Maximilian G. Barteau – SBN 227879
CARTER LAW OFFICE
329 Flume Street
P. O. Box 3606
Chico, CA 95927-3606
Telephone: (530) 342-6196
Facsimile: (530) 342-6195

Attorney for Protestant McConnell Chevrolet Buick, Inc.

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NEW MOTOR VEHICLE BOARD

FILED
NEW MOTOR VEHICLE BOARD
DATE 7/1/13
BY

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of MCCONNELL CHEVROLET BUICK, INC., Protestant, vs. GENERAL MOTORS, LLC, Respondent	Protest No.: PR-2369-13 **AMENDED PROTEST** **[Vehicle Code §3060]**

Protestant, McConnell Chevrolet Buick, Inc., a California corporation, by and through its attorneys, hereby files this protest under the provisions of California Vehicle Code section 3060 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Chevrolets, Buicks, and Pontiacs and is located at 1646 Hwy 99E, Gridley, California 95948-2611. Protestant's telephone number is (530) 713-5119.

2. Respondent General Motors, LLC, franchises dealerships for the sale of and manufactures, and distributes to franchisees, including Protestant, motor vehicles, parts, and equipment. Protestant is a franchised dealer for Respondent.

3. Protestant is represented in this matter by the John Jeffery Carter Law Office, whose address is P.O. Box 3606, Chico, California 95927 and whose telephone number is (530) 342-6196.

4. On or about June 19, 2013, Protestant received from Respondent written notice that Respondent intended to terminate its franchise agreement to sell Chevrolet vehicles with Protestant effective 15 days from Protestant's receipt of said notice. A copy of this notice is attached hereto as Exhibit "A".

5. Protestant generally denies each and every allegation contained in the written notice of termination.

6. Respondent does not have good cause to terminate the franchise by reason of the following facts:

a. Protestant has made and continues to make a substantial and permanent investment in the dealership.

b. Protestant has transacted and is transacting an adequate amount of sales and service business compared to the business available to it.

c. Protestant has fulfilled the warranty obligations to be performed by it.

d. Protestant has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of all buyers and owners in the market area and is rendering adequate services to the public.

e. Given the historical performance of Protestant's Chevrolet Dealership, the limited time frame used by Respondent as the basis to terminate the franchise agreement, is arbitrary and capricious.

f. Respondent is aware that Protestant has been and now is actively seeking to sell the Dealership and in fact has recently received an offer for the purchase of same. A copy of which is attached hereto as Exhibit "B".

g. It would be injurious to the public welfare for the Chevrolet franchise to be terminated or for Respondent to refuse to continue the existing Chevrolet franchise.

7. Protestant and its attorneys desire to appear before the Board to protest the termination of its Chevrolet franchise agreement and estimate that the hearing in this matter will take one day to complete.

8. A pre-hearing conference is requested.

Wherefore, Protestant prays as follows:

1. That the Board sustain this protest and order Respondent not to terminate Protestant's Chevrolet franchise.

2. That pending the hearing in this matter and until Respondent has established good cause for such actions under the provisions of Vehicle Code sections 3060 and 3061, the Board or its authorized representative immediately enjoin Respondent from terminating Protestant's Chevrolet franchise.

CARTER LAW OFFICE:

Date: June 28, 2013

By: _____
MAXIMILIAN G. BARTEAU
Attorney for Protestant

A

General Motors LLC
Dealer Contractual Group
Mail Code 482-A16-C66
100 GM Renaissance Center
Detroit, MI 48265-1000

CERTIFIED MAIL: 7003 1010 0004 4523 7566
RETURN RECEIPT REQUESTED

June 18, 2013

PERSONAL & CONFIDENTIAL

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

McConnell Chevrolet Buick, Inc.
1646 Hwy 99 E
Gridley, CA 95948-2611

Attention: Michael A. McConnell, President

Dear Mr. McConnell,

This letter concerns the failure of McConnell Chevrolet Buick, Inc. ("McConnell" or "Dealer") to conduct Chevrolet and Buick sales and service operations as required by the GM Dealer Sales and Service Agreements for Chevrolet and Buick (the "Dealer Agreements') in effect between McConnell and General Motors LLC ("General Motors" or "GM").

GM representatives have observed that on each and every day during the period May 2, 2013, through May 10, 2013, McConnell was not conducting customary sales and service operations at its dealership premises.

Specifically, GM representatives observed the following:

1. May 2, 2013 - Saul Escalante, GM District Manager, visited the dealership. As with previous visits, no regular day-to-day business activity was observed. There was no customer service being scheduled and customers were being referred to other Chevrolet dealers. No technicians were on staff or in the shop. Service appeared closed.
2. May 3, 2013 - Saul Escalante, GM District Manager, visited the dealership. Service customers were being referred to other dealers. No technicians were located on the property, and service operations looked closed.
3. May 4, 2013 - Saul Escalante, GM District Manager, telephoned the dealership. Saul called in several times throughout the day with no answer. The store appeared to be closed, although the dealership's website states that the dealership is open on Saturdays until 6 p.m.

4. May 6, 2013 - Leonard Deprez, GM District Manager, visited the dealership. There was no activity at the dealership, except for two men in the service department who were talking on cell phones. Mr. Deprez asked about getting an oil change, and was referred to Wittmeier Chevrolet in Chico, CA. Mr. Deprez was advised that the dealership was going through an ownership change and unable to perform any service work.
5. May 7, 2013 - Saul Escalante, GM District Manager, visited the dealership. Mr. Escalante spoke with the dealer principal, Mike McConnell. Mr. McConnell stated that the dealership was planning to hire a new technician, who would begin work on May 8th. No technicians were at the store/service drive. The store appeared closed.
6. May 8, 2013 - Saul Escalante, GM District Manager, visited the dealership. Mr. Escalante was advised that the new technician's start had been delayed until the next day. While there is no technician on hand, the dealership Managing Partner, Bill Marker, stated that the dealership would be taking appointments, starting that day, for minor jobs, such as lube, oil, and filter changes (LOFs) and tire rotations. No technicians were working. Service operations appeared to be closed.
7. May 9, 2013 - George Kovacs, GM District Manager, visited the dealership. The service department was deserted. Mr. Kovacs was advised by the only individual in store that a technician had just "gone to lunch". Mr. Kovacs was referred to Wheeler Chevrolet & Dow Lewis GMC for an intermittent engine light. The McConnell shop appeared empty.
8. May 10, 2013 - Saul Escalante, GM District Manager, visited the dealership. Analysis of dealership records revealed that, except for LOF changes of May 9, the last dealership service or repair order occurred on April 1, 2013. The last warranty transaction appears to have occurred March 26, 2013, as verified by the GM Global Warranty Management database.

   Dealer Mike McConnell and Managing Partner Bill Marker were both present on the 10th. There was only one technician on duty at the dealership. The only available tools in the business are for LOFs. GM was informed that service work is limited to LOFs and tire rotations, and until further funding is brought into the business, no other personnel could be brought back (i.e. former technicians).

   No major tools for in-depth jobs were observed. A tour of the parts room and the parts annex confirmed there was no activity and only miscellaneous/scattered parts available. It appeared there were insufficient personnel, parts, and tools to effectively run the dealership.

Moreover, GM's records of Dealer's sales, service and parts activity verify that McConnell has not conducted customary Chevrolet and Buick sales and service operations since at least April 1, 2013. GM's records show that McConnell sold six (6) new Chevrolet vehicles and (0) new Buick vehicles during the period January 1, 2013, through June 15, 2013. The last sale of a new GM vehicle occurred on March 6, 2013. The last new vehicle was ordered on February 7, 2013. Records show the last warranty claim was submitted on March 28, 2013.

Further, GM has learned that, in violation of Articles 10.2, 13.1 and 13.1.1 of the Dealer Agreements and GM's reasonable requirements established under those provisions, McConnell has failed to maintain its floor plan financing and has therefore failed to meet Dealer's contractual obligation to have and maintain a sufficient line of credit to finance the purchase of new vehicles.

According to GM's records, there are only two (2) new Buick vehicles and twenty one (21) new Chevrolet vehicles in stock and no new GM vehicles on order. The lack of a separate line of credit for flooring of new vehicles has impaired Dealer's ability to order and stock a selection of product for display and sale to potential customers.

By letter dated May 8, 2013, GM notified McConnell of this breach and provided Dealer with the opportunity to explain or correct the breach. Dealer's failure to secure financing constitutes a continuing, unresolved material breach of the Dealer Agreement. Without appropriate financing, Dealer is unable to satisfy one of the most basic purposes of the Dealer Agreement. While this notice of termination is predicated upon Dealership's failure to be open for service during a 7 day period, GM maintains its right to proceed on the basis of any and all breaches of the Dealer Agreements.

Further, on April 10, 2013, McConnell Chevrolet Buick, Inc. received a forbearance letter for an unapproved change in ownership and failure to exercise full managerial authority over dealership operations.

In short, dealership operations are compromised by the skeleton staff sporadically present at the dealership and McConnell's failure to conduct customary sales and service operations at the dealership since at least May 2, 2013. The lack of customary dealership operations and the failure to maintain floor plan financing are causing serious harm to the reputation of Chevrolet and Buick and their products. Chevrolet and Buick customers in the Gridley market cannot obtain warranty or customer pay service for their vehicles because McConnell cannot or has chosen not to purchase parts and has failed to maintain a staff of trained service technicians. These customers have been forced to seek service for their vehicles elsewhere.

Article 14.5.3 of the Dealer Agreements provides that General Motors may terminate the Dealer Agreements for the following reason:

> *"Failure of dealer to conduct customary sales and service operations during customary business hours for seven consecutive business days."*

GM dealers are responsible for effectively selling *and* servicing GM products. As detailed above, McConnell's failure to conduct customary sales and service operations has continued since at least May 2, 2013. General Motors believes that any further delay in seeking replacement Chevrolet and Buick representation to provide for the service needs of General Motors customers in the Gridley market would not be in the best interests of GM, its customers or the general public.

Therefore, General Motors has elected to, and does hereby terminate the Dealer Agreements currently in effect between GM and McConnell, pursuant to Article 14.5.3 of the Dealer Agreements and CAL. VEH. CODE section 3060(a)(1)(B)(v). Such termination will be effective fifteen (15) calendar days from your receipt of this letter, and McConnell's status as an authorized Chevrolet and Buick dealer will terminate at that time.

Please be advised that General Motors will endeavor to fulfill, as expeditiously as possible, its obligations, as set forth in the Dealer Agreements, that are applicable under these circumstances.

Very truly yours,

Michael Stinson

Michael Stinson
Zone Manager
General Motors LLC
(303) 549-1395

c: Dealer Contractual Group
William Brennan, Executive Director, California New Motor Vehicle Board
via Federal Express # 7960 2504 8493

B

AES Automotive LLC

OFFER SHEET

I Parm Matharu residing at
2266 Kitty Hawk Rd, Livermore, Ca. 94551
have given AES Automotive LLC the authorization to convey an offer to
McConnell Chevrolet-Buick
for the purchase of said dealership, including the following: Assets

1. All new + unregistered Chevrolet + Buick vehicles
2. All current + returnable Parts + Accessories
3. FF+E based on Marshall-Stevens Appraisal
4. Seller to receive $50,000 Goodwill
5. Seller to receive all cash at CoE.
6.
7.

Good faith deposit: $50,000 upon acceptance of offer

Terms and conditions: (1) Offer subject to Mfg, lender, DMV approval.
(2) Buyer to enter into Management Agreement until CoE.

Signature of Purchaser

Signature of acceptance of Seller

Date

P.O. Box 4767, Incline Village, NV 89450 ▪ (775) 825-5517 ▪ Cell (916) 768-1162 ▪ tahoesawyer@aol.com

PROOF OF SERVICE

I, the undersigned, declare:

I am over the age of eighteen years and not a party to the cause. I am employed by the Law Office of John Jeffrey Carter, 329 Flume Street, Chico, CA 95926.

On this date, I served the document described as: AMENDED PROTEST [VEHICLE CODE §3060] on the interested parties in this matter by placing a true copy thereof in a sealed envelope addressed as follows:

Mr. Michael Stinson, Zone Manager General Motors, LLC Dealer Contractual Group Mail Code 482-A16-C66 100 GM Renaissance Center Detroit, MI 48265-1000	Mr. William Brennan, Executive Director California New Motor Vehicle Board 1507 21st Street, Suite 330 Sacramento, CA 95811

Service of the above document was effectuated by the following means of service;

[X] **By First Class Mail** – I am readily familiar with this firms practice for collection and processing of correspondence for mailing with the United States Postal Service. It is deposited with the United States Postal Service in the ordinary course of business on the same day it is processed for mailing. I caused such envelope(s) to be deposited in the mail at Chico, California. The envelope(s) was/were mailed with postage thereon fully prepaid.

[ ] **By Personal Service** – I delivered the above-referenced document by h and to the offices of the addressee.

[ ] **By Overnight Delivery Service** – I caused such envelope(s) to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. The envelope(s) was/were deposited with the express service carrier with delivery fees paid or provided for.

[ ] **Facsimile Transmission** – I caused the document to be transmitted to a fax number regularly maintained by each respective party upon whom service has been made as set forth above.

[ ] **State Court** – I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that service was made under the direction of an active member of the State Bar of California and who is not a party to the cause.

[ ] **Federal Court** – I declare under penalty of perjury that the foregoing is true and correct and that service was made under the direction of a member of the bar of this court who is admitted to practice and is not a party to the cause.

Executed on June 28, 2013 at Chico, California

TANYA HORTON