

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

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
CALABASAS EURO AUTO GROUP, LLC,
Protestant,
v.
AUTOMOBILI LAMBORGHINI, S.p.A.,
Respondent.

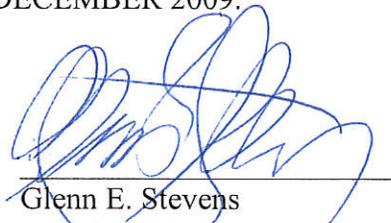
Protest No. PR-2174-09

DECISION

At its regularly scheduled meeting of December 10, 2009, the Public Members of the Board met and considered the administrative record and Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest" in the above-entitled matter. After such consideration, the Board adopted the Proposed Order.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 10th DAY OF DECEMBER 2009.


Glenn E. Stevens
Presiding Member
New Motor Vehicle Board

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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 CALABASAS EURO AUTO GROUP, LLC,
13 Protestant,
14 v.
15 AUTOMOBILI LAMBORGHINI, S.p.A.,
16 Respondent.

Protest No. PR-2174-09

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST**

17
18 To: Carlos F. Negrete, Esq.
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13 Chicago, Illinois 60606

14 **PRELIMINARY STATEMENT OF THE ISSUE**

15 1. Under the circumstances here, the Vehicle Code¹ provides a franchisee with the right to a
16 hearing before the New Motor Vehicle Board (“Board”) only if a protest is filed within 10 days from the
17 time a notice of termination is received. It is undisputed that notices of termination were sent on
18 November 25, 2008 and that no protest was filed until July 31, 2009, more than eight months later. If
19 Protestant received a notice of termination at any time prior to July 21, 2009 (more than 10 days prior to
20 the July 31, 2009 date of filing), the protest was not timely filed and must be dismissed.

21 **PROCEDURAL AND FACTUAL BACKGROUND**

22 **THE PARTIES**

23 2. Protestant, Calabasas Euro Auto Group, LLC (“Calabasas”), a California limited liability
24 company having its registered office at 2441 S. Pullman Street, Santa Ana, California 92705,² alleges that
25 it is a new motor vehicle dealer and authorized to sell Lamborghini vehicles and parts.

26 3. The protest filed by Calabasas named Automobili Lamborghini, S.p.A. as the Respondent
27 and franchisor. However, Automobili Lamborghini America, LLC (“Lamborghini”), filed a notice of
28 appearance as Respondent and current franchisor, as the “assignee and successor in interest” of

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///

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

² The Lamborghini Dealer Agreement states this to be the “registered office” of Calabasas, however the protest filed on July 31, 2009 states only the mailing address of Calabasas, which is “Post Office Box 11028, Santa Ana, California 92711.”

1 Automobili Lamborghini, S.p.A.³

2 4. At some time in the past, Calabasas and another Lamborghini dealership in Orange
3 County, Platinum Motors, LLC ("Platinum") were managed by Mr. Vik Keuylian with the majority
4 ownership held by a trust of which Mr. Keuylian is or was the trustee. Three of Mr. Keuylian's sisters,
5 Asdghig ("Astrid"), Nora, and Sossi Keuylian, also owned interests in both Calabasas and Platinum,
6 either in their own names or as trustees.

7 5. The Calabasas franchise was signed on November 28, 2006 by "Vik Keuylian" with his
8 title shown as "Managing Member".⁴ Appendix 3 to the Dealer Agreement indicates the following
9 ownership interests at that time:

Name:	Extent of holding:
	(in local currency and as a percentage)
Keuylian Children's Trust	85% \$850,000
Trustee – Vic (sic) Keuylian	
Lagun (sic) Hills, CA	
Nora Keuylian	5% \$50,000
F.V., CA	
Astrid Keuylian	5% \$50,000
F.V., CA	
Sossi Keuylian	5% \$50,000
F.V., CA	

24 Appendix 3 also showed "Management Vested in Vic (sic) Keuylian."

27 ³ Automobili Lamborghini, S.p.A. is an Italian company having its registered office in Bologna, Italy and is no longer licensed
28 by the Department of Motor Vehicles ("DMV"). Automobili Lamborghini America, LLC is located in the United States with
an office in Santa Monica, CA, and is licensed by the DMV as a "Distributor".

⁴ The Calabasas Dealer Agreement is part of Exhibit B attached to this proposed order.

1 6. However, a filing in the Bankruptcy Court on July 5, 2009, signed under penalty of perjury
2 by "Asdghig Astrid Keuylian, Member Manager" shows the following ownership interests:

3 21. Current Partners, Officers, Directors and Shareholders

4 a. If the debtor is a **partnership**, list the nature and percentage interest of each member of the
5 partnership⁵ [Emphasis added.]

6 NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
7 Asdghig Keuylian Trust	[none shown]	5
8 Keuylian Childrens Trust	[none shown]	85
9 Nora Keuylian Trust	[none shown]	5
10 Sossi Keuylian Trust	[none shown]	5

11 b. If the debtor is a **corporation**, list all officers and directors of the corporation, and each
12 stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or
equity securities of the corporation. [The block checked here is "None".] [Emphasis added.]

13 22. Former partners, officers, directors and shareholders

14 a. If the debtor is a partnership, list each member who withdrew from the partnership within **one**
15 **year** immediately preceding the commencement of this case.... [The block checked here is
"None".]⁶

16 b. If the debtor is a corporation, list all officers or whose relationship with the corporation
17 terminated within **one year** immediately preceding the commencement of this case.... [The block
checked here is "None".]

18 CALABASAS CEASES LAMBORGHINI DEALERSHIP OPERATIONS

19 7. Lamborghini contends that, on or about November 6, 2008, Calabasas' floor plan lender
20 cancelled its wholesale flooring line of credit, and Calabasas ceased Lamborghini dealership operations.
21 Lamborghini further contends that, since November 2008, Calabasas has failed to reopen the dealership
22 facility or resume Lamborghini dealership operations. Calabasas does not appear to dispute that it ceased
23

24 ⁵ Although this block a. indicates it is to be filled in if the debtor is a "partnership" it was the block completed by Calabasas, an
25 "LLC", as shown above. This may have been done because these bankruptcy forms have no separate provisions for an LLC
and there may be uncertainty as to whether an LLC, especially if small with few "members", should be treated as a corporation
26 or a partnership under the Bankruptcy Code.

27 ⁶ This filing on July 5, 2009 in Bankruptcy Court is inconsistent with the Dealer Agreement signed in November 2006. The
28 Dealer Agreement was signed by "Vik Keuylian" as "Managing Member". The Bankruptcy Court filing was signed under
penalty of perjury by "Asdghig Astrid Keuylian" as "Member Manager". The filed document also indicates that no member
had withdrawn during one year prior to the commencement of the bankruptcy filing (from March 25, 2008 to March 25, 2009).
If this is accurate, it means that Vik Keuylian ceased being a member of the LLC some time prior to March 24, 2008.

1 Lamborghini dealership operations in November 2008. Platinum has also been closed since November
2 2008, and is the subject of a separate Protest pending before the Board.⁷

3 **LAMBORGHINI'S NOTICES OF TERMINATION**⁸

4 8. Lamborghini sent several sets of notices of termination. Because the facts as well as the
5 identity of the addressees and addresses differ somewhat as to each, it is necessary to describe them
6 separately.

7 **The First Set of Notices – November 21, 2008**⁹

8 9. The first notices were sent November 21, 2008 “via Electronic Mail, Overnight Mail and
9 Certified Mail” and directed to two different addresses. Two sets were sent to:

10 Mr. Vik Keuylian
11 Calabasas Euro Group, LLC
12 2441 S. Pullman Street
13 Santa Ana, CA 92705

13 Two other sets were sent to:

14 Mr. Vik Keuylian
15 Calabasas Euro Group, LLC
16 (street address redacted)
17 Laguna Hills, CA 92653 (This is the residence address of Mr. Keuylian.)

18 10. None of the four hard copy notices were delivered to the addresses shown above as neither
19 of the two carriers could obtain signatures evidencing their receipt. Whether the e-mail notice was
20 received is unknown.

21 ⁷ As best as can be determined, Calabasas and Platinum have had substantially the same common members/owners and have
22 been represented by the same attorneys since the filing of the Calabasas protest both in Bankruptcy Court and before the Board.

23 ⁸ It is important to note that the Vehicle Code does not require that the notices mandated to be received by the franchisee be
24 delivered by any particular method or manner or medium of communication. All that is required is that the notice be in
25 writing, conform to the language and format specified in the statutes and be “received”. Although it is not required by the
26 Vehicle Code, it is common for franchisors to send such notices by “U.S. Postal Service, Certified or Registered Mail, Return
27 Receipt Requested”, or by a private carrier such as United Parcel Service (“UPS”) or Fed Ex, “Return Receipt Requested”. If
28 all goes smoothly, the notices will be delivered in due course, and signed for by an authorized agent of the franchisee. The
franchisor can then utilize the signed and dated receipt for delivery as evidence as to when the notice was received by the
franchisee. However, things do not always go smoothly.

⁹ As was explained in greater detail in connection with the Platinum protest, the November 21 and November 25 letters
addressed to Calabasas and Mr. Keuylian were the first and second set of notices. The letters sent to Ms. Dietrich are referred
to as the third set of notices. Some of the notices were sent via U.S. Postal Service Certified Mail and some were sent by UPS
Next Day Air. The multiple communications were sent because Calabasas and Platinum had ceased operations at the
dealership facilities, and had ceased communicating with Lamborghini. Accordingly, Lamborghini sent the termination notices
to the only known addresses where Calabasas (and Platinum) were most likely to receive them.

1 11. In addition, the notices did not technically comply with Section 3060 as the language
2 required by that section was not in bold and was not circumscribed by a line.

3 12. Lamborghini is not contending that any of these first sets of notices satisfied the
4 requirements of Section 3060.

5 **The Second Set of Notices – November 25, 2008**

6 13. Because the first notices did not comply with the requirements of Section 3060 as to form,
7 Lamborghini, on November 25, 2008, sent corrected notices of termination “Via Electronic Mail,
8 Overnight Mail and Certified Mail”. Two sets were sent to:

9 Calabasas Euro Group, LLC
10 2441 S. Pullman Street
11 Santa Ana, CA 92705

12 The second two sets were sent to:

13 Mr. Vik Keuylian
14 Calabasas Auto Group, LLC
15 (street address redacted)
16 Laguna Hills, CA 92653 (This is the residence address of Mr. Keuylian.)

17 14. There is no contention that these termination notices failed to comply with the
18 requirements of Section 3060 as to content or form.

19 15. As with the first four hard copies of the notices that were sent on November 21, none of
20 the four sets of corrected notices could be delivered to the addresses shown as the carriers could not
21 obtain a signature for their receipt. Lamborghini is not contending that these notices were received by
22 Calabasas. Whether the e-mail notice was received is unknown.

23 **The Third Set of Notices – Also November 25, 2008**

24 16. On November 25, 2008, Lamborghini also sent notices addressed to Debra M. Dietrich,
25 Esq., the person designated by Calabasas and Platinum as their agent for service of process. In addition to
26 one of the sets of letters being sent to Ms. Dietrich “Via Electronic Mail”, two of the four hard copy sets
27 of letters were sent (one by “Overnight Mail” and one by “Certified Mail”) addressed as follows:

28 ///

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1 Debra M. Dietrich, Esq.
2 Agent for Service of Process for
3 Calabasas Euro Auto Group, LLC
4 and Platinum Motors, LLC
5 Croudace Dietrich & Parker LLP
6 4750 Von Karman Avenue
7 Newport Beach, California 92660

8 The second two sets of hard copy letters to Ms. Dietrich were also sent "Via Overnight Mail and Certified
9 Mail" addressed as follows:

10 Debra M. Dietrich, Esq.
11 Agent for Service of Process for
12 Calabasas Euro Auto Group, LLC
13 Platinum Motors, LLC
14 5 Park Plaza, Suite 1150
15 Irvine, California 92614-8591

16 17. It is important to note that each of the four envelopes sent to Ms. Dietrich contained both
17 the corrected notice of termination as to Calabasas as well as a separate corrected notice of termination as
18 to Platinum, multiple copies of which had also been sent to Calabasas, and to Platinum, and to Mr.
19 Keuylian.

20 18. Each envelope to Ms. Dietrich also contained a cover letter addressed to her for the two
21 notices of termination in each of the envelopes. The cover letters stated in their entirety:¹⁰

22 Dear Ms. Dietrich:

23 Please find enclosed the notices of termination for Calabasas Euro Auto Group,
24 LLC and Platinum Motors, LLC (collectively, "Dealerships") that were sent to the
25 Dealerships on November 25, 2008 and are now being served¹¹ on the Dealerships
26 through you, as their designated Agent For Service of Process.

27 If you have any questions, please feel free to contact me. Thank you.

28 19. The reasons for termination, as stated in the Calabasas Notice were:

¹⁰ Because Platinum had also been dark since November 6, 2008, Lamborghini also sent a notice of termination relating to Platinum, pursuant to Vehicle Code § 3060 (the "Platinum Notice"). The Calabasas Notices and the Platinum Notices were in the same envelopes with the same cover letters addressed to Ms. Dietrich. (Declaration of Roger Stetson in Support of Motion to Dismiss ("Stetson Decl.") ¶ 6)

¹¹ As will be discussed below, whether there was proper "service" is irrelevant. Section 3060 requires only that the notice of termination be "received" by the franchisee, not "served" upon the franchisee. Lamborghini is asserting that the notices, undisputedly received by Ms. Dietrich on November 25, 2008, were subsequently "received" by Calabasas and its owners/managers/attorneys at some time long before July 21, 2009 (long before 10 days prior to the filing of the protest on July 31, 2009).

1 1. Dealer has ceased to conduct its customary sales and service operations
2 during its customary hours of business for seven consecutive business days, giving rise to
3 a good faith belief on the part of the (sic) Lamborghini that Dealer is in fact going out of
4 business. See California Vehicle Code § 3060, (a)(1)(B)(v); Agreement, Art 19(1)(e).

5 2. Insolvency of the franchisee. On or before November 5, 2008, the
6 Dealer's floor plan line of credit was shut down by Dealer's finance company.
7 Furthermore, on November 6, 2008, the Dealer's assets were seized by the same creditor
8 and Dealer has ceased operations. Both actions taken by the creditor give rise to a good
9 faith belief by Lamborghini that Dealer is insolvent. See California Vehicle Code § 3060,
10 (a)(1)(B)(iii); Agreement, Art. 19(1)(a).

11 20. One of the Calabasas Notices that was sent to Ms. Dietrich, the person designated as agent
12 for service of process for both Calabasas and Platinum, was received and signed for by someone at Ms.
13 Dietrich's Newport Beach office on November 26, 2008 at 10:08 a.m. Out of the four packets of notices
14 sent to the two addresses for Ms. Dietrich, this was apparently the first to be delivered to her and is the
15 Calabasas Notice that is the focus of this Motion to Dismiss.

16 **Evidence of Receipt of the Termination Notice by Calabasas**

17 **Calabasas' owners, managers and attorneys acknowledged receipt of the Platinum**
18 **Notice of Termination which had been delivered in the same envelope as the**
19 **Calabasas Notice of Termination**

20 21. In response to the Platinum Notice, Platinum filed Protest No. PR-2140-08 with the Board
21 on December 9, 2008. In that protest, Platinum acknowledged that it had received the Platinum Notice on
22 or about December 1, 2008. Subsequently, when the date of receipt of the notices became the critical
23 issue, Platinum's then-counsel, during a hearing on March 9, 2009, clarified that the notices admittedly
24 received on December 1, 2008 had been received from Ms. Dietrich's office on that date.¹² Although the
25 Calabasas Notice was delivered to Ms. Dietrich¹³ on November 26, 2008 in the same envelope as the
26 Platinum Notice, and "the documents were timely turned over" by Ms. Dietrich, the only protest filed in
27 December 2008 was in behalf of Platinum. No protest was filed in behalf of Calabasas until some eight
28 months later, on July 31, 2009. The reasons for the delay in filing the Calabasas protest, as explained

¹² During the March 9, 2009 hearing then-counsel for Platinum stated that "From my standpoint, my understanding was that my client actually received notice on December 1st and we filed our protest on December 9th." Although he was unable to state when Ms. Dietrich received the documents, counsel continued, "But the documents were timely turned over to the client, and the client did timely and promptly file a Protest." "And from that standpoint, 10 days was calendared and we attempted to file, we filed one day early on December 9th." (Emphasis added.) (March 9, 2009, corrected transcript, Platinum Motors, LLC v. Automobili Lamborghini, S.p.A., page 24, lines 27-28, page 25, lines 1-14; page 26, lines 1-4)

¹³ Ms. Dietrich had been designated by Calabasas and Platinum in filings with the California Secretary of State as the agent for service of process for each of them.

1 below by Calabasas, were that: (a) There had not been valid service of the notice upon Calabasas; and (b)
2 The members/managers of Calabasas were addressing the more pressing issues of the Chapter 11
3 bankruptcy filing by Calabasas, which allegedly tolled the time to file the protest.¹⁴

4 22. On or about December 31, 2008, Lamborghini moved to dismiss Platinum's protest on the
5 grounds that it was untimely. Lamborghini alleged that because the Platinum protest was filed 11 days
6 after the Platinum Notice was received by Ms. Dietrich's office on November 26, 2008, the filing was one
7 day past the 10-day statutory deadline for the Board's jurisdiction under Vehicle Code § 3060(a). In
8 response to Lamborghini's motion to dismiss, Platinum argued that the Platinum Notice was not
9 necessarily received by Platinum on November 26, 2008, because Ms. Dietrich was the agent for service
10 of process, and not the franchisee. Platinum did not contend that the Platinum Notice was not received at
11 all, but rather that the Platinum Notice had been received by Platinum on December 1, 2008, rather than
12 on November 26, 2008, as contended by Lamborghini. (See footnote 11.)

13 23. After a hearing on the Motion to Dismiss, Administrative Law Judge Anthony M. Skrocki
14 ("ALJ Skrocki") issued a proposed order which if it had been adopted by the Board would have resulted
15 in the Board dismissing the Platinum protest as untimely. The Board declined to adopt the proposed
16 order, and instead ordered the matter to proceed to a hearing on the merits. The Platinum termination
17 protest is currently pending. As set forth below, the Board never made any findings of fact or conclusions
18 of law in support of its decision not to adopt the proposed order of dismissal.

19 24. It is noted that the owners/managers of Platinum did not contend they had not received the
20 notice of termination. In fact, the contention was that the notice had been received but that it had been

21 ¹⁴ Neither of these stated reasons will withstand scrutiny. First, as to lack of "valid service": Any lack of "valid service" as to
22 Calabasas would also be the case with Platinum, but would be irrelevant as the Calabasas Notice and the Platinum Notice were
23 both "received" by Calabasas and Platinum on December 1, 2008, as required by the Vehicle Code; As stated, the notices to
24 Calabasas and Platinum were both included with the same cover letter to Ms. Dietrich and were in the same envelope;
25 Therefore, both notices were delivered to Ms. Dietrich at the same time on November 26, 2008. Thereafter, the "documents
26 were timely turned over to the client" on December 1, 2008, with the result being that the Platinum protest was filed on
27 December 9, 2008, which is within 10 days of that date. Second, even if the pressure of filing for bankruptcy could excuse the
28 delay and extend the statutory time for filing a protest (which it does not), the following chronology indicates that this excuse is
not supportable by the facts: The Calabasas Notice and the Platinum Notice were in the same envelope which was received by
Ms. Dietrich on November 26, 2008; The notices were thereafter received by the common owners of Calabasas and Platinum
on December 1, 2008; Platinum filed a protest on December 9, 2008, but Calabasas did not file its protest until July 31, 2009.
Calabasas filed its petition in bankruptcy on March 26, 2009, long after the time to file a protest had expired. There could be no
tolling of the time to file a protest as there was no time to file that could be tolled. Tolling may prevent a time period from
expiring if it has not already run, but tolling will not begin a new time period if the original time had already expired. Here, the
time to file the protest had expired prior to the bankruptcy filing.

1 received on December 1, 2008. Platinum thus contended that the time to file the protest should be
2 counted from that date, rather than November 26, 2008, the date that Ms. Dietrich, their agent for service
3 of process had received the notice. In essence, the contention of Platinum's owners and attorney was that
4 the notice had been received by Platinum on December 1 and therefore the protest filed on December 9
5 was timely.

6 25. Because the Calabasas letter was included in the same envelope as the Platinum letter the
7 implication is that if the common owners/members of Platinum/Calabasas received the Platinum letter as
8 they admitted, then they also received the Calabasas letter. Nothing was submitted by Calabasas to negate
9 this implication or to counter the statement by Platinum's then-counsel, that the "documents (plural) had
10 been timely turned over" to his clients.

11 26. The September 15, 2009 declaration of Asdghig Astrid Keuylian in which she identifies
12 herself as "the Member-Manager" for Calabasas states only that:

13 ...

14 2. In regard to the purported Notice of Termination ("Notice") issued by
15 Lamborghini on (sic) allegedly in November, 2008, regarding Calabasas, Calabasas was
not served according to the terms of our dealership/franchise agreement or law.

16 3. Since the Notice was not properly served upon Calabasas our time to file
17 the Protest was not limited so no Protest was necessary to be served. Since the Notice
18 was not properly served, and we had pressing issues concerning the Calabasas Chapter
19 11, which also tolled the time to file a protest, we filed the Protest on July 31, 2009. The
Protest was filed at that time to protect our existing rights, under the prevailing
circumstances, including, but not limited to, the right to sell the Calabasas Lamborghini
franchise, or to reopen it, even though we disputed its service and its validity.

20 ...

21 27. As stated, there is nothing in this declaration that negates the implication that Calabasas
22 had received the notice issued in November, and in fact the statement is rife with its own implications
23 admitting that the November 2008 notice of termination had been received by, but just "not properly
24 served upon, Calabasas."

25 28. Paragraph 2 of the declaration asserts no facts and is merely a legal conclusion that relates
26 to the manner the notice was "served". Again, the declaration states only that the notice was "not
27 properly served", not that it had not been received.

28 29. Paragraph 3 of the declaration states that because the notice was not properly served

1 she/Calabasas believed that the time to file a protest was not limited and that no protest was necessary.
2 This again is challenging how the notice was “served” as compared to a statement that it had never been
3 received or a specific date as to the claimed invalid service. There is no statement denying that
4 she/Calabasas had received the notice nor even a date claimed as the date when she/Calabasas became
5 aware of the “service”.

6 30. The declaration implies that notwithstanding the notice and its conspicuous statement as to
7 the time to file a protest, there was a conscious decision not to file the protest until July 31, 2009. This
8 means that she/Calabasas did “receive” the notice at some time and thereafter made the decision to refrain
9 from filing the protest based upon two things: (a) The claimed improper service of the November 2008
10 notice (which did not negate the contention of Lamborghini that the notices had been received by
11 Calabasas on December 1, 2008 at the latest), and (b) The need to address the more “pressing issues
12 concerning the Calabasas Chapter 11, which also tolled the time to file a protest....” However, as to (b)
13 and as stated below, Calabasas did not file its petition in bankruptcy until March 26, 2009. This means
14 that if the November 25, 2008 notice had been received by Calabasas on December 1, 2008, the time to
15 file a protest would have expired on December 11, 2008 and no tolling of this time could have occurred
16 by virtue of the Bankruptcy Act as the bankruptcy filing did not occur until March 26, 2009. (See also
17 footnote 13.)

18 31. If anything, the declaration of Asdghig Astrid Keuylian admits that she had received the
19 November 25, 2008 notice of termination at some unknown time but certainly long before July 21, 2009,
20 that because she considered it defective as not being properly served and because of the pressing issues
21 relating to the bankruptcy filing in March 2009, she/Calabasas chose not to file a protest until July 31,
22 2009, eight months after the date of the letter.

23 32. In addition to the mailed notices, Calabasas’ owners, managers and attorneys also received
24 an additional copy of the Calabasas Notice during the Platinum proceeding. Lamborghini attached the
25 Calabasas Notice as an exhibit to pleadings that it served on Platinum through its counsel in the Platinum
26 termination protest. At all relevant times, it is believed that the owners and managers of the Calabasas
27 and Platinum franchisees were substantially the same. Furthermore, Platinum and Calabasas from the
28 time Calabasas filed its protest and earlier have shared the same counsel of record in this protest and the

1 Platinum protest.¹⁵

2 **Calabasas' attorney acknowledges during pending bankruptcy proceedings that**
3 **Calabasas is aware of the Notice of Termination**

4 33. In March 2009, both Platinum and Calabasas filed for Chapter 11 Bankruptcy in the United
5 States Bankruptcy Court for the Central District of California. Platinum filed for bankruptcy on March
6 23, 2009 (Case No. 09-12472-TA) and Calabasas filed for bankruptcy on March 26, 2009 (Case No. 09-
7 12593-TA). In connection with the Platinum and Calabasas bankruptcy proceedings, the Office of the
8 United States Trustee for the Central District of California conducted meetings of creditors pursuant to
9 Section 341 of the Bankruptcy Code. Mr. Carlos Negrete represented both Platinum and Calabasas
10 during creditors' meetings on May 7, 2009 and June 17, 2009, respectively.¹⁶

11 34. During the May 7, 2009 creditors' meeting, Mr. Negrete acknowledged that he knew about
12 the Calabasas Notice.¹⁷ Mr. Negrete further acknowledged that, despite Calabasas' receipt of a notice of
13 termination, there was no hearing before the Board regarding Calabasas' termination.¹⁸

14 35. During the June 17, 2009 creditors' meeting, despite the passage of over a month since his
15 acknowledgement of the existence of the Calabasas Notice, Mr. Negrete again acknowledged that there
16 was no Board hearing regarding the Calabasas termination.¹⁹ Mr. Negrete also stated that the only asset
17 of the Calabasas bankruptcy estate was a potential lawsuit against VW Credit, Inc., Calabasas' flooring
18 lender, or Lamborghini, thereby implicitly stating that Calabasas' franchise had terminated and was no
19 longer an asset of Calabasas Euro Auto Group, LLC.²⁰

20 ///

21 _____
22 ¹⁵ Both Platinum and Calabasas changed counsel during the course of their respective proceedings. However, each change of
23 counsel was mirrored in the two cases, and at all times Platinum and Calabasas shared the same counsel from the time
24 Calabasas filed its protest.

¹⁶ Mr. Negrete is also co-counsel to Platinum in the termination protest, and co-counsel on the termination protest filed by
25 Calabasas.

¹⁷ Stetson Decl., Ex. F at 20.

¹⁸ *Id.* In a June 3, 2009 status hearing before Hon. Theodore Albert in the Calabasas bankruptcy, the U.S. Trustee noted that, at
26 the May 5, 2009 creditors' meeting, a Calabasas representative was "emphatic" that, unlike Platinum, "the [Calabasas] franchise
27 had been terminated." The U.S. Trustee also noted that Mr. Negrete had filed schedules listing the franchise as an asset of the
28 estate, and that this was contrary to the testimony given by the Calabasas representative. Stetson Decl., Ex. H at 3. As noted
herein, Mr. Negrete subsequently took the position that the franchise was not an asset of the Calabasas estate.

¹⁹ Stetson Decl., Ex. G at 20.

²⁰ *Id.* at 21-22.

THE FILING OF THE PROTEST

36. Calabasas filed its protest on July 31, 2009. In the Protest, Calabasas alleges that “[o]n or about November 13, 2008, Respondent ceased doing business with Protestant despite the fact that no valid Notice of Termination pursuant to Vehicle Code Section 3060 was ever received by Protestant from Respondent.”²¹ (Emphasis added.)

37. As stated above, for this protest to have been timely filed, the following facts must exist. Either:

- a. Calabasas never received a notice of termination; or
- b. Calabasas did receive the notice of termination but the date of receipt was on, or some time after, July 21, 2009 (which is 10 days prior to the filing of the protest on July 31, 2009).

38. Stated another way, if Calabasas received a notice termination at any time prior to July 21, 2009, the protest was not timely filed and must be dismissed.

THE MOTION TO DISMISS AND HEARINGS

39. During an August 17, 2009 telephonic status conference, Lamborghini informed Calabasas and the Board that it intended to file a motion to dismiss the protest. The parties stipulated and agreed to a briefing schedule for Lamborghini’s motion to dismiss; and further agreed to hold a telephonic hearing on the motion to dismiss on September 23, 2009 before ALJ Skrocki.

40. Lamborghini submitted its “Motion to Dismiss Protest” (the “Motion”) on August 28, 2009. Lamborghini also submitted the declaration of Roger H. Stetson in support thereof.

²¹ It is noted that the language here is only that “no valid Notice ... was ever received by Protestant from Respondent,” (Emphasis added.) The Protest does not state that “no notice was received” nor does it state any date for receipt of even an “invalid” notice. This language, which may have been artfully chosen, appears to be focusing on whether the notice was “valid” which may relate to the form or substance of the notice, or perhaps the manner of communicating the notice, none of which is relevant under these facts. The language also appears to have been carefully chosen where it states that no valid notice was ever received “from Respondent”, to distinguish the notice being received by Calabasas “from Ms. Dietrich.” If this is the distinction sought to be made, it would mean that even a notice delivered by the U.S. Postal Service, or UPS, etc. would be ineffective as the notice would have been “received by Protestant from UPS” and would not have been “received by Protestant from Respondent”. Whether the notice was ultimately delivered to Calabasas by the U.S. Postal Service or by one of Calabasas’ own agents is irrelevant as long as it was “received”. The notice would be “from the franchisor” as required by Section 3060 whether it was delivered by a third party mail or delivery service or by the franchisor’s agent or the franchisee’s agent. The notice is “from the franchisor” even though it may be delivered “by a messenger”. Here the notice was proper as to form and substance and the manner of communicating the notice is irrelevant so long as the notice is “received” by the franchisee and the notice is from the franchisor.

1 41. Calabasas submitted its opposition brief on September 16, 2009, as well as a declaration of
2 Asdghig Keuylian, an owner and manager of both Calabasas and Platinum. Lamborghini submitted a
3 reply brief on September 21, 2009.

4 42. On September 23, 2009, the Motion came on for hearing. Allen Resnick and Ryan Mauck
5 of Jeffer, Mangels, Butler & Marmaro LLP and Randall Oyler of Barack Ferrazzano appeared
6 telephonically for Lamborghini. Carlos Negrete of the Law Offices of Carlos Negrete and Michael Piazza
7 of Greenberg Traurig, LLP²² appeared telephonically on behalf of Calabasas. Also present telephonically
8 were Sossi Keuylian, Nora Keuylian, and Asdghig Keuylian, all owners and/or managers of Calabasas.²³

9 43. During the September 23, 2009 telephonic hearing, ALJ Skrocki raised several questions
10 regarding the applicability of the California Uniform Commercial Code ("UCC") to the issues raised in
11 the Motion, as well as questions relating to certain comments made by counsel for Platinum during the
12 March 9, 2009 hearing in the Platinum protest proceeding regarding the receipt by Platinum and
13 Calabasas' owners and managers of the Platinum Notice. Calabasas' counsel requested an opportunity to
14 submit supplemental briefs on these two issues, and further requested that the telephonic hearing resume
15 after the supplemental briefing.²⁴ The parties and the Board agreed that the parties would submit
16 supplemental briefs on these issues, and that the telephonic hearing would resume on October 14, 2009.

17 44. On September 28, 2009, Calabasas submitted its supplemental brief in opposition to the
18 Motion. Lamborghini submitted its opposition to Calabasas' supplemental brief on October 5, 2009.
19 Calabasas submitted its reply to Lamborghini's opposition on October 13, 2009, as well as a declaration
20 of Vik Keuylian.

21 45. On October 14, 2009, the telephonic hearing on the Motion resumed before ALJ Skrocki.
22 Allen Resnick and Ryan Mauck of Jeffer, Mangels, Butler & Marmaro LLP appeared telephonically for
23 Lamborghini. Kevin Collins of Greenberg Traurig, LLP appeared in person at the Board's offices in
24

25 ²² At the time of this hearing, Calabasas had not yet submitted a formal Notice of Association identifying Mr. Piazza of
26 Greenberg Traurig as new counsel for Calabasas.

27 ²³ Calabasas' former counsel, Michael J. Flanagan, also appeared telephonically as a result of some apparent confusion over
28 whether he had withdrawn or been terminated as counsel for Calabasas.

²⁴ Although the stated purpose of Calabasas' request for supplemental briefing was to address these two discrete issues,
Calabasas' supplemental briefs in fact largely ignored these two issues and instead focused chiefly on new arguments relating
to the parties' Dealer Agreement and on presenting further argument regarding the impact of the Board's decision in the
Platinum matter. These additional contentions of Calabasas will be addressed below.

1 Sacramento to represent Calabasas. Mr. Negrete made no appearance. At the beginning of the hearing,
2 Mr. Collins objected to the hearing being conducted electronically. That objection was overruled, at
3 which time Mr. Collins refused to participate in the hearing and physically walked out of the proceeding
4 and the Board's offices.²⁵ The hearing proceeded telephonically as had been initially agreed by all
5 counsel and as had been ordered by the Board.

6 46. On October 19, 2009, ALJ Skrocki issued his Proposed Order Granting Respondent's
7 Motion to Dismiss Protest and Instructions to Respondent, as Prevailing Party, to Draft Proposed Order.

8 47. While reviewing the record a final time prior to submitting a Proposed Order to the
9 Board, it was noted that the Board had no information relating to the automatic stay that will frequently
10 arise upon the filing of a petition in bankruptcy. Neither side had previously mentioned this possible
11 problem in any of the several briefs or in oral argument.

12 48. A Telephonic Status Conference on the issue of the application of the bankruptcy stay
13 was held on November 20, 2009.

14 49. Counsel agreed that each side would submit their brief to the Board no later than
15 Wednesday, November 25, 2009. The scope of each brief was to be limited to whether the stay arising
16 under the Bankruptcy Code applies to this Motion, and whether the Board has the power to determine
17 the scope of the stay.

18 50. On December 3, 2009, ALJ Skrocki issued an order determining that the automatic stay
19 in the Bankruptcy Code does not apply to the Board's consideration of the "Proposed Order Granting
20 Respondent's Motion to Dismiss Protest" as the bankruptcy stay does not preclude the Board from
21 determining that the Board has no jurisdiction to consider the protest. (See December 3, 2009, Order
22 which is incorporated into this Proposed Order and attached as Exhibit B.)

23 ///

24 _____
25 ²⁵ The merits of Calabasas' objection to conducting the hearing telephonically, as well as the procedural history which led up
26 to the objection, are further described and addressed in the Board's October 20, 2009 Order Denying Protestant Calabasas Euro
27 Auto Group, LLC's Request that the Hearing on the Motion to Dismiss Scheduled to Resume Telephonically on October 14,
28 2009 be Held in Person. In addition to other reasons for denying the request of Calabasas for an in person hearing, the ALJ
found that the objection of Calabasas to the hearing being conducted telephonically was not in good faith and was an attempt to
delay the proceedings before the Board. (See October 20, 2009, Order which is incorporated into this Proposed Order and
attached as Exhibit A.)

THE TIME WITHIN WHICH A PROTEST MUST BE FILED

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2 51. Because the Calabasas Notice listed the cessation of operations and insolvency as the
3 reasons for termination of Calabasas, Section 3060 permits the franchisor to give what is termed a “15-
4 day notice” of termination. This would allow the franchisor to terminate the franchise 15 days after the
5 notice is received by the franchisee unless the franchisee files a protest with the Board “within 10 days
6 after receiving a 15-day notice.”²⁶ The legislative shortening of the time for termination from 60 days to
7 15 days and, even more important, limiting the time to file a protest to only 10 days from receipt of the
8 notice (compared to 30 days if the termination is based upon other reasons) is an indication of the
9 significance the legislature placed on the reasons for termination and the prompt action needed by a
10 franchisee if the reasons for termination were cessation of operations or insolvency, as alleged here by
11 Lamborghini. As explained by the court in *Sonoma Subaru, Inc. v. New Motor Vehicle Board*, 189 Cal.
12 App. 3d 13, 234 Cal. Rptr. 226 (Cal. Ct. App. 1987), the 10-day filing deadline is strictly applied:

13 Where no protest of the termination is filed within the allotted time, the Legislature’s
14 obvious intent is to let the franchisor treat the termination as final and effective...
15 Sanctioning late filings would undercut that finality and create uncertainty in the minds
16 of franchisors as to whether they may treat their relationship with unsatisfactory
franchisees as concluded. We conclude that the Legislature did not intend that the 10-day
filing deadline be extended.

17 *Sonoma Subaru, Inc.*, 189 Cal. 3d at 22 (affirming the Board’s refusal to hear a protest that was
18 untimely by five days).

19 52. Despite the significance of these reasons for termination, if a timely protest is filed, the
20 franchise may not be terminated until after the Board has conducted a hearing and then only if the Board
21 finds that the franchisor has met its burden of proving good cause for the termination, taking into
22 consideration the existing circumstances including specified factors. However, if a protest is not filed
23 within 10 days of the franchisee’s receipt of the notice of termination, the franchisee has no right to a
24 hearing before the Board, and the franchise terminates upon the passage of 15 days from the franchisee’s
25 receipt of the notice of termination. This means that if no timely protest is filed the franchise terminates

26
27 ²⁶ Section 3060(a)(2) provides in part: “...The franchisee may file a protest with the board within 30 days after receiving a 60-
28 day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the
franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after
the end of any appeal procedure provided by the franchisor.” (Emphasis added.)

1 automatically five days after the 10-day deadline to file a protest has expired.²⁷

2 53. Accordingly, as a matter of law, the protest filed by Calabasas was untimely if Calabasas
3 received the Calabasas Notice at any time prior to July 21, 2009, *i.e.* more than 10 days before the protest
4 was actually filed. As explained above and below the evidence establishes that Calabasas received the
5 Calabasas Notice prior to July 21, 2009, and therefore this protest is untimely and must be dismissed.

6 ANALYSIS

7 54. Vehicle Code § 3060(a) provides: “Notwithstanding Section 20999.1 of the Business and
8 Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any
9 existing franchise unless all of the following conditions are met: (1) The franchisee and the board **have**
10 **received** written notice from the franchisor...” (Emphasis added). Vehicle Code § 3060(a)(2) further
11 states that “[t]he franchisee may file a protest with the board ... within 10 days after **receiving** a 15-day
12 notice, satisfying the requirements of this section....” (Emphasis added).

13 55. Thus, the present Motion turns on two factual questions: (1) whether Calabasas “received”
14 the Calabasas Notice; and (2) if so, whether Calabasas received the Calabasas Notice prior to July 21,
15 2009.

16 CALABASAS “RECEIVED” THE CALABASAS NOTICE UNDER THE “ORDINARY USE” OF THE WORD

17 56. The Vehicle Code does not define “received” or “receiving.” Under California law
18 “[w]ords used in a statute or constitutional provision should be given the meaning they bear in ordinary
19 use.” *Lungren v. Deukmejian*, 45 Cal.3d 727, 735 (1988). To “receive” is defined in ordinary use as “to
20 come into possession of.” Webster’s Collegiate Dict. (10th ed.1995) p. 975. Thus, the first question
21 presented by this Motion is whether Calabasas “came into possession of” the Calabasas Notice more than
22 10 days before filing this protest, *i.e.*, before July 21, 2009. The manner in which Calabasas came into
23 possession of the Calabasas Notice is irrelevant under the Vehicle Code. That is, if a franchisee had come
24 into possession of the notice upon its delivery by the U.S. Postal Service mail carrier, or upon delivery as
25 here by one of its own agents, the result is the same. In either situation, the franchisee would have come
26

27 ²⁷ If the notices required by Section 3060 have been “received,” Section 3060(a)(3) states that the franchise may be terminated
28 if “(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has
elapsed.”

1 into the possession of the notice, meaning the notice had been received.

2 57. The evidence is undisputed in this case that Calabasas “came into possession of” the
3 Calabasas Notice prior to July 21, 2009. The only contentions of Calabasas relate to whether the notice
4 was “valid” (not that it was not received) and whether it was “served” in accordance with the franchise
5 and the law (again these are not assertions that it had not been received). Specifically, the evidence
6 presented by Lamborghini in support of the Motion establishes the following:

7 A. The Calabasas Notice dated November 25, 2008, was in the same envelope as the Platinum
8 Notice, a notice which the owners/managers of both Calabasas and Platinum and Platinum’s attorney
9 admit was received by them on December 1, 2008. As explained in paragraph 21 and footnote 12
10 thereto, Platinum’s counsel stated that he had counted 10 days from December 1, 2008, which he stated
11 was the date his clients had received the notices of termination from Ms. Dietrich, and filed a protest on
12 December 9, 2008. All of the packets sent to Ms. Dietrich contained only one cover letter that pertained
13 to both Calabasas and Platinum (quoted above) and had as attachments the notice to Calabasas and the
14 notice to Platinum.

15 B. Platinum’s initial counsel Jeffrey Gubernick, Esq. of Bishton•Gubernick engaged in the
16 following discussing during the March 9, 2009, telephonic hearing on Respondent’s motion to dismiss the
17 Platinum protest:

18 MR. GUBERNICK: I do want to follow-up because I think your comment is
19 appropriate, and I think what you should also take into account is this; the Wednesday that
20 this document was delivered to Ms. Dietrich's office was the Wednesday before
21 Thanksgiving. **From my standpoint, my understanding was that my client actually**
22 **received notice on December 1st and we filed our Protest on December 9th.** So I think
23 in a situation like this, we are not dealing with a dilatory situation; we are dealing with the
24 fact that documents were processed in a timely manner as one would envision with regard
25 to an Agent for Service of Process...In this situation, I cannot state definitely one way or
26 another whether Ms. Dietrich received the documents on Wednesday, November 25th,
27 because these documents were sent in so many ways that it was difficult for her to recall
28 what she got, whether she got an e-mail, whether there was the actual letter, what she saw
29 on what particular day. **But the documents were timely turned over to the client, and**
30 **the client did timely and promptly file a Protest.** What is really happening here is there
31 is an attempt to take advantage of, you know, the five days of the Thanksgiving, the four
32 days of the Thanksgiving weekend. And I think that, equitably, it would be rather
33 inequitable here to basically penalize a Protestant over one day. (Emphasis added.)

34 (March 9, 2009, corrected transcript, Platinum Motors, LLC v. Automobili Lamborghini, S.p.A.,
35 page 24, lines 25-28, page 25, lines 1-17)

36 C. Although the parties may dispute the exact chain of events which led to the “receipt” of the

1 Platinum Notice and the Calabasas Notice by the owners and managers of Calabasas, Calabasas does not
2 present any facts to dispute the fact that the envelope and its contents delivered to Ms. Dietrich on
3 November 25, 2008 containing both the Platinum Notice and the Calabasas Notice were in some manner
4 received by the owners/managers before the Platinum protest was filed on December 9, 2008. Indeed,
5 several times in the Platinum proceedings, counsel for Platinum acknowledged that Mr. Keuylian received
6 the Platinum Notice -- again, which was in the same envelope as and received by Ms. Dietrich along with
7 the Calabasas Notice -- on December 1, 2008. Platinum, in its protest which was filed on December 9,
8 2008, also acknowledged receiving the Platinum notice on December 1, 2008.

9 D. On or about December 31, 2008, Calabasas' owners, managers and attorneys received a
10 copy of the Calabasas Notice as part of the pleadings in the Platinum protest.

11 E. Calabasas acknowledged during pending bankruptcy proceedings that Calabasas: (1) knew
12 that Lamborghini had issued a termination notice to Calabasas; and (2) considered the Calabasas
13 dealership terminated. During the May 7, 2009 creditors' meeting, Mr. Negrete acknowledged that a
14 notice of termination existed for Calabasas and that, despite Calabasas' receipt of a notice of termination,
15 there was no hearing regarding Calabasas' termination. On June 17, 2009, Mr. Negrete again
16 acknowledged that there was no hearing regarding Calabasas' termination. Likewise, Calabasas' other
17 filings noted above -- all of which predate the July 21, 2009 deadline at issue here -- also evidence that
18 Calabasas was aware that it had received the Calabasas Notice and that its Lamborghini dealership had
19 terminated.

20 58. None of this evidence is disputed. Although this evidence was submitted with the Motion
21 on August 28, 2009, and although Calabasas was subsequently given the opportunity to file three separate
22 briefs opposing the Motion, Calabasas never submitted any evidence disputing that it had "received" the

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1 Calababas Notice, or disputing that it had received the Calababas Notice prior to July 21, 2009.²⁸ In fact,
2 Calababas never even made an unsupported factual allegation that it had not received the Calababas
3 Notice, or that it had received the Calababas Notice after July 21, 2009.²⁹

4 59. Accordingly, Calababas has effectively conceded that it came into possession of the
5 Calababas Notice well before July 21, 2009, and therefore the 10-day protest period expired well before
6 Calababas filed its protest on July 31, 2009. In its opposition to the Motion, instead of addressing these
7 determinative issues, Calababas relies on arguments regarding “service” of the Calababas Notice and the
8 equity of dismissing its protest. These issues are addressed below.

9 **CALABASAS “RECEIVED” THE CALABASAS NOTICE UNDER THE COMMERCIAL CODE’S GUIDANCE**

10 60. The Uniform Commercial Code, codified in the California Commercial Code, provides
11 further guidance for the term “receipt.” As set forth in Commercial Code § 1202(e), “Subject to
12 subdivision (f), a person ‘receives’ a notice or notification when: (1) it comes to that person’s attention; or
13 (2) it is duly delivered in a form reasonable under the circumstances at the place of business through
14 which the contract was made or at another location held out by that person as the place for receipt of such
15 communications.”

16 61. Section 1202(f) in turn states:

17 Notice, knowledge, or a notice or notification received by an organization is effective for
18 a particular transaction from the time it is brought to the attention of the individual
19 conducting that transaction and, in any event, from the time it would have been brought
20 to the individual’s attention if the organization had exercised due diligence. An
organization exercises due diligence if it maintains reasonable routines for

21 ²⁸ The sole evidence submitted by Calababas, other than excerpts from various transcripts, are the declarations of Asdghig
22 Keuylian and Vik Keuylian. Ms. Keuylian's declaration (discussed above) does not provide any factual statements or attach
23 any documents evidencing when Calababas purportedly received the Calababas Notice, or challenging that Calababas received
24 the Calababas Notice at all. Instead, the declaration largely consists of either legal arguments or conclusory statements such as
25 “There is no valid basis for the termination of the dealership of Calababas.” See Declaration of Asdghig Keuylian ¶ 4.
26 Likewise, Mr. Keuylian's declaration does not provide any factual statements or attach any documents evidencing when
27 Calababas purportedly received the Calababas Notice, or challenging that Calababas received the Calababas Notice at all.
28 Instead, Mr. Keuylian's declaration is limited to providing certain facts relating to the drafting of the Dealer Agreement
between the parties. See Declaration of Vik Keuylian ¶¶ 3-4.

²⁹ Calababas' protest contains the unsupported allegation that “no valid Notice of Termination pursuant to Vehicle Code
Section 3060 was ever received by Protestant from Respondent.” (Emphasis added.) However, Calababas did not submit any
evidence or make any argument regarding this allegation as part of its opposition to the Motion. Calababas provided no
explanation of whether Calababas was contending that the Calababas Notice was never received, or that the Calababas Notice
was received but for some reason was invalid. (See also footnote 18.) None of the declarations submitted by Calababas
contain anything that could be the equivalent of: “The Calababas Notice was never received.” Or, “The envelope was received
from Ms. Dietrich on ---- but it did not contain the Calababas Notice.” Or, “We received the Platinum Notice from Ms. Dietrich
but she did not include the Calababas Notice.”

1 communicating significant information to the person conducting the transaction and there
2 is reasonable compliance with the routines. Due diligence does not require an individual
3 acting for the organization to communicate information unless the communication is part
4 of the individual's regular duties or the individual has reason to know of the transaction
5 and that the transaction would be materially affected by the information.

6 62. The Calabasas franchise is a contract for the sale of goods, and therefore is governed by
7 the provisions of Division 2 of the California Commercial Code. If a contract comes within the scope of
8 Division 2 of the California Commercial Code, then, the definitions in Division 1 of the California
9 Commercial Code would also apply.

10 63. Here, the evidence is undisputed that, long before July 21, 2009, the Calabasas Notice
11 came to the "attention" of Calabasas, thus satisfying the standard contained in Commercial Code section
12 1202(e)(1). Even if the receipt of the Calabasas Notice and the Platinum Notice by Ms. Dietrich on
13 November 25, 2008 may not constitute receipt by Calabasas as of that date, certainly the Calabasas Notice
14 had come to the "attention" of Calabasas as of December 1, 2008 when the notices for Calabasas and
15 Platinum were "timely turned over" by Ms. Dietrich to the members of those two entities on December 1,
16 2008. Ms. Keuylian's declaration of September 15, 2009 has been addressed above. In addition and
17 more specifically, Calabasas' attorney, Mr. Negrete, conceded that Calabasas was aware of the Calabasas
18 Notice as early as May 7, 2009 in a bankruptcy proceeding.

19 64. Accordingly, under both the "ordinary use" definition of receipt and the alternative
20 definition provided by the Commercial Code, Calabasas "received" the Calabasas Notice prior to July 21,
21 2009.

22 **NEITHER THE VEHICLE CODE NOR THE BOARD REQUIRES PERFECTED SERVICE**

23 65. Calabasas incorrectly focuses not on whether the Calabasas Notice was "received" by the
24 franchisee, but rather on whether service of the Calabasas Notice was "perfected" or "valid". The Vehicle
25 Code contains no such requirement. As noted above, Vehicle Code § 3060(a)(2) requires a franchisee to
26 file a protest "within 10 days after receiving a 15-day notice...." (Emphasis added).

27 66. Calabasas' attempts to rely on the Board's decision not to grant Lamborghini's motion to
28 dismiss the Platinum protest are unavailing. Calabasas argues that the Board determined that the
Platinum Notice and Calabasas Notice were "defective" because they were not properly served. Nothing
in the record supports this statement. The Board neither made nor was required to make any findings and

1 offered no explanation for its decision not to adopt the proposed order dismissing the Platinum protest.³⁰

2 67. Furthermore, the issue before the Board in the Platinum case actually disproves Calabasas'
3 contention. The question of "if" the Platinum Notice had been "received" was never presented to the
4 Board, because Platinum conceded in its protest that it had received the Platinum Notice (which was in
5 the same envelope as the Calabasas Notice). Platinum's attorneys confirmed several times that Platinum
6 (as opposed to its attorneys or agent for service of process) received the Platinum Notice on December 1,
7 2008. Thus, the only issue in dispute and the only question presented to the Board in the Platinum
8 proceeding was "when" the Platinum Notice had been "received" by Platinum – when the notices were
9 received by Ms. Dietrich on November 26, 2008 as asserted by Lamborghini, or, as asserted by Platinum,
10 on December 1, 2008 when the notices were admittedly received by the members of Platinum. There is
11 nothing in the record to suggest that the Board even considered, let alone made a ruling on, the question
12 of whether the Platinum Notice had been "received" by Platinum, as that term is used in the Vehicle Code
13 or that Platinum had never received the notice of termination.

14 **CALABASAS' EXPLANATION OF MR. NEGRETE'S STATEMENTS IN THE**
15 **BANKRUPTCY PROCEEDING ARE UNAVAILING**

16 68. Although Calabasas did not provide any evidence or even unsupported statements as to
17 whether or when Calabasas purportedly received the Calabasas Notice, Calabasas did challenge one of the
18 pieces of evidence submitted by Lamborghini - Mr. Negrete's statements during the bankruptcy
19 proceeding.³¹ Calabasas argues that Mr. Negrete's statements indicate that Calabasas in fact did believe
20 that a protest could still be filed.

21 69. However, Calabasas' alternative interpretation of Mr. Negrete's statements is not
22

23 ³⁰ Calabasas incorrectly claims that Board member Mr. Glenn E. Stevens made a statement after oral comments had concluded
24 in support of the Board's decision not to adopt the proposed order of dismissal. Calabasas claims that this purported statement
25 by Mr. Stevens establishes that the Board concluded that the notice provisions of the Lamborghini Dealer Agreement trump the
26 Vehicle Code requirements for "receipt." In fact, the statement in question was made during (not after) oral comments.
27 During the same oral comments, Mr. Stevens also asked whether the Dealer Agreement should in fact be ignored on this issue,
28 and another Board member, Mr. Ryan Brooks, later stated that "I believe the notice does trump whatever agreement two
companies have with each other." (June 5, 2009, Board Meeting Transcript, page 33, lines 22-24) Accordingly, the record
does not establish or even suggest that the Board made any finding that the terms of a dealership agreement replace the
"receipt" requirements of the Vehicle Code.

³¹ Calabasas did not submit any argument or evidence disputing the fact that Calabasas' owners and managers had received the
Calabasas Notice in the same envelope as the Platinum Notice, or disputing that Calabasas' owners, managers and/or their
attorneys had received the Calabasas Notice when they received Lamborghini's motion to dismiss the Platinum protest.

1 supported by the record. Mr. Negrete stated unequivocally in May 2009, two months before the
2 Calabasas Protest was filed, that “[t]here was a notice of termination” and further confirmed in June 2009,
3 more than ten days before the filing of the Protest on July 31, 2009, that the only asset of the Calabasas
4 bankruptcy estate was a potential lawsuit against Calabasas’ flooring lender or Lamborghini, and not the
5 dealership itself (i.e., that the dealership had terminated).

6 70. Thus, even if Calabasas’ contention was true, it would be irrelevant - the fact that
7 Calabasas may have mistakenly believed it had the right to file a protest does not mean that it actually had
8 that right. As noted above, the Vehicle Code requires receipt of a termination notice, and the evidence
9 establishes that Calabasas in fact “received” the Calabasas Notice.

10 71. In any event, Calabasas’ contention does not appear to be accurate. During the bankruptcy
11 hearing, Mr. Negrete was asked to explain why Calabasas would not admit that its franchise was
12 terminated. Mr. Negrete clarified that Calabasas’ argument was based, not on any dispute over receipt of
13 the Calabasas Notice, but rather on the theory that Calabasas was an “affiliate” of Platinum and thus the
14 termination of the Calabasas franchise could be resolved through the pending protest of Platinum:

15 MS. PONCE-GOMEZ: ...my understanding is at least the franchise was, in
16 fact, terminated, and no protest had not been filed. So my understanding from that
would be there is no longer a franchise.

17 MR. NEGRETE: I will not commit to that position because that was before
18 my filing and before their Chapter 11, although we’re going to advance an
19 argument that is still alive because it’s an affiliate of the Platinum. But it is not the
subject of a protest before the New Motor Vehicle Board.³²

20 72. Thus, Mr. Negrete’s statements do not support Calabasas’ contention that, in May 2009,
21 Calabasas believed that it had not yet properly received the Calabasas Notice. Calabasas was apparently
22 considering other theories or procedural methods of challenging the termination of Calabasas’
23 Lamborghini franchise, specifically by trying to incorporate that challenge into the already pending
24 Platinum protest. Mr. Negrete’s apparent misunderstanding of Calabasas’ protest rights under the Vehicle
25 Code does not change the fact that Mr. Negrete’s statements in the bankruptcy proceeding confirm the
26 fact that Calabasas was aware of the Calabasas Notice no later than May 7, 2009.

27
28 ³² Stetson Decl., Ex. G at 20:1-10.

**THE NOTICE PROVISIONS OF THE DEALER AGREEMENT DO NOT
CHANGE THE FACT THAT CALABASAS' PROTEST IS UNTIMELY**

1
2
3 73. Calabasas also argues that the notice provisions in the Lamborghini Dealer Agreement
4 establish the manner in which the Calabasas Notice was required to be given, and that because the
5 Calabasas Notice was purportedly not given in the manner specified in the Dealer Agreement, it is invalid.
6 This argument also fails.

7 **Notice Provisions in a Dealer Agreement Do Not Trump the Vehicle Code**

8 74. Contrary to Calabasas' arguments, the Vehicle Code requirement of "receipt" of a
9 termination notice is not subject to the terms of any dealer agreement. Vehicle Code § 3060(a) expressly
10 states that it shall be applied "Notwithstanding ... the terms of any franchise." Accordingly, any
11 contractual provisions regarding **the giving** of notices in the Dealer Agreement are irrelevant to the
12 jurisdictional question of whether the protest was timely filed pursuant to the deadlines imposed by the
13 Vehicle Code.

14 **The Notice Provisions of the Franchise Do Not Apply to a Statutory Notice of Termination**

15 75. The notice provisions in Article 27 of the Lamborghini Dealer Agreement (see attached
16 Exhibit B), on their face do not apply to the Calabasas Notice. Article 27 applies to "all notices required
17 hereunder" (emphasis added), i.e. notices that are specified in and required by the Dealer Agreement. The
18 Calabasas Notice, however, was required by statute, not by the Dealer Agreement.

19 76. Further, if the notice provisions of the franchise were found to be applicable, then notices
20 would be effective when they are "given", meaning when they are sent, rather when they are received, as
21 is required by the Vehicle Code.

22 77. Under the standard established by the Dealer Agreement, the Calabasas Notice was
23 properly given because certified mail and registered mail are legally equivalent, and the Dealer
24 Agreement does not require that a notice be "received" by the franchisee. (See paragraph 79.)

25 78. Even if Article 27 of the Dealer Agreement were applicable to this Motion (which it is

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28 ///

1 not)³³ the Calabasas Notice still would be deemed effective under California law. Calabasas argues that
2 receipt of the Calabasas Notice was defective solely because it was sent via certified mail rather than
3 registered mail, as reflected in the following exchange during the September 23, 2009 telephonic hearing
4 on this Motion:

5 JUDGE SKROCKI: Mr. Oyler, was there a letter sent certified mail
6 return receipt requested to the address stated in this Calabasas franchise?

7 MR. OYLER: Yes.

8 JUDGE SKROCKI: Mr. Negrete, tell me why you think that
9 Article 27 was not complied with.

10 MR. NEGRETE: Article 27, your Honor?

11 JUDGE SKROCKI: Was not complied with.

12 MR. NEGRETE: There is a difference between certified mail and
13 registered mail.³⁴

14 79. However, under numerous provisions of California law, including Vehicle Code section
15 29, there is no legal distinction between service or giving of a notice via certified mail and service via
16 registered mail. *Lucero v. City of Los Angeles*, 208 Cal.App.3d 664, 670 (1989); Code of Civ. Proc. § 11;
17 Civil Code § 17; Financial Code § 8; Gov. Code § 8311.

18 **The Calabasas Notice was Properly Given Under the Dealer Agreement Because the**
19 **Agreement Does Not Prohibit Notice by Certified Mail**

20 80. Furthermore, Article 27 does not expressly require **notice be given only** by registered
21 mail. Article 27 states “all notices hereunder shall be in writing, and **shall be deemed duly given when**
22 sent by registered letter, return receipt requested ...” (Emphasis added).³⁵ The reasonable interpretation
23 of this general notice provision is that it mandates only that the notices “shall be in writing” and that
24 sending a notice by registered mail, return receipt requested, provides a safe harbor for the protection of

25 ³³ Article 27 of the franchise is not applicable if for no other reason than its application could make the notice of termination
26 effective when sent rather than when it is received as is required by the Vehicle Code.

27 ³⁴ September 23, 2009 Transcript at 45:10-20. Although the ALJ agreed with Mr. Negrete that there was a difference between
28 Certified Mail and Registered Mail, the difference relates only to the manner in which the mail is processed by the U.S. Postal
Service. The ALJ did not agree that the difference was legally significant in regard to this protest.

³⁵ Under the language of Article 27 of the franchise, the notices sent on November 25, 2008 would have been effective as of
that date even if they had never been received by Calabasas. The requirements of the Vehicle Code regarding protest rights
are more protective of a franchisee than are the requirements of the franchise.

1 the franchisor as a notice will be “deemed duly given” when sent (as opposed to when it is received),
2 regardless of when or whether the notice was actually received.

3 81. Nowhere does Article 27 state that notices must be sent by any particular method, that the
4 parties are required to send notices by registered mail, or that other methods of delivery are prohibited.
5 To construe registered mail as the only acceptable form for giving a notice would require the Board to add
6 terms to the Dealer Agreement that do not exist.

7 **The Board Does Not have Discretion to Consider Whether Calabasas’ Delay was**
8 **“Reasonable”**

9 82. Finally, Calabasas argues that it “was reasonable to believe that” service of the Calabasas
10 Notice was never “perfected,” and thus it had an interminable amount of time to file a protest. This
11 argument is also incorrect. As noted above, Calabasas’ belief was not reasonable, because the Board
12 never found that the Platinum Notice had not been received. Rather, the Board found that there was a
13 dispute as to when the Platinum Notice had been received by Platinum, November 26, 2008 or December
14 1, 2008, and thus whether the deadline for filing a protest had expired before Platinum filed its protest on
15 December 9, 2008. The Board never held that Platinum could wait indefinitely to file its protest.

16 83. Furthermore, whether Calabasas’ belief was “reasonable” is irrelevant. The 10-day
17 deadline under the Vehicle Code is both jurisdictional and intended to be strictly applied. *See Sonoma*
18 *Subaru, Inc. v. New Motor Vehicle Board*, 189 Cal.App.3d 13 (1987) (affirming the Board’s refusal to
19 hear a protest that was untimely by five days). The Board does not have the discretion to allow a dealer to
20 wait months after the deadline expires to file a protest, regardless of the purported “reasonableness” of the
21 cause for the delay. *Id.* at 22 (“Where no protest of the termination is filed within the allotted time, the
22 Legislature’s obvious intent is to let the franchisor treat the termination as final and effective...
23 Sanctioning late filings would undercut that finality and create uncertainty in the minds of franchisors as
24 to whether they may treat their relationship with unsatisfactory franchisees as concluded.”)

25 84. Calabasas’ attempt to lay the blame for the delay at the feet of the initial counsel for
26 Platinum, Bishton•Gubernick, is likewise without merit. The deadline for filing a protest is jurisdictional
27 and must be applied regardless of the reason for the late filing. The fact that any of the former attorneys
28 purportedly declined to file the protest does not grant Calabasas a unilateral extension of the statutory

1 deadline. Furthermore, Calabasas provides no evidence as to when it may have purportedly asked
2 Bishton•Gubernick to file a protest, or why the firm declined. Given the undisputed evidence that
3 Calabasas received the Calabasas Notice, it is entirely possible that by the time Calabasas asked
4 Bishton•Gubernick to file the protest, it was already untimely, and the firm refused to file a protest for
5 whatever reasons.

6 85. In any event, Calabasas' claim that it "must be permitted to proceed to a merits hearing ...
7 to avoid substantial injustice" is incorrect for the same reasons. There are no "substantial justice"
8 exceptions to the statutory deadline. Once the deadline passes, the Board no longer has jurisdiction and
9 an untimely protest must be dismissed. Calabasas chose to sit on its rights for months after receiving and
10 becoming aware of the Calabasas Notice. During that time, Lamborghini proceeded in reliance on the
11 lawful termination of the Calabasas franchise, until Calabasas found it convenient or advantageous to file
12 a protest. If the Board were to determine that Calabasas could proceed with a protest under these
13 circumstances, it would be rewriting the Vehicle Code to eliminate the statutory deadline altogether. The
14 Board has no such power. Calabasas, like all franchisors and franchisees appearing before this Board, is
15 required to operate within the law as written.

16 CONCLUSION

17 86. Here, as in *Sonoma Subaru* -- and in sharp contrast to the factual situation underlying
18 Lamborghini's motion to dismiss the Platinum protest -- allowing Calabasas' untimely protest to proceed
19 would undercut the finality and certainty afforded by the strict statutory requirement that Calabasas had
20 10 days to file a protest after receipt of Lamborghini's 15-day termination notice. The actions of
21 Calabasas and its owners, managers and attorneys from December 2008 through July 2009, *i.e.*;
22 acknowledging receipt of the Platinum Notice which was in the same envelope as the Calabasas Notice,
23 filing a protest on behalf of Platinum in December 2008, not filing a protest on behalf of Calabasas until
24 July 31, 2009, representing to the United States Trustee that there was not a protest hearing despite the
25 existence of a notice of termination for Calabasas of which Calabasas and its attorney were aware, and
26 stating that the franchise is not an asset of the Calabasas bankruptcy estate, all confirm that, prior to the
27 filing of this untimely protest, Calabasas knew that it had received the Calabasas Notice, Calabasas knew
28 that it had failed to file a timely protest, and Calabasas knew that its Lamborghini dealership had been

1 terminated.

2 **PROPOSED ORDER**

3 After consideration of the pleadings, exhibits, and oral arguments of counsel, it is hereby ordered
4 that Respondent's Motion to Dismiss Protest is granted. As the protest was not timely filed, the Board
5 has no jurisdiction over this matter. *Calabasas Euro Auto Group, LLC v. Automobili Lamborghini,*
6 *S.p.A.*, Protest No. PR-2174-09 is hereby dismissed with prejudice.

7
8 I hereby submit the foregoing which constitutes my
9 proposed order in the above-entitled matter, as the
10 result of a hearing before me, and I recommend this
11 proposed order be adopted as the decision of the New
12 Motor Vehicle Board.

13 DATED: December 3, 2009

14 

15 By: _____
16 ANTHONY M. SKROCKI
17 Administrative Law Judge

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25
26 James J. Joseph, Interim Trustee

27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

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

CERTIFIED MAIL

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4
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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 CALABASAS EURO AUTO GROUP, LLC,
13 Protestant,
14 v.
15 AUTOMOBILI LAMBORGHINI, S.p.A.,
16 Respondent.

Protest No. PR-2174-09

**ORDER DENYING PROTESTANT
CALABASAS EURO AUTO GROUP,
LCC'S REQUEST THAT THE
HEARING ON THE MOTION TO
DISMISS SCHEDULED TO RESUME
TELEPHONICALLY ON
OCTOBER 14, 2009, BE HELD IN
PERSON**

17
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Attorney for Protestant
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M. Theresa Tolentino Meehan, Esq.
25 Ray A. Sardo, Esq.
26 Attorneys for Protestant
GREENBERG TRAUIG, LLP
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27 Sacramento, California 95814

28 ///

EXHIBIT A

ORDER DENYING PROTESTANT CALABASAS EURO AUTO GROUP, LCC'S REQUEST THAT
THE HEARING ON THE MOTION TO DISMISS SCHEDULED TO RESUME
TELEPHONICALLY ON OCTOBER 14, 2009, BE HELD IN PERSON

1 Allen Resnick, Esq.
2 Ryan S. Mauck, Esq.
3 Attorneys for Respondent
4 JEFFER, MANGELS, BUTLER & MARMARO LLP
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6 Los Angeles, California 90067-4308

7 Randall L. Oyler, Esq.
8 Roger H. Stetson, Esq.
9 Attorneys for Respondent
10 BARACK FERRAZZANO
11 200 West Madison Street, Suite 3900
12 Chicago, Illinois 60606

13 1. Protestant is Calabasas Euro Auto Group, LLC, ("Protestant" or "Calabasas"), a California
14 limited liability company, with its mailing address at P.O. Box 11028, Santa Ana, California, 92711.
15 Protestant is a new motor vehicle dealer and franchisee authorized to sell Lamborghini products under a
16 franchise executed in November 2006.

17 2. The named Respondent and franchisor is identified as Automobili Lamborghini, S.p.A.
18 However, the appearance made identifies the Respondent and current franchisor as Automobili
19 Lamborghini America, LLC ("Lamborghini"), which is stated to be the "assignee and successor in interest
20 to Automobili Lamborghini, S.p.A."

21 3. On November 21 and November 25, 2008, Lamborghini sent notices of its intention to
22 terminate the franchise of Protestant. Because the dealership had closed, the notices were sent to different
23 persons and different addresses via both Certified Mail and overnight mail.

24 4. On July 31, 2009, Protestant filed a protest with the New Motor Vehicle Board ("Board")
25 asserting that "Respondent does not have good cause to terminate the franchise by reason of" the good
26 cause factors enumerated in Section 3061 of the Vehicle Code.

27 5. Protestant is represented by Carlos F. Negrete, Esq. of the Law Offices of Carlos F.
28 Negrete, and Michael A. Piazza, Esq., Lindsay A. Ayers, Esq., Kevin T. Collins, Esq., M. Theresa

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1 Tolentino Meehan, Esq., and Ray A. Sardo, Esq. of Greenberg Traurig, LLP.¹

2 6. Respondent, as assignee and successor in interest to Automobili Lamborghini S.p.A., is
3 represented by Allen Resnick, Esq. and Ryan S. Mauck, Esq. of Jeffer, Mangels, Butler and Marmaro,
4 LLP, and by Randall L. Oyler, Esq., Roger H. Stetson, Esq., and Eli Selinger, Esq. of Barrack Ferrazano.

5 7. During the initial telephonic Pre-Hearing Conference, held on August 17, 2009, counsel
6 for the parties stipulated to the following briefing schedule and date for telephonic hearing that was
7 memorialized in an August 18 order:

8 ▪ Respondent's Motion to Dismiss was due via e-mail no later than Friday, August 28, 2009.

9 This pleading was timely received.

10 ▪ Protestant's Opposition to Motion to Dismiss was due via e-mail no later than Tuesday,
11 September 15, 2009. This pleading was actually received via e-mail on Wednesday,
12 September 16.

13 ▪ Respondent's Reply to the Opposition to Motion to Dismiss was due via e-mail no later
14 than Monday, September 21, 2009. This pleading was actually received via e-mail and
15 regular mail on Tuesday, September 22.

16 ▪ The telephonic hearing would commence at 10:00 a.m. (Pacific Time) before
17 Administrative Law Judge Anthony M. Skrocki on Wednesday, September 23, 2009.

18 8. As a result of the telephonic hearing on September 23, the parties stipulated to a
19 supplemental briefing schedule and a resumption of the telephonic hearing. On September 24, 2009, the
20 Board issued an order reflecting this stipulation wherein Protestant's supplemental brief was due via e-
21 mail no later than Monday, September 28, 2009; Respondent's opposition to the supplemental brief was
22 due via e-mail no later than Monday, October 5, 2009; and Protestant's reply to Respondent's opposition
23 was due no later than Monday, October 12, 2009. The order also reflected that the telephonic hearing

24 _____
25 ¹ Protestant was initially represented by Michael J. Flanagan, Esq. and Gavin M. Hughes, Esq. of the Law Offices of Michael J.
26 Flanagan, and Carlos F. Negrete, Esq. of the Law Offices of Carlos F. Negrete. On September 23, 2009, the morning of the
27 initial telephonic hearing on Respondent's Motion to Dismiss Protest, the Board received a letter via e-mail from Asdghig
28 Keuylian indicating that "effective immediately, September 22, 2009, The Law Offices of Michael J. Flanagan is no longer
counsel of record..." and "will not be the counsel...on Wednesday, September 23, 2009 during the 10:00 a.m. scheduled
telephonic hearing in this matter." Michael A. Piazza was present during the telephonic hearing and there was a representation
that he would be associating in as counsel for Protestant. An Association of Counsel was not filed until October 5, 2009.

1 would resume on Wednesday, October 14, 2009, at 10:00 a.m. (Pacific Time).

2 9. Counsel for Calabasas, at 4:51 p.m. Pacific Time on October 13, 2009, the eve of the
3 hearing, submitted via e-mail a written objection to the telephonic resumption of the hearing of this
4 motion and requested the hearing scheduled for 10:00 a.m. the next morning be conducted in person.

5 10. Counsel for Protestant, Kevin Collins, did appear in person at the Board's office in
6 Sacramento for the beginning of the October 14 resumption of the telephonic hearing. Co-counsel, Carlos
7 Negrete did not appear nor did anyone from the Irvine office of Greenberg Taurig. Neither the ALJ nor
8 any of the counsel for Lamborghini were physically present.

9 11. Mr. Collins stated that if the hearing on the motion was to proceed telephonically he would
10 leave the premises and not participate in the hearing.

11 12. Upon going on the record, and while Mr. Collins was still present, the ALJ pointed out
12 several of the following facts:

13 (a) This was the resumption of a telephonic hearing that had been started three weeks ago on
14 September 23;

15 (b) More than five weeks ago, on August 17, 2009, counsel for the parties agreed to the dates
16 for submission of the initial briefs and agreed to the date of September 23 for the initial telephonic hearing
17 of this motion;

18 (c) The Board on August 18 issued its order setting the dates for the briefs to be submitted and
19 setting September 23 as the date for the telephonic hearing of the motion;

20 (d) Counsel for Protestant agreed that this telephonic hearing would be held on September 23;

21 (e) During the hearing on September 23, counsel for the parties desired to submit
22 supplemental briefs and resume the telephonic hearing;

23 (f) On September 23, counsel for the parties chose October 14 as the date for resumption of
24 the telephonic hearing;

25 (g) The Board issued its order on September 24 expressly stating that the hearing would be
26 resumed telephonically on October 14;

27 (h) It was not until 4:51 p.m. on October 13 that the Board received an electronic
28 communication from Protestant's counsel seeking that the hearing to be held the next morning at

1 10:00 a.m. be conducted in person rather than telephonically;

2 (i) This meant that it was already 6:51 p.m. in Chicago where some of Respondent's counsel
3 are located;

4 (j) It is possible that counsel in Chicago would not become aware of the request until
5 8:00 a.m. Central Time (6:00 a.m. Pacific Time) on the morning of the hearing;

6 (k) This would mean that Respondent's Chicago counsel would have four hours (from
7 6:00 a.m. Pacific Time until 10:00 a.m. Pacific Time) to travel from Chicago and appear in Sacramento;
8 and,

9 (l) If counsel for Respondent located in Los Angeles did not happen to see Protestant's e-mail
10 until the following morning at 8:00 a.m. Pacific Time, Lamborghini's Los Angeles counsel would have
11 only two hours to travel from Los Angeles and appear at the Board's offices in Sacramento.

12 13. Although counsel for Protestant recited apologies to opposing counsel and the Board for
13 the late objection to the telephonic hearing, there were no explanations for the timing of the objection.

14 14. Mr. Collins stated that the decision to object to the telephonic format was made in
15 consultation with Mr. Negrete, lead counsel, the day the objection was submitted on October 13, near the
16 close of business.

17 15. Upon the ALJ stating some of the facts above and concluding that the hearing would
18 proceed telephonically, Mr. Collins, as he had previously stated, refused to participate in the hearing on
19 the motion and physically left the Board's office before Lamborghini commenced its arguments.

20 16. As Mr. Collins had chosen to leave and not participate, no arguments were made in behalf
21 of Protestant as to the Motion to Dismiss Protest during the resumption of the telephonic hearing of
22 October 14.

23 17. As can be seen, even if the Board had instantaneously upon receipt of the request at
24 4:51 p.m. ordered that the hearing be conducted in person, it would have been necessary to order a
25 continuance of the hearing, a fact undoubtedly known to Calabasas and its counsel.

26 18. No one could reasonably believe that counsel for Respondent would be able to arrive in
27 Sacramento from either Chicago or Los Angeles for an in person hearing given the timing of the
28 objection.

1 19. But for the fact that the Board's staff is small and quite efficient, it may have been that
2 Protestant's request would not have been read by anyone at the Board until 8:00 a.m. just two hours prior
3 to the time for the hearing.

4 20. All parties knew that even the assigned ALJ was out of state. Although it may have been
5 possible to find another ALJ to preside over the matter, because none of the ALJs employed by the Board
6 are full-time employees located in the Board's office, it is unlikely this could have occurred within what
7 was about a two hour period to do so. And, if a different ALJ could have been assigned, it would have
8 required giving the new ALJ sufficient time to acquaint himself/herself with the materials filed.

9 21. It is noted that Protestant's counsel has offices in Sacramento where the Board is located,
10 whereas Respondent's counsel are located in Los Angeles and Chicago. Contrary to the oral assertion by
11 Protestant's counsel (both off the record prior to the hearing and on the record during the beginning of this
12 hearing) that the in-person hearing was requested by Protestant as it was necessary to observe "live
13 testimony", there was going to be no live testimony during this hearing and there is generally no "live
14 testimony" in what are essentially law and motion matters. This position was retracted upon questioning
15 by the ALJ but no other reasons for objecting to the telephonic hearing were offered, and most important
16 as stated above, no reasons were given for the lateness of the objection to the telephonic hearing.

17 22. The decision of Mr. Collins to leave the premises if the Board refused to continue the
18 hearing and convert it to an in person hearing was not reached spontaneously during the hearing. Mr.
19 Collins informed the Board's staff of this intent at 8:32 a.m. on October 14 via a voicemail message to
20 Robin Parker, Senior Staff Counsel. Mr. Collins indicated that Protestant would not be participating in
21 the hearing but he would be at the Board's offices at 10:00 a.m. to put on the record but nothing was
22 going to happen as far as the hearing and if it did he will have to take it up immediately on a writ as soon
23 as the decision was final. The reason for the lateness in the objection was not explained to the Board or
24 opposing counsel. Mr. Collins did explain in his voicemail that due to the number of motions being filed
25 in the cases (there are three protests involving the same ownership and most of the same counsel), he had
26 been filing a whole host of motions and that was the soonest he could send the letter to the Board
27 objecting to the telephonic hearing. Mr. Collins stated that there was nothing in the statutes (Government
28 Code per voicemail) requiring any specific time for making an objection. Regardless of the absence of a

1 specific time for such an objection, it is unlikely that the legislature intended to allow a party to utilize the
2 right to object to a telephonic hearing under the circumstances that exist here.

3 23. Except for the retracted reason of needing to observe "live testimony" the reasons for the
4 objection to the telephonic hearing were not stated. Although there may be no affirmative requirement for
5 stating reasons for making such an objection, there are implicit negative limitations upon the claimed right
6 to make any request, objection, motion or even the exercise of a right - the limitation that they not be
7 made in bad faith. When Mr. Collins stated there is no requirement that the motion be made timely, the
8 ALJ replied that the limitation was that it "be fair".²

9 24. The reason for Mr. Collins leaving and refusing to participate was not explained on the
10 record. Such an advance decision to do so could also support the inference that the motive for the
11 objection was that of delay and increasing the cost to Lamborghini. An alternative course of conduct was
12 available. Mr. Collins could have participated under protest. As the decision to leave had been made in
13 advance, a consideration of this alternative was likely considered but rejected.

14 25. If Mr. Collins had participated under protest and if the motion to dismiss were denied,
15 Calabasas would have prevailed. Whether the Board was right or wrong in conducting the hearing by
16 telephone would then be irrelevant as to this motion and the issue of future telephonic hearings in this and
17 other matters in which the parties are involved could be addressed and perhaps resolved without
18 disruption of this schedule.

19 26. And, if the Motion to Dismiss Protest had been granted after participation by Mr. Collins
20 under protest, Calabasas could still pursue what remedies it claims it has for not being granted an in
21 person hearing.

22 27. This was not a situation where a great deal of time and expense would have been incurred
23 by Calabasas in making its oral argument at the hearing on the motion rather than walking out. All the

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26 _____
27 ² Although not expressly applicable to the Government Code, one common definition of "good faith" is found in the California
28 Uniform Commercial Code ("UCC") which applies to the contract between the parties. UCC section 1201(b)(20) states: "(20)
'Good faith,' except as otherwise provided in Division 5 (commencing with Section 5101), means honesty in fact and the
observance of reasonable commercial standards of fair dealing." (Emphasis added.)

1 briefs had already been filed. The initial hearing had already been held.³

2 28. There were only two brief issues to be addressed in this remaining portion of the hearing.

3 29. The duration of this portion of the hearing, even with both parties participating, would
4 have been less than an hour.

5 30. Mr. Collins' office is in Sacramento. This fact plus the fact that the hearing would take
6 less than an hour is in marked contrast with how long it would take for counsel for Lamborghini to travel
7 to Sacramento from Chicago and from Los Angeles to Sacramento.

8 31. The inference is strong that counsel for Calabasas was more concerned about delaying the
9 proceedings before the Board rather than having a fair opportunity to present their client's case (perhaps
10 because Calabasas was aware its position in opposing the motion was not tenable).

11 32. This situation is too serious to be humorous but it is absurd that Mr. Collins would
12 announce in advance that he expected that the filing of the objection at 4:51 p.m. to a telephonic hearing
13 calendared to start at 10:00 a.m. the next morning would have the effect of producing in Sacramento the
14 ALJ (who was known by all to be out of state) along with producing in Sacramento the attorneys for
15 Lamborghini (known to be in Los Angeles and Chicago), and that he would walk out if this did not occur.

16 33. Mr. Collins must have known it was literally impossible for this to occur and therefore his
17 own appearance in person was made solely for the purpose of obtaining a continuance or walking out.
18 Effectively, the ultimatum issued by Mr. Collins was, "I am appearing in person and, (1) unless you
19 continue the telephonic hearing to some future date; and (2) order that it be live, I will walk out."

20 34. The facts recited above also evidence that Calabasas had waived its right to object to a
21 telephonic hearing of the motion for the following reasons.

22 ///

23 ///

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25 _____
26 ³ Walking out was not done to avoid additional expenditures by Calabasas or to avoid revealing its position on the merits of the
27 motion. Mr. Collins was already physically present in the Board's office. Two sets of briefs had been filed, one set for the
28 original hearing held on September 23 and one set of supplemental briefs for the resumption of the hearing. The original
hearing, held three weeks prior on September 23, was conducted telephonically without objection by Calabasas and in fact with
the consent of Calabasas.

1 35. Protestant's basis for claiming the right to an in person hearing is Government Code⁴
2 section 11440.30⁵ which provides as follows:

3 11440.30. (a) The presiding officer may conduct all or part of a hearing by telephone,
4 television, or other electronic means if each participant in the hearing has an opportunity
5 to participate in and to hear the entire proceeding while it is taking place and to observe
6 exhibits.

7 ///

8 ⁴ Nothing contained herein is intended to imply that the Board agrees that Government Code section 11440.30 relied upon by
9 Protestant requires the Board conduct an in person hearing because a party objects to the telephonic or other electronic format
10 of the hearing.

11 ⁵ Chapter 4.5 of the Administrative Procedure Act ("APA"), commencing with Section 11400, contains general provisions of
12 administrative adjudication. Government Code section 11415.10 provides as follows:

13 (a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the
14 statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute
15 or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication
16 provisions of the Administrative Procedure Act.

17 (b) This chapter supplements the governing procedure by which an agency conducts an adjudicative
18 proceeding. (Emphasis added.)

19 Chapter 4.5 contains both mandatory and optional provisions. The California Law Revision Commission comment to
20 subsection (b) states some provisions of the Chapter are optional, such as the informal hearing procedure (Article 10), the
21 emergency decision procedure (Article 13), and the declaratory decision procedure (Article 14). Furthermore, "[t]he agency
22 determines whether to use any of the optional provisions. The optional provisions do not replace any other agency procedures
23 that serve the same purpose." The comment goes on to state that other provisions of Chapter 4.5 are mandatory, such as
24 Section 11425.10, the Administrative Adjudication Bill of Rights. The comment then states:

25 The mandatory provisions govern any adjudicative proceeding to which this chapter is applicable, and
26 supplement the governing procedure by which an agency conducts an adjudicative proceeding, subject to a
27 contrary statute applicable to the particular agency or proceeding...

28 Government Code section 11415.20 provides that "[a] state statute or a federal statute or regulation applicable to a particular
agency or decision prevails over a conflicting or inconsistent provision of this chapter." An agency cannot exempt itself from a
mandatory provision of the APA by its own regulations.

The California Law Revision Commission is an independent state agency charged with recommending reforms of state law to
the Legislature. (Gov. Code sec. 8289.) "Because the official comments of the California Law Revision Commission 'are
declarative of the intent not only of the draftsman of the code but also of the legislators who subsequently enacted it' (cit.), the
comments are persuasive, albeit not conclusive, evidence of that intent." (Department of Alcoholic Beverage Control v.
Alcoholic Beverage Control Appeals Bd. (2006) 40 Cal.4th 1, 12, fn. 9 (50 Cal.Rptr.3d 585) (Alcoholic Beverage Control).)

The Law Revision Comments to Section 11440.30 do not categorize it as mandatory or optional. Some agencies have adopted
regulations that exempt their hearings from the requirements of Section 11440.30 and some agencies have adopted regulations
consistent with Section 11440.30 (see for example, Section 7429(c)(3) of Title 2 of the California Code of Regulations
("CCR"), Section 115.07(b) of Title 13 of the CCR, Section 3082(g) of Title 5 of the CCR, and Section 2509.58(b) of Title 10
of the CCR). If Section 11440.30 of the Government Code was mandatory, the Office of Administrative Law could not have
approved the regulations because they would be in conflict with existing law (Gov. Code § 11349(d)).

Moreover, the comments indicate that the "opportunity to observe exhibits includes a reasonable opportunity to examine and
object to exhibits before or at the hearing..." Other than exhibits to pleadings or declarations that have been served on
opposing counsel, there are no exhibits identified and admitted nor any witnesses examined during a Board conducted
telephonic hearing on a law and motion matter.

1 (b) The presiding officer may not conduct all or part of a hearing by telephone,
2 television, or other electronic means if a party objects.

3 36. However, the Government Code also contains the following section:

4 11415.40. Except to the extent prohibited by another statute or regulation, a person may
5 waive a right conferred on the person by the administrative adjudication provisions of the
6 Administrative Procedure Act.

7 37. It is noted that Government Code section 11440.30(b) states: "The presiding officer may
8 not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects."
9 (Emphasis added). The statute does not state that "The presiding officer shall not conduct...." This
10 language is clearly permissive, not mandatory. (See footnote 5).

11 38. It is determined that Calabasas waived its right to an in person hearing in that:

12 (a) Counsel for Calabasas in the scheduling of the hearings on this motion expressly agreed to
13 the hearings to be held telephonically on the two dates chosen. (See discussion above.)

14 (b) Even if there had been no such agreement, there was an implied waiver of the right to
15 object to the telephonic hearings by the conduct of Calabasas in participating in the first telephonic
16 hearing, agreeing to a continuance and resumption of the hearing to be conducted telephonically without
17 objection, and remaining silent until the day (evening in Chicago) prior to the resumption of the hearing.

18 39. Although waivers are generally retractable, any retraction must be done in a timely
19 manner, which means within a reasonable time. In addition, any retraction must occur at a time when
20 there would be no prejudice to the other party.

21 40. Here the attempted retraction of the waiver of the claimed right to object to the telephonic
22 hearing was not timely and to allow the retraction would operate to the prejudice of the other party. If
23 retraction is permitted, Lamborghini would be the victim of a fait accompli in that the retraction by
24 Platinum would mean that Lamborghini would have a continuance imposed upon it by the unilateral
25 conduct of Calabasas, and without any opportunity to object.

26 41. Counsel for Calabasas have raised the argument that Protestant is entitled to due process
27 with an opportunity to be heard. (September 23, telephonic hearing transcript, page 40, lines 23-25, page
28 41, lines 1-3, page 57, lines 14-24, page 60, lines 15-24) But, it is their own conduct that involves or
utilizes mechanisms or principles that deprive Lamborghini of its opportunity to be heard. All of the

1 protections of which they have availed themselves are permissible, and when used properly, are not
2 unfair. However, here counsel for Calabasas has used the mechanisms in ways that demonstrate a
3 pattern that their use was not fair but rather done for obstruction and delay.

4 42. In conclusion, even if the claimed right to object was exercised in good faith, the objection
5 to the telephonic hearing is overruled for the following reasons:

6 A. The Objection to the Telephonic Hearing was Not Timely

7 (1) Absent exigencies to militate otherwise, any objection to a telephonic hearing to which the
8 party had agreed weeks in advance must be made within a reasonable time prior to its scheduled
9 commencement;

10 (2) Calabasas failed to object within a reasonable time prior to the agreed and ordered time for
11 hearing.

12 B. Calabasas Both Expressly and Impliedly Waived its Right to Object to the Telephonic
13 Hearing

14 (1) The right to object to a telephonic hearing can be waived;

15 (2) Calabasas by expressly agreeing to the telephonic hearings waived its claimed right to an
16 in person hearing;

17 (3) Calabasas by its conduct in participating in the first part of the hearing impliedly waived its
18 claimed right to object to the telephonic hearing;

19 (4) Calabasas by remaining silent until only hours prior to the resumption of the hearing
20 impliedly waived its claimed right to object to the telephonic hearing.

21 C. The Attempted Retraction by Calabasas of the Waiver of its Claimed Right to Object
22 to the Telephonic Hearing was not Effective

23 (1) The attempted retraction by Calabasas of its waiver of its claimed right to object was not
24 timely;

25 (2) Under these circumstances, allowing Calabasas to have an in person hearing would be
26 granting Calabasas a continuance of the hearing of the motion to dismiss without an opportunity for
27 Lamborghini to be heard.

28 ///

D. The Objection to the Telephonic Hearing was Not Made in Good Faith

(1) The exercise of any right must be done in good faith;

(2) There are sufficient circumstances here to evidence a lack of good faith in objecting to the telephonic format of the hearing;

(3) These circumstances include:

(a) The 11th hour filing of the objection to the telephonic hearing with knowledge that none of the attorneys for Lamborghini could appear in person from Chicago or Los Angeles (and that neither could the assigned ALJ);

(b) The decision to file the 11th hour objection to the telephonic hearing had been made in consultation with the lead counsel for Calabasas;

(c) The physical appearance of counsel for Calabasas at the Board's office in Sacramento, followed by the refusal to participate and walking out from the Board's office when the hearing resumed (rather than participating under protest and with express reservation of rights);

(d) The unsupportable statements of counsel for Calabasas as to the purported need for an in person hearing;

(e) The advance statements of counsel for Calabasas that he would leave the Board's office if the hearing went forward telephonically and therefore, "I don't think it's to anyone's benefit to have the hearing go forward today" implying that the two decisions (1) to object to the telephonic hearing, followed by (2) walking out, were for the purpose of obtaining a continuance;

(f) The requests that the Board inform Calabasas as to whether the Board's order was a "final" order so a writ could be sought which if issued would delay the proceedings.

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1 For the above reasons, IT IS HEREBY ORDERED THAT Protestant Calabasas Euro Auto Group,
2 LLC's request that the hearing on the motion to dismiss scheduled to resume telephonically on
3 October 14, 2009, be held in person, is denied. Proceeding with the telephonic hearing after counsel for
4 Calabasas refused to participate and left the Board's Office was proper.
5 SO ORDERED.

6
7 DATED: October 20, 2009

NEW MOTOR VEHICLE BOARD

8
9 By 

10 ANTHONY M. SKROCKI
11 Administrative Law Judge
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27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

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

CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 CALABASAS EURO AUTO GROUP, LLC,
13
14 Protestant,
15 v.
16 AUTOMOBILI LAMBORGHINI, S.p.A.,
17 Respondent.

Protest No. PR-2174-09

**ORDER DETERMINING
APPLICATION OF AUTOMATIC
STAY IN BANKRUPTCY CODE TO
BOARD CONSIDERATION OF
"PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST"**

18
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EXHIBIT B

ORDER DETERMINING APPLICATION OF AUTOMATIC STAY IN BANKRUPTCY CODE TO BOARD
CONSIDERATION OF PROPOSED ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

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10 Attorneys for Respondent
11 BARACK FERRAZZANO
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13 Chicago, Illinois 60606

14 **ISSUE CONCERNING AUTOMATIC STAY UNDER BANKRUPTCY CODE**

15 1. Does the automatic stay that arises under the Bankruptcy Code preclude the New Motor
16 Vehicle Board ("Board") from considering the Proposed Order Granting Respondent's Motion to
17 Dismiss Protest?

18 **PROCEDURAL BACKGROUND**

19 **CHRONOLOGY THAT LED TO THIS ISSUE**

20 2. The following events led to the issue of whether the automatic stay under the Bankruptcy
21 Code applies to the Board's consideration of the Proposed Order at its December 10, 2009, General
22 Meeting:

- 23 ■ Automobili Lamborghini America, LLC ("Lamborghini") sent its 15-day notice of termination
24 on November 25, 2008.
- 25 ■ Protestant, Calabasas Euro Auto Group, LLC ("Calabasas") filed for bankruptcy protection
26 under Chapter 11 of the Bankruptcy Act on March 26, 2009.
- 27 ■ Calabasas filed its protest with the Board on July 31, 2009.
- 28 ■ Lamborghini filed its Motion to Dismiss Protest (the "Motion") on September 16, 2009 (an
electronic version was received on August 28, 2009). The Motion alleged that the protest was
not timely filed.
- In accordance with two briefing schedules and hearing dates, all agreed to by counsel, the
hearing on the Motion was conducted on September 23, 2009 and October 14, 2009. The second
hearing date was needed to give the parties the opportunity to submit supplemental briefs.

- 1 ▪ The bankruptcy proceedings were converted from Chapter 11 (Re-organization) to Chapter 7
2 (Liquidation) proceedings on October 21, 2009.
- 3 ▪ While reviewing the record a final time prior to submitting a Proposed Order to the Board, it was
4 noted that the Board had no information relating to the automatic stay that will frequently arise
5 upon the filing of a petition in bankruptcy. Neither side had previously mentioned this possible
6 problem in any of the several briefs or in oral argument.
- 7 ▪ In a companion case (Platinum Motors, LLC v. Automobili Lamborghini, S.p.A., Protest No.
8 PR-2140-08) involving the same attorneys, franchisor, and owners of the two franchisees, there
9 had been filings in Bankruptcy Court and “11th hour” claims by counsel for Platinum that all
10 proceedings before the Board relating to Platinum must cease due to the bankruptcy stay.
- 11 ▪ Concerned that such a claim could be made again at the 11th hour when the Board is convened to
12 consider the proposed order recommending the protest be dismissed, Administrative Law Judge
13 Anthony M. Skrocki (“ALJ Skrocki”) initiated a noticed telephonic Status Conference with
14 counsel for the parties. The Interim Trustee in the Platinum bankruptcy proceedings, Mr. James
15 Joseph, was also invited to participate.
- 16 ▪ Prior to the conference, ALJ Skrocki in the written Notice of November 17, 2009, informed the
17 parties that the Board had received notice that the Calabasas bankruptcy proceeding had been
18 converted from a Chapter 11 to a Chapter 7 proceeding but had not received any information as
19 to whether an Interim Trustee had been appointed for Calabasas and that neither side indicated
20 whether there was a stay that would prevent the Board from acting in regard to the Calabasas
21 protest.
- 22 ▪ In the written notice, ALJ Skrocki directed the parties to be prepared to address the following
23 issues:
- 24 1. Whether the automatic stay had been lifted in the Calabasas protest (as it had been
25 in the Platinum protest);
- 26 2. Whether there had been an Interim Trustee appointed in the Calabasas protest,
27 and if so whether it was Mr. Joseph, the Interim Trustee for Platinum;
- 28 3. Whether it is necessary for the Interim Trustee to appoint Special Counsel for

1 Calabastas, and if so, whether this had been done.

2 4. In particular, because counsel for Calabastas had not asserted that the Bankruptcy
3 Code stay was applicable to the Calabastas protest proceedings before the Board, the parties were
4 instructed to address whether there was anything arising from the Calabastas bankruptcy
5 proceedings that would prohibit the Board from acting on any aspect of the Calabastas protest
6 including the Motion.

7 **NOVEMBER 20, 2009, STATUS CONFERENCE**

8 3. The telephonic Status Conference on the issue of the application of the bankruptcy stay
9 was held on November 20, 2009.

10 4. Calabastas was represented by Carlos Negrete, Esq., and Hanh Nguyen, Esq. of the Law
11 Offices of Carlos F. Negrete. Lamborghini was represented by Allen Resnick, Esq., of Jeffer, Mangels,
12 Butler & Marmaro LLP, and Randall Oyler, Esq. and William J. Barrett, Esq. of Barack Ferrazzano
13 Kirschbaum & Nagelberg LLP. James Joseph, Esq. also participated as the Interim Trustee on behalf of
14 the debtor Calabastas.

15 **As to the Bankruptcy Proceedings and the Position of Mr. Joseph Regarding who is to**
16 **Represent Calabastas before the Board**

17 5. Upon conversion of the proceedings from Chapter 11 to Chapter 7, Mr. Joseph, who was
18 already the Interim Trustee for Platinum, had been appointed the Interim Trustee for Calabastas.

19 6. Mr. Joseph will not seek to appoint Special Counsel to represent Calabastas before the
20 Board.

21 7. Mr. Joseph has filed a motion in Bankruptcy Court seeking permission to reject the
22 executory contract (the franchise here) between Calabastas and Lamborghini. Mr. Joseph has done the
23 same with regard to Platinum. The hearing on the Calabastas motion is set for December 15, 2009 and
24 the hearing on the Platinum motion is set for December 18, 2009.

25 8. If the Bankruptcy Judge grants the motion to reject the franchise, "the estate of the
26 debtor" (Calabastas) will no longer be involved in the franchise. The same would be true for Platinum.

27 9. Mr. Joseph stated that if the Bankruptcy Judge approves the rejection of the franchise,
28 this will constitute a breach of the contract by Calabastas (with the date of breach being the date of the

1 filing of bankruptcy). He was of the opinion that neither the rejection of the contract nor its breach
2 would have the effect of terminating the contract and that whatever rights there were under the contract
3 (including any remedies) would continue to exist between the parties to it. (There is a difference of
4 opinion as to this last sentence.) The party to the contract here would be Calabasas, not its members.

5 10. Although Mr. Joseph did not intend to appoint Special Counsel, Mr. Joseph did authorize
6 current counsel for Calabasas to proceed with the representation of Calabasas before the Board.

7 **Position of the Interim Trustee of Calabasas as to the Automatic Stay Arising from the**
8 **Bankruptcy Code**

9 11. Mr. Joseph declined to state his position as to whether there was an automatic stay in
10 effect that would preclude the Board from acting on the Motion.

11 **Position of Lamborghini as to the Automatic Stay Arising from the Bankruptcy Code**

12 12. Lamborghini has taken the position that the automatic stay does not apply to these
13 proceedings. As the stay does not apply, there was no need for Lamborghini to seek an order from the
14 Bankruptcy Court lifting a stay that does not exist. It is understandable that Lamborghini would not
15 raise the issue of whether the automatic stay applies to its own Motion as a party would not raise an
16 issue that it does not believe exists and which is defensive in nature. It would be Calabasas that would
17 be expected to raise the claim (as its counsel did in the Platinum proceedings) that the Board is
18 powerless to act on the Motion due to the Bankruptcy Code stay.

19 **Position of Calabasas as to the Automatic Stay Arising from the Bankruptcy Code**

20 13. As expected, counsel for Calabasas has now announced his position that the Board is
21 precluded from acting on the proposed order because of the automatic stay that arises upon the filing of
22 a petition in bankruptcy.

23 14. Calabasas is now contending that not only is the Board barred from acting because of the
24 stay but that the Board is also powerless to make even a determination of whether the stay is applicable
25 to this Motion.

26 15. As stated, Calabasas filed its petition in bankruptcy on March 26, 2009 and filed its
27 protest on July 31, 2009. Calabasas was served with this Motion on August 28, 2009. Why Calabasas
28 did not earlier raise the claim that the Board had no power to consider the Motion because of the

1 automatic stay is unknown. One would think that such a claim would be raised immediately by
2 Calabasas upon the receipt of the Motion rather than undertaking the time and expense of submitting
3 multiple briefs, declarations, etc., contesting the merits of the Motion. One would also think that such a
4 “defense” to the Motion would be the first argument in any brief filed in opposition thereto.

5 16. Based upon the history of this protest and that of Platinum, including other “11th hour”
6 assertions and “tactics” by counsel for Calabasas, it is possible to conclude that the issue of whether the
7 automatic stay is applicable here was withheld by Calabasas with the intent to raise it immediately
8 before or at the time of the Board’s consideration of the Proposed Order, which if adopted by the Board
9 would result in dismissal of the protest.

10 17. During the telephonic Status Conference of November 20, 2009, counsel for each side
11 requested they be given an opportunity to submit briefs as to their positions regarding whether the
12 automatic stay under the Bankruptcy Code prevented the Board from acting on this Motion.

13 18. Counsel agreed that each side would submit their brief to the Board no later than
14 Wednesday, November 25, 2009 (Thanksgiving Eve), at 4:00 p.m. The scope of each brief was to be
15 limited to whether the stay arising under the Bankruptcy Code applies to this Motion, and whether the
16 Board has the power to determine the scope of the stay. The parties’ briefs were timely received by the
17 Board.

18 19. Regardless of the reasons for the decision of Calabasas not to raise the issue of the stay
19 prior to an inquiry by the Board’s ALJ the issue must now be confronted.

20 **ANALYSIS**

21 20. It is determined that the automatic stay that generally arises under the Bankruptcy Code
22 does not operate to stay the Board’s consideration of Lamborghini’s Motion.

23 21. The reasons as stated in Lamborghini’s “Statement of Respondent Concerning
24 Applicability of Automatic Stay Under 11 U.S.C. § 362” are hereby incorporated by reference and a
25 copy of this Statement is attached hereto as Exhibit A.

26 22. It is also determined that the Board in considering this issue is determining the extent of
27 its own jurisdiction as created by the legislature. The Proposed Order Granting Respondent’s Motion to
28 Dismiss Protest (if adopted by the Board) is determining only that the Board has no jurisdiction to

1 consider the merits of the claim as raised by Calabasas in its protest. If the Board has no jurisdiction to
2 hear the protest, the issue of whether the protest proceedings before the Board are stayed by the
3 Bankruptcy Code is not relevant. To conclude otherwise could mean that the Board must stay a
4 proceeding over which it has no jurisdiction.

5 23. The Board is empowered to rule on its own jurisdiction. If the Board determined that it
6 had jurisdiction to hear the protest, contrary to the finding in the Proposed Order, then whether the
7 automatic stay applied would have had to be determined.

8 24. Because the protest was not timely filed, the Board never had jurisdiction to hear the
9 protest. The filing of a petition in bankruptcy, whether before or after the filing of the protest, cannot
10 create jurisdiction in the Board to hear the protest. Staying a proceeding involving a dispute over which
11 the Board has no jurisdiction is meaningless.

12 25. If filing a petition in bankruptcy requires the Board recognize that it must stay
13 proceedings over which it has no jurisdiction, the filing in bankruptcy would then have the double effect
14 of creating in the Board jurisdiction that did not exist and also at the same time requiring the Board to
15 stay the proceedings before it over which it had no jurisdiction.

16 26. Here no jurisdiction existed at the time of filing of the protest, and there is no possibility
17 that jurisdiction could ever arise. Certainly Congress did not intend that the bankruptcy stay operate to
18 "create" temporary jurisdiction in the Board for some indefinite time into the future. This would be the
19 result if a party were to file a protest over which the Board had no jurisdiction but because of the
20 bankruptcy filing the Board was required to hold in abeyance proceedings over which it has no
21 jurisdiction. The effect would be to empower a person, here Calabasas, to create its own jurisdiction and
22 empower it far beyond the legislative intent.

23 27. Finding that the Board must stay its consideration of the Proposed Order can have
24 significant consequences beyond just the issue of good cause to terminate the franchise of Calabasas.
25 Such a result could have significant impact upon a franchisor as well as the consuming public.

26 28. If the bankruptcy stay prevents the Board from dismissing a protest over which the Board
27 has no jurisdiction that would mean there would be a protest pending before the Board that should not be
28 and would not be before the Board but for the bankruptcy filing. Because the protest would be pending,

1 the franchisor would not be permitted to treat the "protesting franchisee" as terminated, meaning that the
2 "protesting franchisee" is still an "existing franchisee". And more significantly to the franchisor and the
3 public, no replacement franchisee could be appointed if the "existing franchisee" would be within 10
4 miles of the proposed additional location. (See Section 3062)

5 29. If Calabasas, a former franchisee, can file a protest challenging its termination, then there
6 is no reason why Calabasas, a former franchisee, could not also file an establishment protest in the event
7 Lamborghini, next week or next year, attempts to establish a replacement dealer. Could Calabasas,
8 because of its bankruptcy, claim that the Board is stayed from dismissing the protest against the
9 establishment? Under the scenario here, the result could be as follows:

10 a. The "existing franchisee" ceased operations in November 2008.

11 b. The "existing franchisee" receives a notice of termination around December 1, 2008, and
12 has 10 days to file a protest;

13 c. Failure to file a timely protest has the effect of terminating the franchise so as of mid-
14 December 2008, Calabasas is now only a "former franchisee";

15 d. The franchisor may establish a replacement dealership/franchisee even though the
16 location of the "former franchisee" is within 10 miles of the new location;

17 e. The franchisor is not required to give notice of the establishment of the new franchisee to
18 either the "former franchisee" or the Board;

19 f. The "former franchisee" files a petition in bankruptcy in March 2009, almost four months
20 after the notice of termination was received.

21 30. By itself, the filing of the petition in bankruptcy in March 2009 (as occurred here), has no
22 effect upon any of the above.

23 31. However, add in the following:

24 g. The protest is filed on July 31, 2009, eight months after the expiration of the time to file a
25 protest and four months after the filing in Bankruptcy.

26 32. By itself, the filing of the protest by the "franchisee" on July 31, 2009 was not within the
27 rights of a "franchisee" under Section 3060 as it was not timely, and because the franchise terminated in
28 December 2008, Calabasas is a "former franchisee" and no longer a "franchisee". The protest should

1 be dismissed.

2 33. Now with the combination of the filing in bankruptcy and the filing of the protest - if the
3 bankruptcy stay applies to the protest that was filed, it now means that:

4 h. The Board is stayed from dismissing the protest due to lack of jurisdiction with the effect
5 being that the "former franchisee" is a de facto "franchisee" and as such;

6 i. The franchisor cannot establish a "replacement dealership" as such an establishment
7 would be an "additional dealership" if the location of the "former franchisee" is within 10 miles of the
8 proposed "additional dealership".

9 34. As can be seen, finding that the automatic bankruptcy stay applies to a protest that was
10 not timely filed, and when filed was filed by a "non-franchisee", results in giving the "equivalent of
11 protest rights" to a non-franchisee. More accurately stated, the "non-franchisee", who has no "right" to
12 file a protest, will be given the improper "power" to "freeze" the market depriving both Lamborghini
13 and the public from having a replacement dealership in that market.

14 35. Applying the bankruptcy stay under these circumstances has the effect of "reviving" a
15 "former franchisee" into an "existing franchisee". The franchisee who in December 2008 lost the right
16 to file a protest but then filed a protest in March 2009 is essentially attempting to use the Bankruptcy
17 Code to revive the right to protest far beyond the rights that were granted by the legislature.

18 36. Congress could not have intended that the Bankruptcy Code be used to "revive" or
19 "create" rights that do not exist. The filing of the petition in bankruptcy in March 2009 did not create a
20 right to file a protest on July 31, 2009. The protest was filed far beyond the 10 days permitted for such
21 a protest by the Vehicle Code¹. And, when the protest was filed, Calabasas was not even a franchisee.

22 37. The bankruptcy stay may be able to "freeze" any rights that exist as of the date of the
23 filing in bankruptcy but there were no protest rights in Calabasas as of the date of its bankruptcy filing.
24 Calabasas lost its protest rights 10 days after it received the notice of termination and was no longer a
25 franchisee 15 days after it received the notice of termination.

26 38. To conclude that the bankruptcy stay applies to this protest is to cloak Calabasas with
27 "rights" as a franchisee (even though it is not) and subject Lamborghini and the consuming public to the
28

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

1 “power” of Calabasas to freeze the market based upon Calabasas’ own decision to file bankruptcy at
2 some time long after Calabasas ceased being a franchisee and then attempt to reclaim its status as a
3 “franchisee” merely by the act of filing a protest when it no longer had the right to do so.

4 39. It is the legislature that determines how long a franchisor is precluded from acting to
5 terminate a franchise and how long a franchisee has to file a protest. Here if the Board is stayed from
6 dismissing the protest due to lack of jurisdiction (because the protest was not timely filed and when it
7 was filed Calabasas was no longer a franchisee) the determination of the time period within which a
8 protest must be filed would be in the discretion of the former franchisee. A franchisee who did not file a
9 protest within the time limits established by the legislature could nonetheless delay a franchisor from
10 proceeding with its intended action simply by first filing a petition in bankruptcy followed by a protest.
11 It could be that the “late protest” could be filed even before the bankruptcy. So long as the franchisee
12 won the race, by filing a petition in bankruptcy before the protest was dismissed, the franchisee could
13 claim that the filing in bankruptcy stayed the proceedings relating to the protest with the result in either
14 case being the same: the franchisor would be barred from acting far beyond what was intended either by
15 Congress or the state legislature.

16 40. As discussed below, the use of the two “stays” could be appropriate if the franchisee acts
17 timely, perhaps by filing a timely protest followed by a petition in bankruptcy.

18 41. Congress has created the right in a “debtor” to file a petition in bankruptcy. Upon the
19 exercise of that right, the Bankruptcy Code imposes an automatic stay on certain other proceedings.

20 42. The California legislature has also created a statutory stay. It has seen fit to prevent a
21 franchisor from terminating a franchise unless certain notices are received by the franchisee and the
22 Board with the franchisor’s intended termination stayed for a limited time after receipt of the notices.
23 The legislature has also given the franchisee the right to file a protest within stated time limits and, if a
24 timely protest is filed, the statutory stay of the termination will continue to exist until the Board holds a
25 hearing and finds good cause has been established by the franchisor to allow the termination. However,
26 if the franchisor does not exercise its right to file a timely protest within 10 days of the notice being
27 received, the Vehicle Code’s automatic stay (15 days here) will be automatically lifted.

28 43. Here, Calabasas is attempting to create another stay. Calabasas is claiming that it has the

1 right to have the proceedings before the Board stayed because Calabasas filed a petition in bankruptcy.
2 However, there were no proceedings that existed before the Board prior to the filing of the petition in
3 bankruptcy. (Bankruptcy filed in March 2009. Protest filed July 31, 2009.) And, as of the time of the
4 filing in bankruptcy, there was no time within which a protest is permitted to be filed by the Vehicle
5 Code.

6 44. If the protest had been timely filed, and there was also a petition in bankruptcy filed
7 before or after the protest had been filed, the Bankruptcy Code might impose a stay on the proceedings
8 before the Board.

9 45. The "double-stay" would be the result of Congressional and State legislative action.

10 46. One problem with Protestant's contention is that, if there was no timely protest filed,
11 there is no statutory stay under the Vehicle Code of the termination of the franchise and the later filing
12 of a protest is a meaningless act. The late protest will not and can not operate to continue the Vehicle
13 Code stay as that stay had lapsed. The California legislature did not empower a "franchisee" to create a
14 stay by the filing of a protest.

15 47. The "stay" can not be created by the franchisee nor can it be revived by the franchisee
16 once the stay has terminated. Once the legislatively-created automatic stay is terminated (due to the
17 passage of 15 days with no protest being filed within 10 days), the franchisee has no right to file a
18 protest and no right to a hearing before the Board. The Vehicle Code stay of the termination has ceased
19 to exist and the Board is powerless to hear a protest that has not been timely filed.

20 48. As stated above, it is the timely filing of a protest that has the effect of continuing the
21 Vehicle Code stay. Filing a late protest has no legal effect as there is no Vehicle Code stay that will be
22 continued. Calabasas has no power to create a stay. Calabasas had the right to file a timely protest and
23 had it done so the Vehicle Code stay would have continued. However, Calabasas has no right to file a
24 late protest and such an attempted filing has no legal effect as the Vehicle Code stay has already
25 terminated. There is nothing upon which the bankruptcy stay can operate.

26 49. The Board in dismissing the protest has merely determined that it has no jurisdiction to
27 consider the Protest and therefore is powerless to conduct a hearing on its merits. The Board can neither
28 grant nor deny the relief requested by Calabasas in its protest. The protest, having not been timely filed

1 has no legal effect. It does not trigger or give rise to the application of the provisions of the Vehicle
2 Code and is essentially void. There are no proceedings before the Board which could be the subject of a
3 stay.

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1 ORDER

2 After considering the pleadings and oral arguments of counsel, IT IS HEREBY ORDERED
3 THAT the automatic stay in the Bankruptcy Code does not apply to the Board's consideration of the
4 "Proposed Order Granting Respondent's Motion to Dismiss Protest" for the following reasons:

5 I. The Board's consideration of the motion was limited to whether the Board had
6 jurisdiction to hear the protest. As there is no jurisdiction to hear an untimely protest there were no
7 judicially cognizable proceedings before the Board that could be stayed; and

8 II. As stated in Lamborghini's Statement filed with the Board on November 25, 2009 and
9 attached hereto as Exhibit A, the automatic stay does not apply because:

10 A. The protest is a proceeding brought before the Board by Calabasas;

11 B. Even if the motion to dismiss is deemed to be a proceeding brought by
12 Lamborghini:

13 (1) 11 U.S.C. § 362(a)(1) does not apply because Lamborghini could not have
14 commenced or filed its motion to dismiss the protest before the filing of the petition in
15 bankruptcy; (The protest was filed after the petition in bankruptcy.) And,

16 (2) 11 U.S.C. § 362(a)(3) does not apply because the current proceeding does
17 not and will not impact any current asset or property of Calabasas.

18 SO ORDERED.

19
20 DATED: December 3, 2009

NEW MOTOR VEHICLE BOARD

21 
22 By _____
23 ANTHONY M. SKROCKI
24 Administrative Law Judge
25

26 James J. Joseph, Interim Trustee

27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

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16 Attorneys for Respondent
17 AUTOMOBILI LAMBORGHINI AMERICA LLC,
18 as assignee and successor in interest to
19 Automobili Lamborghini, S.p.A.

20 STATE OF CALIFORNIA
21 NEW MOTOR VEHICLE BOARD

22 In the Matter of the Protest of:
23 Calabasas Euro Group, LLC, a California
24 limited liability company,
25 Protestant,
26 v.
27 AUTOMOBILI LAMBORGHINI, S.p.A.,
28 Respondent.

Protest No. PR-2174-09

STATEMENT BY RESPONDENT
CONCERNING APPLICABILITY OF
AUTOMATIC STAY UNDER 11 U.S.C. § 362

Respondent AUTOMOBILI LAMBORGHINI AMERICA LLC ("Lamborghini"), as assignee and successor in interest to Automobili Lamborghini, S.p.A., submits the following statement in response to the Board's order requiring the parties to address the applicability of the automatic stay under 11 U.S.C. § 362 to the instant proceeding in light of the pending chapter 7 bankruptcy case of protestant Calabasas Euro Group, LLC ("Calabasas"):

EXHIBIT A

NOV 30 2009

FILED

NEW MOTOR VEHICLE BOARD

DATE 11-30-09

BY [Signature]

1 I. INTRODUCTION

2 On November 23, 2009, Administrative Law Judge Anthony Skrocki ("ALJ
3 Skrocki") issued an order requiring each party to submit a brief addressing the following two issues:

- 4 1. Whether Bankruptcy Code Section 362 automatically stays this proceeding; and
5 2. Whether ALJ Skrocki has the authority to make that determination.

6 II. FACTUAL BACKGROUND

7 On November 25, 2008, Lamborghini issued a fifteen day notice of termination letter
8 to Calabasas on the basis that, among other things, Calabasas had ceased to conduct sales and
9 service operations for over seven business days; and Calabasas was insolvent.

10 Calabasas failed to file a protest within 15 days of the notice of termination.
11 Consequently, pursuant to the relevant provisions of the Vehicle Code, Calabasas' dealer agreement
12 and franchise was terminated.¹

13 On March 26, 2009 ("Petition Date"), Calabasas filed a voluntary chapter 11 petition
14 in the United States Bankruptcy Court for the Central District of California, Santa Ana Division.

15 On October 21, 2009, the Bankruptcy Court entered an order converting the case to a
16 chapter 7 bankruptcy.

17 On May 7, 2009, at meeting of creditors of the Calabasas estate under 11 U.S.C.
18 § 341 (the "341 Meeting"), counsel for Calabasas admitted there was not a protest of termination
19 proceeding regarding Calabasas' dealership agreement pending before the Board. Exhibit 2 at 20-
20 21. At the continued 341 Meeting on June 17, 2009, counsel for Calabasas indicated that the only
21 remaining asset of Calabasas was a potential cause of action against the manufacturer (not this
22 protest action) unrelated to a protest of termination. Exhibit 3 at 19:22-22:9.

23 Notwithstanding the aforementioned testimony, Calabasas file its Protest on July 31,
24 2009, more than seven months after its dealership agreement was terminated, seeking a
25 determination by the Board that Lamborghini's pre-bankruptcy termination was legally defective.

26
27 ¹ The dealer agreement is attached hereto as Exhibit 1.

1 bankruptcy court and the court in which the other litigation exists may construe the automatic
2 stay.").

3 The Ninth Circuit has also held that state courts and administrative law judges have
4 authority to determine whether § 362(a) stays a proceeding pending before them. *See, e.g., Gruntz v.*
5 *County of Los Angeles*, 202 F.3d 1074 (9th Cal. 2000) (ruling that a California state court correctly
6 found that the automatic stay did not apply in the criminal proceeding before it, and therefore the
7 state court had jurisdiction to commence proceedings without first receiving bankruptcy court
8 approval); *see also Contractors' License Bd. v. Dunbar*, 245 F.3d 1058, 1062 n.2 (9th Cir. 2001)
9 (holding that the rule for state court judges determining the applicability of § 362(a), as provided by
10 the Ninth Circuit in *Gruntz*, also applies to administrative law judges). Therefore, this Board has the
11 authority to decide whether § 362(a) applies to this proceeding.

12 **B. Bankruptcy Code § 362(a) Does Not Stay This Proceeding**

13 **1. The Current Litigation Is Not Litigation Brought By Lamborghini.**

14 The automatic stay pursuant to § 362(a) applies to actions taken against a debtor. It
15 does not apply to actions taken or brought by the debtor. In particular, the automatic stay does not
16 apply to defensive actions in judicial, administrative, and other proceedings, whether initiated by
17 the debtor pre-petition or post-petition. *Stanwyck v. Beilinson*, 104 Fed. Appx. 616, 619 (9th Cir.
18 2004); *see also Eisinger v. Way*, 229 B.R. 11, 13 (B.A.P. 9th Cir. 1998); *see also Shah v. Glendale*
19 *Federal Bank*, 44 Cal. App. 4th 1371, 1376-77 (Cal. App. 2nd. Dist. 1996) (and collecting cases);
20 *In re White*, 186 B.R. 700, 705 (B.A.P. 9th Cir. 1995) (threshold test is whether proceeding was
21 brought against or by the debtor, and ruling that the debtor's "initiation of administrative
22 proceedings as opposed to a lawsuit suffices under this test.") The automatic stay provides debtors
23 with a breathing spell from actions by their creditors. Actions initiated by the debtor, however, do
24 not implicate those same concerns. Accordingly, a defendant in an action by the debtor is permitted
25 to defend itself from attack, and "the automatic stay should not tie the hands of a defendant while
26 the plaintiff debtor is given free reign to litigate." *White*, at 706 citing *In re Merrick*, 175 B.R. 333,
27 338 (B.A.P. 9th Cir. 1994).

1 Here, Lamborghini has defended itself by filing motion to dismiss in an
2 administrative proceeding commenced by the debtor. Accordingly, Lamborghini is not required to
3 obtain stay relief to defend itself in this proceeding.

4 2. Even If Deemed To Be An Action By Lamborghini, The Stay Does Not
5 Apply

6 Even if Lamborghini's defensive action of moving to dismiss the Protest was
7 considered action taken against the debtor, the automatic stay would still not apply because neither
8 § 362(a)(1) nor § 362(a)(3) are applicable.

9 a. § 362(a)(1) Does Not Apply

10 Section 362(a)(1) applies only to a proceeding "that was or could have been
11 commenced before the commencement of the case under this title..." §362(a)(1) (emphasis added).
12 Lamborghini could not have moved to dismiss until the Protest had been filed, which occurred on
13 July 31, 2009, after the March 26, 2009 filing of bankruptcy. Therefore, § 362(a)(1) simply cannot
14 apply in this case.³

15 b. § 362(a)(3) Does Not Apply

16 Section 362(a)(3) stays any action that seeks to "obtain possession of property of the
17 estate or of property from the estate or to exercise control over property of the estate." The dealer
18 agreement ceased to be property of Calabasas before it entered bankruptcy, and therefore it is not
19 property of the estate.

20 On November 25, 2008, Lamborghini properly issued the fifteen day notice of
21 termination letter to Calabasas. Calabasas' failed to protest that termination within 15 days;
22 consequently, pursuant to the Vehicle Code, Calabasas' dealer agreement was terminated in
23 December. Calabasas filed its petition for bankruptcy more than three months later, and its protest
24

25
26 ³ As the Board is aware, Platinum Motors LLC filed a protest of Lamborghini's November 2008
27 notice of termination of its dealer agreement. That proceeding, unlike this proceeding, and Lamborghini's
28 motion to dismiss, were pending at the time Platinum filed its bankruptcy case.

1 more than three months after that. Because the dealer agreement terminated before Calabasas filed
2 for bankruptcy, it was no longer property of, or an asset of, Calabasas' estate.

3 If Calabasas could trigger §362(a)(3) merely by filing a protest of an earlier notice of
4 termination, no matter how long ago the notice was given, then a dealer could at any time attempt to
5 breathe new life into a long-terminated agreement by filing for bankruptcy, and then filing a Protest
6 with the Board. This is not a sensible outcome and certainly not one required by §362(a).

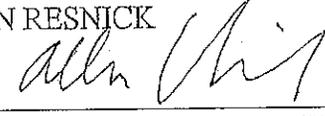
7 Therefore, § 362(a)(3) is not applicable because the terminated dealer agreement is
8 not an asset or property of the estate.

9 IV. CONCLUSION

10 For the foregoing reasons, this proceeding is not stayed by § 362(a), and the Board
11 has the authority to make that determination.

12 DATED: November 25, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP
ALLEN RESNICK

13 By: 
14 _____
ALLEN RESNICK

15 Attorneys for Respondent
16 AUTOMOBILI LAMBORGHINI AMERICA LLC
17 as assignee and successor in interest to Automobili
Lamborghini, S.p.A

PLUMBER'S & PAINTERS' UNION

DEALER AGREEMENT

Structure:

I. Basis of the Agreement

- Article 1 - Subject of the Agreement
- Article 2 - Definitions

II. Dealer's Duties and Legal Status

- Article 3 - Principles of Performance
- Article 4 - Sales Planning, Minimum Annual Purchases, Conditions of Sale and Delivery
- Article 5 - After Sales Service
- Article 6 - Warranty
- Article 7 - Pre-Delivery Checks
- Article 8 - Parts
- Article 9 - Sales Promotion
- Article 10 - Identification and Trade Marks
- Article 11 - Information and Reporting
- Article 12 - Facilities and Organization
- Article 13 - Compliance with Local Laws

III. Lamborghini's Obligations

- Article 14 - Advice and Assistance
- Article 15 - Prices
- Article 16 - Payment Terms

Article 17 - Reservation of Title

IV. Term and Termination of the Agreement

Article 18 - Term of the Agreement

Article 19 - Immediate Termination

Article 20 - Procedures upon Termination of the Agreement; No Termination
Indemnity

V. General Provisions

Article 21 - Confidentiality

Article 22 - Form; Appendices; Relationship with Previous Agreements

Article 23 - Transferability

Article 24 - Partial Invalidity

Article 25 - Failure to Exercise Rights

Article 26 - Liability

Article 27 - Notices

Article 28 - Consent or Approval

Article 29 - Defense and Indemnification

Article 30 - Waiver

Article 31 - Applicable Law

Article 32 - Titles

Appendices

Appendix 1 - Premises

Appendix 2 - Standards of Performance

Appendix 3 - Dealer's Organization

Appendix 4 - Contractual Products

Appendix 5 - Minimum Annual Purchases and Sales; Non-Refundable Down-
Payment

Appendix 6 - Warranty Policy and Procedure Manual
Appendix 7 - Line of Credit, Required Forms

LAMBORGHINI DEALER AGREEMENT

Automobili Lamborghini S.p.A.

an Italian company, having its registered office at Via Modena, 12, 40019 Sant'Agata
Bolognese (Bologna), Italy

- hereinafter referred to as "Lamborghini" -

and

Calabasas Euro Auto Group, LLC, a California company having its registered
office at 2441 S. Pullman Street, Santa Ana, California 92705, USA

- hereinafter referred to as "Dealer" -

conclude the following Agreement:

1. Basis of the Agreement

Article 1 - Subject of the Agreement

1. Lamborghini appoints Dealer as an authorized dealer in the Contractual Products as hereinafter defined and Dealer accepts such appointment in accordance with the terms of this Agreement.
2. Dealer shall perform all the duties imposed upon it under this Agreement, including all Appendices incorporated herein, and shall fully exploit market opportunities for the Contractual Products and shall promote in all respects the image and good reputation of Lamborghini, and the Contractual Products in order to ensure that Lamborghini's brand achieves and/or maintains a competitive position.
3. Dealer shall perform these obligations through the organization set forth in Appendix 3. No material changes to the data and/or situation indicated in this Appendix (including, but not limited to, the legal form of the Dealer, the shareholders or legal or beneficial owners and their respective interests or holdings, and the position of managing director) shall be made without Lamborghini's prior written approval.
4. Lamborghini has approved the location of Dealer's Premises as specified in Dealer Premises Addendum, attached as Appendix 1. Dealer agrees that, without Lamborghini's prior written consent, it will not make any major structural change in any of Dealer's Premises, change the location of any of Dealer's Premises or establish any additional premises for Dealer's Operations.

Article 2 - Definitions

In addition to terms defined elsewhere in this Agreement, the terms listed below shall be deemed to have the following meanings:

1. "Contractual Products" as used in this Agreement shall mean all products and services of the Lamborghini brand listed in Appendix 4. "Motor vehicle

Contractual Products" shall mean Lamborghini brand automobiles listed in Appendix 4.

2. "Lamborghini's Guidelines" as used in this Agreement shall mean those written guidelines which may be prepared by Lamborghini for its dealers and distributors and supplied to them from time to time, concerning, without limitation such matters as corporate identity and design (CI/CD), including but not limited to appearance, design and presentation guidelines for stationery, advertisement and dealer facilities, trade and service mark design criteria and usage and after sales service standards and procedures it being understood that a) the purpose of said Guidelines shall be to ensure that a coherent image of Lamborghini and the Contractual Products is projected world-wide, b) said Guidelines shall be reasonable in scope, c) said Guidelines shall be presented with appropriate notice and information and d) if said Guidelines are not acceptable to the Dealer, the Dealer shall be entitled to withdraw from this agreement upon 90 (ninety) days written notice to Lamborghini given within 30 (thirty) days following the Dealer's receipt of the Guidelines or of the amended Guidelines, provided that the Dealer has paid to Lamborghini all sums due and has performed all of its other obligations hereunder as of the effective date of its withdrawal.
3. "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Contractual Products if such parts, accessories and optional equipment are supplied by Lamborghini.

II. Dealer's Duties and Legal Status

Article 3 - Principles of Performance

1. Dealer shall be responsible for promoting sales of the Contractual Products. Accordingly, in compliance with this Agreement and with the annual sales.

plan for the area in which Dealer's place of business is located and agreed with Lamborghini in writing prior to the commencement of each calendar year during the term hereof (as such annual sales plan may subsequently be amended by agreement of the parties in writing), Dealer shall achieve exemplary performance in the fields of sales, after sales service and parts operations and services.

2. Dealer shall perform all obligations under this Agreement as an independent entrepreneur, on its own behalf and for its own account. Dealer is not authorized to act on behalf of Lamborghini and shall have no power to bind Lamborghini with respect to third parties.
3. Dealer shall ensure that its organization complies in all respects with the Standards of Performance set forth in Appendix 2, and Lamborghini's guidelines in effect from time to time.
4. Dealer shall not export the Contractual Products without the prior written approval of Lamborghini. Aside from sales to other authorized Lamborghini dealers, Dealer shall not sell Contractual Products for resale.
5. Dealer shall not sell the Contractual Products to anyone other than retail customers, vehicle lessors or other authorized Lamborghini dealers.
6. Dealer shall employ sales and after sales service staff who have been specifically trained in the sale and service of the Contractual Products, shall pursue separate marketing and advertising activities for the Contractual Products and shall communicate to the public an image consistent with the high quality standards of the Contractual Products and with the prestige of Lamborghini's name and trademarks.

7. Dealer shall not, directly or indirectly, market, sell or deal in, new vehicles of brands other than Lamborghini's brand and the brands named in Appendix 3, without the prior written consent of Lamborghini.
8. Dealer's obligations in respect of after sales service and the provision of Genuine Parts pursuant to this Agreement, including but not limited to Article 8(2) and 8(3), shall also apply, with respect to all other models ever manufactured by Lamborghini and/or its predecessors in interest, including those models which Lamborghini no longer manufactures, which are in use in the United States market.

Article 4 - Sales Planning, Minimum Annual Purchases and Sales, Conditions of Sale and Delivery

1. Each year during the term hereof, Dealer place firm orders for and, subject to availability, take delivery of at least that quantity of brand new motor vehicle Contractual Products for sale to retail customers which Lamborghini shall specify and which, for the first year of this Agreement, is set forth in Appendix 5 (the "Minimum Annual Purchases and Sales"). The parties hereby acknowledge that said Minimum Annual Purchases and Sales have been determined conservatively and represent not an assessment of Dealer's market potential but agreed minimums below which the relationship between the parties would no longer be justified.

Each year during the term hereof, the parties shall agree in writing as to the timing of the placement by Dealer of its purchase orders for the brand new motor vehicle Contractual Products and the schedule of the delivery of said brand new motor vehicle Contractual Products for the following year in accordance with the procedures implemented by Lamborghini from time to time during the term of this Agreement and using the forms prescribed by Lamborghini.

2. With the sole exception of vehicle exchanges and sales to and from other authorized Lamborghini Dealers in the U.S., Dealer shall purchase the Contractual Products exclusively from Lamborghini..
3. The purchase orders issued by Dealer from time to time during the term hereof shall be Irrevocable unless rejected in writing by Lamborghini, shall comply in all respects with the provisions of this Agreement and shall clearly indicate the Contractual Products and quantities requested and the requested delivery dates. The purchase orders shall further specify the external and internal colors of any motor vehicle Contractual Product, which colors shall be chosen from Lamborghini's then-current samples. Should Dealer fail so to specify the external and internal colors of the Contractual Products ordered, Lamborghini may, in its sole discretion, decide upon said colors.
4. In order to ensure an optimum supply capability, Dealer shall without fail maintain stocks of the Contractual Products commensurate with anticipated sales and, in any event, in line with the Minimum Annual Purchases and Sales and shall hold available the appropriate warehouse capacity and funds. The extent of these stocks shall be such that Dealer can compensate for fluctuations in both sales and incoming deliveries. The assortment of the stocks shall correspond to turnover of the individual Contractual Products.

Dealer shall purchase from Lamborghini, maintain at its sole expense and keep available at all times for display and demonstration purposes such quantity and models as shall be reasonably prescribed by Lamborghini's Guidelines.

5. Except as otherwise agreed in writing by the parties hereto, all Contractual Product deliveries shall be made by Lamborghini, or by a third party so authorized by Lamborghini, CIP Dealer's main warehouse, as that term is

defined in Incoterms 2000, International Chamber of Commerce ("Delivery"), it being understood that any alternative delivery term that may be agreed upon in writing by the parties shall also have the meaning given to it in Incoterms 2000. In no event shall Lamborghini be liable for any failure to deliver or any delay in delivery for whatever cause, unless said failure or delay is due to the willful or grossly negligent conduct of Lamborghini.

6. If any Contractual Product sold by Lamborghini to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Contractual Product is placed in first-class saleable condition prior to such delivery. Dealer immediately will notify Lamborghini of any substantial defects or damage and will follow such procedures for making damage claims as Lamborghini may establish from time to time. Lamborghini shall repurchase any Contractual Products with substantial defects or damage of which Dealer has given Lamborghini immediate notice and which render such Contractual Products unsaleable. Such repurchase shall be at the price at which they were originally sold by Lamborghini, less any prior refunds or allowances made by Lamborghini and less any insurance proceeds received by Dealer in respect of such defect or damage. Lamborghini will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. Lamborghini will disclose to Dealer as may be required any damage which Lamborghini repaired before delivering a motor vehicle Contractual Product to Dealer. Dealer will properly disclose such repair prior to delivering such Contractual Product to a customer, and will hold Lamborghini harmless from any claims that required disclosure was not made.
7. Dealer shall not modify Contractual Products without the prior approval of Lamborghini. Lamborghini shall be entitled to modify Contractual Products at any time and reserves the right to require Dealer to make certain changes to Contractual Products.

8. If Dealer installs on a new Contractual Product any equipment, accessory or part other than a Genuine Part; sells any new Contractual Product which has been modified; or sells in conjunction with a new Contractual Product a service contract not offered or specifically endorsed in writing by Lamborghini, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify Lamborghini against claims that may be asserted against Lamborghini in any action by reason of such modification, equipment, accessory, part or service contract. ANY UNAUTHORIZED MODIFICATION TO CONTRACTUAL PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF A CONTRACTUAL PRODUCT OR CAUSES SUCH CONTRACTUAL PRODUCT TO FAIL TO COMPLY WITH ANY APPLICABLE FEDERAL OR STATE REGULATION OR STANDARD, INCLUDING BUT NOT LIMITED TO THE NATIONAL HIGHWAY TRAFFIC SAFETY ACT OR ANY FEDERAL MOTOR VEHICLE SAFETY STANDARD PROMULGATED PURSUANT THERETO OR THE ENVIRONMENTAL PROTECTION ACT OR ANY REGULATION OR STANDARD PROMULGATED PURSUANT THERETO, WILL BE A FUNDAMENTAL BREACH OF THIS AGREEMENT AND CAUSE FOR IMMEDIATE TERMINATION,

9. EXCEPT FOR LAMBORGHINI'S WARRANTIES, AND EXCEPT AS PROVIDED IN APPENDIX 6, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF LAMBORGHINI AS TO THE QUALITY OR CONDITION OF CONTRACTUAL PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF CONTRACTUAL PRODUCTS.

9. Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Contractual Products by Lamborghini to Dealer. Dealer represents and warrants, as of the date of the purchase of each Contractual Product, that all Contractual Products purchased from Lamborghini are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Contractual Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Contractual Products by Lamborghini to Dealer and will hold Lamborghini harmless with respect thereto.

10. Lamborghini may add or discontinue, at its sole discretion, any type or model of Lamborghini automobile offered for sale in the USA. Any types or models introduced to the US market may be offered to Dealer, at Lamborghini's option.

11. Lamborghini will not be under any liability to Dealer for failure to deliver under, or for delay in making delivery pursuant to, orders of Dealer, accepted by Lamborghini other than for willful or grossly neglected conduct of Lamborghini.

Article 5 - After Sales Service

1. Dealer shall ensure that after sales service of a high standard of quality is provided for the Contractual Products, in accordance with Lamborghini's

Guidelines, it being understood that such service is aimed at attaining full customer satisfaction.

2. To this end, Dealer shall acquire and maintain the levels specified by Lamborghini of special tools, workshop facilities/equipment, literature and staff trained in accordance with Lamborghini's Guidelines.
3. Dealer shall also provide Lamborghini with such services associated with recall campaigns for the Contractual Products as deemed necessary by Lamborghini and shall maintain and communicate to Lamborghini complete and accurate current information as to the owner or lessee of all Lamborghini vehicles sold, lease or serviced by it to assist in notification in the event of a recall.
4. The obligation pursuant to this Article 5 shall apply in respect of all Contractual Products in used in the USA regardless of whether said Contractual Products were originally sold by Dealer.
5. Dealer will notify Lamborghini by telefax or by electronic mail of repairs to motor vehicle Contractual Products pursuant to Lamborghini's Warranties under each of the following circumstances:
 - (a) The Contractual Product has been brought to Dealer more than once for the same complaint; or
 - (b) The Contractual Product has been in Dealer's custody for any repairs pursuant to Lamborghini's Warranties for three days.

Article 6 - Warranty

1. The warranty in respect of the brand new motor vehicle Contractual Products set forth in Lamborghini's Warranty Policy and Procedure Manual, as updated

from time to time (the "Warranty"), shall constitute Lamborghini's exclusive warranty in respect of the brand new motor vehicle Contractual Products and shall be in lieu of any other warranty, whether written, oral or implied. Except as expressly provided in the Warranty or by applicable rule of law, which rule of law is absolute and may not be varied by contract, Lamborghini shall have no liability in respect of the brand new motor vehicle Contractual Products. Lamborghini shall provide Dealer with any updated versions of the Warranty Policy and Procedure Manual issued by Lamborghini from time to time during the term hereof and said updated version shall become effective 30 (thirty) days thereafter. A copy of the Warranty in effect as of the date hereof is attached hereto as Appendix 8. In the event of any inconsistency between the provisions of this Agreement and the Warranty, the former shall prevail.

2. Dealer hereby acknowledges that, although the Warranty is given by Lamborghini directly to the customers purchasing brand new motor vehicle Contractual Products, the Warranty provides for the performance of Warranty service by Dealer. Dealer agrees to comply with all of the obligations of Lamborghini dealers as indicated in the Warranty (whether or not the Contractual Product in question was originally supplied by Dealer) and further agrees to bring the Warranty to the attention of its customers in accordance with the terms thereof. Provided that Dealer complies with said obligations, Lamborghini shall assist Dealer in performing the Warranty service in accordance with the terms of the Warranty.

4. In addition to carrying out all obligations imposed on it by law or by contract, Dealer shall undertake the services offered by Dealer to the customer under the terms of the Warranty in relation to any motor vehicle Contractual Product (whether or not supplied by Dealer) and shall provide free Warranty servicing and vehicle recall work for the motor vehicle Contractual Products as shall be directed by Lamborghini. Dealer shall maintain on its premises at all times Lamborghini replacement parts in compliance herewith in such

quantities as shall be reasonably necessary to enable Dealer to fulfill its motor vehicle Contractual Product repair and service obligations under this Agreement.

Article 7 - Pre-Delivery Checks

Prior to delivering to a customer any Contractual Product sold by it, Dealer shall fully and efficiently carry out a pre-delivery check of said Contractual Product in accordance with the procedure as prescribed by Lamborghini from time to time and shall ensure that the Contractual Product is in all respects in first class and immaculate condition as prescribed in Lamborghini's specified pre-delivery procedures.

Article 8 - Parts

1. In order to ensure prompt and efficient customer service, Dealer shall constantly maintain a stock of original Lamborghini parts, in accordance with Lamborghini's Guidelines.
2. In this respect, Dealer shall comply with Lamborghini's recommendations regarding the storage of the parts to ensure appropriate safekeeping and processing.
3. Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Contractual Products. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

3. Dealer will not use in the repair or servicing of Contractual Products any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Contractual Products. DEALER WILL USE ONLY GENUINE PARTS IN PERFORMING WARRANTY SERVICE ON CONTRACTUAL PRODUCTS. DEALER WILL NOT REPRESENT AS NEW GENUINE PARTS ANY PARTS USED BY IT IN THE REPAIR OR SERVICING OF CONTRACTUAL PRODUCTS WHICH ARE NOT NEW GENUINE PARTS.

Article 9 - Sales Promotion

1. In agreement with Lamborghini, Dealer shall draw up marketing objectives and strategies, taking into account the Minimum Annual Purchases and Sales agreed upon pursuant to Article 4, Para. 1. Dealer shall ensure effective sales promotion and public relations on the basis of promotional principles agreed with Lamborghini, it being understood that, except as otherwise agreed in writing by Lamborghini, the cost of all such sales promotion and public relations shall be borne exclusively by Dealer.

To this end, Dealer and Lamborghini shall agree in writing upon an annual budget to be used by Dealer for promotional purposes, subject to and in conformity with the minimum budget set forth in Appendix 2, item II.C.

2. Dealer shall promote the Contractual Products, the after sales service and the services offered to customers by Lamborghini using the trademarks and names designated by Lamborghini.
3. Dealer shall not perform any advertising, sales promotion and/or product placement (namely, placement of the Contractual Products on display) which contradicts the position adopted in public by Lamborghini or which is detrimental to the image of Lamborghini. In any case, a description or copy,

as the case may be, of each sales promotion, product placement and/or advertisement Dealer intends to use or to effect shall first be sent to Lamborghini for its written approval. Only those promotional activities approved in writing by Lamborghini shall be carried out by Dealer.

4. In order to safeguard and promote sales of the Contractual Products, Dealer's used-vehicle business must be efficiently managed in conformity with the terms of this Agreement and with Lamborghini's Guidelines.

Article 10 - Identification and Trade Marks

1. Notwithstanding any provision to the contrary contained in this Agreement, Dealer shall not use any trade name and/or trademarks of Lamborghini or any company which controls Lamborghini or any company which is controlled by or related to Lamborghini (hereinafter, collectively, the "Lamborghini Group") other than in connection with the sale and/or servicing of the Contractual Products in accordance with the terms hereof and with any instructions which Lamborghini may give from time to time. At all times, Dealer shall properly identify itself as a dealer of Lamborghini, especially on its premises and in its stationery and any other documents or marketing devices (including, but not limited to, sales literature and business cards). For these purposes, Lamborghini shall provide Dealer with appropriate samples.
2. The names and trademarks of the Lamborghini Group (including but not limited to, the word or term "Lamborghini", "Automobili Lamborghini", or the name of any of Lamborghini's motor vehicles, be it past or current models) may not appear within Dealer's name/s, trade name/s, trademarks, marks and/or in any other signs of Dealer, in whole or in part, or in combination with any other names, words, or signs, absent Lamborghini's prior express written consent.
4. It is further understood that the names and trademarks of the Lamborghini Group are and will remain the exclusive property of the Lamborghini Group, that Dealer shall not acquire any rights in respect of said names and/or

trademarks and that Dealer is authorized to use them only in compliance with this Agreement; therefore, at the time of termination of this Agreement for whatever reason Dealer shall immediately cease and desist from using said names and trademarks or any names or trademarks confusingly similar to such names or trademarks.

5. Dealer agrees not to register and/or cause to be registered, be it alone or in combination with any other names, words or signs, the names, trademarks and/or any other sign owned by the Lamborghini Group or any other name, trademark or sign which may be confusingly similar to any of them. The Dealer further agrees not to register any internet domain name incorporating "Lamborghini" without prior written consent and to assign irrevocably to Lamborghini any such internet domain name to which it holds any right as of the date of this Agreement, it being understood that Lamborghini shall use its reasonable endeavors to license to the Dealer a domain name incorporating "Lamborghini" in a standard corporate form. After termination or expiration of this Agreement the Dealer shall promptly relinquish any domain name incorporating "Lamborghini" which Lamborghini may have authorized in accordance with this Article 10, paragraph 4, shall not use any trademarks, names or other signs which may be confusingly similar to those of the Lamborghini Group and shall promptly assign to Lamborghini or any company within the Lamborghini Group, upon Lamborghini's request and free of charge, any right it may have acquired in or to said names, trademarks and/or other signs of the Lamborghini Group. After termination or expiration of this Agreement the Dealer shall not use any trademarks, domain names, meta tags, names or other signs which may be confusingly similar to those of the Lamborghini Group and shall promptly assign to Lamborghini or any company within the Lamborghini Group, upon Lamborghini's request and free of charge, any right it may have acquired on or to said names, trademarks and/or other signs of the Lamborghini Group. After termination or expiration of this Agreement Dealer shall not identify or advertise itself as a former

Lamborghini dealer and covenants after the termination or expiration of this Agreement not to establish or maintain any Internet or other electronic site referencing its experience as Lamborghini dealer.

5. Dealer shall conform all aspect of its corporate identity prescribed by Lamborghini's Guidelines as amended from time to time during the term of this Agreement, including its appearance, advertising, signs and stationery to such Guidelines.
6. Dealer shall inform Lamborghini promptly of any infringement or unauthorized use of the names, trademarks, distinctive signs or logos or any other intellectual property right or other right of the Lamborghini Group of which Dealer is aware or should reasonably be aware, but shall take no other action with respect thereto except as authorized in writing by Lamborghini. Lamborghini may take any action it deems fit in connection with such infringement or unauthorized use, and if Lamborghini should choose to bring an action to protect said names, trademarks, distinctive signs or logos or said intellectual property right or other rights, then Dealer shall fully cooperate with Lamborghini in connection therewith. Dealer shall not make any claim against Lamborghini for compensation in respect of Dealer's cooperation in this regard, but shall be reimbursed for reasonable documented out-of-pocket expenditures reasonably approved in advance by Lamborghini as reasonably necessary to effectuate such cooperation.

Article 11 - Information and Reporting

1. In order to permit Lamborghini to conduct market surveys, marketing measures and recall campaigns, Dealer shall, to the extent permitted by law, make available customer data to Lamborghini or to a third party designated by Lamborghini and utilize the information systems intended for this purpose.

2. Upon Lamborghini's request, Dealer shall provide Lamborghini with reports concerning, without limitation, the market situation, sales and workshop service statistics, inventories and estimated requirements. In addition, Dealer shall keep Lamborghini informed at all times concerning legal regulations, taxation and customs duties.

5. Dealer shall provide Lamborghini with all such information on Dealer's business relating to the subject matter of this Agreement as Lamborghini reasonably requests. During normal working hours, Lamborghini's authorized representatives shall be allowed access to Dealer's business and operating premises, warehouses and stores to the extent that these serve business operations under this Agreement and shall be permitted to inspect the accounts of Dealer relating to Dealer's business activity hereunder and to make copies thereof for purposes of verifying that Dealer has complied and continues to comply with its obligations under this Agreement. This shall also apply to business data stored on electronic media.

4. Within three (3) months following the end of each of Dealer's fiscal years during the term hereof, Dealer shall submit to Lamborghini its annual financial statements, duly audited by an accountant qualified to practice in the jurisdiction in which Dealer's business is located, in accordance with generally accepted accounting principles and good accounting practice consistently applied. In addition, upon request by Lamborghini, Dealer shall submit to Lamborghini unaudited monthly financial statements in such form as Lamborghini may from time to time prescribe.

5. Dealer shall send to Lamborghini on or before the fifth day of each calendar month a written report setting forth the number of Contractual Products (by model) held in stock by Dealer and the number of Contractual Products (by model) sold by Dealer during the preceding calendar month.

6. Lamborghini shall treat all information obtained under the provisions of the present article as confidential.

Article 12 - Facilities and Organization

1. Dealer shall equip and maintain its business premises in accordance with the Standards of Performance set forth in Appendix 2
2. If the volume of business expands, Dealer shall in each case reasonably in the circumstances adapt its organization and its equipment and facilities to the new situation in accordance with market requirements, subject to the provisions of Article 1; paragraph 3 and Appendix 2 hereto. Dealer shall inform Lamborghini in writing of any investments by Dealer exceeding the scope of normal business operations and which directly or indirectly affect the business conducted by Dealer under this Agreement.
3. Dealer shall employ an adequate number of qualified personnel and ensure that its repair and sales staff attend such training courses as may be prescribed by Lamborghini at such places and at such intervals as Lamborghini may specify. All costs and expenses incurred by Dealer in connection with said training (including, but not limited to, travel, food and lodging expenses and the compensation of Dealer's personnel attending said training and of any persons substituting for them while they are attending the training) shall be borne solely by Dealer.
4. Dealer shall operate its organization with the accounting system prescribed by Lamborghini for all dealers in the U.S., in particular using Lamborghini's standard classification of accounts, for financial planning, analysis and financial management

5. Dealer shall create the communication interfaces as well as the organizational and technical conditions, as prescribed by Lamborghini, to ensure that business transactions and data flow between Dealer and Lamborghini and are handled in an optimum manner. In all cases, Dealer shall ensure that its data processing systems are compatible with those used by Lamborghini.

Article 13 - Compliance with Local Laws

1. Dealer will promptly and adequately inform Lamborghini in writing of any laws, regulations and/or standards with which the Contractual Products must comply and of any changes made to said laws, regulations and/or standards during the term hereof.

III. Lamborghini's Obligations

Article 14 - Advice and Assistance

1. Lamborghini shall provide Dealer with such advice and assistance as Dealer shall reasonably request in writing, subject to the resources reasonably available to Lamborghini. In particular, Lamborghini shall, if necessary for appropriate remuneration to be agreed upon by the parties on a case by case basis:
 - a) recommend systems and programs for the planning of Dealer's business activities under this Agreement, as well as standard systems of its own;
 - b) make available plans, concepts and programs to promote sales of the Contractual Products as well as for the customer-oriented management of parts and after-sales service operations;

- c) assist Dealer in procuring special tools and other workshop equipment, it being understood that Dealer shall purchase said tools and equipment at its sole cost and expense;
- d) together with Dealer, commission any market research and surveys which Lamborghini deems necessary or advisable and contribute to the costs thereof.

Article 15 - Prices

1. Lamborghini shall sell the Contractual Products to Dealer at Lamborghini's CIP prices in effect on the date of shipment from Lamborghini's factory or by the third party authorized by Lamborghini to effect delivery of the Contractual Products.
2. Lamborghini shall inform Dealer from time to time of Lamborghini's recommended retail prices (net of any applicable taxes, license or registration fees or other fees) for the Contractual Products, which recommended retail prices shall be determined by Lamborghini taking into account a Dealer trade margin on each Contractual Product.
3. At all times during the term hereof, Dealer shall keep Lamborghini informed of Dealer's actual resale prices for the Contractual Products, including all taxes, license fees, registration fees and other fees or charges borne by Dealer's customers.

Article 16 - Payment Terms

1. Except as otherwise agreed by the parties in writing, payment for motor vehicle Contractual Products shipped to the United States shall be effected, through drawings by Lamborghini against Dealer's line of credit as provided in Article 16(2) below, as follows:

- a) A non-refundable down payment for each Contractual Product in such reasonable amount as shall be communicated by Lamborghini to Dealer in writing shall be wired to Lamborghini at the time of placement of the purchase order in respect of said Contractual Product and as a condition precedent to Lamborghini's acceptance of said purchase order; the amount of such reasonable non-refundable down payment currently payable on each Contractual Product is set forth in Appendix 5 hereto; and
- b) The balance of the purchase price of each Contractual Product shall be drawn by Lamborghini on Dealer's line of credit on the date of shipment from Lamborghini's factory of said Contractual Product.
- c) In the event that delivery of any motor vehicle Contractual Product to Dealer is delayed more than ten (10) days after the date of shipment from Lamborghini's factory of such Contractual Product, Lamborghini will reimburse or credit Dealer for any finance charges or interest cost incurred by the dealer with respect to such delay.

2. Lamborghini's acceptance of any order for Contractual Products placed by Dealer is conditional upon the that Dealer providing to Lamborghini, fully completed, correspondence from the Dealer and from Dealer's bank, in the form set forth in Appendix 7, and having available at all times a line of credit conforming to the representations in such correspondence for a minimum of US \$ 1,500,000 for purposes of carrying out the activities contemplated by this Agreement in respect of the Contractual Products; any daily limit on said line of credit imposed by a financial institution must be for an amount no less than US \$ 1,500,000.

3. Should Dealer fail to effect payment in accordance with the provisions of Article 16, paragraph 1 above or should Dealer fail to maintain the line of credit referred to in Article 16, paragraph 2 above, Lamborghini shall be

entitled, in its sole discretion and without incurring any liability for damages, to refuse to ship the Contractual Products in question and any other Contractual Products ordered by Dealer and not yet shipped or to postpone shipment until such time as all sums owed to Lamborghini by Dealer have been paid and the letter of credit has been provided to and cashed by Lamborghini.

Article 17 - Reservation of Title

1. Except as otherwise provided by applicable rule of law, which rule of law is absolute and may not be varied by contract, title to the Contractual Products shall pass to Dealer only upon payment in full of the purchase price of said Contractual Products in accordance with Article 16 above, but otherwise at all times shall remain with Lamborghini and Lamborghini shall have the right to repossess and sell the Contractual Products until Lamborghini has been paid the full amount of the purchase price.

IV. Term and Termination of the Agreement

Article 18 - Term of the Agreement

1. This Agreement shall enter into force as of the day of execution hereof by both parties hereto and shall remain in effect until terminated pursuant to Article 19, paragraph 1 or Article 20 below.
2. This Agreement may be terminated at any time upon mutual written agreement of the parties.

Article 19 - Immediate Termination

1. Without prejudice to any other remedies it may have at law or under the terms of this Agreement, Lamborghini shall be entitled to terminate this Agreement with immediate effect, upon written notice to Dealer if:

- a) Dealer becomes insolvent or commits any act of bankruptcy or makes any assignment for the benefit of creditors or has a receiver appointed over any of its assets or, being a partnership, is dissolved or any distraint or execution is levied upon any of its goods or assets;
- b) a criminal or administrative investigation or proceeding is commenced concerning or against Dealer or any shareholder or partner thereof, which investigation or proceeding may affect adversely the image, reputation, operation business or other interests of Lamborghini or other companies within the Lamborghini Group;
- c) Dealer fails to obtain or is deprived of an official permit required for the performance of the business activities governed by this Agreement;
- d) Dealer performs acts or takes measures without the prior written consent of Lamborghini although such consent was required under this Agreement;
- e) Dealer fails to conduct its customary sales and service operations for a continuous period of seven business days;
- f) Dealer makes any unauthorized modification to a Contractual Product which adversely affects the safety or emissions of such Contractual Product or causes such Contractual Product to fail to comply with and applicable federal or state regulation or standard, including but not limited to the National Highway Traffic Safety Act or any Federal

Motor Vehicle Safety Standard promulgated pursuant thereto or the Environmental Protection Act or any regulation or standard promulgated pursuant thereto

- g) Dealer is in breach of any of its fundamental obligations hereunder, including but not limited to its obligations under Article 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 16, 22 or 24 or under any Appendix to this Agreement, and has failed to cure such breach following reasonable notice thereof.

Article 20 - Procedures upon Termination of the Agreement; No Termination Indemnity

1. Following termination of this Agreement for any reason Dealer shall:

a) at Lamborghini's request, assign to Lamborghini or to a third party designated in writing by the latter, for reasonable compensation, any orders not yet filled, and surrender to Lamborghini or to the third party designated by it, free of charge, all documents needed for the execution of such orders or for the provision of customer service;

b) subject to the terms of paragraph 2 of this article, at Lamborghini's request, make available to Lamborghini or to a third party designated in writing by Lamborghini all Contractual Products, provided that the Contractual Products

were directly acquired from Lamborghini or from other authorized dealers ;

are brand-new and/or still in the original packaging, unused and undamaged and in salable condition;

have not been sold and are the unencumbered property of Dealer or Lamborghini and in the possession of Dealer.

- c) In the event that Lamborghini, in its sole discretion, elects to repurchase from Dealer any or all of the Contractual Products, the repurchase price of said Contractual Products shall be the same price paid by Dealer to Lamborghini for said Contractual Products, less a reasonable deduction for the condition and/or age of the motor vehicle Contractual Products or, in the case of spare parts, a deduction of 15% for depreciation and administrative expenses, as permitted by law;
- d) within 7 (seven) days following termination or expiration of this Agreement, remove or cancel from its premises, stationery and advertising materials, all signs, notices or printed matter which state or may lead members of the public to believe that it is authorized by Lamborghini as a distributor or dealer and shall return to Lamborghini, at Dealer's sole risk and expense, all signs, displays, information systems, items of equipment or special tools, manuals and similar materials and all other items owned by Lamborghini or any company within the Lamborghini Group which it holds lease or loan from Lamborghini or any company within the Lamborghini Group and pay such sums as Lamborghini may reasonably require for any damage or deterioration thereto. To the extent however that such material was invoiced to Dealer when supplied, then in the event that Lamborghini, in its sole discretion, decides to repurchase said material, it shall be paid for by Lamborghini on return at the purchase price originally paid by Dealer to Lamborghini for said material, minus 15% for depreciation and administrative expenses, as permitted by law. Dealer

shall cease forever thereafter to hold itself out in any manner whatsoever as a distributor or dealer of Lamborghini.

- e) within 30 (thirty) days following the termination of this Agreement for any reason, Dealer shall transfer to Lamborghini or its designee (a) all of Dealer's files regarding warranty claims on the Contractual Products and (b) all lists, files and service records of the customers.
2. Upon termination of the present contractual relationship, Lamborghini shall cancel any orders which have not been filled; Dealer shall not be entitled to any compensation whatsoever as a result of such action. The provision set forth in paragraph 1(a) of this Article shall remain unaffected.
3. Upon the termination of this Agreement for any reason, Lamborghini shall have no obligation to compensate or indemnify Dealer for loss of distribution rights, loss of goodwill, or any similar loss incurred by Dealer and Dealer hereby waives any right it might otherwise have to seek such compensation or indemnification by Lamborghini.
3. If Dealer chooses to transfer its principal assets or change owners, Lamborghini has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. Lamborghini will consider in good faith any such proposal Dealer may submit to it during the term of this Agreement. In determining whether the proposal is acceptable to it, Lamborghini will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, Lamborghini may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, Lamborghini shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding

dealer in locality surrounding Dealer's place of business; provided, however, that such notice shall be given only if there is good cause for discontinuing representation of Contractual Products in the locality surrounding Dealer's place of business.

5. Lamborghini will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within forty-five (45) business days, or the exercise by Lamborghini of its right of first refusal under Article 26 within thirty (30) calendar days, after Dealer has furnished to Lamborghini all applications and information reasonably requested by Lamborghini to evaluate such proposal. If Lamborghini approves Dealer's proposal, Lamborghini shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If Lamborghini had previously notified Dealer in writing that Lamborghini would not appoint a succeeding dealer in Dealer's Premises, then Lamborghini's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to Lamborghini a voluntary termination of this Agreement and a general release in favor of Lamborghini, excepting claims under Article 29 of this Agreement and open parts account transactions.

6. Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, Lamborghini shall have the right to purchase such assets or ownership interest, as follows:
 - (a) Lamborghini may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to Lamborghini all applications and information reasonably requested by Lamborghini to evaluate Dealer's proposal.

(b) If Dealer's proposed sale or transfer is to a successor approved in advance by Lamborghini, to any of Dealer's owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of Lamborghini's notice of election of its purchase right.

(c) Lamborghini's right under this Article shall be a right of first refusal, permitting Lamborghini to

(i) assume the proposed transferee's rights and obligations under its agreement with Dealer and

(ii) cancel this Agreement and all rights granted Dealer hereunder.

Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of Lamborghini's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.

(d) Dealer shall furnish to Lamborghini copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to Lamborghini any permits or licenses necessary for the continued conduct of Dealer's operations.

(e) Lamborghini may assign its right of first refusal to any party it chooses, but in that event Lamborghini will remain primarily liable for payment of the purchase price to Dealer.

- (f) If Lamborghini exercises its purchase right, Lamborghini will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
- (g) Nothing contained in this Article shall require Lamborghini to exercise its right of first refusal in any case, nor restrict any right Lamborghini may have to refuse to approve Dealer's proposed transfer.

7. In the event of the death of any of Dealer's Owners, Lamborghini will not terminate this Agreement by reason of such death if:

- (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
- (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's authorized representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's authorized representative; provided, however, that in this event Lamborghini will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and Lamborghini's evaluation of the performance of Dealer's management during such period, Lamborghini will review with Dealer the changes, if any, in the management or equity interests of Dealer required by Lamborghini as a condition of extending this Dealer Agreement

with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as Dealer Agreements then currently offered by Lamborghini to its dealers in Contractual Products generally

7. Upon receipt of an application for a replacement dealer agreement, Lamborghini may modify its terms of payment with respect to Dealer to the extent Lamborghini deems appropriate, irrespective of Dealer's credit standing or payment history.

V. General Provisions

Article 21 - Confidentiality

Dealer shall not use, either directly or indirectly, any information concerning Lamborghini or the Contractual Products and deemed by Lamborghini to be confidential, except as shall be strictly necessary to enable Dealer to fulfill its obligations under this Agreement, nor shall Dealer disclose said confidential information to any third party except its own employees having a need to know said information in order to assist Dealer in fulfilling its obligations hereunder. This Article 21 shall survive the termination or expiration of this Agreement.

Article 22 - Form; Appendices; Relationship with Previous Agreements

1. Subject to the terms of Article 22 (2) below, amendments and additions to this Agreement shall be made in writing and signed by the duly authorized representatives of both parties.
2. The following Appendices constitute an integral part of this Agreement:
 - Appendix 1 - Premises
 - Appendix 2 - Standards of Performance
 - Appendix 3 - Dealer's Organization

Appendix 4 -Contractual Products

Appendix 5 -Minimum Annual Purchase Orders; Non-refundable Down-payment

Appendix 6 -Warranty Policy and Procedure Manual

Appendix 7 - Line of Credit, Required Forms.

3. This Agreement is the entire and sole agreement and understanding between the parties terminates and supersedes any and all other prior agreements between the parties, whether oral or in writing.

Article 23 - Transferability

Dealer's rights and obligations under this Agreement cannot be assigned either in whole or in part without the prior written approval of Lamborghini.

Article 24 - Partial Invalidity

If any term or provision of this Agreement shall to any extent be held illegal, invalid or unenforceable, or should the performance of any obligation under this Agreement violate any valid law of any jurisdiction the law of which may govern any aspect of this Agreement or the parties' business relations, this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

Article 25 - Failure to Exercise Rights

Failure of either party to this Agreement to exercise any of the rights to which it is entitled under the Agreement shall not be regarded as a waiver of such a right and shall not prevent the party from exercising such a right at a later date.

Article 26 - Liability

Each party to this Agreement shall itself bear the commercial risk arising to it from the Agreement and the execution thereof. Lamborghini shall, in particular, accept no responsibility for expenses incurred by Dealer in the execution of this Agreement or for undertakings entered into by Dealer hereunder. No provision of this Agreement shall be interpreted in such a way that rights vis-à-vis Lamborghini may accrue to third parties.

Article 27 - Notices

Unless otherwise agreed upon in writing, all notices required hereunder shall be in writing, and shall be deemed duly given when sent by registered letter, return receipt requested, to the parties at the addresses set forth above or at such other addresses as the parties may designate by written notice; if dispatched by telefax or by telegram any such notice shall be confirmed on the same date by certified letter, return receipt requested.

Article 28 - Consent or Approval

Any consent or approval by Lamborghini which is required under this Agreement, including Appendices, to authorize specific activities by Dealer shall not be unreasonably withheld, except that Lamborghini shall retain the absolute right to grant or withhold consent or approval under Article 9(3) and Article 10(2), in its sole discretion.

Article 29 - Defense and Indemnification

Lamborghini will, upon Dealer's written request:

- (a) Defend Dealer against any and all claims for breach of Lamborghini's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may

be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in

(i) a Contractual Product or

(ii) a product of the same line-make formerly supplied by Lamborghini pursuant to a former dealer agreement; and

(b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims;

provided Dealer promptly notifies Lamborghini in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as Lamborghini may require. However, such defense and indemnification by Lamborghini will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if Lamborghini determines that such action seeks recovery for allegations other than those described in Article 29 (a)

Article 30 - Waiver

The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of Lamborghini to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

Article 31 - Applicable Law

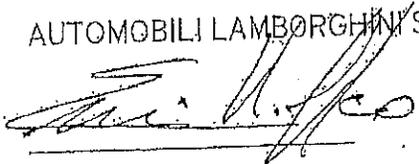
The coming into existence, validity, performance and termination of this Agreement, as well as the interpretation of its provisions and the entire business relation between the parties governed by this Agreement shall be subject to the law of the state of California and, as applicable, the United States of America.

Article 32 - Titles

The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of NOVEMBER 28 2006

AUTOMOBILI LAMBORGHINI S.P.A.



By: Enrico Maffeo
Title: Head of Sales



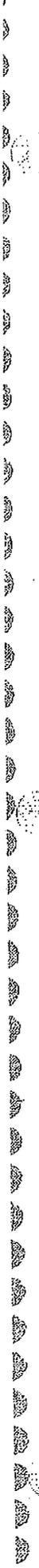
By: Salvatore Cleri
Title: Proxy Holder

CALABASAS AUTO GROUP LLC



By: Vik Keuylian
Title: Managing Member

M



LICENSE TO USE THE LAMBORGHINI TRADEMARK TOGETHER WITH THE CITY
NAME AS THE DEALERSHIP'S SIGN

Between

AUTOMOBILI LAMBORGHINI S.P.A., an Italian company having its registered office in Sant'Agata Bolognese (BO), Italia, via Modena 12 (hereinafter referred to as "MANUFACTURER")

And

Calabasas Euro Auto Group LLC, a California company, having its registered office at 2441 S. Pullman Street, Santa Ana, California, 92705, USA (hereinafter referred to as "DEALER")

WHEREAS

- MANUFACTURER manufactures and sells high performance, luxury automobiles under several trademarks registered in Italy and throughout different other countries of the world, among which the trademark "Lamborghini" as set forth in Exhibit A hereto;
- Pursuant to the Lamborghini Dealer Agreement entered into force as of NOVEMBER 28 2006 between the MANUFACTURER and the DEALER (the "Dealer Agreement"), the DEALER has set up an authorized a Lamborghini dealership at the Temporary Location 23833 & 24000 Ventura Blvd., Calabasas CA 91302 with the statement to set up the Lamborghini dealership at the Permanent location at 24400 Calabasas Road, CA 91302 on or before October 1, 2007 (hereinafter referred to as the PREMISES) it being understood that any change of location must receive the MANUFACTURER's prior written approval, as a condition for the continuation in force of this license;
- Pursuant to the Dealer Agreement, the Dealer will purchase in its own name and on its own behalf, for resale at the PREMISES, the products and services of the "Lamborghini" brand listed in Appendix 4 of the Dealer Agreement (hereinafter referred to as the PRODUCTS);

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Subject to the terms and condition set forth herein, the MANUFACTURER hereby grants to the DEALER the license to use the name and trademark "Lamborghini" as the DEALER's sign only, at the PREMISES, as well as on the DEALER's stationery, provided that said name and trademark must be used at all times together with the name of "Calabasas" in which the PREMISES are located (i. e. "Lamborghini Calabasas"). It is understood that the DEALER, its managers, owners and personnel shall not make any other use of the name and trademark "Lamborghini" or any other trademark of the "Lamborghini Group" (as defined in article 10 of the Dealer Agreement); or any other trademark that may be confusingly similar to it. Accordingly, and not by way of limitation, the "Lamborghini" trademark may only be used by the DEALER in its present and precise PREMISES, as indicated in Appendix I of the Dealer Agreement. Moreover, the DEALER shall not register or cause to be registered any domain name incorporating "Lamborghini". It being understood that the MANUFACTURER shall use its reasonable endeavours to license the DEALER a domain name incorporating "Lamborghini" in a standard corporate format.
2. The characteristics of the PREMISES and of the services provided therein shall comply at all the time with the CI/CD standard indicated in the Dealer Agreement and shall be consistent with the prestige, the fine reputation and tradition of the PRODUCTS and of the "Lamborghini" trademark.
3. Any and all use of the name and trademark "Lamborghini" made by the DEALER in compliance herewith, must first receive the MANUFACTURER prior approval in writing. Accordingly, the DEALER must submit to the MANUFACTURER, sufficiently in advance, all its proposal in writing in this respect, with specification as to the proposed design, size and colour involved, that in any case must comply with CI/CD requirement; the MANUFACTURER will reply to any such request in writing and within a reasonable time.
4. The present license is not a license to "manufacture, use and sell" goods under the "Lamborghini" trademark; therefore, the licensee may not make any such use of the trademark and it is understood that any rights acquired by it in this respect shall inure to the benefit of the MANUFACTURER and are hereby assigned to the MANUFACTURER. At the time of expiration or termination of this license for whatever reason, the DEALER and its owners and managers shall execute any and all documents necessary for formalizing said assignment at MANUFACTURER simple request in writing and free of charge.
5. This license is not a franchise agreement. Therefore, no royalties are due, not any other consideration whatsoever owed, for use of the "Lamborghini" trademark in accordance herewith; accordingly, there will be no special mark up on sales prices.

6. The DEALER must comply with all laws and regulations applicable to it and keep current all its payments, including those in respect of the purchase price of PRODUCTS, as agreed from time to time with the MANUFACTURER. Should the DEALER fail to do so, MANUFACTURER reserves the right to terminate the present agreement (pursuant to article 9 hereof), so as to free the name and trademark "Lamborghini" from any connection with illegal activities by the DEALER and from any connection with an insolvent business concern.
7. The DEALER shall act in all respects as an independent retailer. The DEALER may not in any way act in the name or on behalf of MANUFACTURER (or of other companies in the Lamborghini Group) vis a vis third parties, or create liabilities on their behalf; therefore, the DEALER shall hold them free and harmless from any and against any claims or actions of third parties on the activity of the DEALER and of its managers, owners and personnel.
8. The present license agreement shall enter into full force and effect as of ~~July 7, 2006~~ ^{January 1st 2007} after its signature by both parties and after the PREMISES have been fully furnished and are ready to start sales to public. Either party may terminate this license at any time upon 90 (ninety) days prior written notice to the other party by registered mail, return receipt requested. In any case, this license shall terminate automatically (without notice) and with immediate effect upon expiration or termination for any reason of the Dealer Agreement.
9. Without prejudice to any other remedies it may have under the terms of this license, the MANUFACTURER shall be entitled to terminate this license with immediate effect, upon written notice sent by registered letter, return receipt requested, to the DEALER:
 - A) if the DEALER becomes insolvent or commits any act of bankruptcy or compounds or makes arrangement with its creditors or goes into liquidation otherwise than for the purpose of a bona fide reconstruction without insolvency or has a receiver appointed over any of its assets or, being a partnership, is dissolved or any distraint or execution is levied upon any of its goods or assets;
 - B) if a criminal or administrative investigation or proceeding is commenced concerning or against the DEALER or any shareholder or partner thereof, which investigating or proceeding tends to affect adversely the operation, business, reputation or interest of the DEALER and/or the MANUFACTURER or other companies within the Lamborghini Group and/or fiduciary relationships between the DEALER and the MANUFACTURER; or
 - C) in the presence of serious reason which does not permit continuation of this license on the basis of mutual trust, or in the event of breach of any one of the DEALER's

fundamental obligations hereunder, in particular but not by way of limitation, if the DEALER is in breach of one of its obligations under Articles 1, 2, 3, 4, 6, 7 and/or 15 of this license.

10. At the time of termination or expiration of this license for any reason, the DEALER and its managers owners and personnel shall relinquish any domain name incorporating "Lamborghini" which the MANUFACTURER may have authorized in accordance with article 1 above, shall cease any and all use of the name and trademark "Lamborghini" and shall return to MANUFACTURER all materials bearing it according to the procedure set forth in article 20.1 lett. D) of the Dealer Agreement; from then on said parties shall abstain from any and all use of said name and trademark, of any name and trademark that may be confusingly similar to it and of any other name and trademark belonging to MANUFACTURER or to any other company in the Lamborghini Group.
11. Exhibit A hereto and the statements in the preamble to the present license are integral part hereof. This license is the entire and only license and understanding between the parties on its subject matter and supersedes all other prior agreements, whether oral or in writing; for the avoidance of doubt, it is hereby expressly agreed that this license does not supersede the Dealer Agreement. Any amendment to the present license shall be valid only if made in writing and signed by the parties' authorized representatives.
12. Any waiver of any right or prerogative hereunder shall not imply waiver in respect of any subsequent breach by the other party or waiver of any other right hereunder.
13. If not otherwise agreed upon in writing, all notice and communications required hereunder shall be in writing and shall be deemed duly given when sent by registered letter, return receipt requested; if dispatched by telefax, e-mail or telegram any such notice shall be confirmed by registered letter, return receipt requested, on the same date.
14. If any term or provision of this license shall to any extent be invalid or unenforceable, the remainder of this license shall not be affected thereby and the parties shall substitute any such invalid provision with a new and valid provision having, as far as possible, a similar or equivalent content.
15. This license may not be assigned, in whole or in part, without the prior written consent of the other party.
16. The present license is governed by Italian law.
17. Any disputes, claims or proceedings arising out of this license or in connection herewith, shall be within the exclusive jurisdiction of the competent courts of Bologna, Italy, and the MANUFACTURER may not be sued outside such courts unless it previously waives the

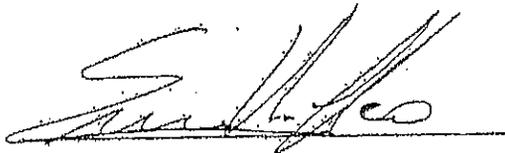
present clause in writing. Notwithstanding the preceding clause, the MANUFACTURER may, if it so wishes, seek protection or indemnification in respect of any of its rights and prerogatives hereunder before a court having jurisdiction over the DEALER, its managers and/or owners, including, not by way of limitation, the courts of the place in which DEALER's principal place of business is located and/or the place in which the PREMISES are located.

Sant'Agata Bolognese, July 7, 2006

ATUOMOBILI LAMBORGHINI S.P.A.

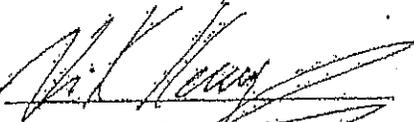


By: Salvatore Cieri
Title: Attorney in fact



By: Enrico Maffeo
Title: Head of Sales

CALABASAS EURO AUTO GROUP LLC



By: Vik Keuylian
Title: Managing/Member

The Manufacturer and the Dealer hereby declare that they accept, without any reservation, the whole Agreement and, specifically, the following clauses, in accordance with Articles 1341 and 1342 of the Italian Civil Code:

Art. 1 restriction to the use of the name and trademark "Lamborghini"

Art. 6 early termination

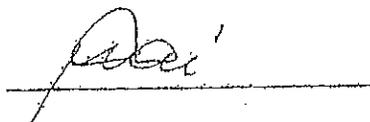
Art. 8 early termination

Art. 9 early termination

Art. 16 governing law

Art. 17 choice of jurisdiction

ATUOMOBILI LAMBORGHINI S.P.A.



Appendix 1: Premises

1. Dealer legal name:

Calabasas Euro Auto Group LLC

2. Lamborghini has approved the location of the following temporary and permanent premises, and no others, for Dealer's Operations (see attached floorplan and pictures):

a. Sales Facilities:

Temporary: 23822 & 24000 Ventura Blvd, Calabasas, CA 91302

Permanent: 24400 Calabasas Road, CA 91302

b. Authorized Automobile Storage Facilities:

Temporary: same as above

Permanent: same as above

c. Service Facilities:

Temporary: same as above

Permanent: same as above

d. Genuine Parts Storage Facilities:

Temporary: same as above

Permanent: same as above

e. Used Car Lot:

Temporary: same as above

Permanent: same as above

The "Temporary" location(s) for Sales and Service Facility set forth above are authorized only until March 1, 2008. On or before June 15, 2007 Calabasas Euro Auto Group LLC will have obtained the approval of the plans by the Planning Departments for the "Permanent" location. On or before March 1, 2008, Calabasas Euro Auto Group LLC will relocate the Lamborghini showroom to the "Permanent" location set forth above, which shall conform in all material respects to the proposed build-up plans for the facility as presented by Calabasas Euro Auto Group LLC, which have been inspected by Lamborghini and approved.

Platinum Motors LLC shall provide Lamborghini on a monthly basis of current and anticipated progress of its relocation to the Permanent facility.

The Permanent location(s) shall be decorate and furnished in accordance with Lamborghini's CIV/CD requirement.

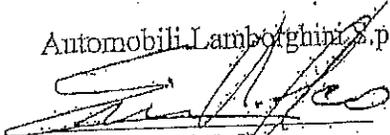
The respect of the above mentioned deadlines shall be considered as a condition precedent for the execution and continuation of the present Agreement.

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Appendix cancels any prior Dealer Premises Addendum.

NOVEMBER 28 UK
Dated: October 7, 2006,

Automobili Lamborghini S.p.A.

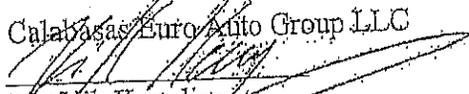

By: Enrico Maffeo

Title: Head of Sales


By: Salvatore Cieri

Title: Proxy Holder

Calabasas Euro Auto Group LLC


By: Vik Keuylian

Title: Managing Member

Appendix 2: Standards of Performance

The Standards of Performance set forth below prescribe the minimum performance standards and provide a tool to assess dealer adherence to guidelines that enhance the Lamborghini customer's shopping and ownership experience. Adherence to the minimum standards defined therein is required. Dealers falling short of such Standards will work with Lamborghini in drafting and implementing an action plan to bring such dealers into compliance with the relevant Standards of Performance. Failure to substantially comply with the minimum Standards of Performance or the action Plan established to bring Dealer into compliance with such Standards shall constitute a material breach of a fundamental obligation and cause for termination of the Lamborghini Dealer Agreement in accordance with its terms and applicable law.

I. Management

General Manager

A General Manager is required whenever the owner/s of Dealer company does/do not take an active part in the management of Dealer's operation and/or is/are absent from the premises at which Dealer sells the Contractual Products more than 50% of the time. The parties agree that the appointment of a General Manager requires the prior written approval of Lamborghini, which approval shall not be unreasonably withheld.

Staffing requirements

A. Vehicle sales

1. Sales Manager

A specific person shall be charged with all marketing of the Contractual Products. In Dealer companies which have only 1 (one) Sales Manager for new vehicles, said Sales Manager may be charged with the marketing of the Contractual Products.

Where Dealer has more than 1 (one) Sales Manager for motor vehicles, with the approval of Lamborghini, Dealer principal shall designate the Sales Manager who will be responsible for the marketing of the Contractual Products.

The Sales Manager must utilize a system in order to record all customer contacts (by telephone, appointments of sales personnel or showroom visits) for the purpose of customer follow-up and supervision of sales force.

2. Salespersons

In dealerships with more than one salesperson, a salesperson shall be designated as the salesperson of the Contractual Products.

The sales personnel who are responsible for the Contractual Products may be asked to participate, from time to time, in specific sales training seminars held by Lamborghini, in accordance with the provisions of Article 12(3) of this Agreement.

B. Service

1. Manager

The Manufacturer requires that a specific person be charged with managing the servicing of the motor vehicle Contractual Products. In Dealer companies which have only 1 (one) Service Manager, said Service Manager may be charged with managing the servicing of the motor vehicle Contractual Products.

Where Dealer has more than 1 (one) Service Manager for motor vehicles Dealer principal, with the approval of Lamborghini, shall designate the Service Manager who will be responsible for managing the servicing of the motor vehicle Contractual Products.

2. Service Advisor

The Dealer shall employ a Service Advisor who shall be responsible for dealing with customers in connection with the servicing of the motor vehicle Contractual Products.

3. Technicians

The Dealer shall employ at least one technician, fully trained in relation to the motor vehicle Contractual Products, for the purposes of repairing and servicing said Contractual Products.

4. Warranty Administrator

The Dealer shall employ a person who shall be responsible for handling and processing Warranty claims relating to the Contractual Products.

5. Other Staff

The Dealer shall employ a sufficient number of other staff, such as, but not limited to, porters, janitors and car wash attendants, so as to ensure that customer expectations are satisfied.

C. Parts

The Dealer shall employ a parts manager.

II. Capitalization

A. Net Working Capital Requirements

Net working capital requirements are established by Lamborghini in an effort to ensure that there is sufficient capital available for the growth of Dealer and to afford Dealer the opportunity to conduct its dealership in accordance with the terms of the Lamborghini Dealer Agreement. Adequate working capital, at least equal to that described below, shall be maintained by Dealer at all times.

Minimum net working capital requirements (defined as current assets minus current liabilities) will be calculated as follows:

1. Current assets.

a. Cash and Equivalent (as defined below)

New dealers: equal to two months' total projected operating expenses.

Existing dealers: equal to average monthly operating expenses, over the preceding 12 months

Cash and Equivalent shall be calculated as follows:

- * Cash on hand and in the bank.
- * Finance contracts in transit, such as long-term financing/loans to Dealer.
- * Liquid marketable securities (actually owned by Dealer).

- Accounts receivable - Vehicles.
- New vehicle equity.
- Less customer sales down payments held in trust.

b. Accounts Receivable - Service, Parts and Accessories

New dealers : based on 75% of average month's forecasted service, parts and accessories sales.

Existing dealers : based on 75% of dealer's actual average monthly service, parts and accessories sales, over the preceding 12 months

c. Used Vehicle inventory

New dealers : 45 days supply of used vehicles based on 0.3 to 1 retail used to new ratio x average forecasted used retail cost of sale.

Existing dealers : 45 days supply of used vehicles based on 0.3 to 1 retail used to new ratio x average used retail cost of sale over the preceding 12 months or 45 days' supply of used vehicles based on dealer's annual sales volume of used vehicles during the preceding calendar year x dealer's actual average unit retail cost of sale for the same period.

d. Parts and accessories

New dealers: based on forecasted monthly sales of parts and accessories and initial parts and accessories kit requirements.

Existing dealers: 60 days' supply of parts and accessories based on dealer's average monthly cost of sale, over the preceding 12 months.

e. Other parts and accessories, Work in process, Sublet, Miscellaneous Inventory.

New dealer - based on forecast

Existing dealers - based on actual average month, over the preceding 12 months.

f. Prepaid expenses

New dealer - up to 20 % of an average month's forecasted total operating expenses.

Existing dealers - up to 20% of average monthly total operating

expenses, over the preceding 12 months, or dealer's actual expenses, whichever is the higher.

2. Current liabilities

Shall be calculated at one month's average total operating expenses, over the preceding 12 months.

B. Owner's Equity

New dealer - Owner's equity shall be established at a minimum of 50% of total Operating Investment (as defined below) plus 100% of land, construction-in-progress and buildings net (less mortgage payable), and investments and advances.

Operating Investment shall comprise the total of:

- Net working capital
- Leasehold improvements
- Machinery and equipment
- Furniture and fixtures
- Company vehicles
- Other depreciable assets
- Long term notes receivables
- Receivables - Owner, Employee and Other
- Finance and insurance receivables
- Lease vehicles (less lease vehicles liability)
- Cash surrender value of life insurance

less accumulated depreciation.

Owner's notes shall be considered debt unless the notes are subordinate to any capital loans and the subordination is documented.

Existing dealer - Owner's equity will be evaluated based on Dealer's annual business plan, which Dealer shall timely provide to Lamborghini, and the projected cash flow to service existing Dealer debt and maintain required working capital.

C. Promotional budget

Unless agreed otherwise pursuant to the provisions of Article () of this Agreement, the Dealer's advertising budget for the Contractual Products shall be at least 2.0% of Dealer's turnover in respect of the Contractual Products, calculated based on the sales price of said Contractual Products to Dealer's customers, including funds withheld.

III. Facilities and Premises

At all times during the currency of this Agreement, Dealer shall, at its sole cost and expense, maintain the facilities and premises at which it sells, stores, exhibits and services the Contractual Products at the same location/s and in the same condition, state of repair and appearance in which they were at the time Dealer was appointed by Lamborghini or as agreed at that time, including but not limited to the minimum requirements set forth below. Quote CI / CD manual and guidelines

The Dealer's facilities and premises must compare favorably to those of other luxury high performance motor vehicle dealerships in the market in terms of appearance, decor and space and, in any event, they must be in such a condition, state of repair and appearance as is consonant with the prestige of Lamborghini's name and trademarks. Any restructuring, expansion or relocation of Dealer's facilities and premises in relation to the Contractual Products requires the prior written approval of Lamborghini, including, but not limited to, with regard to layout, size, appearance.

The Manufacturer shall have the right to inspect Dealer's facilities and premises at all reasonable times during normal business hours and without prior notice to ensure due compliance by Dealer with the provisions of the Lamborghini Dealer Agreement.

A. New Vehicles

1. The net showroom area for new motor vehicles must be at least 2000 (two thousand) square feet. For each new motor vehicle Contractual Product in Dealer's possession at a given time and displayed in the showroom, a display area of at least 500 (five hundred) square feet is required. Subject to the provisions of Article 3(8) of this Agreement, in the event that the showroom is shared with vehicles other than Contractual Products, a minimum of 1000 (one thousand) square feet shall be exclusively reserved for the display of new motor vehicle Contractual Products.

2. In order to ensure the appropriate harmony of and unity in the display of the Contractual Products throughout the Sales Organization, the showroom or showroom area referred to above which is reserved for the Contractual Products, shall be arranged in accordance with Lamborghini's Guidelines.

3. Subject to the provisions of paragraph 1 above, Dealer shall maintain an indoor storage area adequate for the safe storage of those Contractual Products not displayed in Dealer's showroom.

B. Used Vehicles

The Dealer shall ensure that sufficient space, either inside or outside Dealer's showroom shall be available for the display of the used Contractual Products and other used motor vehicles manufactured by or to the order of Lamborghini or its predecessors in interest and bearing the trademark/s of Lamborghini.

C. Service

1. The Dealer shall designate a service area for the servicing of the motor vehicle Contractual Products.
2. The designated service area must be equipped with a hoist that can handle the motor vehicle Contractual Products.
3. The vehicle intake area used in relation to the motor vehicle Contractual Products as well as a customer reception area must be in the showroom or showroom area used for the motor vehicle Contractual Products and it must be organized in accordance with Lamborghini's Guidelines.
4. The Dealer shall participate in such customer satisfaction analysis (telephone report) programs as Lamborghini may prescribe in Lamborghini's Guidelines.
5. The Dealer shall participate in such 24-hour service programs as Lamborghini may prescribe in Lamborghini's Guidelines.

D. Parts

The Dealer shall make available shelf space in Dealer replacement parts storage area as adequate to maintain at least the minimum required stock of Lamborghini's original replacement parts and accessories as shall be specified from time to time in the relevant Lamborghini's Guidelines.

E. Presentation

The promotional presentation of the Contractual Products, in addition to Dealer's corporate identity and corporate design, must be organized in accordance with Lamborghini's Guidelines.

Appendix 3: The Dealer's Organization

I. Name of enterprise:

Calabasas Euro Auto Group LLC

Legal form of the enterprise:

Limited Liability Company

Ownership:

Name: Extent of holding:

(in local currency and as a percentage)

Keuylian Children's Trust

Trustee: Vic Keuylian

Lagun Hills, CA

85% \$ 850,000

Nora Keuylian

F.V., CA

5% \$ 50,000

Astrid Keuylian

F.V., CA

5% \$ 50,000

Sossi Keuylian

F.V. CA

5% \$ 50,000

II. The management of said enterprise is vested in:

Vic Keuylian

III. The above-mentioned person(s) who is/are on Dealer's staff have full power and authority to perform the obligations of Dealer as set forth in the present Agreement. Should such authority be restricted or modified in any way, Dealer shall, in writing, inform Lamborghini of such change without delay and name a person who has full power and authority to perform the obligations of Dealer as set forth in the present Agreement.

Lamborghini acknowledges and accepts, as a condition of entering into the Lamborghini Dealer Agreement, Dealer's representations, which are hereby expressly reiterated and confirmed, that, in addition to Contractual Products, Dealer and/or the persons named under I. and II. above are actively engaged or participate directly or indirectly in the marketing of the following car brands and/or the following automotive products at the locations indicated and no others.

brand, product	firm	persons participating	percentage
Lamborghini	Lamborghini Orange County Paroiz Orange County T-Rex Orange County		
Lotus	Lotus Beverly Hills T-Rex Beverly Hills		
AUDI	Audi Santa Ana (in the process of purchasing)		
VW	VW Santa Ana (in the process of purchasing)		
Lotus	Lotus Temecula (LOI)		
Lotus	Lotus Calabasas		

IV. Staffing: key employees involved in the sales of the Contractual Products: the Dealer agrees to give communications every three months to the Manufacturer about the key employees involved in the sales of the Contractual Products

Appendix 4: Contractual Products

The current Contractual Products referred to in the Dealer Agreement of which this Appendix is an integral part are the following:

A. Manufacturer's motor vehicles

All models of brand new vehicles bearing Lamborghini's trademarks, which are offered for sale in the U.S. by Lamborghini.

B. Parts

Original parts bearing Lamborghini's trademark.

C. Options

Optional features or equipment offered by Lamborghini with the motor vehicle Contractual Products.

D. Accessories

Such accessories to the motor vehicle Contractual Products as Lamborghini shall make available to its distributors and dealers from time to time.

Year 2007

Minimum Quantity of Contractual Products For Which Dealer Shall Place Firm Purchase Orders with Lamborghini for Sale To Retail Customers and Take Delivery (subject to vehicle availability).

- 5 MURCIELAGO COUPE
- 5 MURCIELAGO ROADSTER
- 10 GALLARDO COUPE
- 20 GALLARDO SPYDER

At the beginning of each calendar year, Lamborghini will furnish dealer with a proposed quarterly planning for supply of Contractual Products for that calendar year. If Dealer does not dispute such proposed quarterly planning volumes within two weeks of receipt, Dealer will be conclusively deemed to have consented and agreed to Lamborghini's proposed quarterly volumes. Dealer will then purchase the prescribed number of contractual products each quarter.

If by the end of each quarter Dealer has not placed firm purchase orders with Lamborghini for sale to retail customers and taken delivery (subject to vehicle availability) of at least 1/4 (one-fourth) of the minimum quantity of brand new motor vehicle Contractual Products Dealer set forth above for the year in question, Dealer shall be deemed to be in breach of Article 4 of this Agreement and the terms of this Appendix 5, and shall constitute a material breach of a fundamental obligation and cause for termination of the Lamborghini Dealer Agreement in accordance with its terms and applicable law.

As of the date of this Agreement, the amount of the non-refundable down-payment payable on each Contractual Product, pursuant to Article 16, paragraph 1(a) hereof is 10 % of the invoice amount for each Contractual Product.

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Appendix 6: Warranty Policy and Procedure Manual

Appendix 7: Line of Credit, Required Forms

DEALER'S HEADLETTER

Dealer's bank or financial
institution granting the credit

line

Date:

Dear Gentlemen,

effective the above date, we authorize and request you to furnish AUTOMOBILI LAMBORGHINI S.p.A. information reflecting the line of credit that you are extending us for the purchase of Lamborghini products, and you are further instructed and authorized to advise AUTOMOBILI LAMBORGHINI S.p.A., upon their request of any change or termination that may hereafter occur with respect to said line of credit.

Signed by a duly empowered representative

CC: Automobili Lamborghini S.p.A.
Via Modena, 12
40019 Sant'Agata Bolognese (BO)
Italy
Attn. Credit Department

BANK'S HEADLETTER

Automobili Lamborghini S.p.A.
Via Modena, 12
40019 Sant'Agata Bolognese (BO)
Italy

Date:

Attn: Credit Department

Re: *DEALER'S NAME*
DEALER'S ADDRESS

This is to certify that the above subject dealer has an established line of credit with us for \$ 1,500,000 exclusively for Lamborghini automobiles, and you are hereby authorized to use an Automated Clearing House (ACH) transaction, Depository Transfer check (DTC), or Cash Draft to draw on his bank, identifying the vehicles ordered, shipped or delivered for payment of invoices covering Lamborghini motor vehicles ordered, shipped or delivered from Italy to said dealer. Said transactions to be drawn upon as payable as herein below indicated for the amount of each invoice covering such motor vehicles ordered, shipped or delivered as aforesaid.

We agree to pay at par these transactions upon presentation, provided that such transactions will be presented to our Branch Office as indicated below. And further provided that, upon request, you will furnish to us a copy of the invoice identifying the vehicle ordered, shipped or delivered to said dealer.

Upon telegraphic or written notice to the National Credit manager, at the above specified address only, we may withdraw or suspend this commitment with respect to subsequent orders or shipment of vehicles to the above named dealer effective two (2) business days following receipt of such notice. Drafts for vehicles ordered or shipped prior to the effective date of our withdrawal or suspension of this commitment will be honored irrespective of the date of the draft and/or the date of receipt of such draft by us.

This authorization is effective and supersedes prior authorizations, if any, whereby we have agreed to pay for motor vehicles ordered or shipped to the above named dealer.

AUTHORIZED BANK SIGNATURE

Information required by AUTOMOBILI LAMBORGHINI S.p.A. to draw above described cash transactions:

BANK NAME:
ADDRESS:
CITY, STATE, ZIP:
BANK ACCOUNT NUMBER:

BANK ROUTING NUMBER:

Manufacturers Certificates of Origin should be sent to the DEALER.
DEALER'S HEADLETTER

Automobili Lamborghini S.p.A.
Via Modena, 12
40019 Sant'Agata Bolognese (BO)
Italy

Date:

Attn: Credit Department.

You are hereby authorized to use an Automated Clearing House (ACH) transaction, Depository Transfer Check (DTC), Cash Draft or any other instrument you deem appropriate to charge my flooring account for payment of vehicles from AUTOMOBILI LAMBORGHINI S.p.A.

Please note for your records the following information:

DEALER CENTER NAME:
ADDRESS:
CITY, STATE, ZIP:

BANK NAME:
ADDRESS:
CITY, STATE, ZIP:
BANK ACCOUNT NUMBER:
BANK ROUTING NUMBER:

Signed by a duly empowered representative

CC: Dealer's bank

SI LETTER TO DEALER AGREEMENT

Between

AUTOMOBILI LAMBORGHINI S.P.A. an Italian company having its registered office at via Modena 12, Sant'Agata Bolognese, Bologna, Italy, represented by Salvatore Cieri, its Attorney-in-fact (the "Manufacturer") and by Enrico Maffeo, its Head of Sales

And

CALABASAS EURO AUTO GROUP, LLC, a California company having its registered office at 2441 S. Pullman Street, Santa Ana, California 92705, USA

(the "Dealer")

WHEREAS

- The Manufacturer and the Dealer are parties to a Dealer Agreement which entered into force as of _____ (the "Dealer Agreement") whereby *inter alia* the Manufacturer grants the Dealer the right and impose upon it the obligation to market and sell the Contractual Products (it being understood that said term and all other capitalized terms herein shall have the meaning attributed to them in the Dealer Agreement, unless otherwise expressly indicated therein) in its own name and on its behalf and fully to exploit the market for said Products;
- with effect as of the same date, the parties wishes to amend certain articles of the Dealer Agreement, in accordance with the provisions of Article 22.1 thereof

Now, therefore, the parties hereby agree as follow:

1. The article 6.4 shall be read as follow:

"In addition to carrying out all obligation on it by law or by contract, Dealer shall undertake the services offered by Dealer to the customer under the terms of Warranty in relation to any motor vehicle (Contractual Product) whether or not supplied by Dealer and shall provide Warranty servicing and vehicle recall for the motor vehicle Contractual Products as shall be directed by Manufacturer. Manufacturer compensates Dealer for warranty work in accordance with procedures and rates as reflected in the Warranty Policy and Procedure Manual. Dealer shall maintain on its premises at all time Manufacturer replacement parts in compliance herewith in such quantities as shall be reasonably necessary to enable Dealer to fulfil its motor vehicle Contractual Products repair and service obligations under this Agreement".

2. At the end of Art. 9.3 shall be added the following sentence:

"Manufacturer shall respond to Dealer within 10 (ten) days of Dealer's submission of any sales promotion, product placement or advertisement".

3. At the end of art. 10.4 shall be added the following sentence:

"Nothing in this Article 10 is intended to limit Dealer's right to protect its own tradename and goodwill, or to seek monetary damages and injunctive relief in the event that the Dealer is the victim of an infringement or unauthorized use by third party".

4. Art. 19, par. 1, lett. A) shall be read as follow:

"Dealer becomes insolvent, or files any petition under bankruptcy law, or executes an assignment for the benefit of creditors, or appoints a receiver or trustee or another officer having similar powers is appointed for Dealer and is not removed within thirty (30) days from its appointment hereto or there is a levy under attachment or execution or similar process which is not vacated or removed by payment or bonding within 10 (ten) days".

5. Art. 19, par. 1, lett. E) shall be read as follow:

"Dealer fails to conduct its customary sales and service operations for a continuous period of seven business days, except in the event such closure or cessation of operation is caused by some physical event beyond the control of Dealer, such as fires, flood, earthquakes, or other acts of God".

6. At the end of art. 20, par. 3 shall be added the following sentence:

"Nothing in this Paragraph is intended to, nor shall it limit, Dealer's right to seek relief and damages from Manufacturer in the event that this Agreement is wrongfully or improperly terminated, or sought to be terminated, by Manufacturer".

7. The following provisions shall be added to the Dealer Agreement, as further obligation of the Dealer.

These obligation are deemed to be as a condition precedent for the execution of the dealer agreement.

"The parties hereby agree that the Dealer undertakes the obligations of:

- Submission of financial background fro the investment in the dealership;
- submission 5 years business plan for the dealership;
- submission of the orders according to time schedule established by the Manufacturer;
- fully cooperation with Manufacturer rules, as, but not limited to, planning, merchandising, CI/CD elements, special edition vehicles.

8. All other provisions of the Dealer Agreement remain unchanged.
9. The recitals shall be deemed to constitute an integral part of this Side Letter.

Sant'Agata Bolognese, November 23, 2006

AUTOMOBILI LAMBORGHINI S.P.A.

By: Salvatore Cieri
Title: Attorney-in-fact

By: Enrico Maffeo
Title: Head of Sales

CALABASAS EURO AUTO GROUP, LLC

By: Vik Keuylian
Title: Managing/Member

(2/3)

(2/3)

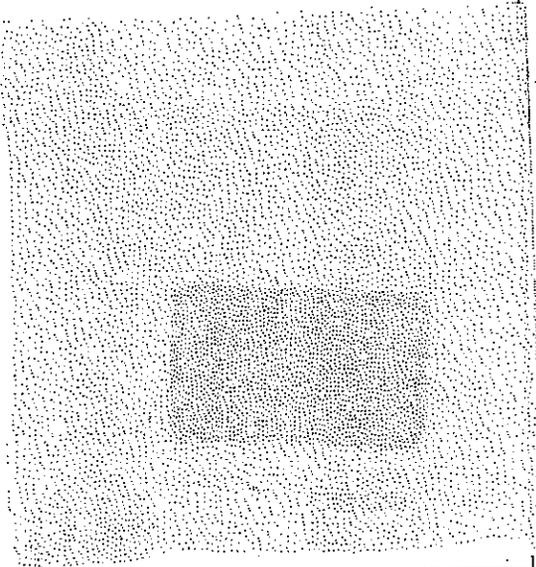
Original Transcript

TRANSCRIPT OF CD ENTITLED: CH 11.

May 7, 2009
1:00 p.m.

Platinum Motors 09-12472-TA.
Calabasas Euro Auto 09-12593-TA.

AMY K. ZUMBROCK C.S.R.




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an Alexander's & Co. Company

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1 then so appellate rights are still up in the air.

2 MS. GOLDENBERG: And with respect to
3 Calabasas?

4 MR. NEGRETE: Calabasas, there's no hearing
5 one way or the other. There was a notice of
6 termination.

7 MS. GOLDENBERG: But will there be a hearing?

8 MR. NEGRETE: There may be. That's stayed
9 right now. All actions stayed.

10 MS. GOLDENBERG: Okay. Since the bankruptcy
11 filing, have there been any significant actions in
12 this case, these cases?

13 MS. KEUYLIAN: As far as what? As far as --

14 MS. GOLDENBERG: Well, your counsel can answer
15 that because it would be legal actions.

16 MR. NEGRETE: An action is the board or here.
17 You mean like lawsuits?

18 MS. GOLDENBERG: Yeah. Any -- any -- or
19 relief from stays or --

20 MR. NEGRETE: There's been relief from stays.
21 There was a hearing on VCI this past week with
22 respect to the property that they seized or that

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1 was turned over to them. The relief from stay was
2 granted. That's awaiting an appeal.

3 There is a -- the board hearing. There
4 was a relief from stay for Lamborghini to proceed
5 with the board hearing. Also, the case was removed
6 back into the bankruptcy court before Judge
7 Albert -- Judge Albert remanded it back to the
8 board.

9 Now, since -- (inaudible) -- may be
10 appeals or motions for reconsideration on those.

11 MS. GOLDENBERG: And that the board hearing is
12 with respect to Platinum only?

13 MR. NEGRETE: Platinum only. There has
14 been -- there was relief from stay also as to
15 Calabasas, and VCI was granted.

16 MS. GOLDENBERG: Okay. Ms. Keuylian, did you
17 review and sign the debtors' bankruptcy petition
18 and schedules in the related documents?

19 MS. KEUYLIAN: Yes, I did.

20 MS. GOLDENBERG: Are all of the assets and
21 liabilities for each debtor reported on the
22 bankruptcy filing?

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TRANSCRIPT OF CD ENTITLED:

CH 11. 6-17-09. Platinum Motors. Calabasas.



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1 MR. NEGRETE: Well, we don't expect
2 Lamborghini to be the easiest in the world to work
3 with. But they can't deny selling cars and selling
4 parts and selling everything else.

5 MS. PONCE-GOMEZ: Okay. Okay. I think that
6 answers my questions with respect to Platinum.

7 So your main -- (inaudible) -- with
8 Platinum then would be this franchise dealership
9 and the potential to sell it.

10 MR. NEGRETE: Well, and the assets, which
11 are selling -- which VCI has that are selling that
12 got relieved from -- (inaudible).

13 MS. PONCE-GOMEZ: The vehicles that got
14 relieved from stay, so.

15 MR. NEGRETE: I mean, there's still assets,
16 but you're liquidating them.

17 MS. PONCE-GOMEZ: Okay.

18 MR. NEGRETE: Theoretically, I guess.

19 MS. PONCE-GOMEZ: Right. So, I mean, we
20 haven't really -- I mean, -- (inaudible) -- was
21 granted to sell the vehicles. Okay.

22 Now, on Calabasas, sort of the same kind



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1 of question in that Calabasas -- my understanding
2 is at least the franchise was, in fact, terminated,
3 and no protest had not been filed. So my
4 understanding from that would be there is no longer
5 a franchise. There is no longer a dealership.

6 MR. NEGRETE: I will not commit to that
7 position because that was before my filing and
8 before their Chapter 11, although we're going to
9 advance an argument that is still alive because
10 it's an affiliate of the Platinum. But it is not
11 the subject of a protest before the New Motor
12 Vehicle Board.

13 MS. PONCE-GOMEZ: Because I'm just wondering
14 in terms of the Calabasas plan for reorganization
15 and the assets of Calabasas, I can't quite figure
16 out really what the assets of Calabasas are.

17 Not only because the order was entered
18 granting VCI's motion to sell vehicles which they
19 are selling, and that that -- I mean, that there's
20 no -- (inaudible) -- there to benefit the estate.
21 And then with this franchise that's no longer
22 there, there's no longer a dealership.



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1 I'm just trying to figure out what the
2 assets are of Calabasas.

3 MR. NEGRETE: If one would hope and pray and
4 wish that the VCI gets more for the assets that
5 were taken from Calabasas and there's a surplus for
6 creditors, then it would be a liquidating plan.
7 Obviously, it'll be a difficult road to hoe as to
8 the dealership franchise. I don't know if that
9 answered your question. But it's -- that one's not
10 a reorganization.

11 MS. PONCE-GOMEZ: Yeah. Okay.

12 MR. NEGRETE: The prospects are dimmer from
13 Calabasas.

14 MS. PONCE-GOMEZ: Yeah, it seems pretty
15 tenuous. I'm just trying to figure out what --
16 what's really there for Calabasas --

17 MR. NEGRETE: A lawsuit.

18 MS. PONCE-GOMEZ: -- in terms of
19 reorganization, you know.

20 MR. NEGRETE: A lawsuit claim.

21 MS. PONCE-GOMEZ: A lawsuit claim. A lawsuit
22 claim?



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1 MR. NEGRETE: A lawsuit claim. A claim. I'd
2 do a lawsuit. That'd be about it.

3 MS. PONCE-GOMEZ: That would be the only
4 asset?

5 MS. GOLDENBERG: A claim against who?

6 MR. NEGRETE: VCI and Lamborghini. It hasn't
7 been filed. So it's still got to be considered.
8 There's no asset right now other than the ones you
9 described.

10 MS. PONCE-GOMEZ: Okay. I think those were my
11 two main questions or my series of questions on
12 both of the debtors.

13 And then I only ask that, again, not to
14 prolong this, but when we get amended schedules,
15 that it would just be good to have an opportunity
16 for the creditors to examine based on the
17 additional information --

18 MS. GOLDENBERG: Right.

19 MR. NEGRETE: And I totally take the blame on
20 that. I've been at trial for four weeks, and I
21 understand. So we'll get them to you in e-mails
22 and whatever.



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TITLE 11 > CHAPTER 3 > SUBCHAPTER IV > § 362

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

- (A) of the commencement or continuation of a civil action or proceeding—
 - (i) for the establishment of paternity;
 - (ii) for the establishment or modification of an order for domestic support obligations;
 - (iii) concerning child custody or visitation;
 - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
 - (v) regarding domestic violence;
- (B) of the collection of a domestic support obligation from property that is not property of the estate;
- (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
- (D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
- (E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
- (F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
- (G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546 (b) of this title or to the extent that such act is accomplished within the period provided under section 547 (e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105-277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement

forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements; including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109 (h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to

reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414 (d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security

Interest in real property—

(A) If the debtor is ineligible under section 109 (g) to be a debtor in a case under this title; or

(B) If the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506 (a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit

enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707 (b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)

(A)

(i) If a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707 (b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) If, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363 (c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a

claim secured by a judgment lien or by an unmatured statutory lien);
and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521 (a)(2)—

(A) to file timely any statement of intention required under section 521 (a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524 (c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365 (p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521 (a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy ^[1] law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which

the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)

(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)

(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)

(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) It is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

[1] So in original. Probably should be "nonbankruptcy".

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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

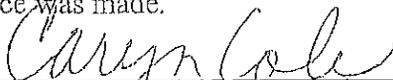
On November 25, 2009 I served the document(s) described as **STATEMENT BY RESPONDENT CONCERNING APPLICABILITY OF AUTOMATIC STAY UNDER 11 U.S.C. § 362** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

- (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FAX) At _____, I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.
- (BY EMAIL) I transmitted the above-described document by email in PDF format, which complied with the New Motor Vehicle Board's pre-hearing conference order. The email transmission originated from my computer and was reported as complete and without error.
- (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on November 25, 2009 at Los Angeles, California.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Caryn Cole

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