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13 **STATE OF CALIFORNIA**
14 **NEW MOTOR VEHICLE BOARD**
15

16 In the Matter of the Protest of
17 HC AUTOMOTIVE, INC., dba
HOOMAN CHRYSLER JEEP DODGE
18 RAM,
19 Protestant,
20 v.
21 FIAT CHRYSLER AUTOMOBILES,
22 Respondent.
23

**Protest No: PR-2429-15, PR-2430-15, PR-
2431-15, PR-2432-15
Vehicle Code Section 3065.1
FCA US LLC'S CLOSING BRIEF**

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1 Respondent FCA US LLC (“FCA US”) submits its Closing Brief in this sales incentive
2 Protest commenced by HC Automotive, Inc. (“Hooman CDJR” or “Protestant”).

3 INTRODUCTION

4 The largely undisputed facts of this case demonstrate that Protestant was caught in the
5 famous proverb—it sought to have its cake, yet eat it, too. In 2014, Hooman CDJR claimed hundreds
6 of thousands of dollars in sales incentives from FCA US as a result of vehicles that Hooman CDJR
7 reported to FCA US that the dealership had sold to itself as “loaner” vehicles. When FCA US
8 audited Hooman CDJR in December of 2014, however, FCA US found that the dealership had not
9 complied with the simple requirements for claiming sales for incentive purposes. In fact, FCA US
10 found very little evidence that the “sales” were sales at all—they were not documented with
11 contracts or any of the other documentation required by FCA US’s Incentive Rules Manual and
12 Dealer Policy Manual. That failure alone was sufficient to justify a chargeback of the incentives.
13 Moreover, despite a separate and independent requirement that the dealership title vehicles at the
14 time of sale, FCA US learned that only those vehicles that the dealership had subsequently re-sold as
15 “new” to consumers—without reporting the second sale to FCA US—had ever been titled, but long
16 after the initial sale of the vehicle by the dealership to itself. Such noncompliance was a second,
17 separate and independent ground for the chargebacks.

18 Hooman CDJR admits that it failed to comply with sales incentive program terms and the
19 reasonable and nondiscriminatory documentation requirements that FCA US propounds for vehicle
20 sales in its Dealer Policy Manual and the Incentive Rules Manual. And the dealership reaped the
21 benefits of its decision to ignore the requirements. When it reported these “sales,” Protestant did not
22 pay any taxes or fees to the state. It did not segregate any other funds or even pay off its flooring
23 line. Protestant therefore retained the ability to (and in fact actually did) sell vehicles it had
24 previously sold and reported sold as new—rather than as used, as would have been required if
25 Protestant properly documented and reported the original “sale.” The uncontroverted testimony from
26 FCA US’s auditor was that the only “loaner” vehicles that the dealership could physically show to
27 the auditor were sitting on the sale lot, near other vehicles for sale, with less than ten miles on the
28 odometer, and with the Monroney labels still on the windows. Yet Protestant had received hundreds

1 of thousands of dollars in recognition of the “sales” of loaner vehicles and the corresponding sales
2 objectives the “sales” allowed the dealership to reach.

3 Protestant claims that it was unaware of the requirements in the Dealer Policy Manual and
4 the Incentive Rules Manual, and failed to comply because it did not know the requirements for
5 claiming incentives for a “sale.” It makes this claim despite having signed an acknowledgment that it
6 had access to the manuals and that it bore responsibility for ensuring its own compliance; despite the
7 fact that it had received training in the processing and submission of incentive claims; and despite
8 the fact that every set of incentive program terms referred the dealership to the Incentive Rules
9 Manual. The Incentive Rules Manual and the Dealer Policy Manual were electronically available to
10 the dealership 24 hours a day, 7 days a week.

11 Now indisputably aware that it improperly claimed hundreds of thousands of dollars in
12 incentives from FCA US, Hooman CDJR argues that it should not have to pay the money back to
13 FCA US because it supposedly “cured” its noncompliance after the audit by titling the vehicles
14 during or after the audit. But Hooman CDJR never provided FCA US with the contracts or other
15 documentation required for sales by the Incentive Rules Manual and the Dealer Policy Manual. That,
16 alone, is enough to require that the Protest be denied. Moreover, to the extent that the dealership
17 titled any vehicles during or after the audit (at least many months after the “sale” at issue), it does
18 not cure the dealership’s failure to title the vehicles at the time of sale. As the bell cannot be unrung,
19 the Protest must be denied.

20 **FACTUAL BACKGROUND**

21 **A. The Parties**

22 1. Respondent FCA US LLC

23 FCA US is the exclusive distributor of Chrysler, Jeep, Dodge, and Ram vehicles (“CJDR
24 vehicles”) in the United States. FCA US sells vehicles to a network of authorized dealers. The
25 dealers, in turn, sell CJDR vehicles and provide authorized service to the general, consuming public.

26 2. Protestant HC Automotive, Inc.

27 Hooman CDJR is a dealership located in Inglewood, in Los Angeles County, California.
28 Hooman CDJR is part of an experienced dealership group that operates multiple dealerships in

1 California under the direction of Mr. Hooman Nissani (“Mr. Nissani”). In 2014, the year of the audit,
2 Hooman CDJR sold roughly 1,000 retail units. (RT II p. 46)¹ Mr. Nissani is a sophisticated
3 businessman who also owns Toyota, Nissan, Acura, Chevrolet, Hyundai, and Volvo dealerships, in
4 additional to numerous other non-dealership businesses. (RT I pp. 37-38, 40)

5 FCA US and Hooman CDJR are parties to a dealer agreement that includes a Term Sales and
6 Service Agreement (“TSSA”) and Additional Terms and Provisions (together, the “Dealer
7 Agreement”). (Exhs 202; 203; JtExh 1:0002) The relationship is also governed by certain manuals,
8 including a Dealer Policy Manual and the Incentive Rules Manual. (Exhs 206a; 207a; 207b)² The
9 TSSA reflects that FCA US “has entered into this Term Agreement relying on the active, substantial
10 and continuing personal participation in the management of” the dealership by “Hooman M
11 Nissani.” (Exh 202:0001) In the TSSA, the dealership agreed that Mr. Nissani “will be physically
12 present at the Dealer’s facility . . . during most of its operating hours.” (Exh 202:0002) Mr. Nissani,
13 however, admitted that he spends only 15 to 20 percent of his time at Hooman CDJR. (RT I p. 47)
14 Additionally, in the TSSA, the dealership agreed that it would complete an expansion and renovation
15 of the facility at 333 Hindry Avenue in Inglewood, “for the exclusive display, sales, and service of
16 the Chrysler, Dodge, Jeep and RAM vehicle line(s)” before November 2014, but Mr. Nissani’s
17 testimony reflected the dealership’s failure to comply. (Exh 202:0006-08; RT I pp. 61-62)

18 **B. FCA US’s Incentive Programs Are Governed by Clear Requirements**

19 1. FCA US’s Incentive Programs

20 Consistent with its efforts to provide the best possible products and support to its dealers and
21 customers, FCA US provides sales incentives to its dealers. (Exhs 207a:0004; 207b:0004) The
22 incentives are financial—when a dealership claims incentives, it receives incentive payments from
23

24 ¹ Pursuant to the Administrative Law Judge’s instructions, citations to the transcript of the
25 hearing are to “RT”—“Record Transcript”—and a roman numeral denoting the day of the hearing,
26 with the cited page numbers.

27 ² Exhibits 207a and 207b were the two Incentive Rules Manuals in effect during the audit
28 period. The differences between the two documents were very limited, *e.g.*, relating to the length of
time after a vehicle is sold that the title must be retained by the purchaser. (RT II p. 103) Exhibit
206a is the Dealer Policy Manual that was in effect during the audit period. (RT II p. 82)

1 FCA US. (RT IV p. 138) Such incentives typically fall into two categories: (1) customer incentives
2 and (2) dealer incentives (also referred to as the “objective” program). (RT II pp. 93-94; RT III
3 p. 118)

4 Customer incentives are incentives that are paid to a customer through a dealer. (RT III p. 13)
5 These incentives include, for example, Conquest Lease to Retail/Lease programs that incentivize
6 current lessees of competitive vehicles to purchase or lease a FCA US vehicle; incentives for
7 members of the military; and incentives for recent college graduates. (Exh 282:0007, 0009; RT III
8 pp. 12-15, 118-19) Dealers claim payments for customer incentives by representing to FCA US that
9 the customer is eligible for the incentive, based on specific program rules, and that the vehicle is
10 eligible for incentives. (RT III pp. 13-15)

11 Dealer incentives, on the other hand, represent payments directly to the dealer. (Exh
12 206a:0044; RT III pp. 121-23) An example of a dealer incentive is the Volume Growth Program
13 (“VGP”), a monthly program that rewards dealers for reaching certain sales goals. (Exh 282:0011-
14 43, 0046-51; RT I pp. 145-46) These sales goals are stated in terms of the number of units sold.
15 (Exhs 282; 274 (showing sales objectives); RT III p. 122) The programs may have more than one
16 component, allowing dealers to receive incentive payments both for reaching a standard VGP
17 objective (many of which allow payments per vehicle, retroactive to the first vehicle sold that
18 month) and also for reaching bonus objectives. (RT II p. 48; *e.g.*, Exh 282:0039-43 (reflecting a “fast
19 start” program, a “core” program, and a “Non-Retro Bonus”)) The sale of a single vehicle that is
20 eligible for incentives may qualify the dealer for multiple incentive payments (including both
21 customer and dealer incentives). Dealers claim these dealer incentives merely by reporting a vehicle
22 as sold, and eligible, into the NVDR system. (Exh 206a:0044; RT II pp. 95-96) Dealers are not
23 required to participate in these incentives programs. They do so only if they seek compensation in
24 return. Because VGP is an objective-based program, and payments can be retroactive to the first unit
25 sold that month, the incremental value of the sale that allows the dealership to reach an objective
26 may be high.³ (RT III p. 122) Because VGP is a monthly program, it is also important that vehicles

27 _____
28 ³ As an illustration, if a given month’s objective is 75 units and the incentive is \$500 per unit,
retroactive to the first unit, selling the 74th unit would not result in any incentive payment, but selling

1 claimed toward a VGP objective were actually sold in that month. (RT III p. 17; *see also* RT II p.
2 47)

3 2. FCA US's Audit Program: Trust and Verify

4 To properly handle incentive claims and to ensure that dealers timely receive payment, FCA
5 US accepts, as an initial matter, dealers' representations via electronic submissions that vehicles (and
6 customers) are eligible for incentive payments. (RT II p. 96; RT III p. 14-15) Because FCA US has
7 close to 3,000 dealers, the ability to rely on its dealers to comply with the rules, and to honestly
8 report their compliance, is crucial. (RT III p. 162) Mr. Nissani recognized the requirement for honest
9 reporting, agreeing that when Hooman CDJR submits incentive claims, the dealership represents that
10 it is in compliance with Chrysler's incentive policies. (RT I pp. 122-23) Mr. Nissani said, "We
11 wouldn't be submitting it if we were not." (*Id.*)

12 Incentives result in very significant payments from FCA US to dealerships. For instance,
13 Hooman CDJR was paid more than \$1.445 million in incentives in the roughly 12-month period
14 between when the dealership opened and the audit began. (Exh 213:0002; RT II pp. 43-44; RT I
15 p. 61) (Multiplied by close to 3,000 dealers, that would reflect payments of several billion dollars in
16 that time frame.) And, as became painfully obvious in the present matter, it is important for FCA US
17 to occasionally monitor the incentive claims to verify the dealerships' compliance with the incentive
18 policies and to ensure the payments it is making are appropriate. To do so, FCA US occasionally
19 audits its dealers. (RT II pp. 96, 100; RT III p. 14-15)

20 FCA US's right to audit dealerships is ingrained in both its agreements with Hooman CDJR
21 and in California law. Hooman CDJR's Dealer Agreement protects FCA US's right to conduct
22 audits: "DEALER agrees that [FCA US] may at any time for confidential use inspect DEALER's
23 books and records . . . to verify invoices or other claims DEALER may render to [FCA US]." (Exh
24 203:0006; RT IV pp. 8-9) That right is also protected by the Dealer Policy Manual and the
25 Incentives Rules Manual. The Dealer Policy Manual states that all sales incentive payments FCA US
26 makes to a dealer "are subject to audit and chargeback," and thus that "[i]t is vital that all the data

27
28 the 75th would result in \$37,500 of incentive payments. The 76th eligible unit would result in an
additional \$500 payment.

1 submitted to [FCA US] is accurate and complete.” (Exh 206a:0014) The Incentive Rules Manual
2 reiterates that FCA US reserves the right to audit the dealership and that the dealership has agreed to
3 be audited. (Exhs 207a:0004; 207b:0004) Moreover, it repeats that “if an audit reveals failure to
4 comply with program rules or that false or fraudulent claims/information were submitted to [FCA
5 US], [FCA US] will charge back the dealer amounts improperly claimed” (Exhs 207a:0004;
6 207b:0004)

7 Thus, if a dealership improperly claims incentives for an ineligible vehicle, FCA US will
8 chargeback the incentives paid on account of that vehicle in an audit. (RT II p. 100) And just as
9 properly-sold vehicles that reach a dealership’s sales objectives under VGP programs can have a
10 very high incremental value, if an audit uncovers that a dealership improperly claimed incentives on
11 those vehicles that allowed it to reach its sales objectives, the incremental chargeback can be high.⁴

12 3. The Incentive Rules Manual Sets Forth Reasonable and Nondiscriminatory
13 Documentation and Record Retention Requirements and Incentive Terms

14 Because the incentive programs are very important and result in the exchange of large
15 amounts of money, every FCA US incentive program, regardless of whether it is a customer
16 incentive or dealer incentive, is governed by the Incentive Rules Manual and individual program
17 rules. (Exhs 207a:0005; 207b:0005; 282; RT II p. 98) Dealers are required to acknowledge in writing
18 their access to, and their responsibility to read and understand, the Incentive Rules Manual. (Exh
19 204) Moreover, to ensure that the requirements of the Incentive Rules Manual are not inadvertently
20 overlooked, the Incentive Rules Manual is incorporated into the Dealer Policy Manual and
21 referenced in every set of program rules. (Exh 206a:0040; Exh 282:0007 (“Refer to the latest version
22 of the Incentive Program Rules Manual (referred to as the Gold Book) and Incentive Summary
23 Communications.”); *id.* at 0009 (same); *id.* at 0010 (same); *id.* at 0011 (same); *id.* at 0015 (same); *id.*
24 at 0020 (same); *id.* at 0025 (same); *id.* at 0029 (same); *id.* at 0033 (same); *id.* at 0036 (same); *id.* at
25 0039; *id.* at 0046 (same); *id.* at 0044 (“Refer to Incentive Rules Manual (Gold Book) and Incentive
26

27 ⁴ To use the same example as in footnote 2, if the 76th vehicle is charged back, the
28 chargeback would be \$500. But if the 75th vehicle is charged back, there would be a \$37,500
chargeback. (*See generally* RT II pp. 57-62)

1 Summary Communications.”); RT III p. 127) Although program rules change monthly, the
2 requirement to comply with the Incentive Rules Manual never changes. (RT II pp. 65-67) The
3 Incentive Rules Manual sets out both reasonable and nondiscriminatory record retention
4 requirements and other terms that apply to every incentive program.

5 a. Reasonable and Nondiscriminatory Documentation Requirements

6 The Incentive Rules Manual is a straightforward document. Relevant here, it contains simple,
7 reasonable, and nondiscriminatory Record Retention Requirements. These requirements include that
8 “All documents/records pertaining to the acquisition, sale/lease and delivery of a vehicle must be
9 retained by the selling dealership for a minimum of two (2) years from the date of incentive
10 payment” (Exhs 207a:0016, 207b:0016) Dealerships are required to retain, “[a]t a minimum,”
11 the following:

- 12 • Customer’s Bill of Sale/Dealership Invoice
- 13 • Lease Agreement/Contract (if applicable)
- 14 • Title and Registration Documents including a copy of the actual title and/or official
15 state confirmation thereof
- 16 • Signed Buyer’s Order/Purchase Contract
- 17 • Customer Certificate/Coupon (if applicable)
- 18 • Program specific claim form (Employee Advantage Chrysler Employee
19 Purchase/Lease Claim, Dealership Employee Purchase, Friends, Affiliate Rewards,
20 Certain Designated Individual, On the Job, Target Direct Mailings, etc.), if applicable
- 21 • Proof of customer eligibility for incentive program (if applicable)
- 22 • All Customer Payment Documents including copies of checks and all receipts
- 23 • Factory Vehicle Invoice
- 24 • Finance Contract (if applicable)
- 25 • Lease/Short-term Finance Worksheets (if applicable)
- 26 • Odometer Statement
- 27 • Insurance Verification
- 28 • Carrier/Shipper Receipt (proof of vehicle delivery to dealership = ‘X’ Date)

- 1 • Customer Dealership Delivery Document
- 2 • Vehicle Order Confirmation

3 (Exhs 207a:0016, 207b:0016)

4 The document requirements are not surprising. The Dealer Policy Manual contains a
5 substantially identical list. (Exh 206a:0042; *see also* RT II pp. 91, 100) Moreover, the Dealer Policy
6 Manual states that “It is your responsibility as a dealer to maintain complete and accurate supporting
7 documents for all incentive transactions, such as sales incentives” (Ex. 206a:0040) These
8 requirements are less stringent, moreover, than the requirements under California law. *See* 13 Cal.
9 Code Regs. § 272.00 (“Unless otherwise specified by statute, all business records relating to vehicle
10 transactions shall be retained by the dealership for a period of not less than three years.”). They are
11 also shorter than Hooman CDJR’s alleged record retention practices. Mr. Nissani testified that
12 Hooman CDJR had a record retention policy that maintained deal jackets (folders that contain all the
13 relevant documents for the sale of a vehicle) for at least five years. (RT I p. 60; RT II p. 22)

14 b. The Incentive Rules Manual Sets Forth Terms Applicable to All FCA
15 US Incentive Programs

16 The Incentives Rules Manual also limits which vehicles are eligible for incentive programs.
17 Vehicles are ineligible for incentive programs (among other reasons) if they are purchased for resale,
18 they are not titled to the New Vehicle Delivery Report (“NVDR”) customer at the time of sale, or
19 title is not held for a minimum of three months (six months for those vehicles sold before June 2014)
20 from the time of the sale. (Exhs 207b:0006; 207a:0006; RT II p. 99 (“ineligible” vehicles not eligible
21 for incentives)) NVDR is a process whereby a dealer reports to FCA US that it has sold vehicles.
22 (JtExh 2:0002) The reports are made using DealerCONNECT, the same system in which the
23 dealership can access the Incentive Rules Manual. (RT II p. 26, 91-93; JtExh 2:0002)

24 The Incentives Manual further explains that eligible vehicles may be:

25 New and unused vehicles sold or leased to any entity with a dealer license that are
26 titled at the time of sale. Title must be retained on these vehicles for a minimum of
27 three (3) months after the reported NVDR delivery date. The selling dealership must
28 ensure these requirements are fulfilled. The selling dealership is also responsible for
compliance with state tax, licensing and registration requirements. Any violation will
result in the chargeback of all incentives[.]

1 (Exhs 207b-0006 (emphasis supplied); *see also* 207a-0006)

2 4. Mr. Nissani Acknowledged Receipt of the Incentive Rules Manual on Behalf
3 of Hooman CDJR Before the Beginning of the Audit Period

4 Before the audit period began, Hooman CDJR received the Incentive Rules Manual and the
5 requirements it sets forth. Mr. Nissani, as the dealer principal for Hooman CDJR, signed a document
6 dated October 15, 2013, titled “Dealer Acknowledgment of Receipt of Chrysler Group LLC
7 Incentive Program Rules Manual DAP-27.” (Exh 204:0001; RT I p. 102; RT II p. 90) That document
8 reflects that the Dealer Policy Manual and the Incentives Manual are accessible in
9 DealerCONNECT, the software package that enables a dealership to communicate electronically
10 with FCA US. (*Id.*; JtExh 2:0001-02) In light of the importance of the two manuals, FCA US ensures
11 they are available to dealers electronically, 24 hours a day, 7 days a week. (Exh 206a:0040; RT I p.
12 162; RT IV pp. 11-12)

13 Mr. Nissani’s signature reflects his acknowledgement “that upon receiving access to the []
14 DealerCONNECT website it is my responsibility to read and thoroughly understand the contents of
15 the [Incentives Rules] Manual and to require my employees who are involved in any way in the
16 processing of sales incentive claims to read and thoroughly understand the contents of the
17 [Incentives Rules] Manual.” (Exh 204:0001 (emphasis added); *see also* RT I pp. 102-04) The
18 document reiterates that “All incentive claims made by your dealership will be governed by the rules
19 in the [Incentive Rules] Manual and the dealership may be audited and charged back if you fail to
20 comply with the rules stated in the [Incentive Rules] Manual.” (Exh 204:0001 (emphasis added); RT
21 I p. 104)

22 5. Hooman CDJR Received Incentive Claim Training From Julio Sebastiani
23 Before the Audit

24 In addition to having received the Dealer Policy Manual and the Incentive Rules Manual, and
25 the unambiguous terms that they set forth for incentive programs and documentation requirements,
26 Hooman CDJR received training in incentive claims. As Mr. Nissani acknowledged, Julio Sebastiani
27 sat down with several people in the Hooman CDJR business office during the first few weeks the
28 dealership was in business, to discuss incentive claims. (RT I p. 121) Mr. Sebastiani elaborated,

1 stating that he met with office staff and management of Hooman CDJR on more than two occasions.
2 (RT I pp. 149-51) When he met with them, he discussed “[t]he process of claiming incentives.” (RT
3 I p. 151) At the time, Mr. Sebastiani was FCA US’s Area Sales Manager for the Orange County and
4 L.A. South District.

5 Together with Hooman CDJR’s employees, during at least one of the meetings with Hooman
6 CDJR’s office staff, Mr. Sebastiani contacted a helpdesk hotline regarding incentives. (RT I pp. 151-
7 52) On each of the hotline calls, the hotline referenced the Incentive Rules Manual. (RT I p. 152) For
8 those incentives, Mr. Sebastiani discussed various documents required by the Incentive Rules
9 Manual, including title and a Buyer’s Agreement. (RT I p. 156) Mr. Sebastiani discussed with the
10 Hooman CDJR employees that vehicles were required to show title to have incentives paid. (RT I p.
11 159) William Danforth, a Dealer Audit Manager for FCA US, testified that the training administered
12 by Mr. Sebastiani would have been applicable to dealer-cash based incentives at issue here. (RT III
13 p. 124)

14 Further, Mr. Sebastiani gave uncontroverted testimony that he told Mr. Nissani’s brother,
15 Rayan Nissani (“Rayan”), who was acting as “the decision maker” at Hooman CDJR, that any
16 vehicle Hooman CDJR sold to itself as a loaner vehicle needed to be titled at the time of sale. (RT I
17 pp. 138, 172, 190, 200-01)⁵

18 **C. The Audit of Hooman CDJR Resulted in a \$385,115.00 Chargeback on Multiple**
19 **Independent Grounds**

20 Matthew Gabel, a dealer auditor for FCA US, began a sales incentive audit of Hooman CDJR
21 on December 1, 2014. (JtExh 1:0002) Rayan was the “point of contact” for the audit and insisted on
22 being present throughout the entire audit. (RT II pp. 16, 18-19) Although Mr. Gabel sent Rayan a
23

24 ⁵ Mr. Sebastiani testified that any testimony to the contrary would be untruthful, which the
25 dealership appeared to acknowledge, as it did not call Rayan or otherwise attempt to contradict
26 Mr. Sebastiani’s testimony. (RT I pp. 200-01) It appeared that Mr. Nissani tried to undercut
27 Mr. Sebastiani’s testimony by claiming that he asked Mr. Sebastiani about a “program” and that
28 Mr. Sebastiani did not know the “rules” of an incentive program that did not exist. (RT IV p. 263-64;
RT V pp. 37-38) Even if Mr. Nissani’s testimony were credible, however, it is irrelevant—whether
Mr. Sebastiani had information about a non-existent program does not reflect on the fact that he
informed the dealership that it would need to title any vehicles it sold to itself at the time of sale.

1 pull list the week before the audit, and although the Dealer Policy Manual stipulates that a dealer
2 “must immediately provide the auditor with any documents requested,” Mr. Gabel testified that no
3 deals were available for his review when the audit began, and that he was denied access to the
4 dealer’s business center, which was unusual for any audit he has ever conducted. (RT II pp. 17-19;
5 Exh 206a:0004; Exh 211) Rayan also refused to provide deal jackets to Mr. Gabel, instead providing
6 Mr. Gabel only single documents at a time. (RT II p. 28) Mr. Gabel testified that he felt the
7 dealership was “trying to hide something” from him. (RT II p. 29)

8 During the audit, Mr. Gabel reviewed 163 VINs and determined that 108 of those vehicles
9 had been submitted for incentives although they were noncompliant with the sales incentive rules.
10 The vast majority of these chargebacks—and the only chargebacks the dealership is contesting⁶—
11 relate to vehicles “sold” to the dealership, allegedly to serve as loaner vehicles. (RT II pp. 42-43,
12 114) Mr. Gabel discussed the Incentive Rules Manual with Rayan during the audit, and also showed
13 portions of the Incentive Rules Manual to him. (RT II p. 98)

14 Mr. Nissani has admitted that, for the chargebacks the dealership is contesting, the charged-
15 back vehicles were not titled at the time of sale. (RT I p. 125; RT II p. 68) Mr. Nissani also admitted
16 that contracts were not created when the dealership sold vehicles to itself. (RT I p. 72; Exh
17 221:0001; RT II pp. 68-69) In fact, in correspondence with Mr. Gabel, Mr. Nissani claimed that
18 creating such contracts was a waste of “paper and \$4 for each contract.” (Exh 222:0002)

19 The purpose of Hooman CDJR’s sales to itself was immaterial for the audit. (RT II p. 161)
20 However, in light of Hooman CDJR’s representations, Mr. Gabel asked Rayan to show him the
21 loaner vehicles. Rayan was only able to show him two or three, each of which were parked in the
22 sale lot, by vehicles for sale, and they had less than ten miles on the odometers and Monroney labels
23 on the windows. (RT II pp. 162-63)

24 After several days at the dealership, dealing with a blockade of the business center, and poor
25 record-keeping and compliance, Mr. Gabel concluded that a chargeback of \$385,115.00 was
26

27 ⁶ There were several chargebacks for incentive claims for which the vehicles’ eligibility for a
28 program was not established. (*E.g.*, Exh 213:0002) Those chargebacks are not contested and are
therefore admitted by Protestant.

1 required. (RT II p. 75; Exh 213) The dealership never challenged or contested the calculation of the
2 chargeback in this case. (RT II p. 68; Exh 223:0003, 49) Mr. Gabel told Rayan that if the vehicles
3 were not titled at the time of sale, the noncompliance could not be cured. (RT III p. 108-09)

4 Mr. Gabel conducted an exit meeting regarding the audit on December 5, 2014, and provided
5 written notice of the results to Hooman CDJR that day. (RT II p. 119; Exh 213) The exit meeting
6 covers the audit findings and presents the dealer with information about the chargebacks, the appeal
7 process, and the Incentive Rules Manual. (RT II p. 39) Rayan attended the exit meeting in person,
8 although Mr. Nissani did not (he may have attended by telephone). (RT II pp. 39-40)

9 The written notice specified every VIN that was being charged back, and each of the reasons
10 it was being charged back. (Exh 213:0004-45) The vast majority of the VINs were charged back for
11 two reasons, each of which would be sufficient to justify the chargeback independently: (1) the
12 vehicles were not titled to the NVDR customer at the time of sale, and (2) the deal file—that is, all of
13 the required sales documentation—was missing. (*Id.*; RT II pp. 72-74, 136; RT III pp. 40-41)
14 Mr. Gabel independently verified, for each vehicle at issue, that the vehicle had not been timely
15 titled. (RT II p. 133; RT III p. 99) Mr. Gabel also provided documentation that reflected the
16 calculation of the chargeback. (Exh 213:0003-49)

17 Mr. Gabel then offered Hooman CDJR its first post-audit opportunity to provide the missing
18 documentation and prove that the vehicles had been titled to the NVDR customer at the time of sale.
19 (Exh 213; RT II p. 40) The dealership was initially provided until January 5, 2015, a period of thirty-
20 one days, to provide documents to demonstrate that the chargebacks were made in error. (RT II p.
21 40) Although the dealership represented that it would provide missing documentation, it provided no
22 documentation during that time. (RT II pp. 79-80) Mr. Gabel then provided Hooman CDJR a second
23 opportunity to provide the missing documentation and proof, unilaterally extending the period to
24 allow the dealership to submit documentation, as a courtesy. (Exh 220; RT II p. 127)

25 Finally, Mr. Nissani submitted documents. He submitted DMVdesk Vehicle Registration
26 Inquiry Reports for a subset of the vehicles (Exh 217), and “screenshots,” apparently computer
27 printouts, for a subset of the vehicles. (Exh 221) Mr. Nissani represented that “this is everything we
28 have on the” vehicles. (Exh 221:0001) Mr. Nissani did not provide titles for any of the vehicles, and

1 he did not provide any contracts, let alone the other required documents. (RT III pp. 40-41, 88; RT
2 IV pp. 138-39) To the contrary, he asserted that “we don’t print contracts between cars that are going
3 to rental as the agreement would be between ourselves.” (Exh 221:0001) Mr. Gabel responded that
4 “the vehicle title activity was processed after the audit had begun. Also when a vehicle is sold to the
5 dealer we still require a contract and all other associated paperwork just as any other deal.” (Exh
6 222:0003) In response, Mr. Nissani said, “I am sorry why do we need to waste paper and \$4 for each
7 contract, when it is only a contract between ourselves?” (*Id.*) He wrote to Mr. Gabel that “all of the
8 DMV work was done correctly.” (*Id.*)

9 Neither Mr. Nissani’s representations nor the documents that were provided impacted the
10 chargeback. The DMVdesk reports were not what Mr. Gabel requested, were not the vehicles’ titles,
11 and did not even reflect the date that title for the vehicles was obtained.⁷ (RT II pp. 120-21)
12 Mr. Gabel reiterated to the dealership which documents he required, and even copied a portion of the
13 Incentive Rules Manual into his email, listing the Record Retention Requirements. (Exh 222:0001-
14 02) The screenshots were irrelevant. (RT III p. 67) Hooman CDJR hinted at additional documents,
15 but did not provide them. (RT II pp. 126-28)

16 Pursuant to Mr. Nissani’s representation that “everything” had been provided, Mr. Gabel
17 determined that no changes to the chargeback were merited. (Exh 222:0001) He noted both of the
18 independent grounds for the chargebacks. (Exh 222:0001) In response to Mr. Gabel’s statement that
19 “The titling for the subject vehicles was processed after the date the audit began and not at the time
20 of sale,” Mr. Nissani apparently protested “yes they were.” (Exh 222:0001) Nonetheless, Mr. Nissani
21 has admitted under oath that the vehicles were not titled before the audit began, much less at the time
22 of the sale. (RT I p. 125)

23 On January 14, 2015, Mr. Gabel sent Mr. Nissani the “final reports” from the audit, with a
24 chargeback of \$385,115.00. (Exh 223:0001; RT II pp. 50-51, 134) Mr. Gabel’s correspondence
25 provided Hooman CDJR with a third opportunity to submit documentation, along with a request for
26

27 ⁷ The dealership’s failure to produce titles was particularly noteworthy in light of the fact
28 that, as the seller and purchaser of the vehicles, one would expect the dealership to possess a copy of
the title. (*See* RT II pp. 121-22)

1 an Audit Manager Review (“AMR”) of the audit and chargeback amount. (Exh 223:0002) The letter,
2 sent by email to both Rayan and Mr. Nissani, specified that the AMR and the supporting documents
3 were due to FCA no later than “twenty (20) calendar days following the date of this Audit Report
4 Letter,” or by February 3, 2015. (Exh 223:0001-02) The letter stated that “no further action” was
5 required “[i]f you accept the audit findings,” and described that, in such a situation, a debit would be
6 processed against Hooman CDJR’s dealer statement for the amount of the chargeback “[i]n
7 approximately thirty (30) calendar days,” or approximately February 13, 2015. (Exh 223:0002)

8 The dealership belatedly requested an AMR and, though late, FCA US agreed to proceed
9 with the AMR. (RT III pp. 143-44) Hooman CDJR again submitted the same DMVdesk Vehicle
10 Registration Inquiry Reports and screenshots, but nothing else. (Exh 232) Mr. Gabel had no
11 decision-making power in the AMR, and no role in the audit appeal. (RT II p. 88)

12 William Danforth performed the AMR for FCA US. (RT III p. 144) He reviewed the
13 documents submitted by Mr. Nissani, reviewed the accuracy of Mr. Gabel’s audit, and because
14 Mr. Nissani failed to submit appropriate documents, took the extra step of requesting and reviewing
15 a sample of Auto Check Vehicle History Reports obtained by Mr. Gabel for vehicles that had been
16 charged back. (RT IV p. 57; RT III pp. 158-59; Exh 234) The nine reports further confirmed that the
17 vehicles had been titled after the audit began and not, as required, at the time of sale. (Exh 234)
18 Additionally, there were noteworthy patterns in the reports—for instance, of the nine reports, seven
19 reflected that Hooman CDJR had provided an odometer reading to the DMV dated December 5,
20 2014, the last day of the audit. (Exh 234:0004, 0007, 0010, 0013, 0016, 0019, 0028) The alleged
21 odometer reading for each of those seven vehicles was exactly, and curiously, 15. (*Id.*)

22 On March 2, 2015, Mr. Danforth sent Mr. Nissani the results of the AMR. (Exh 236:0001)
23 Mr. Danforth’s letter states that “[t]he review resulted in no change to the audit findings as initially
24 reported.” (Exh 236:0002) It also offered Hooman CDJR its fourth opportunity to supply the missing
25 documents, in addition to titles showing that the vehicles had been titled to the NVDR customers at
26 the time of sale. (*Id.*) It gave Hooman CDJR thirty days to request a second-level appeal, to the
27 Audit Appeal Committee, and provide any documentation. (*Id.*) It directed the dealership to the
28 Dealer Policy Manual regarding the addresses to which to send any appeal materials, stating that the

1 “request must be sent to the Director – Dealer Relations and Development, with copies to the Audit
2 Manager and your Business Center Manager.” (*Id.*)

3 **D. The Audit Appeal Committee Found Hooman CDJR Failed to Comply With the**
4 **Incentive and Record Retention Requirements, But Provided a Good-Will Offset**
5 **of \$101,660.00, for a Final Chargeback of \$283,445.00**

6 FCA US maintains an Audit Appeal Committee as the final level of review of the results of
7 an audit. (RT IV p. 128) The Dealer Policy Manual succinctly sets forth a great deal of information
8 about the Audit Appeal Process for the benefit of FCA US’s dealers. (Exh 206a:0011-14)

9 On March 20, 2015, instead of following the directions in Mr. Danforth’s letter or the clear
10 terms of the Dealer Policy Manual, Mr. Nissani wrote to Mr. Danforth to request an audit appeal.
11 (Exh 238:0001-02) Even though the request was improperly submitted, FCA US nonetheless
12 extended Hooman CDJR the courtesy of considering the appeal. (RT IV p. 71)

13 Despite the acknowledgement that he had personally signed, Mr. Nissani’s letter seeking
14 appeal claimed that “at no time did we ever receive a Dealer Policy Manual.” (Exh 238:0002)
15 Despite the acknowledgement, the individual incentive program rules, the training the dealership had
16 received from Mr. Sebastiani, and the audit itself, Mr. Nissani claimed that Mr. Danforth’s letter was
17 the “first time we have ever even heard of” the Incentive Rules Manual, also referred to as the “Gold
18 Book.” (*Id.*) And again despite Mr. Sebastiani’s training and the plethora of documents at the
19 dealership’s disposal, Mr. Nissani wrote that “At no time did we receive any kind of procedure
20 training or instructions from the [*sic*] Chrysler.” (*Id.*)

21 Mr. Nissani’s letter is also noteworthy for what was absent: the letter did not suggest that
22 there had been any error in the audit or the AMR. (Exh 238:0002-03) Mr. Nissani did not claim that
23 any of the dealership’s failures to adhere to the terms of the incentive programs or record retention
24 requirements had been cured. (*Id.*) Rather, he requested that the “chargebacks resulting from this
25 audit (as well as any others resulting from unwitting procedure [*sic*] errors occurring from then until
26 now) be waived[.]” (Exh 238:0003 (emphasis added)) Mr. Nissani again attached the same selection
27 of DMVdesk Vehicle Registration Inquiry Reports and certain screenshots, and nothing more. (Exh
28 238:0093, 0094; 239:0005, 0088)

Mr. Danforth forwarded the appeal request to Geoff Edmonds, Manager of Dealer Relations

1 for FCA US, and Christopher Glenn, the Director of U.S. Dealer Relations and Retail Strategies for
2 FCA US. (Exh 239) FCA US agreed to consider Mr. Nissani's errant request. (RT IV p. 71) Mr.
3 Edmonds subsequently arranged to have an Audit Appeal Committee meeting to address Mr.
4 Nissani's request on July 9, 2015.⁸ (Exhs 243; 244)

5 Five members of the Audit Appeal Committee attended Hooman CDJR's appeal. (RT IV p.
6 81) The members, who are director-level individuals, included members of senior management of
7 various groups within FCA US, including incentive finance, warranty, procurement and supply,
8 service and parts/quality finance, and dealer relations and retail strategies. (RT IV pp. 81-82, 129-31)
9 Mr. Glenn is the chair of the Audit Appeal Committee. (RT IV p. 127) Mr. Glenn, however, does not
10 have any authority over any of the other voting members. (RT IV p. 131)

11 At the Audit Appeal Committee meeting, Mr. Nissani was allowed to present his position as
12 to why all or some of the chargeback should be waived. (RT IV pp. 82-83) Mr. Nissani claimed that
13 Hooman CDJR had not complied with the requirements because he was not aware of them. (*Id.*) Mr.
14 Nissani acknowledged at the meeting that the dealership had an obligation to follow the rules, and
15 acknowledged that there were not contracts for the sales and that the vehicles were not titled at the
16 time of sale. (RT IV pp. 146-47)

17 The Audit Appeal Committee, after carefully considering Mr. Nissani's request for leniency,
18 concluded that there was "no basis for any adjustment to the chargeback." (Exh 246:0001; RT IV p.
19 152) The only issue, then, was whether the Committee would offer a good-will offset to the amounts
20 that Hooman CDJR owed. (RT IV pp. 152-54) The committee made a goodwill decision to take into
21 consideration Hooman CDJR's alleged loaner program, and to consider making an adjustment to the
22 amount that was being charged back if Mr. Nissani could demonstrate that vehicles were actually
23 being used as loaners. (RT IV p. 154) After Mr. Nissani submitted some documentation, the
24 committee decided to extend a goodwill offset—a gift—of \$101,660.00 to the dealership. (RT IV p.

25
26
27 ⁸ FCA US had initially proposed a date in the first half of May, which Mr. Nissani could not
28 do. (Exh 242:0002-03) After Mr. Nissani requested a June day and the parties agreed on June 4,
FCA US agreed to move the date to July at Mr. Nissani's understandable behest. (Exhs 242:0001-02;
243; 244)

1 181) Mr. Glenn sent the dealership a letter conveying the final determination. (RT IV pp. 166-67;
2 Exh 264) Hooman CDJR then filed these consolidated Protests.

3 **LEGAL STANDARD**

4 The protest of the sales incentive audit at issue in this matter is governed by California
5 Vehicle Code § 3065.1(g). Under this provision, franchisors are given the right to conduct such
6 audits and franchisees are permitted to protest the notice of a chargeback pursuant to an audit or an
7 audit appeal. § 3065.1(g)(1) and (6).

8 Typically, in the protest of an incentive audit, the franchisor has the burden of proof to
9 demonstrate compliance with the statutory requirements in § 3065.1(g). *Id.* However, as the
10 California Court of Appeals has held, “Obviously, a burden of proof can only exist if there is an
11 issue of fact to be determined.” *Estate of Luke*, 194 Cal. App. 3d 1006, 1021 (1987). In *Estate of*
12 *Luke*, because the party without the burden of proof (there, the defendants) represented in response
13 to interrogatories that they did not make a certain contention, the Court stated that “no issue as to”
14 that matter “remained to be determined at the hearing.” *Id.* The trial court’s finding that the party
15 with the burden of proof had failed to meet an element that the defendants did not challenge was
16 reversed. *Id.* at 1022.

17 In the present matter, Hooman CDJR has repeatedly represented to the Board and FCA US
18 that the only issue it contests—that is, “the only issue before the Board”—is “whether Protestant
19 cured the alleged noncompliance with the sales incentives identified in Respondent’s 2014 audit of
20 Protestant.” (Protestant’s Mot. *in Lim.* at 2 (emphasis added); *accord* Protestant’s Opening Br. at 6
21 (“[T]he only issue the Board should determine is whether Respondent can demonstrate that
22 Protestant failed to cure any material noncompliance when it provided evidence that the vehicles
23 placed in Protestant’s loaner fleet were tiled [*sic*] to the dealership prior to the close of the Audit.”))
24 Thus, even before the hearing, there was no issue to be determined except whether Hooman CDJR
25 cured its noncompliance with the incentive program terms and its failure to comply with
26 documentation requirements. *See Estate of Luke*, 194 Cal. App. 3d at 1021. Following the hearing,
27 all issues must be resolved in FCA US’s favor.

1 **THE PROTEST MUST BE DENIED BECAUSE THE AUDIT PROPERLY**
2 **RESULTED IN A CHARGEBACK OF \$385,115.00**

3 **A. Hooman CDJR Failed to Cure the Bases for the Chargebacks**

4 There were two separate and independent grounds for each of the contested chargebacks in
5 this matter, and each ground would have been sufficient to justify the chargeback alone: (1) the
6 vehicles were not titled to the NVDR customer at the time of sale, and (2) the deal file was missing
7 (that is, the dealership could provide none of the required documentation). (Exh 213; RT II pp. 72-
8 74, 136; RT III pp. 40-41) The only issue Hooman CDJR raised in this litigation is whether the
9 dealership “cured” these two issues. (*See* Protestant’s Mot. *in Lim.* at 2, 7, 8 (“Pursuant to Vehicle
10 Code Section 3065.1, the Board’s consideration of this Protestant should be limited to whether
11 Protestant cured the alleged material noncompliance with any previously communicated incentive
12 program.”); Protestant’s Opening Br. at 6.) Based on the totality of the evidence, it is undisputable
13 that there has been no cure.

14 In the present matter, Protestant could have cured only by providing both the missing deal
15 files and documentation proving that the vehicles were timely titled. Neither was supplied. (RT IV
16 pp. 138-39) As Administrative Law Judge Woodward Hagle stated at the hearing, recognizing that
17 Protestant never produced contracts for the vehicles at issue, “The saddest words,” she said, “[w]hat
18 might have been.[’]” (RT III p. 88) In accord with this sentiment, the evidence mandates a decision
19 in FCA US’s favor.

20 1. Hooman CDJR Did Not Cure Its Failure to Document “Sales”

21 Hooman CDJR failed to cure the first independent basis for the chargebacks because it never
22 produced the required deal files to FCA US. FCA US, like all franchisors, can charge back claims
23 where there is “material noncompliance with reasonable and nondiscriminatory documentation . . .
24 requirements.” § 3065.1(g)(2). As noted above, the present chargebacks are based on the complete
25 absence of universally required documents that are listed in multiple manuals which are always
26 available to dealerships. (Exhs 207a:0016, 207b:0016; 206a:0040, 0042) These requirements reflect
27 the requirements under California law. *See* 13 Cal. Code Regs. § 272.00 (“Unless otherwise
28 specified by statute, all business records relating to vehicle transactions shall be retained by the

1 dealership for a period of not less than three years.”).

2 The dealership does not even pretend to have submitted most of the required documents.
3 That, alone, is grounds to deny the Protest. In fact, the only document it purports to have submitted
4 were the screenshots it belatedly claims were akin to contracts. But, as Administrative Law Judge
5 Woodward Hagle recognized at the hearing, there was no factual dispute—Hooman CDJR did not
6 submit any documents to demonstrate contracts for the vehicles at issue. (RT III p. 88)

7 Protestant’s claim regarding the screenshots was specious. Its argument was premised on the
8 submission of certain screenshots—certainly not concerning every vehicle at issue—labeled “F&I –
9 Deal Worksheet” and “Retail Recap Screen.” (RT III p. 88; Exh 238:0094) Mr. Nissani did not know
10 the “purpose” of the Retail Recap Screens, but he attempted to overcome the absence of contracts in
11 the deal files—merely one of the required but missing documents—by claiming that the documents
12 titled “F&I – Deal Worksheet” contained all of the information of a contract. (RT IV pp. 251-53)⁹

13 In fact, Mr. Nissani, when asked if there was “any difference between these F&I deal
14 worksheets and the contract,” denied that there was a difference. “Same information, same exact line
15 by line, identical,” he said. “This is a printout of our computer software that prints onto the contract.
16 So each item, if you look on – on the front screen, is numbered, those numbers and – and those items
17 line up to the contract.” (RT IV p. 253)

18 A quick review of the documents, however, is enough to see that Mr. Nissani’s claims are, at
19 best, mistaken. Mr. Nissani compared Exhibit 221, page 5 with Exhibit 281, pages 1 through 3. (RT
20 IV p. 253) The “numbers” do not, as Mr. Nissani claimed, “line up.” Rather, the items are vastly
21 different, as the following table shows:

<u>Number</u>	<u>Exh 221, page 5</u>	<u>Exh 281, pages 1-3</u>
1	Deal #	Total Cash Price
2	Deal Date	Amounts Paid to Public Officials
3	Stock #	Amounts Paid to Insurance Companies

27 ⁹ Mr. Nissani had a sudden appreciation for the Retail Recap Screen on the fifth day of the
28 hearing. (RT V p. 86) Mr. Nissani did not explain his newfound understanding of the documents, or
even acknowledge the change in his testimony.

4	Price	State Emissions Certification Fee . . .
5	Term	Subtotal
6	Rate	Total Downpayment

And so on. The documents do not come close to lining up.

Moreover, the contract has many subtopics that are not addressed in the screen shots, despite Mr. Nissani’s representations to the contrary. For instance, in response to a question from Administrative Law Judge Woodward Hagle, Mr. Nissani testified that the screenshot reflected vehicle license fees, registration transfer/titling fees, and tire fees. (RT V p. 77) Even a cursory review of the screen shots, however, shows that is not true. (Exh 221:0005)

And just in case there was any question, the record provides an even more straightforward comparison that demonstrates the problematic nature of Mr. Nissani’s comments. The record contains the F&I Deal Worksheet and Retail Recap Screen for the vehicle with VIN 1C3CCBBBXEN127559 and also contains the contract that Mr. Nissani testified was “unnecessar[ily]” created for the vehicle.¹⁰ (RT I pp. 76-77; Exhs 238:0093-94; 288:0003-05) Mr. Nissani testified that the information on Exhibit 288, pages 3-5 was populated by screen shot. (RT V p. 74) Contrary to Mr. Nissani’s representations, large, important sections of the contract have no corollary in the Deal Worksheet or Retail Recap Screen. These include an odometer reading, the breakdown of fees, the amount of a finance charge, the amount of the annual percentage rate, the Federal Truth in Lending Disclosures, the Statement of Insurance, the Electronic Vehicle Registration or Transfer Charge, and much more, as even a portion of the contract illustrates:

¹⁰ As further evidence of the inconsistent positions taken by the dealership, although Mr. Nissani said that the dealership’s employee simply “print[ed] the wrong documents,” there were a few contracts for the sale of cars to the dealership that were apparently completed. (RT I pp. 76-78; Exh 288)

Screenshots:

JAN 12, 2015 F&I - DEAL WORKSHEET Store 04 FANDI01 A95/5105 4770

HOOVAN CHRYSLER DODGE JEEP RAM 2014 CHRY 200 SD
 1 HOOVAN CHRYSLER DODGE JEEP RAM LIFE CO:

1 DEAL #	1777	9 TRADE #1		16 DOC FEE	80.00
2 DEAL DATE	03/31/2014	10 PAYOFF #1		17 WARR PREM	0.00
3 STOCK #	14C0059	6 11 DEPOSIT		18 GAP PREM	
4 PRICE	22942.00	12 CASH DOWN		19 MSRP	24585.00
TOTAL AFTMKT	0.00	13 REBATE	4500.00	20 BALLOON	0.00
TERM	1	14 REGISTERED STATE	CA	21 PYMT DATE	03/31/2014
6 RATE	0	15 COUNTY CODE	LA	AMT FINANCED	18805.75
7 DAYS	0	GOVT FEES	283.75	TAXES	0.00
8 PAY/YEAR	1				

STATUS F

NO CR -1768 0 -560
 MONTHLY PYMT () 18805.75

JAN 12, 2015 RETAIL RECAP SCREEN Store 04 FANDI01 A95/5105 4772

HOOVAN CHRYSLER DODGE JEEP RAM 2014 CHRYSLER STOCK 14C0059
 CASH DEAL 200 DATE 03/31/2014
 DAVID M BOUTWELL 1C3CCBBXEN127559 DEAL# 1777

COMMISSIONS	F/E	B/E	PRICE	22942.00
SLS 1 DAVID M BOUTWELL	0.00	0.00	VEH COST	23600.00
SLS 2	0.00	0.00	VEH GROSS	-560.00
SLS 3	0.00	0.00	GROSS PYBL	-1768.00
SLS 4	0.00	0.00		
TOTAL COMMISSIONS		0.00		
F&I MGR DAVID M BOUT	0.00	0.00	SALE PROFIT	-560.00
TEAM MGR	0.00	0.00	NET FI	0.00
DESK MGR DAVID M BOUT	0.00	0.00	SELL RATE	0
SLS MGR	0.00	0.00	BUY RATE	0
CLOSER	0.00	0.00	FIN.RESERVE	0.00
CLOSER 2	0.00	0.00		
INTERNET	0.00	0.00	TOT B/E RES	0.00
TOTAL COMMISSIONS		0.00	TOTAL PROFIT	-560.00

(F=FRONT END) (B=BACK END) (C=COMMISSIONS) (P=PRINT RECAP) (R=RO/PO)

Contract excerpt:

**RETAIL INSTALLMENT SALE CONTRACT - SIMPLE FINANCE CHARGE
(WITH ARBITRATION PROVISION)**

Dealer Number 84693 Contract Number _____ R.O.S. Number _____ Stock Number 14C0059

Buyer Name and Address (Including County and Zip Code) HOOVAN CHRYSLER DODGE JEEP RAM 333 HINDRY AVENUE INGLEWOOD CA 90301 LOS ANGELES	Co-Buyer Name and Address (Including County and Zip Code) N/A	Seller-Creditor (Name and Address) HOOVAN CHRYSLER DODGE JEEP RAM 333 HINDRY AVENUE INGLEWOOD CA 90301 LOS ANGELES
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2014	CHRYSLER 200	15	1C3CCBBXEN127559	Personal, family or household unless otherwise indicated below. <input type="checkbox"/> business or commercial

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of
0.00 %	\$ 0.00 (e)	\$ 20992.84	\$ 20992.84 (e)	\$ 4500.00 (e)

(e) means an estimate

STATEMENT OF INSURANCE		
NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.		
Vehicle Insurance		
\$ _____	Term R/A	Premium N/A
\$ _____	Ins. \$ N/A	Ins. \$ N/A
\$ _____	Ins. \$ N/A	Ins. \$ N/A

1 (Exhs 238:0093-94; 288:0003-05) Moreover, even those numbers that are provided in the Deal
2 Worksheet and the Retail Recap Screen are inconsistent.¹¹ For instance:

- 3 • The contract says the Total Cash Price is \$25,234.09; the Deal Worksheet says the
4 Price is \$22,942.00
- 5 • The contract says the Amount Financed is \$20,992.84; the Deal Worksheet says the
6 “Amt Financed” is \$18,805.75
- 7 • The contract shows that sales tax alone is \$2,187.09; the Deal Worksheet says the
8 “Taxes” are “0.00”

9 (Exhs 238:0093, 288:0004) There is certainly no indication that a “screen shot” would be a credible
10 replacement for a contract. Mr. Nissani’s representations to the contrary are not credible.

11 Contracts are important evidence of the finality of a sale and they provide important
12 information to FCA US concerning the sale, even when the sale is between a dealer and itself. (RT
13 III p. 168) Without a contract and other supporting documents, a dealer can simply “go in and report
14 at any time a sale via the computer system[.]” (RT III p. 168) And, in fact, that appears to be what
15 Hooman CDJR did in the present matter.

16 According to Mr. Nissani’s own testimony, without contracts, Hooman CDJR did not buy the
17 vehicles it “sold” at the alleged time of sale. Hooman CDJR did not segregate the amounts it had
18 “paid” for the alleged loaner vehicles in any way and did not pay any of the required taxes or fees
19 before the audit. (RT V p. 96; *see also* RT V pp. 78-79)

20 Moreover, without contracts it appears that no money was moved or changed hands in any
21 way when the dealership allegedly sold itself vehicles. Hooman CDJR purchases vehicles through a
22 flooring line. (RT V p. 8) “A flooring line of credit is secured by the vehicles purchased with the
23 loan proceeds, and the vehicles are part of the lender’s collateral. When vehicles are sold, specific

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25 ¹¹ Mr. Nissani did testify that he would have to check the screenshot to ensure that the printed
26 contract was accurate, but that statement does not make any sense if Mr. Nissani’s other testimony—
27 that the information is populated by the screenshot—is true. (RT V p. 75) If the information is, in
28 fact, populated by screenshot, the information should automatically and perfectly reflect the
screenshot. It may make sense that Mr. Nissani would want to check the information against some
third source, but it makes no sense that Mr. Nissani would need to double-check the information
against the document from which it supposedly auto-populated.

1 amounts must be paid to the lender.” *First Hawaiian Bank v. Bartel*, No. CIV 08-00177DAE-LEK,
2 2008 WL 4377329, at *1 (D. Haw. Sept. 22, 2008). “When a vehicle is sold, but the proceeds are not
3 paid to the lender, the vehicle is considered to have been sold out of trust.” *Id.* For Hooman CDJR,
4 when a vehicle is sold to a “paying customer,” Hooman CDJR is typically required to pay off the
5 sale to the flooring line within 7 to 10 days after the sale. (RT V p. 9) Yet when the dealership sells a
6 vehicle to itself, it does not pay off the flooring line, the lienholder. (RT V p. 93) In fact, it does not
7 pay off the flooring line until “the car leaves our possession and it goes to a consumer.” (RT V p. 93)
8 Thus, in a “sale” to itself, conducted without a contract, it appears that no money changes hands at
9 all, or is segregated in any way and Hooman CDJR continues to keep the vehicles on its flooring
10 line, without any notice of or paydown of the lien amount to the lender (thus apparently denying the
11 lienholder the protection it would gain from a contract). For good reason, FCA US and
12 Administrative Law Judge Woodward Hagle determined that the screen shots did not evidence a
13 contract for the sale of the vehicle. (RT II p. 173; RT III p. 88)

14 Hooman CDJR submitted none of the required documents. A submission of contracts alone
15 would have been insufficient, and that did not even occur. The chargebacks must stand.

16 2. Hooman CDJR Did Not Cure Its Failure to Title Vehicles at the Time of Sale

17 Protestant also failed to cure the other independent basis for the contested chargebacks.
18 Protestant admits that the contested vehicles were not titled at the time of sale. (RT I p. 125;
19 Protestant’s Opening Br. at 3 (“From November 2013 to the audit in 2014, Protest[ant] did not title
20 the vehicles that were transitioned to the loaner fleet because they were being sold to Protestant
21 itself.”).) Protestant could not and did not cure its failure to title vehicles to the NVDR customer at
22 the time of sale. (*See* Exhs 207b:0006; 207a:0006.)

23 There are many reasons that FCA US has the requirement that vehicles be titled at the time of
24 sale, including (1) guaranteeing that customers receive the full benefit of the manufacturer warranty,
25 (2) ensuring that FCA US’s thousands of dealers maintain similar practices and stay on equal
26 footing, (3) instilling accountability and credibility into the system for all of the dealers, and
27 (4) reducing the brokering and export of FCA US vehicles. (RT III pp. 162-63)

28 First, the warranty on vehicles begins to run at the time a vehicle is NVDR’d, not the time

1 that it is titled. (RT I pp. 147-48, RT II p. 107) By failing to title the vehicles when it sold them to
2 itself, the dealership then sold the vehicles as “new,” with a higher value than an identical “used”
3 vehicle. (RT II pp. 106-07, 116; *see* RT V pp. 7-8) Vehicles should, however, be sold as used after
4 they have been NVDR’d, especially since the warranty had already begun to run. (RT II p. 112)
5 Requiring that vehicles are titled at the time of sale ensures that consumers are not cheated out of
6 any portion of a vehicle’s warranty when they purchase a vehicle that was previously NVDR’d. And
7 the record in this case supports the importance of the requirement, because the dealership repeatedly
8 took cars that it had NVDR’d as “sold” to itself, and then turned around and sold them as new to
9 customers even though the warranty was already running. (RT II pp. 116-17) For instance, there was
10 testimony of a vehicle “sold” to the dealership on July 31, 2014, and then sold new to a customer,
11 Maria Hernandez, on October 1, 2014. (RT II pp. 156-57; RT I pp. 69-71) Ms. Hernandez’s warranty
12 was running for more than two months before she bought her vehicle “new.” FCA appropriately
13 seeks to ensure that its customers get the full benefits of their warranties. (RT II 156-57; RT III p.
14 162)

15 Second, the titling requirement, like the record retention requirements, is also important to
16 ensure uniformity among FCA US’s dealerships. FCA US has close to 3000 dealerships. (RT III
17 p. 167) As a logistical matter, it is important for FCA US to be able to interface with each of its
18 dealerships easily and efficiently. Given that the requirements are in place, it is also important to
19 encourage uniformity among the dealerships, such that dealerships that fail to adhere to the rules are
20 not unfairly rewarded for their behavior over the thousands of dealerships that do comply.

21 Third, the titling requirement also promotes accountability and credibility at dealerships. The
22 VGP incentives at issue are monthly incentives—they concern how many vehicles were sold in a
23 specific month. Without the requirement, a dealer could report as many vehicles “sold” as it may
24 like, hitting sales objectives without truly selling vehicles. (RT IV pp. 85-86) For instance,
25 dealerships could—as Hooman CDJR did in the present case—claim sales to collect incentive
26 payments without paying any fees or taxes, paying off a flooring line, or otherwise reflecting the sale
27 in any documented way, only to later sell the car as “new” to a consumer in a different month
28 without reporting the second “new” sale to FCA US. The titling requirement ensures that when

1 dealerships claim that they have sold a car to themselves, it is a legitimate sale.

2 And finally, the titling requirement discourages the brokering and export of FCA US
3 vehicles, protecting both dealerships and FCA US. Brokers prefer to deal with new vehicles. (RT III
4 pp. 163-64; RT IV pp. 44-45) By requiring dealers to title vehicles in order to claim incentives on a
5 sale, it protects FCA US from paying incentives on vehicles that can then be brokered or exported.

6 Moreover, the titling requirement is time-sensitive. Because the requirement is time-
7 sensitive, it is not possible to “belatedly” comply with it. (RT III p. 118) A dealership cannot
8 belatedly title a vehicle and thereby “cure” its failure to timely title because doing so does not extend
9 the consumer’s warranty. Such a “cure” would also put the dealerships that comply with the law and
10 the rules at any even greater disadvantage relative to dealerships like Hooman CDJR than they
11 otherwise would be. And it allows the noncompliant dealership to “shop” the vehicles it has “sold”
12 to itself to customers and brokers, up until an audit begins. If Hooman CDJR had its way, it could
13 simply title those vehicles it has not otherwise sold (for a greater profit to itself), after an audit
14 begins.

15 In questioning Matthew Gabel, Protestant’s counsel attempted to compare the cure for
16 missing documentation to support a conquest sale (that is, for customers who are lessees of a
17 competitor’s vehicle and purchase or lease a CJDR vehicle) with the opportunity to cure Protestant’s
18 failure to title vehicles at the time of sale. (RT III pp. 13-16) Mr. Gabel explained how an absence of
19 required documents could be cured—for instance, a dealership could collect evidence of a prior lease
20 or of timely titling—after an audit had commenced. (RT III pp. 16-18) However, a dealer cannot
21 cure a failure to comply as an initial matter. If the consumer in the conquest lease example had never
22 actually leased a competitor’s vehicle, the consumer would not be eligible for the incentive and the
23 dealership’s failure to comply could not be cured. (RT III p. 17) Similarly, if a dealer failed to title a
24 vehicle at the time of sale, the dealership cannot “backdate” a title, and cannot cure its failure to
25 comply. (RT III pp. 18, 157)

26 Further, because Hooman CDJR claimed to have turned the vehicles into loaners, Mr. Gabel
27 also expressed concern that vehicles that were not titled may “be potentially illegal for operation on
28 the road.” (RT II p. 116) The titling requirement corresponds to California law. California law

1 requires a dealer to “submit to the [DMV] an application accompanied by all fees and penalties due
2 for registration or transfer of registration of the vehicle”—thus any temporary registration is
3 insufficient—“within . . . 20 days if the vehicle is a new vehicle.” Cal. Veh. Code § 4456 (emphasis
4 added). Mr. Nissani explained that there was “[a]bsolutely not” a difference “between the act of
5 titling a vehicle and the act of registering a vehicle.” (RT IV p. 236)

6 The law that required registration, and therefore titling, of a vehicle within 20 days
7 emphasized that accurate records at the DMV are important not only to owners and lien holders, but
8 also to law enforcement, tax collection, and pollution control agencies. Motor Vehicles--
9 Registration--Electronic Filing, 2011 Cal. Legis. Serv. Ch. 329 (A.B. 1215); (RT V p. 91 (stating
10 procedure for titling and registration is the same)). The law also required dealerships to use
11 electronic vehicle registration to reduce the time period required for “issuance of permanent license
12 plates from a period of weeks or months to days.” 2011 Cal. Legis. Serv. Ch. 329 (A.B. 1215). It
13 also reduced the period of time during which cars may be operated without permanent license plates
14 to the shorter of (1) when the license plates are received by the purchaser, and (2) ninety days after
15 the date of sale of the vehicle.¹² (*Id.*) The same law emphasized the importance of the National
16 Motor Vehicle Title Information System, highlighting the importance of consumers’ access to
17 accurate vehicle titling information. (*Id.*) All of these reasons support the requirement that a vehicle
18 be titled when it is sold. Belated titling does not add time to a vehicle’s warranty. It does not
19 promote uniformity amongst FCA US’s dealers. It does not confer accountability into the system. It
20 does not retroactively provide clarity of information to state agencies and consumers. It does not
21 cure.

22 3. Section 3065.1 Does Not Mandate that Every Failure is “Curable”

23 Protestant’s argument that it has cured the deficiencies that underlie the chargeback,
24 moreover, is premised on a misreading of § 3065.1(g)(3). That section offers franchisees a time
25

26 ¹² The law also demonstrates why any claim that the dealership continued to expect anyone
27 else to title the vehicles is specious. Many vehicles were not titled for months and months—the
28 dealership must have been aware that it did not receive license plates, which it should have received
within weeks. (*See, e.g.*, Exh 236) Even if it was confused, the dealership could not have continued
to be in the dark about the failure to title.

1 period to cure deficiencies, where a cure is possible and actually done. Here, neither occurred. Yet
2 Protestant's interpretation would force a Protestant's choice of "cure" upon a franchisor to remedy
3 any deficiency after an audit, even after the Protestant chose not to comply with the rules.
4 Administrative Law Judge Woodward Hagle has already correctly ruled that this could not be the
5 proper interpretation of the section. (RT I pp. 9-10) And for all of the reasons in FCA US's Response
6 to Protestant's Motion *in Limine*, Protestant's position could not be correct. *Cf. Wisser Co. v. Mobil*
7 *Oil Corp.*, 730 F.2d 54, 59 (2d Cir. 1984) ("[T]he proposition that a franchisee always has the right
8 to cure a default is obviously wrong."). Although FCA US certainly would not have continued to
9 charge back any amounts that Hooman CDJR actually cured, as Administrative Law Judge
10 Woodward Hagle said, "there's water under the bridge" and "you can't unring the bell." (RT I p. 10)

11 Nonetheless, because Protestant is likely to focus on the argument in its Closing Brief, it is
12 worth revisiting briefly. The language on which Protestant relies for the argument that it must be
13 allowed to cure any noncompliance is as follows:

14 The franchisor shall provide a reasonable appeal process allowing the franchisee
15 a reasonable period of not less than 30 days after receipt of the written disapproval
16 notice to respond to any disapproval with additional supporting documentation or
17 information rebutting the disapproval and to cure any material noncompliance, with
18 the period to be commensurate with the volume of claims under consideration. If the
19 franchisee rebuts any disapproval and cures any material noncompliance relating to a
20 claim before the applicable deadline, the franchisor shall not chargeback the
21 franchisee for that claim.

22 Cal. Veh. Code § 3065.1(g)(3). Protestant's interpretation cannot be correct.

23 "The meaning of a statute may not be determined from a single word or sentence; the words
24 must be construed in context, and provisions relating to the same subject matter must be harmonized
25 to the extent possible." *Lungren v. Deukmejian*, 755 P.2d 299, 304 (Cal. 1988). "In interpreting a
26 statutory provision, our task is to select the construction that comports most closely with the
27 Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general
28 purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary
results." *Poole v. Orange Cty. Fire Auth.*, 354 P.3d 346, 350 (Cal. 2015) (emphasis added) (internal
quotations omitted).

The concept of "curing" a contractual deficiency "did not receive widespread attention until

1 it was adopted in Article 2 of the UCC.” William H. Lawrence, *Cure After Breach of Contract*
2 *Under the Restatement (Second) of Contracts: An Analytical Comparison with the Uniform*
3 *Commercial Code*, 70 Minn. L. Rev. 713, 714 (1986); *see also* CURE, Black’s Law Dictionary (10th
4 ed. 2014). That section of the UCC makes clear that a “cure” is time-sensitive. U.C.C. § 2-508
5 (“Where any tender or delivery by the seller is rejected because non-conforming and the time for
6 performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure
7 and may then within the contract time make a conforming delivery.” (Emphasis added)). That makes
8 sense. “Cure is not always possible, as in the case of a singer who does not show up on the night of
9 the opera.” *Lippo v. Mobil Oil Corp.*, 776 F.2d 706, 724 (7th Cir. 1985) (Posner, J.) (dissenting in
10 part) (quoting Farnsworth, *Contracts*, at p. 613 n.1 (1982)).

11 Protestant argues that § 3065.1(g)(3) means that every form of noncompliance must have a
12 cure, and that the cure for not complying with a time-sensitive requirement is simply to belatedly
13 “fulfill” the requirement. But that interpretation fails to comport with the statutory framework and
14 would lead to unreasonable and arbitrary results.

15 California protects the right of franchisors to conduct audits, and allows franchisors to charge
16 back claims that were “ineligible under the terms of the incentive program as previously
17 communicated to the franchisee.” § 3065.1(g)(1)-(2). There would be no purpose in allowing audits
18 or protecting “the terms of the incentive program as previously communicated to the franchisee” if a
19 franchisee could, whenever it is audited, take some after-the-fact action, not allowed “under the
20 terms of the incentive program” (such as “belatedly” titling vehicles), to cure. Thus, Protestant’s
21 position does not comport with the statutory framework or the legislature’s intent.

22 Moreover, Protestant’s position would beget absurdities. For one, it would incentivize dealers
23 to neglect their contractual requirements. As noted above, Protestant did not title the vehicles at the
24 time of sale, which among other things, allowed it to sell several of these “previously sold” vehicles
25 as “new” to consumers. (*See, e.g.*, RT II pp. 116-17) If belatedly titling vehicles, despite the clear
26 language of the Incentive Rules Manual, would allow Protestant to receive the incentive payments,
27 then the statute would incentivize Protestant to not title vehicles at the time of sale, continue to sell
28 those that it can as “new,” and simply title the others after (and only if) an audit begins, to ensure

1 that the dealership retains the economic benefit of the incentives. Under Protestant's statutory
2 interpretation, there would be no reason for Protestant to comply with any incentive requirements
3 until an audit begins, and then there would be no repercussions for the previous decisions not to
4 comply. FCA US would be forced to constantly audit its dealers to ensure that there was any form of
5 compliance.

6 Second, like the requirement that vehicles be titled "at the time of sale," other incentives
7 make clear that § 3065.1 cannot mean what Protestant suggests it does. For instance, FCA US may
8 provide Conquest Lease to Retail/Lease programs that incentivize current lessees of competitive
9 vehicles to purchase or lease a FCA US vehicle. Had Protestant claimed such an incentive and had a
10 claim charged back, Protestant could cure by providing previously unavailable, but required,
11 documentation showing that the dealership in fact sold the vehicle to an individual who had
12 previously been leasing a competitor's vehicle (just as Protestant here could have cured by
13 presenting documentation reflecting that it had actually titled the vehicle at the time of sale). If,
14 however, Protestant had claimed that incentive for a vehicle sold to someone who was not previously
15 leasing a competitor's vehicle, it could not cure that noncompliance by, upon commencement of the
16 audit, leasing a competitor's vehicle in the customer's name (just as, here, Protestant could not cure
17 by titling a vehicle after the audit began). (RT III pp. 16-17) Similarly, a dealer could not claim that
18 a consumer was a military veteran at the time of a sale and then "cure" its failure to comply by
19 enrolling the non-veteran purchaser in the armed forces. (RT II p. 161)

20 Third, Protestant's position would allow a franchisee to re-write a franchisor's incentive
21 program terms and/or documentation requirements every time there was noncompliance. That is,
22 Protestant would have it that the franchisor's rules do not determine compliance—only some
23 variation of those rules as retroactively re-drafted by Protestant would determine whether a
24 chargeback was appropriate. It would completely defang franchisors' warranty policies and
25 procedures. It is unfair of Protestant to ask this tribunal to exceed its jurisdiction to re-write FCA
26 US's policies and programs.

27 The statute provides for a time period to allow dealers to cure those failures that can be
28 cured. It does not guarantee that every failure can be cured. In the present matter, Hooman CDJR did

1 not cure either of the independent grounds for the chargebacks. Respectfully, the Protest must be
2 denied.

3 **B. The Board Should Consider the Credibility of the Witnesses**

4 In resolving this matter, the Board should consider the diminished credibility of the only
5 witness who testified in support of the Protestant. Mr. Nissani's testimony must be analyzed in the
6 context of (1) his admittedly limited involvement with the dealership, (2) the documentary evidence
7 in this case, and (3) its other inconsistencies and contradictions.

8 1. Mr. Nissani's Testimony Reflected the Limitations of His Commitment to the
9 Dealership

10 a. Mr. Nissani's Unfamiliarity with the Controlling Documents Impacts
His Credibility

11 Hooman Nissani is an accomplished businessman with a number of different financial
12 interests. Mr. Nissani's testimony, however, reflected a lack of commitment to Hooman CDJR,
13 given his expansive business enterprise which covers interest in and outside the motor vehicle
14 industry. For instance, Mr. Nissani testified that he failed to read the TSSA—the document that
15 created Hooman CDJR—before signing it and that he still has not read it in the more than two-and-
16 one-half years since it was signed. (RT I p. 67) He has never read the Dealer Policy Manual. (RT I
17 pp. 107-08) And, by the time of his deposition at the end of April 2016, Mr. Nissani had not read the
18 Incentive Rules Manual. (RT I pp. 112-13) Mr. Nissani's failure to read the operative documents
19 provided a strong undercurrent to his testimony.

20 For instance, Mr. Nissani testified at length about Hooman CDJR's facilities, inadvertently
21 emphasizing the dealership's failure to comply with its contractual requirements. In the TSSA, the
22 dealership agreed that it would complete an expansion and renovation of a facility at 333 Hindry
23 Avenue in Inglewood, "for the exclusive display, sales, and service of the Chrysler, Dodge, Jeep and
24 RAM vehicle line(s)" before the "expiration" of the TSSA in November 2014. (Exh 202:0006-08)
25 Mr. Nissani signed the document, agreeing to ensure that there was an exclusive facility that
26 contained an "exterior arch" and branding, such as "[b]randed showroom vehicle salons." (Exh
27 202:0006-08) Nonetheless, Mr. Nissani testified at length during the hearing in this matter about
28 how he and the dealership had failed to comply with the requirements under the contract—Hooman

1 CDJR is not located in an exclusive facility, and despite the contractual requirements, there is
2 “absolutely not even one sign on any one of our premises that says there is a Chrysler Dodge Jeep
3 dealership there.” (RT I pp. 61-62) Despite his contractual requirement to provide branded
4 showroom vehicle salons by November 2014, Mr. Nissani testified that “[t]here is absolutely no
5 showroom.” (RT I p. 62, 65) And although Mr. Nissani signed a contract requiring that he expand
6 and renovate the facility located at 333 Hindry Avenue, Mr. Nissani admitted under oath that he has
7 not and that the dealership is located “across the street,” which leads customers to believe that the
8 dealership is closed. (RT I p. 64)

9 Mr. Nissani’s absence from the dealership is highlighted by a document that he signed that
10 “represents and warrants” that Mr. Nissani “will be physically present at the DEALER’s facility
11 (sometimes referred to as “Dealership Facilities”) during most of its operating hours and will
12 manage all of DEALER’s business relating to the sale and service of CG products.” (Exh 202:0002)
13 The contract makes clear that Hooman CDJR is not permitted to “change the personnel holding the
14 above described position[] or the nature and extent of his/her/their management participation without
15 the prior written approval of” FCA US. (Exh 202:0002) Nonetheless, Mr. Nissani admitted that he
16 spends only 15 to 20 percent of his time at Hooman CDJR. (RT I p. 47)

17 Mr. Nissani’s distance from the dealership was highlighted in the procedure of this Protest.
18 The Protest was initially brought in the name of a non-existent entity. Even after the Protest was
19 amended, Protestant did not correct the order of the vehicle makes in the dealership’s “dba” name.
20 (See Exhs 133:0004; 202) And although the Protest forced many ranking members of FCA US to
21 attend, Mr. Nissani, at times, decided it was not worth the time or money to attend much of the
22 hearing, or even to send someone in his stead. Mr. Nissani does not have the relationship with the
23 dealership, or with the documents that underlie its existence, to offer credible testimony about it and
24 its practices.

25 b. Mr. Nissani’s Unfamiliarity with the Controlling Documents Does Not
26 Impact His Responsibilities

27 At the hearing, it appeared that Mr. Nissani sought to turn this detachment on its head and
28 justify the dealership’s failure to comply with its contractual requirements, including the

1 requirements of the Incentive Rules Manual, by explaining his lack of familiarity with the
2 documents. (RT I pp. 54-56) Such a contention is meritless, and has been rejected by California
3 courts:

4 Plaintiff has cited no California cases (and we are aware of none) that stand for the
5 extreme proposition that a party who fails to read a contract but nonetheless
6 objectively manifests his assent by signing it—absent fraud or knowledge by the
7 other contracting party of the alleged mistake—may later rescind the agreement on
the basis that he did not agree to its terms. To the contrary, California authorities
demonstrate that a contracting party is not entitled to relief from his or her alleged
unilateral mistake under such circumstances.

8 *Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565, 1589 (2005); *see also Brookwood v. Bank*
9 *of Am.*, 45 Cal. App. 4th 1667, 1673 (1996) (position that unilateral lack of understanding of contract
10 would allow revocation “turns contract law on its head”). “Generally, one who assents to a writing is
11 presumed to know its contents and cannot escape being bound by its terms merely by contending
12 that he did not read them; his assent is deemed to cover unknown as well as known terms.” *Stewart*,
13 134 Cal. App. 4th at 1589 (quoting Restatement (Second) of Contracts, § 157, Comment b, p. 417).

14 Mr. Nissani’s claims are further undermined by his continued failure to read the documents.
15 (RT I pp. 67, 107-08, 112-13) Such failure cannot be justified, and it certainly does not allow him to
16 disregard the terms of the agreements he signed.

17 Moreover, there were many reminders to the dealership of the requirements and its
18 responsibility to comply with the Incentive Rules Manual, including:

- 19 • The written acknowledgement signed by Mr. Nissani (Exh 204)
- 20 • The Dealer Policy Manual (Exh 206a:0040)
- 21 • The rules for every incentive program (Exh 282:0007 (“Refer to the latest version of
22 the Incentive Program Rules Manual (referred to as the Gold Book) and Incentive
23 Summary Communications.”); *id.* at 0009 (same); *id.* at 0010 (same); *id.* at 0011
24 (same); *id.* at 0015 (same); *id.* at 0020 (same); *id.* at 0025 (same); *id.* at 0029 (same);
25 *id.* at 0033 (same); *id.* at 0036 (same); *id.* at 0039; *id.* at 0046 (same); *id.* at 0044
26 (“Refer to Incentive Rules Manual (Gold Book) and Incentive Summary
27 Communications.”); Exh 283; RT I pp. 114-16)
- 28 • The training provided by Mr. Sebastiani (RT I pp. 148-156)

- The audit (RT II p. 98)

Mr. Nissani's failure to read the relevant documents reflects on his credibility, but not on the merits of the dealership's Protest.

2. Mr. Nissani's Testimony Was Inconsistent with the Contemporaneous, Documentary Evidence

Mr. Nissani's testimony was also not credible because it was inconsistent with documents contemporaneous to the audit. At the time of the hearing, more than a year and a half had passed since the audit of the dealership. To the extent that Mr. Nissani and Hooman CDJR made claims that were not previously made during the audit and appeal process—which lasted more than eight months, from December 2014 into August 2015—or that was inconsistent with the documentary evidence, those claims were not credible.

During the audit, Mr. Nissani sent a significant amount of correspondence, some of which specifically was designed to support the dealership's position. For instance, in response to the AMR, Mr. Nissani was required to submit a request for appeal which "must also state why you disagree with the" AMR results. (Exh 236:0002) He wrote a two-page letter, asking that the chargebacks be "waived" because the dealership (despite acknowledging receipt of the Incentive Rules Manual and despite the training it had received) allegedly did not know the requirements. (Exh 238:0002-03) The testimony of others present reflected that Mr. Nissani's presentation at the Audit Appeal Committee meeting was similar—he stated that "he didn't understand the rules." (RT IV pp. 82-83; *see also* RT IV pp. 145-46 ("I remember that they were confused by the rules"))

Although Mr. Nissani's comments appear to have been consistent in front of the Audit Appeal Committee, at the hearing several new stories emerged that are not reflected in the documents and lack indicia of credibility. These include his claims that (1) improper sales were unwound, (2) Mr. Nissani was told that he could belatedly title the units at issue, and (3) that he had provided proof of title and contracts to the Audit Appeal Committee.

First, at the hearing, Mr. Nissani claimed for the first time that the dealership had unwound the transactions at issue. (RT IV p. 63; RT V pp. 43, 54-55) This claim lacks credibility for several reasons. First, multiple witnesses testified that there was no evidence that the dealership ever

1 unwound any of the sales at issue.¹³ (RT II p. 118; RT IV pp. 50-51, 63, 216) Second, had the
2 dealership actually unwound any of the sales at issue, the system would have automatically charged
3 back the incentives that were applied to the NVDR at the time of the improper sale, and there would
4 have been no amounts to chargeback in the audit. (RT II p. 157; Exhs 207a:0014; 207b:0014) Third,
5 it seems strange that, had the dealership complied with the rules, Mr. Nissani's appeal to the Audit
6 Appeal Committee would not describe the compliance, rather than state that the dealership had not
7 known the rules—why seek the Committee's pity when he could have demonstrated that there was
8 no basis for the chargeback? And fourth, in making his newfound assertion, Mr. Nissani ignored that
9 the Incentive Rules Manual specifically states how to unwind a transaction, with rules he did not
10 know of, much less follow. (Exhs 207a:0014; 207b:0014) Mr. Nissani's testimony was not credible.

11 During the hearing, Mr. Nissani also claimed for the first time that FCA US had agreed to
12 allow him to cure by titling vehicles after the audit. (RT I p. 125) The claim is not reflected in any of
13 the documentary evidence, and it is not credible that Mr. Nissani would have had that understanding
14 yet not raised it in a single piece of correspondence with Mr. Gabel, Mr. Danforth, or the Audit
15 Appeal Committee. Had those events actually occurred, it would not have taken Mr. Nissani
16 approximately eighteen months to mention that alleged agreement.

17 Finally, Mr. Nissani also claimed during the audit that the Audit Appeal Committee “had
18 gone past the titling and contracts as I had provided proof of those already.” (RT V p. 14) But that is
19 inconsistent even with Mr. Nissani's own letter to the Audit Appeal Committee, and with the
20 testimony of Mr. Glenn, the chair of the Committee. (Exh 238:0002-03; RT IV pp. 145-47)
21 Moreover, it is inconsistent with Mr. Nissani's repeated assertions that the dealership did not print
22 contracts for vehicles it sold to itself. (Exh 221:0001) Mr. Nissani was not credible because he
23 testified inconsistently with the contemporaneous documentation and correspondence.

24
25
26 ¹³ Mr. Nissani's testimony about the process of unwinding transactions on the dealership's
27 own software was also confusing and, it appeared, contradictory. He repeatedly emphasized that
28 once a transaction was finalized in the dealership's accounting system, “We are not able to go back
in and make any changes to that system.” (RT V pp. 43-44) He subsequently testified, however, that
“probably less than four people in my organization” could, in fact, go back into the system and
unwind a transaction. (RT V p. 44)

1 3. Whether Because of a Lack of Information or Otherwise, Mr. Nissani's
2 Testimony was Not Credible

3 Additionally, Mr. Nissani's testimony contained a number of other contradictions or
4 discrepancies. A prime example is Mr. Nissani's testimony regarding the screenshots, discussed
5 above. Additional examples include:

- 6 • Mr. Nissani repeatedly testified that of the vehicles that were not titled at the time of
7 sale, "every one of those vehicles were registered within days or the next day that the
8 auditor was there" from December 1-5, 2014, even though only nine vehicles were
9 titled before December 16th. (RT I p. 94; Exh 236:0004-06) Even Protestant's
10 counsel agreed on the record that the "bulk of the vehicles" were not titled until "the
11 late December or mid-December timeframe." (RT III pp. 35-36)
- 12 • Mr. Nissani refused to acknowledge that a representative of FCA US, Julio
13 Sebastiani, had sat down with representatives from Hooman CDJR's business office
14 to discuss incentives, saying "Sir, I don't know if Julio has ever gone to go train our
15 staff" at the business office, even though at his deposition, about 17 days earlier,
16 Mr. Nissani had testified that Mr. Sebastiani discussed rebates on incentives with
17 folks from the business department and that Mr. Nissani himself was present for
18 portions of the training. (RT I pp. 120-22; RT I p. 59 (acknowledging location of
19 business office in Long Beach)) Mr. Nissani changed his testimony upon seeing the
20 deposition, agreeing that Mr. Sebastiani did in fact "s[i]t down with several people in
21 [the] business office during the first few weeks" the dealership was in business "to
22 discuss incentives." (RT I p. 121)
- 23 • Mr. Nissani claimed that the DMVdesk documents show that a vehicle was titled,
24 apparently by reference to a "date of last ownership certificate," despite the fact that
25 those dates could not be the dates of title. (RT IV pp. 261-62) He testified that the
26 "ownership certificate" is "the same thing" as a title. (RT V p. 90) However, the
27 DMVdesk document in the record demonstrates the fundamental problem with Mr.
28 Nissani's representation. That page reflects that the "Date of Latest Ownership

1 Certificate” was October 16, 2014 for the vehicle with VIN 2C3CDXBG5EH202182.
2 (Exhs 217:0003; 239:0005) That date, however, would mean that the vehicle was
3 titled more than two weeks before it was even NVDR’d, and nearly two months
4 before the audit. (Exh 236:0005 (showing that the vehicle was NVDR’d on October
5 31, 2014)) The vehicle was actually titled on December 16, 2014. (Exh 236:0005)
6 And even Mr. Nissani admitted that the vehicles were not titled before the audit
7 began on December 1, 2014. (RT I p. 125) Thus, his claim about the DMVdesk
8 documents does not make sense, and is not credible.

9 The Board should conclude that Mr. Nissani was not a credible witness.

10 4. The Board Should Ignore Any Reference to Undisclosed Documents

11 Similarly, the Board should ignore Mr. Nissani’s insinuations that Hooman CDJR has
12 additional documents in its possession that it never produced or provided to FCA US. (*E.g.*, RT V
13 p. 109 (“pink slips”); RT IV pp. 239-40; RT V p. 88 (signed screenshots)) Mr. Nissani’s testimony
14 reflects that he cannot credibly testify about the procedures followed by Hooman CDJR. Moreover,
15 before the hearing, FCA US moved to compel production of certain documents that Protestant had
16 promised but failed to produce. (Mot. to Compel, Apr. 7, 2016) Administrative Law Judge Skrocki
17 heard the motion and determined to hold it in abeyance in light of Protestant’s counsel’s
18 representation that all documents would be produced. FCA US had propounded a request for
19 production on Hooman CDJR requesting “Produce the Deal File for each individual chargeback
20 Hooman is disputing. . . .” Hooman CDJR responded “Protestant will produce such documents as it
21 has in its possession.” (Tab 2 to the Decl. of M. Clouatre in Support of Mot. to Compel at 2.) Mr.
22 Nissani should not be permitted to benefit by implying that Hooman CDJR has additional documents
23 that it failed to produce in discovery.

24 **C. The Audit Complied with All Other Statutory Requirements**

25 The Board can deny the Protest without further analysis. However, even if FCA US were
26 required to prove every statutory element in this matter, the evidence in the record demonstrates that
27 the Board must decide in favor of FCA US.

1 1. The Audit Properly Resulted in a \$385,115.00 Chargeback on Multiple
2 Independent Grounds

3 FCA US may chargeback claims that are “false or fraudulent,” where “the claim is ineligible
4 under the terms of the incentive program as previously communicated to the franchisee, or for
5 material noncompliance with reasonable and nondiscriminatory documentation and administrative
6 claims submission requirements.” § 3065.1(g)(2). As detailed at length above, FCA US only charged
7 back claims that fell within these categories. Moreover, FCA US did not chargeback any claims
8 without particular reasons to chargeback that claim, and did not chargeback any claims based upon
9 an extrapolation from a sample. (RT II pp. 69-70); *see* § 3065.1(g)(2). The audit thus adhered to all
10 of the requirements in § 3065.1(g)(2).

11 2. The Audit Was Conducted for a Period of Nine Months, Hooman CDJR was
12 Not Selected for an Improper Purpose, and There Were No Other Audits
13 Within a Nine-Month Period

14 The audit process also complied with the requirements of § 3065.1(g)(1). In relevant part, the
15 section states:

16 Audits of franchisee incentive records may be conducted by the franchisor on a
17 reasonable basis, and for a period of nine months after a claim is paid or credit issued.
18 A franchisor shall not select a franchisee for an audit, or perform an audit, in a
19 punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no
20 more than one random audit of a franchisee in a nine-month period.

21 Undisputed testimony reflected that Hooman CDJR was not selected for an audit for an
22 inappropriate reason. (RT IV pp. 28, 55) Undisputed testimony also demonstrated that the audit
23 period was the appropriate nine-month period. (RT I p. 115; RT II p. 11) Further, the parties have
24 stipulated that FCA US conducted no other audits of Hooman CDJR. (JtExh 1:0002) Thus, FCA US
25 could not have conducted any other audits of Hooman CDJR within a nine-month period. *See* Cal.
26 Veh. Code § 3065.1(g)(1).

27 3. FCA US Provided Time for Hooman CDJR to Deliver Additional Supporting
28 Documents, Offered a Reasonable Appeals Process, and Provided
 Unambiguous Notices of the Final Denial

 Section 3065.1(g)(3) states:

 If the franchisor disapproves of a previously approved claim following an audit, the
 franchisor shall provide to the franchisee, within 30 days after the audit, a written
 disapproval notice stating the specific grounds upon which the claim is disapproved.

1 The franchisor shall provide a reasonable appeal process allowing the franchisee a
2 reasonable period of not less than 30 days after receipt of the written disapproval
3 notice to respond to any disapproval with additional supporting documentation or
4 information rebutting the disapproval and to cure any material noncompliance, with
5 the period to be commensurate with the volume of claims under consideration. If the
6 franchisee rebuts any disapproval and cures any material noncompliance relating to a
7 claim before the applicable deadline, the franchisor shall not chargeback the
8 franchisee for that claim.

6 In the present matter, Mr. Gabel began the audit on December 1, 2014. (JtExh 1:0002) On
7 December 5 (far less than thirty days after the beginning of the audit), Mr. Gabel had the exit
8 meeting with Hooman CDJR, and provided the dealership the written disapproval notice. (RT II p.
9 119; Exh 213) The notice provided the specific grounds on which each claim was being charged
10 back. (Exh 213) Mr. Gabel offered the dealership more than thirty days after receipt of the
11 disapproval notice to provide additional information or supporting documents. (Exh 213:0001; RT II
12 p. 87) Even then, FCA US extended the period and only closed it after Mr. Nissani represented that
13 he had provided “everything we have.” (Exhs 221:0001; 223)

14 Moreover, Hooman CDJR was then given two additional subsequent periods during which to
15 provide the missing documentation. First, Hooman CDJR was given the opportunity to provide
16 documents in conjunction with requesting an AMR, and then again in conjunction with requesting
17 review by the Audit Appeal Committee. (RT III pp. 147-48; Exhs 223:0002; 236:0002)

18 Further, the audit and appeal process provided to Hooman CDJR was reasonable. The
19 Administrative Law Judge has already expressly recognized that Hooman CDJR is not contesting
20 issues, including that the audit was reasonable. (RT I p. 14) Moreover, FCA US allowed Hooman
21 CDJR to provide additional documentation and arguments, if it could, first to the auditor; then,
22 second, to an audit manager; and third, to the Audit Appeal Committee. If Hooman CDJR had been
23 able to demonstrate at any of those levels that it had complied, or cured its noncompliance, with the
24 incentive programs and record retention requirements, the chargebacks would have been overruled.
25 But it could not. Seven FCA US decisionmakers reviewed or participated in the audit, and Hooman
26 CDJR could not convince one of them that it had complied or cured. Nonetheless, FCA US provided
27 Hooman CDJR a goodwill offset of over \$100,000. There can be no doubt that the process was
28 reasonable.

1 Finally, the evidence established FCA US complied with § 3065.1(g)(4). That paragraph says

2 If the franchisee provides additional supporting documentation or information
3 purporting to rebut the disapproval, attempts to cure noncompliance relating to the
4 claim, or otherwise appeals denial of the claim, and the franchisor continues to deny
5 the claim, the franchisor shall provide the franchisee with a written notification of the
6 final denial within 30 days of completion of the appeal process, which shall
7 conspicuously state “Final Denial” on the first page.

8 In the present matter, Mr. Nissani repeatedly submitted the same incomplete set of irrelevant
9 documents. (Exhs 217; 221; 232; 238) And Hooman CDJR admitted that it was provided “a final
10 report closing the audit on August 13, 2015.” (Protestant’s Mot. *In Lim.* at 3.) That letter stated the
11 “final chargeback amount” and reflected that the “appeal is now closed.” (Exh 264; *see also* RT IV
12 pp. 169-70) This was undisputably less than thirty days after the Audit Appeal Committee had voted
13 on the final outcome of Hooman CDJR’s appeal. (Exh 263; RT IV pp. 166-67)

14 In the present matter, it is inconsequential that the Audit Appeal Committee’s letter did not
15 specifically say “Final Denial.” “Substantial compliance, as the phrase is used in the decisions,
16 means *actual* compliance in respect to the substance essential to every reasonable objective of the
17 statute.” *Stasher v. Harger-Haldeman*, 58 Cal. 2d 23, 29 (1962) (emphasis in original). When a party
18 actually complies with “all matters of substance then mere technical imperfections of form or
19 variations in mode of expression . . . should not be given the stature of noncompliance and thereby
20 transformed into a windfall . . .” *Id.* Here, FCA US complied with the temporal requirements, and
21 the substantive requirements of the statute. The words “Final Denial” cannot be intended to do more
22 than ensure that the franchisee is notified that the appeal of its audit has been completed and the
23 timeline for protests has begun. The letter dated August 13, 2015 from Christopher Glenn to Mr.
24 Nissani reflects the amount of the “final chargeback” and says “[y]our appeal is now closed”
25 (Exh 264.) Further, in response to correspondence from Mr. Nissani, Mr. Glenn also wrote “[t]here
26 will be no further consideration or adjustments to this chargeback” on August 21, 2015. (Exh 266.)
27 On September 1, 2015, in response to a letter from Mr. Nissani threatening litigation if the final
28 chargeback was not reversed, Mr. Glenn again emphasized that FCA US “considers the audit of your
dealership, and the corresponding chargeback, final.” (Exh 268.) Hooman CDJR filed these
consolidated Protests by September 9, 2015 (less than 30 days after the August 13 letter), and thus

1 was obviously aware that the audit was “final,” and the time period for a Protest had been triggered.
2 FCA US has proven its compliance.

3 4. FCA US Has Not Completed the Chargeback of Hooman CDJR

4 Finally, FCA US has complied with the timing requirements of § 3065.1(g)(5). The parties
5 have stipulated that FCA US has not collected nor completed the chargeback of Hooman CDJR.
6 (JtExh 1:0002; *see also* RT I p. 134)

7 **D. The Amount and Calculation of the Good-Will Offset is Irrelevant**

8 As a final matter, the calculation of the goodwill offset, a gift that FCA US provided to
9 Hooman CDJR, is irrelevant. As described above, at the Audit Appeal Committee Meeting, the
10 committee saw no evidence that Hooman CDJR had complied with the terms of the incentive
11 program or with the record retention requirements, and thus had no reason to overturn the
12 chargeback. (RT IV p. 152) Although it certainly was not required to do so, the committee decided
13 to try to do Hooman CDJR a favor, and made a goodwill decision to consider making an adjustment
14 to the chargeback. (RT IV p. 154)

15 While it would not cure the dealership’s noncompliance, the committee determined that if
16 Mr. Nissani could demonstrate that vehicles that were being charged back were actually used in a
17 loaner car program, the committee would consider some form of goodwill offset to the chargeback.
18 (RT IV p. 154; RT III p. 181) The committee in fact considered a goodwill offset to the chargeback
19 and, in the end, unanimously voted to reduce the chargeback by more than \$100,000. (RT IV pp.
20 166, 185)

21 The amount was a goodwill adjustment to the amounts that Hooman CDJR owed, to assist
22 the dealership. (RT IV p. 21) The Audit Appeal Committee was simply attempting to help the dealer.
23 (RT III p. 184) The Audit Appeal Committee never agreed to offset a particular amount or by a
24 particular metric. (Exh 246; RT IV p. 154) That FCA US provided Hooman CDJR with a significant
25 goodwill offset is relevant. How it was calculated is not. If Hooman CDJR insists on complaining
26 about the gift, the gift should be retracted and Hooman CDJR should be required to pay the full
27 value of the chargeback.

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CONCLUSION

Based on the unambiguous and even undisputed evidence outlined above, FCA US has met its burden and the Protests must be denied. Accordingly, FCA US respectfully requests that the Board enter an order allowing FCA US to process the chargeback in accordance with § 3065.1(g).

Dated: July 1, 2016

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1 **PROOF OF SERVICE**

2 CAPTION: HC Automotive, Inc., dba HOOMAN CHRYSLER JEEP DODGE RAM,
3 Protestant v. FCA US LLC, Respondent

4 BOARD: NEW MOTOR VEHICLE BOARD

5 PROTEST NO.: PR-2429-15

6 I am employed in the City and County of Sacramento, State of California. I am over the age
7 of 18 years and not a party to this action. My business address is P.O. Box 277010, Sacramento,
8 California 95827-7010.

9 On **July 1, 2016**, I served the foregoing **FCA US LLC'S CLOSING BRIEF** on each party in
10 this action, as follows:

11 Law Offices of Gavin M. Hughes
12 Gavin M. Hughes
13 3436 American River Drive, Suite 10
14 Sacramento, CA 95864
15 Telephone: 925.457.2028
16 E-mail: gavin@hughesdealerlaw.com

17 Attorney for Protestant

18 (BY MAIL) I caused such envelope to be deposited in the United States Mail at
19 Sacramento, California, with postage thereon fully prepaid. I am readily familiar with
20 the firm's practice of collection and processing documents for mailing. It is deposited
21 with the United States postal service each day and that practice was followed in the
22 ordinary course of business for the serve herein attested to.

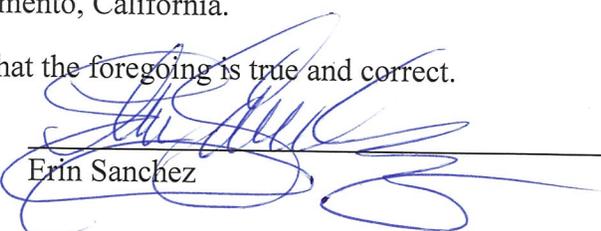
23 (BY FACSIMILE) The facsimile machine I used complied with California Rules of
24 Court, Rule 2003, and no error was reported by the machine. Pursuant to California
25 Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the
26 transmission, a copy of which is attached to this Affidavit.

27 (BY FEDERAL EXPRESS) I caused such envelope to be delivered by air courier, with
28 the next day service.

(BY E-MAIL) at the e-mail address listed above.

Executed on **July 1, 2016**, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.


Erin Sanchez