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9 ATTORNEYS FOR PROTESTANT

10 **STATE OF CALIFORNIA**
11 **NEW MOTOR VEHICLE BOARD**

12 In the Matter of the Protest of:

13 STOCKTON AUTOMOTIVE
14 DEVELOPMENT, LLC dba STOCKTON
15 NISSAN,

16 Protestant,

17 v.

18 NISSAN NORTH AMERICA, INC., a
19 California corporation,

20 Respondent.

21 **PROTEST NO: PR-2351-12**

22 **PROTESTANT'S AMENDED**
23 **RESPONSE TO ORDER TO**
24 **SHOW CAUSE**

25 On November 12, 2013, the New Motor Vehicle Board issued an email from ALJ Skrocki, requiring that certain questions be answered and that an analysis of the issues raised in those questions be provided by the parties to the Protest. The following consists of answers to those questions and a brief analysis supporting those answers. Protestant's Response to Order to Show Cause Why the Protest Should Not Be Dismissed (Protestant's Response) and the Declarations and documentation attached to Protestant's Response are incorporated in this Amended Response as though fully set forth herein.

1 Protestant's franchise has been terminated pursuant to a Voluntary Termination letter
2 executed by Protestant on October 1, 2013, and made effective upon Buyer's execution of new
3 franchise, which is presumed to have occurred after completion of the Buy/Sell Agreement
4 between Protestant and its Buyer, Lithia Motors, Inc., which occurred on October 19, 2013.
5 (Declaration of Michael Rosvold and attachment thereto).

6
7 Protestant and its counsel do not have personal knowledge (even after consultation with
8 Respondent's counsel) that a new franchise was executed by the buyer, but aver on information
9 and belief that a new franchise agreement has been executed by the buyer. Because Vehicle
10 Code Section 330.1 defines "franchisee" as "any person who *pursuant to a franchise*, receives
11 new motor vehicles subject to registration..." (emphasis added), and because Vehicle Code
12 Section 330 defines "franchise" as "a written agreement between two or more persons" having
13 all of certain specified conditions, Protestant's voluntary termination of its Nissan franchise
14 agreement means there is no franchise agreement now in effect between Protestant and
15 Respondent, and Protestant cannot be a franchisee under the provisions of Vehicle Code
16 Sections 330, 330.1, 3050 (d), and 3060(a)(3).

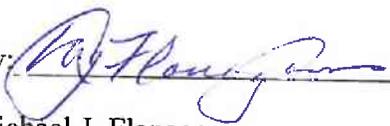
17
18 Protestant reserves its right to Reply to any Response submitted by Respondent.

19 Respectfully submitted this 14th day of November, 2013.

20
21 Dated: November 14, 2013

LAW OFFICES OF

MICHAEL J. FLANAGAN

22
23
24 By: 
25 Michael J. Flanagan

