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6 ATTORNEYS FOR PROTESTANT

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8 **STATE OF CALIFORNIA**

9 **NEW MOTOR VEHICLE BOARD**

10 In the Matter of the Protest of:

11 STOCKTON AUTOMOTIVE
12 DEVELOPMENT, LLC dba STOCKTON
NISSAN,

13 Protestant,

14 v.

15 NISSAN NORTH AMERICA, INC., a
16 California corporation,

17 Respondent.
18

PROTEST NO: PR-2351-12

**PROTESTANT'S REPLY TO
RESPONDENT NISSAN NORTH
AMERICA, INC.'S REPLY TO
ORDER TO SHOW CAUSE AND
PROTESTANT'S RESPONSE TO
ORDER TO SHOW CAUSE**

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20 Respondent's Reply to Order to Show Cause Re Dismissal and to Protestant's Response
21 Re Order to Show Cause ("Reply") makes two important points, and fails to appreciate the
22 current state of the record, as well as the evidence in this case.
23

24 First, at page 2, line 3 of its Reply, Respondent claims "...any findings made by the
25 Board must be limited to undisputed facts which are contained in the declarations submitted by

1 the parties." At page 2, line 9 of its Reply, Respondent adds "... the Board is powerless to make
2 any such findings in its Order of Dismissal, except for undisputed facts which are contained in
3 the declarations submitted by the parties." Next, Respondent goes on to say "Board findings
4 must be supported by substantial evidence" citing the *Kawasaki Motors Corp and British Motor*
5 *Cars* decisions.

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7 There are three declarations submitted by the parties in their Replies to the Order to
8 Show Cause (Rosvold, Flanagan and Filiault), and now that each party has had the opportunity
9 to respond to the other's submissions, not a single statement made in any of those declarations
10 has been disputed by the other party. Moreover, "Substantial evidence is defined as 'evidence of
11 ponderable legal significance...reasonable in nature, credible and of solid value[, and] ... relevant
12 evidence that a reasonable mind might accept as adequate to support a conclusion..." *Young v.*
13 *Gannon*, 97 Cal App 4th 209 (2002), at pg. 225, citing to *Desmond v. County of Contra Costa*
14 (1993) 21 Cal App. 4th 330, 334-335.

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16 Given these facts and authorities, the Board, contrary to Respondent's claims, is
17 empowered to issue a comprehensive Order of Dismissal, setting forth all of the undisputed facts
18 and substantial evidence contained in the declarations submitted by the parties. Protestant urges
19 that the Board must do so, in order to avoid a misleading or misinterpreted understanding of
20 what occurred in this case, such as the one provided by Respondent in its Reply, wherein it
21 states misleadingly and disingenuously, at page 2, line 20, "Rather it would seem, Protestant has
22 consented to the termination after receipt of the Notice of Termination, as set forth in Vehicle
23 Code Section 3060 (a) (3)."
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25

1 The Voluntary Termination executed by Protestant had absolutely nothing to do with
2 Respondent's Notice of Termination (Rosvold Declaration, para.4; Filiault Declaration, para. 3),
3 as Respondent well knows. That being an undisputed fact, it is imperative that the Board's
4 Order Dismissing the Protest for lack of jurisdiction be supported by that fact and the others
5 contained in the declarations submitted by the parties, so that there can be no misunderstanding
6 as to the context in which, and the reasons for which, the Protest is being dismissed for lack of
7 Board jurisdiction.¹

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9 It remains difficult to understand what valid objection to this approach Respondent could
10 have and what possible adverse consequence would befall Respondent if the relevant (and
11 undisputed) facts are recited in the Board's Order.

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

14 Respectfully submitted this 20th day of November, 2013.

15 Dated: November 20, 2013

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19 By: 
20 Michael J. Flanagan

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23 ¹ Respondent's argument that it "offered" to enter into a "Settlement Agreement and Release" is curious
24 for two reasons: 1) it "offered" that proposed resolution AFTER the franchise had been transferred and a Voluntary
25 Termination had been executed pursuant to that transfer, and AFTER Protestant requested on a conference call with
Respondent's counsel and Senior Counsel for the Board, Robin Parker, that Respondent withdraw its Notice of
Termination; 2) What reason would Protestant have to enter into a Settlement Agreement and Release when the
parties were no longer in a franchise relationship, and there was therefore nothing to "Settle"?

