

1 NEW MOTOR VEHICLE BOARD
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of)
12 THOMPSON'S AUTO & TRUCK CENTER,) **Protest No. PR-1965-05**
13 INC., dba THOMPSON'S CHRYSLER-)
JEEP,)
14) **PROPOSED DECISION**
Protestant,)
15 v.)
16 DAIMLERCHRYSLER MOTORS COMPANY,)
17 LLC,)
Respondent.)

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19
20 PROCEDURAL BACKGROUND

21 1. Protestant Thompson's Auto & Truck Center, Inc., dba
22 Thompson's Chrysler-Jeep (hereinafter Thompson's or Protestant) is a
23 California corporation with its principal place of business at 55
24 Placerville Drive in Placerville, California.

25 2. The Department of Motor Vehicles (DMV) licenses Protestant
26 as a new motor vehicle dealer. Protestant owns and operates two
27 franchised dealerships: Thompson's Pontiac, Buick and GMC Truck
28 (hereinafter Thompson's GM); and Thompson's Chrysler-Jeep, a

1 DaimlerChrysler franchise. This proceeding involves Protestant's
2 Chrysler-Jeep franchises.

3 3. Ronald Lee Thompson (hereinafter RLT) is the owner and
4 dealer principal of Protestant. RLT also owns a separate corporation,
5 not involved in these proceedings, that owns and operates a Toyota
6 dealership, also located in Placerville.

7 4. Respondent DaimlerChrysler (hereinafter DC or Respondent) is
8 a Delaware corporation headquartered in the Detroit area, with
9 operations throughout the United States and the world, and of
10 relevance hereto in Irvine, California. DC is licensed by the DMV as
11 a distributor.

12 5. By letter dated May 31, 2005, DC gave notice to Thompson's
13 pursuant to Vehicle Code section 3060¹ of its intent to terminate
14 Thompson's Chrysler-Jeep Sales and Service Agreements dated
15 August 23, 2002. It was alleged that:

16 On or about October 1, 2004, Thompson's engaged in an
17 unauthorized relocation from 55 Placerville Drive ("Approved
18 Location") to 659 Main Street in Placerville, California,
19 over the repeated objections of DaimlerChrysler. Since the
20 unauthorized relocation, Thompson's has not conducted
21 Chrysler Jeep dealership operations at the Approved
22 Location. On or about May 5, 2005, Thompson's ceased new
23 Chrysler and Jeep vehicle sales and, to DaimlerChrysler's
24 knowledge, has not conducted customary dealership operations
25 for Chrysler and Jeep at any address since that date.

26 A DaimlerChrysler representative has visited the
27 Thompson's Approved Location from time to time since October
28 2004 through May 16, 2005. At each visit, there were no
Chrysler and Jeep operations being conducted at the Approved
Location. In fact, [Thompson's] Buick, Pontiac and GMC
dealership has occupied the Approved Location exclusively
for many months.

6. Thompson's filed its protest on June 13, 2005.

¹ All statutory references are to the California Vehicle Code, unless noted
otherwise.

1 7. On October 4, 2005, DC issued an amended notice of
2 termination. The amended notice reiterated the allegations of the
3 May 31, 2005, letter and added the following:

4 ...Upon information and belief, after filing its
5 Protest in response to DaimlerChrysler's original notice of
6 termination, Thompson's moved its inventory of Chrysler and
7 Jeep vehicles back to 55 Placerville Drive, where Thompson's
8 Buick, Pontiac and GMC dealership is currently located. In
9 fact, [Thompson's] Buick, Pontiac and GMC dealership had
10 occupied the Approved Location exclusively for many months
11 and despite the recent move back to this location by
12 Thompson's Chrysler Jeep, the Buick, Pontiac and GMC
13 dealership continues to occupy this location along with
14 Thompson's Chrysler Jeep. Upon information and belief,
15 Thompson's continues to conduct its Chrysler and Jeep
16 service operations at 659 Main Street in Placerville,
17 California.

18 8. A hearing on the merits of the protest was held on
19 February 27, 2006 through March 6, 2006, before Administrative Law
20 Judge (ALJ) Jerold A. Prod.

21 9. Michael M. Sieving, Esq., of Law Offices of Michael M.
22 Sieving, 350 University Avenue, Suite 105, Sacramento, California,
23 represented Protestant.

24 10. Mark F. Kennedy, Esq. and Mark T. Cloutre, Esq., of Wheeler
25 Trigg Kennedy LLP, 1801 California Street, Suite 3600, Denver,
26 Colorado, represented Respondent.

27 11. Both parties filed pre-hearing briefs which were read and
28 considered by the ALJ prior to the taking of evidence. Oral
testimony, documentary evidence, stipulated facts, and an officially
noticed document were received.

 12. Protestant presented five witnesses at the hearing.
Testifying on behalf of Thompson's were dealer principal RLT and
controller Tammy St. Germain. As adverse witnesses, Thompson's called
Charles Polce, DC's Dealer Network Development Manager for the West

1 Business Center, and Steve Weeks, a DC Dealer Operations Manager.
2 Thompson's also called Marshall Crossan, a former dealer principal of
3 a Dodge dealership in Shingle Springs, California.

4 13. DC presented the testimony of nine witnesses at the hearing.
5 The following current employees of DC testified at the hearing: Steve
6 Weeks; Santiago Piñon, Public Company Manager and former Dealer
7 Placement Manager for the West Business Center; and Charles Polce.
8 Also testifying on behalf of DC were Denice Ortega, Inspector with
9 DMV; Carrol Anne Stubbs, a private investigator with Pacific Legal
10 Investigations; and Jeff McKay, an Investigator with DMV. DC also
11 called RLT and Tammy St. Germain as adverse witnesses, and presented
12 the deposition testimony of John McClellan, Deputy Director of the
13 Occupational Licensing Division of DMV.

14 14. The hearing was closed on March 6, 2006, at which time a
15 briefing schedule was set. The matter was submitted for decision on
16 May 10, 2006.

17 ISSUE PRESENTED

18 Whether DaimlerChrysler Has Good Cause for the
19 Termination of Thompson's Chrysler and Jeep Franchises

20 15. Pursuant to Section 3066(b), DC has the burden to establish
21 good cause for the termination of Thompson's franchises. In
22 determining whether DC has established good cause for the termination,
23 Section 3061 requires that the Board consider the "existing
24 circumstances", including but not limited to all of the following:

- 25 (a) Amount of business transacted by the franchisee, as compared
26 to the business available to the franchisee;
27 (b) Investment necessarily made and obligations incurred by the
28 franchisee to perform its part of the franchise;

- 1 (c) Permanency of the investment;
- 2 (d) Whether the franchisee has adequate motor vehicle sales and
3 service facilities, equipment, vehicle parts, and qualified
4 service personnel to reasonably provide for the needs of the
5 consumers for the motor vehicles handled by the franchisee
6 and has been and is rendering adequate services to the
7 public;
- 8 (e) Whether the franchisee fails to fulfill the warranty
9 obligations of the franchisor to be performed by the
10 franchisee;
- 11 (f) Extent of the franchisee's failure to comply with the terms
12 of the franchise.

13 GENERAL FINDINGS OF FACT²

14 History Of The Dealerships Owned By RLT Up To October 2004

15 16. RLT has been in the automobile business for about 43 years.
16 He bought Buick, Pontiac, GMC Truck and Jeep dealerships in 1989,
17 which constituted the inception of Thompson's Auto and Truck Center.
18 Since that time, RLT has been its president. The dealerships were at
19 first operated from a facility located on Broadway Street in
20 Placerville, California. (RT Vol. 1, pp. 36-37).

21 17. In February of 2001, RLT bought a Chrysler dealership from
22 another dealer. At that time the Chrysler franchise was to
23 temporarily operate together with the General Motors Corporation
24 (hereinafter GMC) line-makes on Broadway. The plan, also a temporary
25 one, was to subsequently provide a new facility at 140 Forni Road

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27 ² The references to testimony, exhibits, or other parts of the record contained
28 herein are examples of the evidence relied upon to reach a finding, and are not
intended to be all-inclusive.

1 (hereinafter Forni Road) for all five line-makes: Chrysler; Jeep;
2 Buick; Pontiac; and GMC Truck. (RT Vol. 1, pp. 37-38) RLT was then a
3 favored and well-performing Chrysler and Jeep dealer, and was until
4 recent events (see below) deemed worthy of corporate support by
5 Respondent DC. (Exhibit R29)

6 18. However, the plan changed prior to the relocation to Forni
7 Road. GMC approved the Jeep line being dualled with its Buick,
8 Pontiac, and GMC Truck brands, but would not approve of the dualing of
9 the Chrysler brand. (RT Vol. 1, pp. 38; Vol. V, pp. 60-61) The plan
10 changed to making the Forni Road location an exclusive GMC dealership
11 (Buick, Pontiac, and GMC Truck), and establishing a new stand-alone
12 exclusive Chrysler-Jeep dealership at 55 Placerville Drive
13 (hereinafter Placerville Drive). This plan was implemented, and was
14 at that time (2001-2002) deemed satisfactory to those involved - GMC,
15 DC, and RLT. (Exhibit R20) RLT at that time believed that the move
16 would enhance the overall business opportunities of Thompson's in
17 general, and believed that the exclusive Chrysler-Jeep dealership on
18 Placerville Drive would be successful. (RT Vol. 1, pp. 38-39; Exhibit
19 R17)

20 19. RLT testified that as 2004 drew near, he was losing
21 considerable amounts of money on both his GMC and DC franchises, but
22 making money with his Toyota franchise. (RT Vol. V, p. 81)
23 Irrespective of RLT's financial evaluation of his Placerville Drive
24 Chrysler-Jeep franchise, DC was pleased with the operation from its
25 point of view. (Exhibit R29, p. 2)

26 20. RLT had purchased his Toyota dealership from an existing
27 dealer in 1997 (see Paragraph 3). It was located at 659 Main Street
28 in downtown Placerville (hereinafter Main Street), where it had been

1 since 1963 or 1964. Some time in 1999 or 2000, Toyota Motor Sales,
2 U.S.A., Inc. (hereinafter Toyota), first communicated to RLT that he
3 needed to move the Toyota dealership from Main Street to a better
4 location, or be forced to lose it or sell it. (RT Vol. 1; pp. 75-76)

5 21. Although the Toyota dealership was profitable, it was not
6 performing to its potential at the Main Street location. (RT Vol. I,
7 pp. 76-77) Only one vehicle can be displayed on the showroom floor.
8 Its 2.7-2.8 acres are on four separate pieces of land, a public street
9 crosses the property, and a creek runs underneath the main building.
10 (RT Vol. I, pp. 103-104, 117-119)

11 22. As of March 2004, Thompson's franchises were located thusly:
12 an exclusive GMC franchise (Buick-Pontiac-GMC Truck) at Forni Road; an
13 exclusive Chrysler-Jeep franchise at Placerville Drive; and the
14 exclusive Toyota franchise at Main Street. Faced with the ultimatum
15 from Toyota to move from Main Street and the agreement with GMC to not
16 "dual" Chrysler with its brands, RLT decided in March 2004 to relocate
17 his franchises as follows: Toyota to Forni Road; GM to Placerville
18 Drive; and Chrysler-Jeep to Main Street. This decision was noticed
19 publicly in March 2004, and implemented by RLT in October 2004. (RT
20 Vol. 1, pp. 76-80; Exhibit R37)

21 23. In RLT's mind, Forni Road was the best facility and location
22 of the three. Toyota agreed to and accepted the new location plan, as
23 did GMC. Respondent did not, and has not to this date. (RT Vol. 1,
24 pp. 49-50, 69-70, 77-78, 126-127) The October 2004 moves were
25 denominated and are referred to hereinafter as "Trading Spaces" (see
26 *infra*).

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1 RLT's Three Facilities³

2 24. It is not contested that among the Forni Road, Placerville
3 Drive and Main Street locations operated by RLT, the consensus is that
4 "...the 140 Forni Road dealership (is) the best facility and the best
5 location of the three..." (RT Vol. 1, pp. 77, 108) There is a Ford
6 dealership adjacent to RLT's Forni Road Toyota store. Placerville
7 Drive is about ¼ mile from Forni Road. From Main Street to the
8 nearest other car dealership (which is Forni Road) the distance is
9 about 1 ½-2 miles. (RT Vol. 1, pp. 114-116).

10 25. DC has consistently been of the opinion that the Main Street
11 facility is significantly inferior to Placerville Drive facility in
12 several critical respects, focusing on (1) location, and (2) the
13 physical facility. DC believed, and believes, that Main Street has
14 less freeway visibility, is not as easily accessible, has less traffic
15 passing it, and is located in an older downtown commercial business
16 area featuring small boutique-type establishments, as opposed to a
17 retail area with shopping and other dealerships nearby. (Exhibit R31;
18 RT Vol. IV, pp. 123-127)

19 26. In reviewing Protestant's proposal for the move of the
20 Chrysler-Jeep franchises from Placerville Drive to Main Street, all
21 factors, including operational considerations and dealer performance,
22 were reviewed by the DC West Business Center in Irvine, California.
23 From DC's dealer placement perspective, however, location was viewed
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26 ³ In addition to the citations to the record in this section, labeled ground and
27 aerial photographs of both the Placerville Drive and Main Street facilities, before
28 and after October 2004, can be found as Respondent's Exhibits 4-9 and 16.

1 as a paramount factor given that a franchise is likely to remain in a
2 fixed location for a long period of time. (RT Vol. II, pp. 218-220)

3 27. DC's assessment was, and is, that the Main Street facility
4 is inadequate. The four separate parcels of land comprising the
5 facility required both employees and customers to cross streets to
6 view inventory. Customer parking is limited and inaccessible during
7 higher traffic times, particularly in mornings when customers are
8 bringing cars in for services. Customers are at such times required
9 to park off-site. Employee parking is off-site. The Main Street
10 facility fronts on a two-lane street with no center turn lane, making
11 access difficult. (Exhibit R31, RT Vol. IV, pp. 125-128)

12 28. The Placerville Drive facility fronts on a two-lane street
13 with a center turn lane and has two separate driveways, making for
14 easy ingress and egress. At Placerville Drive many rows of cars can
15 be easily seen, suggesting a large inventory from which to make a
16 selection; probably double what can be displayed at all of the
17 separate Main Street parcels. (RT Vol. II, pp. 244-246)

18 29. The fact that the Main Street dealership consists of several
19 separate parcels of land makes for difficulty in managing and
20 monitoring the facility. (Exhibit R31; RT Vol. IV, pp. 125-128) The
21 Main Street facility does not have the same appearance as the
22 Placerville Drive facility (built in 2002). Main Street, in addition
23 to being smaller and discontinuous, appears to be "...approximately a
24 '70s' type building" (it dates from 1963-64). (RT Vol. II, p. 247)

25 Also, RLT's testimony was that the Main Street location is incapable

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1 of servicing trucks, which can be serviced at Placerville Drive.⁴ (RT
2 Vol. V, pp. 93-94)

3 30. RLT's assessments are not totally dissimilar. He had the
4 Placerville Drive facility constructed in 2002, during the same time
5 the Forni Road facility was being built. It has approximately 300
6 feet of frontage, and consists of four (4) acres on one piece of
7 property. The facility is on a two-lane street with a turning lane in
8 the middle. There is room for a total of six rows of vehicles to be
9 displayed. No public roads or bike paths cross the property. The
10 dealership is about 200 yards from a freeway exit. (RT Vol. I, pp.
11 101-103)

12 31. RLT states that the Main Street facility is 2.7-2.8 acres,
13 and that these are not on one contiguous plot of land. A public
14 street and a bike path both cross the property, and a creek runs
15 underneath the main building. Employee parking is in an off-site lot
16 about 100 yards from the property. Only one vehicle can be displayed
17 in the showroom. Trucks cannot be serviced there. (RT Vol. I, pp.
18 101-104, Vol. V pp. 93-94; see Footnote 4, *supra*)

19 32. The main point of difference between the RLT and DC
20 evaluations is the question of visibility from the Highway 50 freeway.
21 DC at the hearing agreed, contrary to its earlier position in writing,
22 that Placerville Drive is not directly visible from the freeway, and
23 that from the freeway there is an opportunity for a fleeting glance at
24 the Main Street facility when traveling between off-ramps. (RT Vol.
25 111, pp. 63-65)

27 ⁴ Testimony on this point was general, and was uncontested. There was no
28 specificity presented regarding the types of trucks being addressed, and/or whether
sports utility vehicles (SUVs) or similar vehicles were contemplated.

1 33. RLT agreed with DC that the Main Street location is not as
2 easily accessible as Placerville Drive, that a lot fewer new vehicles
3 could be displayed, and that the traffic counts are less at Main
4 Street. They also agreed that the land and buildings at Main Street
5 are less efficient and convenient than Placerville Drive as both
6 customers and employees have to cross streets in conducting sales
7 transactions. At one time, cameras were used to monitor the
8 discontinuous lots at the Main Street location. (RT Vol. I, pp. 117-
9 119)

10 34. Directly across from Placerville Drive are a large retail
11 center and numerous fast food restaurants. The Forni Road Toyota
12 dealership is nearby and the Ford store is on the adjacent land. (RT
13 Vol. II, pp. 232-233) The Main Street facility is located in old
14 downtown Placerville, surrounded by a storage facility, a medical
15 supply building, and some rather old homes that have been converted to
16 small retail boutiques. There are a few older homes nearby on Main
17 Street, and a quilting shop and a small realty office. There is no
18 surrounding major retail business, and no other automobile dealerships
19 are nearby. (RT Vol. II, pp. 238-239)

20 The Franchise Agreement Between Protestant And Respondent

21 35. Thompson's and DC entered into Chrysler and Jeep Sales and
22 Service Agreements on August 23, 2002. The agreements generally
23 require the following:

24 a. Thompson's is to comply with all applicable federal,
25 state and local laws, rules and regulations in the operation of
26 the dealership. (Exhibit R22, p. 5) The dealership is to
27 operate described facilities located at 55 Placerville Drive, a
28 physical facility deemed easily large enough for current

1 operations, and to at some point in the future accommodate the
2 possible addition of the Dodge brand. (Exhibits R18, R20, p. 3)

3 b. The Placerville Drive location was agreed to be an
4 exclusive stand-alone dealership selling and servicing only the
5 Chrysler and Jeep brands and no others. (Exhibit R18) RLT in
6 writing recognized the importance of exclusivity by signing an
7 Exclusivity Acknowledgment letter on August 1, 2002. (Exhibit
8 R19) Protestant agreed to operate the Chrysler-Jeep franchises
9 only from the Placerville Drive location, and to not make any
10 change in the dealership operation or location without the prior
11 written approval of DC. (Exhibit R22, p. 5; RT Vol. 1, pp. 61-
12 64) Additional provisions commit Protestant to provide
13 appropriate support to franchise operations at the Placerville
14 Drive location, including but not limited to personnel, service,
15 advertising, and signage. (Exhibit R22, pp. 3-6)

16 c. The franchise agreements are to terminate without
17 notice to either party upon the failure of the franchisee to
18 conduct dealership operations for seven (7) consecutive business
19 days. (Exhibit R22, pp. 11-12)

20 The "Trading Spaces" Move Of October 2004

21 36. RLT caused a notice to be sent to vendors, suppliers, and
22 other persons that effective October 1, 2004, the franchises were
23 being moved as follows:

- 24 ▪ Buick-Pontiac-GMC Truck from Forni Road to
25 Placerville Drive;
- 26 ▪ Toyota from Main Street to Forni Road; and
- 27 ▪ Chrysler-Jeep from Placerville Drive to Main Street. (RT
28 Vol. 1, pp. 70, 71; Exhibit R37)

1 37. As noted above, RLT had purchased the Toyota franchise in
2 1997. It was located at Main Street, where it had been since 1963 or
3 1964. Around 1999 or 2000, Toyota told him that he must relocate the
4 dealership or sell it. RLT agreed to move the Toyota franchise from
5 its unsatisfactory location (Main Street), and promised Toyota a
6 stand-alone dealership at Forni Road, which RLT believed (and
7 believes) is the best location of the three he operates. Toyota was
8 pleased, and RLT's sales of Toyota vehicles have since increased by
9 about 40 percent. (RT Vol. 1, pp. 75-77, 105)

10 38. RLT's commitment to Toyota put him in a position wherein he
11 needed to do something with the GMC franchises then located at Forni
12 Road. GMC reluctantly agreed to a move of its franchises to
13 Placerville Drive (where Chrysler-Jeep was then located), but only on
14 the condition that it was to be an exclusive GMC dealership. (RT Vol.
15 1, pp. 77-78; Exhibit R6)

16 39. These commitments (to Toyota and GMC) necessitated a need to
17 find a new home for the Chrysler-Jeep dealerships at Placerville
18 Drive. RLT proposed to DC that it move them to Main Street. Neither
19 this move, nor the move of the GMC dealerships from Forni Road to
20 Placerville Drive, where Chrysler-Jeep had been successfully
21 operating, has ever been approved by DC. (RT Vol. 1, pp. 49-50) The
22 entire dealership swap (see Exhibit R37) was advertised and marketed
23 by Thompson's as "Trading Spaces", after a then popular television
24 show. (RT Vol. 1, p. 78)

25 40. All signage at the Placerville Drive location was at RLT's
26 direction changed from Chrysler-Jeep to Buick, Pontiac and GMC Truck,
27 effective October 1, 2004, and continues to the present. No DC
28 vehicles were displayed or stored there from October 2004 until May or

1 June 2005, at which time some were moved back to Placerville Drive.
2 The storage of Chrysler and Jeep vehicles was limited to a small space
3 at the right rear of the Placerville Drive property. None have been
4 openly displayed for sale.

5 41. This small DC presence at the Placerville Drive site
6 beginning May/June 2005 was a result of GMC temporarily "...cutting us
7 some slack, or bearing with it..." for a short period of time to see
8 if difficulties regarding the forced move of the Chrysler-Jeep
9 franchises to Main Street and the trouble with DMV "(see *infra*) could
10 be worked out. RLT has since October 2004 done everything he could to
11 make Placerville Drive appear to be an exclusive Buick-Pontiac-GMC
12 Truck dealership. (RT Vol. 1, pp. 50, 78, 85)

13 42. New Chryslers and Jeeps were not displayed at Placerville
14 Drive from October 2004 until May or June of 2005. They were
15 displayed and sold at Main Street from about early October 2004
16 forward. Of importance regarding the May 31, 2005, and October 4,
17 2005 notices of intent to terminated the franchise, RLT acknowledged
18 that there was a period of about six (6) weeks, or from perhaps the
19 end of March through some time in June 2005, when Thompson's was not
20 displaying or selling new Chryslers and Jeeps from any location at
21 all, authorized or unauthorized. (RT Vol. 1, p. 83; see also findings
22 regarding "The Involvement of the Department of Motor Vehicles",
23 *infra*).

24 43. DC never at any time since execution of the franchise
25 agreements of August 23, 2002 consented to either the moving of the
26 GMC franchises from Forni Road to its exclusive Chrysler-Jeep
27 dealership location at Placerville Drive, or the moving of its
28 franchises to Main Street (these moves, along with that of Toyota from

1 Main Street to Forni Road, constituted the October 1, 2004, "Trading
2 Spaces" event). RLT has honored his commitments of exclusivity of
3 franchise to Toyota and GMC in their new locations. He made these
4 commitments "...with (his) eyes wide open..." and an understanding of
5 the possible and probable consequences, i.e., a notice of franchise
6 termination. (RT Vol. 1, pp. 50, 64-67, 126)

7 44. Since early October 2004 until the time of this hearing, all
8 parts, service, and warranty activities of the Chrysler-Jeep
9 franchises have been conducted at Main Street. None of these
10 activities have been conducted at Placerville Drive. (RT Vol. 1, pp.
11 68-69) New Chryslers and Jeeps were displayed only at Main Street
12 until some or all of them were moved to the Placerville Drive back lot
13 in May or June of 2005. (RT Vol. 1, pp. 83-85)

14 45. Since October 2004 until the time of this hearing there has
15 been no Chrysler or Jeep signage at Placerville Drive, nor have any
16 Chrysler or Jeep vehicles been on the showroom floor there. RLT has
17 no present intention to change this. (RT Vol. I, pp. 85-86)

18 46. All advertising, which includes web pages and ads in local
19 and metropolitan newspapers, has since October 2004 until now
20 represented Toyota at Forni Road, GMC at Placerville Drive, and
21 Chrysler-Jeep at Main Street. (RT Vol. I, pp. 90-101, 149, 152)
22 There has been scant advertising of Chrysler-Jeep anywhere as of late,
23 which RLT attributes to events surrounding this dispute. (RT Vol. I,
24 p. 98)

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1 Thompson's/DC Dialogue Regarding The October 2004 Move

2 47. RLT first requested DC approval to move its franchises from
3 Placerville Drive to Main Street as part of the October 2004 3-way
4 dealership swap ("Trading Spaces", described *supra*) in a letter to
5 Steve Weeks, Sacramento area dealer operations manager, dated March
6 17, 2004. RLT knew Mr. Weeks would not be making the final decision
7 to approve or disapprove the relocation request, and asked him to
8 forward the request as appropriate. On April 14, 2004, RLT forwarded
9 traffic count information that had been requested by DC. (Exhibits
10 R25, R28; RT Vol. I, pp. 109-112)

11 48. On May 20, 2004, DC replied to the March 17, 2004 request,
12 denying the same, in a letter to RLT from Charles Polce, DC's Dealer
13 Network Development Manager for the West Business Center located in
14 Irvine. The reasons cited were that the location, appearance, layout,
15 and facility requirements at Main Street were not acceptable. The
16 letter also informed RLT that DC would not issue a Certificate of
17 Proposed Franchise (hereinafter OL-124) for the Main Street location.
18 (Exhibit R30, RT Vol. I, pp. 112-113)

19 49. Internal DC memorandum correspondence subsequent to receipt
20 of the March 14, 2004, request for relocation and prior to the May 20,
21 2004, denial indicates that Mr. Weeks was reluctantly in RLT's corner.
22 Based on RLT's representations to him, Mr. Weeks believed Thompson's
23 was in financial trouble, and that if RLT's claim was believed,
24 Thompson's could not survive and remain in business with DC.
25 (Exhibits R26, 27, 29) Mr. Weeks acknowledges that Main Street was
26 not a prime facility, and that DC would be "moving from a nicer larger
27 facility to the lesser of the three facilities, the smaller one in the
28 older part of town." (Exhibit R26; RT Vol. II, p 95) He subsequently

1 opined that it was maybe "...really not too bad", and that he
2 "...would not be supporting Thompson's case if he was a poor
3 performing dealer." (Exhibits R27 and R29, p. 2)

4 50. Mr. Weeks looked at Thompson's proposal from an operations
5 standpoint rather than from a strategic network dealer alignment
6 standpoint. He was tasked with promoting a continuing flow of sales
7 of cars and parts, and that was his perspective. He did not want to
8 lose car and truck sales in that market (that would result, at least
9 temporarily, if the dealership were to be lost). Thompson's Chrysler-
10 Jeep had been "a 166% MSR performer last year⁵ and has easily exceeded
11 MSR since he has been our CJ dealer." (RT Vol. II, pp. 92-93; Exhibit
12 R29, p. 2)

13 51. Mr. Weeks' memoranda generated discussions and deliberation
14 involving himself, Santiago Piñon and Charles Polce. Mr. Weeks' input
15 from an operations standpoint was received and considered, but was
16 overridden by longer-term dealer network considerations. (RT Vol. II,
17 pp. 221-223, Vol. IV, pp. 83, 85-88, 110-111) These deliberations led
18 to the letter of May 20, 2004, denying the relocation request. (RT
19 Vol. IV, pp. 118-120)

20 52. The next inter-party written communication was a letter from
21 Thompson's counsel to DC dated June 14, 2004, in response to the May
22 20, 2004, denial of the relocation request. That letter reiterated
23 the March 17, 2004, request for approval of the relocation of the
24 Chrysler-Jeep franchises from Placerville Drive to Main Street, and
25 offered to make any reasonable modification to the Main Street

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27 ⁵ This was at Placerville Drive, not Main Street.
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1 facility. (RT Vol. I, p. 113; Exhibit P67) On July 6, 2004, Mr.
2 Polce again denied consent to the transfer; providing more detailed
3 reasons, and once again stated that an OL-124 would not be
4 forthcoming. (Exhibit R31; see also section above, "RLT's Three
5 Facilities")

6 53. This prompted a reply from RLT to Mr. Polce dated September
7 24, 2004. As the October 2004 implementation date for the "Trading
8 Spaces" event drew near, DC was once again implored to assent to the
9 Placerville Drive-Main Street move. Several potential alternative
10 solutions to the looming spectre of litigation were proposed, which
11 included consideration of more favorably located but as yet
12 undeveloped parcels of land, and possible buy-sell and purchase
13 scenarios. The suggested implementation proposed was that DC "...
14 immediately issue to Thompson's Chrysler-Jeep an OL-124 so that we can
15 relocate our dealership to the current Toyota premises on Main Street
16 on or about October 4". There was a promise to commit in writing to a
17 time limit of three years, at which time if new arrangements were not
18 made RLT would agree to a voluntary franchise termination. This was
19 coupled with a pledge to agree to "...any reasonable renovations..."
20 of the Main Street facility. (Exhibit R34)

21 54. The DC reply on September 28, 2004, for the third time
22 rejected the proposal, and once again definitively stated that an OL-
23 124 would not be forthcoming. (Exhibit R35)

24 55. RLT at all relevant times clearly understood that DC's
25 written approval for the October 2004 move was required, and that DC
26 plainly, unambiguously, and consistently declined approval and
27 declined to issue the required OL-124. (RT Vol. I, pp. 112-114, 124-
28 128) Discussions were had between RLT and DC regarding "...as many

1 conceivable options as could be thought of." None of these came to
2 fruition and/or changed RLT's "Trading Spaces" business plan of
3 October 2004. (RT Vol. I, p. 124)

4 56. On January 12, 2005, shortly after the formalization of
5 ongoing and escalating trouble between Protestant and DMV (see *infra*),
6 there was one final written exchange between RLT and DC. DC again, in
7 response to yet another request from RLT for a temporary OL-124 for
8 the Main Street location, replied that it "...will not issue any type
9 of OL-124 for 659 Main Street, Placerville, California" (Exhibit R52).

10 The Involvement Of The Department Of Motor Vehicles

11 57. Some time during September 2004, as the "Trading Spaces"
12 date of October 1, 2004, drew near, Protestant's controller, Tammy St.
13 Germain, contacted DMV to inquire as to what forms needed to be
14 submitted in connection with the relocations. She was told that among
15 other forms, a Certificate of Proposed Franchise (OL-124) was
16 required. (RT Vol. II, pp. 130-133)

17 58. On October 4, 2004, Protestant submitted an application to
18 relocate the Chrysler-Jeep franchises from Placerville Drive to Main
19 Street and to sell new and used vehicles there. The application did
20 not include an OL-124 from DC. On that day DMV Inspector Denice
21 Ortega told Ms. St. Germain that only a temporary permit for used
22 vehicles could be issued, as there was no OL-124. Despite the fact
23 that RLT knew there was never any reason to think an OL-124 would be
24 forthcoming from DC, his controller told DMV that "...they were going
25 to get it in a couple of days, or she might have it the next day."
26 (RT Vol. I, pp. 126-127, Vol. II, pp. 138-139)

27 59. DMV nevertheless, despite the lack of an OL-124, mistakenly
28 issued a temporary permit on October 4, 2004, to sell both new and

1 used vehicles at Main Street. (RT Vol. II, pp. 139-140) Between
2 October 4, 2004, and late October, Protestant's controller (and
3 through her, RLT) were informed that DMV would be issuing a corrected
4 application, to sell used vehicles only at Main Street, due to the
5 lack of an OL-124 from DC. (RT Vol. I, pp. 139-145, Vol. II pp. 146-
6 149) On October 28, 2004, DMV sent a corrected application to
7 Protestant, clearly verifying, consistent with earlier conversations,
8 that the proper license to be applied for was for a temporary permit
9 to sell used vehicles only at Main Street. (RT Vol. I, p. 143, Vol.
10 II, pp. 47-48)

11 60. On October 14 or 15, 2004, DMV received a call from DC's
12 attorney, Carey Taylor, inquiring as to the licensing status of the
13 Main Street location. DMV informed Ms. Taylor, as it had informed Ms.
14 St. Germain, that the proper license was for a used car dealership
15 only. (RT Vol. II, p 147) DMV then left a message for Protestant's
16 controller, Ms. St. Germain, informing her that it was "a violation to
17 sell new Chryslers without the OL-124." She (the controller) said
18 once again "...that she should have an OL-124 at any time." (RT Vol.
19 II, pp. 148-149)

20 61. DMV inspector Denice Ortega went to the Main Street location
21 on November 8 and 16, 2004. She was surprised to note that new
22 Chryslers and Jeeps were being displayed for sale. Protestant had
23 been advised on numerous occasions that this was not permitted by the
24 temporary "used only" license. (RT Vol. II, pp. 154, 159) When the
25 inspector asked personnel there about whether they had an OL-124 she
26 was referred back to the Forni Road headquarters, and then later on to
27 Protestant's attorney. (RT Vol. II, pp. 155, 159-160)

28 62. Between November 16 and December 9, 2004, DMV Inspector

1 Ortega called several times and made several visits to Main Street.
2 Protestant was still displaying new Chryslers and Jeeps despite the
3 ongoing lack of an OL-124. (RT Vol. II, pp. 160-161) On November 22,
4 2004, Protestant's controller, Ms. St. Germain, told the inspector
5 that Thompson's was interested in moving the Main Street location over
6 to a Dodge dealership in Shingle Springs, and also reiterated once
7 again that Thompson's was still working on it (the OL124) and would
8 get it to DMV any time. (RT Vol. II, pp. 162-163) Inspector Ortega
9 then informed Ms. St. Germain that DMV investigations (which deals
10 with non-compliant dealers) was going to be notified. (RT Vol. II,
11 pp. 163-164)

12 63. On December 20, 2004, DMV Inspector Ortega discussed
13 Protestant's situation with her supervising management. She was
14 instructed to make the investigations arm of DMV aware of the
15 situation, and to formally and officially notify Protestant that it
16 had three days to obtain the OL-124 from DC. She called Protestant's
17 controller and so advised her, and also told her that Protestant was
18 to cease and desist from selling new Chrysler and Jeep vehicles. (RT
19 Vol. II, pp. 165-166)

20 64. On January 3, 2005, DMV sent a letter formalizing the
21 foregoing, as follows:

22 The Department of Motor Vehicles Inspector has issued a
23 temporary operating permit effective 10/04/04 for new car
24 sales in error. Thompson's Auto & Truck Center application
25 for a branch location at 659 Main Street Placerville Ca.
26 was approved for used auto only. The temporary permit is
27 hereby voided effective immediately. A corrected Temporary
28 Permit for used autos only has been issued for the business
location.

You must do the following:

Surrender your temporary permit to occupational
Licensing Inspector, Denice Ortega.

1 ***Failure to comply with this notice will result in a***
2 ***Department of Motor Vehicles Investigator contacting you***
3 ***and may also result in criminal prosecution.*** (Emphasis and
 italicization in original)

4 (Exhibit R48, RT Vol. II, pp. 171-175)

5 65. On January 7, 2005, DMV inspectors observed that, despite
6 the unambiguous oral and written directives from DMV, Protestant
7 continued to sell and display new Chrysler and Jeep vehicles at Main
8 Street. The temporary permit mentioned in the January 3, 2005, letter
9 was never returned to DMV Inspector Ortega. (RT Vol. II, pp. 171-175;
10 Exhibit R83, p. 11)

11 66. On January 11, 2005, a DMV investigator, Jeff McKay, also
12 observed the display of new vehicles at Main Street. Prior to the
13 visit he called Santiago Piñon of DC, who when asked informed
14 Investigator McKay that an OL-124 was not forthcoming for the Main
15 Street location. The investigator then went to Forni Road and talked
16 with Protestant's controller and with RLT. He had RLT sign an
17 official formal notice that selling new vehicles at Main Street was a
18 violation of the Vehicle Code. (RT Vol. IV, pp. 4-12; Exhibit R51)

19 67. Months later, on or about May 3, 2005, and/or a few days
20 before, DMV investigator McKay again observed the display of new
21 Chrysler and Jeep vehicles, and sales activity thereof, at Main
22 Street. On May 3, 2005, he and another investigator met with RLT at
23 Forni Road. RLT was informed in no uncertain terms that Protestant
24 was in violation of the January 2005 Cease and Desist Order, and that
25 it needed to stop new Chrysler and Jeep vehicle sales activity and
26 take down Chrysler and Jeep signage that day. (RT Vol. IV, pp. 14-19)

27 68. RLT was aware at all times, from at least as far back as
28 January 2005 until May 3, 2005 that he was in violation of DMV orders,

1 that he did not have an OL-124 from DC, and had no reason to believe
2 one was forthcoming. (RT Vol. I, pp. 112-114, 124-12, 148-157)

3 69. Official notice is taken that DMV on September 28, 2005,
4 filed an Accusation against Protestant, praying for suspension or
5 revocation of its license. At the time of this hearing, (February 27
6 - March 6, 2006), the proceeding on the DMV Accusation was scheduled
7 to commence on April 12, 2006. As of the time of the preparation of
8 the Proposed Decision on the instant protest proceeding, it was not
9 known by the ALJ whether that Accusation had been heard, or if heard
10 what the decision may have been.

11 COLLATERAL FINDINGS

12 70. Much documentation and testimony was devoted to an attempt
13 at determining how various costs of doing business (particularly
14 lease/rent) were allocated among Protestant's franchises. This proved
15 difficult to sort out. (See e.g. RT Vol. II, pp. 89-91, 223-225, Vol.
16 V, pp. 153-155, 179-180, 183-185)

17 71. DC orally offered free-of-charge consulting assistance to
18 RLT regarding the potential achievement of profitability of the
19 franchises. (RT Vol. II, p 225) This assistance RLT refused, stating
20 that no consultant was going to come in and tell him how to run his
21 business that he had owned for 18 years, and make it profitable. (RT
22 Vol. V, pp. 186-187)

23 72. RLT had offered, through his attorney, to make reasonable
24 modifications to Main Street to make it acceptable to DC. Scraping
25 all the buildings off of the Main Street properties and constructing a
26 new facility or facilities that would meet DC's space and imaging
27 requirements would cost, if not four or five million dollars, "...at
28 least a couple of million..." (RT Vol. V, pp. 169-170) Prior to

1 October 2004 there may have been consideration of putting around
2 \$500,000 into upgrading Main Street, or for a partial purchase of the
3 Dodge dealership in Shingle Springs. None of these alternatives came
4 to fruition due largely to a lack of funds, among other reasons. (RT
5 Vol. V, pp. 170, 174-176)

6 FINDINGS OF FACT RELATING TO THE GOOD CAUSE FACTORS

7 Findings Relating To The Amount Of Business Transacted By
8 Thompson's As Compared To The Business Available To It
9 (Sec. 3061(a))

10 73. Regarding the amount of business transacted by Protestant
11 (Section 3061, subsection (a)), there is no contention that it was
12 inadequate prior to October 2004. Indeed, Thompson's was then a
13 respected and well-performing dealer, functioning at 166% of MSR while
14 at Placerville Drive. Since October 2004, due to what is undoubtedly
15 a combination of factors flowing from the unauthorized move from
16 Placerville Drive to Main Street (primarily poor location and trouble
17 with DMV), business has dropped to a small fraction of what it was.
18 There now is little or no advertising of DC products. Findings on
19 this good cause factor are not contested. See also findings on
20 Section 3061(g).

21 Findings Relating To The Investment Necessarily Made
22 And Obligations Incurred By The Franchisee To
23 Perform Its Part Of The Franchise
24 (Sec. 3061(b))

25 74. There was no contention by Respondent that investment and
26 obligations incurred were inadequate at Placerville Drive prior to
27 October 2004. The "investment" in putative DC franchises at Main
28 Street is, especially when compared to Placerville Drive, inadequate.
This was and is admitted in the form of an oft-repeated acknowledgment
of the need to make renovations. Regarding that, no solid proposal

1 was ever made. What was probably minimally required may well be a
2 scraping of existing buildings from the land and replacement with a
3 new facility. Even this drastic and sweeping measure, at a cost of
4 millions, would still leave DC with a much smaller dealership in a
5 poorer location with inferior access in an old part of town, on four
6 separate parcels of land, bisected by a public street or streets, with
7 a creek running under it. It is accordingly found that there now is
8 virtually no investment in the DC franchises.

9 Findings Relating To The Permanency
10 Of The Investment
(Sec. 3061(c))

11 75. RLT has acknowledged that since October of 2004 he has done
12 everything he could to make Placerville Drive appear to be an
13 exclusive Buick-Pontiac-GMC Truck dealership. He has no intention to
14 change this. Placerville Drive is the only authorized locale for the
15 DC franchise. This compels a finding that beyond doubt what
16 investment was made in the DC franchises prior to October 2004 was not
17 permanent.

18 Findings Relating To Whether It Is Injurious Or Beneficial
19 To The Public Welfare For The Franchise To Be Modified Or
20 Replaced Or The Business Of The Franchisee Disrupted
(Sec. 3061(d))

21 76. In virtually any termination case, the closure of a
22 franchise will mean that members of the general public owning or
23 having an interest in the line-make of vehicle of the franchisee will
24 have one less place to go for sales or service, and will suffer some
25 inconvenience or loss of flexibility as a consequence thereof. To
26 assign controlling or primary relevance to this fact without extensive
27 proof would come close to compelling a conclusion that no franchise
28 should ever be terminated for any performance or business-related

1 reasons.

2 77. Protestant notes that closure of the franchise would dictate
3 that Chrysler and Jeep owners in or near downtown Placerville would
4 have to travel some 10-15 miles to the nearest alternative dealership.
5 However, no actual hardships, egregious or otherwise, have been cited
6 or testified to. Without any such proof it would certainly be
7 incongruous to hold that DC had or has an obligation to accept the
8 unilaterally dictated move to Main Street and remain there primarily
9 on the grounds that the public welfare commands it; this in the face
10 of the fact that its contractual arrangement with Thompson's
11 specifically prohibits such an unapproved move, and to a concededly
12 inferior location at that. Respondent cites the public interest in
13 favoring dealerships of high integrity that are free from running
14 afoul of the regulatory arm of DMV. However, Protestant's own
15 business decisions resulted in all of the following: Total and
16 apparently irreversible cessation of DC operations at the location
17 called for by the franchise and licensed by the DMV; significantly
18 reduced sales and service operations being conducted at an
19 unauthorized and unlicensed location in what appears to be a flagrant
20 disregard not only of the franchise provisions but also of the law;
21 and, a complete cessation of Chrysler and Jeep sales for a period of
22 approximately 45 days from any location. None of these events were
23 attributable to DC and all occurred prior to the issuance of the
24 notice of termination. Therefore, it is difficult to find that DC's
25 decision to formally terminate the franchise relationship will be any
26 more injurious to the public welfare than what has already occurred
27 due to Protestant's unilateral conduct described above.

28 ///

1 Findings Relating To Whether The Franchisee Has Adequate
2 Motor Vehicle Sales And Service Facilities, Equipment,
3 Vehicle Parts, And Qualified Personnel To Reasonably
4 Provide For The Needs Of The Consumers For The Motor
5 Vehicles Handled By The Franchisee And Has Been And Is
6 Rendering Adequate Services To The Public
7 (Sec. 3061(e))

8 78. Since October 2004, and continuing, there has been no sales
9 facility at Placerville Drive, and none authorized elsewhere. No
10 evidence was forthcoming on whether service and parts facilities at
11 Main Street were sufficient to meet the needs of those already owning
12 Chrysler and Jeep vehicles. None were available at Placerville Drive,
13 which was the authorized location agreed upon by the parties. As a
14 consequence of the complete absence of any provision for the needs of
15 customers at Placerville Drive, and at best, partially meeting the
16 needs at Main Street, it is found that customer needs are not being
17 adequately met.

18 Findings Relating To Whether The Franchisee Fails To
19 Fulfill Warranty Obligations Of The Franchisor To
20 Be Performed By The Franchisee
21 (Sec. 3061(f))

22 79. Protestant has not fulfilled its DC warranty obligations at
23 Placerville Drive. No allegation has been made that they are not
24 being fulfilled at Main Street or elsewhere.

25 Findings Relating To the Extent of the Franchisee's Failure
26 To Comply With The Terms Of The Franchise
27 (Sec. 3061(g))

28 80. Of the factors for determining whether good cause exists for
termination of a franchise set forth in Section 3061, clearly the most
dominant one in this matter is subsection (g), "the extent of the
franchisee's failure to comply with the terms of the franchise."
Considered by itself this factor alone in the instant proceeding might

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1 conceivably support termination.⁶

2 81. As concerns Protestant and Respondent herein, the scene-set
3 in March-October of 2004 was as follows. Protestant was making
4 substantial money only with his stand-alone Toyota franchise, which
5 was in the oldest and least desirable location and physical facility
6 of the three dealerships he operated. Even though profitable, it was
7 not performing to its potential. Thompson's GM franchises and its
8 Chrysler-Jeep franchises were both in new and better-located
9 facilities that were built in 2002. Even though the franchisors (GMC
10 and DC) were reasonably satisfied and getting sales, service, and
11 customer satisfaction results above targeted levels, Protestant was
12 losing money on these operations.

13 82. In RLT's mind he may well have had urgent business reasons
14 for unilaterally abandoning Protestant's obligations under the
15 August 23, 2002 franchise agreements with Respondent DC and executing
16 the October 2004 moves. Even granting for purposes of argument
17 Thompson's real or perceived business problems, it is difficult to see
18 how these would translate into an obligation on the part of DC to
19 surrender the basic elements of the arrangement freely and fairly
20 negotiated between the parties on August 23, 2002.⁷

21 83. It is clear from this record that Protestant breached its
22 franchise agreement with DC regarding its most central and basic
23 elements. Despite obligations of exclusivity and maintenance of the
24

25 ⁶ As is shown above, this is not the only factor supporting a determination of good
26 cause to terminate the franchise in this case.

27 ⁷ There is in this record no hint whatsoever of coercion, fraud, or deception in
28 the negotiation of any element of the August 23, 2002 franchise agreements between
Thompson's and DC.

1 Placerville Drive location as an exclusive DC franchise, DC was, over
2 strong and consistent objection, physically removed from the premises
3 and competitor GMC was invited in to exclusively run its franchise at
4 DC's location.

5 84. RLT is a businessman; and has been a successful and
6 respected one at that. He made a business determination in 2004 that
7 he would be in a better financial position by moving his principal
8 franchise (Toyota) from his worst location at Main Street to his best
9 location at Forni Road. He convinced GMC to reluctantly or otherwise
10 agree to move from his best location at Forni Road to his next best
11 location at Placerville Drive; incidentally, a move to which
12 Respondent DC itself had earlier given consent. Both Toyota and GMC
13 had insisted upon and been granted exclusivity in their new franchise
14 agreements. RLT knew this would cause a problem for him in his
15 relations, contractual and otherwise, with DC.

16 85. Protestant responds to the entirely predictable (and
17 predicted) consequences of its unilateral action (DC's notice of
18 intent to terminate the franchises) with a contention that DC's
19 refusal to go along with the "Trading Spaces" move of October 2004 was
20 in some or all respects unreasonable, as contrasted with the approval
21 of GMC, which on the other hand is characterized generally in its
22 pleadings as reasonable.

23 86. GMC was prevailed upon only to move from Forni Road to
24 Placerville Drive, both of which are modern well-located physically
25 suitable facilities within ¼ mile of each other. As noted above, DC
26 had already earlier consented to just such a move. The record
27 indicates GMC was never approached regarding a move from Forni Road to
28 Main Street. One rather suspects that had it been, GMC would have

1 emphatically refused to consent. In any event, the evidence does not
2 support a contention or inference that the moving of a franchise from
3 Forni Road to Placerville Drive is at all comparable to a move from
4 Placerville Drive to Main Street.

5 87. DC, like Toyota, GMC and RLT, made a business decision
6 regarding the October 2004 "Trading Spaces" move. Its decision not to
7 assent to an involuntary move from its established newer and better-
8 located modern facility to a 40 year old downtown location cannot by
9 any strained interpretation of this record be characterized as totally
10 unreasonable. Toyota had insisted on being moved from the Main Street
11 location to a more modern one and predictably experienced a
12 considerable increase in sales, which amounted to 40 percent. (RT Vol.
13 1, pp. 75-77, 105)

14 88. The evidence indicates that Protestant had been a valued DC
15 dealer in the Placerville market while at the Placerville Drive
16 location. There is room for an inference that, could DC have been
17 offered a facility at least somewhat equal in desirability and
18 location to the Placerville Drive facility (as was GMC in moving from
19 Forni Road to Placerville Drive), it may conceivably have consented to
20 being forced out of Placerville Drive in the interest of preserving
21 the dealership and the relationship. However, at some point DC
22 concluded that the price had become too high.

23 89. DC management was within its rights to consider facility
24 location, or relocation, as a long-term proposition. It rationally
25 concluded that being in a new larger facility in a considerably better
26 location was a much better long-term proposition than accepting a
27 poorer facility in an older and concededly less desirable location.
28 This view made sense even if given a well-performing and locally

1 respected dealer principal whom, it must be noted, has already been in
2 the automobile business for 43 years and could not reasonably be
3 expected to remain indefinitely. The trend in the industry is to move
4 toward placing dealerships in auto malls, or auto dealership rows, and
5 away from older downtown locations.

6 90. RLT may well have been, or seen himself to have been,
7 between a rock and a hard place. Each considered alone and in
8 isolation, he may have had sound reasons for making his 2004
9 commitments to GMC and Toyota. Those commitments were not, however,
10 executed in isolation. The execution led directly to a blatant and
11 serious breach of Protestant's August 23, 2002 franchise agreement
12 with DC, which led to the forced relocation from Placerville Drive to
13 Main Street. After October 2004, there was never even the pretense of
14 operating a stand-alone exclusive Chrysler-Jeep franchise at the
15 validly contracted for Placerville Drive location. Protestant
16 contests none of this.

17 91. DC cannot in these circumstances be held obligated to submit
18 to RLT's unilateral action against its clearly expressed opposition,
19 and insulate Thompson's from the consequences of its admitted breach.
20 To so hold would be to stand the law of contracts on its head. It
21 would render meaningless any franchise agreement with a dealer who has
22 multiple franchises, allowing any such dealer to at will move
23 franchises among its locations solely as a function of shifting views
24 on their relative worth and profitability. Unilateral modifications
25 on this basis are without good cause and cannot be sanctioned.

26 92. Protestant in October 2004 knowingly violated the most
27 important provisions of his franchise agreements with DC. He
28 physically moved the Chrysler Jeep franchises to a concededly inferior

1 location in the face of repeated and unambiguous denials of approval
2 therefore, and invited and allowed a rival competitor dealership to
3 exclusively occupy and operate at the Placerville Drive premises.

4 Findings Relating To DC's Notices Of Proposed
5 Termination Dated May 31, 2004, and October 4, 2004

6 93. Dealer principal RLT acknowledged that for about a six week
7 period sometime between the end of March 2005 until sometime in June
8 2005, Protestant did not display for sale, or sell, new Chryslers or
9 Jeeps from any location at all, authorized or unauthorized. (RT Vol.
10 1, p. 83)

11 DETERMINATION OF ISSUES

12 94. Respondent DC has established, pursuant to the provision of
13 Section 3061(a), that commencing in October of 2004 Thompson's
14 Chrysler and Jeep franchises have not been transacting anywhere near
15 the amount of business available to it. This has been a direct result
16 of its unauthorized move from the Placerville Drive location to the
17 Main Street location in October 2004. (See Paragraph 73)

18 95. Respondent DC has established that Protestant now maintains
19 a far less than adequate investment to perform its part of the
20 franchise, as required by the provisions of Section 3061(b). This has
21 been the case since October 2004. (See Paragraph 74)

22 96. Respondent DC has established that the adequate 2002
23 investment Protestant had made in the franchise at Placerville Drive
24 was not permanent, a criterion set forth in Section 3061(c). Since
25 October 2004 the investment at Placerville Drive has been for all
26 practical purposes totally unavailable to the DC franchise, as it has
27 been given over to GMC, a competitor. (See Paragraph 75)

28 97. It has not been established one way or another whether the

1 modification or replacement of the franchise would be injurious or
2 beneficial to the public welfare, a criterion set forth in Section
3 3061(d). However, as stated above in Paragraph 77, it was
4 Protestant's own business decisions that resulted in the cessation of
5 operations of the Chrysler and Jeep franchises at their authorized and
6 legal locations and DC is essentially seeking no more than legal
7 recognition of what had already factually occurred due to Protestant's
8 own conduct. (See Paragraphs 76-77)

9 98. Respondent DC has established that no Chrysler and Jeep
10 sales and service facilities, equipment, and parts, adequate or
11 otherwise, have been available at Placerville Drive since October
12 2004, as set forth in Section 3061(e). No showing was made regarding
13 the adequacy or inadequacy of facilities other than sales available at
14 Main Street since October 2004. (See Paragraph 78)

15 99. No showing has been made that the warranty obligations of DC
16 have not been fulfilled by Protestant, as set forth in Section
17 3061(f). (See Paragraph 79)

18 100. DC has shown that Protestant has since October 2004 failed
19 to comply with the terms of the franchise, as set forth in Section
20 3061(g). The failure was serious, material, intentional, direct, and
21 is ongoing. (See Paragraph 80-92)

22 101. By reason of the foregoing Determination of Issues and the
23 Findings herein, Respondent DC has met the statutory burden of proof
24 required by Section 3066(b) and did establish, under Section 3061,
25 good cause for the termination of Thompson's Chrysler and Jeep
26 franchises.

27 ///

28 ///

