

1 Mark T. Clouatre (#29892)
John P. Streelman (#37923)
2 Benjamin I. Kapnik (#46011)
Wheeler Trigg O'Donnell LLP
3 370 Seventeenth Street, Suite 4500
Denver, CO 80202-5647
4 Telephone: (303) 244-1800
Fax: (303) 244-1879
5 E-mail: clouatre@wtotrial.com
streelman@wtotrial.com
6 kapnik@wtotrial.com

7 Robert E. Davies, Esq. (California Bar No. 106810)
Gregory A. Nelson, Esq. (California Bar No. 274926)
8 Donahue Davies LLP
P.O. Box 277010
9 Sacramento, CA 95827-7010
Telephone: (916) 817-2900
10 Facsimile: (916) 817-2644
E-mail: rdavies@donahuedavies.com
11 E-mail: gnelson@donahuedavies.com
Attorneys for Respondent, FCA US LLC

12 **STATE OF CALIFORNIA**

13 **NEW MOTOR VEHICLE BOARD**

14 In the Matter of the Protest of
15 HC AUTOMOTIVE, INC., dba
HOOAN CHRYSLER JEEP DODGE
16 RAM
17 Protestant,
18 vs.
19 FIAT CHRYSLER AUTOMOBILES,
20 Respondent.

**Protest No: PR-2429-15, PR-2430-15, PR-2431-15,
PR-2432-15
Vehicle Code Section 3065.1**

**FCA US LLC'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

21 **PROCEDURAL BACKGROUND**

22 **Parties and Counsel**

23 1. Protestant HC Automotive, Inc., dba Hooman Chrysler Dodge Jeep Ram (herein
24 "Hooman CDJR" or "Protestant") is a new automobile vehicle dealer located at 333 Hindry Avenue,
25 Inglewood, California 90301. Protestant is a "franchisee" within the meaning of Cal. Veh. Code
26 § 331.1.¹

27 _____
28 ¹ Hereinafter, unless otherwise indicated, all Section references are to the Vehicle Code.

1 Manual was available online and that it was the dealership’s responsibility to ensure that it
2 complied with the Manual.

3 26. Upon the dealership’s request, selected individuals from the dealership received
4 training in claiming incentives.

5 27. Nonetheless, Hooman CDJR chose to claim incentives on vehicles for which it had
6 not complied with the requirements. This choice allowed the dealership to receive hundreds of
7 thousands of dollars to incentivize “sales” that essentially never took place. No money changed
8 hands or was segregated in any way, no taxes were paid, and the dealership subsequently was able
9 to resell several of these already-purchased vehicles to consumers as “new.”

10 28. FCA US conducted an incentive audit of the dealership and discovered the
11 noncompliance, which resulted in a chargeback of \$385,115.00.

12 29. During and for 9 months after the audit, Hooman CDJR was repeatedly provided
13 opportunities to submit documentation demonstrating that it had, in fact, complied with the
14 requirements. To date, it still has not done so.

15 30. Hooman CDJR repeatedly appealed the audit results, but each level of the audit found
16 the audit results were appropriate. The dealership was nonetheless provided with a goodwill offset
17 of more than \$100,000.00, a more than fair result in light of Hooman CDJR’s noncompliance with
18 policies which it agreed to follow.

19 **FINDINGS OF FACT²**

20 **Preliminary Findings**

21 **History and Description of the Franchisor-Franchisee Relationship**

22 31. FCA US has close to 3000 dealerships. (RT III p. 167)

23 32. FCA US and Hooman CDJR are parties to a dealer agreement that includes a Term
24 Sales and Service Agreement (“TSSA”) and Additional Terms and Provisions (together, the
25

26 _____
27 ² References herein to testimony, exhibits or other parts of the record are examples of evidence
28 relied upon to reach a finding and are not intended to be all-inclusive. Findings of Fact are organized
under topical headings for readability only and are not to be considered relative to only the particular
topic under which they appear.

1 “Dealer Agreement”). (Exhs 202; 203; JtExh 1:0002)³ The TSSA is dated November 19, 2013.
2 (Exh 202:0005)

3 33. The relationship is also governed by certain manuals, including a Dealer Policy
4 Manual and the Incentive Rules Manual (at times referred to as the “Gold Book”). (Exhs 206a;
5 207a; 207b)

6 34. Hooman CDJR is part of an experienced dealership group that operates multiple
7 dealerships in California under the direction of Mr. Hooman Nissani. Mr. Nissani is a sophisticated
8 businessman who also owns Toyota, Nissan, Acura, Chevrolet, Hyundai and Volvo dealerships, in
9 additional to numerous other non-dealership businesses. (RT I pp. 37-38, 40)

10 35. Mr. Nissani testified that he did not read the TSSA before signing it, and has not read
11 it in the more than two-and-a-half years since it was signed. Despite his agreements to the contrary
12 in the acknowledgement form, he has not read the Dealer Policy Manual, and he had never read the
13 Incentive Rules Manual before his deposition in this case, shortly before the hearing. (RT I pp. 67,
14 107-08, 112-13; Exh 204)

15 36. Although the dealership had a contractual obligation to expand and renovate the
16 facility at 333 Hindry Avenue in Inglewood, “for the exclusive display, sales, and service of the
17 Chrysler, Dodge, Jeep and RAM vehicle line(s)” before the “expiration” of the TSSA in November
18 2014, it has not done so. (Exh 202:0006-08; RT I pp. 61, 62)

19 37. Although Mr. Nissani signed a document on behalf of Hooman CDJR, which
20 “represents and warrants” that Mr. Nissani “will be physically present at the DEALER’s facility
21 (sometimes referred to as “Dealership Facilities”) during most of its operating hours and will
22 manage all of DEALER’s business relating to the sale and service of CG products,” Mr. Nissani
23 admitted that he spends only 15 to 20 percent of his time at Hooman CDJR. (Exh 202:0002; RT I
24 p. 47)

25
26 ³ Exhibits are referenced as “Exh” and joint exhibits as “JtExh”. In both exhibits and joint exhibits,
27 page number references will be to the last four digits only. Since most exhibits were marked for
28 identification by the parties prior to the hearing, they were not offered or introduced in numerical
order; also, some pre-marked items may not have been used in the hearing at all, so there may be
numerical gaps in the Exhibit List.

1 47. FCA US accepts, as an initial matter, dealers' representations that vehicles (and,
2 where appropriate, customers) are eligible for incentive payments. (RT II p. 96; RT III pp. 14-15)

3 48. Mr. Nissani recognized the requirement for honest reporting, agreeing that when
4 Hooman CDJR submits incentive claims, the dealership represents that it is doing so in compliance
5 with FCA US's incentive policies. Mr. Nissani said, "We wouldn't be submitting it if we were
6 not." (RT I pp. 122-23)

7 49. FCA US retains the right to audit dealerships with regard to their compliance with
8 incentive program terms and documentation and record retention requirements. That right is
9 protected in the Dealer Agreement and reiterated in the Dealer Policy Manual and the Incentive
10 Rules Manual, as is the remedy of charging back any incentives that were improperly claimed.
11 (Exh 203a:0006; RT IV pp. 8-9; Exh 206a:0014; Exhs 207a:0004; 207b:0004)

12 **FCA US's Incentive Rules and Program Terms**

13 50. Every FCA US incentive program, regardless of whether it is a customer incentive or
14 dealer incentive, is governed by the Incentive Rules Manual and individual program rules, all of
15 which are available twenty-four hours a day, seven days a week to dealers via DealerCONNECT.
16 (Exhs 207a:0005; 207b:0005; 282; RT II p. 98)

17 51. The Incentive Rules Manual requires that "All documents/records pertaining to the
18 acquisition, sale/lease and delivery of a vehicle must be retained by the selling dealership for a
19 minimum of two (2) years from the date of incentive payment" Dealerships are required to
20 retain, "[a]t a minimum," many documents, including "Title and Registration Documents including
21 a copy of the actual title and/or official state confirmation thereof" and a "Signed Buyer's
22 Order/Purchase Contract." (Exhs 207a:0016, 207b:0016)

23 52. The Dealer Policy Manual contains a substantially identical list. Moreover, the Dealer
24 Policy Manual states that "It is your responsibility as a dealer to maintain complete and accurate
25 supporting documents for all incentive transactions, such as sales incentives" (Ex. 206a:0040,
26 0042; RT II pp. 91, 100) The duration of these requirements is less stringent than the requirements
27 under California law.
28

1 53. The Incentives Manual also states that vehicles are ineligible for incentive programs
2 (among other reasons) if they are not titled to the NVDR customer at the time of sale. (Exhs
3 207b:0006; 207a:0006; RT II p. 99 (“ineligible” vehicles not eligible for incentives))

4 54. The Incentive Rules Manual is available electronically via DealerCONNECT twenty-
5 four hours a day, seven days a week. (Exh 204; RT I p. 162; RT IV pp. 11-12)

6 55. Mr. Nissani, as the dealer principal for Hooman CDJR, signed a document dated
7 October 15, 2013, titled “Dealer Acknowledgment of Receipt of Chrysler Group LLC Incentive
8 Program Rules Manual DAP-27.” Mr. Nissani’s signature acknowledges “that upon receiving
9 access to the [] DealerCONNECT website it is my responsibility to read and thoroughly
10 understand the contents of the [Incentives Manual] and to require my employees who are involved
11 in any way in the processing of sales incentive claims to read and thoroughly understand the
12 contents of the [Incentives Manual.]” (Exh 204:0001 (emphasis added); *see also* RT I pp. 102-04)
13 The document reiterates that “All incentive claims made by your dealership will be governed by
14 the rules in the [Incentive Rules] Manual and the dealership may be audited and charged back if
15 you fail to comply with the rules stated in the [Incentive Rules] Manual.” (Exh 204)

16 56. To ensure that the requirements of the Incentive Rules Manual are not inadvertently
17 overlooked, the Incentive Rules Manual is incorporated into the Dealer Policy Manual and
18 referenced in every set of incentive program rules. (Exh 206a:0040; Exh 282:0007, 0009, 0010,
19 0011, 0015, 0020, 0025, 0029, 0033, 0036, 0039, 0044, 0046; RT III p. 127)

20 57. Additionally, Mr. Sebastiani provided training to the dealership regarding incentive
21 claims on multiple occasions. (RT I pp. 121, 149-52; RT III p. 124)

22 58. Mr. Sebastiani also told Mr. Nissani’s brother, Rayan Nissani (“Rayan”), who was
23 acting as “the decision maker at the store,” that any vehicle Hooman CDJR sold to itself as a
24 loaner vehicle needed to be titled at the time of sale. (RT I pp. 138, 172, 190, 200-01)

25 **Hooman CDJR’s Failure to Comply With the Incentive Program Terms**

26 59. It is undisputed that Hooman CDJR did not comply with the Incentive Program
27 Terms, as previously communicated to the dealership, for the contested chargebacks.
28

1 60. Mr. Nissani admitted that the charged-back vehicles were not titled at the time of sale.
2 (RT I p. 125; RT II p. 68)

3 61. Mr. Nissani also admitted that contracts were not created for the sale of the vehicles
4 being charged back, let alone retained. (RT I p. 72; Exh 221:0001; RT II pp. 68-69)

5 62. In correspondence close to the time of the audit, Mr. Nissani claimed that making
6 such contracts was a waste of “paper and \$4 for each contract.” (Exh 222:0002)

7 63. The evidence reflected that none of the required documents were submitted to FCA
8 US.

9 **FCA US Audited Hooman CDJR And Discovered the Noncompliance**

10 64. Matthew Gabel, on behalf of FCA US, began a sales incentive audit of Hooman
11 CDJR on December 1, 2014. (JtExh 1:0002)

12 65. During the audit, Mr. Gabel reviewed 163 VINs and determined that 108 of those
13 vehicles had been submitted for incentives although they were noncompliant with the sales
14 incentive rules. (RT II pp. 42-43)

15 66. Mr. Gabel discussed the Incentive Rules Manual with Rayan during the audit, and
16 also showed portions of the Incentive Rules Manual to him. (RT II p. 98)

17 67. After several days at the dealership, dealing with poor record-keeping and
18 compliance, Mr. Gabel concluded that a chargeback of \$385,115.00 was required. (RT II p. 75;
19 Exh 213)

20 68. The dealership never challenged or contested the calculation of the chargeback. (RT
21 II p. 68; Exh 223:0003, 49)

22 69. Mr. Gabel told Rayan that if the vehicles were not titled at the time of sale, the
23 incentive chargebacks could not be reversed. (RT III pp. 108-09)

24 70. Mr. Gabel conducted an exit meeting regarding the audit on December 5, 2014, and
25 provided written notice of the results to Hooman CDJR that day. (RT II p. 119; Exh 213)

26 71. The written notice specified every VIN that was being charged back, and each of the
27 reasons it was being charged back. The contested chargebacks were charged back for two reasons,
28 each of which would be sufficient to justify the chargeback independently: (1) the vehicles were

1 not titled to the NVDR customer at the time of sale, and (2) the deal file—that is, all the required
2 documentation—was missing. (Exh 213:0004-45; RT II pp. 72, 73-74, 136; RT III pp. 40-41)

3 72. Mr. Gabel independently verified for every single vehicle at issue that the vehicle had
4 not been timely titled at the time of sale. (RT II p. 133; RT III p. 99)

5 73. Mr. Gabel provided Hooman CDJR a period of thirty-one days, until January 5, 2015,
6 to provide the missing documentation and prove that the vehicles had been titled to the NVDR
7 customer at the time of sale. (Exh 213; RT II p. 40)

8 74. As a courtesy to the dealership, FCA US unilaterally extended the period until
9 January 14, 2015. (Exh 220; RT II p. 127)

10 75. The dealership did not provide to Mr. Gabel titles or any of the other documents
11 required to be kept by the dealership. (RT II pp. 72, 173; RT III p. 88)

12 76. Instead, Mr. Nissani submitted DMVdesk Vehicle Registration Inquiry Reports for a
13 subset of the vehicles and “screenshots” comprised of “F&I – Deal Worksheets” and “Retail Recap
14 Screens” for a subset of the vehicles (Exhs 217; 221)

15 77. Mr. Nissani claimed that the screenshots contained the “[s]ame information, same
16 exact line by line, identical,” as a contract for the sale of a vehicle. He said: “This is a printout of
17 our computer software that prints onto the contract. So each item, if you look on – on the front
18 screen, is numbered, those numbers and – and those items line up to the contract.” (RT IV p. 253)

19 78. Mr. Nissani’s testimony was not credible. It is directly contradicted by the
20 documents, as the screenshots do not match the data that should have been completed as part of a
21 contract. (Exhs 221:0005; 281:0001-03; 238:0093-94; 288:0003-05)

22 79. Mr. Nissani also claimed that the DMVdesk Vehicle Registration Inquiry Reports
23 show when a vehicle was titled, by reference to a “date of last ownership certificate.” (RT IV pp.
24 261-62)

25 80. Mr. Nissani’s testimony was not credible, and was contradicted by other record
26 evidence and Mr. Nissani’s own admissions. (Exh 236:0005; RT I p. 125)

27 81. The other reasons that Mr. Nissani offered for Hooman CDJR’s lack of compliance
28 with the rules and policies were also not credible.

1 82. On January 14, 2015, Mr. Gabel sent Mr. Nissani the “final reports” from the audit,
2 with a chargeback of \$385,115.00. Mr. Gabel’s letter provided Hooman CDJR the opportunity to
3 request an Audit Manager Review (“AMR”) and to submit additional supporting documents. (Exh
4 223:0001; RT II pp. 50-51, 134)

5 83. Mr. Nissani requested an AMR, and FCA US agreed to proceed with the AMR.⁴ (RT
6 III pp. 143-44)

7 84. Hooman CDJR again submitted certain DMVdesk Vehicle Registration Inquiry
8 Reports and certain screenshots, but nothing else. (Exh 232)

9 85. Mr. William Danforth conducted an Audit Manager Review of the chargeback of
10 Hooman CDJR. The review resulted in no change to the audit chargeback. (JtExh 1:0002)

11 86. Mr. Danforth reviewed the documents submitted by Mr. Nissani, reviewed the
12 accuracy of Mr. Gabel’s audit, and, because Mr. Nissani failed to submit the relevant documents,
13 took the extra step of requesting and reviewing a sample of Auto Check Vehicle History Reports
14 for vehicles that had been charged back. (RT IV p. 57; RT III pp. 158-59; Exh 234)

15 87. On March 2, 2015, Mr. William Danforth sent Mr. Hooman Nissani the final results
16 of the Audit Manager Review of the chargeback of Hooman CDJR. (JtExh 1:0002)

17 88. Mr. Danforth’s March 2, 2015 letter offered Hooman CDJR yet another opportunity
18 to supply the missing documents and to demonstrate that the vehicles had been titled to the NVDR
19 customers at the time of sale. It provided Hooman CDJR another thirty days to request a second-
20 level appeal, to the Audit Appeal Committee, and to provide the documentation. It directed the
21 dealership to the Dealer Policy Manual regarding the addresses to which to send any appeal
22 materials, stating that the “request must be sent to the Director – Dealer Relations and
23 Development, with copies to the Audit Manager and your Business Center Manager.” (Exh
24 236:0002)

25
26
27
28 ⁴ Despite the belated nature of Mr. Nissani’s request, FCA US agreed to proceed with the AMR. (RT
III pp. 143-33)

1 **FCA US's Audit Appeal Committee Found No Basis to Adjust the Chargebacks But Provided**
2 **Hooman CDJR a Goodwill Offset**

3 89. On March 20, 2015, Mr. Hooman Nissani emailed Mr. William Danforth a letter
4 requesting an appeal of the sales incentive audit. (JtExh 1:0002)

5 90. Mr. Nissani's letter contained several claims that have been contradicted by sworn
6 testimony. (Exh 238:0002-03) These include claims that the dealership had never "heard of" the
7 Incentive Rules Manual, that the dealership never received the Dealer Policy Manual, and that the
8 dealership never received "any kind of procedure training or instructions from Chrysler."

9 91. Mr. Nissani's letter did not claim that any of the dealership's failures to adhere to the
10 terms of the incentive programs or record retention requirements had been cured. Rather, it
11 requested that the "chargebacks resulting from this audit (as well as any others resulting from
12 unwitting procedure [sic] errors occurring from then until now) be waived." (Exh 238:0003)

13 92. Mr. Nissani again attached the same selection of DMVdesk Vehicle Registration
14 Inquiry Reports and certain screenshots, and nothing more. (Exh: 238:0093, 0094; 239:0005,
15 0088)

16 93. Mr. Nissani's testimony at the hearing was not credible to the extent it suggested he
17 had grounds to claim compliance that were not raised to FCA US during the audit.

18 94. As with its belated AMR request, Hooman CDJR failed to comply with the policies
19 for requesting an appeal to FCA US's Audit Appeal Committee; nevertheless, FCA US agreed to
20 consider the errant request. (RT IV p. 71)

21 95. FCA US maintains an Audit Appeal Committee as the final level of review of the
22 results of an audit. (RT IV p. 128)

23 96. The Audit Appeal Committee held a meeting to consider Hooman CDJR's appeal on
24 July 9, 2015. (JtExh 1:0002)

25 97. Five members of the Audit Appeal Committee attended Hooman CDJR's appeal. The
26 members, who are director-level individuals, included members of senior management of various
27 groups within FCA US, including incentive finance, warranty, procurement and supply, service
28 and parts/quality finance, and dealer relations and retail strategies. (RT IV pp. 81-82, 129-31)

1 98. At the Audit Appeal Committee meeting, Mr. Nissani was allowed to present his
2 position. Mr. Nissani claimed that Hooman CDJR had not complied with the requirements because
3 he was not aware of them. Mr. Nissani acknowledged at the meeting that the dealership had an
4 obligation to follow the rules, and acknowledged that there were not contracts for the sales and that
5 the vehicles were not titled at the time of sale. (RT IV pp. 82-83, 146-47)

6 99. The Audit Appeal Committee concluded there was “no basis for any adjustment to
7 the chargeback.” (Exh 246:0001; RT IV p. 152)

8 100. The Audit Appeal Committee, however, made a goodwill decision to take into
9 consideration Hooman CDJR’s alleged loaner program, and to consider making an adjustment to
10 the amount that was being charged back if Mr. Nissani could demonstrate that vehicles were
11 actually being used as loaner vehicles. (RT IV p. 154)

12 101. After Mr. Nissani submitted some documentation, the committee decided to extend a
13 goodwill offset—a gift—of \$101,660.00 to the dealership. (RT IV p. 181)

14 102. Mr. Glenn sent the dealership a letter conveying the final determination. (RT IV pp.
15 166-67; Exh 264)

16 **Findings Related to Hooman CDJR’s Claim That it Cured the Noncompliance**

17 103. Hooman CDJR submitted only two types of documents to FCA US in an attempt to
18 reverse the chargebacks: (1) the screenshots and (2) DMVdesk Vehicle Registration Inquiry
19 Reports. (RT V p. 15; Exhs 217, 221, 232, 238)

20 104. There were two independent grounds for the contested chargebacks, each of which
21 would be sufficient to justify the chargeback independently: (1) the deal file was missing (that is,
22 the dealership failed to submit the required documents), and (2) the vehicles were not titled to the
23 NVDR customer at the time of sale. (*Id.*; RT II pp. 72, 73-74, 136; RT III pp. 40-41)

24 105. The absence of a deal file means that there are “a lot of missing things.” (RT III p. 44)

25 106. None of these missing documents were submitted to FCA US.

26 107. The documentation requirements for the deal file are reasonable and
27 nondiscriminatory. Among other benefits, they ensure that sales are legitimate and completed.
28

1 equal footing, (3) instilling accountability and credibility into the system for all of the dealers, and
2 (4) reducing the brokering and export of FCA US vehicles.

3 125. The requirement is also in line with California law. Accurate records are important
4 for consumers, state agencies, and law enforcement.

5 126. Belated titling does not “cure” a dealership’s failure to title vehicles at the time of
6 sale. Allowing a dealership to cure noncompliance by titling after an audit has begun would
7 incentivize dealerships to not comply with the franchisor’s requirements or the law, thus setting
8 consumers, the state, and FCA US all at a disadvantage.

9 127. The problem is illustrated in the present case, as Hooman CDJR sold several vehicles
10 to consumers as “new,” some period of time after it reported selling the vehicles to itself. It was
11 able to do so because it failed to title the vehicles at the time of the initial sale. (RT II pp. 116-17)

12 128. Hooman CDJR also withheld and retained money that was owed to the state until
13 after the audit began. (RT V p. 96; *see also* RT V pp. 78-79)

14 129. Such belated titling does not cure the risk to consumers, it sets a dealership out for
15 preferential treatment against the thousands of other FCA US dealerships, and it reduces the
16 accountability and credibility in the system. It does not cure a dealership’s failure to comply with
17 the rule as an initial matter.

18 **Franchisor’s Compliance With All Other Statutory Requirements**

19 130. As discussed above, no other issues are contested and thus they need not be
20 addressed. However, although unnecessary, there was sufficient record evidence that FCA US has
21 sustained its burden of proof as to all other statutory requirements as well.

22 131. FCA US did not chargeback any claims without particular reasons to chargeback that
23 claim, and thus did not chargeback any claims based upon an extrapolation from a sample. (RT II
24 pp. 69-70)

25 132. FCA US only charged back claims that were ineligible under the terms of the
26 incentive program as previously communicated to the franchisee or where there was material
27 noncompliance with reasonable and nondiscriminatory documentation requirements.
28

1 133. Hooman CDJR was not selected for an audit for an inappropriate reason. (RT IV pp.
2 28, 55)

3 134. The audit period was limited to nine months. (RT I p. 115; RT II p. 11)

4 135. FCA US has conducted no other audits of Hooman CDJR, and thus did not conduct
5 any other audits of Hooman CDJR within nine months of the audit at issue. (JtExh 1:0002)

6 136. The audit was conducted on a reasonable basis and Hooman CDJR was offered
7 numerous opportunities to respond to the audit and provide additional documents.

8 137. Hooman CDJR was provided timely written notice of the disapproval of previously
9 approved claims following the audit and was provided more than 30 days after the receipt of the
10 written disapproval to respond to the disapproval with additional documentation or information.
11 (RT II pp. 87, 119; Exhs 213; 223)

12 138. Hooman CDJR was subsequently given two additional periods of time in which to
13 submit additional information or documentation. (Exhs 223:0002; 236:0002)

14 139. Hooman CDJR admitted that it was provided “a final report closing the audit on
15 August 13, 2015.” (Protestant’s Motion *In Limine*, at 3.) That letter stated the “final chargeback
16 amount” and reflected that the “appeal is now closed.” (Exh 264; *see also* RT IV pp. 169-70) This
17 was undisputably less than thirty days after the Audit Appeal Committee had voted on the final
18 outcome of Hooman CDJR’s appeal. (Exh 263; RT IV pp. 166-67)

19 140. FCA US has not collected nor completed the chargeback of Hooman CDJR. (JtExh
20 1:0002; *see also* RT I p. 134)

21 **DETERMINATION OF ISSUES**

22 141. In regard to the documentation requirement, FCA US has established that Hooman
23 CDJR did not cure its noncompliance. FCA US has sustained its burden of proof.

24 142. In regard to the titling requirement, FCA US has established that Hooman CDJR did
25 not cure its noncompliance. FCA US has sustained its burden of proof.

26 143. Because FCA US has sustained its burden of proof with regard to the only contested
27 issues in the litigation, the protest is overruled. There was, however, record evidence of FCA US’s
28 compliance with all of the requirements of § 3065.1(g).

1 144. FCA US established that the audit of Hooman CDJR was conducted on a reasonable
2 basis and for a period of nine months. FCA US further demonstrated that the franchisee was not
3 selected for the audit for an improper purpose and that this was the only audit of the franchisee
4 which has taken place. FCA US sustained its burden of proof with regard to § 3065.1(g)(1).

5 145. FCA US established that it only charged back claims that were ineligible under the
6 terms of the incentive program as previously communicated to the franchisee or where there was
7 material noncompliance with reasonable and nondiscriminatory documentation requirements. FCA
8 US also showed that it did not disapprove of any claims on the basis of sampling or extrapolation.
9 FCA US sustained its burden of proof with regard to § 3065.1(g)(2).

10 146. FCA US established that it provided Hooman CDJR a written disapproval notice
11 stating the specific grounds upon which the claims were dissolved within less than 30 days of the
12 audit. FCA US established that it subsequently provided a reasonable period of in excess of 30
13 days to respond to the written disapproval notice. FCA US further established that there were no
14 disapprovals that were rebutted or cured. FCA US sustained its burden of proof with regard to
15 § 3065.1(g)(3).

16 147. FCA US established that Hooman CDJR repeatedly submitted the same irrelevant
17 documents. Nonetheless, FCA US established that it provided a final correspondence to Protestant.
18 FCA US sustained its burden of proof to demonstrate that it complied with § 3065.1(g)(4).

19 148. FCA US established that it has not completed the chargeback. Thus, FCA US
20 sustained its burden of proof with regard to § 3065.1(g)(5).

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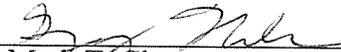
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1 **PROPOSED DECISION**

2 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT
3 the Protest in consolidated protests in HC Automotive, Inc. v. FCA US LLC, Protests No, PR-2429-
4 15, PR-2430-15, PR-2431-15, PR-2432-15 is OVERRULED.

5 Dated: July 1, 2016

WHEELER TRIGG O'DONNELL LLP

6
7 By: 

8 Mark T. Clouatre
9 John P. Strelman
10 Benjamin I. Kapnik

11 DONAHUE DAVIES LLP
12 Robert E. Davies, Esq.
13 Gregory A. Nelson, Esq.
14 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 1, 2016**, I served the foregoing **FCA US LLC'S PROPOSED FINDINGS OF**
10 **FACT AND CONCLUSIONS OF LAW** 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.

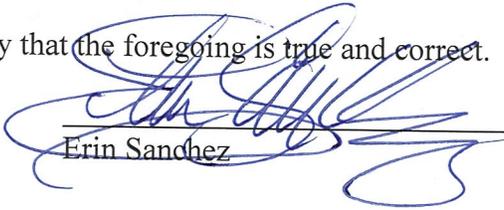
23 (BY FACSIMILE) The facsimile machine I used complied with California Rules of
24 Court, Rule 2003, and no error was reported by the machine. Pursuant to California
25 Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the
26 transmission, a copy of which is attached 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 1, 2016**, at Sacramento, California.

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


Erin Sanchez