---immediately following receipt of the audit results and information about
21 each chargeback---“to respond to any disapproval with additional supporting documentation or
22 information rebutting the disapproval ... [and] to cure any material noncompliance [with documentation

23 ///

24 ///

26
27 ¹⁷ The Gold Book is the Incentive Rules Manual that was revised October 1, 2015 and June 2, 2016. (Exhs 20.001,
21.001)

28 ¹⁸ Also called a deal file, a dealer’s jacket, a deal folder, and a vehicle sales deal file. [I 88:22; II 34:6-7; Exhs
19.008, Exh 44.005]

1 or administrative claims submission requirements].”¹⁹ [Veh. Code § 3065.1(g)(3)] This is exactly what
2 SMG was offered. There is no unfairness in this interpretation, nor is protestant deprived of any rights
3 accorded by the statute. Following the audit review, the auditor issues an Audit Report. [Exh 19.010]

4 80. After receiving the Audit Report, dealers may request an Audit Manager Review by
5 providing Audit Manager Gerald Cram with supporting documents and details supporting the dealer’s
6 positions. Where, as here, “no communication is received by the Audit Manager ... the [d]ealer will be
7 presumed to have consented to the results of the audit contained in the Audit Report. The audit is
8 considered final and any audit chargeback will be billed” [Exh 19.010-.011]

9 81. Although not relevant here (because SMG did not request an Audit Manager Review),
10 FCA offers an additional right of review of audit results to dealers following the Audit Manager Review:
11 an “audit appeal”, which involves appearing before an audit appeal committee in Auburn Hills,
12 Michigan. The committee’s Decision may uphold or make adjustments to the audit results and, at least by
13 implication, may informally settle some chargebacks. [Exh 19.012-.014]

14 82. At all stages of the audit, as a matter of policy, FCA auditors keep a strict distance from
15 other FCA personnel, to avoid influence or bias. [I 219:23-220:21]

16 **The Audit – October 12 to December 1, 2016**

17 83. On Wednesday, October 19, 2016, Matt Gabel, a Dealer Auditor for FCA, began a sales
18 incentive audit of records at SMG’s dealership. [II 40:8-11, III 132:5-10]

19 84. He looked at a selected number of “deal jackets” of transactions where SMG had received
20 incentive payments in two programs:

21 (1) In the Volume Growth Program (VGP), FCA had relied on the accuracy of SMG’s
22 statement in each sales report of the delivery date, then had automatically made a VGP payment based
23 upon the volume of sales SMG had reported during the month---no “submission” of a “claim” is involved
24 in this program. [X 131:1-22]

25 (2) In regard to other incentive programs, SMG had successfully submitted the incentive
26 _____

27 ¹⁹ As discussed below in paragraphs 116-118, 124, and 133, protestant did not “rebut”, “attempt to cure” or
28 “otherwise appeal” the audit findings within the contemplation of the statute, so there was no obligation for
respondent to provide a “written notification of the final denial” per section 3065.1(g)(4).

1 claims; each one had been received by FCA and approved for payment by FCA in reliance upon the
2 information in SMG’s claim. Each had been paid. (If a claim is not substantiated by the auditor, the
3 “chargeback” will be of a previously paid claim.) [Exh 34.002]

4 85. The audit period covered claims submitted to FCA between January 11, 2016 and October
5 11, 2016. No previous audits of the dealership had been conducted. [Exh 102; II 28:13-16]

6 86. Mr. Gabel informed SMG of the audit on October 12th, in a call to Kayvan Naimi. A
7 follow-up email from Mr. Gabel explained that “[he would] provide an initial list of deals for review
8 [and that] [s]ubsequent deals may be requested based upon the results of the initial review.” [Exh 32; II
9 40:2-5, 48:18-20]

10 87. The initial list of deals for review was chosen, in part, by Matt Gabel after he looked at
11 two FCA-generated reports of protestant’s incentive sales: an “[e]ligibility based retail program report”
12 and an “[o]bjective based program report”. Both are available to SMG on DealerCONNECT. [Exhs 95,
13 97; II 72:19-75:5, 76:23-77:10, 84:19-85:23]

14 88. The purpose of FCA’s audits is to verify dealer compliance with the rules of FCA’s sales
15 incentive promotions. [Exhs 95, 97] The integrity of the VGP is a matter of particular interest to FCA: it
16 is a lucrative income source for dealers, and VGP payments are based on FCA’s trust that dealers’ claims
17 accurately state sale and lease delivery dates. FCA does not routinely have access to dealers’ original
18 documents before payment, so relies on audits to ensure dealer compliance.²⁰ [X 123:18-124:12]

19 89. Protestant was selected for audit because of Objective Programs. [Exh 102.001-.002]
20 Protestant was not singled out for audit because SMG was a new dealer, or because Kayvan and Kamran
21 Naimi were minority dealers. No bias was shown in FCA’s selection of this dealership for audit, in the
22 identification or amount of the chargebacks, nor in any dealings with protestant’s personnel before,
23 during or after the audit:

24 Q. [ALJ WOODWARD HAGLE]: “In this particular audit, what particular areas of
25 concern were you looking at?

26 A. [MR. GABEL]: ...in this audit, the reason for selection was objective programs.
27 So that generally means they had a number of months in the audit period where their sales
28 volume was at or very close to the sales objective ... [G]enerally in my experience if there

²⁰ Here, for example, \$132,100 of the \$154,100 audit chargebacks was due to SMG’s incorrect date reporting in order to qualify for VGP incentives, as more particularly described below in paragraph 131.

1 is going to be a misrepresentation, it usually occurs at the end of the month.” [II 40:13-41:5]

2
3 “[MR. GABEL]: ... in my experience when stores get to the end of the month and
4 they realize they are not pacing to obtain their objective, that is when – that is when they
5 make adjustments to deals that are not compliant with the rules. What I mean by
6 adjustments is they will misdate them” [II 43:17-22]

7
8 “[MR. GABEL]: ... that’s what I would see in my experience, they would misdate a
9 deal and then they would hit the number that they require nearly 100 percent or right at 100
10 percent of objective. So we would examine those deals. I would usually ask for a sample of
11 deals that occurred at the end of the month, you know, in the last days of the month just to
12 make sure that they were, in fact, sold on that day, you know, based on the paperwork and
13 the deal. So that’s why I would target those particular deals in the initial pull.” [II 44:4-13]

14 90. Arriving at the dealership on October 19th, Matt Gabel met with Kayvan Naimi. Mr. Naimi
15 “seemed upset” about the audit and complained to Mr. Gabel that his store is losing money every month
16 and that FCA lied to him about its potential profitability. [Exh 102.001]

17 91. Mr. Gabel presented a “pull list” of 99 transactions, each identified by VIN and customer
18 name. [Exhs 99, 102.001] He reviewed a total of 100 VINs (although SMG failed to produce four “deal
19 jackets”). [Exhs 33, 34.002, 102.001; II 96:13-97:7]

20 92. He determined that records in deal jackets for 12 transactions did not support VGP
21 payments previously made. SMG had submitted to FCA incorrect dates of sale or lease in order to qualify
22 for the lucrative incentive payments under the VGP, which rewards dealers achieving a certain number of
23 transactions during a pre-stated monthly period. Matt Gabel found records in the deal jackets showing
24 that the actual dates of the transactions occurred in different, ineligible claim program periods.
25 Correcting the 12 transaction dates to conform to the records meant recalculating the VGP incentives
26 paid to SMG for each of the four now-ineligible months, resulting in chargebacks of \$132,100. [Exh
27 44.003-.013; II 88.22-89.12]

28 93. The remainder of the chargebacks were for “deal file[s] not located” (\$10,500); “ineligible
customer/wholesale broker” (\$7,500); “program eligibility not established” (\$3,000) and “rebate benefit
not properly documented” (\$1,000). [Exhs 34.002, 44.003]

94. During the nine-month audit period, SMG had received \$983,864.82 in incentive
payments. [Exhs 34.002, 44.003]

95. As a courtesy to the dealer, Matt Gabel “would put, like, a Post-it note on the deal jacket

1 itself just advising the store what was wrong with this particular deal just to make it easier for them if
2 they, you know, could run down some missing items or what have you to try and secure a reversal of
3 whatever. So if it was missing proof of Conquest, for example, I would put the chargeback code and
4 Conquest on the deal jacket...” [II 35:19-36:1]

5 96. On October 20th, Matt Gabel concluded his initial audit work and generated his
6 preliminary audit results, the 25-page Sales Audit Results-Exit Meeting report. On that day, he held an
7 exit meeting at the dealership with Kayvan Naimi (whom he identified as Dealer Principal), General
8 Manager Dave Maxwell, Business Manager Rosa Munoz, and Sales Manager Rodd Naimi. He gave hard
9 copies of the Sales Audit Results report to everyone present and “covered in detail [his audit findings],
10 including the individual chargebacks and the retro spreadsheet details”. [Exhs 19.009, 34.002-.014,
11 102.001-002; II 36:8-13]

12 97. Although no one from SMG refuted the validity of any of the findings presented, Dave
13 Maxwell complained that FCA was “picking on new minority dealers in a [*sic*] effort to recover money”
14 and that the audit was “punitive” and a “revenue generating operation”. When Matt Gabel observed that
15 the findings [*i.e.*, chargebacks] were primarily in the area of date reporting errors [to qualify for VGP
16 payments], Dave Maxwell asked if the deals charged back in a particular month would be added to the
17 count they were supposed to appear in, [saying] that he had ‘done the math’ and they should be able to
18 get one of the objective months back. [Matt Gabel] told him they would not be, that when they are
19 charged back at audit for incorrect reporting they no longer count for objective. [Exh 102.002]

20 98. Matt Gabel told Mr. Naimi and the others at the exit meeting that “the next 30 days [was
21 their] opportunity to provide [him] with any additional information that ... may not have been here [in
22 the deal jackets] or maybe even [he] missed.” He advised that the 30-day period was “their window for
23 them to provide any additional supporting documentation ...”. They could, he said, email him, or call
24 him, and that “[he] will even return to the store if it is something of that nature if that is the way we have
25 to do it.” In any event, he told them that a future recontact meeting would be scheduled, at which time he
26 would provide them “with an updated report based on how the next 30 days goes.” [II 36: 22-37:15]

27 99. The exit meeting report concluded with “[w]e agreed to an 11/21/2016 close”. (Actually,
28 it was 32 days, not 30 days, between October 20th and November 21, 2016.) [Exh 102.002]

1 100. Matt Gabel remembered the exit meeting as “contentious”. [II 22:17-25] However, he
2 recorded in his notes that Mr. Naimi, the Dealer Principal, thanked him for his visit and advised him they
3 would have a look at the findings in detail and submit any items they thought warranted a reversal. [Exh
4 102.001-002]

5 101. On October 21st, Matt Gabel emailed the Sales Audit Results report to Kayvan Naimi, and
6 advised that “[b]y 11/21/2016 you will need to provide any additional information or documentation to
7 reverse the potential chargebacks that were identified during the audit At the end of 30 days, the audit
8 will be officially closed, and any outstanding chargebacks will be processed. I will be checking with you
9 during the 30-day period. Please contact me with any questions or concerns.” [Exhs 34.001-014;
10 233.001-.012]

11 102. This “audit review” time period immediately after SMG received the Sales Audit Results
12 report was SMG’s opportunity to challenge potential chargebacks. As more fully described above in
13 paragraphs 78 and 79, it is the same as the “appeal process” in section 3065.1(g)(3). [Exh 19.010]

14 103. The same day, on October 21st, Kayvan Naimi responded with an email thanking Mr.
15 Gabel, saying “[w]e are going to work on them. Have a nice weekend.” [Exh 36] He also emailed Dave
16 Maxwell and Rosa Munoz directing them to “[p]lease make sure proper paperwork is submitted before
17 the due date. Thank you.” [Exh 35]

18 104. Two letters signed by Kayvan Naimi,²¹ dated October 27, 2016 and November 8, 2016,
19 sent to several FCA personnel (Jeffrey Eschenbach and John Tangeman, among others²², but not Matt
20 Gabel), were prompted by the audit.²³ The opening paragraphs stated: “I would like to take a few minutes
21 of your time to review the past weeks’ events, and thank you personally for the time that your auditor
22 spent with my accounting and operations staff to help raise awareness of the mistakes that were being
23 made due to our staff’s lack of knowledge on many points in the FCA Incentive Programs.” The letters
24 then set forth a litany of grievances about protestant’s FCA franchise. In order, SMG complained about
25

26 ²¹ Despite Kayvan Naimi’s signature, Dave Maxwell was the author: he “basically dictated the letter and reviewed
27 and explained it to Kayvan Naimi prior to having him sign the letter”. [XI 137:8-138:7]

²² It is immaterial to the resolution of this case what responses, if any, the recipients made to the letter.

28 ²³ There were some differences in wording or emphasis between the two letters, but both letters contained same or similar points.

1 the following: the difficulty of recruiting “FCA certified service and sales staff”; the “personally painful
2 financial decisions” required to be made because of the unexpected necessity of infusing Naimi family
3 money into the dealership; FCA’s “miss-alignment [*sic*] of inventory”, not reflective of the Santa Monica
4 market, resulting in difficulties meeting sales quotas; FCA’s insensitivity to SMG’s lack of floor and
5 storage space “mak[ing] it impossible to manage the ebb and flow of the inventory”; a list of five “major
6 problems” for dealers related to FCA’s incentive program procedures which led to SMG “being faced
7 with penalties from mistakes we had no idea we were committing ...”; and “lack of training” by FCA
8 which was revealed to protestant by the audit chargebacks. [Exhs 37, 38, 235, 238]

9 105. Among other things, Kayvan Naimi’s letters “formally request[ed] ... total relief from last
10 week’s audit findings of a \$154,000 [*sic*] in incentive charge backs”. [Exhs 37.003, 37.004, 38.004,
11 38.005, 235.003, 235.004, 238.005, 238.006]

12 106. Matt Gabel extended the audit close date by 10 days, to Thursday, December 1, 2016. He
13 granted SMG a 10-day extension instead of 60 days “because in the previous 30 I had not received
14 anything at all aside from the letter [of November 8th]. I hadn’t received anything related to the actual
15 chargebacks that were presented ...”. In his experience as an auditor, if a dealership is providing
16 information to him during the 30-day window following an audit “and it appears that the store is, you
17 know, looking for it and finding, you know, the missing deals or what have you, whatever is required,
18 you know, we work with them the best we can to extend out the time and -- you know, within reason.”
19 [Exh 41.001; II 167:5-169:1, III 157:6-24]

20 107. The audit review period of 40 days (actually 42 days) allowed protestant to submit proof
21 contesting any of the audit results. This was a “reasonable appeal process” after SMG had received the
22 detailed Sales Audit Report by which it could respond to the chargebacks by providing additional
23 supporting or rebuttal documentation or information or cure any other noncompliance with FCA
24 incentive rules, and was a “reasonable period ... commensurate with the volume of claims under
25 consideration” which gave SMG the opportunity to respond to the chargebacks. [Veh. Code §
26 3065.1(g)(3)]

27 108. Twelve of the 31 transactions were VGP chargebacks (\$132,100 of the total \$154,100).
28 [Exh 34.002] There were date differences in SMG’s claim reporting of Sale Date per Claim and the

1 actual Sale Date per Review for these 12 VIN's, causing "a change in [VGP] program attainment level
2 for January, April, May and June due to chargebacks for NVDR date...". [Exh 34.003] SMG can easily
3 look at its own records and talk to its own personnel to find documentation or information to either
4 substantiate or cure its delivery date reporting for these 12 transactions. Its failure to do so raises the
5 reasonable inference that either no documentation or information existed or that it did exist and was
6 unfavorable to SMG, and that the dealership knew or should have known that the auditor had properly
7 charged back \$132,100 because of erroneous reporting.

8 109. Similarly, SMG could have easily cured the remainder of the VIN chargebacks: all it
9 needed to do was to produce the missing deal files in the "Brian", "Daniel", "Oscar" and "Annette"²⁴
10 transactions (\$10,500); to correct any error of customer status in sales to "Colby Auto Investments Inc."
11 and to "Bounty Co LLC/exxel Auto", both "ineligible customer/wholesale brokers" (\$7,500); to provide
12 program eligibility for the Conquest Lease to Retail promo sales to "David", "Pete" and "Mehry"
13 (\$3,000); and to properly document rebate benefits to "Andrew" and "Corey".²⁵ [Exh 34.002-.010]

14 110. Matt Gabel's November 21st email also advised Kayvan Naimi that "[y]ou still have the
15 appeal process²⁶ available to you after the close, if you wish to dispute the findings." [Exh 41.001]

16 111. On November 28, 2016, Matt Gabel emailed Kayvan Naimi and Dave Maxwell,
17 reminding them that the audit would close on December 1st, and asked for a convenient time to schedule
18 a meeting. [Exh 43.001-.002]

19 112. As of December 1, 2016---the date the audit closed---protestant had failed to address a
20 single chargeback. SMG's only challenges to the chargebacks had been the letters described above. [II
21 168:23-169:1]

22 113. On December 1st, Matt Gabel met at the dealership with Kayvan Naimi, Dave Maxwell,
23 Rosa Munoz, and Rodd Naimi for the recontact meeting. He gave Kayvan Naimi the audit results letter
24 and the Sales Incentive Audit Results – Recontact Meeting document he had prepared, with the
25

26 ²⁴ On March 22, 2021, the first day of the hearing, protestant withdrew its claim relating to one of the missing deal
27 files (Annette) without explanation. [Exh 129.027; III 74:6-17]

28 ²⁵ "Corey" appears in two different VIN transactions: GL201711 and GW222454. [Exh 034.006, 034.010]

²⁶ The "appeal process" stated in section 3065.1(g)(3) is FCA's "audit review", as more particularly described in
paragraphs 78-79 and 102.

1 chargeback amount unchanged at \$154,100. Kayvan Naimi said he felt they were treated unfairly. Matt
2 Gabel “advised them of the appeal process and told him that if he felt the findings were unfair that he
3 should use that process to make his case.” Dave Maxwell complained about FCA’s “low level of
4 support”, unlike other manufacturers he had worked with. He said he had been to Auburn Hills for an
5 appeal meeting with another dealer and opined that the dealer board would be unwilling to reverse
6 anything “but said they would try anyway”. [Exhs 44.001-.013, 102.002-.003]

7 114. The following day, on December 2, 2016, Matt Gabel emailed the audit documents to
8 Kayvan Naimi and Dave Maxwell. His cover email’s subject line read “26978 Santa Monica CJDR –
9 Sales Incentive Audit Closed – Final Reports” with the email stating that the “final reports” showing “the
10 final chargeback amount of \$154,100” were attached, together with a letter “detail[ing] what steps you
11 must take if you do not agree with this finding”. [Exh 44.001, .002]

12 115. The final Audit Results report set forth the details of each of the 31 chargebacks (customer
13 name, VIN, relevant dates, incentive program code and description, reason for chargeback, chargeback
14 code and description, and chargeback amount). [Exh 44.007-.013] To assist the dealer’s understanding of
15 the chargebacks, it also gave each reason for each chargeback and advice on how to avoid chargebacks in
16 each program in the future. At least by implication, it contained guidance for the dealer to challenge
17 current audit chargebacks (under the headings “recommendation/requirements” and “comments”). [Exh
18 44.004-.006]

19 116. Dave Maxwell and Kayvan Naimi knew the details and reasons for each of the 31
20 chargebacks of incentive payments previously made, as identified by the audit. They knew that protestant
21 could rebut or cure any chargeback during the audit period, but they failed to take any action to do so
22 within the contemplation of the statute. The audit period ended December 1, 2016.

23 117. As of December 1, 2016, protestant’s statutory rights to challenge the chargebacks with
24 FCA expired. [Veh. Code § 3065.1(g)(3)]

25 118. As of December 1, 2016, since protestant had not initiated an appeal process in a timely
26 manner within the contemplation of section 3065.1(g)(3) and (4), FCA was under no statutory obligation
27 to take any further action in regard to the audit; specifically FCA had no obligation “to provide [SMG]
28 with a written notification of the final denial ... which shall conspicuously state ‘Final Denial’ on the first

1 page”. [Veh. Code § 3065.1(g)(4)]

2 119. SMG’s statutory right to file a protest of the audit chargebacks ended on or about June 1,
3 2017. [Veh. Code § 3065.1(g)(6)]

4 **Post-Audit Events: After December 1, 2016**

5 120. FCA’s offering of a post-audit opportunity to dealers to challenge audit chargebacks, its
6 Audit Manager Review, does not extend statutory rights or responsibilities.

7 121. Matt Gabel’s audit results letter of November 30, 2016 had advised SMG that “[i]f you
8 have additional information or documentation that would change the audit findings, you may request a
9 formal written review...” by mailing or emailing the request and supporting documents to Audit Manager
10 Gerald E. Cram. The 20-day period for requesting an Audit Manager Review ended on December 20,
11 2016. [Exh 44.002]

12 122. On December 22, 2016, Dave Maxwell emailed to Jeffery Eschenbach and John
13 Tangeman²⁷ a letter dated December 17th; although signed by Mr. Naimi, the letter was composed by Mr.
14 Maxwell. The letter repeated (sometimes verbatim) Mr. Naimi’s letters of October 27th and November
15 8th.²⁸ He also wrote a lengthy paragraph about “all of our research pertaining to our client incentive
16 discounts ...,” as follows:

17 (a) “Our General Manager [Dave Maxwell] and Operations Director called the ‘Incentives
18 Hot Line’ and it was revealed to them ... that ... you must only use the most recent release of Internet
19 Explorer Browser in order for the data to input or upload properly ...”. (This comment presumably
20 referred to two conversations with Concentrix Help Desk agents: on June 2, 2016, “[a]gent advised [Dave
21 Maxwell] to use internet explorer 10+ with PDF or JPG file”, not “firefox/google chrome”²⁹; and on
22 ///

23 _____
24 ²⁷ It is immaterial to the resolution of this case whether the recipients acted or did not act following this email and
25 letter.

26 ²⁸ The letter is lengthy: sentences are not necessarily quoted in order written, but do represent the contents of the
27 letter.

28 ²⁹ Dave Maxwell had complained he was receiving an ineligible status when attempting to submit a claim. In fact,
the ineligible message was accurate, even though he presumably used the wrong browser, because SMG had
previously and successfully submitted incentive claims for this VIN which had been paid on 4/28/16 and 5/12/16;
no claims subsequent to this call regarding the VIN were made. [Exh 129.060; X 86:15-87.16, XIII 78:20-83.22]

1 December 2, 2016, “[a]gent advised [Will Cashen, presumably the “Operations Director” that] Dealer
2 Chrome is [not] a supported browser. Agent advised dealer he will need to use IE10 or higher...”) [Exhs
3 130.004, 130.007, 132.010; X 86:15-87.16, 107:9-19, XIII 78.20-83.22]³⁰

4 (b) “If any other browser is used, the data input and more importantly the items uploaded will
5 be lost completely ... the system would acknowledge ‘Processing’ [but] this was not at all the case ...”.

6 (c) “This is very bad and was categorically some of the issues with the failures in ‘Validating’
7 many of the incentives once they were added by our business department.”

8 (d) “[T]his ... was probably the cause of tens of thousands of dollars lost in incentives in the
9 system ...”.

10 (e) “The GM and the [Operations Director] asked where they could find this information, was
11 it in the Gold Book, the support person said it is not written down anywhere that’s just a fact that the
12 support staff knew.” [Exh 247.004]

13 123. Protestant made no contact with Audit Manager Gerald Cram requesting an Audit
14 Manager Review either before, or at any time after, December 20, 2016. [Exh 89.001, paragraph A]
15 Kayvan Naimi’s December 17, 2016, letter (received December 22, 2016) asking for “total relief from
16 the audit findings in question of a \$154,000 [*sic*] in incentive charge backs” did not request an Audit
17 Manager Review nor can it be viewed as making such a request, as there is nothing for a senior auditor to
18 review. [Exh 247.005]

19 124. At no time either before the audit closed on December 1, 2016, or before FCA’s offer of
20 an Audit Manager Review closed on December 20, 2016, did protestant present to FCA additional
21 documentation or information, rebuttal or cure for any one of the 31 individual chargebacks.

22 125. In a letter dated December 30, 2016, to Jeffery Eschenbach and John Tangeman,³¹ Kayvan
23 Naimi requested “total relief from the audit findings in question of a \$154,000 [*sic*] in incentive charge
24 backs”. This was based, he wrote, on “our extensive research ...” showing “the frailties of [FCA’s]
25 Incentives Configurator software system ...”: the latest IE, Internet Explorer is “the only browser that the
26 Dealer Connect website is configured to operate with ...”. The letter stated that “[a]fter our internal major

27
28 ³⁰ The complete notes with the Concentrix Help Desk agents are found below in paragraph 189.

³¹ It is immaterial to the resolution of this case whether the recipients took any action or not following the letter.

1 review and self-audit ... [i]t was made clear that hundreds of submissions were executed properly and yet
2 the audit revealed that few submissions were ever completed.” But the letter also admitted that a factor in
3 the audit’s outcome was that “[s]ales staff may have not collected the proper paper work [*sic*] needed to
4 complete the incentives online submission process” [Exhs 46, 250]

5 126. The December 30, 2016, letter also contained an oblique reference to “this package”
6 which, the letter stated, was included in the “2015 results of our internal audit claiming reimbursement of
7 incentives submitted ...”, but SMG produced no evidence or testimony regarding a package. In fact,
8 according to Dave Maxwell, there was no package attached to the letter-- “[i]t was just a letter.” [Exhs
9 46.002, 250.002; XIII 158:20-159:12]

10 127. A year later, on December 28, 2017, Kayvan Naimi wrote an Incentives Payment Demand
11 Notice (regarding “an unpaid debt ... of nearly \$500,000) to five FCA personnel. Among other
12 complaints, Mr. Naimi repeated his earlier assertion that “[i]n December 2016, we sent a complete
13 package of the FCA Audit materials along with our additional findings and proof of our position to the
14 FCA headquarters in Auburn Hills” but had never “receive[d] a reply ... [despite] communications ...
15 [and] phone calls” [Exhs 65.005, 263.005] Again, no evidence or testimony identified this package,
16 and Dave Maxwell denied that it existed. [XIII 158:20-161:12]

17 128. The protests filed January 10, 2020 included the audit. SMG alleged that “[a]ny alleged
18 deficiency in the Audit claims was caused by FCA’s undisclosed requirement to use Internet Explorer
19 when submitting claims”; and that SMG’s December 30, 2016 letter “provided Respondent additional
20 supporting documentation or information purporting to rebut the disapproval, attempted to cure
21 noncompliance relating to the claim, or otherwise appealed denial of the Audit claims ...”. [Protest, pp.
22 3:10-18, 27-28]

23 Analysis

24 129. The express or implied assertion in protestant’s letters during and after the audit was that
25 each of the 31 chargebacks was, in fact, legitimate and, but for FCA’s training and support deficiencies
26 and the browser issue, the claims would not have been charged back. SMG alleges that problems were
27 caused by its ignorance of the proper submission and validation process.

28 130. There is no merit to this argument. SMG successfully “submitted” claims which FCA

1 “received” and paid. [Exh 129.00-129.030] The payments were charged back because the auditor
2 discovered that SMG had provided supporting information for its claims which was either contradicted
3 by, or absent from, its own records.

4 131. Moreover, most of the chargebacks (\$132,100 of \$154,100) did not result from submission
5 problems or browser issues. The VGP payments were charged back because the auditor found that
6 protestant misrepresented delivery dates in sales reports (NVDRs) made to FCA, which are independent
7 from incentive claim submissions. SMG has never alleged that it did not understand the NVDR reporting
8 system or that a browser issue interfered with its reporting of sales.

9 132. The protests alleged that Kayvan Naimi’s December 30, 2016 letter served to challenge
10 the audit chargebacks. [Protest, p. 3:10-18] This argument is without merit: on December 1, 2016, when
11 the audit closed, SMG’s statutory right to challenge audit results expired and FCA was under no
12 obligation to take further action. Moreover, nothing in the letter contains information which would rebut
13 or cure any claim, or could be construed as an appeal.

14 133. The remedies offered by FCA within its audit process complied with section 3065.1(g).
15 Section 3065.1(g) not only gives to franchisees rights in the audit process, it also imposes responsibilities
16 on them. Protestant’s failure to pursue those rights raises the inference that its claims were unfounded,
17 irrespective of protestant’s later assertions of merit. When protestant chose not to pursue those remedies
18 within time frames stated in the statute and in the manner contemplated by the statute, any statutory
19 rights it had going forward were lost.

20 134. The protests in regard to the October 2016 audit chargebacks were untimely filed: SMG’s
21 statutory right to do so ended on or about June 1, 2017. [Veh. Code § 3065.1(g)(6)]

22 **FCA’S SALES INCENTIVE PROGRAMS**

23 135. FCA processes approximately 100,000 incentive claims per week from around 2,500
24 dealerships in the U.S. “[E]ach VIN, on average, has ... five to eight incentive programs associated with
25 [it]”. “And when we [FCA’s incentive staff³²] run our incentive payment[s], which is each week, we’re
26 processing typically between 200 and 400 million dollars in incentive payments.” [IX 92:5-6; 96:14-97:4,
27 _____

28 ³² FCA’s incentive staff does not process PAP fund claims.

1 X 10:12-15]

2 136. Incentives are a lucrative source of dealer income:

3 (a) For the week ending April 11, 2019, protestant received \$108,398.93 from FCA for
4 successful participation in a number of different incentive programs: “VGP Eligible Vehicles” (\$48,750);
5 “VGP Bonus Pay-18MY Wrangler” (\$8,000); “Grand Cherokee Lease Loyalty (\$3,000); “California
6 2019 Bonus Cash” (\$4,500); “California BC Lease Bonus Cash” (\$6,000); “California Chrysler Capital
7 Bonus Cash” (\$2,000); and “Midwest 2019 IDL Bonus Cash” (\$3,750), just to name a few. [Exh
8 134.001]

9 (b) As noted above, during the nine-month audit period (January-October 2016), protestant
10 received \$983,864.82 in incentive payments from FCA. [Exh 34.002]

11 Overview

12 137. Authorized FCA dealers have on-line access to FCA’s DealerCONNECT website, “the
13 tool that we would use to communicate with dealers.” [X 109:13-14] Dealers use DealerCONNECT to
14 report vehicle sales to FCA (required within two days of the delivery date) and to complete submission of
15 incentive claims (required within 90 days of the delivery date). The Dealer Policy Manual is guidance for
16 sales reports (NVDRs), while the Official Program Rules and the Gold Book are available to dealers in
17 navigating FCA’s incentives programs. [Exh 19.045; III 121:1-8, X 132:2-3]

18 138. Additionally, “each incentive has its own set of rules”, which are published on
19 DealerCONNECT. [III 92:7-9] “New incentive offers” (with “eligible vehicles” and “other conditions or
20 exclusions”) are periodically “activated” and dealers “can view them in our incentive configurator tool.”
21 [Exhs 19.045, 28.001; III 92:7-9, IX 90:13-21]

22 139. FCA requires new dealers to acknowledge that “it is my responsibility to read and
23 thoroughly understand the contents of the Manual[s] and to require my employees who are involved in
24 any way in the processing of sales incentive claims to read and thoroughly understand the contents of the
25 Manual[s].” [Exh 9.001] Dealers are told that the Incentives Rules Manual must be reviewed with all
26 dealership employees. [Exhs 20.004, 21.004]

27 140. Dealers’ claims for incentive payments are made separately from the NVDR sales
28 reporting system, using a separate screen on the DealerCONNECT website. (The VGP is an exception, as

1 it is automatically paid when dealers hit a targeted number of sales in a monthly period.)³³ [Exhs 19.045-
2 .046, 20.015, .016; 21.015, .016; IX 141:2-6, X 115:20-21, 131:1-22]

3 141. “Validation” is a critical step in the submission process. Many incentive programs require
4 dealers to validate that the customer meets the specific program rules requirements. Submission of a
5 claim is not complete until validation information is entered into the Incentives Configurator: programs
6 such as “conquest” and “loyalty” sales and leases are two examples. When the dealer selects programs
7 needing validation on the Incentives Configurator screen, a new pop-up window will appear “that will
8 ask them the questions specific to the program. So in this case for ‘conquest’, the pop-up window would
9 ask the dealer to provide the full 17 of the VIN of the conquest vehicle [the customer’s currently-owned
10 vehicle]”. [IX 186:22-187:15]

11 142. FCA relies on the accuracy of the information dealers submit in support of incentive
12 claims; under FCA’s rules, it is the dealer’s obligation to provide accurate information. [III 217:25-
13 218:5] “Some of the irregularities found result from misunderstandings of program rules, poor
14 recordkeeping, or other administrative errors. In a few instances, however, audits have disclosed evidence
15 that appeared to show deliberate misrepresentations by some dealership personnel resulting in unjustified
16 payments from FCA [W]ith or without the knowledge of the dealer principal, the dealer is responsible
17 for the acts of employees or anyone acting [on the dealer’s behalf].” [Exhs 20.004, 21.004]

18 143. The Incentives Configurator Reference Guide is “a quick reference guide that walks the
19 dealership through all of the steps to use the Incentives Configurator. So it’s a very user-friendly
20 document ... We (agents at the Concentrix Help Desk) refer dealerships to [the Guide] to help educate
21 them and teach them.” The Guide provides visual training to dealers: “[t]here are screenshots. On a call
22 we will ask the dealer to – we’ll navigate the dealer to it [the link to the Guide] and ask them to open it,
23 and we will actually walk them through and show them particular pages.” There is also an online training
24 tab on the DealerCONNECT website which offers various training courses, as well as guidance in the
25 Gold Book and information provided online in connection with each announced incentive promotion.
26 [VII 36:6-20, 37:7-13, 125:6-14, 128:21-129:24]

27
28 ³³ Each sale invariably generates more than one incentive claim; each incentive program carries a different four-to
six-digit Program ID. [Exh 129.031-.187]

1 144. FCA offers an online Incentives Configurator Course. A total of 26 SMG employees have
2 completed this course, 25 of them in 2016 and 2017, and one in 2020. General Manager Dave Maxwell
3 completed the course on March 29, 2016. The General Sales Manager completed it on November 8,
4 2016, two Sales Managers on May 30, 2016 and December 18, 2017, and 17 New Car Salespersons
5 between March 6, 2016 and December 13, 2017. Both of the Internet Sales Managers completed the
6 course, the earlier completion on March 6, 2016. [Exh 130.008]

7 145. The FCA rule is that “[c]laims and inquiries [by dealers] concerning sales and incentive
8 programs must include customer name, validation number (if applicable), VIN, vehicle delivery date, and
9 Program ID.” [Exhs 20.016, 21.016]

10 146. FCA runs its payment cycle for the week “[s]o typically, ... we process [dealers’ incentive
11 claims and make the payments] within about a seven-day window.” [IX 133:2-8] In addition to paid
12 claims, “we would also post and produce a detail level view of all of the claims that were processed ...”,
13 including denials and other dispositions. [Exh 134.014; IX 134:6-135:19, X 108:15-109:19] Dealers are
14 informed electronically of FCA’s actions. They can find them in no fewer than three places on
15 DealerCONNECT: the Incentives Configurator (described below in paragraphs 155 through 161); the
16 weekly dealer parts statement (described below in paragraphs 173 and 174); and “reports on
17 DealerConnect for both pre-pay and paid statuses where a dealer, again, can look up a specific VIN. They
18 can also look by a specific program ID to see the VIN detail within that specific program.” [X 108:15-
19 109:2]

20 147. The Gold Book states that “FCA ... reserves the right to inspect and copy any and all
21 [dealer] records ... pertaining to any sales incentive payment”. A dealership’s failure, upon request, “to
22 submit claims and backup documents ... will result in a chargeback to the dealership.” [Exhs 19.015,
23 20.004, 21.004] A dealer’s books and records are to be “kept in such manner that the data shown in them
24 can be used ... to verify invoices or other claims DEALER may render to FCA ...”. [Exh 7.032]

25 **FCA’s Programs**

26 148. FCA offers two kinds of incentive programs: “dealer cash” and “customer rebates”. [I
27 168:14-16, XII 14:6-7, 71:8, 72:22-23]

28 ///

1 **“Volume Growth Program” (VGP)**

2 149. FCA’s Volume Growth Program (VGP) is a dealer cash program. It rewards dealers for
3 reaching certain monthly sales goals, measured by numbers of eligible vehicles sold. VGP payments are
4 automatically made to dealers when FCA sees that the number of monthly sales has hit a pre-stated
5 qualifying target---unlike other incentive programs, dealers do not submit VGP claims using the
6 Incentives Configurator. [Exh 28.001; X 131:16-22]

7 150. Official Program Rules, with each month’s “program period,”³⁴ “descriptions” and
8 “elements”, are sent to dealers through DealerCONNECT. [Exh 28.001-.004, .019-.021, .031-.033, .037-
9 .039] FCA sets a sales objective target on a monthly basis for a dealership. And if they achieve that sale
10 target during the month, FCA will then generate a payment to the dealership for the sales that have
11 qualified under the program rules. The dealer does not have to take any independent action aside from
12 reporting the vehicle sold: “[t]hey only need to report the vehicle sold, and then [FCA] will generate the
13 claim for them for that incentive offer ... the dealer had earned that money by reporting the sale
14 successfully, so [FCA] will automatically generate the payment to them.” [X 130:11-131:22]

15 151. FCA calculates VGP incentive payments on a per-vehicle basis. Since incentive payments
16 are retroactive to the first VIN sold during the month, the sale at the end of the month that allows the
17 dealer to reach the volume objective has a high incremental value. Because of the nature of the VGP
18 promotion which pays dealers for each vehicle sold during the month if the monthly qualifying sales
19 number is met, a chargeback of a single sale will result in negating the total amount paid to the dealer for
20 all vehicles sold during the month.

21 152. FCA relies on the accuracy of the delivery date in the dealer’s sales report (NVDR) since
22 FCA automatically calculates and pays VGP incentives based upon that date. If an audit reveals
23 inaccurate dates, correcting the transaction dates to conform to the records means recalculating the VGP
24 incentives paid to the dealer for the entire month.

25 **Other FCA Incentive Programs**

26 153. There are many other incentive programs offered to dealers. These are often time-limited
27 _____

28 ³⁴ The monthly VGP inclusive dates do not necessarily conform exactly to monthly calendar dates. [Exh 28.001]

1 and the dealer must provide “validating” information that the customer meets specific program
2 requirements.

3 154. As examples, a dealer needs to validate (1) a customer’s military status for a military
4 rebate; (2) the VIN of a customer’s currently-owned vehicle for either a “legacy” or “conquest” incentive
5 or rebate; (3) financing with Chrysler Capital for a banking rebate; (4) the customer’s ZIP Code for a
6 regional incentive; and (5) the “correct sponsor name” and “control number” (an extra step) to establish a
7 familial relationship to dealership staff to insure they fall within program guidance for the “friends and
8 family” rebate. [VI 213:15-22, IX 126:9-128:20, 145:23-147:3, 184:9-185:4, XII 128:7-17]

9 **The “Incentives Configurator” Screen**

10 155. The Incentives Configurator is the online screen dealers use in performing tasks related to
11 incentives (but not VGP and PAP, both of which are handled differently). It is accessed via the
12 DealerCONNECT website. The Incentives Configurator Reference Guide (rev. 8/14/17) “walks the
13 dealership through all of the steps to use the configurator ... it’s a very user-friendly document”. [Exh
14 22.002; VII 36:7-37:13]

15 156. In negotiating a vehicle sales deal, the dealer can input data to the Incentives Configurator
16 screen to view dealer cash payments and customer rebates offered by current incentive programs. The
17 dealer will provide, for a prospective sale, the chosen vehicle’s VIN, body model and year, vehicle
18 description, MSRP price, as well as invoice and delivery dates, and customer ZIP code, then select
19 incentive programs by Program ID, Program Name, Start and End Dates (of the promotion) and Amount
20 (of each incentive). [Exhs 22.005, 139.023; III 61:2-4, 196:16-21; IV 15:21-16:14]

21 157. After the sale, the dealer will use the Incentives Configurator screen to start, and then---
22 after validation of the claim, if required---to complete submission of the incentive claim for payment.
23 [Exh 22.010]

24 158. Dealers have the ability “to do a print of [most of the Incentives Configurator screens] so
25 that they can keep it in the deal jacket ... if they need to refer back to it at a later time”. [IX 129:21-
26 130:2]

27 159. FCA requires dealers to print the Incentives Configurator screen and put it in the deal
28 jacket at the time of completing the submission, “[a]nd we also have a disclaimer at the bottom of the

1 incentive configurator that reminds the dealer to do just that. And really, the intention is so that if we ever
2 had to look back, we have a very good, accurate, timely view of what was occurring at the time that the
3 dealer was submitting their claim. And then the dealer also could look back to it if there's anything that
4 they wanted to dispute, that they would also have the proof of what was available to them at the time that
5 they submitted.” [IX 130:6-15; 177:13-17]

6 “Q. [MR. STREELMAN]: Why do you want these incentive configurators to be
7 printed at the time that the transaction occurs?

8 A. [MS. HUMPHREYS]: It would be expected that the dealership has all of their
9 full documentation in the deal jacket at the time that they're executing the sale. So if the
10 dealer is submitting a claim to us for reimbursement, they would already have a [sale or]
11 lease agreement that is signed by the customer. They would have a copy of their incentive
12 configurator where they would have already gone through and selected all the incentives
13 that they passed on to their customer, and then they would submit that document to us.
14 And then for the dealer's purposes, they really should be using that also as a tool as they
15 track their payment to ensure that we have paid them properly.” [IX 176:7-21]

16
17 Q. Is that why FCA insists on dealerships keeping the incentive configurator from
18 the time of the transaction?

19 A. Yes, that's correct. And we give the dealer a 90-day window from the time that
20 they sell the vehicle to when they should be submitting their incentive claims so that we
21 can make sure that both the dealer is performing these activities timely, but also from an
22 [sic] FCA's perspective, we can also reimburse them timely.” [IX 131:21-132:4]

23 160. The importance of accurate reporting and submission dates to FCA's process is
24 underscored by the prominence on the Incentives Configurator screen given to dates: each screen and
25 printout will state, at the top of the page, underlined and in bolder type than the remainder of the printed
26 page, the current date and day of the week. As an example, “Incentives Configurator as of Monday, April
27 1, 2019” reflects the information appearing on the screen on that day and no other. [Exhs 276.005,
28 276.008, 276.013³⁵]

161. After submission of the claim, the Incentives Configurator is one of the tools which the
dealer can use to track its payment or other disposition. [X 176:19-25] “[I]n [the] incentive configurator,
... there is a third tab that provides all of the programs that the dealer had selected and submitted that also
provides the status of each claim. If it has been paid, it will also include the payment date and the
payment amount”. [X 108:15-22]

///

³⁵ The 4/1/19 printout date of these Incentive Configurator screens bears no relationship to critical dates of the three transactions: 1/29/17, 1/5/18, and 4/23/16.

1 The “Submission” of a Claim

2 162. A franchisee’s transmission of a claim is not a “submission” until it is “received” by the
3 franchisor. The entirety of section 3065.1 is predicated on this concept: if a franchisor is not in “receipt”
4 of a claim, there is nothing to act on, and the transmission is incomplete and unsuccessful. [Veh. Code §
5 3065.1(a)] Similarly, in FCA’s incentive system, nothing is received by FCA until a dealer completes
6 submission of a claim by clicking the Save and Submit button at the bottom of the Incentives
7 Configurator screen no later than 90 days after the delivery date.³⁶ [III 240:21-241:7, VII 56:15-58:2, X
8 34:12-14]

9 163. After a dealer has reported a sale (within two days of the delivery date) and has selected
10 incentive programs on the Incentives Configurator for that VIN, the dealer must take one of the following
11 actions in order to complete submission of the claim to FCA before the deadline (no later than 90 days
12 following the delivery date). Without submission of a claim, it is not received by FCA to be “processed”
13 (approved and paid, or other disposition):

14 (a) If validation of the claim is required, the dealer must validate entitlement to payment by
15 providing supporting information. [Exh 22.10] Absent validating information, the Incentive Configurator
16 will not allow a dealer to submit a claim to FCA. The Incentives Configurator Reference Guide states:
17 **“Important!** Claims cannot be submitted without an accepted NVDR, and claims requiring validation
18 cannot be submitted unless they are validated as eligible” [Bold in original; Exh 22.017]; or

19 (b) If validation is not required, and even if all the other requirements have been met and the
20 program selected is “eligible”, the dealer must still click the Save and Submit button at the bottom of the
21 Incentive Configurator page. [Exh 22.017] If the dealer fails to take this last step, the claim has not been
22 submitted, nor has it been received by FCA.

23 164. FCA allows dealers 90 days after delivery date to submit an incentive claim. After 90
24 days, the claim is ineligible to be processed. It is within FCA’s discretion to grant or deny payment of a
25 claim if a dealer requests relief for an untimely-submitted claim. [Exhs 20.016, 21.016]

26 165. As noted above, dealers must print and retain the Incentives Configurator screen at the
27 _____

28 ³⁶ Section 3065.1 is silent regarding the time frame for submission of a claim. Here, FCA’s rules allowed dealers
90 days from sale date to completion and submission of a claim. Protestant has not contested the 90-day rule.

1 time of submission and keep it in the customer deal jacket. The screen may be printed as often as the
2 dealer chooses; the print date will always appear in bold at the top of the page. The dealer may change
3 information on the screen at any time---new information overrides old information, hence the importance
4 of printing if there is data input which is critical. Dealers are expected to keep the printouts in the
5 customer deal jackets. [Exh 22.012; IX 129:21-130:15]

6 *The “Pending Incentives List”*

7 166. During the 90-day period between delivery date and deadline for submitting claims, a
8 dealer can view a link to their pending incentives list via the Incentives Configurator screen. It is
9 arranged by VINs, showing all sold vehicles, with all the incentive programs that the dealer has selected
10 for that VIN, but has not successfully submitted. “The incentive configurator provides a variety of
11 statuses to a dealer to help them understand where in the process they are in the claim validation and
12 submission.” Programs in “eligible”, “not eligible” or “not validated” status all display on the pending
13 incentives list. While a claim is in any of those statuses, it has not yet been submitted to FCA for
14 payment processing. Each program (not each sale) may have a different status because each may be
15 handled differently by the dealer, and each has a different four-or five-digit Program ID as well as
16 Program Name. The dealer can look at this list “to determine if they need to take further action to submit
17 for [payment] or not.” [IX 133:19-23, 181:14-19, 209:24-210:11, X 114:24-25]

18 167. The pending incentives list is “a helpful tool for the dealer to be able to view what may be
19 outstanding. And then the dealer would have the responsibility to go through to determine if they would
20 like to proceed with submitting their claims. Or potentially something may have been selected in error,
21 they do still have the option to unselect the program, which will then drop that record from the pending
22 incentives list.” [X 112:21-113:4]

23 168. When a claim is displaying as “eligible” in the pending incentive list, that status indicates
24 the dealer has “made a selection [of a program]” and FCA has “deemed that [the dealer’s] claim ... is
25 ready to be submitted or transacted to FCA”. (Emphasis added.) FCA does not automatically process the
26 payment, however---it is still incumbent on the dealer to submit the claim when the dealer knows that all
27 the conditions for entitlement to the claim have been met. [X 114:4-12]

28 169. Even if a claim is displaying “eligible”, “the only way a dealer is actually paid is ...” by

1 clicking a button called ‘save and submit’ at the bottom of the Incentive Configurator screen which
2 “physically submits the claim to [FCA’s] incentives payment system”. [IX 132:11-24, X 113:11-13,
3 114:4-14] FCA expects that the dealership has “full documentation in the deal jacket” and has selected all
4 the incentives that they have passed on to the consumer before submitting the claim. [IX 176:9-18]

5 170. When a claim shows “not eligible” in the pending incentives list, this indicates “that the
6 dealer has selected the program, they’ve attempted to validate the program, but [FCA has] not been able
7 to validate that the data ... [is] eligible”. An example: “[p]erhaps a dealer selected a conquest program
8 [the eligibility-based program for selling an FCA vehicle to a previously non-FCA customer] and they
9 mistyped the 17 characters of the conquest VIN [the non-FCA vehicle] ..., we would mark it not eligible
10 for them and give them the opportunity to be able to clarify or update that information ...”. [X 114:13-
11 23]

12 171. When a claim shows “not validated” in the pending incentives list, this “indicates that the
13 dealer has simply selected the program but not yet done any work to validate the customer, nor have they
14 submitted the claim”. If, for example, “it’s an eligibility-based program and the dealer selected the
15 program but not yet validated it, it will display an error message or a warning message that says ‘not
16 validated.’ And then the dealer also has a hyperlink that they can click directly on the hyperlink to take
17 them to the incentive configurator for that particular sale.” [IX 133:24-134:5, 181:25-182:3]

18 172. The pending incentives link is only active for 90 days (from the delivery date reported by
19 the dealer). After 90 days, any claims on the pending incentives list that have not been changed from
20 being “eligible”, “not eligible” or “not validated” (i.e., have not been submitted by the dealer) disappear
21 from that list. [X 115:17-116:7] This reflects FCA’s policy that dealers must submit incentive claims
22 within 90 days of delivery dates. If they have failed to make the corrections or provide the validations
23 mentioned above within 90 days---even though they have reported the sale and may have started building
24 a claim in the Incentives Configurator---any later claim is untimely.

Weekly “Dealer Parts Statement”

25
26 173. The weekly “dealer parts statement” reports to dealers FCA’s actions during the preceding
27 week in regard to claims FCA has received from the dealer. It has “all of the transactions that happen[ed]

28 ///

1 that week ...” reflecting FCA’s weekly payment cycle, whether claims were paid, denied³⁷ or in some
2 other status. The first page is a summary of the actions taken under headings Program ID, Program Name
3 and Amount. The Amount column lists, in dollars, the credits (to the dealer’s account), debits (from the
4 dealer’s account) and “.00” (denials or nonpayment for various reasons). If paid, the Pay Date is stated.
5 [Exh 134.001-.014; IV 30:14-21, 31:3-8, IX 133:2-8, X 109:3-8]

6 174. If a claim was denied or otherwise not paid, three-digit codes printed next to the VIN
7 identifier explain the reasons: VIN submissions found to be either “inel/elig” are coded: examples are
8 “claim not submitted within 90 days or NVDR delivery date” (IG9); “claim to be rechecked in 90 days
9 for eligibility” (CCS); “no Chrysler Capital contract on file – claim denied” (ICS); and “NVDR delivery
10 date makes unit ineligible for program claimed” (I47). [Exh 134.001-.014; IX 196:9-12, X 17:13-20,
11 31:112-32:6, 42:20-43:8, 123:10-23]

12 **Dealer Remedies Following Denial of Incentive Claim**

13 175. Dealers receive denial information within about a week after submitting claims due to
14 FCA’s weekly payment cycle. Dealers may access denial information in the three places on
15 DealerCONNECT discussed above in paragraph 146.

16 176. Dealers may easily cure some denials by “simple corrections”: resubmitting a claim for a
17 sale which was mistakenly unwound, or one which was called a purchase but was really a lease or
18 correcting a VIN. [IX 135:20-136:7]

19 177. “They also could contact our call center for assistance. The call center could help provide
20 them with a description of what the general rejection or ineligible reason code was, and then they can
21 walk them through the steps to either correct the issue...-- or they can ask the dealer to submit their
22 documents for a manual review...” [IX 136:8-14]

23 178. If there is a manual review of a claim (if, for example, a dealer has asked for help through
24 FCA’s call center hotline and the claim is denied), FCA “would send the dealer in writing an e-mail
25 through DealerCONNECT to indicate the VIN, the program ID and the reason for why the rejection was
26 made.” [X 109:20-110:3]

27 _____
28 ³⁷ GM Dave Maxwell denied that the weekly “parts statement” included “denials”. [XIII 113:13-114:22]

1 179. Dealers may appeal a denial by asking for assistance from their business center “if they
2 feel that an exception should be made”, or they can raise concerns with the help desk. [IX 136:17-137:4]

3 180. “If they do have a concern, it would be **within that 90-day period** that we were
4 referencing in the Gold Book that we would expect them to reach back out to us to dispute any incentive
5 payment that they do not agree with.” (Emphasis added.) [IX 176:21-25]

6 181. If an incentive payment is charged back (unrelated to an audit), “the dealer may submit a
7 dispute to FCA US Assistance Center within ninety (90) days of the initial chargeback.” The Assistance
8 Center’s “Hotline” and FAX numbers are given as well as an email address. (This route for review for
9 charged back claims appears to be separate from the other dealer options discussed above.) [Exhs 20.016,
10 21.016; IX 140:13-20]

11 **Dealer Failure to Submit a Timely Incentive Claim**

12 182. The Gold Book states, in bold: “**Electronic claims submitted ninety-one (91) days or**
13 **more after the NVDR delivery date will receive an ineligible code and may not be paid.**” [Bold in
14 original; Exhs 20.016, 21.016] The Dealer Policy Manual makes a similarly worded statement, but states
15 that untimely claims “will not be paid.” (Emphasis added.) [Exh 19.045]

16 183. Dealers which fail to complete submission of an incentive claim within 90 days after
17 delivery date and attempt to do so thereafter receive an IG9 error message “to alert them to the fact that
18 they did not submit timely so their claim is not being considered for payment.” The claim will be locked.
19 [Exh 134.014; IX 141:8-23]

20 184. If a dealer discovers that it has failed to submit a timely claim, it may request review by
21 submitting the proper documents to FCA along with a “[l]etter on dealer letterhead with name, title, VIN
22 & program ID(s) the dealer is seeking payment for [and] explaining why [the] program was not claimed
23 within the 90 days.” SMG was given this information on May 27, 2016. [Exh 130.003]

24 **Santa Monica Group’s Allegations:**
25 **“Incentives Not Credited” – The “Browser Issue”**

26 185. Santa Monica Group alleges that FCA owes it \$252,542.72 in “incentives not credited”
27 dating from September 8, 2015, due to “the browser issue”. According to protestant, this is “[a]ny alleged
28 deficiency in ... [the submissions of SMG’s incentives] claims [that] was caused by FCA’s undisclosed

1 requirement to use Internet Explorer when submitting claims.” [Protest, pp. 3:27-28, 4:22-28] This being
2 so, protestant argues, FCA failed to comply with section 3065.1(c) in failing to provide SMG a
3 reasonable appeal process allowing it to cure any material noncompliance with documentation or
4 administrative claims submission requirements.

5 186. FCA has agreed that claims submitted to DealerCONNECT may not be “received” if
6 submitted through a web browser other than Internet Explorer.³⁸

7 187. Since becoming General Manager, Dave Maxwell has been exclusively responsible for
8 submitting and ensuring payment of incentives. [XIV 69:16-20]

9 188. Kayvan Naimi’s December 17, 2016 letter to FCA complained about SMG’s failure to
10 receive “tens of thousands of dollars lost in incentives in the system ...” The cause, he writes, was FCA’s
11 failure to disclose that the dealership must use “the most recent release of Internet Explorer Browser ...”
12 in order to validate and complete submission of incentive claims. “If any other browser is used, the data
13 input and more importantly the items uploaded will be lost completely ... the system would acknowledge
14 ‘Processing’ [but] this was not at all the case ...”. The information is not in the Gold Book, he writes, nor
15 is it “written down anywhere [in FCA material] ...” [Exh 247.002-.005]

16 189. Mr. Naimi’s December 17th letter further states that SMG discovered the explanation for
17 the incomplete validations and submissions through its own efforts---“our research pertaining to our
18 client incentive discounts ...” He writes that calls by SMG’s General Manager and Operations Director to
19 FCA’s Incentives Hot Line had revealed that it was necessary to use Internet Explorer in order for the
20 data to input or upload properly. [Exh 247.002-.005] The referenced calls were presumably ones made on
21 June 2, 2016 and December 2, 2016:

22 (a) General Manager Dave Maxwell had actually been given the browser information six and
23 one-half months earlier. On June 2, 2016, he was told by an agent at the Concentrix Help Desk to use
24 Internet Explorer 10+ to submit incentive claims. The agent’s notes stated:

25 “Dave Maxwell ... called in concerning: Dealer uploaded and submitted document [*sic*]
26 and are receiving a [*sic*] ineligible status. Agent advised dealer he is unable to view
27 documents. Dealer stated he is using either firefox/google chrome and PDF files. Agent
advised dealer to use internet explorer 10+ with PDF or JPEG file. Agent advised dealer to

28 ³⁸ Rulings on Objection to Requests for Production of Documents, 7/14/20, p. 2:22-23.

1 re upload documents and to wait till they receive status. Agent advised if documents are
2 ineligible to call back to find out if we are able to view documents.” [Exh 130.004]³⁹

3 (b) On December 2, 2016, Will Cashen [presumably the Operations Director] was told by an
4 agent at the Concentrix Help Desk the following:

5 “Chrome is [not] a supported browser. Agent advised dealer he will need to use IE10 or
6 higher ... Dealer will call back if he requires further assistance. Agent advised dealer case
7 would be escalated to Processing team for further review.” [Exhs 130.007, 132.010; X
8 107:9-19]

9 190. Santa Monica Group, a new FCA franchisee as of April 10, 2015, made its first sale of an
10 FCA product at an unknown time, but “after May 15th of 2015” according to Dave Maxwell, and during
11 Clay James’ tenure as General Manager, which ended June or July of 2015. [VI 94:15-20, 156:5-7, XIII
12 191:20-22]

13 191. A sale or lease to customer “Homayoon” on June 6, 2015, went through without a problem
14 with incentives or rebates paid, as did transactions with delivery dates onward from October 8, 2015,
15 including a sale or lease to Farinaz Naimi, SMG’s corporate secretary, on December 1, 2015 (with a \$675
16 incentive or rebate paid). Between June 6, 2015 and May 31, 2016, there were no fewer than 56
17 transactions for which SMG received incentive and rebate payments. [Exhs 141.005-.006, 202.002; XIII
18 191:23-192:23]

19 192. Lisa Humphrey’s testimony in regard to the 156 VIN transactions involving SMG’s
20 “incentives not credited” claims in Exhibit 129.031-187 established the following:⁴⁰

21 (a) There was no instance where FCA failed to comply with section 3065.1(a) through (f).
22 Examples of legitimate denials were “incompatible” programs---claiming both “conquest” and “loyalty”
23 incentives in the same transaction; “late submission” – more than 90 days past delivery date; and
24 “ineligible” – not financed through Chrysler Capital; and

25 _____
26 ³⁹ Although Dave Maxwell had used the “wrong” browser, he had still received accurate information. In fact, the
27 reason for the “ineligible” status message was that SMG had already successfully submitted incentive claims for
28 this VIN which had been paid on 4/28/16 and 5/12/16. Moreover, no claims on this VIN after this call were made.
[Exh 129.60; X 86:15-87.16, XIII 78:20-83:22]

⁴⁰ The full explanation of her review and the documents Ms. Humphreys reviewed is at Volume X 8:15-9:13, 26:1-
27:9.

1 (b) The great majority of the transactions showed the dealership received payments from FCA
2 for successfully submitted incentive claims. [X 32:6-67:14]

3 “Q. [MR. STREELMAN]: As with some of the other pages we have looked at, was
4 the dealership paid successfully on a number of their claims?

5 A. [MS. HUMPHREYS]: Yes, they were. They were paid successfully, and there
6 was no intervention that was required for those programs.” [X 42:1-6]

7 193. Therefore, it is a reasonable assumption that---from the beginning of the franchise---
8 protestant knew the proper browser to use to submit incentive claims. SMG did sell and lease vehicles,
9 and successfully validated and “submitted” incentive claims which were “received” by FCA, approved
10 and paid. [Exh 141.005-.014; XI 42:1-6]

11 194. Kayvan Naimi admitted, in a letter written on December 28, 2017, that “... hundreds of
12 submissions were executed uniformly and approved for funding ...”, but he contends that “FCA stands
13 that some submissions are not fit for approval. This reveals an inconsistency in the auditing process on
14 FCA’s side, and a lack of communication from the corporate offices.” [Exh 263.003]

15 195. Dave Maxwell’s explanation of why incentive claims were unpaid was the following:

16 “Q. [MR. STREELMAN]: Why would you say that the incentives are unpaid
17 because of a lack of knowledge of your staff?⁴¹

18 A. [MR. MAXWELL]: The collection -- the collection process, the submission
19 process and the fact that there is no – if it wasn’t clearly explained that there is no e-mail,
20 there is no letter, there is no text, there is no phone call, there is nothing that tells our staff
21 that these incentives are being charged back, so that would be the confusion is nobody tells
22 us. They just get taken out of your bank account.

23 Q. Well, I think you testified already that you were the one handling the sales
24 incentive submissions.

25 A. Submitting the incentives or at the time of sale reporting, and that is only one of
26 the processes in the long process to collect the funds, which would be fruition.

27 Q. You told us that you had the skills and capabilities to take an incentive
28 from submission to the bank account, did you not? That was your quote.

A. To review the documents, familiar with the process, familiar with the
documents to review.” [XIII 112:11-113:6]

196. As noted above, on June 2, 2016, Dave Maxwell received explicit information regarding
the proper browser to use to submit incentive claims from a Concentrix Help Desk agent; Will Cashen
was informed of the same information by the Help Desk six months later. This confusion speaks to the
dealership’s lack of organization and/or communication, not to FCA’s training or disclosures. [Exh

⁴¹ This refers to a May 21, 2017 email Dave Maxwell wrote to Gordy Nevers and others concerning a number of concerns the dealership was raising with FCA. [Exh 55.003]

1 130.4; XIII 78:20-83:22]

2 197. From the opening of the dealership, SMG successfully validated and submitted incentive
3 and PAP fund claims. The audit of the dealership's VIN records covered validated and submitted claims
4 from January to October 2016, all of which were paid. Dave Maxwell, hired by SMG in reliance on his
5 knowledge of Chrysler policies and practices, completed FCA's Incentives Configurator Course on
6 March 29, 2016, as did 25 other employees, all but one finishing in 2016 or 2017. On June 2, 2016, Dave
7 Maxwell received explicit information from Concentrix on the proper browser to use for submissions, as
8 did Will Cashen on December 2, 2016.

9 198. There is enough evidence, bolstered by the actions of FCA personnel such as Gordy
10 Nevers, Steve Weeks and Matthew Bullion, to conclude that SMG's dealership operations were less than
11 optimal, including management of staff and procedures to secure incoming cash flow from incentives and
12 PAP reimbursements. Many of SMG's expired claims were, no doubt, valid but for the dealership's
13 failure to complete timely submissions; some of the denied claims could have been timely fixed.
14 However, SMG's reliance on the browser issue as a basis for claiming relief for all unpaid claims is not
15 credible. It is not possible to determine when the corporation "knew" it had to use the Internet Explorer
16 browser to validate and submit incentive and PAP fund claims but here, it had the knowledge early in the
17 franchise. Section 3065.1 imposes responsibilities on franchisees, as well as according rights to them, and
18 time limits are an integral part of the incentive claim process in both the statute and FCA's rules.

19 199. When protestant failed to comply with FCA's 90-day submission deadline and pursued no
20 remedies FCA made available to it for untimely submissions, and failed to timely respond to denials or
21 disapprovals of submitted claims by following FCA's stated procedures for doing so,⁴² it has no remedies
22 available under section 3065.1.

23 **Protestant's Statutory Argument is Flawed**

24 200. Protestant alleges that "section 3065.1(a)-(e) requires FCA to provide Santa Monica a
25 reasonable appeal process and allow it to cure any material noncompliance with documentation or
26 _____

27 ⁴² It is unclear if SMG argues that the browser issue also impacted its receipt of FCA's disapproval or denial
28 notices. If so, it is not credible that SMG successfully submitted initial claims, but later encountered the browser
issue in regard to the same claims.

1 administrative claims submission requirements [per Veh. Code §3065.1(c)]. Here, FCA failed to provide
2 a reasonable appeal process ... and did not allow Santa Monica to cure any material noncompliance with
3 browser submission issues” which SMG “encountered”. [Protestant’s Post-Hearing Opening Brief, p.
4 65:23-27] Therefore, protestant argues, FCA’s denial of this appeal process precluded SMG from curing
5 its submission issues so that it did not receive payment for claims which, it implies, were valid under
6 FCA incentive rules.

7 201. To make this argument, it is necessary for protestant to re-write section 3065.1 by
8 ignoring subdivisions (a) and (b) of the statute. SMG’s argument relies exclusively on subdivision (c) of
9 section 3065.1, the responsibility of the franchisor to provide “a reasonable appeal process” to allow a
10 franchisee its right “to cure any material noncompliance” with “claims submission requirements”.

11 202. However, the rights of franchisees in subdivision (c) of section 3065.1 do not exist
12 independently.

13 203. Protestant’s argument fails because it ignores subdivisions (a) and (b) of section 3065.1,
14 which describe prerequisites necessary to a franchisee’s right to “a reasonable appeal process” to cure
15 ineffectual or late submissions. In regard to the claim of late submissions, protestant’s argument is “the
16 timeliness issue is something that should be subject to cure.” [XIII 32:23-33:6]

17 (a) A franchisor must have received a claim---the first sentence of section 3065.1(a)---absent
18 “receipt by the franchisor” of a claim, a franchisor has no knowledge of the claim and no obligation to
19 act, and a franchisee has no statutory rights.

20 (b) The franchisor must have reviewed the submitted claim and approved or disapproved it
21 and either paid it or notified the franchisee of disapproval with a specific explanation. [Veh. Code
22 3065.1(a)]

23 (c) If the franchisor fails to notify the franchisee of a disapproval within the time and in the
24 manner stated above, the claim shall be “deemed approved on the 30th day”. [Veh. Code 3065.1(a)]

25 204. It is only after the foregoing steps have been accomplished that a franchisee has a right to
26 a reasonable appeal process. Ignoring the first steps means ignoring that the franchisor also has rights
27 under the statute, i.e., the right to review the submitted claim to determine if it is eligible for payment
28 under its incentive rules. It also ignores the purpose of the appeal process, which is to allow the

1 franchisee “to respond to any disapproval [of a submitted claim]”, i.e., the franchisor’s “specific grounds
2 of the disapproval”. (Emphasis added.)

3 205. In statutory construction, the “plain meaning rule” is the starting point. “Words used in a
4 statute ... should be given the meaning they bear in ordinary use. [citations omitted.] If the language is
5 clear and unambiguous there is no need for construction.” (*Lundgren v. Deukmejian* (1988) 45 Cal.3d
6 727, 735; *accord, Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (2009) 171 Cal.App.4th 1088,
7 1093; *Mazda Motor of America, Inc. v. California New Motor Vehicle Board* (2003) 110 Cal.App.4th
8 1451, 1456)

9 206. A franchisee’s rights of appeal and cure may only be asserted in the context of the
10 statutory scheme the Legislature has enacted. Those rights may not be viewed in isolation, as protestant’s
11 argument requires. Protestant does not have the rights it asserts without the preceding statutory steps in
12 subdivisions (a) and (b) of section 3065.1.

13 207. Protestant’s argument runs into an additional statutory problem: the time limits in section
14 3065.1, reflecting the Legislature’s intent in enacting a statute governing Franchisor Incentive Programs.
15 “The goal of statutory construction is to ascertain and apply the intent of the Legislature. To determine
16 that intent, a court first looks to the statutory words themselves, giving to the language its usual and
17 ordinary import. The court construes statutory words in context, keeping in mind the statutory purpose.”
18 (*Holmes v. Jones* (2000) 83 Cal.App.4th 882, 888; *accord, Sonoma Subaru, Inc. v. New Motor Vehicle*
19 *Board* (1987) 189 Cal.App.3d 13, 20)

20 208. In section 3065.1, the Legislature has enacted a chronological process, once it has been
21 commenced by a franchisor receiving an incentive claim submitted by a franchisee. Not only is the
22 process chronologically legislated, with one action (or omission) building on a prior one, but the
23 Legislature has also, at every step in the process, mandated the minimum or maximum number of days
24 for both franchisors and franchisees to protect their rights and meet their responsibilities, plus a six-
25 month deadline for franchisees to file protests. These statutory time frames are clear and unambiguous,
26 and there is no need for statutory interpretation. “When interpreting statutes, we begin with the plain,
27 commonsense meaning of the language used by the Legislature. If the language is unambiguous, the plain
28 meaning controls. [citations omitted.] Courts will not interpret away clear language in favor of an

1 ambiguity that does not exist ... We decline defendant’s invitation to rewrite [the statute] to include a
2 limitation that does not appear in the text of the statute.” (*People v. Dunbar* (2012) 209 Cal.App.4th 114,
3 117)

4 209. In stating time frames (with consequences for not adhering to them) in section 3065.1, the
5 Legislature has shown its intent. *Sonoma Subaru, Inc., supra*, is on point: the Court affirmed the Board’s
6 refusal to consider a franchisee’s termination protest because it had not been timely filed (5 days late).
7 Even though the statute called for a “short filing deadline” (*Id.* At 20), and the franchisee had arguable
8 reasons for failing to file timely (*Id.* At 19-20), the Court declined the franchisee’s invitation to “imply a
9 ‘good cause’ exception to section 3060’s 10-day filing deadline” because to do so would “frustrate the
10 intent of the Legislature”. (*Id.* at 20) “[T]he Legislature’s obvious intent is to let the franchisor treat the
11 termination [of the franchise] as final and effective ... Sanctioning late filings would undercut that finality
12 and create uncertainty in the minds of franchisors as to whether they may treat their relationship with
13 unsatisfactory franchisees as concluded.” (*Id.* at 22)

14 210. Here, by stating time limits at every step in the process in section 3065.1, the Legislature’s
15 clear intent has been to ensure the expeditious processing and final resolution of incentive claims.
16 Finality is beneficial for both franchisee and franchisor. No “good cause” exception (alleged failure to
17 disclose proper browser) should be implied here to frustrate that legislative intent.

18 **Protestant’s Argument Lacks Evidentiary Support**

19 211. Protestant did not produce as evidence of its incentives not credited allegation, printouts of
20 Incentive Configurator screens contemporaneous with completed submissions. These screens---required
21 by FCA to be printed out by dealers and kept in customer deal jackets---are uniquely available only
22 to protestant. Without explanation, the contemporaneous screens are, for many of protestant’s claims,
23 missing, replaced by printouts made years after the transactions. This failure to produce and lack of
24 explanation raises the inference that the contemporaneous documents contained information detrimental
25 to protestant. The following is a selection of transactions (which protestant describes as similar to the
26 documents delivered to Gordy Nevers on July 12, 2017) with Incentives Configurator print dates two or
27 three years after the delivery dates:

28 ///

| | Customer Name | Exhibit # (with pages in evidence) | Last 5 of VIN | Delivery Date | Incentives Configurator Print Date |
|-------------------|---------------|---------------------------------------|---------------|---------------|------------------------------------|
| Pre-July 12, 2017 | | | | | |
| 1. | Florindo | 276.035 | 21092 | 11-14-15 | 4-5-19 |
| 2. | Kristin | 276.038 | 60492 | 11-29-15 | 4-4-19 |
| 3. | Franck | 276.013 | 32260 | 4-23-16 | 4-1-19 |
| 4. | Marketa | 276.223 | 14141 | 4-29-16 | 4-1-19 |
| 5. | Deren | 276.233 | 69079 | 5-20-16 | 4-1-19 |
| 6. | Victor | 276.088 | 73644 | 6-26-16 | 4-4-19 |
| 7. | Andrea | 276.523 | 20821 | 7-9-16 | 11-15-18 |
| 8. | Grecia | 276.061 | 51075 | 7-10-16 | 4-4-19 |
| 9. | Brett | 276.053 | 71181 | 9-20-16 | 4-4-19 |
| 10. | Jenny | 276.057 | 51700 | 9-23-16 | 4-4-19 |
| 11. | Kimberly | 276.065 | 50959 | 11-20-16 | 4-4-19 |
| 12. | Rosie | 276.005 | 43648 | 1-29-17 | 4-1-19 |
| 13. | Reginald | 276.050 | 73049 | 4-3-17 | 4-4-19 |
| 14. | Luke | 276.041 | 02762 | 4-11-17 | 4-4-19 |
| 15. | Rana | 276.044 | 93017 | 6-26-17 | 4-4-19 |

212. Replacement documents are unreliable---especially when accurate, contemporaneous documents either are, or have been, in protestant's sole possession:

“Q. [MR. STREELMAN]: Would you typically rely on an incentive configurator that has been run two or three years after the sale or lease transaction occurred?”

A. [MS. HUMPHREYS]: No. It would be concerning – I think that's probably the best way to describe it – if a dealer was going in years later and trying to pull up a configuration. It doesn't really seem necessary to have to do that unless something has changed. So we would typically be looking for the configuration proof at the time that the sale was conducted and at the time that the incentive claims were submitted.

Q. Have you seen examples in this case [in Ms. Humphrey's review of protestant's documents produced during discovery] where there's a configurator from 2017 for a VIN, another configurator two years later for the same VIN, but they're not the same?

A. Yes, I have. I've seen that several times.

Q. Why would that happen?

A. I'm not really certain, to be honest, why the dealership wouldn't have a configuration from the time of the actual sale. I did notice on some of the documents that things like delivery dates were changed, types of sale were changed, incentive programs that were selected were changed. So that would indicate to me that very likely the dealer did modify something within the sale, but I – it wouldn't make sense as to why that would occur, because if a dealer has reported the vehicle timely and submitted their claims timely, there really should be no reason to go back into their incentive configurator months or even years later to view it again.” [IX 130:16-131:20]

....

Q. Can things change in the configurator from when it was originally ran to, in this situation, three years later?

A. The only reason why it would change is because a key field related to the sale has changed. So either the delivery date has been modified, the type of sale has been modified, or the customer information, specifically their name or their address, has been changed.

Q. Who is responsible for making those changes and reporting them to FCA?

A. The dealership would be responsible.” [IX 177:1-12]

1 **The Misrepresentation of Evidence Precludes Consideration**

2 213. Protestant misrepresented the contents of Exhibit 276, as more fully described above in
3 paragraph 44. Throughout this proceeding, whenever Exhibit 276 was mentioned by protestant, it was
4 identified as similar to the papers delivered to Gordy Nevers on July 12, 2017, thereby implying several
5 things: that Dave Maxwell had not made or kept identical copies of the papers delivered to Gordy
6 Nevers, that Exhibit 276 closely replicated the papers delivered to Gordy Nevers, and that Exhibit 276
7 was limited to the VINs delivered to Gordy Nevers.

8 214. In fact, Exhibit 276 (and the list attached as Exhibit 3 to the protests) included 51 VINs
9 not delivered to Gordy Nevers. The 51 VINs represented \$75,325.00 of protestant’s total demand of
10 \$252,542.72. The transaction dates range from August 11, 2017 to September 22, 2018. The documents
11 in the Exhibit 276 binder were not similar, a fact which SMG knew or should have known when it
12 repeatedly described them as such.

13 215. SMG made no allegation in the protests that FCA violated section 3065.1 in regard to
14 these 51 claims. None were delivered to Gordy Nevers, the factual basis on which SMG relied in support
15 of its incentives not credited argument.

16 216. After the hearing, SMG disclosed that the documents in its Exhibit 276 “are not the same
17 as those provided to Mr. Nevers because they were re-printed at a later date ... Exhibit 276 contains ...
18 additional documents for vehicles added to Santa Monica’s internal pending incentives schedule
19 thereafter”. [Protestant’s Post-Hearing Opening Brief, 9:25-27, fn. 7] SMG gives no reason for adding
20 these internal pending incentives to the protests, or for misrepresenting them as part of the Gordy Nevers
21 delivery.

22 217. These transactions will be excluded from consideration in this proceeding. Protestant did
23 not allege that FCA violated section 3065.1 in regard to any transactions after July 12, 2017, nor did it
24 allege that FCA violated section 3065.1 in regard to any transactions which were independent of the
25 delivery to Gordy Nevers.

26 **SMG’s “Incentives Not Credited” Allegation –**
27 **The “Gordy Nevers Delivery Issue”**

28 218. At an unknown time, but presumably in the spring of 2017, Dave Maxwell and Gordy

1 Nevers (FCA’s former Head of Dealer Network at the California Business Center) discussed unpaid sales
2 incentive claims (not in the context of the audit) which the dealership felt should have been paid. Dave
3 Maxwell knew these were “overaged” claims, i.e., past the time for any review or appeal pursuant to
4 FCA’s rules or section 3065.1. [Exh 52.001-.002; IX 26:5-10, XII 98:25-99:5, XIII 109:6-8]

5 219. On May 15, 2017, Gordy Nevers emailed Dave Maxwell: “After a long series of
6 conversations, I have an avenue to pursue the overaged incentives. No guarantees, but we will get them
7 looked at. I will need the detail and backup for the claims and I will get them to the right people. When
8 assembled, let me know and I will either come by and pick-up or make other arrangements to have them
9 picked up.” [Exhs 54.001, 57.004]

10 220. On the same date, Dave Maxwell responded: “I will be able to provide you any type back
11 up requested” and, in a separate email, wrote: “I have a file with the configurations on my desktop. What
12 do you recommend for documents a copy of the deal screen and the configuration? If so I can get the
13 paperwork done quick.” [Exhs 54.001, 57.004]

14 221. On May 21, 2017, Dave Maxwell emailed Gordy Nevers stating, among other things, that
15 “[i]n addition I am still waiting for the format to collect our old incentives I am prepared to verify that
16 they are from a lack of knowledge by our staff. The claims are not false or fraudulent and should be paid
17 out. I may also suggest a factory training session for the Office staff.” [Exh 55.002-.003]

18 222. On June 5, 2017, Gordy Nevers emailed Dave Maxwell: “Circling back ... Yes the deal
19 screen and configuration.” On June 11, 2017, Dave Maxwell replied: “We [*sic*] are pleased to hear that I
20 have the configurators and deal screens. Is the detailed vin inquiry the same as summary?⁴³ [Exh 57.003-
21 .004]

22 223. Gordy Nevers agreed to pick up SMG’s documents at 7:00 PM on July 12, 2017 at the
23 dealership. Dave Maxwell was “running configurators and VIN details in these retail and lease
24 worksheets (as well as printing documents) to provide to Mr. Nevers ... up until the time [Gordy Nevers]
25 got there”. He was actually “printing the last few [configurators] upon his arrival ...” Dave Maxwell
26 recalled: “[H]e was catching a flight. I talked to him for maybe two minutes. Kayvan spoke to him for
27 _____

28 ⁴³ Gordy Nevers response, if any, is not in the record.

1 maybe five. I handed him all the documents and he flew to Detroit.” [Exh 57.001; XIII 131:4-12, 131:19-
2 132:1, 133:3-7]

3 224. It is uncontroverted that documents were delivered to Gordy Nevers on July 12, 2017.
4 However, there is no reliable evidence identifying them.⁴⁴Dave Maxwell testified that “[t]here were
5 probably, I don't know, 500 pages”---he described it as a “giant stack of paperwork that I just did.” [XIII
6 136:12-14, 20-21]

7 225. Dave Maxwell was evasive as to what documents he delivered to Gordy Nevers:

8 “Q. [MR. STREELMAN] Do you recall testifying⁴⁵ that you kept a copy of those
9 materials that you gave to Gordy?

10 A. [MR. MAXWELL: I kept the schedule of what incentives were not paid.”

11 Q. My question was, do you recall testifying keeping a copy of the documents you
12 provided to Mr. Nevers?

13 A. Yes, some of the documents. They do appear to be combined in one of these
14 exhibits. So, yes. I do recall testifying to that. I have a copy of the documents that were
15 given to Mr. Nevers.” [XIII 132:2-12]

16 226. And he was similarly evasive about how he kept copies of the documents:

17 “Q. [MR. STREELMAN] So just to clarify, you testified you kept a copy digitally
18 and on a memory stick of the documents that you gave to Gordy Nevers?

19 A. [MR. MAXWELL] So the memory stick was actually all of the deals that had
20 all of the consumers’ private information. We actually hired an outside service to provide
21 them, but they were to counsel. So what is on the memory stick, we hired an outside
22 company because the paperwork was just so much. So that’s what I was referring to as far
23 as the memory stick and the digital version of the paperwork. So maybe I wasn’t clear;
24 now I am.

25

26 Q. Did you keep a copy in hard form in the same stack that you handed him, or did
27 you just keep those on your computer?

28 A. There was so much paperwork, I kept it in hard form -- I am sorry, digital. All
that, that file was printed for Gordy and kept digitally.

Q. And that is the thumb drive that you saved it to as well?

A. Yes, sir.

Q. Did I read that correctly?

A. Yes, you did read that correctly. I confused the thumb drive with the actual deal
files.” [XIII 132:13-133:19]

227. After Dave Maxwell had delivered to Gordy Nevers “probably ... 500 pages” on July 12,

⁴⁴ Protestant admits that the documents in its Exhibit 276 (569 pages, selected pages only admitted into evidence) “are not the same as those provided to Mr. Nevers because they were re-printed at a later date ...”. They are similar, protestant asserts, and “are the same types of documents provided to Mr. Nevers.” However, “Exhibit 276 contains ... additional documents for vehicles added to Santa Monica’s internal pending incentives schedule thereafter”. [Protestant’s Post-Hearing Opening Brief, 9:25-27, fn. 7]

⁴⁵ Presumably, in a pre-hearing deposition.

1 2017, Gordy Nevers requested a spreadsheet and a cover letter. Matthew Bullion made the same request
2 in more specific terms. Dave Maxwell promised, but never delivered. Their correspondence is the
3 following:

4 (a) On September 18, 2017, Gordy Nevers emailed Dave Maxwell, asking “[d]o you have a
5 spreadsheet by vin on the claims stack you gave me? I also want to discuss a cover letter.” Dave Maxwell
6 responded: “Yes it’s off the schedule. I can build one. A cover sheet is easy.” Gordy Nevers then replied,
7 “[t]o make sure ... let me have Matt Bullion from [FCA’s Business Center] call you on the list, but I will
8 call you on the letter.” [Exh 60.001-.002]

9 (b) Dave Maxwell’s next email to Gordy Nevers, on September 19, 2017, stated, in part:

10 “We are willing to assist in any fashion.

11 I would expect a more swift decision on unpaid claims that were due to a lack of
12 information provided by FCA.

13 Specifically a browser specific software program.

14 ...

15 Are you paying us interest on the monies?

16 ...

17 I will be more than happy to provide additional Documnets [*sic*] if required.

18 It was alot [*sic*] of work to reconcile that schedule.” [Exh 60.001]

19 (c) On September 29, 2017, Matthew Bullion (FCA’s Region Incentives Manager, California
20 Business Center) emailed Dave Maxwell:

21 “As we discussed, could you please send me the following?

- 22 • Itemized list with VINs, programs, and dollar amounts requested
- 23 • Letter on dealer letterhead requesting review of these incentive claims

24 Please let me know if you have any questions.” [Exh 61]

25 (d) On October 25, 2017, Gordy Nevers emailed Dave Maxwell: “Any luck with Kayvan on a
26 cover letter?” The same day, Dave Maxwell replied: “Yes, Doing a spread sheet for Matt and trying to hit
27 VGP. Redundant as it is.” [Exh 64]

28 228. On December 28, 2017, Kayvan Naimi wrote a letter he captioned an Incentives Payments

1 Demand Notice to five FCA personnel. He wrote: “Since the short meeting with Gordy Nevers [on July
2 12, 2017], follow up communications from FCA, FCA’s Incentives Department, and the FCA Southern
3 California Business Office have all ceased. Recently, Matthew Bullion requested that all the previous
4 information provided to FCA be reassembled, in yet another format, for his use.” [Exhs 65.002, .005,
5 263.002, .005] In fact, FCA did follow up after the delivery, and Matthew Bullion did not ask for
6 reassembling of all information in the delivery. The misunderstandings in Kayvan Naimi’s letter reveal
7 the dealership’s apparent lack of organization and/or communication.

8 229. On March 7, 2018, Matthew Bullion emailed Dave Maxwell:

9 “I am currently in the process of reviewing your dealership’s request for payment of
10 incentive claims, and I have received deal files representing the incentives you are
11 requesting. To organize the information, can you please provide an itemized list by VIN,
12 program, and dollar amount requested? This will allow me to better understand what you
13 are asking for and to have a conversation with the team in Auburn Hills about the claims,
14 some of which are more than a year old. In addition, have you had any discussions or
15 opened any cases with the FCA incentives helpdesk regarding these claims?

16 I have attached a template that can be used to organize the information. Please let
17 me know if you have any questions.” [Exh 71.001]

18 230. There is no evidence that Dave Maxwell sent an itemized list of the VINs or a cover letter
19 from Kayvan Naimi to either Gordy Nevers or Matthew Bullion.

20 231. Similarly, there is no evidence supporting Dave Maxwell’s testimony that “[t]hese items
21 exactly, itemized list of VIN numbers, programs and dollar amounts requested were handed to Mr.
22 Nevers”, that a “detailed schedule ... went with the giant stack of paperwork that I just did.” “[I]t was
23 very clear that I spent hours producing documents. That was one piece of paper ...”. [XIII 136:12-14, 19-
24 20, 142:2-4] Referring to the spreadsheet, Dave Maxwell testified, “I thought they had it. They wanted it
25 in a different format. I do believe Matt Bullion did send some kind of format.” [XIII 135:16-18]

26 232. Presented with Exhibit 276, he testified:

27 “Q. [MR. STREELMAN] ... [L]et’s go to your Exhibit 276.

28 A. [MR. MAXWELL] 276. What book, sir? Oh, I have it, yes, sir.

Q. Okay. Do you have a stack of hundreds of pages of documents in front of you?

A. Yes, sir.

Q. And tell us where this schedule is that you supposedly provided.

A. Where the schedule is? The schedule is at the office. It is one I use to build this
on numerous occasions. The schedule has never changed. It has been the basis to get the
information because there are unpaid claims.

Q. I am asking you to look at the material that you are claiming supports the claims

1 in the material you gave to Gordy, and I am asking you to show us where it is.

2 A. Yes, sir. The information I gave to Gordy is here. The cover sheet is just the
3 schedule that I can print at any given moment because it is our system, Reynolds &
4 Reynolds.

5 Q. It is not in this exhibit, is it?

6 A. No, sir, it is not.” [XIII 136:23-137:19]

7 233. Both Gordy Nevers and Matthew Bullion also asked Dave Maxwell for a “cover letter” or
8 “letter on dealer letterhead requesting review” from the Dealer Principal. No letter was ever produced.
9 This is not an inconsequential request: these were overaged claims, i.e., ones which could not be
10 reviewed or appealed under either section 3065.1 or FCA’s rules. This is FCA policy, previously
11 explained to SMG on May 27, 2016: a dealer may request review of an overaged claim by supporting it
12 with a “[l]etter on dealer letterhead with name, title, VIN & program ID(s) the dealer is seeking payment
13 for [and] explaining why program was not claimed within the 90 days.” [Exh 130.003]

14 **Analysis of the “Gordy Nevers Delivery Issue”**

15 234. Undisputed facts of the Gordy Nevers delivery issue speak for themselves. After the
16 delivery of 500 pages to Gordy Nevers on July 12, 2017, the parties communicated sporadically over the
17 next nine months. Many of the emails were requests by Gordy Nevers and Matthew Bullion to Dave
18 Maxwell for a summary or a schedule with more information about individual claims, and for a cover
19 letter from the Dealer Principal requesting the review, with Dave Maxwell replying that he would
20 provide a summary and later asserting that one had been given to Gordy Nevers in the original delivery.

21 235. No evidence was presented by either party of the final chapter of this story, and no
22 conclusion may be implied from the facts in evidence.

23 **Protestant Has No Cognizable Claim in the “Gordy Nevers Delivery” Issue**

24 236. Protestant alleged that it “provided FCA additional supporting documentation or
25 information purporting to rebut the disapproval, attempted to cure noncompliance relating to the claim, or
26 otherwise appealed denial of the claim. Protestant made multiple efforts to submit such documentation
27 including hand delivering the supporting documents to FCA’s representative, Gordy Nevers, on July 12,
28 2017. Thereafter and to date, FCA failed to provide Santa Monica a written notification of the final denial
within 30 days of completion of any alleged appeal process stating ‘Final Denial’ on the first page.”

[Protest, p. 5:11-17]

1 237. Protestant was unable or unwilling to substantiate its allegation: it produced no reliable
2 evidence of the papers which were delivered to Gordy Nevers on July 12, 2017, most of which were
3 uniquely in its possession. Protestant gave no explanation for its failure to do so, instead producing
4 “similar” documents (protestant’s description).

5 238. The facts of the Gordy Nevers delivery fail to support SMG’s allegations. Instead, the
6 following conclusions may be drawn:

7 (a) Sometime after July 12, 2017, at least a cursory review of the papers which Dave
8 Maxwell had delivered to Gordy Nevers was done and a determination made that whatever information
9 in the papers that might have supported SMG claims could not be reasonably evaluated without SMG
10 preparing a spreadsheet or a schedule breaking out individual claims identified by VINs, Program IDs
11 and dollar amounts claimed for each. This is not only a practical concern, but also consistent with FCA’s
12 rules regarding dealer complaints and inquiries.

13 (b) The delivery consisted of various documents from SMG’s records without sufficient
14 organization, identification and summarization to allow FCA to reasonably evaluate the papers.

15 (c) Many, if not all, of the papers were records only available from customer deal jackets in
16 protestant’s possession, and not otherwise available to FCA.

17 (d) No spreadsheet, schedule or summary of any kind was prepared or ever existed, nor was
18 one included in the papers delivered to Gordy Nevers, despite Dave Maxwell’s testimony to the contrary.

19 (e) Dave Maxwell knew, or should have known, that without a spreadsheet or schedule, it was
20 not reasonably possible to evaluate SMG’s claims.

21 (f) SMG failed to respond to requests by FCA personnel to provide a spreadsheet or schedule
22 with the requested information, as well as a cover letter from Dealer Principal Kayvan Naimi.

23 239. FCA was under no obligation, either pursuant to section 3065.1 or its incentive rules, to
24 review the papers or to communicate with SMG concerning the Gordy Nevers delivery on July 12, 2017.

25 240. Protestant’s mere allegations of delivery, unsupported by facts and failing to show a nexus
26 between the delivery and FCA’s failure to comply with section 3065.1, are insufficient to grant it relief.

27 **The Jurisdictional Issue**

28 241. Among other statutory powers and duties, the Board’s jurisdiction is to “[h]ear and decide,

1 within the limitations and in accordance with the procedure provided, a protest presented by a franchisee
2 pursuant to [enumerated sections, including section 3065.1].” [Veh. Code § 3050(c)]

3 242. And, recognizing that dealers have disputes beyond the jurisdiction of the Board, the
4 Legislature codified the following: “[n]otwithstanding subdivision ... (c), the courts have jurisdiction
5 over all common law and statutory claims originally cognizable in the courts. For those claims, a party
6 may initiate an action directly in any court of competent jurisdiction.” [Veh. Code 3050(e)]

7 243. In regard to the Gordy Nevers delivery issue, protestant has been deprived of no statutory
8 right nor has respondent failed to comply with any statutory responsibilities. Under no interpretation of
9 section 3065.1 is it possible to articulate a statutory right of SMG to have FCA perform an independent
10 review of overaged incentive claims.

11 244. The Board does not have jurisdiction to consider and resolve all common law and
12 statutory remedies; it may only hear and consider protests within the limitations in section 3065.1. The
13 Board does not have “... broad authority to resolve distributor-dealer disputes ... the delegation of
14 greater powers to the Board would violate the judicial powers clause of the California Constitution.”
15 (*Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corporation, U.S.A.* (2013) 221 Cal.App.4th
16 867, 878-879, citing *Hardin Oldsmobile v. New Motor Vehicle Bd.* (1997) 52 Cal.App.4th 585, 598)

17 245. SMG’s remedy, if any it has, is to pursue it by “initiat[ing] an action directly in any court
18 of competent jurisdiction.” [Veh. Code § 3050(e)]

19 **THE PROMOTIONAL ALLOWANCE PROGRAM (PAP)**

20 **FCA’s Promotional Allowance Program and Procedures**

21 246. The “Chrysler Promotional Allowance Program” (PAP) encourages dealers to advertise in
22 local media by underwriting certain advertising costs which the dealerships incur---“[t]he goal of the
23 program is simply to encourage dealers to advertise [FCA] products and ultimately help drive sales.” It is
24 a dollar-for-dollar reimbursement to dealers for their advertising bills. Dealers volunteer for the program,
25 to “utilize their PAP funds”. [Exh 23.004; VIII 13.13-14:4]

26 247. A week or so before the first of each month, FCA sends to participating dealers PAP
27 information and program rules for the coming month. Detailed Advertising Rules are on the PAP
28 website, but parts of the monthly summary vary each month, “depending on what new news needs to be

1 announced”. For example, the April 2015⁴⁶ PAP email discussed the “logo requirements” for a limited-
2 time campaign called Award Season Event, since local and corporate advertising must carry the same
3 logos and event messaging to convey “an aligned theme across all of the advertisements”. And, several
4 years ago, “new media types” were authorized for payment. [Exh 23.001-.002, .008; VIII 15:10-17:1,
5 112:3-18]

6 248. The PAP website is accessed by dealers through DealerCONNECT. “It is on that website
7 ... that the dealer interacts with the PAP fund system.”⁴⁷ (Emphasis added.) [Exh 91.007; VIII: 28.9-16;
8 52:19-53:6]

9 249. Hot links on the PAP website home page connect participating dealers to Program Rules,
10 Online Tutorial, FAQ, and Contact Us. Another hot link (the Dealer Home Page) guides dealers to their
11 own home pages. [Exh 91.007; VIII 28:7-29:11]

12 250. FCA has “a support staff that is there to answer questions for dealerships [about the PAP
13 program generally and the submission or appeal of a claim] via e-mail, phone and chat, and they are there
14 12 hours a day.” [VIII 36:20-37:1]

15 251. Additionally, “Chrysler highly recommends utilizing the Program Headquarters’ [*sic*] no-
16 charge pre-approval services prior to running any advertising. Chrysler Program Headquarters can
17 provide advice on the application of the advertising rules to dealer advertising ... giving dealers
18 assurance that their advertising content will be eligible for reimbursement.” [Exh 23.007]

19 252. Each participating dealer accrues⁴⁸ PAP funds monthly “based on new car⁴⁹ sales for the
20 month” [the “accrual period”]. Once accrued, a participating dealer has available PAP funds of a specific
21 dollar amount to be spent on advertising. To avoid its PAP funds expiring, the dealer must spend its
22 allocated funds on advertising during the two months following the accrual month [the “spend period”].
23

24 ⁴⁶ The April 2015 PAP email went to dealers on March 20, 2015. [Exh 23.001]

25 ⁴⁷ Exhibit 91.007 is a screen shot depicting four pages of the PAP website, each of which is accessed in order by
26 clicking on a link. Dealers see the PAP website home page, which shows the links mentioned above, including one
27 to their own Dealer Home Page. In the exhibit, protestant’s PAP home page is shown. [VIII 28:9-11]

28 ⁴⁸ “[A]n accrual ... is an allowance. It is a dollar amount that a dealer generates based on their sales for a given
month. That amount is made visible and known to dealers, and it is populated for them. And that is the maximum
threshold that FCA would reimburse against, assuming approved claims are ... submitted and approved.” [VIII
18:8-23]

⁴⁹ Only certain Types of cars qualify for credit.

1 Even after the dealer meets the spend period time limits, it also must claim reimbursement “no later than
2 two months after the last day of the month in which the advertisement was aired or published; the
3 billboard advertising was installed; or the direct mail piece was mailed.” A dealer therefore has 60 days
4 or more from the month in which it advertises to submit a claim. [Exh 23.004, .007; VIII 17:2-21:9,
5 66:12-16, 67:11-13]

6 253. “Generally, dealers have the ability to authorize agents to submit [PAP] claims on their
7 behalf.” If FCA denies the claim, both the dealer and the “submitter of the claim” receive the denial.
8 [VIII 111:17-112:2]

9 254. Making a PAP claim is simple and straightforward: all that FCA needs to approve
10 payment is documentation of the advertisement and a paid receipt. Dave Maxwell recognized that “the
11 PAP claim ... is basically the bill from the person you’re spending the money with.” [XI 58:9-11]

12 255. “[C]laim[s] must be postmarked, submitted by fax or received electronically by the
13 Chrysler Promotional Allowance Program Headquarters” (electronic submission is accomplished by
14 using the “Submit a Claim” hot link on the PAP website home page, as well as the “Submit Proof of
15 Payment” on the dealer’s PAP home page). Each media type (e.g., TV Spot, Internet Ad, Magazine) “has
16 different requirements as far as the documentation that is necessary in order to review the claim”. [Exhs
17 23.004, .007, 91.007, 92.002; VIII: 29.12-17, 45:24-46:3]

18 256. After receipt of all required documentation, including paid receipts, “Headquarters
19 processes claims within approximately five business days”, with a turn-around time which varies from
20 seven to 10 days. If approved, “FCA US LLC will reimburse dealers for approved claims via a credit to
21 [the dealer’s] Dealer Parts Account every other week, on or about the 2nd and 4th Tuesday of the month.”
22 [Exhs 23.004, .007, 91.007; VIII 35:10-13, 120:12-14]

23 257. FCA assigns a six- or seven-digit “Claim ID” number to each submitted PAP claim and if
24 more than one ad is part of a claim, an “ad ID” is also assigned to each; both are essential identifiers,
25 needed to locate either a particular claim or a particular advertisement. [VIII 45:17-23]

26 258. If a dealer fails to advertise or make a claim or submits claims which are “ineligible or
27 don’t follow the guidelines ...”, its PAP funds for that month will “officially expire” (or, “go unutilized”)
28 five months after the accrual period. “Expired PAP funds ... [are those] which, based on the accrual date,

1 there is no longer the ability to submit claims on time and/or submit appeals on time based on the
2 timelines ... in the program rules.” [Exh 23.007; VIII 40:13, 53:22-54:1, 108:1-16]

3 259. There are several ways in which PAP funds may expire:

4 “A. [MR. O’HARA]: PAP funds can expire if a dealer chooses not to utilize them,
5 period, and time passes and the funds expire ... PAP funds can also expire to the extent a
6 dealer personally utilizes their funds, but does not utilize all of them. And then, you know,
7 to the extent -- so it is based on the dealer’s behavior, I think, ultimately is what determines
8 whether or not the funds -- the funds expire, you know, with which route.

9 Q. [MR. CLOUATRE]: Could the funds also expire if the dealer didn’t make a
10 claim against them, or if they did make a claim they didn’t claim them correctly?

11 A. Yeah. So to the extent they didn’t make a claim against them, to me that is their
12 choice to not utilize the funds. To the extent they submitted claims that are ineligible or
13 don’t follow the guidelines and they do not have other claims that do follow the guidelines
14 that fully exhaust those claims, they would also expire.” [VIII 107:15-108:16]

15 260. The Current Status of a claim “updates as soon as the decision on the review happens. So
16 whether it is approved, declined, paid, that’s always there for the dealer”. [Exh 91.007; VIII 23:19-23,
17 35:17-36:5] In addition, dealers are notified of approval or denial via a “true email” to the PAP contact
18 information the dealer has provided. [VIII 23:15-24:4, 105:19-106:3]

19 Q. [MR. CLOUATRE]: “You testified on direct that a dealer receives an e-mail
20 notification whenever a PAP claim that has been submitted is accepted or denied; is that
21 right?

22 A. [MR. O’HARA]: Yeah. I believe they probably get an abundance of e-mails with
23 status changes on the PAP claim.

24 Q. And those e-mails go to the e-mail that the dealer has on file, I think you
25 testified?

26 A. Yeah, it goes to multiple individuals at the dealership that are within the site, as
27 well as the submitter of the claim.” [VIII 105:19-106:3]

28 261. Claims may be declined for late submission, or for timely submission but missing required
documentation. If the amount of a claim, even if it is a “valid claim”, exceeds the PAP funds allocated to
the dealer for that month (“insufficient funds”), reimbursement will be declined. Similarly, a claim may
be declined for “ineligible media”, or other ineligibility under PAP program rules. During the process,
claims may be declined either by a PAP “auditor” (also referred to as a “claim reviewer”) who manually
reviews them, or via the program’s automatic “system control”. [Exh 23.007; VIII: 21:10-14, 58:9-12,
59:19-24, 61:4-8, 71:6-20, 77:9-16]

262. If the Current Status of a claim shows non-paid on the PAP screen, information in the
table on the screen notes the reason (e.g., “insufficient funds”, “declined”) and, if there is time for a
dealer to appeal, a red Submit Appeal hot link appears and, if clicked, will open a red-bordered box for

1 the dealer to use to appeal. “[I]f [dealers] have evidence that the decision was incorrect, they can, you
2 know, write that here, attach the documents to prove it and it would be reviewed through our appeal
3 process.” [VIII 34:13-22] A dealer may also use the Appeal a Claim links on both the PAP website home
4 page and the dealer home page---“we try to put [the appeal form] everywhere on the site for easy access”.
5 [Exh 91.007; VIII 24:10-16, 30:10-22, 34:8-35:7] An appeal form and documentation may also be
6 postmarked or faxed to Chrysler Program Headquarters. [Exh 23.007; VIII 87:15-20]

7 263. A dealer must appeal “within 30 days of receipt of that notification of denial ... That’s
8 FCA’s rule. That is FCA’s deadline in order to review any appeals.” [VIII 21:24-22:3, 24:5-9, 66:12-16,
9 88:4-8]

10 Q. [MR. CLOUATRE]: “If the dealer submits, however, a timely claim, does the
11 dealer have an opportunity to appeal that denial of the timely claim?

12 A. [MR. O’HARA]: They do. They do, yeah. Dealers have the opportunity to
13 appeal claims. We have another, you know, 30-day timeline for dealers to appeal declined
14 claim decisions and rectify it.” [VIII 21:15-21]

15 264. If a claim is not timely filed, it is auto-declined. “The dealer can always submit an appeal
16 within 30 days of the ad decline date, but they would have to rectify the original reason for decline ...”.
17 Justification for a late submission could be approved as a “one-time exception” or because of
18 “extraordinary circumstances”, as long as the appeal was timely filed. [VIII 80:1-6, 81:21-82:6, 83:4-19,
19 85:9-86:1, 98:18-100:8]

20 265. Links to both current and historical PAP claim information, broken down in detail, are
21 found on the dealer’s home page.⁵⁰ Examples are View Claims/Ads, View Accruals, and Proof of
22 Payment Claims. [Exhs 23.007, 91.007] Clicking on View Claims/Ads populates a table detailing the
23 dealership’s claims submitted within the time frame noted at the top of the table. It informs dealers of the
24 Current Status of each claim, each identified by the unique six- or seven-digit Claim ID number, start/end

25 ///

26 ///

27 ///

28 ///

⁵⁰ Other links include “View Reimbursement Report”, “Pre-Approval & Claim Activity”, “Current [PAP fund] Balance”, “Historical [PAP fund] Balance”, and “Current [Accrual] Balance”. [Exh 91.007]

1 date, media type and source, eligible ad cost,⁵¹ and date and amount of PAP funds paid to the dealer.⁵²

2 [Exh 91.007]

3 266. Until April 15, 2020 (when FCA did a “refresh” of its PAP website), a dealer could access
4 the backup for all its historical PAP claims information going back 9 or 10 years (to the time FCA
5 initiated the program). Currently, a dealer may access this claim information on the PAP website back to
6 January 2018. [Exhs 23.007, 91.007; VIII 109:14-110:12, 114:8-21]

7 **Santa Monica Group’s PAP Claims**

8 267. Santa Monica Group is demanding \$53,893.58 for unpaid Promotional Allowance
9 Program (PAP) funds for 13 “ad runs” in 13 months: December 2015, January 2016 to August 2016,
10 October 2016, April 2017, July 2017 and June 2018. The 13 line-items were listed in an attached exhibit
11 with captions: Accrual Period, Ad Run Start Date, Ad Run End Date and Expired with dollar amounts
12 claimed. [Protest, pp. 5:20-6:28; Exh 4 to Protests]

13 268. SMG made two allegations in the protests: (1) FCA failed to disapprove protestant’s PAP
14 fund claims within 30 days of receipt and therefore the claims are deemed approved per section
15 3065.1(a); and (2) when its PAP fund “claims were not allegedly submitted in a timely manner, [its] later
16 submission” supplied rebuttal documentation or information, attempted to cure noncompliance, or
17 otherwise appealed denial of the claims. [Protest, pp. 5:20-6:28]

18 269. Protestant’s allegations make no sense: If FCA failed to timely disapprove the claims, as
19 SMG alleges, then there would be no need for SMG to later submit documentation or information
20 rebutting, curing or appealing timely disapprovals by FCA of the claims. If SMG did not (“allegedly”)
21 submit timely claims, then statutory remedies are unavailable to it.

22 270. Dave Maxwell prepared the list of PAP claims alleged in the protests. [I 184:24-185:18,
23 XIII 16:6-17] In his opinion, SMG’s problem with PAP submissions was the browser issue: “I do
24 believe, once again, the same server or issue may have come into play, because there is some
25 documentation that needs to be downloaded in order to get your money back.” [I 186:13-20]

26 _____
27 ⁵¹ “Eligible ad cost” is the amount the dealer submits, which may not always be reimbursed in full. [Exh 23.007;
28 VIII 33:2-6]

⁵² Paid PAP claims also appear on the dealer’s parts statement, although the dates of posting may be slightly
different, since the latter uses a “weekly batch process”. [VIII 33:7-34:2]

1 Q. [MR. MAYVILLE]: “Mr. Maxwell, are there claims here that have been
indicated as denied?

2 A. [MR. MAXWELL]: Declined, auto declined, yes.

3 Q. Okay. And what happened in the time of these declines, if you know?

4 A. Downloading of the documentation that you have to submit or different people
have to submit on behalf of the dealership to become reimbursed.” [XII 200:20-201:2]

5 Q. [ALJ WOODWARD HAGLE]: “What is your opinion the reason why these
[PAP] funds expired?

6 A. [MR. MAXWELL]: Submission transmission. The transmission of the
submission of the documents is my opinion, once again, tying into the browser issue in my
opinion.

7 Q. So would you describe the browser issue?

8 A. So Chrome is the browser that we would normally use at the dealership, and it
requires now – basically it was announced on DealerConnect. Under my dealership it was
published on 12-11-2020 --

9 Q. Wait a minute. Mr. Maxwell, describe your problem with the browser issue.

10 A. The submissions wouldn’t go through due to wrong browser being used.” [XIII
19:11-24]

11

12 Q. [ALJ WOODWARD HAGLE]: “When did you get the first piece of knowledge
that there was a browser issue in submitting PAP claims?

13 A. [MR. MAXWELL]: That would have been the e-mail from the help desk, and I
believe it was -- I would have to refer to the document.

14 Q. I didn’t ask you -- I did not ask you how. I asked you when.

15 A. I am guessing ‘18.

16 Q. That was when you first got knowledge that there was a browser issue in regard
to submission of PAP funds?

17 A. That was -- that was confirmed the first confirmed confirmation was, I believe,
in ‘18 through an e-mail from the help desk.

18 Q. That was the first you knew of a browser issue?

19 A. Verified. Always had concern of a browser issue, but couldn’t pinpoint it to that
specific issue.” [XIII 20:25-21:16]

20 271. Dave Maxwell also testified that he was unable to access any other information from
21 FCA’s system regarding the PAP claims listed in the protests:⁵³

22 Q. [MR. MAYVILLE]: “Mr. Maxwell, you were saying -- were you able to pull
any other claim data about claims that were submitted for these periods of time [December
2015 to June 2018] from FCA’s system?

23 A. [MR. MAXWELL]: So historical data in their system is somewhat sporadic
depending on what -- what information you need to either provide the consumer or
yourself. Historically, you can go back two years on this information of recent. Not maybe
at this juncture, but two years data collection is all that’s readily available.

24 Q. Okay. And so were you able to pull claims submission data for the years in
2015, ‘16, ‘17, and ‘18 that are listed on this document [protestant’s list of PAP claims
alleged to be owing]?

25 A. No, sir. I merely put the funds that were not paid.” [I 185:23-186:12]

26 ///

27 _____
28 ⁵³ In fact, complete historical data regarding PAP claims was available to dealers online until April 2020. The
protests were filed in January 2020. [VIII 109:14-110:12, 114:8-14]

1 272. At Santa Monica Group, “numerous people would submit the claims ... you would have
2 outside service[s], as well as people that worked in the office submit the PAP claim[s] ...”. Dave
3 Maxwell clarified that the “outside services [which] could submit for PAP funds ... [were] Spectrum,
4 Cars.com, Autotrader, I believe Edmunds. And then I hired a gentleman to also assist, an outside service
5 to assist with that function as well.” Dave Maxwell recognized that “the PAP claim ... is basically the bill
6 from the person you’re spending the money with.” [XI 58:4-59:6, XII 192:2-4]

7 273. During the months listed in the protests, protestant successfully submitted and was paid
8 for PAP claims, and it also appealed an unknown number of PAP claims “that were paid out, and those
9 appeals were approved because they fully resolved the issues originally identified in the claim and were
10 submitted timely.” One appeal was not successful because submitted outside of the appeal deadline.
11 [Exh 91.009; VIII 48:24-49:4; 51:13-52:2]

12 274. On August 4, 2016, Steve Weeks, FCA’s Area Sales Manager for LA North, made an
13 email “[r]equest for a one-time PAP payment for Santa Monica CJDR” to an FCA employee, Robert
14 Vinson. The email read, in part, the following:

15 “[W]e are seeking to get some expired PAP funds paid for [SMG which] ... has experienced
16 numerous problems with cash flow and staffing ... [SMG] was doing a good job of collecting their PAP
17 money in their first few months of operation until one of their accounts clerks in charge of PAP had to
18 resign They had some television advertising claims lapse and did not receive payment due to late
19 submission. The request would be for a one-time payment on these expired claims. They have systems in
20 place now [to] collect their PAP monies in a timely fashion ...”. (Emphasis added.) The email listed four
21 PAP claims totaling \$24,998, from December 2015 to April 2016. “There are some missing docs on the
22 last April claim. I have instructed the appropriate person at the dealership to submit those ASAP ...”.
23 [Exh 31.001]

24 275. No evidence was presented by either party of actions, if any, following Steve Weeks’
25 email request, and no conclusion may be implied from the facts in evidence.

26 **Santa Monica Group has Failed to Produce**
27 **Evidence Sufficient to Support its Demand for Reimbursement from**
28 **FCA’s Promotional Allowance Program (PAP)**

276. In fact, SMG has no cognizable claim for PAP fund reimbursement. It is not an

1 unreasonable inference that protestant alleged the \$53,893.58 claim in hopes of finding evidentiary
2 support for it during the litigation process.

3 277. SMG’s brief descriptions in its list of the 13 “ad runs” were too sketchy to be identified.
4 Essential but undisclosed information known to SMG include the six- or seven-digit Claim ID number
5 and the seven-digit ad ID number which FCA assigns to received PAP claims; both are unique identifiers.
6 An ad ID is necessary if a dealer submits one claim but within that claim include multiple media types,
7 the claim has to be broken down in order to fully review it and either approve it or decline it. [Exh
8 92.002; VIII 45:18-23]

9 Q. [MR. CLOUATRE]: “... [w]hat is not contained in the data on [protestant’s list
10 of PAP claims alleged to be owed by FCA] that would help analyze Santa Monica’s
11 allegations?”

12 ...
13 A. [MR. O’HARA]: To understand the allegations, I would need claim numbers to
14 understand what’s actually in question. At the moment, I read this to be just a list of
15 expired funds labeled expired, which is part of our program. Outside of that I don’t have
16 much visibility just via the spreadsheet Nothing on this spreadsheet would tell me
17 anything about claims that were submitted during this time period.” [Exh 91.007; VIII
18 39:5-21]

19 ...
20 Q. “Can you tell whether or not the dealership submitted claims in these amounts
21 for these dates?”

22 A. Nothing on this spreadsheet would tell me anything about claims that were
23 submitted during this time period.” [VIII 39:17-21, 40:23-41:2]

24 ...
25 Q. “Does the chart [protestant’s list of PAP claims] ... indicate whether any claims
26 were appealed and declined by -- appealed by the dealership and declined by FCA?”

27 A. This does not.

28 Q. Does the date on [protestant’s list of PAP claims] ... indicate that the dealership
is entitled to the amounts listed in the expired column?

A. This does not.” [VIII 41:14-21]

21 278. Christopher O’Hara prepared a spreadsheet based on SMG’s list of the dates of the 13
22 line-items of unpaid PAP claims in the protests. “[I]t is a spreadsheet download of all declined or
23 partially paid claims during the complete ad period ... this is the full -- the full view of those claims ... It
24 is a “spreadsheet [that] was pulled to try to identify anything that did not get fully paid ...”. [Exh 92.002;
25 VIII 43:1-6, 9-13, 46:13-14]

26 Q. [MR. CLOUATRE]: “[W]hat was the point in you trying to figure this out or
27 trying to do it?”

28 A. [MR. O’HARA]: I didn’t have a lot of information. So I was trying to identify
any reason why the amounts listed ... were in dispute, and so this was my best stab at
identifying where the dealer may have had disputes or concerns.” [VIII 43:7-13]

1 279. “[T]he [PAP] system will automatically reject claims that fall too far outside of the
2 allowable period ...” As an example, the “first entry [in Exhibit 92] had an ad start date of November and
3 an ad end date of December 27th. Per our program guidelines, claims against this type of ad that ended on
4 December 27th of 2015 would need to be submitted within two months of that ad end date. So that -- that
5 claim had to have been submitted, or should have been submitted by February 27th of 2015. This claim
6 was actually submitted August 31st of 2016 ... Because it fell so far outside of the program window, it
7 was auto-declined.” [Exh 92.002; VIII 47:1-18]

8 280. Among other information, the spreadsheet listed Current Status and AuditNotes for each
9 claim. Each line-item contained a notation: “Too late to submit-past 30-day timeframe”, “Late
10 submission-past mark date”, “Declined ineligible”, “Ineligible media”, “Expired Online Form
11 Submission”, “Insufficient Funds”, “Partial Payment Exhausted Funds”, and “Auto Declined Claims”.
12 [Exh 92.002]

13 281. As noted above, protestant did successfully appeal some denials; one was unsuccessful
14 because it was submitted outside of the appeal deadline. [VIII 48:20-49:4, 51:13-52:2] Also, protestant
15 did receive PAP funds on a number of occasions during this period. [Exh 91.009]

16 282. Mr. O’Hara’s inspection of the spreadsheet did not “in any way, equal that \$53,000 that is
17 listed in the [protests].” [VIII 44:18-23]

Analysis

18
19 283. Santa Monica Group failed to produce evidence supporting its argument that FCA did not
20 comply with section 3065.1 in regard to the 13 PAP claims alleged in the protests. Protestant never
21 identified the claims with enough detail to state a cognizable claim. It pursued the claims, knowing or
22 presumed to have known, that it had no supporting evidence and no remedy, either under the statute or
23 pursuant to FCA rules. Dave Maxwell knew or should have known that SMG had historical claim
24 information in its own records, as well as accessible through DealerCONNECT. Before April 15, 2020,
25 SMG was able to pull its historical claim information, including the backup for its PAP claims going
26 back to the inception of the franchise, but failed to do so, raising the inference that the information would
27 be damaging to SMG’s claims. [VIII 109:14-110:12, 114:19-115:3]

28 284. In fact, protestant’s counsel concedes that there was a failure of proof of many, if not all,

1 of the PAP claims:

2 ALJ WOODWARD HAGLE: “So far the state of the evidence has not shown that
3 the -- the client has a right to those claims.

4 MR. MAYVILLE: Your Honor, I think that will come down -- I understand your
5 concern on that. I think that will come down to the legal argument on this topic, because I
6 think our argument is that this all should be subject to cure, and the timeliness issue is
7 something that should be subject to cure.” [XIII 32:23-33:6]

8 285. The PAP allegation appears to be merely a fishing expedition for proof to establish the
9 claims. Protestant never introduced critical evidence supporting its argument: receipts for payment of
10 advertising expenses. Respondent’s counsel has asserted that SMG withheld this information during pre-
11 hearing discovery:

12 Q. MR. MAYVILLE: “Okay. And each of these entries here, did the dealership
13 make the advertising that’s listed in ... [a list of declined, disapproved, expired PAP
14 claims] to your knowledge?

15 A. MR. MAXWELL: Yes. We still have the receipts from the third parties showing
16 proof of payment.

17 Q. So I just want to take an example --

18 MR. STREELMAN: Wait a second. I’m going to object to that. This information
19 was requested in discovery. It’s never been produced. He’s now testifying to receipts that
20 supposedly exist, have never been provided to us.

21 ALJ WOODWARD HAGLE: Counsel.

22 MR. MAYVILLE: Let me clarify what Mr. Maxwell is talking about first.

23 ALJ WOODWARD HAGLE: No. Respond to Mr. Streelman if you would.

24 MR. MAYVILLE: Your Honor, I -- the dealership has produced 15,000-some-odd
25 pages. I don’t know that the documents Mr. Maxwell has just mentioned were or were not
26 produced just sitting here. I can’t answer that question. I know they’re somewhere. I mean,
27 FCA had the documents when Mr. Chris O’Hara was here. I mean, they had backup to a lot
28 of these claims. I mean, that was that long exhibit. I think it was 93.

MR. STREELMAN: This dealership has never provided the receipts that Mr.
Maxwell just testified he has.

MR. MAYVILLE: And Your Honor, I think --

MR. STREELMAN: And we’ve asked.

MR. MAYVILLE: Your Honor, I think there was testimony that that
documentation was precluded or cleaned out of the system around -- I think it was 2018
from Mr. O’Hara’s testimony. He said that at some point, they tried to update it to make the
system run more smoothly. And so they cleaned out and kind of hid a portion of documents
the dealership had historically viewed. And so I think that --

ALJ WOODWARD HAGLE: I remember it differently. I remember Mr. O’Hara
testifying that in April of 2020, I think it was, there was a revamping of the system. But
before that, they could go back.

MR. MAYVILLE: Yes. Discovery happened after April 20th -- or after April 2020,
Your Honor.

ALJ WOODWARD HAGLE: Well --

MR. MAYVILLE: We didn’t have the requests until after April 2020.

ALJ WOODWARD HAGLE: You had the claims.

MR. MAYVILLE: We had the -- what Mr. Streelman is talking about now is the
backup to these documents which would have had to have been pulled from the
submissions through the system. And that information had been taken away or hidden

1 around April of 2020. I think the document request production was in August 20 of 2020.

2 MR. STREELMAN: He just testified that he has receipts. That's what he just said.
3 Those have never been provided.

4 MR. MAYVILLE: I don't know what Mr. Maxwell is referring to, Your Honor. I'm
5 not sure.

6 ALJ WOODWARD HAGLE: Well, I remember, I think, Mr. O'Hara's testimony,
7 and April of 2020 sticks in my mind. Either counsel, is that the date that the system was
8 revamped?

9 MR. STREELMAN: That sounds right.

10 ALJ WOODWARD HAGLE: Yeah, it does to me. Anytime before April 2020,
11 your client could have accessed this information. And if it's got an ongoing claim that goes
12 back to 2016, they could have accessed that at any time. The claims go from 2016 to 2018
13 per Exhibit 207. Yeah, '16 through '18. So they could have done that.

14 MR. MAYVILLE: Your Honor, I mean, the request didn't come until after, I think,
15 April 2020. I mean, there was a motion to dismiss, and we didn't get the request from FCA
16 about what they would be wanting for their production. I mean, I --

17 ALJ WOODWARD HAGLE: Forget the litigation for a minute. If they've got a
18 claim, they need to have the information to pursue the claim, whether or not a protest was
19 later filed." [XII 201:13-204:21]

20 286. SMG failed to produce receipts or other evidence in support of its PAP claims.

21 **It is Not Established that FCA's Promotional Allowance**
22 **Program (PAP) is a "Franchisor Incentive Program" Within the**
23 **Meaning of Vehicle Code section 3065.1(a)-(f)**

24 287. No definition of "franchisor incentive program" appears in section 3065.1, in its
25 legislative history, or in case law.

26 288. Unlike sales incentive programs, participation in FCA's Promotional Assistance Program
27 (PAP) creates no profit or wealth for dealers: it merely reimburses them for money they have already
28 paid to third parties for advertising. This is a significant difference: if the legislature had intended the
statute to include franchisor programs reimbursing franchisees dollar-for-dollar for money spent (as PAP
does), it is reasonable to assume that inclusive language would have been used.

29 289. Christopher O'Hara, testifying as the head of FCA's PAP program, immediately clarified
30 that FCA considers its PAP fund program an "advertising expense" program---not a "sales incentive
31 program":

32 Q. [MR. MAYVILLE] "Okay. And so if this had been timely submitted, this
33 incentive claim would have paid out of the December '15 --

34 A. [MR. O'HARA] I am sorry. This is an advertising -- advertising expense claim.

35 Q. Yes.

36 A. Sorry, you said the word -- you said "incentive."

37 Q. I am sorry. My apologies. I misspoke." [VIII 102:19-103:2]

38 290. Chrysler Program Headquarters, which administers PAP claims, is "a completely separate

1 system” from FCA’s system processing incentive claims with “a different individual [having] ownership
2 and responsibility for.” [X 20:22-21:8] Lisa Humphreys’ incentive team, for example, “[doesn’t] run any
3 specific incentive that would be an individual dealer-specific”. [IX 94:19-21]

4 291. The Promotional Allowance Program has its own PAP website on DealerCONNECT,
5 where dealers “interact with the PAP fund system.” Rules on the PAP website are unique to the program;
6 for example, only certain “types” of new cars qualify as eligible vehicles and are different from sales
7 incentive “eligible vehicles” designated in the Gold Book. [Exhs 20.005, 21.005, 91.007; VIII 28:9-16;
8 52:19-53:6]

9 292. Sales incentive programs are not tailored to individual dealerships, whereas the PAP is
10 different for each participating dealer. Individual dealers have some discretion in choosing the media and
11 the content of the advertising, with FCA’s Advertising Rules providing a framework (use of “approved
12 logos”, no words “implying distress” such as “Blowout”). [Exh 23.008]

13 293. Neither of the two revisions of the Incentive Rules Manual (Gold Book) (10/1/5 and
14 6/2/16) nor the Incentives Configurator Reference Guide (rev. 8/14/17) refer to the Promotional
15 Allowance Program in their tables of contents. [Exhs 20.002-.003, 21.002-.003, 22.002] Similarly, the
16 weekly dealer parts statement lists only incentives, not PAP claims. [Exh 134.001-.014]

17 294. Dealers must volunteer to participate in FCA’s Promotional Allowance Program.

18 295. Participating dealers complete the PAP claim submission by timely providing to FCA the
19 qualifying advertisement, together with the paid receipt for the advertisement which “must be
20 postmarked, submitted by fax or received electronically by the Chrysler Promotional Allowance Program
21 Headquarters ...”. [Exh 23.007] Once those items are submitted, they are reviewed and, if approved,
22 paid. The program is pretty much self-executing, since dealers have ready access to their own
23 advertisements and paid invoices and are presumably interested in the reimbursement of their own
24 outlays. Dave Maxwell recognized that “the PAP claim ... is basically the bill from the person you’re
25 spending the money with.” [XI 58:9-11]

26 296. PAP claims for reimbursement are different from sales incentive claims and validations.
27 Documentation differs depending on the “media type” (e.g., TV Spot, Internet Ad, Magazine); [“t]here
28 are documentation requirements by media type. In general, for every media type, there is a requirement to

1 submit the creative side of the claim and the invoice side of the claim.” [VIII 91:12-15]

2 297. Dealers may delegate or direct an agent (outside the dealership) to submit PAP claims on
3 their behalf. The delegation is practical: agents (presumably media companies, advertising agencies) have
4 the information necessary to submit PAP claims. Notably, there is no mention of “agent” or “anyone
5 acting on the franchisee’s behalf” in section 3065.1.

6 298. No information in the dealer’s customer records is needed to submit a PAP claim. This is
7 unlike sales incentive submissions, which rely on information in the dealer’s customer records which is
8 private, and possibly confidential, not to be shared with outsiders.

9 299. PAP claims are “audited” differently from sales incentive payments.⁵⁴ After submission
10 but before payment is approved, PAP claims may be either manually reviewed by a PAP auditor (also
11 referred to as a “claim reviewer”) or via PAP’s automatic “system control”.

12 300. For the foregoing reasons, it is not established that section 3065.1 applies to FCA’s
13 Promotional Assistance Program.

14 **CONCLUSIONS OF LAW**

15 301. In regard to the allegations of the protests filed by protestant concerning the October 2016
16 audit, respondent has sustained its burden of proof pursuant to section 3065.1(g)(6), as follows:

17 (a) FCA’s audit of Santa Monica Group’s sales incentive records in October 2016 was
18 conducted on a reasonable basis and limited to a nine-month period. Protestant was not selected for the
19 audit, nor was the audit performed, in a “punitive, retaliatory, or unfairly discriminatory manner.”
20 Respondent charged back previously approved claims as ineligible under the terms of previously
21 communicated incentive programs, gave protestant a written disapproval notice stating the specific
22 grounds of disapproval, and provided a reasonable appeal process allowing Santa Monica Group to
23 respond.

24 (b) When protestant failed to respond to the disapproval within the time frame stated in
25 section 3065.1(g)(3) (or at any other time), and thereby failed to provide “additional supporting
26 documentation or information rebutting the disapproval and to cure any material noncompliance ...,”

27 ⁵⁴ The extensive list of possible records in the Dealer Policy Manual which may be audited does not include PAP
28 records. [Exh 19.008]

1 respondent was under no obligation to take the actions set forth in subdivisions (g)(4) and (g)(5) of
2 section 3065.1.

3 302. In regard to the allegations of the protests filed by protestant concerning “incentives not
4 credited”, respondent has sustained its burden of proof pursuant to section 3065.1(e), as follows:

5 (a) Protestant failed to establish that the browser issue impacted its failures to timely or
6 successfully submit incentive claims, or to respond to disapproved claims, in that protestant made timely
7 incentive claims early in the franchise in 2015 which were approved and paid by respondent, as follows:

8 (1) A sale or lease to customer “Homayoon” on June 6, 2015, went through without a
9 problem with incentives or rebates paid, as did a sale or lease to Farinaz Naimi, SMG’s corporate
10 secretary, on December 1, 2015; and the October 2016 audit pulled successfully submitted and
11 paid claims from January 2016 onwards.

12 (2) General Manager Dave Maxwell completed the Incentives Configurator Course on
13 March 29, 2016 and, on June 2, 2016, was told explicitly by the Concentrix Help Desk agent the
14 proper browser to use to submit claims.

15 (3) The General Manager’s testimony that the browser issue was the ongoing problem
16 of late submissions of incentive claims was not credible.

17 (b) Protestant failed to establish a nexus between the browser issue and its allegation that
18 respondent failed to comply with section 3065.1, as follows:

19 (1) Protestant’s statutory interpretation of section 3065.1 was flawed, in that it ignored
20 rights and responsibilities of the parties in subdivisions (a) and (b) of section 3065.1.

21 (2) The Incentive Configurator screens which protestant relied upon were unreliable in
22 that they were not contemporaneous printouts from the dates of the transactions.

23 (3) There were no allegations in the protests that FCA failed to comply with section
24 3065.1 in regard to the 51 transactions after July 12, 2017, nor may any be implied: no browser
25 issue argument can be made, and the delivery to Gordy Nevers had been completed.

26 (c) Protestant has failed to establish the facts of the delivery to Gordy Nevers, in that it did
27 not produce reliable documents of the delivery and failed or refused to provide information respondent
28 needed to evaluate the papers. Protestant did not establish the nexus between the delivery and its

1 allegation that respondent failed to comply with section 3065.1.

2 303. Alternatively, the Board does not have jurisdiction in regard to the Gordy Nevers issue:
3 protestant’s delivery of overaged incentive claims to Gordy Nevers bears no relationship to any rights of
4 protestant pursuant to section 3065.1 or any responsibility of respondent. SMG’s remedy, if any, is stated
5 in section 3050(e).

6 304. In regard to the allegations of the protests filed by protestant concerning Promotional
7 Allowance Program claims, respondent has sustained its burden of proof pursuant to section 3065.1(e), in
8 that protestant produced no evidence supporting its allegations of FCA’s non-compliance with section
9 3065.1 in regard to PAP claim submissions.

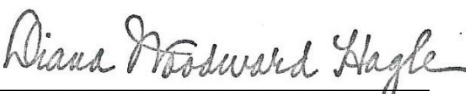
10 305. Alternatively, in regard to protestant’s allegations that respondent failed to comply with
11 section 3065.1 respecting Promotional Allowance Program claims, the Board is without jurisdiction in
12 that PAP is not a franchisor incentive program within the meaning of section 3065.1.

13 **PROPOSED DECISION**

14 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED that the
15 consolidated protests filed herein in *Santa Monica Motor Group* doing business as *Santa Monica*
16 *Chrysler Jeep Dodge RAM v. FCA US LLC*, Protest Nos. PR-2652-20, PR-2653-20, PR-2654-20 and PR-
17 2654-20, are overruled.

18
19 I hereby submit the foregoing which constitutes my
20 Proposed Decision in the above-entitled matters, as
21 the result of a hearing before me, and I recommend
22 this Proposed Decision be adopted as the Decision of
23 the New Motor Vehicle Board.

24 DATED: December 21, 2021

25 By: 
26 DIANA WOODWARD HAGLE
27 Administrative Law Judge

28 Steve Gordon, Director, DMV
Ailene Short, Branch Chief,
Occupational Licensing, DMV