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

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.  
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**Protest No: PR-2429-15, PR-2430-15, PR-2431-15,  
PR-2432-15**

**Vehicle Code Section 3065.1**

**FCA US LLC'S REPLY IN SUPPORT OF ITS  
CLOSING BRIEF**

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1 Respondent FCA US LLC (“FCA US”) replies in support of its Closing Brief as follows:

2 **INTRODUCTION**

3 These consolidated Protests should be overruled because Hooman CDJR did not “cure” its  
4 noncompliance with FCA US’s incentive program terms and documentation requirements.  
5 Recognizing that it failed to comply when it submitted false incentive claims, the dealership  
6 improperly asks this tribunal to re-write FCA US’s policies and manuals. Moreover, Protestant’s  
7 brief attempts to reintroduce issues that the dealership has already conceded, essentially recognizing  
8 that the issues that Protestant did pursue at trial are not persuasive. The consolidated Protests must  
9 be overruled.

10 **ARGUMENT**

11 **I. THE UNDISPUTED EVIDENCE DEMONSTRATES THAT HOOMAN CDJR DID NOT “CURE” ITS NONCOMPLIANCE**

12 The only issue that Hooman CDJR did not concede before the hearing was whether it had  
13 “cured” its noncompliance. But the evidence demonstrates that the dealership did not cure either of  
14 the separate and independent grounds for the chargebacks.

15 A. Hooman CDJR Never Complied With the Reasonable and Nondiscriminatory  
16 Documentation Requirements

17 Hooman CDJR pretends that it has “cured” its failure to comply with the relevant  
18 documentation requirements simply by ignoring most of them. It also repeats its contention that the  
19 “screenshots” that were discussed at trial—but are not listed anywhere among the required  
20 documents and are decidedly insufficient—somehow replace one of the requirements.

21 As reflected in FCA US’s Closing Brief, the Incentive Rules Manual and the Dealer Policy  
22 Manual contain a list of minimally required documents for every sale:

- 23 • Customer’s Bill of Sale/Dealership Invoice
- 24 • Lease Agreement/Contract (if applicable)
- 25 • Title and Registration Documents
- 26 • Signed Buyer’s Order/Purchase Contract
- 27 • Customer Certificate/Coupon (if applicable)
- 28 • Employee Advantage Chrysler Group Employee Purchase/Lease Claim Form (if

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- applicable)
- Friends / Affiliate Rewards Program / Dealership Employee Purchase Form (if applicable)
- Proof of customer eligibility for incentive program (if applicable)
- All Customer Payment Documents including copies of checks and all receipts
- Factory Vehicle Invoice
- Finance Contract (if applicable)
- Lease/Short-Term Finance Worksheets (if applicable)
- Odometer Statement
- Insurance Verification
- Carrier/Shipper Receipt (proof of vehicle delivery to dealership = ‘X’ Date)
- Customer Dealership Delivery Document
- Vehicle Order Confirmation

(Exh 206a:0042; *see also* Exhs 207:0016; 207b:0016) Yet, there were essentially no documents to support the alleged incentive claims. (RT II pp. 101-02, 136, 160) Hooman CDJR does not even attempt to suggest that it had, or produced, any of the listed documents other than the aforementioned “screenshots” (which are not even on the list). Those inadequacies, alone, demonstrate that the chargebacks were appropriate and the Protest must be denied.<sup>1</sup>

The dealership’s other arguments are similarly unconvincing. For instance, Hooman CDJR suggests that there is somehow ambiguity in the “if applicable” words of the second bullet point in the list, all the while ignoring its own complete failure to provide the “Signed Buyer’s Order/Purchase Contract” required (not even “if applicable”) in the fourth bullet point. (*See* Protestant’s Post-Hearing Opening Br. (“Pro. Br.”) at 23-24) There is no ambiguity in the contract requirement.

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<sup>1</sup> FCA US has focused its arguments, and focused at the hearing, on the absence of contracts because Hooman CDJR only disputed contracts. However, it is clear from the documents and the record that the dealership’s documentation failures were much more pervasive than just its failure to create contracts. (Exh 206a:0042; *see also* Exhs 207a:0016; 207b:0016; 236:0007-53; RT II p. 91; RT III pp. 43-44 (“That’s a lot of missing things.”))

1 Hooman CDJR also claims that the screen shots it produced “provide the same information  
2 as the information printed on the sales contracts.” (Pro. Br. at 21-22) As FCA US’s Closing Brief  
3 demonstrated, however, this is simply inaccurate. The screen shots, as Administrative Judge  
4 Woodward Hagle recognized, are not contracts and do not replace them.<sup>2</sup> (*See* RT III p. 88)

5 Hooman CDJR has not “cured” its complete failure to document the “sales” at issue. The  
6 screenshots on which Protestant relied at the hearing are not a replacement for contracts, let alone  
7 the rest of the required, but missing, documents. (*See* FCA’s Closing Br. at 21-24)

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

9 Hooman CDJR argues that it cured its failure to title vehicles, as required by FCA US’s  
10 incentive program terms, by titling them after FCA US discovered the dealership’s noncompliance.  
11 (Pro. Br. at 16, 19) Hooman CDJR asserts that this was a cure because California law supposedly  
12 allows a dealership to cure the failure to title a vehicle by paying penalties. (*Id.* at 19) Hooman  
13 CDJR further attempts to justify its position by misinterpreting record evidence and ignoring  
14 California law.

15 As an initial matter, Hooman CDJR claims that it “cured” its failure to title at the time of sale  
16 by paying a penalty.<sup>3</sup> But payment of the penalty does not retroactively provide the information to  
17 consumers, to law enforcement, or to the government. *See* Motor Vehicles--Registration--Electronic  
18 Filing, 2011 Cal. Legis. Serv. Ch. 329 (A.B. 1215). Indeed, despite Protestant’s position, penalties  
19 are not intended to be, and are not, cures. An illustration is helpful: the penalty for the first time a  
20 driver runs a red light and hurts another person as a result is \$220.00. Cal. Veh. Code § 42001.18.

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22 <sup>2</sup> Hooman CDJR argues that it should not be required to draft a contract because it could not  
23 create a legally enforceable contract—that is, essentially, that it could not successfully sue itself if it  
24 breached. (Pro. Br. at 22) That misses the point. The issue is whether the dealership complied with  
25 the requirements when it claimed incentives from FCA US, not whether Hooman CDJR could sue  
itself. Moreover, FCA US’s Closing Brief illustrated the reasons why a contract is important and the  
problems—illustrated in this case—that occur when a contract and other deal documentation do not  
exist.

26 <sup>3</sup> Hooman CDJR briefly seems to suggest that a requirement to title at the time of sale is  
27 inconsistent with California’s requirement that an application for title be submitted no later than 20  
28 days after sale. (Pro. Br. at 19) The argument is irrelevant and misleading. None of the contested  
vehicles were titled within twenty days of the reported sale, and many were not titled after more than  
240 days had passed, let alone 20. (Exh 236:0004-06)

1 Certainly, Hooman CDJR would not suggest that the payment of \$220.00 to the State would “cure”  
2 any injury to a pedestrian caused by running the light. Rather, the \$220.00 is only a form of  
3 punishment imposed by the State. Similarly, the State’s penalties for failure to timely title a vehicle  
4 do not cure Hooman CDJR’s misrepresentations to FCA US or the dealership’s failure to comply  
5 with the incentive program terms. The State’s penalties were simply a punishment for the  
6 dealership’s failure to comply with the law.

7         Second, Hooman CDJR mischaracterizes the record evidence when it suggests that any sales  
8 at issue were unwound, and that consumers did not suffer as a result. Rather, Hooman CDJR did not  
9 unwind any sales before selling vehicles as “new” to consumers—it did not report the subsequent  
10 sales to consumers to FCA US, but instead continued to pretend that the sales to Hooman CDJR had  
11 been real. (RT II pp. 118, 157; RT IV pp. 50-51, 63, 216) Hooman CDJR ignores that if the deals  
12 had been unwound by the dealership, there would have been nothing to charge back during the audit,  
13 because the relevant amounts already would have been charged back.<sup>4</sup> (RT II p. 157; Exhs  
14 207a:0014; 207b:0014) The argument is unsupported, misleading, and, at best, an irrelevant  
15 hypothetical.

16         Third, Hooman CDJR replaces California law with Mr. Nissani’s (not credible) testimony to  
17 conclude that the contested vehicles were legally driven on California roads. California law,  
18 however, only allows a vehicle to be operated without license plates, at the very latest, 90 days after  
19 “the date of sale of the vehicle.” Cal. Veh. Code §§ 4456; 5202. Nearly sixty of the contested  
20 vehicles were “sold” more than ninety days before the audit began on December 1, 2014, and there  
21 is no suggestion that any of the other vehicles would have been timely titled and licensed had the  
22 audit not begun. (*See* Exh 236:0004-06) The vehicles should not have been on the road, let alone  
23 been provided to consumers as rental vehicles, as they allegedly were.

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25 \_\_\_\_\_  
26 <sup>4</sup> Protestant also misreads Exhibit 213. (Pro. Br. at 8.) Despite Protestant’s assertion, there is  
27 nothing in that exhibit that suggests subsequent titling was requested or would suffice as some form  
28 of cure. (Exh 213:0001) Moreover, it was clear from the testimony that Mr. Gabel did not suggest  
that titling the vehicles, after the audit, would result in a change to the audit results. (RT II pp. 190-  
91) Rather, he thought it was merely a “good idea” because the vehicles could be “potentially  
illegal” to operate on California roads without a title. (*Id.* at 116, 190)

1 For these reasons, and all of the reasons in FCA US’s Closing Brief, the Protest must be  
2 overruled. FCA US should be allowed to proceed with the chargebacks.

3 **II. HOOMAN CDJR CANNOT, AFTER THE HEARING, REVERSE ITS**  
4 **ACKNOWLEDGEMENT THAT ISSUES WERE UNCONTESTED**

5 Before the hearing, Protestant repeatedly represented to the Board and to FCA US that the  
6 only issue Protestant contested—that is, “the only issue before the Board”—is “whether Protestant  
7 cured the alleged noncompliance with the sales incentives identified in Respondent’s 2014 audit of  
8 Protestant.” (Protestant’s Mot. *in Lim.* at 2 (emphasis added); *accord* Protestant’s Opening Br. at 6)  
9 Protestant’s Post-Hearing Opening Brief, however, attempts to silently retract that contention after  
10 the hearing was conducted in reliance on Protestant’s representations. (*See, e.g.*, Pro. Br. at 4  
11 (referencing additional issues)) FCA US and the Board were each entitled to rely on Protestant’s  
12 representations to the tribunal, and it is improper to seek a decision against FCA US based on any  
13 ground that Protestant conceded before the hearing. *See, e.g., Bernstein v. Allstate Ins. Co.*, 119 Cal.  
14 App. 3d 449, 451 (Ct. App. 1981) (client bound by attorney as agent). *Cf., e.g., Morgan v. Timmers*  
15 *Chevrolet, Inc.*, 1 S.W.3d 803, 807 (Tex. App. 1999) (allowing withdrawal of deemed admissions  
16 after trial began was reversible error). It is unfair for Protestant to ask the tribunal to decide the  
17 Protest on the basis of an issue that was conceded before trial, and it would be reversible error for the  
18 Board to render a decision for Protestant on those grounds. *See Estate of Luke*, 194 Cal. App. 3d  
19 1006, 1021 (1987). The Board should refuse to consider any issue raised by Protestant except  
20 Protestant’s failure to cure the two independent grounds for the chargebacks.

21 The prejudicial impact of Hooman CDJR’s purported reversal is obvious from Hooman  
22 CDJR’s argument that FCA US did not provide a “reasonable” appeals process. (Pro. Br. at 11, 16,  
23 21) Indeed, Administrative Law Judge Woodward Hagle expressly recognized at the hearing that  
24 Hooman CDJR was not contesting most issues, including whether the audit was reasonable. (RT I p.  
25 14) Protestant’s counsel did not dispute Administrative Law Judge Woodward Hagle’s conclusion.  
26 (*Id.*) Both the Administrative Law Judge and FCA US were (and are) justified to rely on Hooman  
27 CDJR’s representations regarding what issues were—and were not—in dispute.

28 ///

1 **III. EVEN IF THE BOARD WERE TO CONSIDER THE CONCEDED ISSUES, THE**  
2 **EVIDENCE MANDATES A DECISION IN FCA US’S FAVOR**

3 The Board should not consider any of the issues that Protestant has conceded. Even if it did,  
4 however, it must find in FCA US’s favor.

5 A. The Claims Were False

6 First, FCA US’s brief demonstrated that the Board should overrule the Protest and allow  
7 FCA US to continue with the chargeback in this matter without even needing to reach whether  
8 Hooman CDJR submitted false or fraudulent incentive claims to FCA US. The statute clearly allows  
9 FCA US to chargeback a claim where the claim is “[~~(1)~~] false or fraudulent, [~~(2)~~] the claim is  
10 ineligible under the terms of the incentive program as previously communicated to the franchisee, or  
11 [~~(3)~~] for material noncompliance with reasonable and nondiscriminatory documentation and  
12 administrative claims submission requirements.” Cal. Veh. Code § 3065.1(g)(2) (emphasis added).  
13 The Board can, and should, rule in FCA US’s favor without addressing the first prong—the  
14 chargebacks are clearly appropriate under both of the other two prongs. However, Hooman CDJR’s  
15 brief encourages the Board to focus on the “false or fraudulent” prong—to poorly paraphrase  
16 Shakespeare, in its brief, the dealership doth protest too much. And Protestant argues that the “sales”  
17 underlying the incentive claims at issue in this Protest were not false or fraudulent merely because  
18 the vehicles were titled after FCA US discovered the dealership’s failure to comply with the  
19 incentive program terms and documentation requirements. (Pro. Br. at 10-11) The facts—and long-  
20 established legal principles—demonstrate that Hooman CDJR’s position is wrong.

21 The hearing evidence demonstrated that Hooman CDJR improperly collected nearly  
22 \$400,000 in nine months from FCA US on the basis of claimed incentives. (E.g., Exh 223:0003) The  
23 vast majority of that amount was for vehicles that were reported “sold” to the dealership itself. To  
24 capture those amounts, Rayan Nissani, on behalf of Hooman CDJR (yet unlike other dealers) would  
25 call FCA US monthly to inquire how far Hooman CDJR was from its VGP target, even though the  
26 dealership received the target by email at the beginning of every month. (RT I p. 146) Tellingly, all  
27 but two of the vehicles (that is, two out of nearly 100) that were allegedly sold to the dealership were  
28 reported sold to FCA US on the last day of the respective month, suggesting that “they were sold to

1 the dealership for the purpose of hitting” the dealership’s sales objectives (as opposed to any  
2 preexisting need for a loaner fleet). (RT II pp. 153-54; Exh 236:0004-06) Thus, it appears the  
3 vehicles were claimed sold in pursuit of the aforementioned nearly \$400,000. But the dealership’s  
4 conduct with respect to these vehicles make the sales questionable:

- 5 • The only “loaner” vehicles that the dealership could show to FCA US’s auditor were  
6 parked in the sale lot, by new vehicles for sale, with less than ten miles on the  
7 odometers and Monroney labels on the windows. (RT II pp. 162-63)
- 8 • When vehicles are actually sold, the dealership’s floor plan is paid off within 7 to 10  
9 days. (RT I p. 158; RT V p. 9) But for these “sales,” the dealership did not pay off the  
10 lienholder, the flooring line. (RT V p. 93)
- 11 • When vehicles are actually sold, Hooman CDJR has a record retention policy that  
12 requires that deal jackets (folders that contain all the relevant documents for the sale  
13 of a vehicle) be maintained for at least five years. (RT I p. 60; RT II p. 22) But there  
14 were essentially no documents for vehicles for which there are disputed chargebacks.  
15 (RT II pp. 101-02, 136, 160)
- 16 • When a car is sold, California law requires a dealer to “submit to the [DMV] an  
17 application accompanied by all fees and penalties due for registration or transfer of  
18 registration of the vehicle”—thus any temporary registration is insufficient—  
19 “within . . . 20 days if the vehicle is a new vehicle.” Cal. Veh. Code § 4456 (emphasis  
20 added). But for these vehicles, many were reported sold more than 240 days (12 times  
21 the statutory limit) before the audit began, and that application still had not been  
22 submitted. (Exh 236:0004-06 (showing vehicles NVDR’d on March 31, 2014); RT I  
23 p. 125; RT IV p. 236)
- 24 • After a car is sold, California law only allows a vehicle to be operated without license  
25 plates until, at the latest, a “90-day period, commencing with the date of sale of the  
26 vehicle, has expired.” Cal. Veh. Code §§ 4456; 5202. License plates are issued when  
27 a car is registered. Cal. Veh. Code § 4850. Yet, again, many of these vehicles were  
28 “sold” more than 240 days before the audit began, and license plates were not

1           obtained because Hooman CDJR did not title or register the vehicles upon these  
2           “sales.”

- 3           • Hooman CDJR did not segregate the amounts it had “paid” for the alleged loaner  
4           vehicles in any way and did not pay any of the required taxes or fees before the audit.  
5           (RT V p. 96; *see also* RT V pp. 78-79)
- 6           • Hooman CDJR sold several of these “sold” vehicles as “new” (rather than used) to  
7           consumers after supposedly selling them to itself. (RT II pp. 116-17)

8           The facts overwhelmingly reflect that the sales were not real—to the contrary, they were  
9           false. Yet in NVDR’ing the vehicles and claiming incentive payments, the dealership was  
10          representing to FCA US that the “sales” were real. (RT I pp. 122-23) The representations were made  
11          to induce FCA US to make payments to the dealership. (RT IV p. 138) FCA US was justified in  
12          relying on the dealership’s representations. (Exhs 206a:0014 (“It is vital that all the data submitted to  
13          CG is accurate and complete. Any exception will result in nonpayment or chargeback of the  
14          claims.”); 207a:0004 (discussing claim submission policy, emphasis on reputable and ethical claim  
15          reporting, and responsibility of dealership for agents’ conduct); 207b:0004 (same); RT III pp. 15, 51,  
16          168) And FCA US made payments because of those representations, payments to which the audit  
17          showed Protestant had not been entitled. Thus, the claims based on these sales were not only false,  
18          but fraudulent as well. *See Tenet Healthsystem Desert, Inc. v. Blue Cross of California*, 245 Cal.  
19          App. 4th 821, 837, 199 Cal. Rptr. 3d 901, 914-15 (2016).

20          Hooman CDJR’s only argument that the claims based on these sales were not false or  
21          fraudulent is that “Once Respondent received evidence that Hooman titled the Audit Vehicles to the  
22          dealership, which it also verified through independent means, it was impossible to claim these sales  
23          were false or fraudulent.” (Pro. Br. at 11) This oversimplified analysis is wrong on several levels.  
24          First, despite referring to “eligibility,” it ignores the requirements for these incentive programs,  
25          including the eligibility restrictions, which are listed in the Incentive Rules Manual, referenced in the  
26          terms of every incentive program. (Exhs 207a, 207b; 282; Pro. Br. at 11) Second, it ignores the  
27          requirement (referenced in the very language it cites) concerning when vehicles must be sold to  
28          qualify for VGP incentives—the programs are monthly sales objectives. (RT III p. 17; *see also* RT II

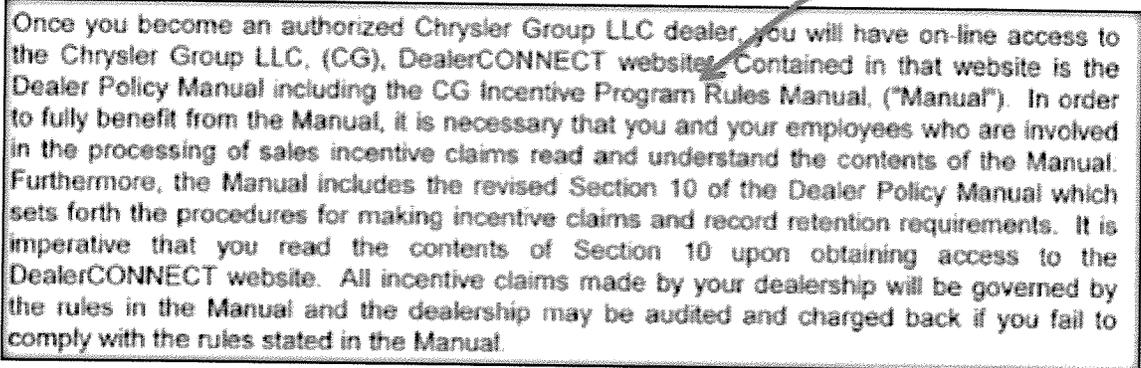
1 p. 47; Exh 282; Pro. Br. at 10-11) It is not enough that the vehicles simply be sold at some future  
2 point, a matter that the dealership inherently recognizes in its Proposed Findings of Fact.  
3 (Protestant’s Proposed Findings, ¶ 116) Third, the argument is premised on the unsupported, and  
4 unsupportable, assumption that a dealer can “fix” its false or fraudulent claim by “belatedly” having  
5 “actual” sales. But even Protestant admits that false or fraudulent claims cannot be cured. (Pro. Br. at  
6 12 n.3) An entity could not avoid fraud charges by offering to replace fraudulent documents with  
7 real counterparts only after it had been caught in the ruse. Hooman CDJR cannot claim innocence by  
8 titling vehicles—only after FCA US discovered its noncompliance—that the dealership represented  
9 it had titled many months before.

10 The Board need not find the claims are false or fraudulent to decide in FCA US’s favor. But  
11 the claims were both. The Protest must be overruled.

12 B. FCA US Communicated the Incentive Rules Requirements to Hooman CDJR

13 Hooman CDJR argues that it was never communicated the terms of the FCA US incentives  
14 for which it requested payment because (1) it ignored the acknowledgement that Mr. Nissani signed,  
15 stating the location of the Incentive Rules Manual and recognizing Hooman CDJR’s responsibility to  
16 familiarize itself with the document; (2) it did not receive a paper copy of the document; and (3) it  
17 disagrees with Julio Sebastiani’s sworn testimony and with California Evidence Code § 1105.  
18 Hooman CDJR does not even address the numerous other ways in which the dealership was alerted  
19 to the requirements and its responsibilities.

20 First, Hooman CDJR’s position is puzzling because Mr. Nissani signed an acknowledgment  
21 regarding the location of the Incentive Rules Manual:

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1 (Exh 204) Hooman CDJR attempts to escape the plain language of the acknowledgement by  
2 asserting that this document was somehow invalidated by a merger clause in the TSSA. But even if  
3 the argument was otherwise logical, the issue is not whether the acknowledgment is a contract. It is  
4 an acknowledgment. This is a matter of communication and notice, neither of which are affected by  
5 a merger clause. And the dealership's other arguments about the acknowledgement are premised on  
6 the mistaken notion that Hooman CDJR could not be expected to read the documents that it  
7 executed. The argument is meritless. *See Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565,  
8 1589 (2005) (quoting Restatement 2d Contracts, § 157, com. b as stating, "Generally, one who  
9 assents to a writing is presumed to know its contents and cannot escape being bound by its terms  
10 merely by contending that he did not read them; his assent is deemed to cover unknown as well as  
11 known terms.").

12 Second, whether Hooman CDJR was given a paper copy of the Incentive Rules Manual is  
13 irrelevant. Hooman CDJR was informed of its responsibility to follow the Incentive Rules Manual  
14 and was given access to the document. A judicially cognizable analogy is helpful—the federal courts  
15 convey court orders through the CM/ECF system. A lawyer could not justify failure to comply with  
16 a court order by saying that, despite being informed of the location and existence of an order in the  
17 CM/ECF system, he or she was not provided a hard copy thereof. Hooman CDJR cannot reasonably  
18 claim ignorance here. Moreover, at the very least, Hooman CDJR regularly accessed  
19 DealerConnect—the same place that the Incentive Rules Manual is kept—to submit the dealership's  
20 incentive claims. (RT III pp. 93-94)

21 Third, despite Hooman CDJR's assertions, the undisputed testimony at the hearing was that  
22 Julio Sebastiani informed the dealership of the titling requirement, even for vehicles sold to the  
23 dealership:

24 Q: And you're absolutely certain you had a conversation with Rayan Nissani or  
25 anyone at the dealership about titling these vehicles that they placed in their  
loaner fleet?

26 [Overruled objection]

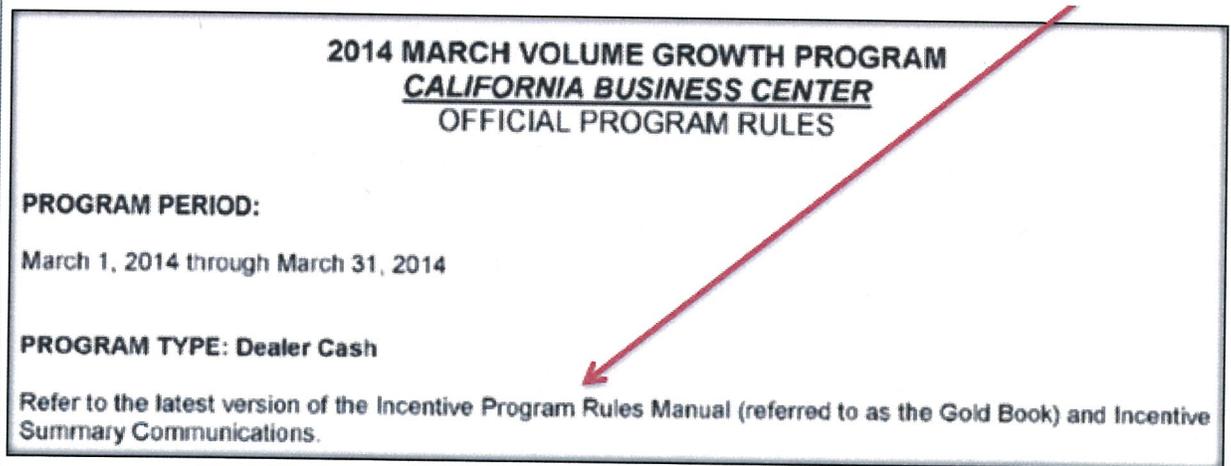
27 THE WITNESS: I'm absolutely certain that I did.

28 (RT I p. 200)

1 Hooman CDJR obliquely suggests that the testimony was not credible because it involved  
2 habit or custom evidence and because Mr. Sebastiani told only Rayan Nissani about the requirement.  
3 (Pro. Br. 17-18 & n.6) But habit and custom evidence is specifically recognized in California. *See*  
4 Cal. Evid. Code § 1105. Moreover, Protestant's counsel questioned Mr. Sebastiani such as to set up  
5 the possibility that the dealership would call Rayan Nissani to challenge the testimony. (RT I pp.  
6 200-01) But after Mr. Sebastiani testified that Rayan would be lying if Rayan testified that the  
7 conversation had never taken place, Hooman CDJR chose not to call Rayan. This is true even though  
8 Rayan was the dealership's general manager, the dealership representative who was present  
9 throughout the audit, and Mr. Nissani's brother. (RT I pp. 38-39, 200-01; RT II pp. 16, 18-19) The  
10 only reasonable inference is that Mr. Sebastiani's testimony was both credible and accurate.

11 Finally, Protestant's argument that it was not communicated the requirements is premised on  
12 ignoring hearing evidence. Every set of incentive program rules prominently reiterated that the  
13 dealership needed to refer to the Incentive Rules Manual, for example:

14 2014 March Volume Growth Program, Exh 282:0011:



2014 July Volume Growth Program, Exh 283 (produced by the dealership):

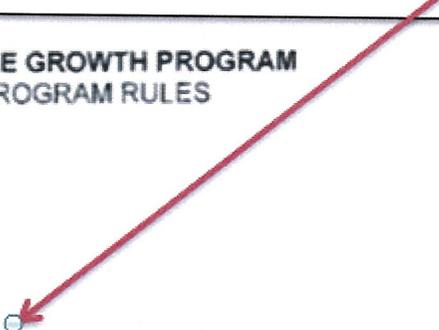
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**2014 JULY VOLUME GROWTH PROGRAM  
OFFICIAL PROGRAM RULES**

**PROGRAM PERIOD:**  
July 1, 2014 through July 31, 2014

**PROGRAM TYPE: Dealer Cash**

Refer to the latest version of the Incentive Program Rules Manual (referred to as the Gold Book) and Incentive Summary Communications.



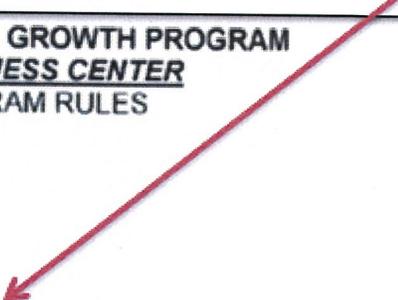
2014 September Volume Growth Program, Exh 282:0033:

**2014 SEPTEMBER VOLUME GROWTH PROGRAM  
CALIFORNIA BUSINESS CENTER  
OFFICIAL PROGRAM RULES**

**PROGRAM PERIOD:**  
September 3, 2014 through September 30, 2014

**PROGRAM TYPE: Dealer Cash**

Refer to the latest version of the Incentive Program Rules Manual (referred to as the Gold Book) and Incentive Summary Communications.



Thus, Protestant’s claim that “The Program Rules do not describe documents that Hooman was required to keep upon sale of a vehicle; the Program Rules also do not describe that Hooman was required to title vehicles upon sale or to create contracts for sales to the dealership,” (Protestant’s Proposed Findings at 34), is a weak attempt to distract the tribunal from the first full sentence in the program rules.

The argument also completely ignores:

- The training provided by Mr. Sebastiani (RT I pp. 148-156)
- The Dealer Policy Manual (Exh 206a:0040):

1 The Incentive Rules Manual (the “Gold Book”) is available to all dealers on the  
2 DealerCONNECT website. All updates to the Gold Book will be made electronically  
3 as they occur and will be made available immediately to you. The terms of that  
4 manual are incorporated into this Dealer Policy Manual as if they were written  
5 directly into it. Chrysler will also issue written program rules from time to time  
6 that pertain to a specific program (“Official Program Rules”). You are required to  
7 comply with all of the rules of the Gold Book, and any Official Program Rules for a  
particular program for which you report a sale or submit a claim.

8  
9 There is no question that FCA US timely provided the Incentive Rules Manual to Hooman  
10 CDJR. If Hooman CDJR did not heed that information, that reflects on the dealership, but not on  
11 FCA US.

12 C. Protestant’s References to Loaner Vehicle Incentive Programs Are a Red Herring

13 Protestant’s brief repeatedly addresses the absence of a “loaner vehicle program” by FCA  
14 US, as if it were meaningful. (Pro. Br. at 6, 17) This is irrelevant—the chargebacks are not related in  
15 any way to the manner in which the vehicles were used, as Protestant admits. (*Id.* at 7) The non-  
16 existent terms of the non-existent program have no bearing on Hooman CDJR’s failure to comply  
17 with the existent incentive program terms relevant to this Protest.<sup>5</sup>

18 Similarly, as discussed in FCA US’s Closing Brief and as Administrative Law Judge  
19 Woodward Hagle already recognized, the only issue concerning loaner vehicles *as* loaner vehicles in  
20 the present matter pertained to a goodwill offset that FCA US provided to Protestant.<sup>6</sup> (RT I pp. 8-9)  
21 By continuing to deride FCA US for having provided it a gift of more than \$100,000.00, Protestant  
22 essentially kicks a gift horse in the mouth. (Pro. Br. at 9; Protestant’s Proposed Findings, ¶ 77)  
23 Despite Protestant’s contentions to the contrary, it was entirely reasonable for FCA US, having  
24

25 <sup>5</sup> Protestant also repeatedly references alleged pricing concerns in the context of incentives.  
26 (Pro. Br. at 3, 7) The claims are not supported by the record, or by the citations referenced by  
Protestant.

27 <sup>6</sup> As the testimony clearly reflected, the Audit Appeal Committee did not focus for long on  
28 Hooman CDJR’s lack of compliance because the noncompliance was obvious and admitted. (RT IV  
pp. 152-54; *see also* Pro. Br. at 8-9) Protestant’s complaints regarding the issue are difficult to  
comprehend and apparently seek to undermine the gift that FCA US offered to Hooman CDJR.

1 concluded that there was no basis on which to reverse the chargebacks, to ask Protestant to provide  
2 documents in support of a potential gift to Protestant. (RT IV p. 167) The request was not related to  
3 an incentive program, but reflected separate consideration of a potential goodwill offset to the  
4 amount owed by the dealership. (RT IV pp. 152-54) The Protest should be overruled and the Board  
5 should require Hooman CDJR to pay the entire \$385,115.00 chargeback.

6 **IV. CONCLUSIONS IN HOOMAN CDJR'S PROPOSED FINDINGS OF FACT ARE**  
7 **NOT SUPPORTED BY THE RECORD**

8 Finally, Protestant's Proposed Findings of Fact and Proposed Decision is riddled with factual  
9 inaccuracies and misinterpretations, sufficient that the citations in the documents cannot be trusted to  
10 justify the representations allegedly made in reliance upon them. A smattering of examples  
11 illustrates the point:

- 12 • Protestant's Proposed Findings state "When Hooman registered and titled the Audit  
13 Vehicles, it did so with the same sale date as Hooman reported to Chrysler."  
14 (Protestant's Proposed Findings, ¶ 100) But one of the citations that Protestant cites,  
15 allegedly for support of the conclusion, clearly states "there's no way to retroactively  
16 title a vehicle." (RT II, p. 194) Moreover, the documentary evidence does not support  
17 the statement. (Exh 236:0004-06; 234)
- 18 • Protestant's Proposed Findings state that the Incentive Rules Manual is "silent as to  
19 whether a dealer must title a vehicle when the vehicle is reported sold to the  
20 dealership from the dealership's own sales stock." (Protestant's Proposed Findings,  
21 ¶ 29) But the Incentive Rules Manual clearly states that "Eligible vehicles may be . . .  
22 New and unused vehicles sold or leased to any entity with a dealer license that are  
23 titled at the time of sale. . . . The selling dealership must ensure these requirements  
24 are fulfilled. The selling dealership is also responsible for compliance with state tax,  
25 licensing and registration requirements. Any violation will result in the chargeback of  
26 all incentives[.]" (Exhs 207a:0006; 207b:0006)
- 27 • Protestant's Proposed Findings attempt to artificially limit the scope of the training  
28 sessions that Mr. Sebastiani provided to the dealership. (Protestant's Proposed

1 Findings, ¶ 35) Mr. Sebastiani’s testimony was credible, as discussed above, and the  
2 training was not only “focused on claiming incentives that were automatically  
3 rejected by FCA’s incentive system and not incentives subject to audits.” (*Id.*)  
4 Protestant’s citation makes clear that it means that the incentives had been challenged  
5 because they were submitted late, but late means that they were submitted after more  
6 than 90 days. (RT I p. 148) Yet even Mr. Nissani admitted that Mr. Sebastiani  
7 provided training to the dealership on incentives in the “first few weeks” that the  
8 dealership was in business. (RT I p. 121) Such training could not have been related to  
9 incentive claims for sales made more than three months prior. The incentive training  
10 that Mr. Sebastiani provided to the dealership was much more complete than  
11 Protestant represents.<sup>7</sup>

- 12 • Protestant’s Proposed Findings ignore California law and instead substitute the  
13 testimony of Mr. Nissani to claim that a dealership’s temporary registration allows a  
14 vehicle to be operated “until a permanent title and registration are issued by DMV.”  
15 (Protestant’s Proposed Findings, ¶ 52) But dealerships are required to register a new  
16 vehicle with the DMV within 20 days, and the vehicles can only be operated without  
17 a permanent license plate for at most 90 days. Cal. Veh. Code §§ 4456, 5202.
- 18 • Protestant claims that the Audit Manager Review “maintained the initial chargeback  
19 based solely on the failure to title the vehicles at the time of sale,” but the cited  
20 exhibit flatly contradicts this representation.<sup>8</sup> (Protestant’s Proposed Findings, ¶ 76;  
21 Exh 236:0007-51 (in the “Sales Audit Results – AMR” dated “03/02/2015,” reflecting  
22 *ad nauseum* chargeback reasons, primary and secondary, of “Deal File Not Located,”  
23

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24 <sup>7</sup> Similarly, as referenced in FCA US’s Closing Brief, the dealership attempts to spin  
25 Mr. Nissani’s testimony concerning the absence of a loaner vehicle program into allegations that  
26 there was a lack of information regarding general incentive requirements. (Protestant’s Proposed  
27 Findings, ¶ 37) Mr. Nissani’s testimony, even if it were credible, does not support the conclusion  
28 that Protestant attempts to reach.

<sup>8</sup> Moreover, Hooman CDJR claims that the DMVdesk documents show a date of title, but, as  
FCA US demonstrated in its Closing Brief, Mr. Nissani’s claim that the DMVdesk documents show  
the date when a vehicle was titled is not credible. (FCA Closing Brief at 37-38)

1 etc.))

- 2 • The dealership's characterization of the chargebacks is inaccurate. (Protestant's  
3 Proposed Findings, ¶ 123) For instance, Reason Code H "is all of the objective  
4 program chargebacks that come from reason codes A, and D, and K," not  
5 chargebacks "for incentives if they do not meet reason codes D and K." (RT II p. 49;  
6 Protestant's Proposed Findings, ¶ 123) The dealership's representations of the reasons  
7 for the chargebacks ignores that there were multiple, independent grounds for the  
8 chargebacks and that the amount charged back to each code varied only by which  
9 code Mr. Gabel put into the system first. (RT II pp. 73-75; Protestant's Proposed  
10 Findings, ¶ 122)
- 11 • Despite the claims to the contrary in Protestant's Proposed Findings, the evidence  
12 does not support the conclusion that the screenshots contain the same information that  
13 would be printed on a sales contract, or that a contract is necessarily populated with  
14 the same information as a screenshot. (Protestant's Proposed Findings, ¶ 95; Exhs  
15 221:0005; 281:0001-03; 238:0093-94; 288:0003-05) As was addressed at length in  
16 FCA US's Closing Brief, important sections of the contracts are missing from the  
17 screenshots, including the odometer reading, the breakdown of fees, the amount of a  
18 finance charge, the amount of the annual percentage rate, the Federal Truth in  
19 Lending Disclosures, the Statement of Insurance, the Electronic Vehicle Registration  
20 or Transfer Charge, and much more. (FCA's Closing Br. at 21-24)

21 Protestant's Proposed Findings of Fact and Proposed Decision is unreliable and the  
22 conclusions are incorrect. It should be discarded.

### 23 CONCLUSION

24 For all of the reasons herein and in FCA US's Closing Brief, the consolidated Protests should  
25 be overruled and FCA US should be permitted to proceed with the full chargeback.

1 Dated: July 15, 2016

WHEELER TRIGG O'DONNELL LLP

2  
3 By: 

4 Mark T. Clouatre  
5 John P. Streelman  
6 Benjamin I. Kapnik

DONAHUE DAVIES LLP

7 Robert E. Davies, Esq.  
8 Mary A. Stewart, Esq.

9 Attorneys for Respondent, FCA US LLC

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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 15, 2016**, I served the foregoing **FCA US LLC's REPLY IN SUPPORT OF ITS**  
10 **CLOSING BRIEF** on each party in this action, as follows:

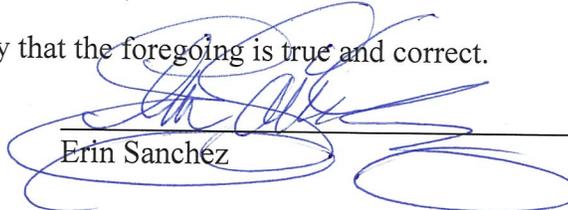
11 Law Offices of Gavin M. Hughes  
12 Gavin M. Hughes  
13 3436 American River Drive, Suite 10  
14 Sacramento, CA 95864  
15 Telephone: 925.457.2028  
16 E-mail: gavin@hughesdealerlaw.com

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 15, 2016**, at Sacramento, California.

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

  
Erin Sanchez