

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

SANTA MONICA GROUP, INC.,

Protestant,

v.

GENERAL MOTORS, LLC,

Respondent.

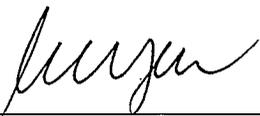
Protest No. PR-2276-10
Protest No. PR-2277-10

DECISION

At its regularly scheduled meeting of February 4, 2011, 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 Protests" in the above-entitled matters. After such consideration, the Board adopted the Proposed Order.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 4th DAY OF FEBRUARY 2011.



ROBERT T. (TOM) FLESH
President
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
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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 SANTA MONICA GROUP, INC.,
13 Protestant,
14 v.
15 GENERAL MOTORS, LLC,
16 Respondent.

Protest No. PR-2276-10
Protest No. PR-2277-10

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

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1 11. The Board, on September 15, 2010, issued its “Order Adopting [Proposed] Confidential
2 Stipulated Decision and Order of the Board Resolving Protests” (“Board Order”).

3 12. This meant that the terms of the Settlement Agreement became a “Decision” and “Order
4 of the Board”, with the effect being, as stated in the caption and text of the Order, that it was “Resolving
5 [the] Protests”, which at that time were the two “establishment protests” and the two “termination
6 protests” identified above.

7 **THE TERMS OF THE STIPULATED DECISION THAT HAVE BEEN DISCLOSED BY THE PARTIES**

8 13. In order to rule on this motion to dismiss, it was necessary for the ALJ to be informed of
9 some of the contents of the confidential Settlement Agreement that had become an order of the Board.

10 14. Because of the confidentiality of the terms at issue, counsel for the parties submitted a
11 “Stipulation Re Confidential Settlement Agreement” that was provided to the ALJ.⁵ The stipulation
12 provided the following terms from the Confidential Settlement Agreement:

13 **1.0 RECITALS**

14 WHEREAS, SMG conducts Chevrolet and Buick Dealership Operations in Santa
15 Monica, California pursuant to General Motors Corporation Dealer Sales and Service
16 Agreements (“Dealer Agreement(s)”) which were assigned to GM by General Motors
17 Corporation, n/k/a Motors Liquidation Company;

18 WHEREAS, GM as assignee of General Motors Corporation, n/k/a Motors
19 Liquidation Company, and SMG are parties to a “Wind-Down Agreement,”...

20 WHEREAS, GM and SMG are parties to an arbitration pursuant to section 747 of
21 the Consolidated Appropriations Act of 2010 (Public Law 111-117) enacted December 16,
22 2009 (the “Arbitration”);

23 WHEREAS, GM and SMG also are parties to a protest filed by SMG with the
24 [Board] pursuant to section 3062...in regard to GM’s notice of intent to establish an

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28 ⁵ This document is now maintained by the Board as a public record and is subject to disclosure.

1 additional Buick dealership in West Los Angeles, California (the “Buick Protest”);⁶

2 WHEREAS, the Parties have agreed to resolve the issues presented by the
3 Arbitration and Buick Protest⁷ and all other existing and potential claims, demands, causes
4 of actions and disputes between them pursuant to the terms of this Agreement and a
5 Stipulated Decision of the Board, and without further proceedings, hearings or adjudication
6 of any issues of fact or law, and without the Parties’ admission or acknowledgement of any
7 responsibility, fault or liability whatsoever;

8 NOW, THEREFORE, in consideration of the mutual promises, covenants, and
9 conditions contained herein and other good and valuable consideration, the receipt and
10 sufficiency of which is hereby acknowledged, the Parties agree as follows:

11 **2.0 SETTLEMENT TERMS**

12 2.1 Upon execution and delivery of this Agreement (a) SMG shall immediately
13 request that the American Arbitration Association dismiss the Arbitration and (b) GM after
14 dismissal of the arbitration shall issue SMG a standard and customary letter of intent [to
15 reinstate SMG’s Dealer Agreement] such as it issues to dealers who prevail after
16 arbitration, subject to the modified terms and conditions detailed in this Agreement....

17 *****

18 2.6 Notwithstanding [contrary provisions contained in] paragraphs 1, 2, 3 and 4
19 of the Letter of Intent, GM agrees to approve a proposal by SMG to permit variable
20 operations⁸ for a competitive line-make at 3205 Santa Monica Boulevard (“Separate
21 Premises”) and fixed operations for a competitive line-make at 3223 Santa Monica
22 Boulevard (“Existing Dealership Premises”). However, SMG and Owners agree not to use
23 any portion of the Existing Dealership Premises for variable operations for the competitive
24

25 ⁶ The “Stipulation Re: Confidential Agreement” submitted to the Board by the parties makes specific reference only to the
26 “Buick Protest” filed pursuant to Section 3062 challenging the establishment of an additional dealership in West Los Angeles.
27 As no contention has been made otherwise, it is assumed that what was submitted as to the terms pertaining to the Section 3062
28 “Buick Protest” re: establishment is also applicable to the Section 3060 Buick termination protest, as well as the Section 3060
Chevrolet termination protest and Section 3062 Chevrolet establishment protest.

⁷ See footnote 6.

⁸ The term “variable operations” was agreed by counsel for both parties to mean “sale of new and used vehicles”. The term
“fixed operations” was agreed by counsel for both parties to mean “service and parts”. (Transcript, p. 6, lines 15-25; p. 7, lines
1-3)

1 line-make prior to or during the period in which the Dealer Agreement remains in effect....
2 If SMG or Owners permit any competitive line-make variable operations at the Existing
3 Dealership Premises..., SMG shall be deemed without more to have voluntarily and
4 immediately terminated its Dealer Agreements by written agreement pursuant to Article
5 14.2 and shall be eligible to receive termination assistance pursuant to Article 15 except
6 Article 15.3. **It is the intent of the Parties that the res judicata effect of the**
7 **Confidential Stipulated Decision of the Board provided for below shall preclude the**
8 **filing of any such protest or other legal challenge to the termination. SMG and**
9 **Owners further agree not to protest said voluntary termination pursuant to section**
10 **3060 of the Vehicle Code or to challenge said termination in any judicial or**
11 **administrative forum and hereby agree that they will have no legal right to do so.**
12 (Emphasis added.)

13 *****

14 5.6 Dispute Resolution. Subject to the following provisions of this section, GM
15 and SMG agree to submit to the Board for final and binding determination, upon either
16 party's written notice, any and all claims, disputes, and controversies between them arising
17 under or relating to this Agreement and its negotiation, execution, administration,
18 modification, extension or enforcement (collectively, "Claims"). Such determination shall
19 be made by an Administrative Law Judge appointed by the Board in accordance with its
20 customary procedures as they may exist from time to time. Under no circumstances shall
21 any Claim be combined with, joined with, or adjudicated in, a common proceeding with
22 Claims involving persons in addition to the Parties. GM and SMG agree that the dispute
23 resolution process outlined in this section shall be the exclusive mechanism for resolving
24 any Claims except for Claims pursuant to paragraph 4.4 hereof which may be brought in
25 any court of competent jurisdiction.

26 5.7 Governing Law. This Agreement shall be governed by, and construed in
27 accordance with, the laws of the state of California.

28 5.8 Complete Agreement of the Parties. This Agreement and the Stipulated

1 Decision of the Protests by the Board together contain the entire agreement and
2 understanding of the Parties relating to the subject matter of this Agreement and supersede
3 all prior statements, representations and agreements relating to the subject matter of this
4 Agreement. The parties represent and agree that, in entering into this Agreement, they
5 have not relied upon any oral or written agreements, representations, statements, or
6 promises, express or implied, not specifically set forth in this Agreement. No waiver,
7 modification, amendment or addition of this Agreement is effective unless evidenced by a
8 written instrument signed by an authorized representative of the parties, and each party
9 acknowledges that no individual will be authorized to orally waive, modify, amend or
10 expand this Agreement. The parties expressly waive application of any law, statute, or
11 judicial decision allowing oral modifications, amendments, or additions to this Agreement
12 notwithstanding this express provision requiring a writing signed by the parties.

13 15. After the four prior protests described above were resolved by the issuance of the Board's
14 Stipulated Decision and Order on September 15, 2010, there was nothing pending before the Board
15 involving these two parties until the two current protests were filed on October 29, 2010

16 **FACTS (SUBSEQUENT TO THE BOARD'S ORDER) LEADING**
17 **UP TO THE CURRENT PROTESTS**

18 **THE NOTICES FROM GM**

19 16. On October 18, 2010, GM sent letters to SMG and its attorney giving notice that GM had
20 discovered that SMG had engaged in conduct that, pursuant to the Board's Order issued just a month
21 before, constituted a voluntary termination by SMG of the Buick and Chevrolet franchises and that GM
22 accepted the voluntary terminations in accordance with the Board's Order. (Motion, Exhibit 3) These
23 notices were not sent pursuant to Section 3060 but rather were notices that GM considered SMG to have
24 acted in such a way that the termination clauses in the Board's Order (which had resolved the prior
25 protests) were applicable. In brief some of the alleged conduct of SMG included using "the dealership
26 premises *other than* the parcel at 3205 Santa Monica Boulevard for competitive line-make variable
27 operations" (namely Infiniti vehicles) and moving all of the Chevrolet and Buick vehicles to 3205 Santa
28 Monica Boulevard. (Motion, Exhibit 3) Other allegations included the placing by SMG of a banner

1 advertising the “Grand Opening of Santa Monica Infiniti”, first in the exterior display area outside the
2 Chevrolet and Buick showroom and then later moved to the façade of the Chevrolet and Buick showroom
3 directly over the main entrance where it covered the Chevrolet “bowtie trademark”.

4 17. The letters from GM stated that the notices were issued “pursuant to paragraphs 2.6 and
5 5.9” [paragraph 5.9 was not provided to the ALJ in the stipulation regarding terms from the Confidential
6 Settlement Agreement] of the Settlement Agreement (which became the Board’s Order). GM asserted
7 that “Under paragraph 2.6 of the Settlement Agreement, if SMG and its Owners permit a competitive line-
8 make to utilize the dealership premises *other than* the parcel at 3205 Santa Monica Boulevard for
9 competitive line-make variable operations, ‘SMG shall be deemed without more to have voluntarily and
10 immediately terminated its [Chevrolet and Buick] Dealer Agreements by written agreement pursuant to
11 Article 14.2....’ Paragraph 2.6 goes on to recite that SMG and Owners ‘agree not to protest said
12 voluntary termination pursuant to section 3060 of the Vehicle Code or to challenge said termination in
13 any judicial or administrative forum and hereby agree that they will have no legal right to do so.’”

14 (Motion, Exhibit 3; italics and brackets in the GM letter)

15 18. The notices from GM stated that the terminations were to be effective October 31, 2010, as
16 a matter of administrative convenience. (Motion, p. 8, lines 12-20; Exhibit 3) In a subsequent letter dated
17 October 29, 2010, GM agreed to defer the administrative effective date of the termination until November
18 10, 2010, to allow SMG to obtain new counsel, if desired. (Motion, Exhibit 4)

19 19. The notices from GM of October 18, 2010, were not the usual notices of termination that
20 would come within Section 3060. The notices did not comply with the form and content requirements of
21 Section 3060 and were not sent to the Board as would be required by Section 3060 if that section were
22 applicable. Rather GM, in its letters, stated that it was invoking the provisions of the September 15, 2010
23 Order of the Board, which by its terms expressly provided for and permitted the termination of SMG’s
24 franchises and specifically denies to SMG the right to file protests.

25 **THE CURRENT PROTESTS SOUGHT TO BE DISMISSED**

26 **THE PROTESTS FILED IN RESPONSE TO THE NOTICES**

27 20. Although GM had clearly indicated that it was claiming that the franchises had been
28 voluntarily terminated by SMG in accordance with the terms of the Board’s Order of September 15, 2010,

1 SMG filed two protests both of which were stated to be filed “under the provisions of Vehicle Code
2 section 3060”. (Protests, page 1, lines 18-19) In the protests, SMG expressly sought hearings before the
3 Board pursuant to Section 3061 and 3066. (Protests, page 3, lines 1-10) Such hearing would require that
4 GM establish good cause for the termination of the franchises with the Board taking into consideration the
5 circumstances mandated by those sections. The protests made no reference to the Board’s Order of
6 September 15, 2010 and thus offered no explanation for why the Board’s Order would not apply to the
7 events at issue.

8 **THE EFFECT OF THE BOARD’S ORDER ADOPTING THE**
9 **PARTIES’ SETTLEMENT AGREEMENT**

10 21. It is important to note that what is referred to at times as the “settlement agreement” is no
11 longer only a settlement agreement or private contract between the parties. Rather, the provisions of the
12 settlement agreement became the terms of a decision and order of the Board upon its adoption as such by
13 the Board’s Order dated September 15, 2010. Therefore, any terms of the settlement agreement must be
14 looked upon as being the terms of an Order of the Board. These terms of the Order of the Board would
15 include the conditions to the continued existence of the franchises as well as the manner of dispute
16 resolution. As to the first of these, the Board’s Order states in part: “If SMG or Owners permit any
17 competitive line-make variable operations at the Exiting Dealership Premises ... SMG shall be deemed
18 without more to have voluntarily and immediately terminated its Dealer Agreements by written
19 agreement...”. Whether these events have occurred involve factual questions that are not addressed in
20 this order.

21 22. What is addressed in this order is whether protests are permitted for resolution of disputes
22 between the parties relating to the Board’s Order. As to this, the Order states in part: “It is the intent of
23 the Parties that the res judicata effect of the Confidential Stipulated Decision of the Board provided for
24 below shall preclude the filing of any such protest or other legal challenge to the termination.” The terms
25 of the Board’s Order continue with language providing for any “Claims” relating to enforcement of the
26 Order be submitted to the Board by either party. It is this language that will determine whether SMG is
27 entitled again to the protection afforded by Section 3060, et seq. If SMG may file protests without regard
28 to the Board’s Order, this would mean that GM would be required to meet the burden of proving good

1 cause for termination of the franchises taking into consideration the “good cause factors” of the Vehicle
2 Code. However, if the Board’s Order is given effect, there would be no protest rights in SMG and the
3 only issues to be decided would be whether the conditions contained in the Board’s Order resolving the
4 prior protests have occurred or not occurred.

5 **GM’S MOTION**

6 23. On November 19, 2010, GM filed its “Motion to Dismiss Protests for Lack of Jurisdiction”
7 pursuant to the terms of the Board’s Order of September 15, 2010. The motion asserted that SMG agreed
8 in the “settlement agreement which was approved by the Board in a Stipulated Decision *not* to file these
9 protests, agreed to waive its protest rights, and thus has no legal right to protest.” (Motion, p. 1, lines 22-
10 28; Italics in original)

11 24. GM maintains that in addition to extending SMG’s Buick and Chevrolet Dealer
12 Agreements in lieu of termination, the Settlement Agreement as indicated above provides in paragraph 2.6
13 that “SMG may present, and GM would approve, a proposal for SMG to use a single parcel of land at
14 3205 Santa Monica Boulevard...for variable [new and used car sales] operations for a competitive line-
15 make.” (Motion, p. 2, lines 10-14) Paragraph 2.6 also provides that “if SMG utilizes any other portion of
16 the dealership premises...for competitive line-make variable operations, it will be deemed to have
17 voluntarily and immediately terminated its Chevrolet and Buick Dealer Agreements.” (Motion, p. 2, lines
18 15-19)

19 25. GM alleges that during the first week of October 2010, without submitting any proposal to
20 GM, SMG transformed the existing dealership premises (as defined in the Settlement Agreement) into an
21 Infiniti dealership. (Motion, p. 2, lines 24-27) A number of photographs were submitted by GM in
22 support of this allegation. (Appendix of Photographic Evidence in Support of Motion to Dismiss Protests
23 for Lack of Jurisdiction)

24 **SMG’S OPPOSITION TO THE MOTION**

25 26. SMG filed its opposition on December 7, 2010. SMG maintains that the Board has
26 jurisdiction to hear these termination protests and that there is “no legal authority for GM’s position that a
27 purported waiver of Protest rights, which waiver hinges on the determination of factual circumstances
28 relating (sic) the terms of the settlement agreement ...automatically deprives the Board of its jurisdiction

1 before any such determination has even been made”. (Opposition, p. 3, lines 7-10; 18-21) SMG contends
2 that it must be determined whether SMG violated the terms of the Stipulated Decision warranting
3 termination by GM without protest. (Opposition, p. 3, lines 23-25) These factual determinations it is
4 alleged must be made through an evidentiary hearing conducted by a merits Administrative Law Judge;
5 absent such a determination, SMG maintains that the Board has jurisdiction. (Opposition, p. 3, lines 25-
6 26, p. 4, lines 2-3)

7 27. SMG disputes GM’s assertions that it has violated the terms of the Stipulated Decision.
8 (Opposition, p. 2, lines 22-23) “The thrust of GM’s motion is that SMG essentially replaced the
9 Chevrolet and Buick variable operations at 3223 Santa Monica Boulevard with Infiniti, in violation of
10 paragraph 2.6...” (Opposition, p. 4, lines 14-17) In Michael Sieving’s declaration, e-mail
11 correspondence from Farinaz Naimi (one of the owners of SMG) contends that “[w]e have not touched or
12 removed any approved sign of GM brand on the building. The ones removed were signs with no permit.
13 We did not have any permit for the ones removed. They were not approved by GM or the City and we
14 decided to remove them, since we needed room for a sign for Infiniti also.” (Sieving Declaration, Exhibit
15 B) Farinaz Naimi continues in the e-mail that “3205 Santa Monica Blvd. is part of 3223 [Santa Monica
16 Blvd.] and we have a lot tie for all the lots together. So, 3205 is part of 3223.” (Sieving Declaration,
17 Exhibit B)⁹

18 **GM’S REPLY TO SMG’S OPPOSITION**

19 28. GM filed its reply on December 8, 2010. GM maintains that paragraph 2.6 of the
20 Settlement Agreement “...provides unambiguously (1) that if SMG uses the Existing Dealership Premises
21 for variable operations for a competitive line-make, as it indisputably has done, its Chevrolet and Buick
22 Dealer Agreements will be deemed *without more* to have been voluntarily and *immediately* terminated
23 and (2) that SMG cannot protest the terminations under...” [Section 3060]. GM contends that these
24 protests are unlawful and improper, and must be dismissed. (Reply, p. 1, lines 23-28; italics in original)

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27 ⁹ Although the facts as alleged by the parties are not resolved by this order, this assertion on its face appears to support GM/s
28 contentions as stated below. The Order of the Board precludes the use of the Existing Dealership Premises for a competing
line-make. Thus the issue is whether the Existing Dealership Premises is being used for Infiniti sales, regardless of whether it is
or is not also being used for Buick and Chevrolet.

1 **been met.** If the stipulated decision and order provides for the termination of the franchise
2 **conditioned upon the occurrence of specified conditions, the franchise may be**
3 **terminated upon a determination, according to the terms of the stipulated decision and**
4 **order, that the stipulated conditions have occurred.** (Emphasis added.)

5 31. As can be seen, Section 3050.7 authorizes the Board to adopt stipulated decisions and to
6 issue orders the terms of which permit the termination of a franchise upon the occurrence or non-
7 occurrence of stated events.

8 32. Two of the prior protests that were resolved by the Board's Order issued pursuant to
9 Section 3050.7 were protests filed pursuant to Section 3060 challenging whether there was good cause to
10 terminate the Chevrolet and Buick franchises of SMG. The stipulated decision submitted by the parties
11 to the Board "provide[d] for the termination of the franchise[s] conditioned upon the occurrence of
12 specified conditions" as is permitted by Section 3050.7. The Board's Order of September 15, 2010,
13 adopted the stipulated decision submitted by the parties and therefore the conditions providing for
14 termination of the franchises became part of the Stipulated Decision and Order of the Board.

15 33. The Board was empowered by Section 3050.7 to include the conditions stated in its Order.

16 **WHETHER THE BOARD IS EMPOWERED TO DECIDE WHETHER THE**
17 **CONDITIONS HAVE OR HAVE NOT OCCURRED**

18 34. It is the claimed occurrence of the events in the Order of the Board that are the subject of
19 the two protests currently before the Board and subject to this motion.

20 35. As indicated above, once a stipulated decision has been adopted as an order of the Board,
21 the following language of Section 3050.7 would be applicable:

22 **...the franchise may be terminated upon a determination, according to the terms of**
23 **the stipulated decision and order, that the conditions have not been met.** If the
24 stipulated decision and order provides for the termination of the franchise conditioned
25 upon the occurrence of specified conditions, **the franchise may be terminated upon a**
26 **determination, according to the terms of the stipulated decision and order, that the**
27 **stipulated conditions have occurred.**

28 36. As stated earlier, the language of the statute permits the Board to include conditions in its
orders and this latter language, "the franchise may be terminated upon a determination, according to the
terms of the stipulated decision and order", is obviously intended to give meaning to and provide for the
enforceability of any such conditions contained in the "stipulated decision and order".

37. Therefore, the Board has the power to include the conditions in its Order and to state the

1 effect of their occurrence or non-occurrence. The Board also has the power to determine if the conditions
2 have or have not occurred, with the result being the possible termination of the franchises in accordance
3 with the terms of the Board's Order.

4 38. One of the conditions to the continued existence of the franchises at issue is that the
5 address from which the Buick and Chevrolet vehicles are sold (referred to as the Existing Dealership
6 Premises) could not be used for the sale of any other competitive line-make of vehicles.¹¹ GM has
7 alleged that this condition has occurred (that Infiniti vehicles are being sold from the Existing Dealership
8 Premises) and GM has submitted some documents to establish this fact, including photos and
9 declarations.

10 39. Although SMG has challenged the foundation for the photos, SMG has not directly
11 contested the claim that the Existing Dealership Premises are being used for the sale of Infiniti vehicles.
12 In fact, as argued by GM above, SMG appears to have admitted that the address that had been used for
13 the Chevrolet and Buick sales (the Existing Dealership Premises) is now also being used for Infiniti.
14 However, it is not necessary to reach such a conclusion to decide the issue of whether these protests
15 should be dismissed.

16 40. SMG has submitted documents and alleges that the Buick and Chevrolet sales operations
17 have not been moved from the Existing Dealership Premises. Although implicit that the Existing
18 Dealership Premises would continue to be used for Buick and Chevrolet sales operation, the condition
19 contained in the Board's Order was directed at not using the Existing Dealership Premises for a
20 competing line-make. Whether Chevrolet and Buick are also being sold at another or the same location
21 would be irrelevant as to the occurrence or non-occurrence of this condition. However, as is the case
22 with GM's contentions, it is not necessary to decide whether this contention of SMG, even if true, has
23 any merit in order to rule on this motion to dismiss. Again, the only issue being decided in this Order is
24 whether SMG has a right to file the protests pursuant to Section 3060.

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27 ¹¹ Whether the terms of the Board's Order are such that the franchises may be terminated because "the conditions have not been
28 met" (the premises are to be used only for the sale of Buick and Chevrolet) or that "the stipulated conditions have occurred"
(the premises are being used for the sale of a competing line-make), both are encompassed within Section 3050.7(b), and the
result should be the same.

1 41. SMG maintains that the Board has jurisdiction to hear these termination protests and that
2 there is “no legal authority for GM’s position that a purported waiver of Protest rights, which waiver
3 hinges on the determination of factual circumstances relating (sic) the terms of the settlement agreement
4 ...automatically deprives the Board of its jurisdiction before any such determination has even been
5 made”. (Opposition, p. 3, lines 7-10; 18-21) SMG contends that it must be determined whether SMG
6 violated the terms of the Stipulated Decision warranting termination by GM without protest.
7 (Opposition, p. 3, lines 23-25) SMG alleges that these factual determinations must be made through an
8 evidentiary hearing conducted by a merits Administrative Law Judge; absent such a determination, SMG
9 maintains that the Board has jurisdiction. (Opposition, p. 3, lines 25-26, p. 4, lines 2-3)

10 42. As to the above, SMG is correct that the Board does have the authority to determine if the
11 condition has occurred.

12 43. However, SMG is not correct that the condition must be determined to have occurred
13 before there would be a purported waiver of the right to protest a termination by GM. This is so for the
14 following reasons:

15 (a) SMG has already filed its protests challenging the intended termination of the Chevrolet
16 and Buick franchises by GM and these prior protests have been resolved. The prior protests were
17 properly filed and the parties submitted and the Board adopted a Stipulated Decision and Order of the
18 Board. There are no new notices of termination from GM as to either the Buick or Chevrolet franchises
19 that would be subject to the right to file a protest under Section 3060.

20 (b) As SMG has no right to file a new protest there is no need to have an evidentiary hearing
21 as to whether SMG should be found to have waived a non-existent right to protest. (Whether there is a
22 “waiver” of the right to protest is discussed in paragraph 44 below.)

23 (c) The only evidentiary hearing that might be needed is to determine whether the condition
24 of SMG permitting the Existing Dealership Premises to be used for the sale of a competing line-make of

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1 vehicle has occurred. This is a term of the Board's Order of September 15, 2010.¹²

2 (d) The Board's Order states that, if this event occurs, "SMG shall be deemed without more to
3 have voluntarily and immediately terminated its Dealer Agreements by written agreement..."

4 (e) The occurrence or non-occurrence of this event is solely within the control of SMG.
5 Therefore, SMG's claim that it is GM that is attempting to terminate the franchises is also inaccurate.
6 The Board's Order by its language states that this would be a voluntary termination by SMG.

7 (f) Also contained in the Board's Order are provisions which expressly preclude a right in
8 SMG to protest the effect of the occurrence of the condition. The Board's Order states, "It is the intent of
9 the Parties that the res judicata effect of the Confidential Stipulated Decision of the Board provided for
10 below shall preclude the filing of any such protest or other legal challenge to the termination. SMG and
11 Owners further agree not to protest said voluntary termination pursuant to section 3060 of the Vehicle
12 Code ... and hereby agree that they will have no legal right to do so." (Underline added.)

13 (g) Granting this motion to dismiss and denying SMG the right to file protests does not
14 impose an unjust forfeiture upon SMG. All that is being decided now is whether a party that chooses to
15 utilize the provisions of Section 3050.7 to resolve its protests can subsequently file new protests in
16 derogation of the Board's Order issued pursuant to that section.

17 44. Although referred to as a "waiver" of SMG's right to protest, this term is more than a
18 waiver. It is part of the Order of the Board that resolved the four prior protests and it is stating the effect
19 of the occurrence of the conditions contained in the Order. Read together, the provisions of the Board's
20 Order state that termination of the franchises will not be permitted to occur so long as the Existing
21 Dealership Premises are not used for the sale of a competing line-make of vehicles. Said another way, if
22 the condition does occur then there will be a voluntary termination of the franchises. No matter how it is
23 said, if this condition occurs, the result will be a termination of the franchises without any further action

24 _____
25 ¹² On November 19, 2010, GM filed a Motion to Enforce Confidential Stipulated Decision of the Board. GM's motion was
26 held in abeyance pending the outcome of its motion to dismiss the instant protests. In a letter to the Board dated January 7,
27 2011, SMG raised an issue of compliance with the terms of the confidential settlement and requested an evidentiary hearing on
28 the matter. These matters are being treated as "Cross Motions by Protestant and Respondent." An in-person hearing with
limited discovery is scheduled to commence on March 17, 2011, before ALJ Diana Woodward Hagle. The issue to be decided
is whether there has been compliance with the terms of the confidential settlement that became the Board's Order concluding
the prior protests.

1 by GM, and with no right in SMG to have a hearing pursuant to Section 3060, et seq. The loss of the
2 right to again protest the termination of the two franchises is not unfair to SMG and is appropriate as it is
3 part of the order of the Board as permitted by Section 3050.7. The purpose of the Stipulated Decision
4 and Order of the Board was to conclude the protests filed by SMG. The Board's Order operated in favor
5 of SMG. It precluded the termination of SMG's franchises, but was conditioned upon the Existing
6 Dealership Premises not being used for the sale of a competing line-make.

7 45. SMG was given the protection of Section 3060 when the Order resolving the prior protests
8 was issued. Thereafter, the ball was in SMG's court as to how long SMG would remain a Buick and
9 Chevrolet franchisee. To say that SMG has the right to again file protests pursuant to Section 3060
10 would put the entire matter "back to square 1" as if the Board's Order of September 15, 2010 had never
11 been issued. To allow these protests to be heard, when the only issue is whether the condition contained
12 in the Board's Order had occurred, would be to make the Board's Order meaningless.

13 46. Allowing SMG the right to file a protest would have the effect of nullifying the Board's
14 Order by the unilateral conduct of SMG, first in permitting the Existing Dealership Premises to be used
15 for the sales of a competing line-make (if GM is correct in its stated position), and then in SMG's
16 unilateral conduct of filing its protest (whether or not GM is correct).

17 47. SMG in filing the protests states that it is seeking a hearing on the merits of the protest,
18 with determinations to be made in accordance with Section 3061. SMG is seeking to require that GM
19 establish good cause for the termination in accordance with the factors stated in the Vehicle Code.

20 48. However, the Board's Order provides that termination would occur immediately upon the
21 occurrence or non-occurrence of the stated condition. The Board's Order, issued under the authority of
22 Section 3050.7, not only obviates the need for a hearing pursuant to Section 3061, but also specifically
23 contains language that bars the filing of a protest by SMG.

24 49. It is noted that the Board's Order, which contains the terms negotiated by the parties and
25 their counsel, not only bar any "protest", but also that "...GM and SMG agree to submit to the Board for
26 final and binding determination, upon either party's written notice, any and all claims, disputes, and
27 controversies between them arising under or relating to this Agreement and its negotiation, execution,
28 administration, modification, extension or enforcement (collectively, 'Claims')", with the determination

1 of the Claims to be “made by an Administrative Law Judge appointed by the Board in accordance with
2 its customary procedures as they may exist from time to time.”

3 50. As the dispute between the parties relates to the “enforcement” of the Board’s Order, the
4 proper method for resolution of the Claim would be as stated, that either party could on written notice
5 submit the Claim to the Board for final and binding determination.¹³

6 51. The protests as filed are not seeking resolution of whether there has or has not been the
7 occurrence of the conditions stated in the Board’s Orders. Rather the protests are seeking a hearing as to
8 whether there is good cause for GM to terminate the franchises with the standards as stated in Section
9 3061.

10 52. As the protests filed by SMG on February 3, 2010 and August 12, 2010, challenging the
11 termination of its Buick and Chevrolet franchises have already been resolved by the Board’s Order of
12 September 15, 2010, there is no right in SMG to a hearing as sought by the protests filed on October 29,
13 2010.

14 53. However, SMG would have a right to protest pursuant to Section 3060 if GM issues
15 notices of termination pursuant to that section and the notices assert other reasons for termination of the
16 franchises not encompassed within the Board’s Order of September 15, 2010.

17 **CONCLUSION**

18 54. Based upon the foregoing, IT IS HEREBY CONCLUDED THAT:

19 (1) By virtue of Section 3050.7:

20 (a) The Board’s Order of September 15, 2010 was properly issued;

21 (b) The Board had the statutory power to impose the conditions at issue that could
22 result in termination; and;

23 (c) The Board had the statutory power to establish the procedure to resolve this
24 dispute.

25 ///

26 _____
27 ¹³ As stated in footnote 12, both sides have submitted separate requests for a determination of whether the conditions stated in
28 the Board’s September 15, 2010 Order have occurred and an evidentiary hearing is scheduled to be held on March 17, 2011
before an ALJ of the Board.

1 (2) To allow SMG to proceed with its protests as SMG is seeking in its protests would be to
2 render the Board's Order of September 15 a nullity, effectively negating the Board's proper use of Section
3 3050.7.

4 (3) The Board's Order of September 15, 2010 controls if and when SMG's franchises have
5 been terminated.

6 (4) The Board's Order of September 15, 2010 bars the claimed right of SMG to have a hearing
7 on the merits of SMG's protests as filed here.

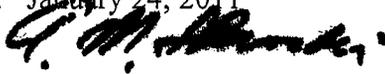
8 (5) The dispute between the parties must be resolved in accordance with the terms of the
9 Board's Order of September 15, 2010.

10
11 **PROPOSED ORDER**

12 After consideration of the pleadings, exhibits, and oral arguments of counsel, it is hereby ordered
13 that Respondent's Motion to Dismiss Protests is granted. Protest Nos. PR-2276-10 and PR-2277-10
14 (*Santa Monica Group, Inc. v. General Motors, LLC*) are dismissed.

15
16
17 I hereby submit the foregoing which constitutes my
18 proposed order in the above-entitled matters, as the
19 result of a hearing before me, and I recommend this
20 proposed order be adopted as the decision of the
21 New Motor Vehicle Board.

22 DATED: January 24, 2011

23 By: 
24 ANTHONY M. SKROCKI
25 Administrative Law Judge

26
27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV