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8
9 **NEW MOTOR VEHICLE BOARD**
10 **STATE OF CALIFORNIA**

11 LAIDLAW'S HARLEY-DAVIDSON SALES,
12 INC. dba LAIDLAW'S HARLEY-DAVIDSON

13 Protestant,

14 vs.

15 HARLEY-DAVIDSON MOTOR COMPANY,
a Corporation,

16 Respondent.
17

PROTEST NO. PR-2299-11

**PROTESTANT LAIDLAW'S HARLEY-
DAVIDSON SALES, INC. DBA
LAIDLAW'S HARLEY-DAVIDSON'S
PROPOSED FINDINGS OF FACT**

18
19 Protestant Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson
20 ("Protestant") hereby submits the following proposed findings of fact. References to the
21 administrative record are abbreviated.¹ This Vehicle Code² section 3060 protest concerns the
22 proposed termination of Protestant's franchise pursuant to Respondent Harley-Davidson Motor
23 Company, Inc.'s ("Respondent") notice of termination.
24

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26
27 _____
28 ¹ RT refers to Reporter's Transcript.

² All statutory references are to the California Vehicle Code, unless otherwise indicated.

1
2
3 **Procedural and Factual Background**

4 1. In 1958, Walter “Bob” Laidlaw began operating “Laidlaw’s Harley-Davidson”
5 Motorcycle dealership in Rosemead, California. [RT Vol. VII, 6:8-18 (W. Laidlaw).]

6 2. Due to success of dealership and growth of business, in 1963, Walter Laidlaw moved
7 Laidlaw's eastward about a mile and a half and built a new state-of-the-art facility. This new, two-
8 story building measured approximately 60 feet by 100 feet.

9 3. In 1969 and 1970, Protestant was ranked the top volume dealer of Harley-Davidsons in
10 the world, selling approximately 575 units annually. [RT Vol. VII, 9:12-16 (W. Laidlaw).] In 1994,
11 Brent Laidlaw, Walter Laidlaw’s son, began working fulltime at the dealership with his father and
12 brother, Jarold Laidlaw, who is also business owner and works closely with the service department
13 due to his technical and mechanical background. [RT Vol. VII, 12:22-24 (W. Laidlaw); RT Vol.
14 VII, 35:4-14 (B. Laidlaw); Exh.1.] In 1999, after almost two decades of successful sales, the
15 Laidlaw family sold their Rosemead dealership and used the proceeds, with Respondent’s
16 encouragement, to purchase a 2.1 acre property in Baldwin Park, California as the location of their
17 new, 46,000 square-foot dealership. Construction began in 2000 and the dealership officially
18 relocated in June 2002. Laidlaw’s growth has been steady over the years, becoming one of the
19 highest volume dealers in Southern California and the nation. Following the relocation, Brent
20 Laidlaw, Walter Laidlaw’s son, became the dealer operator. [RT Vol. VII, 42:12-15 (B. Laidlaw);
21 Exh. 1, pg. 2; Exh. 502.]

22 4. In 2002, Protestant began its motorcycle rental operations through Respondent’s in-
23 house rental program for dealers called the “authorized” rental program. In 2006, this arrangement
24 was switched to an Eagle Rider franchise (a non-Harley-Davidson entity that franchises large
25 motorcycle rental operations, specializing in Harley-Davidsons). In 2007, Protestant began an
26 insurance agency business at the dealership to offer convenient insurance sales to Laidlaw’s
27 customers. [RT Vol. VII, 53:9-54:25 (B. Laidlaw).]

28 5. In 2006, the dealership hired Richard Litchfield as a full time General Manager, though
only the Laidlaw family members own any interest in the dealership, which has been the case since
its inception. [RT Vol. IX, 5:14-18 (Litchfield).]

1 6. The current “Harley-Davidson Motor Company Motorcycle Dealer Contract” is dated
2 January 19, 2005. This contract identified the address of 1919 Puente Avenue, Baldwin Park, CA
3 91706 as the approved location for Protestant’s dealership. [Exh. 1.]

4 7. As a condition of sales and service, Protestant and Respondent also entered into a new
5 “General Conditions of Sales and Service” contract (“Dealer Agreement”). The Dealer Agreement
6 includes a “Non-Retail Sales” provision which states that “Dealer shall not sell Harley-Davidson
7 Products for resale to non-retail customers, except to other United States authorized dealers in
8 accordance with Seller’s written policies.” [Exh. 2, pg. 2.]

9 8. On February 4, 2011, Protestant received a letter from Steve Verduyn, Manager of
10 Dealer Credit and Compliance for Harley-Davidson, which identified approximately 18 potential
11 violations of Respondent’s Non-Retail Sales Policy. The letter requested documentation to
12 substantiate that the identified sales were in compliance with Respondent’s Non-Retail Sales Policy.
13 Mr. Verduyn had obtained this list of vehicles shipped overseas using database information from the
14 National Insurance Crime Bureau. [RT Vol. III, 10:7-19; 13:20-21 (Verduyn); Exh. 16.]

15 9. In contrast to the “Non-Retail Sales” provision found within the Dealer Agreement, the
16 Non-Retail Sales Policy is a separate, very detailed set of rules issued by Respondent prohibiting the
17 sale of new or previously unregistered motorcycles to a customer who intends to resell the vehicle
18 or who intends to ship the motorcycle outside the United States. The Non-Retail Sales Policy does
19 not prohibit the export of, or otherwise apply to, used motorcycles. [Exhs. 6, 16.] Vehicle code
20 section 655 defines a used motorcycle as a vehicle that has been: (1) sold or registered with the
21 DMV; (2) sold and operated on the highways of any other state or country; (3) registered with the
22 DMV of any other state or country; or (4) has been operated as an unregistered demonstrator vehicle
23 in the sales work of a dealer or used by a manufacturer in his or her sales or distribution work.

24 10. On March 23, 2011, Mr. Verduyn visited Protestant’s dealership and conducted an audit
25 of the sales documents with respect to the Non-Retail Sales Policy. [RT Vol. II, 84:13-16
26 (Kennedy).] Protestant fully cooperated with Mr. Verduyn during the course of the on-site audit.
27 [RT Vol. IV, 32: 11-14 (Verduyn).]

28 11. On April 14, 2011, based on the results of the audit, Protestant received the notice of

1 termination of its franchise agreement with Respondent. The notice identifies 42 violations of the
2 Non-Retail Sales Policy since December 27, 2008 for a period of approximately two years. The
3 notice also identifies 17 potential violations of Respondent's Fleet Sales Policy, which prohibits the
4 sales to rental operations unless they are specifically authorized or specially approved by
5 Respondent and if the motorcycle is supplied to the dealer through the Rental Fleet Pool. [RT Vol.
6 II, 89:13-15 (Kennedy); Exh. 237.]

7 12. In the notice of termination, Respondent charged back \$16,007.07 of VIP
8 money from Protestant. Respondent maintains a so-called incentive program called VIP. This
9 program was formerly known as a holdback, but the terminology changed years ago to VIP. Like a
10 holdback, VIP is earned at the time a dealer purchases a motorcycle. The dealer gets paid whether
11 or not the motorcycle is sold. The VIP program terms do, however, say that "non-retail sales" (with
12 the only defining document for that term being other Harley-Davidson policies) are not eligible for
13 the incentive. [RT Vol. II, 29:5-11; 184:25-185:5; 187:12-20 (Kennedy); Exh. 237.]

14 13. On May 12, 2011, in response to the notice of termination, Protestant timely filed the
15 within protest with the New Motor Vehicle Board challenging Respondent's termination notice and
16 threat to terminate Protestant's franchise agreement until such time that the Board held a hearing
17 and made a determination as to whether good cause existed for termination.

18 14. On October 14, 2011, Respondent's Vice President of North American Sales, Michael
19 Kennedy, sent an e-mail to Brent Laidlaw proposing that Protestant may sell the dealership business
20 to a qualified third party buyer, should the franchise be terminated. In that e-mail, Mr. Kennedy
21 stated, in part:

22
23 I said during [my deposition] that the Motor Company plans to replace
24 your dealership after the termination becomes effective. In the meantime, you
25 should understand that we have no objection to you attempting to sell your
26 dealership's assets to a qualified buyer before the effective date of termination.
27 If this is something that interests you, we could refer to you people whom we
28 believe might be interested, and would likely be qualified. We would, as is
standard, want to receive something in writing from you requesting such
referrals, since we do not ordinarily do that without our dealer's authorization.

I also note that we see no reason your family could not continue to lease
your facility to such a new dealer, as you do now, if the parties to such a
transaction wanted to do so. There are no other "strings" attached to our

1 willingness to help in this regard.

2 [Exh.223 (emphasis added.); RT Vol. II, 102:6-103:7 (Kennedy).]

3 15. A hearing was held from November 30 to December 14, 2011 before J. Merilyn Wong,
4 Administrative Law Judge for the Board, in Sacramento, California. Respondent was represented
5 by Robert Ebe and Brett Waxdeck of Cooper White & Cooper, 201 California Street, 17th Floor,
6 San Francisco, California. Protestant was represented by Halbert Rasmussen and Franjo Dolenac of
7 Manning, Leaver, Bruder & Berich, 5750 Wilshire Blvd., Suite 655, Los Angeles, California. [RT
8 Vols. I-XI.]

9 **Statutory Standard**

10 16. In accordance with Section 3060, when a seasonable protest has been filed in response to
11 a notice of intent to terminate a franchise, as is present in the within Protest, the Board must hold a
12 hearing to determine if “good cause” exists for termination. [section 3060.]

13 17. Section 3066 places the burden of proof on the Respondent-franchisor to establish that
14 there is good cause to terminate the franchise. [section 3066.]

15 18. Protestant contends that good cause does not exist to terminate Protestant’s franchise
16 for the following reasons, among others:

17 (a) The amount of business transacted by the Protestant is substantial, as compared to the
18 business available to it [section 3061(a)];

19 (b) The investments necessarily made and obligations incurred by the Protestant to perform
20 its part of the franchise have been substantial and termination will result in a significant
21 loss to Protestant as to these investments [section 3061(b)];

22 (c) The investment in Protestant’s Harley-Davidson business is substantial, has significant
23 permanency and will be significantly adversely affected by termination [section
24 3061(c)];

25 (d) Protestant’s permanent investment will be significantly adversely affected by the
26 termination of its franchise [section 3061(c)];

27 (e) Termination of Protestant’s franchise will be injurious to the public welfare [section
28 3061(d)];

- 1 (f) The current franchisees are providing more than adequate motor vehicle sales and service
2 facilities, equipment, vehicle parts and qualified service personnel to reasonably provide
3 for the needs of the consumers for the motor vehicles handled by the Protestant and has
4 been and is rendering adequate services to the public [section 3061(e)];
5
6 (g) The Protestant has fulfilled the warranty obligations of the Respondent [section 3061(f)];
7
8 (h) The extent of Protestant's failure to comply with the terms of the franchise agreement is
9 insufficiently material to warrant termination [section 3061(g).]

10 **Findings Related to the Amount of Business Transacted [Section 3061(a)]**

11 19. Respondent has failed to meet its burden to show that Protestant has failed to transact an
12 adequate amount of business compared to the business available to it.

13 20. Respondent does not dispute that Protestant is properly performing as to motorcycle
14 sales in its designated territory or that there are any concerns with Protestant's general sales
15 performance. [RT Vol. II, 133:10-134:17 (Kennedy).]

16 21. Based on Protestant's year-to-date sales ranking report, Protestant ranks 101 out of
17 the entire Harley-Davidson national dealer network in terms of sales volume. [RT Vol. II, 134:9-14
18 (Kennedy).]

19 22. Protestant is ranked number one in its district and second in Southern California in terms
20 of sales volume. [RT Vol. II, 135:15-20 (Kennedy).]

21 23. In calendar years 2005, 2006 and 2007, Protestant achieved Gold Bar & Shield Awards.
22 Respondent's Bar and Shield Award Program is an awards program for dealers based on excellence
23 in retail sales performance, operations management and marketing performance in the current year
24 in a given region. A dealer that falls into the top four in the region receives a Gold award; a dealer
25 that falls in the next eight rankings receives a Silver award; and a dealer that falls in the next twelve
26 rankings receives a bronze award. Only 25 stores across the country receive a Gold Bar and Shield
27 Award. [RT Vol. IV, 70:9-72:18 (Hawken); Vol. VII, 137:16-138:17 (B. Laidlaw); Exh. 124]

28 24. In both calendar years 2008 and 2009, Protestant achieved Bronze Bar & Shield Awards.
[RT Vol. IV, 70:9-72:18 (Hawken); Exhs. 158 and 159.]

25. In 2008, Walter Laidlaw, the dealership's founder, was recognized by Harley-

1 Davidson Motor Company for 50-years of service as an authorized Harley-Davidson dealer and
2 received a 50-Year Achievement Award, which recognizes achievement in service performances,
3 marketing, parts and accessories performance, gross sales, retail sales, sales improvement over the
4 previous year and service loyalty. [RT Vol. VII, 136:6-16 (B. Laidlaw).]

5
6 26. Protestant's June 2011 year-to-date service retention of sales customers was 75.2%. This
7 figure demonstrates the high level of loyalty of the buying customer to the dealership. [RT Vol. IV,
8 139:16-140:14 (Stewart); Exh. 155.]

9
10 27. The amount of business transacted by the Protestant relative to the business available to
11 the dealership is comparatively high. Protestant's number of registrations and sales as compared to
12 the national average in its dealer-assigned territory of Baldwin Park was 158% in 2010. In 2011,
13 that figure was 164.4%. These figures show that Protestant's sales relative to other dealerships in
14 the district is substantially higher. [RT Vol. XI, 28:5-30:22 (Stockton); Exh. 634, Tab 7]

15
16 28. As of December 2010, Protestant ranked 62 of 702 dealerships nationwide based on net
17 sales. [RT Vol. VII, 150: 6-22 (B. Laidlaw); Exh. 120.]

18
19 29. In October 2011, the year-to-date aggregate data reflects a 3.6% increase in net sales
20 compared to the previous year. The same data shows a 3.1% increase in net profits before taxes
21 compared to the previous year. The number of new vehicle net sales increased by 2.8% compared
22 to the previous year for the same period. [RT Vol. VII, 150:23-153:9 (B. Laidlaw); Exh. 540.]

23
24 30. In addition to profitability, a key metric that Harley-Davidson uses is customer
25 satisfaction. The customer satisfaction index is measured at two critical points in the ownership of a
26 vehicle: (1) 30 days after purchasing a vehicle and (2) 18 months after purchasing a vehicle. The 18
27 month survey results indicate how well the dealership is serving customers through the service
28 department, parts and accessories department, Motorclothes (Harley-Davidson merchandise)
department and all other departments not associated with vehicle sales. In October 2011, the year-
to-date aggregate data from the 30-day customer surveys shows that that overall customer
satisfaction was up by 1.5% from 9.45 to 9.59 over the same period in 2010. The same year-to-date
data at the 18-month mark shows that customer satisfaction was up 4.4% from 8.68 to 9.06 over the
same period in 2010. [RT Vol. VII, 153:10-154:20 (B. Laidlaw); Exh. 540.]

1
2 31. October 2011 year-to-date aggregate data shows that Protestant's total number of new
3 unit retail sales of Harley-Davidson motorcycles increased from 311 vehicles to 383 vehicles over
4 the same period in 2010, an increase of over 23%. [RT Vol. VII, 156:1-6 (B. Laidlaw); Exh. 540.]

5 32. Protestant was ranked 55 out of 703 dealerships nationwide in total retail units sold
6 during the 2011 calendar year through November 2011. [RT Vol. VII, 156:10-14 (B. Laidlaw);
7 Exh. 540.]

8 **Findings Related to Investments Necessarily Made and Obligations Incurred**
9 **[Section 3061(b)]**

10 33. The total construction costs for the expansion of the dealership to its current 46,000
11 square-foot, Baldwin Park facility was approximately \$4.8 million. Protestant purchased the land
12 where the current dealership is located for \$2.1 million. When the land was purchased, there was a
13 1962 building located on the property, measuring 200 feet long and 60 feet wide. Extensive
14 construction was conducted to bring the building up to earthquake code and to expand the building
15 to its current state, which is currently 46,000 square-feet. [RT VIII, 24:1-25:19 (B. Laidlaw).]

16 34. In 2004 and 2005, Protestant installed 534 solar panels on the roof of its Baldwin Park
17 dealership, and while it was a significant investment, this installation has substantially reduced the
18 dealership's electrical costs. [RT Vol. VII, 44:15-24 (B. Laidlaw).]

19 35. The dealership is family owned and operated; the same investors of the dealership are
20 those of the real property. For many years, the franchisee or dealer-licensee, Laidlaw's Harley-
21 Davidson Sales, Inc., conducted its motorcycle business out of the location in the city of Rosemead
22 in a building that had been acquired in 1963. In 1998, Laidlaw Family Realty Associates, LLC was
23 formed to hold that commercial building and all the real property. When the Laidlaws moved out of
24 the Rosemead building because the City of Rosemead "condemned" the building, the proceeds from
25 that sale were used towards the construction and purchase of the new, current facility located at
26 1919 Puente Avenue in Baldwin Park. In 2000, Laidlaw BP Realty, LLC was formed to hold the
27 Baldwin Park building that was improved and expanded to its present state. Because the City of
28 Rosemead "condemned" the Rosemead building, Laidlaw Realty Associates, LLC completed an
Internal Revenue Code section 1033 exchange of that building for a 40% undivided interest in the

1 Baldwin Park building. This accounts for the present ownership of the Baldwin Park building and
 2 real estate at 40% by Laidlaw Family Realty Associates, LLC and 60% by Laidlaw BP Realty, LLC.
 3 Laidlaw BP Realty, LLC is jointly owned by Brent Laidlaw and his three siblings. Laidlaw Family
 4 Realty Associates, LLC is owned by Brent Laidlaw's father, Walter Laidlaw. [RT Vol. VII, 20:16-
 5 21:6 (W. Laidlaw); Vol. VIII, 15:15-16:16 (B. Laidlaw); Exh. 146A; Exh. 146B; Exh. 146C; Exh.
 6 147; Exh. 148.]

7 36. Investments made are assets funded by the Protestant and its related entities, including
 8 Laidlaw BP Realty, LLC and Laidlaw Family Realty Associates, LLC. Assets are created from
 9 funds contributed as capital from owners, loans from non-third parties (obligations), funds
 10 contributed by loans from related entities (obligations), and retained earnings (cumulative profits
 11 less distributions) of the entities. Investments made are from capital infused into the dealership,
 12 retained earnings and obligations of the Protestant and related entities. [Exh. 135, p.4.]

13 37. The following chart shows Protestant's substantial capital investments in Laidlaw's
 14 Harley-Davidson Sales, Inc. and its related entities, Laidlaw Family Realty Associates, LLC and
 15 Laidlaw BP Realty, LLC:

Entity	Capital Investments
Laidlaw's Harley-Davidson Sales, Inc.	Exceeds \$2,300,000 [Exh. 135, p. 4.]
Laidlaw Family Realty Associates, LLC	Exceeds \$1,800,000 [Exh. 135, p. 4.]
Laidlaw BP Realty, LLC	Exceeds \$740,000 [Exh. 135, p. 4.]
Total Capital Investments:	\$4,840,000 [Exh. 135, p. 4.]

19
 20 38. The chart below shows Protestant and its related entities' total investments in assets at
 21 original cost:

Entity	Total Investments
Laidlaw's Harley-Davidson Sales, Inc.'s investments in facilities and other depreciable assets	\$2,637,000 [Ex. 135, p.4.; Exh. 138]
Laidlaw's Harley-Davidson Sales, Inc.'s cash, receivables and inventory	\$3,531,000 [Exh. 135, p. 4.]
Laidlaw's Family Realty Associates, LLC's investments in facilities and other depreciable assets	\$1,374,000 [Exh. 135, p. 4.]
Laidlaw's Family Realty Associates, LLC's cash, receivables and inventory	\$8,000 [Exh. 135, p.4.]

1	Laidlaw BP Realty, LLC's investments in facilities and other depreciable assets	\$2,011,000 [Exh. 135, p.4.]
2	Laidlaw BP Realty, LLC's cash, receivables and inventory	\$59,000 [Exh. 135, p. 4.]
3	Total Investments:	\$10,620, 000 [Exh. 135, p. 4.]

4 39. The chart below shows Protestant and its related entities' total investment in assets at
5 estimated current value or current basis:

6	Entity	Total Investments
7	Laidlaw's Harley-Davidson Sales, Inc.'s investments in furniture and equipment	\$6,370,000 [Exh. 135, p. 4.]
8	Laidlaw's Harley-Davidson Sales, Inc.'s cash, receivables and inventory	\$3,534,000 [Exh. 135, p.4.]
9	Facilities	\$6,640,000 [Exh. 135, p. 4.]
10	Laidlaw's Family Realty Associates, LLC's cash and other assets	\$8,000 [Exh. 135, p. 4.]
11	Laidlaw BP Realty, LLC's cash and other assets	\$59,000 [Exh. 135, p. 4.]
12	Total Investments	\$16,611,000 [Exh. 135, p. 4.]

13 40. Protestant has made substantial investments in the facility and the business. Brent
14 Laidlaw estimates that the total investments made is approximately \$6.5 to \$7 million. [RT Vol.
15 VIII, 10:17-24 (B. Laidlaw).]

16 41. Significant investments have been made in the dealership's fixtures and equipment,
17 including over 50 computer work stations, over 30 printers, two servers, 35 surveillance cameras,
18 numerous merchandising fixtures, boutique lighting, signage, work stations, desks, service
19 department lifts and work benches. [RT Vol. VIII, 10:25-11:11 (B. Laidlaw).]

20 **Findings Related to Permanency of Investment [Section 3063(c)]**

21 42. Permanency of investment is not a term of art used in or otherwise defined by the
22 accounting profession or automobile dealer industry. Analysis therefore requires an exploration of
23 all investments made in the business, which in turn requires a review of all aspects of permanency,
24 not merely the degree of liquidity. While nothing is permanent from a business perspective,
25 permanency would be considered a relative term with certain assets being less permanent while
26 other assets would be comparatively more permanent. The long term assets which are more
27 permanent in nature include furniture, fixtures, equipment, land, buildings and facilities, goodwill-
28 blue sky, and customer lists and other assets necessary to honor contingent future liabilities. [RT

1 Vol. X, 81:17-83:2 (Woodward); Exh. 135, p. 3, 5.]

2 43. The total construction costs for the expansion of the dealership to its current 46,000
3 square-foot, Baldwin Park facility was approximately \$4.8 million. Protestant purchased the land
4 where the current dealership is located for \$2.1 million. When the land was purchased, there was a
5 1962 building located on the property, measuring 200 feet long and 60 feet wide. Extensive
6 construction was conducted to bring the building up to earthquake code and to expand the building
7 to its current state, which is currently 46,000 square-feet. [RT VIII, 24:1-25:19 (B. Laidlaw).]

8 44. The guarantees (obligations of loans to the dealer-licensee, Laidlaw's Harley-Davidson
9 Sales, Inc., which include the debt of the dealer-licensee and real estate mortgages exceeds \$6
10 million and varies monthly. [Exh. 135, p. 5.]

11 45. In early 2011, Respondent's dealership facility was appraised at \$6.64
12 million. With respect to the real property and buildings owned by the two LLCs, Brent Laidlaw
13 estimates that the value of the Baldwin Park dealership is approximately \$6,500,000 to \$7,000,000.
14 [RT VIII, 20:22-21:9 (B. Laidlaw); RT Vol. X, 23:23-24; 29:7-30:18 (Woodward); Exh. 135, p. 5.]

15 46. To date, the Laidlaw family has invested \$2,300,000 in capital in the dealership,
16 \$1,800,000 in capital in Laidlaw Realty Associates, LLC and \$740,000 in capital in Laidlaw BP
17 Realty, LLC for a total of \$4,840,000. The property is a single purpose facility which makes the
18 investment therein more permanent. There are also long term (non-current and more permanent)
19 assets invested in the dealership consisting of leasehold improvements, furniture, signs and
20 equipment, company vehicles, parts and accessories equipment, and service equipment. The current
21 combined value of these assets for the three entities (dealer-licensee, Laidlaw Realty Associates,
22 LLC and Laidlaw BP Realty, LLC) is approximately \$13,010,000. This figure is the combined sum
23 of \$6,370,000, the current value of the facilities, equipment and intangible for the dealer-licensee,
24 Laidlaw's Harley-Davidson Sales, Inc., and the appraised value of the facility at \$6,640,000. The
25 total costs incurred for these assets for the three entities is \$7,021,000. This figure is the combined
26 sum of \$2,636,000 for costs incurred by Laidlaw's Harley-Davidson Sales, Inc. and \$4,385,000 for
27 the costs incurred by the related entities, Laidlaw Realty Associates, LLC and Laidlaw BP Realty,
28 LLC. [RT VIII, 20:22-21:9 (B. Laidlaw); RT Vol. X, 22:21-23: 24; 29:7-30:18; 34:6-35:16

1 (Woodward); Exh. 135, p. 5; Exh. 138].

2 47. The current range of goodwill or franchise value of Laidlaw's Harley-Davidson is \$4
3 million to \$8 million, with a midpoint of \$6 million. [RT Vol. X, 6:25-9:8; 13:6-12 (Woodward);
4 Exh. 135, p. 6.]

5 48. Termination of Respondent's dealership will result in a loss of \$2 million to the value of
6 the facility and a complete loss of the goodwill or franchise value of \$6 million. [RT Vol. X, 23:9-
7 16; 33:3-34:5 (Woodward); Exh. 135, p. 6.]

8 **Findings Related to Injury to the Public Welfare [Section 3061(d)]**

9 49. Protestant is exclusively involved with multiple contract negotiations with police
10 departments in neighboring communities, including the Los Angeles Police Department and Los
11 Angeles World Airport to sell them Harley-Davidson parts, as well as leasing vehicles to other
12 municipalities including West Covina and City of El Monte. [RT Vol. IX, 85:10-86:1 (Litchfield).]

13 50. The initial contracts with LAX police department and the LAPD were for a period of 5
14 years with a \$5 million cap. [RT Vol. IX, 86:1-19 (Litchfield).]

15 51. Protestant organizes, sponsors and supports "fallen officer" community events and
16 benefit rides on behalf of the local police departments, as well as numerous other charities and
17 rallies, including the Ride for Autism Organization, Operate Gratitude, and events for the Pasadena
18 Humane Society. Many local charities start their fundraisers, rides and events at Protestant's
19 dealership because of its convenient location, unique capacity by virtue of its large facility and
20 strong cooperation with the city. Protestant has hosted numerous charities and fundraisers with up
21 to 600 participants, including members of the California Highway Patrol. These events often begin
22 at the dealership and organized rides or rallies continue down the local freeways for miles.
23 Protestant has been active in serving the community and local charities with these events. [RT Vol.
24 VII, 11:15-12:7; 20:4-15; 68:20-69:21; 139:1-15 (B. Laidlaw); Exh. 124.]

25 52. The large, prominent "Laidlaw's Harley-Davidson" signage by the 10-freeway has
26 become an iconic fixture in the community. The city of Baldwin Park was instrumental in assisting
27 the dealership in attaining a permit for the signage. An average of 55 million cars drive by the
28 building on the freeway each year. [RT Vol. VII, 47:9-48:13; 58:18-25; 60:8-10; 61:14-21 (B.

1 Laidlaw).]

2 53. Protestant maintains an insurance center located inside its dealership, providing
3 optional insurance policies to its customers to ensure that every customer has adequate insurance
4 coverage. Many customers frequently renew their insurance policy with Protestant. Protestant sells
5 over 600 policies a year and over a thousand renewals to existing customer base [RT Vol. VII, 53:9-
6 54:3; 55:1-4 (B. Laidlaw).]

7 54. Protestant also maintains and operates an Eagle Rider rental facility that includes a
8 large fleet of rental bikes for customers who are considering purchasing a motorcycle or for
9 customers whose motorcycle is in repair or there is an emergency breakdown and the customer
10 needs a loaned vehicle while it is serviced. The culmination of the rental experience is to ultimately
11 sell a vehicle to the customer. [RT Vol. VII, 56:14-57:4 (B. Laidlaw).]

12 55. Since the dealership sells insurance as a service to its customers, Protestant also
13 works with many insurance companies and repairs customers' motorcycles in a timely fashion with
14 its well-staffed authorized collision repair center. [RT Vol. VII, 64:4-65:7; 55:9-20 (B. Laidlaw).]

15 56. Harley-Davidson's customer database indicates that the number of customers that
16 Protestant has reached out to over the years of business is 90,422 and 12,151 customers that are
17 active with the dealership within the last 24 months. [RT Vol. VII, 129:20-130:5 (B. Laidlaw); Exh.
18 124.]

19 57. Protestant maintains a large service department with high customer loyalty rating of
20 70 to 80 percent, which is the highest in the district, evidencing that customers often return to
21 Protestant for their warranty services. [RT Vol. VII, 63:17-64:3 (B. Laidlaw).]

22 58. Protestant has a very active Harley Owners Group ("HOG") chapter which it has
23 operated for over 20 years and includes over 177 members. Membership in Protestant's HOG
24 chapter brings Harley enthusiasts together on group rides, which the dealership supports by riding
25 with the group. The dealership charts the HOG chapter and provides them with raffle prizes and
26 holds HOG events each year at the dealership. Once a month, HOG members hold meetings and
27 dealership employees show their support by attending. The dealership also extends special service
28 and discounts on parts for customers who join Protestant's HOG chapter. [RT Vol. VII, 130:15-

1 131:25 (B. Laidlaw); Exh. 124.]

2 59. Protestant operates the Motorcycle Value Program (“MVP”) which offers unique
3 privileges exclusively to Laidlaw's customers. There are currently 6000 customers in the program
4 and no other dealership in the western United States offers the program. MVP is exclusive to only
5 24 dealers in the United States. By paying for membership, the MVP customer receives discounts
6 on parts and services, special rides, dinners, special openings and extended shopping hours. MVP
7 membership increases customary loyalty to the dealership. Approximately 50% of Protestant’s sales
8 are from MVP members. [RT Vol. VII, 132:10-135:8 (B. Laidlaw); Exh. 124.]

9 60. Losses to the customer base would be significant if Protestant was terminated.
10 Customers would no longer have the facility and the comforts and the amenities that come with use
11 of the facility, such as the Motor Value Program, the rental opportunities, the collision repair center,
12 the HOG chapter operated by the dealership, and the loss of use of the facility for the charitable
13 events. Additionally, two local police departments would no longer have a number of their police
14 vehicles because Protestant leases units to them. [RT Vol. VII, 54:19-56:5; Exh. 124.]

15 61. Protestant offers a Priority Maintenance Service Plan which is a pre-paid, three year
16 maintenance contract offered to customers. Over 600 maintenance plans are in effect which would
17 have to be refunded to the customers since Protestant is the sole dealer that provides these services
18 and the benefit of the maintenance program to its customers. [RT Vol. VII, 56:11-18; Exh. 134.]

19 62. There are approximately 50 employees who would lose their jobs if Protestant was
20 terminated. Most of these employees are specifically trained to work with Harley-Davidsons,
21 particularly the eight, specially-trained technicians. The employees would also lose their health
22 benefits offered through the COBRA plan, as well as their 401k and other exclusive employee
23 benefits. [RT Vol. VII, 57:3-21 (B. Laidlaw).]

24 **Findings Related to Adequacy of Motor Vehicle Sales and Service Facilities [Section**
25 **3061(e)]**

26 63. Respondent does not dispute that Protestant maintains an adequate facility. [RT
27 Vol. II, 133:10-134:17 (Kennedy).]

28 64. Respondent is not aware of any inadequacies in Protestant’s staff as to their size, training

1 or capacity to handle customer service. [RT Vol. II, 135:2-7 (Kennedy).]

2 65. Respondent is not aware of complaints that Protestant has received in terms of serving
3 customers coming in for warranty work and having their vehicle repaired. [RT Vol. II, 134: 22-
4 135:1 (Kennedy).]

5 66. Respondent acknowledges that Protestant's facilities are maintained up to Harley-
6 Davidson's standards. [RT Vol. IV, 75:5-12 (Hawken).]

7 67. Protestant's store includes a design center where customers can customize their
8 motorcycle with features and accessories to obtain a more personalized look and fit for their vehicle.
9 [RT Vol. VII, 50:21-51:6 (B. Laidlaw); Exh. 502.]

10 68. Protestant's store includes an Eagle Rider rental center and an insurance center. The
11 rental facility includes a large fleet of rental bikes for customers who are considering purchasing a
12 motorcycle or for customers whose motorcycle is in repair or there is an emergency breakdown and
13 the customer needs a loaner vehicle while it is serviced. The culmination of the rental experience is
14 to ultimately sell a vehicle to the customer. In 2010, the rental center provided services to
15 approximately 566 customers. [RT Vol. VII, 53:3-8; 56:14-57:4 (B. Laidlaw); Exh. 124.]

16 69. Protestant maintains an insurance center located inside its dealership, providing
17 optional insurance policies to its customers to make sure that every customer has adequate insurance
18 coverage. Many customers frequently renew their insurance policy with Protestant. Protestant sells
19 over 600 policies a year and over a thousand renewals to existing customer base. In 2010,
20 Protestant issued 506 new insurance policies and 1020 policy renewals. In 2009, Protestant issued
21 451 new policies and 1055 renewals. In 2008, Protestant issued 609 new policies and 803 renewals.
22 [RT Vol. VII, 53:9-54:3; 55:1-4 (B. Laidlaw); Exh. 124]

23 70. Since the dealership sells insurance as a service to its customers, Protestant also
24 works with many insurance companies and repairs customers' motorcycles in a timely fashion with
25 its well-staffed authorized collision repair center. [RT Vol. VII, 64:4-65:7; 55:9-20 (B. Laidlaw);
26 Exh. 502.]

27 71. Protestant's service department includes 24 repair lifts, 18 of which are in-ground floor
28 lifts. The dealership employs eight specially-skilled service technicians. Seventy to eighty percent

1 of Protestant's customers return to the dealership to have warranty work completed, which is the
2 highest ranking in the district. Protestant has never been constrained to take on more service work.
3 [RT Vol. VII, 63:10-64:3 (B. Laidlaw); Vol. VIII, 6:5-24 (B. Laidlaw); Exh. 502.]

4
5 72. In 2010, Protestant's service department completed 4,745 work orders totaling
6 \$1,364,288 in labor sold, which is above district, region and national averages. This figure reflects a
7 proficiency level of 87%. Proficiency is a key metric of service department excellence, productivity
8 and efficiency. Proficiency measures a technician's ability to complete work, complete work
9 accurately and complete work within the designated time frame. In 2009, the service department
10 completed 5,495 work orders, totaling \$1,626,240 in labor sold, with an 80% proficiency level. In
11 2008, the service department completed 6,497 work orders, totaling \$1,514,908 in labor sold, at a
12 71% proficiency level. [RT Vol. VII, 135:9-136:4; Exh. 124.]

13 73. Protestant also operates a certified collision repair center. In 2010, the collision center
14 completed 160 work orders totaling \$467,242 in parts and labor sold. In 2009, the collision center
15 completed 186 work orders totaling \$734,062 in parts and labor sold. In 2008, the collision center
16 completed 311 work orders totaling \$1,119,964 in parts and labor sold. [Exh. 124.]

17 74. Protestant offers a Priority Maintenance Service Plan which is a pre-paid, three year
18 maintenance contract offered to customers. Over 600 maintenance plans are in effect which would
19 have to be refunded to Protestant's customers since Protestant is the sole dealer that provides these
20 services and the benefit of the maintenance program to its customers. [RT Vol. VII, 56:11-18; Exh.
21 134.]

22 75. Currently, the dealership employs approximately 50 employees and the dealership itself
23 measures 46,000 square feet, including the showroom and service department. [RT Vol. VII, 57:3-
24 21 (B. Laidlaw); RT Vol. VIII, 24:6-13 (B. Laidlaw); Exh. 502.]

25 76. In terms of service metrics, Protestant's September 2011 year-to-date aggregate sales
26 data shows that that the dealership was ranked 10 out of 693 Harley dealerships nationwide in
27 overall net service sales and 110 out of 697 dealerships nationwide in service proficiency. Out of
28 697 nationwide Harley dealerships, Protestant was ranked 47 in new vehicle unit sales and 31 in
parts and accessories sale. [RT Vol. VIII, 5:15-25 (B. Laidlaw); Exh. 539.]

1
2 77. As of September 2011, the year-to-date aggregate data of customers retained for service
3 is 75.6%, an increase of 2% over the last year. As of October 2011, that figured increased to 80.2%,
4 an increase of 7.2% over the last year. [RT Vol. VIII, 9:10-10:5 (B. Laidlaw); Exh. 539; Exh. 540.]

5 **Findings Related to Fulfillment of Warranty Obligations [Section 3061(f)]**

6 78. Respondent is not aware of any complaints as to Protestant's ability to provide proper
7 warranty services and vehicle repairs. [RT Vol. II, 134:18-135:1 (Kennedy).]

8 79. Respondent is not aware of any warranty claim or reimbursement that Respondent has
9 had to make as a result of Protestant's sale of violation units. [RT Vol. I, 148:13-149:25
10 (Kennedy).]

11 **Findings Related to Extent of Compliance with Terms of Franchise [Section**
12 **3061(g)]**

13 80. The gross profits generated by Protestant's violation units in 2009, 2010 and through
14 March 2011 are only a small fraction as compared to the total dealership gross profits for the same
15 periods. From 2009 through March 2011, the total dealership gross profit was \$8,931,081, whereas
16 the violation unit gross profit was \$123,846 for that period, which is only 1.38% of the total
17 dealership gross profit. [RT Vol. XI, 35:25-36:15 (Stockton); Exh. 634, Tabs 11 and 12.]

18 81. Harley-Davidson dealers have specific obligations in order to be an authorized dealer of
19 the Harley-Davidson brand. These obligations are detailed in the franchise agreement and include:
20 stocking proper inventory levels of motorcycle parts, maintaining accessories and general
21 merchandise; making available certain motorcycles for demonstrations and test rides; maintaining
22 the facility up to standards and signage requirements; properly training employees and technicians;
23 and maintaining a technical shop to perform diagnostic and other technical work on the motorcycles.
24 [RT Vol. I, 130:6-130:21 (Kennedy); Exh. 1; Exh. 2.]

25 82. Respondent's only basis for termination is non-compliance with Respondent's Non-
26 Retail Sales Policy and Fleet Sales Policy, as set forth in the termination notice. Respondent does
27 not allege that Protestant violated any of Respondent's other corporate policies. The Non-Retail
28 Sales Policy does not amend or modify the Dealer Agreement nor are its specific terms incorporated

1 into the Dealer Agreement. However, the Dealer Agreement does provide that dealers shall comply
2 with the policies and position statements issued by Respondent regarding the requirement that sales
3 not be “for resale.” [Exh. 2, pg. 2; Exh. 237.]
4

5 83. Respondent’s Fleet Sales Policy is also not incorporated into the Dealer Agreement. In
6 fact, the control of sales to business (fleets) in a retail (that is, not for resale) context is not even
7 addressed in the Dealer Agreement. [Exh. 2.]

8 84. There has been no monetary loss or damage sustained as a result of Protestant’s
9 violations to the Non-Retail Sales Policy and the Fleet Sales Policy as reflected by Respondent’s
10 lack of evidence regarding any such loss and absence of any estimate of the possible existence or
11 extent of any such loss. Respondent is not aware of any fines, sanctions, or penalties imposed on
12 Respondent by foreign governments for units sold by unauthorized sellers in foreign countries.
13 Respondent intimated, but did not prove, that motorcycles exported were disassembled and even
14 then there is no evidence or proof of any kind that there was any injury or monetary loss. [RT Vol.
15 I, 148:13-149:25 (Kennedy); Vol. V, 161:1-13 (McGowan).]

16 85. Protestant offered and continues to offer full reimbursement to Respondent for any and
17 all costs, expenses, or other loss caused by the retail policy violations identified from the audit.
18 Respondent has not responded to Protestant’s offer of reimbursement. [RT Vol. II, 148:4-12
19 (Kennedy); Exh. 124.]

20 86. Respondent does not have an estimate of the actual monetary loss or damage that
21 Respondent has sustained as a result of the violations that Respondent’s audit identified. [RT Vol.
22 II, 148:16-149:7 (Kennedy).]

23 87. Respondent’s Non-Retail Sales Policy identifies the following consequences for a
24 violation therein: (1) placing limitations on future product allocations or shipments; (2) charging
25 back to the dealer any incentives or allowances credited or paid with respect to the violating sale; (3)
26 placing the dealer in Not in Good standing status; (4) charging back any internal and external audit
27 and legal expenses to the dealer; or (5) terminating the dealer’s contract. [RT Vol. II, 156:4-157:1
28 (Kennedy); Exhs. 6, 208, 209.]

88. Respondent unilaterally revises and issues the Non-Retail Sales Policy periodically

1 (generally every year), but dealers are not asked to approve or sign off on the policy.

2
3 89. Respondent's Fleet Sales Policy identifies the following consequences for a violation
4 therein: (1) placing limitations on future product allocations or shipments; (2) charging back to the
5 dealer any incentives or allowances credited or paid with respect to the violating sale; (3) placing the
6 dealer in Not in Good standing status; (4) charging back any internal and external audit and legal
7 expenses to the dealer; (5) making dealer ineligible to purchase fleet motorcycles for one or more
8 model years; or (6) terminating the dealer's contract. [Exhs. 7, 210.]

9 90. Respondent did not impose less severe consequences to Protestant's violations prior to
10 issuing a termination notice, such as limiting future product allocations or shipments. [RT Vol. II,
11 158:12-24 (Kennedy).]

12 91. Respondent has imposed less severe sanctions on other dealerships who have violated
13 the Non-Retail Sales Policy. [RT Vol. IV, 48:9-17; 49:12-18 (Verduyn).]

14 92. Purchasing a new motorcycle in California but shipping it outside of California does not
15 violate Respondent's Non-Retail Sales Policy, even though it has the same effect of reducing the
16 total number of units of Harley-Davidson motorcycles in California as would exporting a
17 motorcycle outside the United States. [RT Vol. II, 172:11-23 (Kennedy).]

18 93. The safety recall campaigns that appear on the list of Protestant's audit report
19 (campaigns 0141, 0144 and 0145) were all reported to the National Highway Traffic Safety
20 Administration ("NHTSA"). Therefore, even if the ultimate customer did not receive notice of the
21 recall campaign through the customer registration information that Protestant submitted to
22 Respondent via the Safety and Warranty Registration ("SWR") form, information regarding the
23 recall campaigns is equally available to members of the public on the NHTSA website. Those recall
24 campaigns are also reported to foreign governments in every country where Harley-Davidson
25 markets its products. [RT Vol. V, 147:20-148:11 (McGowan).]

26 94. Respondent asserts that one "negative" consequence of exporting is that the owner of a
27 motorcycle that has been exported cannot be notified of Respondent's recall safety campaign. In the
28 United States, Respondent notifies customers of a safety recall campaign based on
the customer's address and Vehicle Identification Number ("VIN") found in the SWR database.

1 The SWR database is based on the information on the SWR form that each dealer obtains from the
2 customer at the time of sale. If the customer's contact information on the SWR form indicates an
3 address in the United States, but the new motorcycle has actually been exported to a foreign country,
4 a recall safety notice cannot be sent out to the foreign owner of the motorcycle because the new
5 owner's address is not provided on the original SWR form. [RT Vol. V, 88:14-89:16; 90:19-91:14
6 (McGowan).]

7
8 95. Respondent claims that another "negative" consequence of exporting is that the
9 specialized "fit" of each motorcycle to the purchasing customer will no longer apply. Respondent
10 intimated but did not prove that a retail purchaser would be more likely to have the motorcycle
11 adjusted or "fit" to the customer's physical characteristics. If the motorcycle is exported, the
12 specialized design and fitting that is set for the original customer will be useless. [RT Vol. V, 97:2-
13 98:2. (McGowan).]

14 96. Respondent further claims that another "negative" consequence of exporting new
15 motorcycles is that these vehicles may be disassembled by gray market dealers to reduce the taxes
16 on overseas shipment. Respondent contends that if these motorcycles are reassembled by a non-
17 authorized Harley-Davidson dealer, it would pose a safety issue to the consumer because it may be
18 reassembled in a negligent manner. [RT Vol. V, 132:22-133:15 (McGowan).]

19 97. Respondent also contends that the exporting of a new motorcycle muddles with
20 the specified number of motorcycles that have been specifically allocated by Respondent to be
21 shipped and sold in California. Thus, Respondent claims, the exporting of a new motorcycle
22 deprives California of a unit and is misleading to Respondent's demand-driven allocation system.
23 [RT Vol. I, 159:3-9; Vol. II, 29:17-19 (Kennedy).]

24 98. However, in each of these scenarios, since the Non-Retail Sales Policy does not prohibit
25 the export of *used* motorcycles [Exhs. 6, 16], there is a similar likelihood that the foregoing
26 "negative" consequences may also occur in a non-violation setting, such as if a used motorcycle is
27 exported. Thus, if a used motorcycle is exported, versus a *new* motorcycle, it is just as likely that
28 (1) the foreign-based customer will not receive notice of recall safety campaigns; (2) the motorcycle
is not the proper "fit" for the foreign-based customer; or (3) the vehicle will be disassembled for

1 overseas shipment. Additionally, the exporting of a new motorcycle, which violates Respondent's
2 Non-Retail Sales Policy, deprives a motorcycle unit allocated to California no more than a vehicle
3 that is sold out of the state of California but within the United States, which does *not* violate
4 Respondent's Non-Retail Sales Policy. [Exhs. 6, 16.]

5
6 99. There was no showing of intent to deceive by Protestant with regard to the
7 Non-Retail Sales Policy, but rather that there was a lack of understanding of the Non-Retail Sales
8 Policy on the part of Protestant. Once Respondent's developed an understanding of these policies,
9 the Compliance Coach program was immediately put into effect and Protestant has and continues to
10 comply with all of Respondent's policies and procedures and to go above and beyond what has been
11 requested. [RT Vol. VIII, 54:3-14 (B. Laidlaw).]

12 100. Since the audit and termination notice, Protestant has developed and currently
13 implements a comprehensive program to ensure compliance with Respondent's Non-Retail Sales
14 Policy, with a third-party, FIS Compliance Coach, auditing their performance under the program.
15 FIS Compliance Coach was retained by Protestant in May 2011 to provide consulting review and
16 training on statutory regulations. John Gisiger of Compliance Coach and Richard Litchfield,
17 Protestant's General Manager, develop the compliance training programs for the employees in
18 Protestant's sales department. Compliance Coach conducts monthly PowerPoint training sessions
19 and monthly audits of up to sixty (60) of Protestant's sales files for the previous month to ensure
20 that all forms in every sales jacket are completed thoroughly and accurately in accordance with
21 Respondent's policies and procedures. Compliance Coach reviews with Protestant's sales staff the
22 policies and procedures for preparing deal jackets and documentation with respect to Respondent's
23 Non-Retail Sales Policy to ensure proper completion of the SWR and post-delivery inspection
24 ("PDI") forms. PDI forms are used to verify that the vehicle has gone through an inspection, that
25 the owner of the vehicle understands how it operates and that it is a safe vehicle to drive.
26 Compliance Coach also performs on-site review of compliance policies and provides written risk
27 assessment reports containing findings and recommendations for ongoing program enhancements.
28 As part of the training process, Compliance Coach, in conjunction with Mr. Litchfield, have
identified numerous "red flags" for the sales staff to beware of when making a sale to a customer.

1 Such “red flags” include whether the customer has previously purchased numerous motorcycles,
2 whether the customer is recognized as a “known exporter,” whether the customer has a motorcycle
3 license and the customer’s method of payment. [RT Vol. IX, 18:24-20:18; 21:6-31:2 (Litchfield);
4 RT Vol. IX, 143:23; 147:8-10; 148:22-153:7; 156:4-157:4; RT Vol. X, 12:1-8 (Gisiger); Exhs. 9;
5 36; 608; 610; 612; 614-616.]

6 101. After each audit is conducted, Compliance Coach generates a report documenting the
7 findings of the audit and provides copies to Protestant and Respondent. The results of the audit are
8 debriefed with Protestant’s sales staff, the dealer operator Brent Laidlaw and the General Manager
9 Richard Litchfield. Audits were conducted during each month from June to October 2011. In terms
10 of Protestant’s overall progress, each subsequent audit report depicts a steady improvement in the
11 sales staff’s compliance with Respondent’s policies and procedures. By the time the October 2011
12 audit was completed, there was only one error as to the PDI form. Protestant has been very
13 receptive to the training and feedback on implementing the best practices provided by Compliance
14 Coach. In Compliance Coach’s view, such a consulting and training program is necessary for a
15 dealer to comply with Respondent’s Non-Retail Sales Policy. Additionally, training was provided
16 for Protestant’s service technicians which focused on accurate and proper completion of the PDI
17 forms. [RT Vol. X 5:7-12:19; 14:6-16:3 (Gisiger); Exhs. 9; 603-608; 612.]

18 102. Independent of Respondent’s contentions that termination would be reasonable or
19 justified, Respondent has not established good cause for termination as defined in the Vehicle Code.
20 Moreover, Respondent has failed to establish that independent of Vehicle Code requirements,
21 termination would be reasonable or justified. Protestant’s expert, Edward Stockton, testified
22 regarding several factors that were not included in Respondent’s expert’s report, prepared by Dr.
23 Dominique Hanssens, to sufficiently prove that termination is justified. For example, Mr. Stockton
24 testified that Dr. Hanssens’ report failed to consider the interests of the consuming public and the
25 potential impact on foreign entities, such as dealerships, in determining the reasonableness of
26 termination. Moreover, the fact that Respondent does not perform random audits of dealerships to
27 determine export violations runs contrary to Respondent’s claim that export violations are of critical
28 importance and such violations warrant termination of Protestant’s franchise. In other words,

1 Protestant's contention as to the alleged potential harm to Respondent's brand name as a result of
2 export violations would be far more credible if Respondent performed random audits to substantiate
3 their claim as to harmful impact of grey market exports. Mr. Stockton testified that nothing has
4 been established in the case that would indicate that Respondent has audited every dealership that
5 Respondent knows has committed export violations. Mr. Stockton also testified that there is
6 insufficient evidence to establish whether every dealership that had over 20 export violations
7 received a termination letter (the method of detecting violations not being sufficient to identify
8 every such occurrence of over 20 export violations). These factors are important considerations
9 when determining whether Respondent has acted reasonably in their decision to terminate
10 Protestant's franchise. [RT Vol. XI, 51:22-55:14 (Stockton).]

11 103. Furthermore, Mr. Stockton identified other factors that Mr. Hanssens neglected to
12 include in his report in concluding that termination was warranted. Such factors include the effects
13 of the termination or "externalities", such as the harm to Protestant's employees, the harm to
14 Laidlaw's investments and the harm to the consuming public if Protestant was terminated. Thus,
15 Respondent has failed to take all relevant factors into account in justifying their decision to
16 terminate the franchise. [RT Vol. XI, 51:22-55:14; 59:5-20 (Stockton).]

17 104. In addition, Respondent is motivated by independent reasons to proceed with
18 termination in this case in that it desires to reduce the number of dealers in the Los Angeles area
19 significantly in connection with its market consolidation initiative. [RT Vol. VIII, 42:13-45:20;
20 Exh.23.] Allowing termination in this case would result in an unwarranted windfall to Respondent
21 that would allow it to further its dealer-reduction goals without having to deal facilitate or await the
22 so-called voluntary process of dealer consolidation referred to in the materials presented to the
23 dealers in Los Angeles. [Exh. 23.]

24 **Proposed Determination of Issues**

25 105. Respondent has failed to establish that the amount of business transacted by
26 Protestant was inadequate as compared to the business available to Protestant.

27 106. Respondent has failed to establish that Protestant does not have a material investment
28 and Respondent has failed to establish that Protestant has not incurred substantial obligations in the

1 performance of its franchise.

2 107. Protestant has a significant permanent investment in its dealership.

3 108. Respondent failed to establish that it would be beneficial and not injurious to the
4 public welfare for Protestant's business to be terminated.

5 109. Respondent failed to establish that Protestant does not have adequate motor vehicle
6 sales and service facilities, equipment, vehicle parts and qualified service personnel to provide
7 reasonably for the needs of consumers for Protestant's motorcycle's handled by it. Further,
8 Respondent failed to establish that Protestant has not been rendering adequate services to the public.

9 110. Respondent has failed to establish that Protestant failed to fulfill warranty obligations
10 of Respondent to be performed by Protestant.

11 111. Respondent has failed to establish that the failure of Protestant to comply with the
12 terms of the franchise, if at all, was not of an extent sufficient to warrant termination.

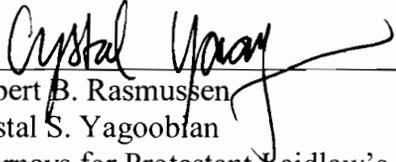
13 112. Respondent has failed to establish that good cause exists to terminate the franchise.

14 **Proposed Decision**

15 This protest is sustained. Respondent has failed to establish that good cause exists to
16 terminate Protestant's franchise.

17
18
19 DATE: March 9, 2012

MANNING, LEAVER, BRUDER & BERBERICH

20
21
22 BY 

Halbert B. Rasmussen

Crystal S. Yagoobian

Attorneys for Protestant Laidlaw's Harley-
Davidson Sales, Inc. dba Laidlaw's Harley-
Davidson

1 **Proof of Service**

2 I, the undersigned, declare and say as follows:

3 I am 18 years of age or older, employed at the business noted above my signature which is in
4 the county where any mailing herein stated occurred, and not a party to the within action.

5 On March 9, 2012, I caused to be served the document(s) listed below my signature under
6 the heading "Document(s) Served" by placing a copy of the document(s) (or the original, if so noted
7 below) in individual envelopes for each of the parties listed below my signature under the heading
8 "Parties Served" (except for fax-only service), addressed to them at their last known addresses in
9 this action exactly as shown (excepting parenthetical references to their capacity), there being U.S.
10 Mail delivery service to those addresses used for service by mail, and by sealing said envelopes, and
11 on the same day, as marked with "X," by --

12 **placing each envelope for collection and processing for mailing** following my firm's
13 ordinary business practice with which I am readily familiar and under which on the same
14 day correspondence is so placed for mailing it is deposited in the ordinary course of business with
15 the U.S. Postal Service at my business address, 1st-class postage fully prepaid.

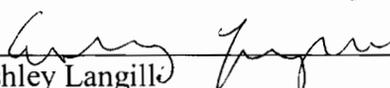
16 **electronically sending [x] by email or [] by fax** each page of each document and this
17 proof of service to the parties served at their last known email address or fax numbers as listed
18 below from a email or fax system located at my business address which reported no errors and
19 which, if by fax, produced a transmission confirmation report, a true copy of which is
20 attached hereto. [use only if electronic service authorized or as a supplement.]

21 **depositing each envelope into the U.S. mail** with 1st-class postage fully prepaid at a mail box
22 or collection facility in the city and state of my business address. "Parties Served" lists all
23 parties and counsel served in the within matter, and their respective capacities. [required for
24 federal cases, including bankruptcy, among others]

25 **depositing each envelope at a drop box or other facility** in the city and state of my business
26 address within the time and pursuant to procedures readily familiar to me necessary for
27 delivery **by Federal Express** on the morning of the next business day or **by courier** on the
28 same day. [use only if overnight or courier service authorized or as a supplement.]

29 **personal delivery** by travelling to the address shown on the envelope and delivering it there
30 during normal business hours or handing the documents to the person served.

31 I declare under penalty of perjury under the laws of the State of California and the United
32 States that the foregoing is true and correct and that this declaration was executed on March 9, 2012
33 at my business address, 5750 Wilshire Blvd., Suite 655, Los Angeles, California 90036, in the
34 County of Los Angeles.

35 
36 Ashley Langill

37 **Document(s) Served (exact title)**

38 **PROTESTANT LAIDLAW'S HARLEY-DAVIDSON SALES, INC. DBA LAIDLAW'S
39 HARLEY-DAVIDSON'S PROPOSED FINDINGS OF FACT**

40 **Parties Served (exact envelope address)**

41 New Motor Vehicle Board
42 **Email: nmvb@nmvb.ca.gov**
43 1507 21st Street, Suite 330
44 Sacramento, CA 95814
45 (Send **ORIGINAL** Via US Mail)

46 Robert L. Ebe, Esq.
47 (rebe@cbclaw.com)
48 Brett Waxdeck, Esq.
49 (bwaxdeck@cbclaw.com)
50 COOPER, WHITE & COOPER,
51 LLP
52 201 California Street, 17th Floor
53 San Francisco, California 94111
54 (Via Email and US Mail)