

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-2080

STATE OF CALIFORNIA

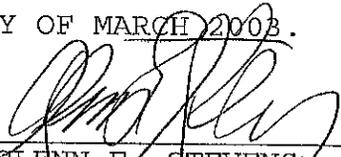
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
)  
PIONEER CENTRES OF SAN DIEGO, ) **Protest No. PR-1827-02**  
INC., a California corporation, )  
)  
Protestant, )  
)  
v. )  
)  
)  
LAND ROVER NORTH AMERICA, INC., )  
)  
Respondent. )  
\_\_\_\_\_ )

The attached "Proposed Ruling Granting Respondent's Motion to Dismiss Protest" of the Administrative Law Judge was considered by the Public members of the New Motor Vehicle Board at its General meeting of March 11, 2003. After such consideration, the Public members of the Board adopted the Ruling Granting Respondent's Motion to Dismiss Protest as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF MARCH 2003.

  
\_\_\_\_\_  
GLENN E. STEVENS  
President  
New Motor Vehicle Board

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2 Sacramento, California 95814  
Telephone: (916) 445-2080

CERTIFIED MAIL

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of )  
12 PIONEER CENTRES OF SAN DIEGO, )  
13 INC., a California corporation, )  
14 Protestant, )  
15 v. )  
16 LAND ROVER NORTH AMERICA, INC., )  
17 Respondent. )

Protest No. PR-1827-02  
  
PROPOSED RULING GRANTING  
RESPONDENT'S MOTION TO  
DISMISS PROTEST

18  
19 TO: Michael J. Flanagan, Esq.  
Attorney for Protestant  
20 LAW OFFICES OF MICHAEL J. FLANAGAN  
2277 Fair Oaks Boulevard, Suite 450  
21 Sacramento, California 95825

22 Richard L. Eason, Esq.  
Attorney for Protestant  
23 BERENBAUM WIENSHIENK & EASON PC  
370 Seventeenth Street, Suite 2600  
24 Denver, Colorado 80202-5626

25 Colm A. Moran, Esq.  
Attorney for Respondent  
26 KIRKPATRICK & LOCKHART LLP  
10100 Santa Monica Boulevard  
27 Seventh Floor  
Los Angeles, California 90067

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1 Carl J. Chiappa, Esq.  
2 John J. Sullivan, Esq.  
3 Attorneys for Respondent  
4 KIRKPATRICK & LOCKHART LLP  
5 599 Lexington Avenue  
6 New York, New York 10022-6030

7 Michelle M. Gallardo, Esq.  
8 Attorney for Respondent  
9 FORD MOTOR COMPANY  
10 Office of the General Counsel  
11 Consumer Marketing, Sales and Distribution  
12 One American Road, Room 417-A2  
13 Dearborn, Michigan 48126-2798

14 PROCEDURAL BACKGROUND

15 1. Pioneer Centres of San Diego, Inc. (hereinafter, "Pioneer")  
16 filed this Protest on October 3, 2002. The Protest alleges that Land  
17 Rover North America, Inc. (hereinafter "Land Rover") refused to  
18 continue and modified Pioneer's Franchise in violation of Vehicle Code  
19 sections 3060 and 3061.<sup>1</sup> Respondent filed the instant Motion to Dismiss  
20 the Protest on December 5, 2002. Pursuant to order of the Board,  
21 Protestant filed its brief in opposition on December 23, 2002, and  
22 Respondent replied to the opposition on January 10, 2003.

23 2. Hearing on the motion was held on January 21, 2003 before  
24 Administrative Law Judge Kenneth Wilson. Protestant was represented by  
25 Christopher Gill, Esq. of the Law Offices of Michael J. Flanagan and  
26 Richard L. Eason, Esq. of Berenbaum Wienshienk & Eason PC. Colm A.  
27 Moran, Esq. and John J. Sullivan, Esq. of Kirkpatrick & Lockhart LLP,  
28 appeared on behalf of Respondent.

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31 <sup>1</sup> All references to statute are to the California Vehicle Code,  
32 unless otherwise indicated.

FACTUAL BACKGROUND<sup>2</sup>

1  
2 3. Pioneer has been a licensed franchisee under a Dealer  
3 Agreement (*Franchise*) with Respondent since 1991 in San Diego,  
4 California. On or about October 1994, Pioneer filed Protest No. PR-  
5 1453-95 with this Board in response to Land Rover's notice of intent to  
6 terminate Pioneer's Franchise. That protest was amicably resolved and  
7 settled by the parties pursuant to a written Settlement Agreement, and,  
8 at the request of the parties, the protest was dismissed, with  
9 prejudice, by order of the Board on April 18, 1995.<sup>3</sup>

10 4. In the Settlement Agreement, Pioneer promised to dismiss  
11 "unconditionally and with prejudice" Protest No. PR-1453-95. Land  
12 Rover agreed to advise Pioneer whenever in the future it might  
13 determine to open an additional "point" (future Land Rover franchise)  
14 in Carlsbad or other locations in San Diego County and to give Pioneer  
15 "the first opportunity to submit a plan to become the dealer at that  
16 point."<sup>4</sup>

17 5. The Settlement Agreement specified two express conditions  
18 precedent to Pioneer's "being allowed to go forward with the additional  
19 operation." First, Protestant's plan would be subject to Land Rover's  
20 approval under its Land Rover Centre standards as generally applied and  
21 in a manner that would be as favorable to Protestant as to any other or  
22 third party. The second condition was that Pioneer convert its then  
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24 <sup>2</sup> The facts set forth here are not in dispute. They are taken as  
presented in the Protest, the Motion to Dismiss, and related briefs.

25 <sup>3</sup> Copies of the Settlement Agreement, the parties' request for  
dismissal, and the Board's order were attached to the Protest as  
26 exhibits.

27 <sup>4</sup> The Settlement Agreement incorporated by reference a letter  
dated January 31, 1995 by Mr. Lance E. Westerlund. Protestant appears  
to consider the letter as separate from the Settlement Agreement and  
28 attached it to the Protest as Exhibit B following the Settlement  
Agreement as marked Exhibit A.

1 existing dealership to a stand-alone Land Rover Centre at or near its  
2 then present location.<sup>5</sup> Pioneer was afforded a period of 120 days from  
3 the date Land Rover would notify Pioneer of its intent to open a new  
4 point to meet these conditions.

5 6. The Settlement Agreement contained a paragraph providing:

6 This Agreement represents the entire, integrated agreement  
7 between the Parties regarding its subject, and may be changed  
8 only by an agreement in writing signed by the party against  
9 whom enforcement of any waiver, amendment, extension or  
10 discharge is sought. The Parties agree that they will make  
11 no claim, at any time or place, that this Agreement has been  
12 orally altered or modified or otherwise changed by oral  
13 communication of any kind or character.

14 ...

15 7. Significantly, the Settlement Agreement recited the existence  
16 of Pioneer's existing Franchise Agreement but contained no reference to  
17 any modification, replacement, abandonment or other change to it. Nor  
18 did the Settlement Agreement purport to impose any additional duty on  
19 Pioneer with respect to its existing operation.

20 8. Subsequently, Land Rover determined to open the contemplated  
21 future point in Carlsbad and, in February 2001, issued a Letter of  
22 Intent ("LOI") nominating Pioneer as its intended dealer for that  
23 point. The LOI was predicated upon the construction or renovation of a  
24 new Land Rover Centre in Carlsbad in accordance with Land Rover  
25 guidelines and the completion of 10 specified conditions according to  
26 time deadlines stated. In pertinent part, the LOI required Pioneer to  
27 establish a separate legal identity or division of Pioneer, and  
28 designated a new Area of Responsibility for the conduct of the

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26 <sup>5</sup> The third paragraph of the incorporated "Westerlund Letter",  
27 attached to the Protest as Exhibit B states in relevant part, "A  
28 condition of your having such first opportunity is your having an  
approved stand-alone Land Rover Centre ... at or near the ... vicinity  
of your current Miramar Road facility..." (Emphasis added.)

1 operations of the new franchise, and required the new Carlsbad Centre  
2 be ready for business by November 30, 2002. The LOI expressly stated  
3 that time was of the essence with respect to the performance deadlines  
4 it contained and provided Land Rover the right to rescind in the event  
5 Pioneer failed to perform.

6 9. Pioneer alleges that it subsequently acquired additional land  
7 and improvements at a cost in excess of \$2,000,000 on which it intended  
8 to establish a stand-alone Centre for San Diego. However, Pioneer  
9 proved unable to find an acceptable site for the contemplated Carlsbad  
10 point and failed to meet any of the performance deadlines in the LOI.<sup>6</sup>

11 10. By letter dated April 24, 2002, Land Rover notified Pioneer  
12 that it had not met any of the performance deadlines, and the LOI was  
13 therefore rescinded as of that date. The letter made no mention of  
14 Pioneer's existing Franchise Agreement or the Settlement Agreement.  
15 Throughout the time period in which these events transpired, Protestant  
16 continued with Respondent's acquiescence to operate its San Diego Land  
17 Rover dealership, and continues to do so today.

18 ISSUES PRESENTED BY THE MOTION

19 11. At its heart, the Motion to Dismiss raises the threshold  
20 issue of whether the Board has jurisdiction under sections 3060(a) or  
21 3060(b) over the matters alleged in the Protest. These sections  
22 provide, in brief, that (a) no franchisor may terminate or refuse to  
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24 <sup>6</sup> Protestant argues that it "substantially complied with all the  
25 material requirements of the Carlsbad Agreement." The sole purported  
26 factual support for this was an e-mail message (Exhibit D to the  
27 Protest) from Land Rover to Pioneer more than five months before the LOI  
28 was signed. On the contrary, the message appears to be no more than a  
request that Pioneer propose a reasonable amount of time to conduct a  
property search in Carlsbad so that the LOI could be drafted and signed  
by the parties. It is devoid of any statement or inference as to  
Pioneer's actual performance of its duties. (Nor could it be otherwise,  
since those duties had not at that time been formally agreed to.)

1 continue a franchise, (b) or may modify or replace an existing  
2 franchise in a manner which would substantially affect the franchisee's  
3 sales or service obligation or investment. The Protest does not allege  
4 facts showing Respondent has *terminated* or refused to continue its  
5 Franchise, but alleges its conclusion that Respondent replaced or  
6 modified it.

7 12. Protestant characterizes the April 24, 2002, rescission of  
8 the LOI as an act that modified Pioneer's San Diego Franchise.  
9 Respondent argues that neither the Settlement Agreement nor the LOI are  
10 themselves franchise agreements nor are they expressly included among  
11 the terms contained in the existing Franchise Agreement. Neither party  
12 contends that the Board would have "protest" jurisdiction over issues  
13 arising under the LOI independent of the Franchise Agreement.<sup>7</sup> Thus the  
14 threshold jurisdictional issue is whether the Protest has alleged facts  
15 sufficient to show that its San Diego Franchise was modified in  
16 violation of section 3060(b).

17 13. In its opposition to the motion, Protestant also raises the  
18 secondary issue of whether the Board may consider facts outside those  
19 alleged in the Protest in ruling on the Motion to Dismiss. In  
20 particular and of most significance, Protestant objects to any  
21 consideration of Protestant's Franchise Agreement, a copy of which was  
22 attached as an exhibit to the motion.

23 RESOLUTION OF THE ISSUES

24 14. The Board's jurisdiction under section 3060(b) is narrow and  
25 particular. It does not apply to all contracts between the parties to  
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27 <sup>7</sup> Both the courts and the legislature have recently clarified that  
28 the Board does not have jurisdiction over common law and statutory  
claims originally cognizable in the courts (section 3050(e)).

1 a franchise, but only to the franchise agreement in particular. It  
2 does not apply to all modifications of a franchise, but only to those  
3 that substantially affect the franchisee's sales and service  
4 obligations or investment. Nor does it apply to all protests of  
5 modification, but only to those filed within the specified periods  
6 after notice.<sup>8</sup>

7 15. It follows that in every franchise modification protest, the  
8 pleadings must, at a minimum, allege sufficient facts to permit the  
9 Board to determine its jurisdiction. Where a protest meets this  
10 minimum, the Board must determine the matter upon the evidence adduced  
11 at a full evidentiary hearing on the merits of the claim and render  
12 findings on the relevant circumstances including the seven statutorily  
13 specified "good cause factors" set forth in section 3061.

14 16. Moreover, a protestant is entitled to a full evidentiary  
15 hearing on the merits only where it can successfully invoke the Board's  
16 jurisdiction and not otherwise. The mere filing of a protest is  
17 necessarily subject to the Board's preliminary scrutiny, and to a  
18 challenge of a party respondent as well, prior to initiating a hearing  
19 and determination on the merits.<sup>9</sup> The pleadings in this Protest and the  
20 Motion to Dismiss squarely pose questions of jurisdiction which must  
21 now be resolved before and apart from any further proceeding.

22 In Determining its Jurisdiction the Board Is Not Required  
23 To Follow Particular Unauthorized Procedures

24 17. Taking up the second issue first, Protestant relies on a  
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26 <sup>8</sup> Although this Protest was filed more than 60 days after the  
27 rescission was issued, no notice was filed as required by statute.  
Accordingly, the timeliness of this Protest is not at issue.

28 <sup>9</sup> Such inquiry might be properly heard as a motion to dismiss  
initiated by a respondent, or as a special issue hearing following an  
order of the Board bifurcating the issues presented in a protest.

1 perceived similarity between the Motion to Dismiss and a demurrer as  
2 might be filed in a civil court under Code of Civil Procedure section  
3 430.10. Protestant acknowledges that no statute or regulation exists  
4 requiring or even authorizing the Board to consider demurrers and then  
5 proceeds to insist that the Board must not only apply the demurrer  
6 statute but the applicable civil court authorities as well.

7 18. What Protestant glosses over is the fact that there is no  
8 specific statute or rule applicable to the Board directly providing for  
9 a motion to dismiss in any form.<sup>10</sup> Nevertheless, the Board, as an  
10 administrative agency with limited jurisdiction, does have such  
11 inherent powers as are necessary or as may be fairly inferred for the  
12 efficient administration of powers expressly granted.<sup>11</sup> Included within  
13 this power is the capacity to avoid the inefficiency of conducting a  
14 full evidentiary hearing and making findings as to good cause in  
15 determining a protest under section 3061 that is not within its limited  
16 jurisdiction at the outset.<sup>12</sup>

17 19. The exercise of this inherent power is subject not to those  
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19 <sup>10</sup> The Board and the courts have from time to time analogized a  
20 motion to dismiss to civil court non-trial proceedings. The demurrer,  
21 however, is particularly inappropriate in a section 3060(b) protest.  
22 Demurrers exist in an open, or notice-fact pleading system where the  
23 courts have authority to hear any claims which the facts will support.  
24 In the section 3060(b) setting, the Board's jurisdiction is extremely  
25 narrow such that artful pleading could easily conceal a jurisdictional  
26 defect.

27 <sup>11</sup> In accordance with this principle, the Board has frequently  
28 granted motions to dismiss where protests were not timely, not within  
the 10 mile jurisdictional limit for protests under section 3062, where  
modifications were not substantial, where the protestant was not a  
franchisee, and where the Board could not grant relief.

<sup>12</sup> One important reason for the Board to move swiftly and surely  
to resolve questions concerning its jurisdiction is the fact that a stay  
is automatically imposed on the subject matter of a section 3060 or 3062  
protest pending final resolution of the case. During this period, one  
which may last up to a year or more, the parties may not proceed with  
the protested action or in some cases mitigate the impacts of the stay.

1 procedural rules of civil court that a particular party prefers, but  
2 rather, to the Constitutional principles of administrative due process.  
3 In short, these principles dictate nothing more specific than adequate  
4 notice and opportunity to be heard commensurate with the significance  
5 and tenor of the rights of the parties involved. (See Section 11425.10  
6 of Chapter 4.5, Article 6 of the Government Code which enumerates the  
7 notice and hearing requirements for administrative adjudication  
8 proceedings.)

9 20. Accordingly, the technical rules of a demurrer applicable in  
10 civil court are not binding here. Neither party may properly object to  
11 the Board's consideration of factual matters relevant to establishing  
12 its jurisdiction, whether they were set forth in the Protest or not.  
13 Here, Protestant resists scrutiny of the very franchise which  
14 Protestant alleges was unlawfully modified, but which Protestant  
15 carefully excluded from its own pleading. Protestant's sole reason for  
16 this is the technicality that if this motion were treated as a demurrer  
17 the Board could not consider it because it was not included within the  
18 four corners of the Protest.<sup>13</sup>

19 21. In other protest cases, it may well be sufficient to merely  
20 allege the existence of a franchise. But here, Protestant has alleged  
21 that after its enfranchisement, two subsequent written agreements  
22 "became" or "are" part of its Franchise Agreement, and that the  
23 rescission of one of them constitutes a modification of the original  
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25 <sup>13</sup> It should not be overlooked that most if not all of the factual  
26 allegations in the Protest could have been pleaded in civil court, but  
27 that a plaintiff there would likely not have the tactical benefit of a  
28 stay on Land Rover's rescission of the LOI. Relief, if any were  
obtained in civil court, would likely be limited under these facts to  
actual damages, which might be far less valuable to Protestant than  
forestalling competition from a new franchise in Carlsbad.

1 Franchise. Protestant itself included copies of the two agreements,  
2 but wishes to 'keep the third card face-down'. Since neither of the  
3 two agreements that Protestant reveals purport to be franchises  
4 themselves, and since neither they nor the pleadings shed any light on  
5 how they "became" part of the Franchise, a prima face question of law  
6 arises as to whether and how a modification of the unseen Franchise  
7 Agreement occurred. Absent a resolution of this mystery, the Board  
8 would have before it only the rescission of an LOI.

9 22. Protestant's existing Franchise Agreement however, was  
10 properly presented to the Board under the Declaration of Mark W.  
11 Redman, General Counsel and Secretary of Land Rover North America,  
12 Inc., as Exhibit B to the Motion to Dismiss. Even if it were not,  
13 since Protestant does not deny that the exhibit is the current  
14 Franchise, it would be a matter suitable for judicial notice under  
15 Evidence Code section 452(h).<sup>14</sup> Accordingly, the Board may consider the  
16 terms of the Franchise Agreement together with those Protestant  
17 included in the Protest.

18 Protestant Has Failed to Plead Facts Sufficient  
19 to Invoke the Board's Jurisdiction

20 23. In reaching this determination, it is necessary to first  
21 clarify certain points respecting the arguments of the parties. First,  
22 much of Respondent's efforts are directed to the assertion that neither  
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24 <sup>14</sup> That section provides that judicial notice may be taken of  
25 "Facts and propositions that are not reasonably subject to dispute and  
26 are capable of immediate and accurate determination by resort to sources  
27 of reasonably indisputable accuracy." The Court of Appeal took judicial  
28 notice of a contract the existence of which was not in dispute in  
*Ascherman v. General Reinsurance Corp.* (1986) 183 Cal. App. 3d 307.  
Although Respondent has filed a request that the Franchise Agreement be  
noticed, it is unnecessary to do so since the document is already  
included in uncontested facts to be considered.

1 the Settlement Agreement, nor the LOI are themselves franchise  
2 agreements. While the Board might well be inclined to agree,  
3 Protestant does not allege that they are. Rather, Protestant says that  
4 these documents somehow "became" or just "are an integral part of"  
5 Protestant's existing San Diego Franchise.

6 24. Protestant, on the other hand dwells on arguments having to  
7 do with its excuses for its failure to perform its obligations under  
8 the Settlement Agreement and the LOI. None of these matters are ripe  
9 for hearing by the Board without first determining what, if anything  
10 they have to do with Protestant's Franchise Agreement.

11 25. As to that question, Protestant only offers what may be  
12 described as a theory of 'sticky contracts'. That is, that over a  
13 period of several years the Franchise Agreement, the Settlement  
14 Agreement and the Carlsbad LOI became stuck together as one agreement  
15 such that the rescission of the LOI on one end produced a modification  
16 of the Franchise Agreement at the other.

17 26. To this end, Protestant relies, mistakenly, as will be shown,  
18 on an exception to the Parol Evidence Rule. Protestant hopes to  
19 demonstrate by extrinsic evidence that all this was somehow what the  
20 parties intended, all the while drafting agreements and engaging in  
21 conduct to the contrary.

22 27. California law applicable to Protestant's 'sticky contracts  
23 theory' is complex but not confusing. If the parties here had actually  
24 intended the Settlement Agreement and the LOI to be legally valid  
25 modifications of the Franchise Agreement, the parties would have had to  
26 follow the provisions of Civil Code section 1698 and Code of Civil  
27 Procedure section 1856.

28 28. Civil Code section 1698 sets out the manner in which written

1 contracts may be modified. In essence, this may be done (a) by another  
2 writing, (b) by an executed oral agreement, or (c) by an unexecuted  
3 oral agreement with additional consideration, unless the prior written  
4 agreement provides otherwise.<sup>15</sup> It is undisputed that the Settlement  
5 Agreement and the LOI were written and not oral agreements. Nor is  
6 there any dispute that none of them expressly purport to modify or  
7 amend any other.

8 29. Protestant's initial difficulty with the provisions of this  
9 statute is that Protestant pleads that the Franchise Agreement was  
10 modified *both* by subsequent written agreements and by oral (implied  
11 from conduct) agreement. This dilemma arises because Protestant cannot  
12 deny the existence of the written Settlement Agreement and LOI, but at  
13 the same time finds it necessary to contradict them. Even if there  
14 were such implied agreements, Protestant has not shown that they were  
15 executed.<sup>16</sup>

16 30. More importantly, the Franchise Agreement expressly states  
17 that it is the sole and complete statement as to the parties agreement  
18 pertaining to Protestant's San Diego Franchise. All three agreements  
19 specifically forbid oral modifications. None of the subject documents  
20 contains language expressly amending the Franchise Agreement.

21 31. Since these three written agreements are by their express  
22 language hostile to Protestant's 'sticky contracts theory', Protestant  
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24 <sup>15</sup> Civil Code section 1698 does not necessarily preclude other  
25 possible contract related actions, such as estoppel, oral novation,  
26 substitution or rescission, waiver of terms, or oral independent  
27 contracts.

28 <sup>16</sup> Notwithstanding Protestant's claim that it purchased additional  
land for its San Diego facility, it has not yet placed the land into  
operation. Protestant admits with excuses that it has not met the  
requirements of the LOI. For these reasons, the LOI cannot be  
considered an executory agreement.

1 is forced to look beyond them for extrinsic evidence, which if found  
2 would necessarily contradict them. However, Code of Civil Procedure  
3 section 1856, the Parole Evidence Rule, specifically prohibits the use  
4 of parol evidence to contradict the terms of a written contract. The  
5 Parol Evidence Rule, simply stated, holds that when the parties have  
6 reduced their agreement to a written expression, that writing becomes  
7 the agreement. Its terms may be explained or supplemented by evidence  
8 of consistent additional terms, including those implied by trade usage  
9 or conduct, unless the writing is intended as the complete and  
10 exclusive statement of the agreement.

11 32. The question of whether the agreement is complete and  
12 exclusive is for the court to determine, and in so doing, the court  
13 looks first to the language of the contract itself. Here, as noted  
14 above, the Franchise Agreement expressly states it is the sole and  
15 complete agreement of the parties as to its subject matter.  
16 Furthermore, if the parties had ever had a present intent to include  
17 within Protestant's existing franchise a right to an additional  
18 dealership in Carlsbad, they would certainly have included that in the  
19 writing.

20 33. Protestant points only to the exception to the prohibition  
21 against parol evidence that allows consideration of circumstances under  
22 which a contract was made or for other extrinsic evidence where the  
23 writing is ambiguous. (See Code of Civil Procedure section 1856(g)).

24 34. The circumstances under which all three agreements were made  
25 have been fully considered in this proceeding. They show that  
26 Respondent in 1994, wanted to replace the San Diego Franchise with a  
27 stand-alone Land Rover Centre. An ensuing protest was settled with  
28 Respondent withdrawing the stand-alone proposal, and promising to

1 consider Protestant for a future additional franchise in Carlsbad, if  
2 Protestant met certain requirements, including the establishment of a  
3 stand-alone centre at San Diego. Protestant was never *required* to (and  
4 never did) make any changes to its San Diego Franchise. The subsequent  
5 conduct of the parties never changed with respect to the San Diego  
6 Franchise but, rather, was undertaken in respect to the collateral  
7 Settlement Agreement and the LOI.

8 35. Protestant does not contend that the subject writings are  
9 uncertain or ambiguous, but that they do not mean what they say. Even  
10 if ambiguity existed, which it does not, extrinsic evidence may not be  
11 used to contradict them. Thus, Protestant need not be afforded further  
12 opportunity to attempt to convince the Board that the parties intended  
13 to modify the Franchise Agreement in the face of an unambiguous written  
14 expression that they did not.<sup>17</sup>

15 PROPOSED RULING

16 1. Based on the undisputed facts presented, the arguments of the  
17 parties and the applicable law, the Board concludes that Protestant has  
18 not pled facts upon which it can be determined that Respondent modified  
19 the Franchise Agreement, and therefore, the Board has no jurisdiction  
20 under Vehicle Code section 3060(b) to consider the merits of this  
21 Protest.

22 2. The parties to this proceeding have been afforded fair and  
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24 <sup>17</sup> Protestant repeatedly argues that the conduct of the parties  
25 pursuant to the Settlement Agreement and the LOI show an intent contrary  
26 to that expressed in the Franchise Agreement, but in actuality, the  
27 subject conduct was consistent with all three agreements. Both parties  
28 continued to perform under the Franchise Agreement with no change as to  
the San Diego Franchise. Protestant attempted but did not complete the  
conditions precedent under the Settlement Agreement and later failed  
completely to perform under the LOI. When Respondent exercised its  
right to rescind the LOI, it did nothing with respect to the San Diego  
Franchise.

1 full notice and opportunity to be heard as to the question of the  
2 Board's jurisdiction. Jurisdiction having been found lacking, the  
3 Motion to Dismiss should be granted without prejudice to any subsequent  
4 or different proceeding before this Board concerning the same or  
5 similar facts upon which it may be determined that the Board's  
6 jurisdiction could be invoked.

7 3. It is acknowledged that Protestant may have other collateral  
8 claims that may be pled in a court having jurisdiction over common law  
9 and statutory claims originally cognizable therein upon which this  
10 ruling makes no determination and shall have no effect whatsoever.

11  
12  
13 I hereby submit the foregoing which  
14 constitute my proposed ruling in the  
15 above-entitled matter, as a result  
16 of a hearing before me on the above  
17 date and recommend the adoption of  
18 this proposed ruling as the ruling  
19 of the New Motor Vehicle Board.

20 DATED: February 20, 2003

21 BY Kenneth B. Wilson  
22 KENNETH WILSON  
23 Administrative Law Judge  
24  
25  
26

27 Steven Gourley, Director, DMV  
28 Terri Thurlow, Chief,  
Licensing Branch, DMV