

1 NEW MOTOR VEHICLE BOARD
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5 STATE OF CALIFORNIA
6 NEW MOTOR VEHICLE BOARD
7

8 In the Matter of the Protest of)

9 RELIABLE PONTIAC-CADILLAC and)
VANDERBEEK OLDSMOBILE-BUICK-GMC)
10 TRUCK, INC., dba ROSEVILLE)
OLDSMOBILE-BUICK-GMC TRUCK,)

Protest No. PR-1405-94
Protest No. PR-1494-95
Protest No. PR-1495-95
Consolidated

11 Protestants,)
12

13 vs.)

14 PONTIAC DIVISION/GMC TRUCK)
DIVISION/BUICK MOTORS DIVISION,)
GENERAL MOTORS CORPORATION,)

DECISION

15 Respondents.)
16

17 CITY OF FOLSOM, FOLSOM LAKE)
TOYOTA, FOLSOM LAKE FORD, and)
CAL WORTHINGTON TRUST,)

18 Interested Individuals or Groups.)
19

20 BRALEY and GRAHAM PONTIAC-BUICK)
GMC TRUCK,)

21 Interested Individual.)
22

23
24 PROCEDURAL BACKGROUND

25 1. By letter dated January 12, 1993, Pontiac Division,
26 General Motors Corporation (hereinafter "Pontiac"), gave notice
27 to Reliable Pontiac-Cadillac (hereinafter "Reliable"), pursuant
28

1 to Vehicle Code Section 3062¹, of Pontiac's intention to
2 establish representation in Folsom, California, at the Folsom
3 Auto Plaza². The notice of establishment was received by the New
4 Motor Vehicle Board ("hereinafter "Board") on January 19, 1993.

5 2. Reliable is a licensed new motor vehicle dealer
6 enfranchised to sell Pontiac vehicles. Reliable is located at
7 400 Automall Drive, Roseville, California.

8 3. Bruce W. Westrup is the dealer principal of Reliable.

9 4. Pontiac is a manufacturer and distributor of new motor
10 vehicles in California.

11 5. Reliable filed a protest on January 29, 1993 with the
12 Board, pursuant to § 3062. The Board assigned Protest No. PR-
13 1405-94.

14 6. By letter dated April 24, 1995, GMC Truck Division,
15 General Motors Corporation (hereinafter "GMC Truck"), gave notice
16 to Vanderbeek Olds/GMC Truck, Inc., dba Roseville Oldsmobile-
17 Buick-GMC Truck (hereinafter "Vanderbeek GMC Truck"), pursuant to
18 § 3062, of GMC Truck's intention to establish representation in
19 Folsom, California, in the vicinity of Highway 50 and Folsom
20 Boulevard. The notice of establishment was received by the Board
21 on April 26, 1995.

22 7. Vanderbeek GMC Truck is a licensed new motor vehicle
23

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

26 ² The Folsom Auto Plaza, located at Folsom Boulevard and
27 Blue Ravine Road, was the subject of litigation between the City
28 of Folsom and General Motors Acceptance Corporation. The Folsom
Auto Mall, located at Highway 50 and Folsom Boulevard, is the
site concerned in this hearing.

1 dealer enfranchised to sell GMC Truck vehicles. Vanderbeek GMC
2 Truck is located at 965 Riverside Avenue, Roseville, California.

3 8. Ronald S. Vanderbeek is the dealer principal of
4 Vanderbeek GMC Truck.

5 9. GMC Truck is a manufacturer and distributor of new
6 motor vehicles in California.

7 10. Vanderbeek GMC Truck filed a protest on May 11, 1995
8 with the Board, pursuant to § 3062. The Board assigned Protest
9 No. PR-1494-95.

10 11. By letter dated April 28, 1995, Buick Motor Division,
11 General Motors Corporation (hereinafter "Buick"), gave notice to
12 Vanderbeek Olds/GMC Truck, Inc., dba Roseville Oldsmobile-Buick-
13 GMC Truck (hereinafter "Vanderbeek Buick"), pursuant to § 3062,
14 of Buick's intention to establish representation in Folsom,
15 California. The notice of establishment was received by the
16 Board on May 1, 1995.

17 12. Vanderbeek Buick is a licensed new motor vehicle dealer
18 enfranchised to sell Buick vehicles. Vanderbeek Buick is located
19 at 965 Riverside Avenue, Roseville, California.

20 13. Ronald S. Vanderbeek is the dealer principal of
21 Vanderbeek Buick.

22 14. Buick is a manufacturer and distributor of new motor
23 vehicles in California.

24 15. Vanderbeek Buick filed a protest on May 11, 1995 with
25 the Board, pursuant to § 3062. The Board assigned Protest No.
26 PR-1494-95.

27 16. On July 17, 1995, the City of Folsom, Folsom Lake Ford,
28 Folsom Lake Toyota, and the Cal Worthington Trust petitioned the

1 Board for designation as interested individuals. Pursuant to
2 § 3066(a), the Board issued an Order dated July 19, 1995,
3 designating the above parties to be deemed "Interested
4 Individuals or Groups."

5 17. On or about October 13, 1995, Braley and Graham Buick-
6 Pontiac-GMC Truck (hereinafter "Braley & Graham") requested
7 permission to appear as an interested party. Pursuant to §
8 3066(a), the Board issued an Order designating the above party as
9 an "Interested Individual."

10 18. On April 3, 1996, the Board issued an Order
11 consolidating PR-1405-94, PR-1494-95, and PR-1495-95 for the
12 purposes of hearing.

13 19. An eight (8) day hearing was held before Douglas H.
14 Drake, Administrative Law Judge, commencing on April 1, 1996 and
15 ending on April 18, 1996.

16 20. Administrative Law Judge Drake prepared a Proposed
17 Decision sustaining the protests.

18 21. The public members of the Board considered the Proposed
19 Decision at its meeting of October 22, 1996. After such
20 consideration, it ordered further briefing on the following
21 issues:

- 22 a. What is the appropriate standard to be applied by
23 the Board in determining whether the impact on the
24 "permanency of the investment" of the Protestants
is sufficient good cause to sustain the protests
as set forth in Vehicle Code section 3063(a)?
- 25 b. What injury to the public welfare, in particular
26 to the City of Folsom, if any, would occur if the
protests were overruled?
- 27 c. How would the establishment of the additional
28 dealer increase competition and therefore be in
the public interest? In particular, if the new

1 dealer participated in the Value Pricing policy of
2 General Motors, how would the public be benefited
3 by the additional dealer?

4 22. At its Special Meeting of January 28, 1997, briefs were
5 submitted by the Protestants, Respondent and Interested Party,
6 the City of Folsom. Upon careful consideration of all of the
7 briefs and evidence before them, the public members of the Board
8 rejected the Proposed Decision, overruled the protests, and
9 directed staff to prepare a written document embodying the
10 Board's Decision.

11 23. Protestants and Interested Individual, Braley & Graham,
12 were presented by Michael J. Flanagan, Esq., Carl D. Mayhew,
13 Esq., and Christopher J. Gill, Esq. of Tuel & Flanagan, 8801
14 Folsom Boulevard, Suite 172, Sacramento, California.

15 24. Respondents were represented by Wallace M. Allan, Esq.
16 and Linda A. Bagley, Esq. of O'Melveny & Myers, 400 South Hope
17 Street, Los Angeles, California.

18 25. Respondents were also represented by L. Joseph Lines,
19 III, Esq., General Motors Corporation, 3031 West Grand Avenue,
20 P.O. Box 33122, Detroit, Michigan, and Keith U. Landenberger,
21 Esq., General Motors Corporation, 515 Marin Street, Suite 226,
22 P.O. Box 5016, Thousand Oaks, California.

23 26. Interested Individuals or Groups were represented by
24 Lawrence W. Miles, Jr., Esq. of the Lawrence Miles Law Firm, 3838
25 Watt Avenue, Suite 301, Sacramento, California.

26 CONTENTIONS OF THE PARTIES

27 27. Protestants contend there is not good cause to
28 establish the proposed dealer in Folsom because, *inter alia*,
Reliable, and Vanderbeek GMC Truck and Vanderbeek Buick

1 (collectively referred to as "Vanderbeek") have a substantial
2 investment in their dealerships. Protestants contend this
3 substantial and permanent investment will be jeopardized by the
4 addition of the proposed GM³ dealership in Folsom.

5 28. Furthermore, Protestants contend there is no material
6 gain to be had by existing GM's service customers in the area;
7 there is no issue of increased competition which will benefit the
8 public; there is not an existing need for service facilities or
9 parts or inventory or qualified service personnel; the distances
10 traveled by existing service customers is not excessive; and
11 price-competition is not an issue.

12 29. Lastly, Protestants contend the Settlement Agreement
13 between the City of Folsom and General Motors Acceptance
14 Corporation ("GMAC") provided the impetus for Pontiac, GMC Truck,
15 and Buick to establish dealerships in the Folsom Auto Mall.

16 30. Respondents contend "the Board has consistently held
17 protesting dealers to a high burden of proof in section 3062
18 cases. . . [S]ection 3062 protests have been sustained by the
19 Board only when there is compelling evidence that the proposed
20 establishment will not create the competitive benefits described
21 above [increased competition, employment and tax revenue,
22 customer convenience], and that the new dealership will put the
23 protesting dealer's investment at risk." Therefore, Respondents
24 contend Protestants have failed to carry their burden of proof.

25 31. Furthermore, Respondents maintain that establishing a
26

27 ³ General Motors Corporation, through its Pontiac, GMC
28 Truck, and Buick Divisions, shall be collectively referred to as
"GM."

1 Pontiac/Buick/GMC Truck dealership in Folsom would not risk
2 Protestants' investments and each of the respective dealers would
3 remain profitable.

4 32. Lastly, Respondents contend that no evidence supports
5 Protestants' theory that the decisions of Pontiac, Buick, and GMC
6 Truck to establish representation in Folsom were motivated by the
7 "not-yet existent GMAC settlement with Folsom."

8 33. Interested Individuals or Groups contend Protestants
9 have failed to meet their burden of proving there is good cause
10 not to establish the proposed dealerships. With respect to the
11 "permanency of the investment" good cause factor, the Board is
12 urged to also consider the proposed franchisees' permanency of
13 investment.

14 34. Interested Individuals or Groups further contend the
15 increased public convenience, the benefits that flow from
16 competition, the additional sources of public revenue, and the
17 contribution to the public process, all compel the conclusion
18 that the establishment of the proposed dealerships is in the
19 public's interest.

20 35. Lastly, Interested Individuals or Groups contend the
21 evidence is overwhelming that GM's staff made their own,
22 independent decision to establish the new points without regard
23 to whatever incentives or liabilities GMAC enjoyed or suffered as
24 a result of the City of Folsom Settlement Agreement.
25 Furthermore, all three General Motors' divisions were studying
26 the new points in Folsom as early as 1988, and were on record as
27 having made final decisions on Folsom at least 90 days prior to
28 the GMAC settlement.

1 ISSUES PRESENTED

2 36. Section 3066 imposes upon Protestants the burden of
3 proving that there is good cause not to enter into a franchise
4 establishing an additional motor vehicle dealership for Pontiac,
5 GMC Truck, and Buick.

6 37. In determining whether good cause has been established
7 for not entering into or relocating an additional franchise for
8 the same line-make, Section 3063 requires the Board to take into
9 consideration the existing circumstances, including but not
10 limited to the following:

- 11 (a) Permanency of the investment.
- 12 (b) Effect on the retail motor vehicle business and the
13 consuming public in the relevant market area⁴.
- 14 (c) Whether it is injurious to the public welfare for an
15 additional franchise to be established.
- 16 (d) Whether the franchisees of the same line-make in that
17 relevant market area are providing adequate competition
18 and convenient consumer care for the motor vehicles of
19 the line-make in the market area which shall include
20 the adequacy of motor vehicle sales and service
21 facilities, equipment, supply of vehicle parts, and
22 qualified service personnel.
- 23 (e) Whether the establishment of an additional franchise
24 would increase competition and therefore be in the
25 public interest.

26 _____
27 ⁴ Vehicle Code Section 507 defines "relevant market area"
28 as any area within a radius of 10 miles from the site of a
potential new dealership.

1 FINDINGS OF FACT

2 a. Facts relating to permanency of the investment.
3 (§ 3063(a))

4 38. The term "permanency of investment" is undefined
5 in the Vehicle Code. An analysis of permanency of the investment
6 must be done in the context of the protesting dealership's
7 liquidity. This analysis determines which of a dealer's assets
8 are liquid and therefore easily converted to cash and which are
9 illiquid and therefore take longer to convert to cash or are
10 incapable of converting to cash. The liquidity analysis next
11 determines what the protesting dealer would lose if he decided to
12 get out of the business of selling and servicing new and used
13 cars, which a rational dealer would surely do if he truly
14 believed that a new dealership would endanger his investment in
15 the dealership by putting it out of business. The protesting
16 dealer's permanent investment thus consists of its illiquid
17 assets that cannot easily be liquidated or cannot be liquidated
18 at all or converted to another use⁵.

19 39. Reliable has been in business for approximately 27
20 years. In 1990, the dealership relocated to a new facility in
21 the Roseville Automall. The cost of land was \$2.2 million

22 _____
23 ⁵ See, e.g., McClellan Buick, Inc. et al v. Buick Motor
24 Division, General Motors Corporation, Protest PR-1117-89, PR-
25 1118-89, decided April 3, 1990; Person Oldsmobile v. Oldsmobile
26 Motor Division, General Motors Corporation, Protest No. PR-1158-
27 90, decided September 21, 1990; Gunderson-Ihle Chevrolet, Inc. v.
28 Chevrolet Motor Division, Protest No. PR-1380-93, decided August
25, 1994. In termination proceedings, See Sunnyday Chevrolet,
Inc., v. General Motors Corporation, Protest No. PR-1407-94,
decided January 25, 1995; Jim Lynch Cadillac, Inc. v. General
Motors Corporation, Protest No. PR-1241-91, decided July 24,
1992.

1 dollars and the cost of the buildings for the new facility was
2 \$1.8 million dollars. In addition, the dealership has invested
3 over \$400,000 in equipment and other assets.

4 40. At the time of the hearing, Vanderbeek was completing
5 construction of a new facility in the Roseville Automall for its
6 Oldsmobile, Buick, and GMC Truck lines. Total cost of the new
7 facility is approximately \$4.5 million dollars, including \$2.6
8 million for the land and \$1.9 million in construction costs. In
9 addition, Vanderbeek has invested approximately \$350,000 in
10 equipment and paid approximately \$240,000 in architectural and
11 permit fees. Vanderbeek has been in operation at its present
12 location for more than 10 years.

13 41. The goodwill value of the Reliable and Vanderbeek
14 franchises are over \$500,000 each. Reliable has a current
15 adjusted net worth in excess of \$2 million dollars and Vanderbeek
16 has a current adjusted net worth in excess of \$1.7 million
17 dollars.

18 42. Reliable has made a long-term commitment to
19 representation of the Pontiac line in the relevant market area.
20 Mr. Bruce Westrup has been on the Board of the Pontiac Dealer
21 Marketing Association for the past five years, and has served
22 previously as its President. Moreover, Mr. Westrup was recently
23 elected to the Pontiac Communications Team which was previously
24 called the Dealer Council. The function of the Pontiac
25 Communications Team is "to facilitate open dialogue between the
26 dealers and . . . Pontiac."

27 43. Vanderbeek has made a commitment to representation of
28 the Buick and GMC Truck lines in the relevant market area through

1 active involvement in community projects and affairs, including
2 participation in the St. Hope Academy after-school program,
3 raising money for the Sacramento Area Trade and Commerce Group
4 and the Stingers Foundation at Sacramento State University,
5 sponsorship of the annual Athena Award for Outstanding
6 Businesswoman in the Roseville area, and participation in a
7 variety of charitable endeavors. The dealership has also been an
8 active member of the Greater Sacramento Auto Dealers, Better
9 Business Bureau, and the Chamber of Commerce.

10 44. The proposed dealership will be located in the Folsom
11 Auto Mall, which is a relatively new auto mall visible and
12 accessible from Highway 50. Cal Worthington, the present owner
13 and developer of the Folsom Auto Mall, has been contacted by GMAC
14 through their real estate company Worldwide Real Estate, about
15 purchasing land in the Folsom Auto Mall.

16 45. The Folsom Auto Mall currently has in operation two
17 successful dealerships, Folsom Lake Ford and Folsom Lake Toyota,
18 with available sites for 10 to 12 additional dealerships
19 depending upon the size of the additional dealerships. Charles
20 Peterson owns both Folsom Lake Ford and Folsom Lake Toyota.

21 46. Roseville's illiquid assets are valued at \$84,297, or
22 only 4.93% of Roseville's total assets. If Roseville were to
23 undergo an orderly liquidation, with assets being sold to pay off
24 the dealership's liabilities, its owners could expect to receive
25 a net distribution of \$1,624,192.

26 47. Reliable's illiquid assets are valued at \$201,756, an
27 amount that represents only 8.40% of Reliable's total assets. If
28 Reliable were to undergo an orderly liquidation, its owners could

1 expect to receive a net distribution of \$2,199,086.

2 b. Facts relating to the effect on the retail motor
3 vehicle business and the consuming public in the
4 relevant market area. (§ 3063(b))

5 48. More than 50% of Vanderbeek's customers reside in areas
6 that the proposed new dealership will be expected to serve.
7 Protestants contend the prospective loss of customers will lead
8 to a loss in profits. However, there was credible evidence that
9 the increased volume of sales due to the addition of a new dealer
10 in the RMA will most likely lessen the impact of these projected
11 losses, if not eliminate them totally.

12 49. Any projected losses in used vehicle sales would be
13 offset by the increased volume of sales due to competition from a
14 new dealer in the RMA most likely would lessen if not eliminate
15 these projections.

16 50. Any projected losses caused by the parts and service
17 sales made by the proposed new dealership would most likely be
18 lessened if not eliminated by the increased volume of sales due
19 to competition of a new dealer in the RMA.

20 51. Net profit losses resulting from lost new and used
21 vehicles sales, and parts and service sales most likely would be
22 lessened if not eliminated by the establishment of a new dealer
23 in the RMA.

24 52. Chevrolet, Ford, Nissan, Honda, Infiniti, Pontiac,
25 Toyota, Mitsubishi, Cadillac, Saturn, Dodge, Jeep-Eagle,
26 Chrysler, and Plymouth are presently located in the Roseville
27 Automall. When Vanderbeek relocates its dealership facilities,
28 Oldsmobile, GMC Truck, Buick, Mazda, Kia, Subaru, and BMW will
also be located in the Roseville Automall. A total of 22

1 franchises are represented in the Roseville area, with three
2 franchise line-makes being represented twice.

3 53. The American River is a natural barrier paralleling
4 Highway 50 and just a few miles north of it. The River is
5 crossed by only two bridges in the RMA⁶.

6 54. The proposed new dealership will significantly
7 contribute to customer convenience along the Highway 50 corridor,
8 but not in the area north of the river. Vanderbeek is 8.15 miles
9 from the proposed Folsom dealership and Reliable is 8.42 miles
10 from that site. Braley & Graham is located only 10.99 miles from
11 the site of the proposed new dealership. Driving time between
12 the Roseville Automall and the site of the proposed Folsom Auto
13 Mall is estimated at approximately 20 minutes under normal
14 traffic conditions.

15 55. The previous facilities of Vanderbeek were in some
16 respects outdated and inconvenient. Vanderbeek's new location in
17 the Roseville Automall is "excellent."

18 56. Some witnesses for the Pontiac, Buick, and GMC Truck
19 Divisions conceded that there is no existing need for additional
20 Pontiac, Buick, or GMC Truck dealership facilities in the
21 relevant market area.

22 57. An optimal location analysis seeks to determine the
23 optimal location, in terms of maximizing customer convenience,
24 should a GMC Truck/Pontiac/Buick dealership be added to the RMA.
25 This computer analysis seeks to minimize the average distance to
26

27 ⁶ The Board observes that it is common knowledge that there
28 is actually a third bridge in downtown Folsom with one lane each
way.

1 such a dealer for the maximum number of potential customers. The
2 optimal location analysis places the proposed new dealer near the
3 Folsom Auto Mall.

4 58. Only two franchises are currently located in the Folsom
5 Auto Mall, Toyota and Ford. A Chevrolet dealership is located a
6 short distance from the Folsom Auto Mall, at the corner of Blue
7 Ravine Road and Folsom Boulevard. Thus, a total of three
8 franchises are currently represented in Folsom.

9 59. The Folsom Auto Mall is not completely developed.

10 60. Folsom Lake Ford and Folsom Lake Toyota compete
11 respectively with Future Ford and Roseville Toyota, who are
12 similarly located in the Roseville Automall.

13 61. The overwhelming majority of the population in the
14 Folsom RMA resides between Highway 50 on the south and Interstate
15 80 on the north.

16 62. The Folsom Auto Mall is located on Highway 50 and would
17 attract its customers from the north while the Roseville Automall
18 would attract its customers from the south. Both the Folsom Auto
19 Mall and Roseville Automall attract the majority of its customers
20 from the area between the freeways.

21 63. Since the average driving time between the proposed
22 dealership and the Roseville Automall is 20 minutes, the average
23 driving time for one half the customers between the two
24 dealerships is approximately 10 minutes.

25 64. The Folsom RMA consists of a 10 mile circle with a
26 center at the Folsom Auto Mall, that encompasses the majority of
27 the population of Sacramento County between the two freeways,
28 Highway 50 on the south and Interstate 80 on the north. See

1 Attachment 1.

2 65. Great deference is given to the City of Folsom's
3 position that the Folsom Automall will not be complete without
4 adequate General Motors representation.

5 66. The Folsom ten mile RMA is presently outperforming the
6 Sacramento Multiple Dealer Area ("MDA"⁷) as a whole with respect
7 to Buick passenger cars in retail registrations.

8 67. GMC Truck has steadily improved its sales performance
9 in Folsom over the last few years. Through the first quarter of
10 1995, a 103% rating of effectiveness to national was achieved in
11 the proposed Folsom AGSSA (Area of Geographic Sales and Service
12 Advantage.)

13 68. The sales performance of Pontiac, Buick, and GMC Truck
14 in the Folsom area has been achieved despite the fact that a
15 Sacramento MDA dealer, Thomas Pontiac-Buick-GMC Truck, has been
16 struggling due to problems associated with its poor location in a
17 deteriorating neighborhood with inadequate facilities. Thomas's
18 impending move to better facilities at an improved location is
19 expected to enhance the sales performance of the Sacramento MDA
20 for these GM lines.

21 69. GMC Truck, Pontiac, and Buick all need at least two
22 franchises in the RMA in order to have a reasonable opportunity
23 of being adequately represented. Based on national penetration
24 rates, the RMA is currently under-performing for all three
25 divisions because of an "insufficiently-sized dealer network
26

27 ⁷ MDA is equivalent to a dealer's area of primary
28 responsibility. In this case it consists of the greater
Sacramento area.

1 based on the size of the market, that is the RMA, and the number
2 of competing franchises in this market." However, the RMA is
3 over-performing based on California penetration rates except for
4 GMC Truck.

5 70. Without the proposed dealer, the existing GMC Truck
6 dealers in the RMA enjoy greater opportunity, in terms of the
7 number of industry retail light truck registrations per dealer,
8 than all of the other 78 markets in California in which GMC Truck
9 is represented. Even with the proposed dealer, the GMC Truck
10 dealers in the RMA, on average, will enjoy greater opportunity,
11 in terms of the number of new light truck registrations available
12 per dealer, than most other California markets.

13 71. Without the proposed dealer, the existing Pontiac
14 dealers in the RMA enjoy greater opportunity, in terms of the
15 number of industry retail car and light truck registrations per
16 dealer, than all but 5 of the 96 markets in California in which
17 Pontiac is represented. Even with the proposed dealer, the
18 Pontiac dealers in the RMA, on average, will enjoy greater
19 opportunity, in terms of the number of new car and light truck
20 registrations available per dealer, than most other California
21 markets.

22 72. Without the proposed dealer, the existing Buick dealers
23 in the RMA enjoy greater opportunity, in terms of the number of
24 industry retail car and light truck registrations per dealer,
25 than all of the other 96 markets in California in which Buick is
26 represented. Even with the proposed dealer, the Buick dealers in
27 the RMA, on average, will enjoy greater opportunity, in terms of
28 the number of new car and light truck registrations available per

1 dealer, than most other California markets.

2 73. Expected penetration rate, as used hereafter, is the
3 penetration rate at a national level adjusted for local segment
4 popularity. Since the national penetration rate is markedly
5 higher than California, then the RMA and AGSSA expected
6 penetration rates will be higher than the actual penetration rate
7 in the RMA and the AGSSA.

8 74. GMC Truck, Pontiac, and Buick have divided the
9 Sacramento MDA into geographic sub-areas called "AGSSAs," or Area
10 of Geographic Sales and Service Advantage. An AGSSA is made up
11 of census tracts or geographic areas that are more convenient to
12 the dealer located in the AGSSA than to other dealers of the same
13 line-make in the MDA. Each dealer or proposed dealer point in
14 the MDA is located in its own AGSSA. Though GMC Truck, Pontiac,
15 and Buick have each assigned their own AGSSAs, in each instance
16 the AGSSA for the proposed dealer is almost identical.

17 75. The current Pontiac dealers, Buick dealers, and GMC
18 Light Truck dealers, have been unable to achieve penetration
19 rates in either the Folsom RMA or the Folsom AGSSA at the
20 national penetration rates for their line-makes as adjusted for
21 local segment popularity, listed as "Expected" in the below
22 tables.

23 76. The current Pontiac dealers selling into the Folsom
24 AGSSA (4-Folsom) have achieved a higher sales penetration rate in
25 the 10 mile RMA than both the AGSSA penetration rate and the
26 California penetration rate. Based on national penetration rate
27 adjusted for local segment popularity, the Folsom RMA penetration
28 rate is less than that expected.

Year	California	National	Folsom RMA	Expected	Folsom AGSSA	Expected
1993	1.22	3.40	1.34	2.48	1.08	2.30
1994	1.60	3.54	1.70	2.79	1.23	2.75
1995	1.69	3.46	1.78	2.94	1.51	2.80

77. The current Buick dealers selling into the Folsom AGSSA have achieved a higher sales penetration rate in the 10 mile RMA than both the AGSSA penetration rate and the California penetration rate. Based on national penetration rate adjusted for local segment popularity, the Folsom RMA penetration rate is less than expected.

Year	California	National	Folsom RMA	Expected	Folsom AGSSA	Expected
1993	3.10	5.80	3.65	4.27	3.57	4.51
1994	2.90	5.72	3.54 ^B	4.37	3.83	4.75
1995	2.91	5.64	3.65	4.25	3.40	4.49

78. The current GMC Light Truck dealers selling into the Folsom AGSSA have achieved a higher sales penetration rate in the 10 mile RMA as compared to the AGSSA, but not as to the California or the National rate. Based on national penetration rate adjusted for local segment popularity, the Folsom RMA penetration rate is less than expected.

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^B A sale of 39 more vehicles into the RMA would have achieved AGSSA average.

Year	California	National	Folsom RMA	Expected	Folsom AGSSA	Expected
1993	5.32	7.16	4.28	6.62	2.76	6.66
1994	5.78	7.23	4.37	6.86	4.00	6.95
1995	6.33	7.11	5.37	6.74	4.84	6.95

79. Protestants' penetration of the retail car and light truck markets at distances equal to the distance between the Roseville Automall and the Folsom Auto Mall -- 8.5 miles -- is minuscule. Vanderbeek captures 1.1% of the retail light truck registrations at that distance, and .8% of the retail car registrations. Reliable captures .6% of the retail car and light truck registrations at that distance. This is evidence Protestants are unable to attract sufficient customers to provide GM with the expected level of penetration in Folsom.

80. To determine the impact on the Protestants by the proposed dealership, it is necessary to access the available opportunity in the marketplace -- opportunity from which the proposed dealer as well as the Protestants can capture sales. This opportunity has two components. The first is interbrand losses to other brand dealers. The second component consists of intrabrand losses caused by in-sell into the RMA and MDA by dealers outside the RMA and the MDA. In-sell is a component of available opportunity to the dealers inside the RMA and the MDA because each unit of in-sell represents a customer who chose to purchase a vehicle from a less geographically convenient dealer. Additionally, as a third component, the proposed dealer can expect to capture sales from Protestants.

81. Establishment of a Pontiac dealer, Buick dealer, and

1 GMC Light Truck dealer in the Folsom Auto Mall would likely
2 increase the penetration rate of each line-make in the Folsom RMA
3 and the Folsom AGSSA.

4 82. The recent relocation of Vanderbeek to the Roseville
5 Automall will likely increase the penetration rate of these line-
6 makes in the Folsom RMA and the Folsom AGSSA.

7 c. Facts pertaining to the injury to public welfare.
8 (§ 3063(c))

9 83. In 1993, GMAC sued the City of Folsom on grounds that
10 the City of Folsom had confirmed and levied a \$7.8 million dollar
11 special assessment against property then owned by GMAC at the
12 corner of Blue Ravine Road and Folsom Boulevard. In mid-July
13 1995, GMAC and the City of Folsom resolved the lawsuit by
14 entering into a settlement agreement, the express purpose of
15 which was "to reduce litigation costs, to avoid the uncertainty
16 of litigation, to encourage the location of General Motors' auto
17 dealerships to the Folsom Automall, to develop that Automall to
18 its fullest potential, and to increase potential sales tax
19 revenue to Folsom . . ." The Settlement Agreement provides that
20 GMAC "acknowledges that a material inducement for Folsom to enter
21 into this Agreement is the location of General Motors automobile
22 dealerships at the New Folsom Auto Mall". The Agreement further
23 provides that "as consideration for the payments made to GMAC
24 pursuant to this Agreement, GMAC agrees to use all reasonable and
25 available means to ensure that General Motors Corporation and/or
26 its subsidiary World Wide Real Estate purchase from Cal
27 Worthington approximately 8 acres of land at the New Folsom Auto
28 Mall".

1 84. The Settlement Agreement between GMAC and the City of
2 Folsom provides that the City of Folsom shall pay to GMAC the sum
3 of \$1,563,000⁹ upon the establishment of two GM franchised
4 dealerships within ten years from the effective date of the
5 Settlement Agreement. GMAC acknowledges in the Agreement that
6 the City of Folsom's obligation to pay this sum is dependent upon
7 the establishment of two GM dealerships at the Folsom Auto Mall
8 and GMAC expressly assumes "any and all risks associated with the
9 construction of facilities and ultimate opening for operation two
10 General Motors dealerships by General Motors Corporation".

11 85. The City of Folsom inserted the above-stated inducement
12 language into the agreement with the expectation that GMAC
13 representatives would exercise some degree of influence over
14 General Motors in connection with the establishment of the new
15 dealerships. The purpose of the language was to make it costly
16 for GMAC if the firm fails to locate two dealerships at the
17 Folsom Auto Mall. GMAC representatives indicated that they might
18 be helpful in getting General Motors' dealerships established.

19 86. GMC Truck was not interested in the proposal to
20 establish dealership representation in Folsom when it was first
21 proposed and in fact regarded the proposal as "on again, off
22 again." A statistical market analysis (SMA) was prepared in
23

24 ⁹ Within five (5) days of the effective date (the date the
25 parties receive approval from the Sacramento County Superior
26 Court that the Stipulated Settlement was entered on the record),
27 Folsom shall pay GMAC \$146,838.00. Within thirty (30) days of
28 establishing each one of the two GM franchises, Folsom shall pay
GMAC \$250,000. After the two (2) GM franchises are established
at the New Folsom Auto Mall, Folsom shall commence annual
payments to GMAC on the sum of \$1,063,000.00. The total sum to
be paid to GMAC is \$1,709,838.00.

1 April of 1995, and revised and finally approved on June 28, 1995,
2 giving the official go-ahead for GMC Truck in regard to the
3 proposed new dealership. An April 24, 1995 letter sent by GMC to
4 its dealers acknowledged that "our plans for implementation have
5 been on hold for some time pending further review and
6 consideration."

7 87. R. Ronte Smith, Buick Zone Manager, acknowledged that
8 he did not learn of Buick's intention to seek representation in
9 Folsom until late 1994 or early 1995. In addition, he had not
10 reviewed any data analyzing the Folsom market because "it has not
11 been a priority for my organization." Ray Moffett, former
12 District Manager for Buick, an individual whose experience
13 included dealer network planning, "expressed some doubt as to
14 whether or not we needed representation." A letter dated April
15 28, 1995, advised Vanderbeek Buick that Buick had conclusively
16 decided to establish dealer representation in Folsom.

17 88. In 1993, Pontiac delivered to Reliable a letter
18 announcing its intention to establish dealership representation
19 in the Folsom Auto Plaza. That proposal would not "pencil"
20 without Buick and GMC Truck. Neither of those divisions had
21 committed to going forward until the GMAC/City of Folsom
22 Settlement Agreement was all but complete.

23 89. At the time of the hearing, Pontiac, the contact or
24 control division¹⁰ for the proposed new dealership, had only
25

26 ¹⁰ With dual arrangements involving multiple General Motors
27 franchises, one division is generally defined as the Control
28 Division who is responsible to coordinate changes in the dealer
operation, to establish points, and coordinate with the other
divisions.

1 talked to prospective candidates for the proposed new dealership
2 who were interested in becoming the new dealer with the financial
3 assistance of Motors Holding Division ("MHD") and had not talked
4 to any candidates who had expressed an interest in establishing
5 the new dealership entirely with personal funds. Cal Worthington
6 expressed an adamant desire to expend his own funds by
7 establishing a GM dealership in the Folsom Auto Mall. GM neither
8 approved nor denied his requests. However, contrary to
9 Protestant's claims, a motivated prospective dealer with adequate
10 capital, Cal Worthington, is anxious to establish the dealership
11 in Folsom.

12 90. Total sales of the proposed dealership are projected at
13 approximately \$20,000,000 and net profits at \$13,000 per year.
14 Given total capital stock plus capital loan to owners at
15 \$1,130,000, the estimated net profits of \$13,000 annually yield a
16 return on investment less than 2%. This is substantially below
17 the industry average of approximately 25%. However, the proposed
18 dealership does project profits.

19 91. A marginal dealer can have an adverse impact on the
20 entire market if customer experiences at that dealership are
21 negative and the customer associates that negative experience
22 with the line-make or line-makes offered at the dealership. In
23 the event of a failed dealership "there would always be some
24 negative connotation to that brand or manufacturer in that
25 immediate area."

26 92. If the proposed new dealership is established and the
27 Chevrolet dealership at the corner of Blue Ravine Road and Folsom
28 Boulevard relocates to the Folsom Auto Mall, the City of Folsom

1 will be obligated to pay GMAC the sum of \$1.563 million dollars.
2 See Footnote 9. Based upon General Motors' own sales projections
3 for the proposed new dealership, it would be expected to generate
4 \$19,000,000 in taxable sales annually, only ½ of 1% of which, or
5 \$95,000, would be payable to the City of Folsom as sales tax.
6 However, the increased sales would also generate jobs, new
7 salaries, new sales in related fields and new sales in the
8 current Folsom Automall due to increased competition, all
9 resulting in benefits for the City of Folsom. While the economics
10 of the settlement transaction in itself appear highly doubtful,
11 the Board gave great deference to the decision of the elected
12 officials of the City of Folsom who chose to enter into this
13 Agreement and to the fact it was made in settlement of
14 litigation.

15 93. The City of Folsom's advocacy as an interested party of
16 the viability of the proposed new dealership was also a factor in
17 consideration of the public welfare.

18 94. Moreover, sales tax revenues are the greatest source of
19 revenue for the City of Folsom, and the three existing Folsom
20 dealerships are the greatest providers of sales tax revenues.
21 The current Folsom dealerships are providing approximately 30% of
22 all sales tax revenue for the City, and that figure would
23 probably go up to 60% with the development of the auto mall.

24 d. Facts relating to whether the franchisees of the same
25 line-make in that relevant market area are providing
26 adequate competition and convenient consumer care for
27 the motor vehicles of the line-make in the market area
which shall include the adequacy of motor vehicle sales
and service facilities, equipment, supply of vehicle
parts, and qualified service personnel. (§ 3063(d))

28 95. There is no present insufficiency or inadequacy in the

1 relevant market area with regard to sales and service facilities,
2 equipment, supply of vehicle parts, and qualified service
3 personnel to serve the needs of Pontiac, Buick, and GMC Truck
4 customers in the relevant market area, as a whole. However, in
5 the southern portion of the RMA, there are no facilities,
6 equipment, factory parts suppliers or factory trained and
7 qualified service personnel to service the needs of these
8 customers along Highway 50 from Placerville to Davis, a distance
9 of nearly 60 miles. All of the customers living south of the
10 American River along Highway 50 must detour across inadequate
11 bridges to obtain any of these parts or services.

12 e. Facts pertaining to whether the establishment of an
13 additional franchise would increase competition and
therefore be in the public interest. (§ 3063(e))

14 96. The California Marketing Initiative ("CMI") was
15 instituted by General Motors in 1992 in response to studies which
16 showed that 70% of California car buyers did not even consider a
17 GM car or truck line-make. One of the key elements of CMI and
18 one of its principal benefits is selling the value of the vehicle
19 rather than haggling over or negotiating its price.

20 97. It is probable that the proposed new dealership will
21 participate in value pricing.

22 98. Although value pricing has the potential to eliminate
23 price competition, dealers will still compete in options and
24 color of automobile, trade-ins, finance and insurance, service
25 and accessories and the proposed dealership will also compete in
26 these areas, thus increasing competition overall in the RMA.

27 DETERMINATION OF ISSUES

28 99. Protestants have not carried their burden of proof on

1 the issue of permanency of investment. The Protestants' illiquid
2 assets constitute only a small percentage of their total assets.
3 While their permanent investments could be affected by the
4 establishment of a new dealer in the Folsom Auto Mall, increased
5 competition in the RMA should result in an increased volume of
6 sales.

7 100. Protestants have failed to carry their burden of proof
8 on the issue of the effect on the retail motor vehicle business
9 in the RMA. Establishment of new dealers in Folsom will likely
10 increase sales and penetration rates in the Buick, Pontiac, and
11 GMC Light Truck market in the RMA. However, the relocation of
12 Vanderbeek into the Roseville Automall will also likely increase
13 sales and penetration rates for Buick and GMC Truck in the Folsom
14 RMA, as well.

15 101. Protestants have not carried their burden of proof
16 on the issue of the injury to the public welfare. While the
17 taxpayers of the City of Folsom will suffer a \$1.563 million
18 dollar loss over a ten year period upon the establishment of the
19 new dealers and receive potentially only \$95,000 a year in tax
20 revenues directly from the proposed dealership, the establishment
21 of the proposed dealership would generate jobs, new salaries, new
22 sales in related fields and new sales in the current Folsom
23 Automall due to increased competition, all resulting in a benefit
24 for the City of Folsom. See Footnote 9. Lost potential tax
25 revenues can be mitigated if other line-makes such as Honda or
26 Nissan are established in the Folsom Auto Mall as well as
27 Pontiac, Buick, or GMC Truck.

28 102. Protestants have not carried their burden of proof on

1 the issue of whether the franchisees of the same line-make in the
2 RMA are providing adequate competition and convenient consumer
3 care. The current motor vehicle sales and service facilities,
4 equipment, supply of vehicle parts and qualified service
5 personnel are adequate in the RMA as a whole. Sales as a
6 percentage of industry are higher in the Folsom 10 mile RMA than
7 they are in the larger Folsom AGSSA, and for Buick and Pontiac,
8 higher than in the State of California. However, for the
9 customers in the southern portion of the RMA, there are no
10 facilities, equipment, factory parts suppliers or factory trained
11 and qualified service personnel to service the needs of these
12 customers along Highway 50 from Placerville to Davis, a distance
13 of nearly 60 miles. All of the customers living south of the
14 American River along Highway 50 must detour across inadequate
15 bridges to obtain any of these parts or services and the
16 establishment of the proposed dealership will provide adequate
17 competition, convenient consumer care, adequate facilities,
18 equipment, parts and service personnel to them.

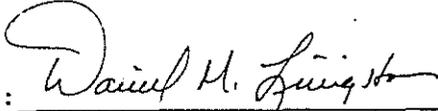
19 103. Protestants have not carried their burden of proof on
20 the issue of whether establishment of an additional franchise
21 would increase competition. While these dealers and any
22 proposed new dealer would participate in California Value Pricing
23 which fixes the price of a new vehicle to a standard price such
24 that the net effect of value pricing is virtually to eliminate
25 the possibility that any price-based advantage will enure to the
26 benefit of customers in the relevant market area even if the
27 proposed new dealership were to be established. However, there
28 would be substantial price variation between the new proposed

1 dealer and the current dealers due to increased competition on
2 color, service, trade-ins, used cars, and model availability.

3 DECISION

4 The Board, after having evaluated all the factors listed
5 above, and balancing their respective merits, hereby finds that
6 General Motors shall be permitted to establish a Pontiac, Buick,
7 and GMC Truck franchise in the Folsom Auto Mall. Accordingly,
8 the protests are overruled.

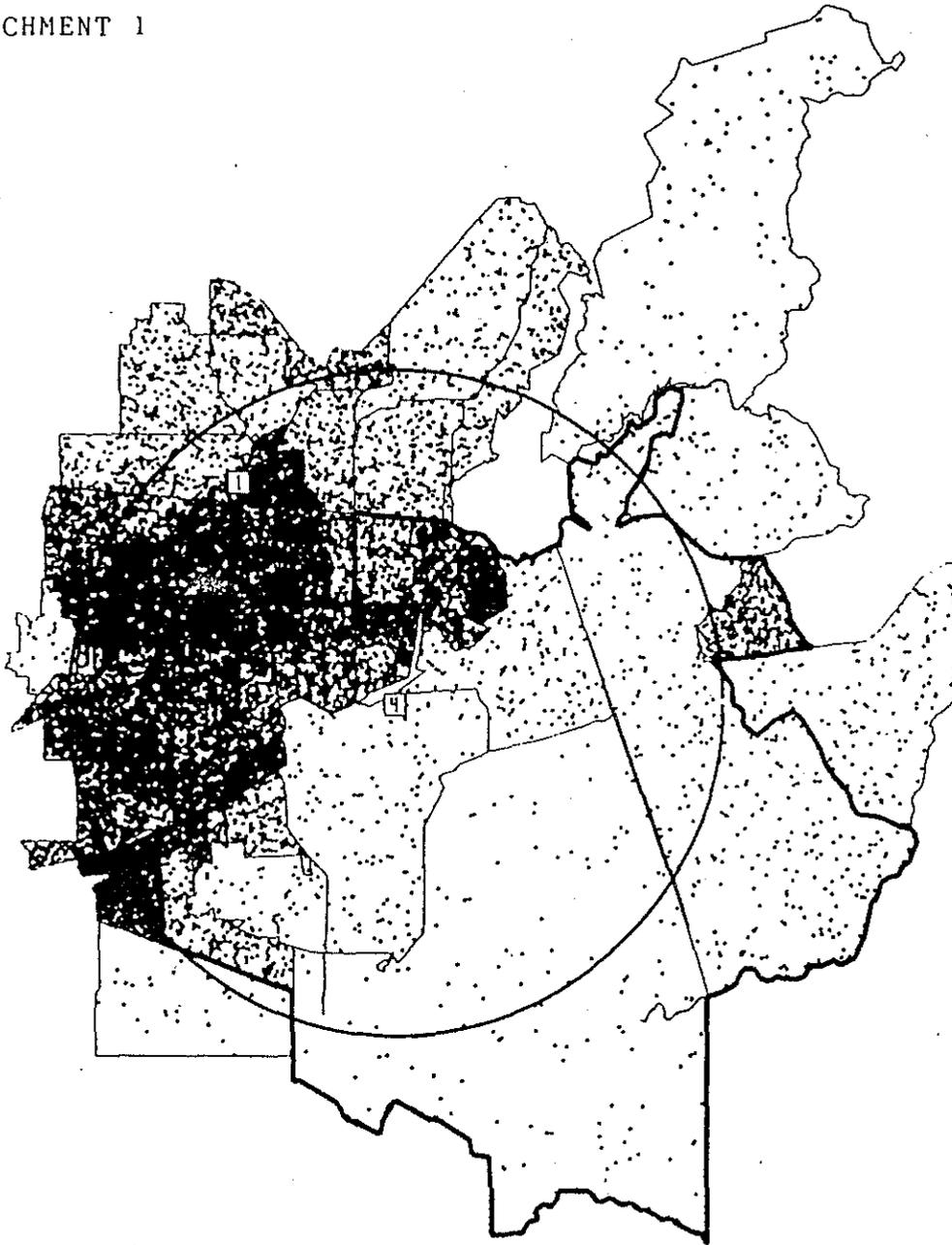
9
10 NEW MOTOR VEHICLE BOARD

11
12 By: 

13 DANIEL M. LIVINGSTON
14 Board President

15 Date: May 21, 1997
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28

ATTACHMENT 1



1 ROSEVILLE
4 OPEN POINT

ROSEVILLE
FOLSOM



FOLSOM 10 MILE RMA
1995
POPULATION

1 DOT = 40 PEOPLE
DATA BY: CLARITAS, INC.

0 1 2 3
MILES

DATA REF: 1995 UPDATE
GEOG R90:H-GMCFOLSRMA

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GENERAL MOTORS CORPORATION

URBAN SCIENCE APPLICATIONS, INC.
DETROIT, MICHIGAN