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9

STATE OF CALIFORNIA

10

NEW MOTOR VEHICLE BOARD

11

12 In the Matter of the Protest of:

PROTEST NO.: PR-2299-11

13 LAIDLAW'S HARLEY-DAVIDSON SALES,
INC., dba LAIDLAW'S HARLEY-
14 DAVIDSON,

**RESPONDENT HARLEY-DAVIDSON
MOTOR COMPANY'S POST-TRIAL
BRIEF**

15 Protestant,

16 vs.

17 HARLEY-DAVIDSON MOTOR
COMPANY, a Corporation,

18 Respondent.
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1 **I. Introduction**

2 This case is not just about Harley-Davidson Motor Company's ("Harley-Davidson's") right
3 to terminate one dealer's contract. It is about Harley-Davidson's ability to continue to consistently
4 enforce a set of contractually based sales policies (principally, Harley-Davidson's Non-Retail
5 Sales Policy – Pleasure Vehicles, or "NRSP") that are vital to public welfare, the Harley-Davidson
6 brand, and the continued health of Harley-Davidson's hundreds of authorized dealers around the
7 world. In a nutshell,¹ these policies require dealers to properly set up, test, inspect, and deliver
8 new motorcycles *directly* to the end users of those motorcycles at their dealership facilities; to
9 document (on Pre-Delivery Inspection ("PDI") forms) that this has been done; to inform Harley-
10 Davidson who the end users are through Sales and Warranty Registration ("SWR"); and not to sell
11 new motorcycles for resale or shipment abroad. They also require that a dealer's pleasure unit
12 allocation be sold only at retail. Fundamentally, these policies reflect the fact (implicit in the
13 Vehicle Code) that consumers are best served by new motor vehicle distribution through
14 *franchised, contractually bound, authorized dealers* -- and not through shadowy networks of
15 non-authorized sellers, resellers and "chop shops" operating in the "grey market."

16 Good cause exists to terminate Laidlaw's Dealer Contract because, between December
17 2008 and January 2011, it sold 59 new motorcycles (the "Sales Violations") in violation of these
18 policies. Specifically, it sold 42 new motorcycles (the "Export Violations") to grey market
19 exporters and resellers in violation of its Dealer Contract and the NRSP, and it sold 17 new
20 motorcycles (the "Rental Violations") to rental companies, that it improperly sourced from its
21 retail pleasure unit allocation, in violation of its Dealer Contract, the NRSP, and a related Fleet
22 Sales Policy ("FSP"). Laidlaw's also breached various Pre-Delivery Inspection ("PDI") and Sales
23 and Warranty Registration ("SWR") obligations in connection with the 59 Sales Violations.²

24 _____

25 ¹ We describe the relevant policies in greater detail in Part II.

26 ² We have attached to this brief Exhibit 200, a demonstrative used extensively at trial,
27 summarizing key evidence regarding 42 Export Violations and 17 Rental Violations (plus, on the
28 final page, several so-called "Additional Sales" learned about in discovery that are relevant,
among other things, to Laidlaw's knowledge of its violations). We also have attached an
(footnote continued)

1 Laidlaw's 59 Sales Violations, and its PDI and SWR breaches, represent a massive failure
2 by the dealership to comply with the terms of its franchise. This is seen, in part, by considering
3 Harley-Davidson's history of enforcement. As discussed below, Harley-Davidson has
4 consistently, and for many years, informed its dealers that they may be audited and terminated for
5 non-compliance with the NRSP, and it has repeatedly exercised these rights. Since 2005, Harley-
6 Davidson has sent 140 inquiry letters regarding suspected NRSP violations.³ It has conducted 30
7 on-site dealer audits in the same time period. It has consistently, when permitted by law, delivered
8 termination notices to all dealers discovered to have committed more than twenty NRSP violations
9 (and in some cases to dealers committing fewer than that amount). In total, Harley-Davidson has
10 delivered 19 such termination notices since 2005. All of these dealers have (except in pending
11 cases) exited Harley-Davidson's dealer network, often through a buy-sell agreement.

12 Laidlaw's 59 violations of the NRSP are the third highest of any dealership during this time
13 period. *If Laidlaw's, one of the largest offenders, remains a Harley-Davidson dealer, Harley-*
14 *Davidson's ability to enforce the critical policies at issue will be gutted – not just in California,*
15 *but throughout the United States.* This is contrary to the interests of Harley-Davidson, its dealers
16 and the public. For these reasons and others (such as the fact that the public will be served by
17 Harley-Davidson's appointment of a new dealer to fill Laidlaw's Baldwin Park point after the
18 dealership is terminated, and the lack of credible evidence regarding the amount of any dealership
19 investment losses resulting from termination), good cause exists to terminate Laidlaw's Dealer
20 Contract under Cal. Veh. Code Sec. 3060, *et. seq.*

21 *Undisputed Facts*

22 Much in this case is essentially undisputed. This is true both as regards many of the
23 reasons for the NRSP, and also the extent and nature of Laidlaw's violations.

24 As regards the reasons for the NRSP, for example, *there seems to be no disagreement that*
25

26 _____
27 Appendix A to this brief that reminds the reader what Ex. 200 shows.

28 ³ And many more before that, including several to Laidlaw's in 1998, which we discuss below.

1 *the efforts and investments of authorized dealers are critical to the brand and to public welfare,*
2 *and that grey market reselling, enabled by NRSP violations, undermines these efforts.* Much of
3 the Dealer Principal Brent Laidlaw's first day of testimony, for example, concerned the ways in
4 which his dealership promotes the brand and the Harley-Davidson lifestyle, which he testified "is
5 life itself" for many Harley-Davidson consumers. [BL. VII:58:7-59:11] He also testified about
6 the investments and efforts his dealership makes to properly set-up and inspect new motorcycles.
7 [See, e.g., BL. VII:63:10-68:13 and 104:12-107:19] The problem for Mr. Laidlaw is that his
8 dealership is not the only authorized dealership that makes these efforts. Hundreds of authorized
9 Harley-Davidson dealerships around the world make similar efforts, and, as his own expert
10 conceded, such efforts are undermined by grey market reselling. When asked by Judge Wong
11 about the impact of grey marketing on authorized dealers, Laidlaw's expert, Edward Stockton
12 testified that "pretty quickly" there would "start to be a negative that the grey market would erode
13 your profits and undermine your investment" [ES. XI:48:18-21] and that "virtually any vehicle
14 dealer would be upset by" free riding. [ES. XI:83:17-84:5]

15 Laidlaw's, likewise, does not appear to dispute that proper completion of SWR forms
16 reporting motorcycle sales is critical to Harley-Davidson and to consumers, that proper PDI is
17 important, and that non-authorized grey market resellers lack the ability to properly set-up, test
18 and inspect new motorcycles. As to the last point, Laidlaw's admits being told that many of the
19 Export Violation motorcycles would be disassembled and reassembled abroad by non-authorized
20 persons. [See, e.g., CT. X(morning session):57:12-59:14.] Jarold Laidlaw, Brent Laidlaw's
21 brother and Laidlaw's chief service technician, admitted, in this regard, that there is a "risk" from
22 having "pre-delivery inspection and assembly" done by non-authorized persons. [Ex. 308 (Jarold
23 Laidlaw deposition) at 22:16-23:15)] He also admitted that disassembled bikes "may not be put
24 back together exactly per Harley-Davidson specifications. It's pretty obvious." [Id. at 17-22]

25 Much about Laidlaw's violations is undisputed as well. First and foremost, *Laidlaw's*
26 *admits violating the NRSP.* Chris Tolman, Brent Laidlaw's nephew and the dealership's Sales
27
28

1 Manager since May 2009, for example, admitted that by the Fall of 2011, before selling the final
2 six Export Violation motorcycles,⁴ he realized that he had violated the NRSP "twelve to fifteen
3 times" and that this was "before taking into account Matt's [Matt Laidlaw's] violations" in selling
4 to Alsharif. [CT. X(morning session):60:17-61:8] (Matt Laidlaw, also one of Brent Laidlaw's
5 nephews, sold twelve Export Violation motorcycles to Alsharif, and five Export Violation
6 motorcycles to the Ngo Group.) Brent Laidlaw, testifying about Harley-Davidson's March 2011
7 audit of his dealership ("the Audit"), which documented all 42 Export Violations and 17 Rental
8 Violations, admitted the Audit was not "inaccurate in identifying these as not living up to the
9 specific policies of Harley-Davidson." [BL. VII:79:5-9]

10 There are many other undisputed facts that shed further light on the nature and extent of
11 Laidlaw's violations. *Laidlaw's does not seem to dispute that it sold most of the 42 Export*
12 *Violations in large quantities to just four individuals* -- Billy Ngo, An Truong, Muneer Alsharif
13 and Art Ahkuputra -- and persons and/or export/import companies affiliated with them.⁵ Also, it
14 is undisputed that the Ngo and Truong Groups⁶ shipped their purchases to Vietnam, while the
15 Alsharif and Ahkuputra Groups shipped theirs, respectively, to Jordan and Thailand.

16 *It is undisputed that Laidlaw's knew, at the time of sale, that the motorcycles purchased*
17 *by these Groups (and several of the smaller purchasers)⁷ would be exported.* Matt Laidlaw, who
18

19 ⁴ The "Extras" on Ex. 200.

20 ⁵ On Exhibit 200, the Export Violation sales to Ngo and his affiliates are reference nos. 3-5 and 9-
21 10 (all of the red reference numbers on page 1). The Export Violation sales to Truong and his
22 affiliates are reference nos. 44-46 and 57 (all of the red reference numbers on page 2). The Export
23 Violation sales to Alsharif and his affiliates are reference nos. 11-14, 18-19, 22-25, 43 and 48 (all
24 of the yellow reference numbers on pages 1 and 2). The Export Violation sales to Ahkuputra and
25 his affiliates are ref. nos. 49-56 and the six sales with the reference number "EXTRA" at the
26 bottom of page 2 (all of the blue reference numbers on page 2 except the first, no. 47).

25 ⁶ For ease of reference, we use the term "Groups" to refer to the principal exporters and persons
26 and entities affiliated with them.

26 ⁷ Chris Tolman, for example, also admitted knowing, at the time of sale, that Toy Palvatana (one
27 of the smaller volume Export Violation purchasers) intended to ship his motorcycles to Thailand
28 [CT. X(morning session):55:18-56:4]; and that a sales jacket for one of the Export Violation sales
that ended up in Hong Kong contained an Manufacturer Statement of Origin ("MSO"), which is a
(footnote continued)

1 was involved in selling to the Ngo and Alsharif Groups, for example, admitted that Ngo *told* him
2 he intended to ship his purchases to Vietnam [ML. IX:126:16-127:12] and that Alsharif *told* him
3 he intended to ship his purchases to Jordan. [ML. IX:121:5-123:16] Matt Laidlaw's cousin, Chris
4 Tolman, who was involved in selling to the Truong and Ahkuputra Groups, admitted knowing, in
5 a February 16, 2011 letter to Harley-Davidson,⁸ that all the bikes sold to the Truong Group and
6 several bikes sold to Ahkuputra would be shipped abroad. At trial, Chris Tolman admitted that
7 Ahkuputra *told* him that Ahkuputra intended to ship *all* his purchases to Thailand. [CT.
8 X(morning session):57:6-11] Indeed, Tolman admitted knowing that Ahkuputra's "plan" was to
9 disassemble and reassemble his export purchases. [CT. X(morning session):57:12-58:22]

10 *It also is undisputed that Laidlaw's knew, at the time of sale, that at least some of the*
11 *Export Violation purchasers were not the intended end users of the motorcycles.* Matt Laidlaw
12 admitted, for example, that he *knew*, at the time he sold the second of the Export Violation bikes
13 to the Ngo Group, that Ngo intended to resell the motorcycles abroad. [ML. IX:139:18-142:25]
14 This admission is not surprising, given that Matt Laidlaw and Rick Williams (Tolman's
15 predecessor as Sales Manager) participated in a long email correspondence with Ngo, prior to
16 selling motorcycles to him, which clearly revealed this to be the case. [Ex. 64 at HDMC959-965.]
17 In the email chain, Ngo, among other things, inquired about a contract to buy "10 bikes a month"
18 from Laidlaw's [*Id.* at HDMC965]; said he had a "customer " waiting in Vietnam [*Id.* at
19 HDMC963]; and complained that he should not have to pay a "retail customer" price – since, of
20 course, he was not one. [*Id.* at HDMC961] The sales to the Truong, Alsharif, and Ahkuputra

21 _____
22 "red flag that the vehicle may be an export." [CT. X(morning session):54:23-55:17]

23 ⁸ As we discuss in Part IV.A.1 Steve Verduyn sent Laidlaw's an inquiry letter on February 4, 2011
24 [Ex 16] asking the dealership to substantiate that 18 sales, about which he had developed
25 suspicions at the time, were compliant with the NRSP. The sales that were the subject of Mr.
26 Verduyn's inquiry letter are marked with an asterisk on Ex. 200. Brent Laidlaw responded,
27 admitting that the sales were NRSP violations, and forwarding letters of explanation from Matt
28 Laidlaw and Tolman. Matt Laidlaw's letters admitted knowing that the Alsharif Group sales about
which he was asked (ref. nos. 18-25) would be shipped abroad. Tolman's letter admitted knowing
that the Ahkuputra Group sales about which he was asked (ref. nos. 49-50 and 53-56) and all of
the Truong Group sales (reference nos. 44-46 and 57) would be shipped abroad.

1 Groups (and the other Export Violation sales) followed the Ngo Group sales. As we discuss in
2 Parts IV.B.1.c-f, the evidence shows that Laidlaw's either knew, or should have known, that these
3 subsequent sales also were sales to non end-users.

4 ***Laidlaw's does not dispute that the 17 motorcycles it sourced from its retail allocation***
5 ***and sold to rental companies violated the NRSP.*** Beyond that, however, Laidlaw's story becomes
6 quite incredible. Brent Laidlaw testified that he understood the NRSP requirement that
7 motorcycles sold to rental companies must be sourced from a dealer's fleet allocation, and not
8 from a dealer's pleasure unit allocation (what we refer to as the "Sourcing Rule"). Yet he testified
9 he violated the Sourcing Rule based on a telephone call in April 2009 with a purchaser, Erik
10 Svensson of EagleRider Corporate. He said Svensson told him that "it was approved for me" to
11 sell up to five bikes, sourced from Laidlaw's pleasure unit allocation, to any EagleRider rental
12 franchise "for this model year."⁹ [BL. VII:110:11-111:15] Mr. Svensson, of course, was not and
13 is not a Harley-Davidson representative. Remarkably, however, Brent Laidlaw says he relied on
14 Mr. Svensson's advice, ignoring repeated contemporaneous reminders from Harley-Davidson
15 about that Sourcing Rule and never asking anyone at Harley-Davidson whether Mr. Svensson was
16 correct. In one instance, for example, Harley-Davidson discussed the NRSP and the Sourcing
17 Rule with Brent Laidlaw, in person, at the dealership. Just two days before that meeting, Mr.
18 Laidlaw had sold two motorcycles in violation of the NRSP, Fleet Sales Policy, and Sourcing
19 Rule, allegedly relying on Svensson's advice -- which by this point was a year old and did not even
20 purport to concern the current model year. Yet Mr. Laidlaw never bothered to ask Harley-
21 Davidson whether there was any truth to Mr. Svensson's representation. Instead he simply (and
22 quietly) continued sell retail units to EagleRider in violation of the policies and the Sourcing Rule.
23 We discuss this story in greater detail below in Part IV.B.2. At this juncture, we note that it shows
24 an utter lack of interest in and regard for Harley-Davidson's sales policies.

25 _____
26 ⁹ Brent Laidlaw testified that Svensson told him that a Harley-Davidson employee, Steve St.
27 Thomas told Svensson that such sales were approved. Mr. Laidlaw's testimony is hearsay as to
28 any purported statement by Mr. St. Thomas to Svensson.

1 *Finally, it is undisputed that Laidlaw's received the NRSP on many occasions* (and, as is
2 discussed below, received many reminders about it). Brent Laidlaw, for example, admitted that
3 Harley-Davidson sent the NRSP to Laidlaw's along "with the price sheets of the new models every
4 year." [BL. VIII:96:18-97:2] He also admitted that he had "known about it for at least five to ten
5 years." [BL. VIII:96:18-24] Laidlaw's own files contain hard copies of the NRSP for Model
6 Years ("MYs") 2006, 2008, and 2009. [Ex. 24, Ex. 6, and Ex. 25 respectively]

7 *"Sufficient Understanding"*

8 In sum, it is undisputed that Laidlaw's knew it was selling to exporters, knew (in many, if
9 not all cases) it was selling to resellers, and knew it was selling pleasure unit allocation to rental
10 companies. It also is undisputed that Laidlaw's had multiple copies of the NRSP forbidding these
11 practices. When asked whether he had ever read the two-page NRSP, Brent Laidlaw testified: "I
12 did not read it in its en(sic) I do not recall reading and studying it like I have since studied it
13 subject (sic)– since the termination." [BL. VIII:75:19-76:3] He then testified that he had not
14 studied it "in depth." [BL. VIII:76:5-6] Finally, he testified (somewhat inconsistently): "I
15 certainly recall seeing it as I would get it in packets like this. But I had not read it." [BL.
16 VIII:76:5-8]¹⁰ When asked how the violations could have occurred, he testified the dealership
17 lacked proper procedures and a "sufficient knowledge and understanding of the policy." [BL.
18 VII:85:12-86:1] Thus, Laidlaw's hired a "compliance coach" (after commencement of these
19 termination proceedings) purportedly to help it comply with the NRSP and other obligations.

20 *Organization of Remainder of Brief*

21 The following Part II discusses the contents and contractual basis of the NRSP and related
22 policies. Then, since Laidlaw's awareness and "understanding" seems to be an issue, Part III
23 discusses evidence of the clarity of the NRSP, Harley-Davidson's consistent communication of the

24 _____
25 ¹⁰ At his deposition, Brent Laidlaw testified that he had *not even read his Dealer Contract*. [Ex.
26 306 at 22:4-6] At trial, when asked how he could fail to read the Dealer Contract - given his
27 MBA, business experience, negotiation with contractors and leadership role at Laidlaw's – he
28 claimed: "I very well could have read an earlier Dealer Agreement. But as of late in the last five
years, I have not."

1 policy, and Laidlaw's own admissions of awareness of the policy. Part IV addresses evidence of
2 Laidlaw's violations. Part V addresses the reasons for the NRSP. Finally, Part VI shows that there
3 is good cause to terminate Laidlaw's Dealer Contract under Veh. Code Section 3061.

4 **II. Contents and Contractual Basis of Policies at Issue in this Case**

5 **A. The Non-Retail Sales Policy**

6 The NRSP is a contractual obligation. Its provisions are clearly stated in a contractually
7 authorized two-page policy document that Harley-Davidson issues to all United States dealers
8 annually.

9 **1. Contractual Authorization**

10 The "Grant of Rights" on the first page of Laidlaw's Dealer Contract grants Laidlaw's the
11 right to "purchase and resell *at retail*," and no more. [Ex. 1 at LLA37203 (*emphasis added*)] The
12 first paragraph of Part B (regarding "Sales Efforts") of the General Conditions of Sales and
13 Service (incorporated in the Dealer Contract by reference) assigns Laidlaw's a Dealer Territory,
14 for which it is "responsible for effectively selling *at retail*." [Ex. 2 at LLA10712 (*emphasis*
15 *added*)] The second paragraph then obligates Laidlaw's to "devote its best efforts to promote
16 aggressively the sale *at retail*" and to focus those efforts on customers within Laidlaw's designated
17 territory. [*Id.* (*emphasis added*)]

18 Moreover, Part B, paragraph 6, provides: "NON-RETAIL SALES. Dealer shall not sell
19 Harley-Davidson Products for resale to non-retail customers." It expressly prohibits sales through
20 "any Internet web site or otherwise in e-commerce" and further provides: "Seller reserves the
21 right to establish from time to time such policies and position statements it believes are necessary
22 or advisable to carry out the purpose or intent of this part of this Contract and Dealer shall comply
23 with all such policies and position statements." [*Id.* at LLA10713. *See also* MK. I:134:6-24.]

24 **2. Annual Issuance of the Non-Retail Sales Policy**

25 Since the early 1990's, Harley-Davidson has issued a formal, written, two-page policy
26 entitled, "Non-Retail Sales Policy – Pleasure Vehicles" for each model year. [MK. I:141:20-25]
27 The NRSP states in its preamble: "This policy expands upon and interprets the non-retail sales
28 provision in the Dealer Contract (paragraph B-6)," quoted above. [Ex. 208 at HDMC6365]

1 Harley-Davidson has sent the NRSP to all its U.S. dealers at least annually and reminded
2 them of the policy in many other ways. Harley-Davidson has sent the policy each year along with
3 pricing lists and other information. [See, e.g., Exs. 115 and 116; MK. I:137:21-138:13] It also has
4 sent the policy separately on other occasions (*i.e.*, not bundled with pricing or other information)
5 to remind dealers of its importance. [See, e.g., Exs. 14, 115, 118; MK. II:34:23-36:6.] For many
6 years dealers received hard copies of the NRSP. Today they receive electronic copies. [See MK.
7 II:38:4-39:1] The NRSP (and FSP) are always available for review by dealers on-line via h-
8 dnet.com. [See Exs. 213 and 214; MK. II:52:10-56:21.] The trial exhibits include copies of the
9 NRSP Model Years 2005 through 2011.¹¹ Laidlaw's own files contain hard copies for Model
10 Years 2006, 2008, and 2009. [Exs. 24, Ex. 6, and Ex. 25 respectively].

11 3. Relevant Non-Retail Sales Policy Provisions

12 The NRSP preamble informs dealers that the policy is designed to:

13 ... ensure customer satisfaction and safety, facilitate compliance
14 with federal and state law and laws in various countries, and protect
15 the integrity of Harley-Davidson's worldwide distribution network.
[Ex. 208 at 6365]

16 The policy then defines violations. Paragraph 1, again referencing the Dealer Contract, provides,
17 in relevant part:

18 As provided in the Dealer Contract, dealers are prohibited from
19 engaging in non-retail sales of motorcycles. A sale by a U.S. dealer
20 of a new or previously unregistered motorcycle (an unregistered
21 motorcycle is one that has not been registered with the state and
22 with Harley-Davidson) will be considered a "non-retail sale" for
23 purposes of the Dealer Contract and this policy if the motorcycle is
24 not properly set up, inspected, tested, sold and delivered at the
dealership facility, directly to the ultimate consumer. An "ultimate
consumer" is the retail end user who purchases, as indicated on the
Certificate of Origin, a new or previously unregistered motorcycle
for his or her own use, without the intent to resell, pays all
applicable taxes and registration fees, and titles the vehicle in his or
her name.

25 As regards a dealer's obligation to investigate the facts, it continues:

26 _____
27 ¹¹ Exhibits 312, 24, 207, 116 at HDMC10991, 313, 208 and 209 respectively are copies of the
28 NRSP for MYs 2004 through 2011. [MK. I:134:25-139:16]

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[T]he sale to a customer who the dealer knows, *or should know*, intends to resell the motorcycle may still be deemed a non-retail sale. [*Id.* (*emphasis added*)]

Paragraph 1 then defines two other types of sales as "non-retail":

A sale by a U.S. dealer of a new or previously unregistered motorcycle will also be considered a non-retail sale if it is sold to a customer who resides outside the United States or for shipment or use outside the United States, or if it is sold on an Internet web site or otherwise in e-commerce.¹²

Paragraph 6, meanwhile, defines any sale made in violation of the Fleet Sales Policy ("FSP") as a "non-retail" sale and expressly requires (as does the FSP) that motorcycles sold to rental companies be "sourced" from the Harley-Davidson's "Rentals Fleet Pool." Finally, in terms of relevant prohibitions, paragraphs 1 and 8 require dealers to submit accurate SWR information. This includes accurately checking a box on the SWR form to indicate whether the sale is "Retail (Direct to Ultimate Consumer)," "Police/Shrine" or "Other;" supplying accurate ownership information; and expressly "certifying" compliance with sales policies and pre-delivery inspection ("PDI") procedures. [*See* Ex. 262 (SWR form) at LLA28523.] As regards enforcement, NRSP paragraph 8 notifies dealers that Harley-Davidson will "strictly enforce" the terms of the NRSP by using "all available means" including "terminat[ing] the dealer's contract." [Ex. 208 at HDMC6366] The SWR forms, too, state that any misrepresentation on the forms is a breach of the Dealer Contract and may constitute grounds for termination. [Ex. 262 at LLA028523]

Another significant feature of the NRSP is that it provides that certain factory incentives and allowances, such as Vehicle Incentive Program ("V.I.P.") payments, set-up and delivery allowances, Co-Op advertising allowances, and various rebates, refunds and credits are applicable to, and available for, retail sales. [Ex. 208 at HDMC6365, paragraph 2] Model Year program

¹² The e-commerce prohibition is not at issue in this case. We note, however, that it reflects the same concerns (discussed in greater detail in Part V) that underlie the NRSP and FSP prohibitions that are at issue. See, e.g., 3/18/2004 memo to dealers banning e-commerce sales and noting that such sales threaten customer safety and satisfaction, the Harley-Davidson brand and Harley-Davidson's allocation system, and are inconsistent with Harley-Davidson's "'close to the customer' philosophy" as "[e]very dealer's first responsibility is to serve its local market." [Ex. 14]

1 materials sent to dealers annually also inform them that non-retail sales are ineligible for cash
2 incentives. [See Ex. 116 at HDMC11006; SV. III:8-16-9:15.]

3 **B. Relevant Fleet Sales Policy Provisions**

4 Any sale by a dealer to a rental company (or other fleet purchaser) is an exception to a
5 dealer's obligation to sell only at retail. [See SV. III:182:8-183:13 (noting that a reason for the
6 Sourcing Rule is that the Dealer Contract only authorizes retail sales)] Thus, as noted above,
7 paragraph 6 of the NRSP expressly references and requires compliance with the FSP, which
8 specifies obligations related to rental and other fleet sales in greater detail. For purposes of this
9 litigation, three FSP provisions also are relevant. First, the policy provides:

10 As provided in the Dealer Contract, dealers are prohibited from
11 engaging in non-retail sales of fleet motorcycles. A sale by a
12 dealer/distributor of a new or previously unregistered fleet
13 motorcycle...will be considered a "non-retail sale" for purposes of
14 the Dealer contract and this policy if the fleet motorcycle is not
properly set up, inspected, tested, sold, and all appropriate sale, lease
and registration paperwork completed at the dealership facility by an
authorized agent of the purchasing entity. [Ex. 7 at LLA10694,
third paragraph]

15 Second, like the NRSP, the FSP requires that sales to rental companies be sourced from Harley-
16 Davidson's Rentals Fleet Pool. [Ex. 7 at LLA10695 (second and third lines from top of page)]
17 Finally, violation of the FSP may result in termination. [Ex. 7 at LLA10694, sixth paragraph]

18 In sum, the relevant features of the FSP and NRSP are similar and mutually reinforcing.
19 Both are contract based, both require PDI at dealership facilities, both state the "Sourcing Rule,"
20 and both provide that violation may result in termination. Also, like the NRSP, the FSP is issued
21 annually. The trial exhibits include copies of the FSP for Model Years 2008 through 2011.¹³
22 Laidlaw's own files contain hard copies for Model Years 2008, 2009 and 2011. [Exs. 26, 7 and
23 27, respectively]

24 **C. Relevant Pre-Delivery Inspection Obligations**

25 As was just noted, both the NRSP and FSP require proper PDI of new motorcycles at

26
27 ¹³ Exhibits 26, 7, 210 and 27 respectively are copies of the FSP for MYs 2008 through 2011.
[MK. I:139:24-141:1]

1 dealership facilities. Laidlaw's Contract also requires proper PDI. Paragraph F(2), provides, in
2 relevant part:

3 PRE-DELIVERY OBLIGATIONS. Dealer agrees to uncrate, set
4 up, inspect and test each new Harley-Davidson motorcycle prior to
5 delivery to Dealer's customer, in accordance with Seller's written
6 instructions. Dealer agrees to make all necessary repairs to such
7 Harley-Davidson Motorcycle and agrees that each Harley-Davidson
8 Motorcycle, including any accessories or equipment added thereto
9 and sold by Dealer, will be received directly by its customer fully set
10 up by a qualified Dealer technician and in satisfactory, lawful and
11 safe operating condition. [Ex. 2 at LLA10717. *See also* MK.
12 I:142:14-143:16.]

13 The "written instructions" authorized by this provision are contained in, among other
14 places, an approximately 180 page PDI Manual (updated annually) and a PDI Checklist Form that
15 is to be completed and signed at the point of delivery.¹⁴ The Manual informs dealers that Harley-
16 Davidson:

17 . . . considers the pre-delivery inspections procedures in this manual
18 necessary to verify customer safety and satisfaction. None of these
19 inspections or procedures should ever be left out, and only qualified
20 technicians should perform them. [Ex. 211 at LLA038543]

21 It requires that, prior to delivery, the dealership follow detailed set-up and testing procedures. At
22 the point of delivery, the dealership must inspect the vehicle with the end-user purchaser and make
23 sure that he or she understands the owner's manual and materials in the owner's kit, the warranties,
24 the operation of the vehicle controls, certain emergency and safety features, and the scheduled
25 maintenance requirements. [Ex. 211A at LLA38870]

26 The PDI Checklist Form instructs the dealer that various boxes must be checked,
27 confirming that the PDI procedures, including purchaser inspections and communications, have
28 been followed. The form also must be signed by a dealership technician, a dealership sales
representative, and the purchaser, confirming that all required procedures have been followed.
[*See, e.g.*, PDI Checklist Form from the sales jacket for a sale to An Truong, Ex. 33 at

¹⁴ *See* Ex. 211 (PDI Manual). *See also* one of the many uncompleted PDI forms found in the sales jackets, *e.g.*, Ex. 33 at HDMC1189. *See also* MK. I:142:14-143:16 and TM. V:118:9-125:16 regarding obligations imposed by the PDI Manual and Checklist Form.

1 HDMC1189.]

2 **D. Relevant Sales & Warranty Registration Obligations**

3 Paragraph F(3) of Laidlaw's Dealer Contract requires, among other things, that Laidlaw's
4 "explain Seller's customer warranty to its customers prior to the consummation of any sale of
5 Harley-Davidson Products"; deliver a copy of the warranty to the customer "at the time of
6 delivery" of the product; and register all sales with Harley-Davidson "for purposes of establishing
7 warranty protection, providing essential information in the event of a recall of Harley-Davidson
8 Products and/or providing Seller with useful market information, all in accordance with Seller's
9 written procedures from time to time." [Ex. 2 at LLA10717]

10 Elaborating the registration requirements of Paragraph F(3), Paragraph F(7) requires
11 Laidlaw's to "complete and electronically file with Seller a sales and warranty registration form for
12 every new Harley-Davidson sold by Dealer" and "maintain a hard copy of all sale documents,
13 including a hard copy of the fully completed and signed sales and warranty registration form, in its
14 files for a minimum of five (5) years from the date of sale." [Ex. 2 at LLA10719] The PDI
15 Manual, discussed above (which, as noted, is itself contractually authorized), similarly requires
16 both the dealer and customer to sign the hard-copy SWR form. [Ex. 211 at LLA38600, ¶3]

17 Finally, the hard copy SWR form requires the dealer to certify that PDI procedures have
18 been followed, all warranties have been explained, all sales policies have been complied with and
19 that:

20 ... the information on this form is true, correct and complete to the
21 best of my knowledge....I acknowledge that any misrepresentation
22 on this form will be considered a material breach of my dealer
contract and may constitute grounds for termination. [See, e.g., Ex.
55 at HDMC1073.]

23 Thus the SWR form (like paragraphs 1 & 8 of the NRSP), provides notice that the submission of
24 false SWR information may result in termination of the Dealer Contract.

25 **III. Laidlaw's Notice of the Policies: Clarity, Communication and Awareness**

26 Laidlaw's had adequate notice of the NRSP. Any claimed failure to "fully understand" or
27 "read" the policy at all is inexplicable and inexcusable. This is particularly true, given the
28 undisputed evidence of the policy's clarity and of Harley-Davidson's considerable efforts, over

1 many years, to communicate the policy, the reasons for it, the importance of understanding it, the
2 responsibility of the dealer principal to ensure compliance by dealership personnel, and the
3 possibility of audits and termination for non-compliance. Furthermore, whether or not Laidlaw's
4 bothered to read the two-page document, it has, in fact, admitted awareness of the key prohibitions
5 at issue in this case, and of so-called "red flags" that should reasonably have caused it to realize it
6 was violating these prohibitions.

7 **A. The Relevant Policies and Obligations are Clear.**

8 There is no dispute that all of the NRSP and FSP provisions at issue in this case are clear.
9 Critical terms like "non-retail sale" and "ultimate consumer" are clearly and concisely defined.
10 The relevant prohibitions, such as the ban on sales to a customer "who resides outside the United
11 States or for shipment or use outside the United States" are succinct and readily comprehensible.
12 One does not need a consultant to know, for example, that a sale to a person who states he intends
13 to ship a motorcycle abroad violates this provision.

14 No witness testified that any part of the policies is unclear; in fact, every witness who
15 addressed this issue said the opposite. Indeed, John Gisiger, Laidlaw's "compliance coach,"
16 testified he had never reviewed a policy involving "no exports" prior to his engagement by
17 Laidlaw's. [JG. X(morning session):20:12-21:20] Yet, given what he agreed was his "clean-slate
18 background," he testified that he understood simply from reading the NRSP that it requires
19 motorcycles to be "sold to the ultimate end user"; bans "selling to people whom the dealer knows,
20 or should know, are going to be resellers, or might be resellers"; and bans sales "to people who are
21 going to export motorcycles." [*Id.*] He also understood from reading the policy that "simply the
22 payment of sales tax and licensing did not mean that the vehicle was necessarily a retail sale."

23 [JG. X(morning session):21:25-22:4] Chris Tolman, who was involved in most of the Export
24 Violations, testified that he understood from reading the NRSP¹⁵ that the sale of a motorcycle for
25 shipment or use outside the United States violated the policy, regardless of whether the purchaser

26
27 ¹⁵ Tolman claimed he first read the NRSP in the Fall of 2010. We discuss that testimony in Part
28 IV.B.1.e (concerning the Ahkuputra Group sales) below.

1 paid taxes and license fees on the motorcycle. [CT. X(morning session):66:13-68:18]. Harley-
2 Davidson's expert, Dr. Dominique Hanssens, likewise testified that both of the Policies are clear.¹⁶
3 [Ex. 175 (Hanssens Report) at ¶16; DH. VI:61:11-63:21]

4 Similarly, with respect to the PDI-related obligations, Richard Litchfield admitted that it
5 was "obvious" and "you don't need advice from Harley to know" that it is improper to fail to
6 complete and sign PDI Checklist Forms. [See RL. IX:105:11-110:1, especially at 109:17-23.]
7 John Gisiger testified that filling out PDI Checklist Forms is "not rocket science" and is "not a
8 really difficult thing to do." [JG. X(morning session):28:19-29:7]

9 **B. Harley-Davidson Frequently Communicates with Dealers about the NRSP**
10 **and FSP.**

11 Harley-Davidson sends all dealers, including Laidlaw's, the NRSP and FSP each year.
12 Laidlaw's admits having received and seen them. Harley-Davidson's annual communication of the
13 Policies, however, is just the beginning. It has gone to great lengths to remind dealers generally,
14 and Laidlaw's specifically, of the Policies in a variety of ways, and for many years. These
15 additional methods of providing notice include:

- 16 • sending all dealers, including Laidlaw's, bulletins and other reminders about the policies,
17 for many years;
18 • discussing the NRSP with dealers at annual Town Hall meetings and annual Executive
19 Forums, attended by Laidlaw's;
20 • discussing the NRSP with the Harley-Davidson Dealer Advisory Council (D.A.C.) (the
21 elected representative counsel for Harley-Davidson dealers); and
22

23 ¹⁶ Other Harley-Davidson witnesses testified to the clarity of the policy. Angela Stewart, who was
24 General Manager of a Spokane, Washington dealership before joining Harley-Davidson [AS.
25 IV:95:1-19], testified she understood from reading the policy at the time, that sales to exporters
26 violated the policy, regardless of whether taxes were paid. [AS. IV:97:5-98:10] She did not need
27 any training to understand her dealership's obligations under the policy, and she understood that
28 violations could result in termination. [AS. IV:97:5-99:7] Mike Kennedy testified that he did not
believe it was necessary to hire a compliance coach to comply with the NRSP, and indeed that he
was not aware of *any* other of Harley-Davidson's 700 U.S. dealers having done so. [MK. II:16:15-
20]

1 • discussing the NRSP and Sourcing Rule with Laidlaw's specifically on several occasions,
2 including written exchanges with the dealership in 1998 and 1999 regarding prior
violations.

3 **1. Six Communications in 1998 and 1999 Regarding Laidlaw's Prior**
4 **Violations of the NRSP**

5 The present litigation is not the first time Harley-Davidson notified Laidlaw's that it had
6 violated the NRSP.

7 In the Fall of 1998, Harley-Davidson sent Laidlaw's three "inquiry letters"¹⁷ regarding four
8 new motorcycle sales, to which the dealership responded on three separate occasions.¹⁸ Each of
9 the inquiries referenced the NRSP, stated that the vehicles in question may not have "been sold
10 directly to the retail end user," and requested documentation to substantiate compliance with the
11 NRSP. Each of the responses included documentation provided by Laidlaw's in an attempt to
12 substantiate compliance with the NRSP. Each was written in the first person and signed by Walter
13 Laidlaw, Brent Laidlaw's father, who was the Dealer Principal at the time [WL. VII:25:4-13; 26:4-
14 18 and 27:3-16], and who testified that he is still "always on the sales floor." [WL. VII:19:20] On
15 December 12, 1998, Walter Laidlaw sent a follow-up letter asking Harley-Davidson to review the
16 documentation sent in with the previous three letters. [Ex. 12 at HDMC477; WL. VII:28:6-15]

17 On April 5, 1999, Harley-Davidson wrote a letter to Walter Laidlaw stating that all four
18 sales inquired about violated the NRSP. [Ex. 12 at HDMC428-429] The letter stated that Harley-
19 Davidson would issue the dealership a "one-time exception" and that "[a]ny other 'non-retail' sales
20 will be dealt with per the, then current, policy." [Ex. 12 at 429] Walter Laidlaw did not deny
21

22 ¹⁷ As explained in greater detail below, Harley-Davidson monitors its dealers for compliance with
23 the Policies. When Harley-Davidson learns of questionable sales, one way it proceeds is to send
24 "inquiry letters" to the implicated dealer asking about the sales and requesting documentation that
the sales are consistent with the Policies.

25 ¹⁸ Harley-Davidson inquired about the first sale on October 26, 1998. [Ex. 12 at 433-4] The
26 dealership responded on December 9, 1998. [*Id.* at 432] Harley-Davidson inquired about two
27 more sales on November 4, 1998. [*Id.* at 448.] The dealership responded in a second December 9,
1998 letter. [*Id.* at 447] Harley-Davidson inquired about the fourth sale on November 13, 1998.
28 [*Id.* at 479] The dealership responded on November 18, 1998. [Ex. 12 at 478].

1 receiving the April 5 letter. [See WL. VII:24:15-25:3.]

2 **2. Subsequent Communication about the Policies: 2000 to 2011**

3 The following year, in November 2000, Harley-Davidson sent all dealer principals, general
4 managers and vehicle sales managers, a bulletin attaching the Model Year 2001 NRSP. The
5 bulletin reiterated the reasons for the policy and some of its requirements. [Ex. 13; MK. II:36:9-
6 38:2] It expressly warned dealers that violations of the NRSP had in fact resulted in terminations:

7 [D]ocumented non-retail sales are a serious issue and a breach of the
8 dealer contract. ***Past violations have resulted in dealer termination
in several cases; (emphasis added)***

9 and reminded dealer principals:

10 ***It is your responsibility*** to ensure that your dealership and
11 dealership personnel are complying with this policy. ***Non-retail
12 sales are a breach of the dealer contract and the policy, regardless
of whether your employees engage in non-retail sales with or
without your knowledge. (emphasis added)***

13 It also warned that "[a] person or business ***buying multiple motorcycles in a short time period***
14 ***(particularly of the same make and model)***" (something that has occurred repeatedly in this case)
15 may be evidence of a violation, emphasizing: "***It is up to you*** to monitor and police such sales."
16 ***(emphasis added)*** Brent Laidlaw testified that he had no reason to believe he personally did not
17 receive this bulletin. [BL. VIII:98:14-99:9]

18 In March 2004, Harley-Davidson sent its dealers another bulletin announcing that the
19 relatively recent phenomenon of internet sales required amendment to the NRSP to define such
20 sales as "non-retail." [Ex. 14] The memo attached a copy of the amended policy and explained
21 many of the reasons for amendment, equally applicable to the NRSP as a whole, including
22 ensuring customer safety and satisfaction, maintaining Harley-Davidson's "premium brand
23 image," adhering to Harley-Davidson's "close to the customer philosophy," and fulfilling "every
24 dealer's first responsibility is to serve its local market." [Ex. 14] Brent Laidlaw testified that he
25 had no reason to believe Laidlaw's did not receive this bulletin. [BL. VIII:99:10-14]

26 In May 2006, Harley-Davidson again reminded all its dealers of the NRSP at Town Hall
27 meetings across the country. Town Hall meetings typically occur annually in the Spring. Harley-
28 Davidson executives travel in teams to various locations around the United States to discuss with

1 dealers significant Company initiatives and policies. In 2006, one such location was Los Angeles.

2 [MK. II:45:14-46:19]

3 A slide presentation for the May 2006 Town Hall devotes three pages to the NRSP,
4 reminding dealers of the reasons for the policy, types of violations (including sales for shipment
5 abroad and the submission of false SWR information) and dealers' obligations to perform "internal
6 checks/audits" to ensure compliance. [Ex. 112 at HDMC10486 to 10488; MK. II:46:20-48:9]

7 Mike Kennedy testified that this presentation was used at all Town Hall meetings across the
8 country. [MK. II:48:10-23] Brent Laidlaw testified that he tries never to miss Town Hall
9 meetings and that he "would presume" he attended the 2006 Town Hall. [BL. VIII:99:24-100:3]

10 Shortly after the May 2006 Town Hall meeting, Harley-Davidson sent its dealers yet
11 another bulletin regarding the NRSP. The bulletin, which referenced the recent Town Hall
12 discussion of the policy, enclosed yet another copy of the NRSP. It reiterated the importance of
13 the policy and many of the reasons for it. [Ex. 118; MK. II:48:24-52:9] Like the November 2000
14 bulletin it reminded dealers, with underscoring in the original:

15 It is your responsibility to ensure that all dealership personnel are
16 complying with all aspects of this policy ... As discussed at the
17 recent Town Hall meetings, we have and will continue to monitor
18 and review sales records and conduct dealership audits when
19 necessary and take appropriate action...if non-retail sales are
20 uncovered. (*emphasis original*)

19 It also again warned:

20 ***Be aware*** that non-retail sales is a breach of the Dealer Contract and
21 consequences could include... in situations involving repeated or
22 substantial breaches of this policy or submission of false SWR
23 information, ***termination of your Dealer Contract.*** (*emphasis*
added)

23 Brent Laidlaw testified that he had no reason to believe Laidlaw's did not receive a copy of this
24 bulletin. [BL. VIII:99:15-20] He also admitted understanding that it was his "responsibility to
25 ensure that the dealership and the personnel in [his] employ complied with that policy [the
26 NRSP]," as Harley-Davidson had reminded dealers in both the November 2000 and May 2006
27 bulletins. [BL. VIII:103:11-23]

28 In May 2007, Harley-Davidson again discussed the NRSP with its dealers at Town Hall

1 meetings across the country, as is shown by a slide presentation for those meetings. [Ex. 113 at
2 HDMC10563; MK. II:56:22-57:13] Brent Laidlaw testified that he "would presume" he attended
3 the 2007 Town Hall meeting.¹⁹ [BL. VIII:100:4-10]

4 In July 2007, Harley-Davidson sent dealers a bulletin attaching the Model Year 2008
5 NRSP and FSP. [Ex. 115; MK. II:57:14-58:8] The bulletin informed dealers that both paragraph
6 6 of the NRSP and the FSP required that all sales to rental companies be sourced from the Rentals
7 Fleet Pool and not from a dealer's pleasure unit allocation intended for retail sales.²⁰

8 In April 2008, Harley-Davidson sent its dealership owners, general managers and rental
9 program managers a bulletin with five "questions and answers" about the FSP. The bulletin
10 reminded dealers that rental sales had to be sourced from the Fleet Pool. [Ex. 15; MK. II:58:21-
11 59:23]

12 In July 2008, Brent Laidlaw called Angela Stewart, the Director of Regional Sales
13 Operations for the Western Region, to ask about selling motorcycles to Laidlaw's EagleRider
14 Rental operations. Ms. Stewart wrote back on July 10, reminding Mr. Laidlaw of the Sourcing
15 Rule and providing a link to the entire NRSP. [Ex. 10; AS. IV:115:4-116:14; BL. VII:76:20-77:4]
16 Not long after that interaction, in December of 2008, Laidlaw's sold the first of the 42 Export
17 Violations units (to Mr. Ngo) and in April 2009, sold the first of the 17 Rental Violation units (to
18 JC Bromac, EagleRider's corporate office). [See Ex. 200, reference numbers 3 and 7 respectively]

19 In or around May 2009, Paul Hawken, the District Manager for the district in which
20 Laidlaw's is located, sent the dealers in Laidlaw's district an email reminding them of the NRSP
21 and the reasons for the policy. [PH. IV:64:5-66:1 and Exhibit 79 (an example of the type of email
22 _____

23 ¹⁹ Harley-Davidson discussed the NRSP, including the fact that dealers had been terminated for
24 violations, at the 2004 Town Hall meetings as well. Steve Verduyn testified that he was asked by
25 his supervisor to provide information (including the number of inquiry letters, documented
26 violations termination notices sent) for slide presentations prepared for those meetings. [SV.
27 IV:34:7-25] Though he did not attend the meetings, he testified that he believed his information
28 was presented because of the significance of the issue at that time [SV. IV:35:1-35:11]

²⁰ We discuss this and other reminders of the Sourcing Rule in greater detail in Part IV.B.2.
regarding the Rental Violations.

1 he sent in 2009 and 2010)]. The email attached a copy of the policy. [PH. IV:64:16-22] Brent
2 Laidlaw testified that if this email was sent "on a mass email," as was a similar May 31, 2011
3 email, "I would have received [it] as well." [BL. VIII:101:16-21] He testified he "hoped" he
4 would have read it. [BL. VIII:101:22-3]

5 In late March 2010, Paul Hawken met with Richard Litchfield and Ty McPhearson
6 (Laidlaw's rentals business manager), and then with Brent Laidlaw, to discuss Laidlaw's March 3,
7 2010 solicitation to sell motorcycles and other Harley-Davidson products to rental operators
8 throughout the country. Hawken referred Mr. Laidlaw to the NRSP and discussed the Sourcing
9 Rule with him, as Mr. Laidlaw admitted at trial.²¹ [BL. VIII:82:23-83:15]

10 In or around May 2010, Mr. Hawken sent Laidlaw's an email similar to his May 2009
11 email, reminding dealers of the NRSP and reasons for it. [See PH. IV:64:5-66:1]

12 On July 28, 2010, Harley-Davidson sent its dealers a bulletin regarding the Model Year
13 2011 NRSP and a non-retail sales policy for parts, accessories and MotorClothes® Products. [Ex.
14 119/618²²; MK. II:59:24-60:15] The bulletin notified dealers of three "clarifications" to the
15 NRSP. In response to questions from Judge Wong, Brent Laidlaw admitted that he discussed two
16 of the three clarifications to the NRSP with his General Manager, Richard Litchfield. [BL.
17 VIII:46:24-51:8] It makes no sense that the General Manager and Dealer Principal would discuss
18 and be aware of particular clarifications to the policy, but not read and know the underlying core
19 prohibitions on sales to exporters and non-end user sales. Yet, Laidlaw's continued to make sales
20 in violation of the NRSP after July 28, 2010. [Ex. 200, reference nos. 43-57, plus the 6 Extras]

21 3. Communications with the Dealer Advisory Council

22 In addition to the many communications and interactions described above, Harley-
23 Davidson periodically meets with and discusses enforcement of the NRSP with the Harley-
24

25 ²¹ Hawken's meetings with Litchfield and McPhearson and then with Brent Laidlaw also are
26 confirmed by an internal email from Ms. Breeden, the former Director of Regional Sales
27 Operations for the Western Region, to Mr. Kennedy. [Ex. 80 at HDMC8431]

28 ²² The bulletin was produced both as trial exhibits 119 and 618.

1 Davidson Dealer Advisory Council ("D.A.C.")²³ [MK. II:63:1-64:3] Harley-Davidson has
2 informed the D.A.C. that it has terminated dealers for violation of the NRSP. [MK. II:64:4-7]
3 Mike Kennedy testified that no dealer, at a D.A.C. meeting or on any occasion, has ever suggested
4 (as Laidlaw's claimed for the first time in its pre-trial brief) that it is "not bound under its dealer
5 contract by any aspect of the non-retail sales policy including this prohibition against export
6 sales." [MK. II:64:8-13]

7 As we discuss in greater detail in Part IV.A, it was a D.A.C. member and Los Angeles area
8 dealer, Ray Malzo, who wrote Mike Kennedy in January 2011 complaining that Laidlaw's was
9 selling vehicles for shipment abroad in violation of the NRSP, and suggesting that Harley-
10 Davidson was tolerating this behavior. [Ex. 230 at HDMC11041-2; MK. II.74:16-80:1] Mr.
11 Kennedy responded by reminding Mr. Malzo that Harley-Davidson had for the past two years
12 consistently communicated its deep concerns about the NRSP to the D.A.C.: "Ray, I can't
13 understand why in the world you would believe for a minute that we would tolerate this....after all
14 we have invested in sharing over the last two years through the DAC. Frankly it is mind-
15 boggling!!!" [Ex. 230 at HDMC11041] Mr. Kennedy testified that his reference to "all we have
16 invested in sharing" meant that "we share a lot with the DAC in terms of these types of things,
17 compliance, enforcement of this policy is a big deal. And we talk about big things with our
18 DAC." [MK. II:77:12-17]

19 **4. Inquiry Letters, Audits and Terminations: Monitoring and**
20 **Enforcement as a Means of Communication**

21 Another critical way in which Harley-Davidson consistently communicates to its dealers
22 the importance of the NRSP is through the consistent monitoring and enforcement of the policy.
23 Steve Verduyn, who has been Harley-Davidson's manager of dealer credit and compliance for
24 Harley-Davidson for approximately seven years [SV. II:189:1-6], testified that he uses a variety of
25 tools to monitor dealer compliance with the NRSP. [SV. II:192:23-195:11] Specifically:

26 _____
27 ²³ The D.A.C. consists of 12 dealers that represent Harley-Davidson's 700 U.S. dealers. Each year
28 a third of the counsel is elected and rotates. [MK. II:63:7-14]

- 1 • Mr. Verduyn receives information from dealers about the violations of other dealers. Laidlaw's violations were first detected this way. [*Id.* at 193:4-7]
- 2
- 3 • Mr. Verduyn receives information from other Harley-Davidson departments. The Harley-Owners Group (H.O.G.) Department, for example tracks ownership information. Sometimes the department will detect that a single person has purchased a large number of motorcycles under one name (a red flag that the person may be a reseller), and report that information to Mr. Verduyn. [*Id.* at 193:8-21]
- 4
- 5
- 6 • Harley-Davidson's district managers and regional directors look for evidence of violations, *e.g.*, by visiting dealers and non-authorized sellers where motorcycles sold in violation of the NRSP may show up. [*Id.* at 193:22-194:3]
- 7
- 8 • Mr. Verduyn and his department monitor internet sources for evidence of violations, *e.g.*, motorcycles found in Ebay Motors and aftermarket shop postings. [*Id.* 194:4-20]
- 9
- 10 • Since 2009 (the period during which all but the first Export Violations occurred), he has reviewed National Insurance Crime Bureau (NICB) data which shows, on a calendar year basis, the Vehicle Identification Numbers ("VINs") for vehicles sold by U.S. dealers and exported to foreign countries.²⁴ [SV. II:195:1-11]
- 11

12 When Harley-Davidson detects questionable sales, one way it proceeds is by sending
 13 "inquiry letters" to the implicated dealers asking about particular sales and requesting
 14 documentation that the sales are consistent with the NRSP. Harley-Davidson has sent *many*
 15 *hundreds* of these letters over the years. Just since 2005, it has sent about 140 such inquiry letters.
 16 [Ex. 228; SV. II:199:8-200:21] Exhibit 228 shows that most of the dealers who received inquiry
 17 letters since 2005 either were able to substantiate compliance (and hence are shown as having
 18 committed no violations) or were found to have committed a relatively small number of violations.

19 Depending on the circumstances, and particularly if Harley-Davidson suspects large
 20 numbers of questionable sales, it may conduct an on-site audit of a dealership's records. Both the
 21 Dealer Contract [Ex. 2 at LLA010722] and the Policies [*See, e.g.*, Ex. 208 at HDMC6366, ¶ 7 and
 22 _____

23 ²⁴ After removing from that data sales that are not NRSP violations, such as military sales and
 24 exports of used vehicles, Mr. Verduyn prepares a list of remaining questionable sales. [*See* SV.
 25 IV:18:14-19:6] Appearance on the list does not prove a violation, because, for example the list
 26 would report the legitimate export of a new vehicle purchased years earlier without intent to ship
 27 abroad, and then shipped overseas at a much later point. Mr. Verduyn then cross references that
 28 list against data from Harley-Davidson's SWR database (showing which dealers sell which VINs
 based on the SWR information dealers provide to Harley-Davidson) to determine which dealers
 are selling motorcycles that are exported and may evidence NRSP violations.

1 Ex. 7 at 10694, ¶6] give Harley-Davidson the right to do this, as the Company has consistently
2 reminded its dealers. [See, e.g., Ex. 118 at 10425.] Since 2005, Harley-Davidson has conducted
3 30 such on-site audits. [Ex. 72; SV. II:206:17-207:24] Following the completion of these audits,
4 Harley-Davidson has, when permitted by law,²⁵ delivered termination notices to all dealers
5 discovered to have committed more than twenty NRSP violations (and, in certain circumstances,
6 has delivered termination notices to dealers with fewer than 20 NRSP violations). [Ex. 72; SV.
7 II:210:16-211:21] As Mr. Verduyn testified, one of the reasons for terminating all dealers with
8 more than 20 violations (and some with less) is that once a dealer has committed that number of
9 violations, "It's gone beyond the ability of the common person to think 'Hey, you know, I got
10 duped. I got fooled. I got tricked. I didn't understand what was happening here.' And it usually
11 gets to the point of a conscious disregard of the policy itself." [SV. II:209:8-18] All of the dealers
12 served with termination notices have (except in pending cases) exited Harley-Davidson's dealer
13 network. [MK. II:72:17-22] With a total of 59 NRSP violations, Laidlaw's has the third highest
14 number of violations of any dealer audited since 2005. [SV. II:210:9-15]

15 Dealers, of course, talk to each other. The consistent monitoring and enforcement of the
16 NRSP -- through inquiries, audits, and terminations -- signals to dealers the importance the policy
17 and the potential consequences of violations.

18 **C. Similar Policies Across the Industry**

19 Finally, we note that many global corporations with dealer-based distribution networks like
20 Harley-Davidson, including other motor vehicle manufacturers, have instituted policies similar to
21 the NRSP. [Ex. 175 (Hanssens Report), ¶¶ 54-55] Dealer trade literature, moreover, clearly
22 indicates that both the widespread existence and enforcement of such sales policies is common
23 knowledge among the motor vehicle dealership community nationwide.²⁶ [See Ex. 108; Ex. 175

24 _____
25 ²⁵ Two instances of NRSP violations involved Florida dealerships. Florida law did not permit
26 termination for this conduct. [SV. II:210:21-211:11]

27 ²⁶ An article published by the California Motorcycle Dealers Association and produced in this
28 litigation by Laidlaw's, reports, for example, that "virtually all OEM's prohibit sales for export in
the dealer agreement."

¶¶ 56-58; DH. VI:63:22-64:20 and 95:5-96:12]

D. Laidlaw's Admissions of Awareness

The NRSP is a mere two pages long. Given the voluminous and undisputed evidence of notice and Laidlaw's prior violations just discussed, it is hard to believe that no one at Laidlaw's read the policy until the Fall of 2010 (when Chris Tolman testified Brent Laidlaw told him to read it).²⁷ In all events, Laidlaw's has, in fact, admitted awareness of the relevant policy prohibitions to a large degree.

Brent Laidlaw admitted that he "always understood" that Laidlaw's is required "to sell only to end users and not to resellers." [BL. VIII:101:24-102:3] He admitted that there is a particular need in Los Angeles "to be vigilant about ferreting out whether somebody is really an end user" because there is "so much exporting activity" in the area." [BL. VIII:102:4-8] And he admitted, as was noted above, understanding that it was his responsibility "to ensure that the dealership and the personnel in [his] employ complied with [the] policy" – something that Harley-Davidson repeatedly communicated. [BL. VIII:103:11-15]

He also admitted that he understood the Sourcing Rule [BL. VII:110:13-15] (contained in both the NRSP and FSP) and two relatively discrete aspects of the NRSP (that company owned vehicles and dealer demo models are covered by the policy and that dealer plates are not acceptable proof of registration for determination of a retail sale). He admitted he discussed these with his general manager, Richard Litchfield, in July 2010 [BL. VIII:46:24-51:8], which makes Mr. Laidlaw's claim that he was not sufficiently aware of the more fundamental prohibition on sales for shipment abroad especially dubious.

Brent Laidlaw's nephew, Matt Laidlaw, was a general salesman in 2008 and 2009 (at the time of the first Export Violation sales) and was later promoted to Business Manager (at the time of the last Export Violation sales in 2010 and early 2011). [See ML. IX:117:22-118:24.] He admitted that he always knew "just from word of mouth and things that we shouldn't be selling to

²⁷ CT. X(morning session):59:15-60:2.

1 people who were resellers." [ML. IX:135:21-23] He also admitted knowing the dealership should
2 not sell to persons it "had reason to believe were resellers" and only sell to "the person who was
3 going to ride and enjoy the motorcycle." [ML. IX:135:24-136:6]

4 Don Abundis became a Laidlaw's general salesman in 2008 and remains one today. [Ex.
5 302 (Abundis Depo. 9:11-15)] He admitted at his deposition that he knew, both from working at
6 Laidlaw's and at another dealership in Chandler Arizona previously, that "if we knowingly knew
7 someone was going to export a motorcycle, the sale did not happen." [*Id.* at 29:7-17] He also
8 admitted that he "always understood that [he] shouldn't be selling to resellers" [*Id.* at 30:9-11] He
9 explained that he learned about the ban on sales to exporters from, among other sources, "other
10 sales people that were at the [Laidlaw's] store, Roger, Rick." [*Id.* at 32:8-13]

11 Thomas Armijo became a Laidlaw's general salesman in May 2009. He worked at the
12 dealership until August 2010. After a break, he returned as a general salesman in July 2011, two
13 months prior to his September 2011 deposition. [Ex. 303 (Armijo deposition) at 5:16-22 and 7:20-
14 25] At his deposition he admitted that he "developed [an] understanding" of the ban on selling
15 motorcycles to resellers and for shipment outside the country during his "first time around at
16 Laidlaw's " (*i.e.*, between May 2009 and August 2010, when many of the Export Violations
17 (reference nos. 9-43) occurred). [Ex. 303 11:2-12:7] He testified that Chris Tolman told him
18 during this period that "you shouldn't sell to people if they intend to take the bike out of the United
19 States;" "shouldn't sell to people who you suspect were resellers;" and "should sell only to people
20 who were going to be the end users of the motorcycle." [Ex. 303 12:8-12:20]

21 Brent Laidlaw's other nephew, Chris Tolman, became a Laidlaw's general salesman in
22 2008 and was promoted to Sales Manager in May 2009. [CT. X(morning session):33:5-11] As
23 Sales Manager Chris Tolman would have been involved in most if not all of the Export Violation
24 sales after May 2009, regardless of whether he or one of his salesmen made the initial contact with
25 the purchasers. Mr. Abundis testified at his deposition that Mr. Tolman would negotiate payment
26 terms and that "for as long as he's been the sales manager, Chris Tolman has been the one that's
27 finished all the deals." [Ex. 302 18:23-19:1. *See also* CT. X(morning session):47:22-48:21]

28 At trial Mr. Tolman, incredibly, disclaimed *any* awareness of the NRSP's bans on sales for

1 shipment abroad and to non end-users, prior to reading the policy in the Fall of 2010. [CT.

2 X(morning session):50:3-51:4] The credibility of that testimony must be evaluated in light of:

- 3 • Mr. Armijo's testimony that Mr. Tolman told him about both prohibitions prior to the Fall
4 of 2010, during Mr. Armijo's first stint at the dealership (between May 2009 and August
5 2010);
- 6 • The admissions of awareness of Matt Laidlaw, Mr. Abundis and Mr. Armijo (all working
7 under Mr. Tolman in 2009) and Brent Laidlaw (Mr. Tolman's superior);
- 8 • Mr. Abundis' testimony suggesting Laidlaw's salespeople (including persons in other than
9 Matt Laidlaw and Mr. Armijo) generally were aware of the bans;
- 10 • Evidence of Harley-Davidson's considerable efforts to communicate the policy;
- 11 • Evidence of awareness of the NRSP at other Harley-Davidson dealerships;²⁸
- 12 • Evidence of widespread existence and knowledge of similar policies of other vehicle
13 manufacturers;²⁹ and
- 14 • Mr. Tolman's lack of credibility on another important issue: his role in the July 22, 2011
15 sale to Mimi Lai, which is discussed below at p. 36-7, n. 46.

16 *Awareness of "Red Flags"*

17 Laidlaw's own witness, John Gisiger, testified that many types of information available to
18 Laidlaw's about the Export Violation purchasers were "red flags," reasonably suggesting that the
19 purchasers might be exporters and/or resellers. The red flags include whether the purchaser has a
20 motorcycle endorsement to his driver's license [JG. X(morning session):23:13-22]; whether the
21 purchaser is buying more than one motorcycle [*Id.* at 23:20-22]; and whether there are multiple
22 purchasers with the same name or address [*Id.* at 24:8-13]. Materials for Mr. Gisiger's compliance
23 "training program," include other red flags, such as whether a purchaser asks "Why is it so hard to
24 buy a Harley outside of the USA?" and "If I pay cash do you file a 8300 form?" [See Ex. 9 at
25 LLA37276.]

26 ²⁸ See, .e.g., Ex. 302 at 11:9-22 (Mr Abundis' deposition testimony about awareness at the
27 Chandler, Arizona dealership where he worked before joining Laidlaw's); AS. IV:95:8-99:17 (Ms.
28 Stewart's testimony of awareness at the Spokane, Washington dealership where she worked before
joining Harley-Davidson); MK. II.74:16-80:1 (noting that a neighboring Los Angeles area dealer,
Ray Malzo, complained about Laidlaw's export violations).

²⁹ See Ex. 108; Ex. 175 (Hanssens Report) at paras. 54-58; and DH at VI:64:2-20 and 95:5-96:12.

1 Harley-Davidson agrees that these are red flags. But any insinuation that Mr. Gisiger's
2 education about red flags was necessary to avoid the Export and Rental Violations is utterly
3 disingenuous on the facts of this case. As was noted in the introduction, the Export Violation
4 purchasers *told* Laidlaw's they intended to ship abroad. No red flags were required to ferret out
5 subtle intentions. Similarly, Laidlaw's admitted knowing, before hiring Mr. Gisiger, at least *one*
6 red flag regarding non-end users that could and should have prevented the violations. Brent
7 Laidlaw testified knowing that *"when somebody comes in and wants to buy one or two bikes on*
8 *the promise of friends or families, then that's too many if they are going to be taking them*
9 *outside the United States and telling you they are going to ride in another country."* [BL.
10 VIII:121:3-122:15] We refer to this as "Brent Laidlaw's Red Flag." It has two components: first,
11 that someone purports to be purchasing for others (*i.e.*, friends or family), and second that they
12 intend to ship overseas. In such a situation (at least), Brent Laidlaw admitted believing that selling
13 "one or two bikes is too many." Brent Laidlaw shared his Red Flag with Matt Laidlaw and Chris
14 Tolman, respectively, in the Spring and Fall of 2010. [BL. VIII:121:3-13 and 122:3-123:11]

15 Many, if not all, of the Export Violation purchases raised Brent Laidlaw's Red Flag. As is
16 discussed in the following Part IV, many of the Export Violation purchasers clearly were buying
17 bikes for others, or in quantities beyond what they personally could use (purportedly, according to
18 Laidlaw's, for friends and family), and shipping them overseas.

19 In sum, Laidlaw's clearly had more than adequate notice of the NRSP. Though Harley-
20 Davidson need not prove Laidlaw's actual "understanding," the evidence -- including the
21 admissions of many of its employees (some of whom were family members) -- shows it had an
22 understanding sufficient to know that what it was doing involved NRSP violations, contrary to
23 Brent Laidlaw's claim.³⁰

24
25
26
27 ³⁰ Given the evidence of adequate notice, Harley-Davidson need not prove the extent of Laidlaw's
28 understanding or awareness.

1 **IV. Laidlaw's Violations**

2 **A. Chronology: The Audit and Decision to Terminate Laidlaw's Dealer**
3 **Contract; Violations After Termination**

4 On January 13, 2011, Ray Malzo, a D.A.C. representative and Los Angeles dealer, wrote
5 Mike Kennedy complaining that Laidlaw's was exporting new motorcycles. [Ex. 230 at
6 HDMC11041-2; MK. II:74:16-78-5] According to Malzo's email, a woman had come to his
7 dealership suspiciously asking about purchasing multiple bikes. Malzo wrote that he told her "it
8 was impossible to sell her new bikes for export and she immediately came back with, 'I already
9 buy many from a local dealer.'" [Ex. 230 at HDMC11041] According to Malzo, the woman then
10 showed him "about six invoices and MSO's from Laidlaws." [Ex. 230 at HDMC11042]

11 Mr. Kennedy forwarded Mr. Malzo's complaint to Steve Verduyn. [*Id.* at HDMC11041;
12 MK. II:78:6-79:2] Mr. Verduyn then reviewed Harley-Davidson's 2010 SWR database and found
13 18 questionable Laidlaw's sales based "primarily [on] multiple sales in a short timeframe and/or to
14 the same address." [Ex. 230; SV. II:227:17-232:25] These facts caused Mr. Verduyn to send
15 Laidlaw's an inquiry letter on February 4, 2011, asking Laidlaw's to provide documentation to
16 substantiate that the 18 questionable sales were retail sales and not NRSP violations. [Ex. 16; SV.
17 II:233:9-14]

18 On February 19, 2011, Brent Laidlaw responded with documentation pulled from the sales
19 jackets of the transactions Mr. Verduyn had inquired about and with a letter acknowledging that
20 the dealership had committed errors and violated the NRSP. [Ex. 17; SV. II:233:21-234:11] Mr.
21 Laidlaw represented that he and "the entire sales team" had read the NRSP, and apologized for the
22 dealership's "negligence." He also attached short memos of explanation from Matt Laidlaw and
23 Mr. Tolman. Matt Laidlaw's memo³¹ concerned the seven sales to Muneer Alsharif and to
24 Alsharif's wife and brother. Tolman's memo concerned the remaining sales. Both memos served
25 up essentially the same story: Matt Laidlaw and Mr. Tolman admitted that they knew they had

26 ³¹ Technically, Matt Laidlaw wrote seven memos, one for each of the seven sales. The memos are
27 identical, except that each references a different VIN corresponding to the particular sale that
28 memo concerns.

1 made sales of motorcycles for export, as was clear because they had not charged California sales
2 tax. But they both claimed - despite knowing Brent Laidlaw's Red Flag about selling on the
3 promise of friends and family members abroad - that the sales were to "end-users," who simply
4 wanted the bikes for personal and family use abroad. Brent, knowing his own Red Flag,
5 uncritically passed along their explanations, which implied in effect that only the export ban had
6 been violated. He also said nothing about other Export Violations about which he, Chris Tolman
7 and Matt Laidlaw knew, including sales to the Alsharif and Ahkuputra Groups in addition to those
8 Mr. Verduyn asked about in his February 4, 2011 inquiry letter.³²

9 Around this time, Mr. Verduyn also reviewed NICB databases that Harley-Davidson had
10 obtained for calendar years 2009 and 2010. The NICB database for calendar year 2009 showed
11 that Laidlaw's had made 13 sales of MY 2009 and MY 2010 motorcycles that were exported
12 during that calendar year.³³ The NICB database for calendar year 2010 showed Laidlaw's had sold
13 an additional 38 MY 2010 and MY 2011 motorcycles that were exported during calendar year
14 2010.³⁴

15 At this point, Harley-Davidson, having received admissions of substantial NRSP violations
16 in Brent Laidlaw's February 19, 2011 letter, and having obtained proof that 51 vehicles sold by
17 Laidlaw's had been exported in 2009 and 2010, decided to conduct an on-site audit of the
18 Laidlaw's dealership (the "Audit"). [See Ex. 232 (letter to Laidlaw's announcing intention to audit
19 dealership); SV. III:36:17-37:1.] In late March, Mr. Verduyn visited Laidlaw's and copied
20 various documents from the sales jackets for about 70 vehicles, which Mr. Verduyn reviewed in
21 more detail upon his return to Milwaukee. [Ex. 233; SV. III:37:2-19]

23 ³² As is discussed below in Part IV.B.1.e, Chris Tolman testified that he believed in the Fall of
24 2010 that he had violated the NRSP twelve to fifteen times and Matt Laidlaw had committed
additional violations. [CT. X(morning session):60:17-61:8.]

25 ³³ See Ex. 224, a spreadsheet Mr. Verduyn created from the calendar year 2009 NICB database,
26 culling sales made by Laidlaw's. See also SV. III:16:14-19:20 (explaining creation of spreadsheet)

27 ³⁴ See Ex. 225, a spreadsheet Mr. Verduyn created from the 2010 NICB database, culling sales
made by Laidlaw's. See also SV. III:16:14-19:20 (explaining creation of spreadsheet).

1 Mr. Verduyn ultimately concluded that Laidlaw's had committed 59 violations – the 42
2 Export and 17 Rental Violations. At the time of his visit to the dealership, Laidlaw's could not
3 provide adequate documentation for six questionable sales in December 2010 and January 2011
4 (the so-called "Extras").³⁵ On March 31, 2011 therefore, Mr. Verduyn wrote Laidlaw's asking it to
5 acknowledge that "your dealership was aware that these [the six Extras] vehicles were purchased
6 for export." [Ex. 22] Laidlaw's General Manager, Richard Litchfield, emailed back on April 1,
7 responding that the dealership "was aware" that the sales were purchased for export, as he had
8 learned after locating copies of checks for the deals and discussing the deals with the "GSM" – a
9 reference to General Sales Manager Chris Tolman, who was involved in selling the Extras. [*Id.*;
10 *See also*, RL. IX:99:4-10.] Exhibit 235 is Mr. Verduyn's April 1, 2011 memo summarizing his
11 Audit findings, but not including Mr. Litchfield's just received information about the six Extras.
12 [SV. III:39:20-44:14] It contains a spreadsheet summarizing information about Export and Rental
13 Violations by sales jacket reference number. Exhibit 236 is the final revised form of that
14 spreadsheet, showing the six Extras. [SV. III:43:9-44:14] It is the basis for Ex. 200. [SV.
15 III.13:22-14:16]

16 Following Steve Verduyn's April 1 audit memo, at a meeting involving Mr. Kennedy, Mr.
17 Verduyn, Ms. Stewart, Mr. Hawken, Joe Marcolina (then director of dealer development) and
18 legal council, it was unanimously decided that Laidlaw's Dealer Contract should be terminated.
19 [*See* MK. II:88:6-89:12; SV. III:206:11-21; AS IV:123:3-10.] The right decision was clear. As
20 discussed earlier, Harley-Davidson has consistently enforced the NRSP for many years. It has,
21 when permitted by law (*see* p. 23, n. 24), delivered a termination notice to all dealers since 2005
22 with more than 20 NRSP violations (and has, under some circumstances, delivered termination
23 notices to dealers with fewer than 20 NRSP violations). Laidlaw's, with 59 violations, nearly
24 triple the benchmark, and had the third highest number of violations during this period. The total
25 volume of Laidlaw's sales did not affect the conclusion that termination was appropriate and

26 _____
27 ³⁵ Those six sales, therefore, are not mentioned in the April 1 memo (which references only 36
28 Export Violations 17 Rental Violations) or shown on the spreadsheet.

1 justified. Earlier, on February 21, 2011, as the decision to audit Laidlaw's was being made, Mr.
2 Kennedy had explained to Ms. Stewart: "**Remember we can't pick and choose when to enforce**
3 **these policies.**" [Ex. 90 (emphasis added); MK. II:82:5-83:22] At trial, Mr. Kennedy testified that
4 he meant that Harley-Davidson "couldn't pick and choose when to enforce this policy. We
5 couldn't say this is a good dealer, let's look the other way. Or this is a bad dealer, we don't look
6 the other way. Or I don't like this dealer, so let's enforce it." [MK. II:84:4-8] Mr. Verduyn
7 testified: "[W]e can't pick and choose...if we do that, ultimately that's going to undermine our
8 ability to enforce [the NRSP]. It's going to undermine our credibility when we talk to the dealer
9 network and say, 'Look, we're serious about it. And you'll face sanctions up to termination if you
10 get caught violating it.'" Dr. Hanssens also testified to the importance of consistent enforcement to
11 Harley-Davidson's brand value. [See, e.g., DH. VI:122:1-124:5. See also DH VI:62:20-63:21
12 (noting that consistent enforcement is critical to the "unambiguity" of the NRSP)]

13 On April 14, 2011, Harley-Davidson sent a notice of termination to Laidlaw's and the New
14 Motor Vehicle Board. [Ex. 237] Harley-Davidson also charged back Laidlaw's \$16,007.70 for
15 incentives Laidlaw's had improperly obtained by SWR reporting the 59 violation sales were
16 "retail" Sales. [Ex. 237 at HDMC329] On May 5, Brent Laidlaw and Walter Laidlaw spoke with
17 Mr. Kennedy about the termination. Mr. Kennedy testified that neither of them suggested (as
18 Laidlaw's lawyers did for the first time in Laidlaw's pre-trial brief) that the Dealer Contract failed
19 to bind Laidlaw's to any aspect of the NRSP, including the ban on export sales. [MK. II:95:3-8]
20 Brent Laidlaw followed that conversation with an undated May 2011 letter to Mr. Kennedy, which
21 also did not claim Laidlaw's Dealer Contract did not bind it to the NRSP. [Ex. 124; MK. II:95:9-
22 17] During this period, Laidlaw's paid the chargeback –again without ever suggesting that the
23 NRSP is not a contractual obligation. [See MK. II:91:4-13]

24 In his May 2011 letter, Brent Laidlaw admitted that the 42 Export and 17 Rental Violations
25 were "deviations from the retail policy" and "serious and unacceptable." [Ex. 124, p 1 para 2] He
26 also admitted that the dealership had supplied certain "incomplete or inaccurate" SWR
27
28

1 information. [Ex. 124, p. 1, para. 3] Mr. Laidlaw stated that the dealership had hired John
2 Gisiger's firm, Compliance Coach,³⁶ to train dealership employees and audit dealership records for
3 compliance with Harley-Davidson sales policies, promising that this would "correct and prevent
4 any future deviations from policy, and restore the trust that the audit results may have tarnished."
5 [*Id.*, p. 2, para. 3]

6 Mr. Gisiger testified that, through the time of his deposition in October 2011, his audits
7 showed "consistent and chronic failure" by Laidlaw's to comply with Harley-Davidson sales
8 policies. [JG. X(morning session):26:21-28:18] Moreover, though Mr. Gisiger testified that it
9 would be a "best practice" for Laidlaw's not to sell motorcycles to any of the NRSP violation
10 purchasers identified in the Notice of Termination [JG. X(morning session):25:18-24], the
11 dealership did just that in July 2011. As we discuss in Part IV.B.1.b (concerning the Ngo Group
12 sales), Laidlaw's sold a new motorcycle to one of the persons who had bought motorcycles for the
13 Ngo Group in 2009, Mimi Lai. Ms. Lai testified at her deposition that this vehicle is being
14 shipped to Vietnam, and her cousin is paying for it. [Ex. 305 at 21:15-32:9] The sale thus violates
15 the NRSP as both a sale for export and to a non-end user, as Laidlaw's certainly should have
16 known. Remarkably, Laidlaw's never provided the sales jacket for the July 2011 Mimi Lai sale to
17 Mr. Gisiger, so his audits never even detected it. [RL. IX:46:21-47:6]

18 **B. Sales Jacket and Other Evidence of Laidlaw's Violations**

19 We now discuss the evidence of the Export and Rental Violations in greater detail.

20 **1. Export Violations**

21 **a. Summary of Common Types of Evidence of NRSP Violations 22 Found in Export Violation Sales Jackets**

23 Before discussing (in the following subsection) the Export Violations in terms of countries

24 ³⁶ At trial, Mr. Gisiger was unaware of any "dealer-focused risk assessments that Compliance
25 Coach has done for any Harley-Davidson dealers in the past." [JG. X(morning session):18:13-
26 19:2] Indeed, he was unaware of "*any* work [he] or Compliance Coach has done for *any* other
27 dealers or franchisee concerning compliance with *any* policy by a new motor vehicle dealer." [*Id.*
28 at 19:9-13 (emphasis added)]

1 of destination and purchasing Groups, as Mr. Verduyn did at trial [SV. III:47:6-182:7], it is helpful
2 to summarize, as Judge Wong requested, the prevalence and significance of certain types of
3 evidence found in many, or all, of the Export Violation sales jackets.

4 • **Shipping Documents.** All of the dealership's sales jackets for the Export Violations
5 (except those for the six Extras) contain shipping documents, such as bills of lading,
6 commercial shipping invoices, shipping manifests and the like. [See, e.g., Ex. 63 at
7 HDMC952; Ex. 19 at HDMC1162, Ex. 51 at HDMC1023; and Ex 36 at HDMC1244. See
8 also the "notes" column on Ex. 200, summarizing types of shipping documents and other
9 information found in the Export Violation sales.] By the time Laidlaw's sold the Extras, it
10 had developed a plan that made it unnecessary to maintain shipping documents in its files.

11 • **Handwritten Notes Evidencing Awareness of Violations.** Many of the Export Violation
12 sales jackets contain handwritten notes (presumably of persons at the dealership)
13 evidencing awareness that the purchasers intended to ship vehicles and were not the
14 intended end users. [See, e.g., Ex 62 at LLA38636 ("Not going to ride the bike"); Ex. 64 at
15 957 ("ship to Vietnam"); Ex. 69 at HDMC1048 ("Shipping to Cambodia").]

16 • **Failure to Charge Sales Tax.** Laidlaw's did not charge sales tax on any of the 42 Export
17 Violation sales, except the six Extras. [SV. III:50:3-51:17] Mr. Verduyn testified that this
18 shows the motorcycles were not titled and registered in California. [SV. III:49:23-25] It
19 also reasonably shows that the purchasers must have **told** Laidlaw's not to charge sales tax,
20 and presumably supplied a reason, e.g., that the bikes would be shipped.

21 • **Manufacturer Statements of Origin ("MSOs").** Many of the sales jackets contain MSOs,
22 [See, e.g., Ex. 63 at HDMC949 and Ex. 66 at 995.] As Mr Verduyn testified, MSOs are
23 used in some jurisdictions for registration purposes, but not in California. [SV. III:53:16-
24 54:1] Their presence in sales jackets therefore evidences intent to ship elsewhere. [Id.]
25 Mr. Tolman admitted they are a "red flag that a vehicle may be an export." [CT.
26 X(morning session):55:14-17]

27 • **California Driver's License; Lack of Motorcycle Endorsement.** Most of the 42 Export
28 Violation purchasers had U.S. drivers' licenses that lacked motorcycle endorsements [See,
e.g., Ex. 62 at LLA38634; Ex. 19 at HDMC1169; Ex. 20 at HDMC1285; Ex. 51 at
HDMC1019; Ex. 38 at HDMC1237; and Ex. 44 at HDMC1061] This shows they could
not legally operate motorcycles in California [SV. III:99:8-100:17], and perhaps were not
motorcycle riders at all. The fact that the purchasers were U.S. residents (shown by the
fact that they had U.S. licenses), yet were shipping the vehicle abroad, also suggests they
were not the intended end users.

• **Cash Deals; Large Checks; Sales On Account; Advance Payment.** The Export Violation
sales jackets show that all or nearly all of the Export Violation purchases were paid for in
cash, sometimes via large checks covering several bikes. [See, e.g., Ex 63 at HDMC950,
Ex. 20 at HDMC1279; Ex. 60 at HDMC1111; Ex. 61 at HDMC1120; Ex. 54 at
HDMC1153; Ex. 57 at HDMC1208; Ex. 34 at LLA1214; Ex. 39 at HDMC1256; and Ex.
46 at LLA28452. See also discussion in next subsection.] Mr. Verduyn testified that
California retail customers normally do not pay cash. In California about 80% of
motorcycle purchases are financed. [SV. III:56:5-13] Additionally, the six Extras were
purchased "on account." [See Ex. 46 at LLA28452 (bottom of page, noting "!!!Payment on
Account!!!" ; Ex 260 at LLA28484 (bottom of page stating, "charged on account"; Ex. 262
at LLA28503; Ex. 263 at LLA28548; Ex 264 at LLA28578.)] As Mr. Verduyn testified,
payment on account is "is a big red flag" because "[p]eople that come in and buy
motorcycles for their own use probably don't have an account line at a dealership." [SV.

1 III:158:14-22] Indeed, several Extras were paid for *in advance*, via a \$40,000 check
2 deposited by Mr. Ahkuputra before the first Extra sale. [See Ex 260 at LLA28484] This
would be even more unusual for any true retail customer.

3 • **Multiple Purchases of the Same Model.** Many of the Export Violation purchasers bought
4 multiple units of the same model.³⁷ This suggests intent to resell, since true end-users are
5 not likely to need two units of the same model. [See SV. III:88:5-10; SV. III:96:24-97:16;
SV. III:113:20-117:24; SV. III:130:23-131:10; SV. III:147:9-12. See also discussion of
this testimony in the following subsection.]

6 • **References to Export and Trading Companies – in Some Cases as the "Purchaser or
7 Customer" – Concealment from Harley-Davidson.** Many of the Export Violation sales
8 jackets contain references to companies suggesting export or reselling activity. [See, e.g.,
9 Ex. 62 at LLA38616 ("UN Motors Import/Export"); Ex. 63 at HDMC949 ("Billy Ngo
10 DBA UN Motors"); Ex. 66 at HDMC996 ("Luxury Motor Group Inc."); Ex 33 at
11 HDMC1186 ("An T. Troung/AMJ Trading Co."); Ex 49 at LLA38515 ("Optimal for
12 Trading"); Ex. 34 at HDMC1212 ("K and K Auto" of "Bangkok"); Ex. 47 at HDMC1133
13 ("Oriental Motors"); Ex. 48 at HDMC1145 ("Initial Motors "); Ex. 69 at HDMC1052
14 ("Sour Tun" "Worldwide Import & Export"); and Ex. 68 at HDMC985 ("V1 Motor"). In
15 some cases, these entities are identified on various sales jacket documents as the
16 "purchaser" or "customer." Yet in no case did Laidlaw's inform Harley-Davidson of their
17 involvement. Laidlaw's instead reported various persons as the purchasers on the SWR
18 forms. This concealed the involvement of the export and trading companies from Harley-
19 Davidson.

20 • **Fraudulent SWR Information.** The Export Violation sales jackets show that Laidlaw's
21 submitted false electronic SWR information to Harley-Davidson in other respects as well.
22 First, it reported on the SWR forms certain persons as purchasers who were no more than
23 "fronts" for the exporters. Examples include Mimi Lai, who completed paper work for a
24 motorcycle purchased by Billy Ngo, without ever even seeing the motorcycle,³⁸ David
25 Nguyen, whom Laidlaw's reported on the SWR form as the purchaser of one of the Ngo
26 Group motorcycles, though his involvement in the sale was minimal,³⁹ and Moui Ly,
27 whom Laidlaw's reported on the SWR form as the purchaser of one of the Troung Group
28 bikes, though her involvement was minimal.⁴⁰ Several of the Alsharif Group sales that
Laidlaw's registered on the SWR form to persons who neither paid for the bikes nor were
the intended end-users also exemplify this form of SWR misrepresentation. Second,
Laidlaw's falsely reported all 42 of the Export Violation sales (and 15 of the 17 Rental
Violation sales) as "retail" sales even though they were not.⁴¹ [See Ex. 200, column 8]

³⁷ The fourth through sixth digits on a VIN indicate the model. So, for example, duplicates can be spotted by comparing, within purchasing Groups, VINs shown in the fifth column of Ex. 200, e.g., reference nos. 5 and 9 are both "4LE" (833 Sportser Standard) models. See SV. III:88:14-89:6.

³⁸ See Ex. 305 (Lai Depo.) at 36:14-41:24, especially at 36:14-24, 37:14-23; 14:5-8; 20:3-4].

³⁹ See SV. III:90:9- 92:11.

⁴⁰ See SV. III:121:24-122:11.

⁴¹ More fundamentally, of course, to the extent Laidlaw's sold to resellers, it violated the purpose of its SWR obligations, which is to provide the name and address of the end-user, so that Harley-Davidson may fulfill critical functions such as providing recall information.

1 • **Lack of Properly Completed PDI Checklist Forms.** None of the Export Violation sales jackets contain properly completed PDI Checklist Forms, as can be seen by reviewing the
2 tenth column of Exhibit 200. Many contain blank forms or no forms at all. None are
3 signed by customers. None are signed by a dealer representative, confirming inspection
4 and communication with the end-user at the point of sale. (This is not surprising since the
5 exporting purchasers were not the intended end-users.) Only half are signed by a service
6 technician. Most include unchecked boxes. As discussed above, the NRSP defines as
7 "non-retail," the sale of any new motorcycle that is not properly "set up, inspected, tested,
8 sold and delivered at the dealership facility, directly to the ultimate consumer." The
9 absence of properly completed forms suggests that proper set-up, testing, sale and delivery
10 (which includes completing the Checklist Form and obtaining a customer signature) did
11 not occur.

12 • **Large Purchases by Four Groups.** Finally, the Export Violation sales jackets show that
13 four Groups of affiliated persons and export/trading entities (the Ngo, Truong, Alsharif and
14 Ahkuputra Groups) purchased large quantities of motorcycles, more than could reasonably
15 be believed were for personal end-use.

16 Set forth below is the detailed evidence in terms of purchasing Groups and countries of
17 destination. It includes a few so-called "Additional Sales," about which Harley-Davidson learned
18 in discovery, made to the same persons who purchased the 42 Export Violation motorcycles. The
19 Additional Sales are shown on the fourth page of Ex. 200. Two of the Additional Sales (to Billy
20 Ngo on October 2, 2008 and to Mimi Lai on July 2011) are NRSP violations, though these sales
21 were not listed among the 42 Export Violations in the Notice of Termination because they
22 occurred before and after the audit period, respectively. The remaining Additional Sales are not
23 violations because they involved used vehicles and thus were not stated grounds for termination.
24 All of the Additional Sales are relevant to the **total volumes** of purchases made by some of the
25 Export Violation purchasers, and thus (whether or not used vehicles are involved) are relevant to
26 Laidlaw's awareness that it was selling to resellers.

27 **b. Ngo Group Sales to Vietnam: Reference Nos. 3,4,5, 9 and 10
28 (and the October 2, 2008 and July 26, 2011 "Additional Sales")**

Between late December 2008 and June 2009, Billy Ngo, purchasing through companies
named UN Motors Import/Export⁴² and Luxury Motors,⁴³ and persons named Mimi Lai⁴⁴ and

⁴² See, e.g., Ex. 63 at HDMC949 (referring to "Billy Ngo dba UN Motors").

⁴³ See Ex. 67 at 1005 .

⁴⁴ See, e.g., Ex. 64 at HDMC967 (identifying the customer of the second Ngo Group Export
(footnote continued)

1 David Nguyen,⁴⁵ bought five of the 42 Export Violation motorcycle documented by the Audit
2 (reference nos. 3, 4, 5, 9 and 10).⁴⁶ Just prior to the Audit period, on October 2, 2008, Laidlaw's
3 sold one of the Additional Sales motorcycle to Billy Ngo. [Ex. 200, ref. no.4; Ex. 62]. Though
4 not listed among the 42 Export Violations in the Notice of Termination, this sale also violates the
5 NRSP because it is a sale of a new motorcycle for shipment abroad and to a person Laidlaw's
6 knew or should have known was a reseller. Matt Laidlaw and Laidlaw's then Sales Manager, Rick
7 Williams, were involved the five Ngo Group Export Violation sales and the October 2, 2008
8 Additional Sale.

9 Following the Audit, and after termination, on July 26, 2011, Laidlaw's, remarkably, sold
10 another Additional Sale motorcycle to Mimi Lai. [Ex. 200, p. 4; Ex. 21] This sale violated the
11 NRSP because Laidlaw's should not have sold a new motorcycle to a person it knew (from the
12 termination notice) had been the nominal buyer in prior NRSP violations. Laidlaw's testimony
13 about responsibility for the July 2011 sale to Ms. Lai, including the roles of Brent Laidlaw and
14 Mr. Tolman, is inconsistent and, therefore, utterly lacks credibility.⁴⁷

15
16
17 Violation purchase as "Billy Ngo c/o Mimi Lai"). Ms. Lai, who also was identified as the
18 customer of the third Ngo Group Export Violation purchases, testified at her deposition that at the
19 time of these purchases she worked for a shipping company Mr. Ngo was using to ship his bikes.
20 He paid for the vehicles but asked Ms. Lai to go to the dealership and complete paperwork related
21 to the sales. Even though she never saw the bikes, Laidlaw's electronically SWR registered them
22 as sold to her. [See Ex. 305 (Lai deposition) at 36:14-43:8]

23 ⁴⁵ Matt Laidlaw admitted David Nguyen "was working with Mr. Ngo." ML. IX:142:21-4.
24 *Compare also* Ex. 64 at HDMC967 with Ex. 67 at HDMC1005, showing the same "Barbette
25 St/Ave" customer address for the bikes purportedly sold to Billy Ngo c/o Mimi Lai (in Ex. 64) and
26 to David Nguyen Luxury Motor Group (in Ex. 67).

27 ⁴⁶ The sales jackets for these sales are Exs. 63, 64, 65, 66 and 67 respectively.

28 ⁴⁷ Brent Laidlaw reviewed and signed a "Deal Checklist," developed in connection with the post-
termination compliance coaching, for the July 2011 sale to Ms. Lai. [Ex. 21 at 38681] At his
deposition he testified that when he signed the Deal Checklist, he did not recognize Ms. Lai as one
of the exporters listed in the termination notice. [BL. VIII:139:2-140:16] During the first day of
his examination at trial, he told a completely different story. He testified (in some detail) that he
did recognize Ms. Lai's name, but signed the checklist because he was assured by salesmen that
the sale was compliant with the NRSP. [BL. VII:141:13-145:7] The following day of his
testimony at trial (perhaps after review with counsel) he volunteered a "confession" about the
(footnote continued)

1 All of the motorcycles sold to the Ngo Group sales were shipped to Vietnam.⁴⁸

2 *Evidence in the Sales Jackets*

3 Steve Verduyn testified at length about evidence of NRSP violations found in the Ngo
4 Group sales jackets, which is relevant both to the fact of the violations and Laidlaw's awareness.
5 [See SV. III:47:19-108:11] The evidence (in addition to the failure to charge sales tax and
6 complete PDI forms, the overall quantity of the Ngo Group purchases, and the false SWR
7 reporting of these sales as "retail") includes:

- 8 • **Shipping Documents.** See e.g., Ex. 63 at 952 (Sunshine Shipping Co. bill of lading); SV. III:57:17-19
- 9 • **Handwritten Notes.** See, e.g., Ex 62 at 38636 ("Not going to ride the bike"); SV. III:101:8-12
- 10 • **MSOs.** See, .e.g., Ex 63 at 949; SV. III:53:16-54:1
- 11 • **U.S. Driver's License; No Motorcycle Endorsement.** See, e.g., Ex. 62 at LLA38634 (Ngo's driver's license); SV. III:99:8-100:17
- 12 • **Cash Deals.** See, e.g., Ex. 63 at HDMC950 (payment by cashier's check); SV. III:55:24-13
- 13 •
- 14 •

15
16
17 inconsistency, claiming he had completely forgotten this at the time of his deposition, but now
18 remembered the facts in great detail. [BL. VIII:137:14-138:24]

19 At trial, Mr. Tolman testified not to have had "any involvement at all" in the July 2011 sale to Ms.
20 Lai. [CT. X(morning session):70:7-23] That claim is contradicted by two witnesses to the
21 transaction. Don Abundis testified at his deposition that after he got the "sizzle" of the sale going
22 with Ms. Lai and her husband, he (Mr. Abundis) passed the deal on to Mr. Tolman who had to
23 negotiate a dealer trade to obtain the bike Ms. Lai and her husband wanted and to negotiate price.
24 Ms. Lai's husband confirmed during her deposition that after making the initial sales contact with
25 Don Abundis, he and Ms. Lai negotiated the price with Mr. Tolman. [Ex. 305 17:6-18:19].

26 Finally, as was noted above, Mr. Gisiger's compliance training failed to prevent the violation sale
27 to Ms. Lai and his audit failed to catch it, because Laidlaw's failed to provide the deal jacket to
28 him. [RL. IX:46:21-47:6]

⁴⁸ For reference nos. 5 and 9-10, see Ex. 200, right column (summarizing NICB data from Exs. 224 and 225). For reference nos. 3 and 4, see notes column in Ex. 200 (summarizing shipping documents and instructions). For July 2011 sale, see Ex. 305 (Lai depo.) at 26:6-32:9 (Ms. Lai testifying that she took the July 22, 2011 motorcycle to her Air and Ocean Cargo Logistics business to be shipped to her cousin in Vietnam).

- 1 • **Multiple Purchases of the Same Model.** The purchases corresponding to reference nos. 5
2 and 9 are for the same model. [SV. III:88:5-10] The October 2, 2008 purchase and the
3 purchase corresponding to reference no. 10 are the same model. [SV. III:96:24-97:16]
- 4 • **References to Export and Trading Companies; Concealment from Harley-Davidson.**
5 *See, e.g.,* Ex. 62 at 38623 (MSO listing UN Motors c/o Billy Ngo as the purchaser); Ex 63
6 at 949 (MSO listing "Billy Ngo DBA UN Motors" as the purchaser). In both cases
7 Laidlaw's failed to report UN Motors as the purchaser in its SWR submission to Harley-
8 Davidson. [See SV. III:98:22-99:7; SV III.54:21-55:9.] *See also* Ex. 62 at 38616
9 (referring to UN Motors **Import/Export**" (emphasis added) and Ex. 66 at 995 (listing
10 purchaser as "Billy Ngo Luxury Motor Group").
- 11 • **Fraudulent SWR Information.** Laidlaw's reported on the SWR form that Mimi Lai was
12 the purchaser for two of the early Ngo Group sales (ref. nos. 4 and 5), even though she was
13 no more than a front for Ngo.⁴⁹ Laidlaw's reported Ms. Lai as the purchaser of the July 22,
14 2011 Additional Sale motorcycle, even though she did not pay for the bike, and the bike
15 was shipped to her cousin in Vietnam.⁵⁰ Laidlaw's reported on the SWR form that David
16 Nguyen was the purchaser of a June 2009 Ngo Group sale (reference no. 10) even though,
17 as Mr. Verduyn testified, the evidence suggests Nguyen's involvement was minimal, and
18 the bike was purchased by Ngo and shipped by Ngo to Vietnam. [SV. III.90:9- 92:11]

19 It should be noted that most of the evidence cited above comes from Exhibits 62 and 63
20 (though there is similar evidence in other Ngo Group sales jackets). These exhibits correspond to
21 the *earliest* two Ngo Group sales (the October 22, 2008 and December 27, 2008 (reference no. 3)
22 sales). In other words, Laidlaw's knew or should have known that Ngo was an exporter and
23 reseller from the outset.

24 The most significant evidence is, of course, the email correspondence involving Mr. Ngo,
25 Mr. Williams, and Matt Laidlaw found in the sales jacket for one of the February 2009 sales to
26 Ngo (reference no. 4). In it Ngo, inquired about a contract to buy from Laidlaw's "10 Bikes a
27 month" [Ex. 64 at 965]; said he had a "customer" waiting in Vietnam [*Id.* at 963]; and complained
28 that he should not have to pay a "retail customer" price. [*Id.* at 961]

Awareness of the Violations

29 Matt Laidlaw admitted knowing all the Ngo Group bikes would be shipped abroad [ML.
30 IX:126:16-1127:12] and knowing, at least by the time of the second Ngo Group Export Violations
31 (reference no. 4), that Ngo intended to resell the motorcycles abroad. [ML. IX.139:18-142:24]

32 ⁴⁹ See Ex. 305 (Lai Depo.) at 36:14-41:24, especially at 36:14-24, 37:14-23; 14:5-8; 20:3-4]

33 ⁵⁰ Ex. 305 (Lai depo.) at 26:6-32:9

1 Matt Laidlaw also admitted knowing that sales to resellers were prohibited. [ML. IX:135:21-
2 136:6] Yet, it was Matt Laidlaw who submitted false SWR information to Harley-Davidson [See,
3 e.g., Ex. 66 at 992; SV. III:87:4-87:17], thus, among other things, obtaining for the dealership
4 incentives and allocation to which it was not entitled.

5 Obviously, Sales Manager Rick Williams also knew Mr. Ngo was an exporter and reseller,
6 given the evidence cited above. Don Abundis' deposition testimony -- including that he learned
7 about the ban on sales to exporters from, among other sources, "other sales people that were at the
8 [Laidlaw's] store, Roger, Rick" -- suggests Mr. Williams, like Matt Laidlaw, knew the sales were
9 violations of the NRSP. Mr. Ngo's proposal to buy ten motorcycles a month, moreover, was
10 undoubtedly *extraordinary*. It is difficult to believe that neither Mr. Williams nor Brent Laidlaw's
11 nephew Matt would not discuss it with Brent Laidlaw at the time.

12 c. **Truong Group Sales to Vietnam: Reference Nos. 44, 45, 46 and**
13 **57**

14 Between September and November 2010, An Truong, affiliated with a person named Moui
15 Ly⁵¹ and AMJ Trading Corp.,⁵² purchased four of the Export Violation motorcycles (reference
16 numbers 44, 45, 46 and 57).⁵³ Mr. Tolman was involved in selling these motorcycles to Truong
17 [CT X(morning session):53:12-17] and took responsibility for them. [Ex. 17 at 782-3]⁵⁴ Matt
18 Laidlaw also was involved. He, for example, is shown as the cashier on one of the AMJ Trading
19 Corp. checks paying for one of the bikes. [Ex. 20 at 1279; SV. III:120:6-12] Matt also signed
20 hard-copy SWR forms for Truong Group sales, among other things, certifying them as retail and
21 compliant with Harley-Davidson sales policies. [See, e.g., Ex. 19 at 1161; SV. III:116:2-11] The

22 _____
23 ⁵¹ Many documents evidence their affiliation. See, e.g. Ex. 43 at LLA38589 (showing payment
24 from a joint checking account).

25 ⁵² Many documents evidence the affiliation between Mr. Truong and AMJ Trading Corp.. See ,
26 e.g., Ex. 19 at HDMC1166 (identifying the customer as "AMJ Trading Corp./An Toan Truong").

27 ⁵³ See Exs. 19, 20, 32 and 33.

28 ⁵⁴ The February 4 Letter asked about the sales shown with an asterisk in the reference column on
Ex. 200. Matt Laidlaw responded regarding the Jordanian sales. Mr. Tolman responded regarding
the Asian sales, including all four to the Truong Group, reference nos. 44-6 and 57.

1 Truong Group bikes were shipped to Vietnam.⁵⁵

2 *Evidence in the Sales Jackets*

3 Steve Verduyn testified about evidence of NRSP violations in the Truong Group sales
4 jackets. [See SV. III:112:2-127:5.] The evidence (in addition to the failure to charge sales tax and
5 complete PDI Forms and the false SWR reporting of these sales as "retail") includes:

- 6 • **Shipping Documents, Including One Showing Purchases from Other Dealerships.** A
7 commercial invoice manifest in the sales jacket for the first Truong Group sale (reference
8 no. 44), shows that Mr. Truong had purchased five new Harley-Davidson motorcycles
9 from other dealers and was shipping these to Vietnam along with one of the new
10 motorcycles he purchased from Laidlaw's. [Ex. 19 at 1162; SV. III:112:2-113:19]
- 11 • **U.S. Driver's License; No Motorcycle Endorsement.** See, e.g., Ex 19 at 1169 (Truong's
12 license); Ex. 20 at 1285 (Ly's license).
- 13 • **Cash Deals.** See, e.g., Ex. 20 at HDMC1279 (cashiers check from AMJ Trading Corp).
- 14 • **Multiple Purchases of the Same Model.** Of the nine new motorcycles the Truong Group
15 purchased between September and November 2010 (the four from Laidlaw's plus the five
16 from other dealers shown on the commercial invoice for the first Truong Group sale), four
17 were the same model and of the remaining five, two pairs of identical models. [SV.
18 III:113:20-117:24.]
- 19 • **References to Export and Trading Companies; Concealment from Harley-Davidson.**
20 There are numerous references to AMJ Trading Corp. as the customer, purchaser and/or
21 shipper of Truong Group bikes. See, e.g., Ex. 33 at HDMC1186 (dealer document
22 showing "An T. Truong/AMJ Trading Co." as the customer). Matt Laidlaw SRW reported
23 Messrs. Truong and Ly as purchasers, omitting any reference to AMJ Trading Co. [See,
24 e.g., Ex. 19 at HDMC1161; Ex. 20 at HDMC1283; SV. III:116:2-11.] Mr. Verduyn noted
25 that Laidlaw's February 19 2011 response to his February 4, 2011 inquiry letter withheld
26 documentation necessary to show the extent of AMJ Trading Corps involvement in the
27 Truong Group sales. [SV. III:121:24-122:19]
- 28 • **Other SWR Misrepresentation.** Ms. Ly (like Mimi Li and David Nguyen) seems to have
had little involvement with the motorcycle that Laidlaw's reported on the SWR form to
have been purchased by her. [See SV. III:121:24-122:11.]

One of the most significant pieces of evidence from this list is the commercial invoice
manifest under the first bullet, which shows Truong shipping five new motorcycles from other
dealerships. Laidlaw's should have known from the invoice that Truong was shipping within a
two month period (September to November 2010) **a total of nine new motorcycles** to Vietnam

⁵⁵ See Ex. 200, far right column (summarizing NICB data found in exhibits 224 and 225) for
reference nos. 44-6 and 57.

1 (the four purchased from Laidlaw's, plus the five from other dealerships). Brent Laidlaw admitted
2 that "a reasonable person should have deduced [from the invoice] that Truong was a reseller," and
3 that whoever at the dealership was "responsible" for these sales should have deduced this. [BL.
4 VIII:133:24-135:6] Indeed, that is the case, particularly given the dealership's earlier involvement
5 with Mr. Ngo and his grey market exporting to Vietnam.

6 **d. The Alsharif Group Sales to Jordan: Reference Nos. 11-14, 18-
7 19, 22-25, 43 and 48**

8 Between June 2009 and October 2010, Muneer Alsharif paid for a total of *twelve* Export
9 Violation motorcycles (reference numbers 11-14, 18, 19, 22, 23-25, 43 and 48). He also
10 purchased one Additional Sales (non-violation) used Harley-Davidson motorcycle from Laidlaw's
11 on April 30, 2009 – making a total of *thirteen* purchases.⁵⁶ Matt Laidlaw sold the Alsharif Group
12 bikes [See ML. IX:123:8-19] and took responsibility for those Alsharif Group sales that were the
13 subject of Mr. Verduyn's February 4 inquiry letter and Laidlaw's February 19 response. [Ex 17 at
14 HDMC865, HDMC871, HDMC877, HDMC883, HDMC889, HDMC895 and HDMC901] Chris
15 Tolman, as Sales Manager, also likely was involved. The regular practice was for the floor
16 salesman to pass customers along to Mr. Tolman, once the floor salesman had "sold the sizzle,
17 "i.e., induced the customer interest. [CT. X(morning session):47:25-49:3] Tolman would then,
18 among other things, negotiate terms and pricing. [*Id.*] As Mr. Abundis testified, Tolman, in this
19 capacity, would be responsible for "90 percent" of the screening to learn whether sales were in
20 violation of the NRSP. [Ex. 302 at 30:15-31:18]

21 The Alsharif Group motorcycles were shipped to Jordan.⁵⁷ Claude Abry, Harley-
22 Davidson's authorized Jordanian dealer, testified that he has learned, from contact with the current
23 owners, that at least eleven of the Alsharif Group motorcycles have, in fact, been *resold* there (as
24 new vehicles) by Muneer's brother, Alaa Alsharif. [Ex. 283(Abry Decl.) ¶¶19 and 27-40] Alaa
25

26 ⁵⁶ See Ex. 49.

27 ⁵⁷ Ex. 200, far right column.

1 Alsharif is the principal grey market reseller in that country. [*Id.*]

2 *Evidence in the Sales Jackets*

3 Steve Verduyn testified about evidence of NRSP violations in the Alsharif Group sales
4 jackets. [*See* SV. III:127:12-144:20.] The evidence (in addition to the failure to charge sales tax
5 and complete PDI Forms and the false SWR reporting of these sales as "retail") includes:

- 6 • **Shipping Documents.** Interestingly, Laidlaw's itself is shown as the shipper on one of the
7 freight bills for the shipment of four motorcycles (including two of the same model). Ex.
51 at 1023. *See* also SV. III:128:12-129:6]
- 8 • **U.S. Driver's License; No Motorcycle Endorsement.** *See, e.g.*, Ex. 51 at HDMC1019
9 (Muneer Alsharif's license).
- 10 • **Cash Deals.** *See, e.g.*, checks in Ex. 60 at HDMC1111; Ex. 61 at HDMC1120; Ex. 54 at
HDMC1153 and Ex. 57 at HDMC1208.
- 11 • **Multiple Purchases of the Same Model.** *See, e.g.*, SV. III:130:23-131:10 (noting that the
12 sales jackets for reference nos. 18 and 19, purchased one day apart, involve the same
model).
- 13 • **References to Export and Trading Companies.** *See, e.g.*, Ex. 49 at LLA38515 (referring
14 to "Optimal for Trading & Automobiles").
- 15 • **Fraudulent SWR Information.** On the SWR forms, Laidlaw's registered the first eight
16 Alsharif Group sales to Muneer Alsharif. It registered the final four to other persons.⁵⁸
These other persons neither paid for the bikes nor are the end-users in Jordan, according to
Mr. Abry's records.

17 *Brent Laidlaw's Red Flag*

18 Brent Laidlaw testified that the large number of sales to Alsharif caused him to share his
19 Red Flag (that "when somebody comes in and wants to buy one or two bikes on the promise of
20 friends or families, then that's too many if they are going to be taking them outside the United
21 States")⁵⁹ with Matt Laidlaw at some point in 2010. In his deposition, Brent testified that he told
22 Matt this rule after Matt had sold five to eight bikes to Alsharif and that "It would have been I

23 _____
24 ⁵⁸ *See* Ex. 200, ref. nos. 24, 25, 43 and 48. Laidlaw's reported one motorcycle as sold to Alaa
25 Alsharif, who is Muneer's brother. As we discuss below, Alaa is well known as the principal grey
26 market reseller in Jordan. Laidlaw's reported two motorcycles as sold to a woman Laidlaw's
claims is Muneer's wife, Fatima Elshibyab. [ML. IX:123:24-124:16] One motorcycle was
reported in the electronic SWR database as sold to Mouhmmad Tamary.

27 ⁵⁹ BL. VIII:121:3-122:5

1 presume Spring/Summer" of 2010. [BL. VIII:122:3-123:11] At trial, he claimed the conversation
2 occurred in October or November 2010. [BL. VIII:121:3-13] Brent also testified that he
3 communicated his Red Flag to both Matt and Chris Tolman. *Id.* As regards the timing of the
4 conversation, it would make more sense that in the Spring or Summer, since Matt had sold five to
5 eby February 25, 2010, Matt had sold Alsharif more than five bikes [See Ex. 200, ref no. 19] and
6 by April 14, 2010, Matt had sold Alsharif more than eight bikes [See Ex. 200, ref no. 25].⁶⁰ Matt
7 then ignored Brent's Red Flag by making at least the last two Alsharif Group sales after the likely
8 date of his conversation.

9 **e. The Ahkuputra Group Sales to Thailand: Reference Nos. 49-56
and the Six "Extras"**

10 Within one week, between October 30 and November 6, 2010, Art Ahkuputra, and a
11 person affiliated with him, Panpong Bencharit,⁶¹ purchased eight of the Export Violation
12 motorcycles (reference numbers 49-56).⁶² They shipped these to Thailand.⁶³ In December 2010
13 and January 2011, Mr. Ahkuputra purchased another six motorcycles [BL. VIII:118:2-4], which
14 Laidlaw's reported in the electronic SWR database as sold to Tarra and Pirin Singpannames and
15 several Phommasaysy family members. These motorcycles also were exported to Thailand.⁶⁴ In
16 total, within less than 3 months, the Ahkuputra Group purchased *fourteen* Export Violation
17

18
19 ⁶⁰ Also, as was noted above (p. 20), it was in the Summer of 2010 that Brent Laidlaw received and
20 discussed with his General Manager, Richard Litchfield, Harley-Davidson's July 28, 2010 bulletin
regarding the Model Year 2011 NRSP and certain clarifications to the NRSP. [Ex. 119/618]

21 ⁶¹ See also bills of lading showing that the vehicles paid for by Ahkuputra and reported on the
22 SWR form by Laidlaw's as sold to Mr. Sayanath were shipped together with the vehicles reported
23 on the SWR forms by Laidlaw's as sold to Bencharit. [Exs. 37 at HDMC1231 and 39 at
HDMC1254] See also footnote 2 in the far right column of page 2 of Ex 200, which shows that all
24 eight vehicles reported as sold during this period to Mssrs. Ahkuputra, Sayanath and Bencharit
were shipped together on the "NYK Terra" on 11/21/2010.

25 ⁶² Mr. Ahkuputra paid, with one large check, for most of these vehicles, including two (ref nos. 51
and 52) that were SWR registered to an individual named Jonathan Sayanath. [See, e.g., Ex. 37 at
26 HDMC1229-1230 and Ex. 38 at HDMC1234-5.]

27 ⁶³ See Ex. 200, right column.

28 ⁶⁴ See Ex. 22, admitting that these units were exported.

1 motorcycles.⁶⁵ One of these vehicles recently appeared on the website of a non-authorized, grey
2 market reseller in Thailand – displaying, no less, a Laidlaw's license plate. [Ex. 285 (Declaration
3 of Robert Guthrie) ¶15; Ex. 285(E) (photo of motorcycle attached to Guthrie Declaration; Ex. 286
4 (printout of Haus4Riders webpage)] That vehicle subsequently was sold to a Thai grey market
5 consumer as a "new" motorcycle. [Ex. 285 ¶15]⁶⁶

6 Chris Tolman sold the Ahkuputra Group bikes [CT. X(morning session):45:9-46:12], and
7 took responsibility for those Ahkuputra Group sales that were the subject of Mr. Verduyn's
8 February 4 inquiry letter and Laidlaw's February 19 response. [Ex. 17] Matt, who by this point
9 was Business Manager, also was involved. The regular practice was that once Tolman "got the
10 deal wrapped up," Tolman would pass it to Matt. [CT X(morning session):49:4-8] Matt would
11 then process payment, including, in this instance large checks from Mr. Ahkuputra and Mr.
12 Bencharit paying for multiple units [See, e.g., Ex. 34 at HDMC1214 (showing ML as the cashier
13 of a \$109,500 Ahkuputra check). Also, he signed hard copy SWR forms for Ahkuputra Group
14 sales, among other things, certifying them as retail and compliant with Harley-Davidson's sales
15 policies. [See, e.g., Ex. 34 at 1213; SV. III:146:1-17] Don Abundis, who was aware of the ban on
16 sales to exporters and resellers, was the salesman of record on several Ahkuputra Group sales.
17 [Ex. 302 (Abundis Depo) at 50:6-51:12]

18 Steve Verduyn testified about evidence of NRSP violations found in the Ahkuputra Group
19 sales jackets. [See SV. III:144:21-163:20.] The evidence (in addition to the failure to charge sales
20 tax on all but the Extra sales, the failure to complete PDI Forms and the false SWR reporting of
21 _____

22 ⁶⁵ See BL. VIII:133:8-14 (agreeing that after Ahkuputra and his affiliates bought eight
23 motorcycles in November 2010, Mr. Ahkuputra paid for another six in December 2010 and
24 January 2011.

25 ⁶⁶ The appearance of this bike in a grey market reseller's shop is, of course, evidence that the
26 Ahkuputra Group purchasers were resellers. Other evidence includes that one of the persons
27 Ahkuputra was affiliated with, Jonathan Sayanath, to whom two Ahkuputra Group purchases were
28 SWR registered, also purchased four used Additional Sales Harley-Davidson motorcycles in May
2011. As used motorcycle sales, of course, these four sales did not violate the NRSP. Though all
occurred after termination, they confirm (because of the large volume) the fact that Mr. Ahkuputra
and people affiliated with him were resellers.

1 these sales as "retail") includes:

- 2 • **Shipping Documents.** See, e.g., Ex. 36 at HDMC1244 (Siam International Freightliners BOL).
- 3 • **U.S. Driver's License; No Motorcycle Endorsement.** Ex. 38 at HDMC1237 (driver's
- 4 license of Jonathan Sayanath, to whom two of the Ahkuputra purchases were SWR
- 5 registered)
- 6 • **Cash Deals; Advance Payment; Payment on Account.** Most of the Ahkuputra Group
- 7 bikes were paid for by three large checks paying for multiple bikes. [See, Ex 34 at
- 8 HDMC1214 (\$109,500 cashiers check); Ex. 39 at HDMC1256 (\$49,100 cahiers check); Ex
- 9 46 at LLA28452 (re \$40,000 check payment).] The last of these (the \$40,000 check) paid,
- 10 **in advance**, for several of the Extras. [RL. IX:98:1-98:23]⁶⁷ Sales jackets for the Extras
- 11 state "payment on account." This suggests that some sort of account (funded, in part, by
- 12 the \$40,000 check) was available to pay for them.
- 13 • **Multiple Purchases of the Same Model.** On October 30, 2010 Ahkuputra bought⁶⁸ four
- 14 motorcycles consisting of two pairs of the same model. [See SV. III:147:9-12.]
- 15 • **References to Companies Suggesting Export or Resale Activity.** See, e.g., Ex. 34 at 1212
- 16 (listing "K and K Auto" in "Bangkok" as consignee).

17 *The Extras and Laidlaw's Fall 2010 Plan to Charge Sales Tax*

18 Brent Laidlaw testified that in the Fall of 2010 (the time of the first eight Ahkuputra Group

19 purchases), he developed suspicions that sales to Ahkuputra might violate the NRSP. [BL.

20 VIII:130:7-20] At trial, Brent Laidlaw admitted believing Ahkuputra might not be the "end user."

21 [BL. VIII:130:3-20] In his deposition, he testified, somewhat more precisely, that he knew

22 Laidlaw's should not be "in the business" of putting Ahkuputra "in business." [BL. VIII:131:9-

23 133:7] Also by this time, if not before, Brent Laidlaw communicated his Red Flag to both Matt

24 Laidlaw and Chris Tolman, i.e., that "when somebody comes in and wants to buy one or two bikes

25 on the promise of friends or families, then that's too many if they are going to be taking them

26 outside the United States." [BL. VIII:121:3-122:15]

27 Apparently concerned by large volume sales to exporters, Brent Laidlaw told Chris

28 Tolman to read the NRSP in November 2010. [CT. X(morning session):59:15-60:2] Tolman

25 ⁶⁷ The check is dated December 13, 2010. The first Extra was purchased on December 14, and the

26 remaining five all were purchased in January 2011

27 ⁶⁸ As was noted above, Mr. Ahkuputra paid for the two vehicles SWR registered to Jonathan

28 Sayanath (ref nos. 51 and 52). [Ex. 37 at HDMC1229-1230 and Ex. 38 at HDMC1234-5].

1 understood from reading the NRSP, at least, that the sale of a motorcycle for shipment or use
2 outside the United States violated the policy, regardless of whether the purchaser paid taxes and
3 license fees on the vehicle. [CT. X(morning session):66:13-68:18] He testified that he believed
4 after reading the NRSP, that he had violated it twelve to fifteen times and Matt Laidlaw had
5 committed additional violations. [CT. X(morning session):60:17-61:8.] He told Brent that the
6 dealership had been violating the NRSP by "selling bikes to exporters." [CT. X(morning
7 session):62:25-64:4] Tolman, however, did not tell anyone in the sales department that the
8 dealership had been violating the policy, or take steps to prevent exporters. [CT. X(morning
9 session):68:19-69:17]

10 Instead, though Mr. Tolman knew that a sale for export was a violation, regardless of
11 whether sales tax was paid, he and Brent Laidlaw came up with a plan: the "dealership would
12 continue to sell to people who were going to ship or use these motorcycles outside the United
13 States, but simply charge them sales tax." [BL. VIII:117:5-9] As Tolman admitted, it was not
14 until the February 4 inquiry letter from Steve Verduyn that "we stopped completely selling any
15 types of bikes that we thought might be exported." [CT. X(morning session):39:22-40:1] Thus,
16 Laidlaw's sold the final six Ahkuputra Group bikes (the "Extras") in December 2010 and January
17 2011.

18 In April 2011, Laidlaw's acknowledged it was aware that these sales were for export. [Ex.
19 22] Clearly the dealership knew, or should have known, these sales were both for export *and*
20 resale. All six bikes were purchased "on account."⁶⁹ Several were purchased in advance by a
21 large \$40,000 check. [RL. IX:98:1-23] Most importantly, perhaps, Mr. Ahkuputra, a California
22 resident who already had purchased multiple motorcycles for shipment abroad, was paying for all
23 six. Brent Laidlaw had already expressed concerns to Mr. Tolman about putting Ahkuputra "in
24 business." [BL. VIII:131:9-133:7] As Sales Manager, Mr. Tolman would have negotiated the
25 payment terms for these vehicles [CT. X(morning session):47:25-48:21] and must have known
26

27 _____
28 ⁶⁹ See previous page, third bullet.

1 these extraordinary facts, including the identity of the purchaser. Matt Laidlaw, who as Business
2 Manager must have handled the "account" used to pay for the bikes and processed Mr.
3 Ahkuputra's checks,⁷⁰ also must have known the sales were NRSP violations.

4 **f. Remaining Export Violations Sales: Reference Nos. 6, 16, 17, 34-**
5 **5, and 47.**

6 Of the remaining Export Violation sales, three motorcycles were shipped to Thailand (nos.
7 17, 34 and 47). The sales jackets for these three sales all contain shipping documents. Laidlaw's
8 charged no sales tax on any of these sales. Toy Palvatana paid for two of these purchases (ref nos.
9 17 and 47). Mr. Palvatana driver's license does not have a motorcycle endorsement. [Ex. 44 at
10 1061; SV. III:169:7-23] The sales jacket for the other purchase (ref. no. 34) includes evidence that
11 the purported purchaser, Mr. Tupporn Siricho, had an apartment in California yet was shipping his
12 bike via Siam International to Thailand, listing Laidlaw's as the shipper. [Ex. 125 at 1125-7; SV.
13 III:172:3-24]

14 Two of the remaining Export Violation sales were purchased on the same day and shipped
15 to Hong Kong (ref. nos. 35 and 36). The sales jackets for these sales contain shipping documents.
16 Laidlaw's charged no sales tax on either sale. Laidlaw's reported on the SWR forms that these
17 sales were made to a person named Ashly Dahn. The deal jackets show, however, that Laidlaw's,
18 in fact, sold the motorcycles to Lim Lin, affiliated with Oriental Motors [See Ex. 47 at 1132-1135;
19 SV. III:173:10174-175:24]

20 Each of the final remaining Export Violations sales were purchased by persons who
21 shipped the vehicles to Taiwan and Cambodia, respectively (ref. nos. 6 and 16). [SV. III:175:25-
22 182:7] The sales jackets for these sales contain shipping documents. Laidlaw's charged no sales
23 tax on either sale. The sales jacket for the Cambodia sale includes a handwritten note: "Shipping
24 to Cambodia." [Ex. 69 at HDMC1048] The sales jacket for the Taiwan sale includes a business
25

26 ⁷⁰ Only one of those checks was produced in discovery. It is the December 2010 \$40,000 check
27 that paid for several motorcycle purchases in advance. [Ex 46 at LLA28452] "ML" is shown as
28 the cashier. "ML" means Matt Laidlaw. [RL. IV:98:24-99:3]

1 card for "V1 Motor." [Ex. 68 at HDMC985]

2 **2. Rental Violation Sales**

3 The most significant -- indeed shocking -- evidence regarding the 17 Rental Violations is
4 that Brent Laidlaw was fully aware of the Sourcing Rule [BL. VII:110:13-15], yet made the 17
5 Rental Violation sales anyway. Purportedly he did this because Erik Svensson of EagleRider
6 Corporate told him, in an April 2009 telephone conversation, that it was "approved" to sell from
7 Laidlaw's pleasure unit allocation five motorcycles to any EagleRider rental franchise "for this
8 model year." [BL. VII:110:11-111:15] Harley-Davidson's model year runs from August 1 to July
9 31. [MK. I:136:12-13]. Thus, assuming Mr. Svensson made the April 2009 representation
10 alleged, it concerned Model Year 2009, ending on July 31, 2009.

11 What is most incredible about Brent Laidlaw's testimony is that he would rely on the
12 advice of a third party in the face of repeated contemporaneous reminders and instructions from
13 Harley-Davidson that all sales to rental companies had to be sourced from the rental fleet
14 allocation, not retail pleasure unit allocation. Harley-Davidson's reminders of the Sourcing Rule
15 during this period included:

16 (1) an April 30, 2008 bulletin to all U.S. dealerships (including Laidlaw's) with
17 Questions and Answers about the Sourcing Rule, stating, among other things, that
18 sales to rental companies must "be sourced from the rentals fleet pool and not from
19 dealer inventory" [Ex. 82];

20 (2) a July 10, 2008 email from Harley-Davidson's Director of Western Regional
21 Sales Operations, Angela Stewart, to Brent Laidlaw, responding to inquiry from the
22 dealership about its plans to sell units to EagleRider rental operations. In the email,
23 Ms. Stewart reminded Mr. Laidlaw that "you may not sell any new units from your
24 pleasure inventory to any rental operator." She also provided a link to the entire
25 NRSP, directing Brent Laidlaw's attention to paragraph 6 regarding the Sourcing
26 Rule [Ex. 10]; and

27 (3) Two face-to-face meetings in late March 2010 -- first between Harley-
28 Davidson's District Manager, Paul Hawken, and Richard Litchfield, Laidlaw's
General Manager, and Ty McPhearson, Laidlaw's rentals business manager, then
between Hawken and Brent Laidlaw himself -- to discuss Laidlaw's recent
solicitation to sell motorcycles to rental operators throughout the country. Hawken
again reminded everyone, including Mr. Laidlaw, that all sales to rental operators
had to be sourced from the rentals fleet allocation and referred Mr. Laidlaw to the
NRSP. [PH. IV:55:12-63:2]

Brent Laidlaw admitted that Mr. Hawken told him during their late March 2010 meeting
that "you can't sell pleasure units to the rental company." [BL. VIII:82:20-83:2] Yet, just a few

1 days prior to that meeting, Brent Laidlaw had done just that, making two of the Rental Violation
2 sales.⁷¹ Remarkably Brent Laidlaw never mentioned these sales during the meeting. He never
3 attempted to confirm Svensson's alleged April 2009 telephonic representation that such sales were
4 "approved." Also, it was now MY 2010. Svensson's alleged representation, made a year earlier,
5 purportedly concerned MY 2009, and so would no longer have applied. Finally, earlier that month
6 (on March 1, 2010), Chris Tolman had exchanged emails with Harley-Davidson's Rider Services
7 Regional Manager, Rick Malsch, asking approval for Laidlaw's swapping of two pleasure units for
8 two units from the Rental Fleet Pool. [Ex. 28 and Ex. 29; BL. XIII:90:18-91:5; SV. III:28:24-
9 30:14. *See also* Ex. 234 (internal Harley-Davidson communications regarding the swap); SV.
10 III:27:18-28:23] This all shows the dealership knew Sourcing Rule was in effect and knew how to
11 request approval for an exception. [Ex. 28; BL. III:90:1-91:5] Notwithstanding all of this, in the
12 months following the March face-to-face meeting between Brent Laidlaw and Paul Hawken, and
13 supposedly, though clearly not reasonably, relying on Mr. Svensson's year-old telephonic
14 representation, Brent Laidlaw made thirteen additional Rental Violation sales. [Ex. 200, p. 3, ref
15 nos. 26-41; *See also*, BL. VIII:85:9-91:5 (admitting dealership made final thirteen Rental
16 Violation sales and never told Harley-Davidson about them or attempted to obtain permission)]

17 The evidence regarding the Rental Violations also shows the following:

- 18 • Laidlaw's falsely reported 15 of the 17 violations as "retail" sales on the SWR form, thus
19 improperly entitling the dealership to incentives and future pleasure unit allocation. [*See*
20 Ex. 200, page 3]
- 21 • Laidlaw's failed to complete PDI and SWR forms, in connection with the sales, in violation
22 of the dealership's PDI and SWR related obligations. [*See* Ex. 200, page 3]
- 23 • Laidlaw's sold ten of the Rental Violation sales to EagleRider franchises in New Orleans
24 and Salt Lake City. [*See* Ex. 200, reference nos. 29-33 and 37-41; BL. VIII:87:7-89:14]
25 The purchasers of these ten sales did not come to Laidlaw's facility to inspect, finalize the
26 sale, or complete all paperwork. This violates the Fleet Sales Policy ("FSP"). [*See* BL.
27 VIII:88:4-24; Ex. 306 (Brent Laidlaw Depo.) at 195:5-196:8]

28 ⁷¹ Ex. 200, ref. nos. 20 and 21; *See also* BL. VIII:83:8-15 (admitting Laidlaw's made two Rental
Violation sales just prior to the March 2010 meeting, but did not mention sales to the Harley-
Davidson). Laidlaw's also had made two Rental Violation sales in April 2009. Ex. 200, ref. nos. 7
and 8.

1 • Brent Laidlaw testified that he lacked much "motive" to make the Rental Violation sales.
2 [BL. VII:114:4-10] Yet he admitted that the ten sales to the new Orleans and Salt Lake
3 City franchises followed a March 3, 2010 solicitation [Ex. 229] to sell motorcycles to
4 rental operations throughout the country. [BL. VIII:87:12-88:19]

5 In sum, the evidence shows Laidlaw's simply chose to flaunt the Sourcing Rule, ignore
6 PDI and SWR related obligations, ignore the Fleet Sales Policy and conceal the Rental Violations
7 from Harley-Davidson -- all in pursuit of a hope to sell nationwide.

8 **V. The Reasons for the Non-Retail Sales and Fleet Policies.**

9 **A. Reason for the NRSP**

10 As the NRSP states, it is designed to ensure customer safety and satisfaction, facilitate
11 compliance with federal and state law and the laws of foreign countries, and protect the integrity
12 of Harley-Davidson's worldwide distribution network. The NRSP also is designed to protect
13 Harley-Davidson's brand, which is affected by all of these concerns.

14 Fundamentally, the NRSP prohibition on sales to resellers is intended to insure that new
15 Harley-Davidson motorcycles are set-up, inspected, tested and sold to end users *only by*
16 *authorized Harley-Davidson dealers* -- not by non-authorized, grey market resellers. This is vital
17 because only authorized Harley-Davidson dealers, and not grey market resellers, are contractually
18 obligated to do the many things necessary to protect the public and promote the brand. The NRSP
19 prohibition on sale for shipment abroad is designed to protect the integrity of Harley-Davidson's
20 global distribution network and to insure that motorcycles are properly configured, or
21 "homologated," to be in compliance with the laws, regulations, and standards of the countries in
22 which they are sold.

23 **1. Customer Safety**

24 Driving motor vehicles is inherently dangerous. Riding motorcycles is particularly so. As
25 Tom McGowan, a Harley-Davidson Principal Engineer and Recall Investigation Committee
26 member testified at trial, motorcycle riders are vulnerable, and even an accident that causes only
27 minor damage to the motorcycle, can result in serious injury or death. [See TM. V:75:5-77:23.]
28 That is why, in many jurisdictions, special training and a special license are required to ride a
motorcycle. Motorcycle riding courses teach that every time a rider prepares to ride, she should

1 review a mental checklist of safety and operational issues – more akin to what airplane pilots do
2 than to what typical automobile drivers do.

3 The first reason for the NRSP is safety. The policy enhances safety in several ways:

4 **a. Proper Set-up and Testing Prior to Delivery**

5 As Mr. McGowan explained in great detail, authorized dealers (unlike grey market
6 resellers) are contractually required to properly uncrate, set-up and test new motorcycles, prior to
7 sale, per detailed manufacturer instructions, including those in the 180 page PDI Manual.⁷² [See
8 Ex. 211 (PDI Manual); TM. V:98:3-108:15.] Authorized dealers are required to have the proper
9 diagnostic and service equipment, and properly trained Harley-Davidson service personnel to
10 perform these functions.⁷³ Prior to sale, an authorized dealer service representative must sign and
11 check certain boxes on a PDI Checklist Form, confirming that proper pre-delivery set-up and
12 testing has occurred. [See Ex. 33 at HDMC1189 (PDI Checklist Form, boxes on left side and
13 space for service technician signature); TM. V:118:9-125:16.] As Mr. McGowan, Frank Albrecht
14 (Director for Sales and Business Development of Harley-Davidson's Asia Direct Market), Robert
15 Guthrie (the Dealer Operator of Harley-Davidson's authorized Thai dealership), and Claude Abry,
16 (the Dealer Principal of Harley-Davidson's authorized Jordanian dealership) all testified to varying
17 degrees, grey market resellers lack the equipment, facilities, experience, training, and access to
18 Harley-Davidson information necessary to properly set-up and test vehicles prior to delivery.
19 [See, e.g., TM. V:110:14-112:13; FA. VI:13:17-14:16 and 17:6-14; Ex. 285, ¶ 18; Ex. 283 ¶ 24
20 and 41-46; CA. V:45:16-23 and 52:4-53:15.]

21 As regards the general nature of grey market operations, Mr. Guthrie testified that in
22 Thailand, for example, most grey market resellers:

23
24 ⁷² In the wake of the trial, there does not seem to be much disagreement about the importance of
25 proper PDI. Even Laidlaw's expert Mr. Stockton admitted that proper PDI has safety implications.
[ES. XI:75:12-14]

26 ⁷³ Laidlaw's own webpage emphasizes the importance of having "trained" and "experienced"
27 service personnel, "the latest in Harley-Davidson technology," and "a full range of tooling and
28 equipment to handle all of your Harley-Davidson motorcycle servicing needs." [Ex. 289 at
HDMC11189]

1 have other jobs or other professions, other businesses that are their
2 mainstay, and the grey market importation is more or less a sideline.
3 A lot of them I personally know don't really have a showroom, if
4 you will, they have a, what we call here a shophouse where there's a
5 small business on the ground floor and they live on the second and
6 third floor. Most of them do not have technicians. They have one
7 or two people possibly working for them. And it's a sideline
8 business. They, from what I understand they don't, they don't charge
9 VAT [value added tax],⁷⁴ because they are not required to selling a
10 motorcycle from person to person. Most of them don't -- well, they
11 don't advertise in publications or other normal forms of
12 advertisement that we do. They do get business through word-of-
13 mouth. And then they go on websites and advertise on websites.
14 [RG. V:203:4-16 and 22-5]

15 In Jordan, to give another example, the principal importer and seller of new grey market Harley-
16 Davidson motorcycles is Alaa Alsharif, the brother of Muneer Alsharif [Ex. 283 ¶19-23], Alaa
17 Alsharif's business has neither Harley-Davidson trained and certified technicians nor the Harley-
18 Davidson equipment necessary to properly set-up and test new Harley-Davidson motorcycles.
19 [Ex. 283 ¶24. See also CA. V:52:4-53:15 (Alaa Al Sharif's lack of necessary equipment such as a
20 Harley-Davidson Digital Technician).] Alaa Al Sharif has neither a showroom nor a service
21 facility. [CA. V:45:16-23]

22 In all events, and regardless of the exact nature of their businesses, grey market resellers
23 around the world (whether in Thailand, Jordan, Vietnam, or the U.S.) have no contractual
24 obligations to Harley-Davidson to properly set-up, test, inspect, sell and SWR Harley-Davidson
25 Products.

26 **i. Evidence of Improper Disassembly and Reassembly in
27 Vietnam and Thailand and Improper PDI in Jordan**

28 Not surprisingly, given the nature of grey market operations, there is substantial evidence
of improper set-up and testing of motorcycles in the countries to which the 42 Export Violations
were shipped – principally, Vietnam, Thailand, and Jordan.

⁷⁴ Harley-Davidson's authorized Thai dealership, as a *bone fide* business, must charge the V.A.T..
The loophole that allows grey market resellers to avoid the tax is one of several tax and duty
loopholes that give grey market resellers a price advantage over his authorized dealership. [Ex.
285 ¶ 16]

1 (a) Vietnam and Thailand

2 As Frank Albrecht and Robert Guthrie testified, new large motorcycles legally imported
3 into several Southeast Asian countries, including Thailand and Vietnam, are subject to import
4 duties and taxes totaling about 80% to 200% of the wholesale price. [See FA. V:183:1-25 and
5 VI:14:17-25; Ex. 285 ¶16.] The taxes and duties on so-called vehicle spare parts in these
6 countries are much lower. [Id.] Grey market exporters and sellers take advantage of this
7 difference by buying new motorcycles abroad, disassembling them, shipping the parts to Thailand
8 and Vietnam, and reassembling them in those countries. [Id.] Chris Tolman and Don Abundis
9 both admitted that Laidlaw's *knew* motorcycles it sold for shipment abroad were being
10 disassembled and reassembled to avoid import taxes and duties. [CT. X(morning session):57:12-
11 59:14; Ex. 302 (Abundis Depo.) at 46:3-18]

12 Disassembly usually occurs in three shipment groupings: engines, frames and
13 miscellaneous parts. [Ex. 285 ¶16] Reassembly is performed by persons or entities that are not
14 authorized Harley-Davidson dealers, and who lack proper equipment, instructions, and training.
15 [See Ex. 285 ¶18.] Laidlaw's co-owner and former service manager, Jerry Laidlaw, admitted at his
16 deposition that the practice of disassembly and reassembly abroad risks "issues of safety" because
17 motorcycles "may not be put back together exactly per Harley-Davidson specifications....It's
18 pretty obvious." [Ex. 308 (Jarold Laidlaw Depo.) at 22:16-23:22] Tom McGowan testified that
19 the practice of disassembly and reassembly "scares me to death" [TM. V:130:16-132:21], listing a
20 variety of ways in which the practice may seriously jeopardize consumer safety, in particular, and
21 also consumer satisfaction. [TM. V:132:22-135:7]⁷⁵ Robert Guthrie testified about evidence of
22 improper and dangerous reassembly of grey market Harley-Davidson motorcycles he has
23 witnessed in Thailand, including: frames, engines and other major components that do not match,
24 because they are mixed up during reassembly; motorcycles with moderate to high speed wobbles,

25 _____
26 ⁷⁵ This includes, among other things, the fact that certain gaskets, seals, and fasteners, do not
27 survive disassembly, reassembler's lack of necessary equipment, such as Digital Technician
28 Equipment, and proper training, and the improper mixing of parts. [See *Id.*]

1 caused by improper alignment, and grey market motorcycles with improperly affixed steering
2 heads; and motorcycles with electrical issues caused by connectors that are not matted properly.
3 [Ex. 285 ¶18] Grey market customers in Thailand are not aware they are purchasing motorcycles
4 that have been disassembled and reassembled. [RG. V:213:5-14. *See also* Ex. 283 ¶19]

5 **(b) Jordan**

6 Harley-Davidson's authorized dealer in Jordan, Claude Abry, similarly testified that
7 motorcycles exported to his country and sold in the grey market are not being properly set-up,
8 tested, or inspected. [Ex. 283 ¶¶25-26] In one instance, for example, a motorcycle that was
9 among the 12 Alsharif Group motorcycles originally purchased from Laidlaw's⁷⁶ was brought by
10 one of Mr. Alaa Alsharif's grey market customers to Mr. Abry's dealership for service. That
11 vehicle had been driven 1999 miles without ever having any oil put into the primary chain case, a
12 situation that could eventually damage the bike and injure the rider. [See Ex. 283 ¶25; CA.
13 V:22:22-23:24. *See also* TM. V:108:16-110:14 (Mr. McGowan commenting on Mr. Abry's
14 testimony)] In two other instances, customers of Mr. Alaa Alsharif brought motorcycles to Mr.
15 Abry's dealership that, unbeknownst to the customers, were subject to safety recalls. [See Ex. 283
16 ¶45; CA. V:46:10-47:12] Mr. Abry also has encountered improperly PDI'd grey market Harley-
17 Davidson motorcycles in Jordan with wobbles and rattling parts. [Ex. 283 ¶42]

18 **b. Proper Inspection and Explanation at Point of Delivery**

19 In addition to proper set-up and testing prior to delivery, Harley-Davidson PDI procedures
20 require proper inspection with end-user purchasers at the point of delivery and proper explanation
21 by authorized dealership personnel of the owner's manual, warranties, and operational, emergency
22 and safety features of the motorcycle. [See, e.g., PDI Manual, Ex. 211 at LLA38600] Mr.
23 McGowan testified at length about these requirements, which include, among other things, making
24 sure the vehicle owner receives and understands the importance of reading the owner's manual and
25 other materials in the owner's kit, making sure the owner understands the warranties, completing

26 _____
27 ⁷⁶ Ex. 200, reference no 11. The identity of the motorcycle is shown by comparing the VIN for
28 reference no. 11 with the VIN of the vehicle described in Ex. 283 ¶25.

1 and signing the SWR form and making the owner sign it, explaining operation and vehicle
2 controls to the owner, and explaining how directional lamps and emergency flashers operate. [See
3 Ex. 211 at LLA38600; TM. V:112:14-117:10.] At point of sale, a dealership representative
4 checks the boxes on the right side of the PDI Checklist Form, which relate to these functions and
5 the customer must sign the Form confirming that "the dealer representative has disclosed all the
6 information and instruction to me as checked above." [Ex. 33 at 1189] The interface between an
7 authorized Harley-Davidson dealer and an end user during which this critical information is
8 provided (documented by the PDI Checklist Form) is vital to consumer safety (and satisfaction).
9 [See, e.g., TM. V:112:14-117:10 and 122:7-125:16.]

10 Grey market resellers lack the authority, training, knowledge and ability to perform this
11 point-of-sale portion of PDI procedures. [See, e.g., TM. V:129:12-130:15; Ex. 283 ¶¶24 and 43.]
12 As a result, in both Thailand and Jordan, for example, grey market customers lack the accurate and
13 complete information that only authorized Harley-Davidson dealers can provide and are, even
14 more troubling often *misinformed*. [Ex. 283 ¶46; Ex. 285 ¶19; RG. V:212:13-214:19] In
15 Thailand grey market resellers tell consumers they are covered by the Harley-Davidson warranty,
16 when, in fact, motorcycles imported into Thailand through the grey market lose their warranty
17 coverage. [Ex. 285 ¶19; RG. V:212:13-213:4] Grey market purchasers in Jordan do not realize
18 that the vehicles they have purchased have not been set-up, tested, and inspected by trained
19 personnel, that they have no warranty coverage either, and that they may not be contacted by
20 Harley-Davidson in case of a recall. [Ex. 283 ¶46]

21 **c. Liability for Failure to Follow PDI Procedures and Obtain**
22 **Signatures**

23 The failure to inspect motorcycles with end-users at the point of delivery, to provide
24 accurate information to them, and in particular, to obtain customer signatures and the required
25 signatures of dealership personnel on the PDI Checklist Form may, in the event of customer
26 dissatisfaction, injury or death, expose all parties along the supply chain to liability. These parties
27 would include, in addition to the grey marketer, Harley-Davidson and the U.S. dealer committing
28 the NRSP violation. [SV. III:191:13-193:19] When Mr. Verduyn, noting Laidlaw's failure to

1 complete PDI Forms, explained this to Laidlaw's, Laidlaw's did not dispute the potential liability
2 issues: "[t]hey understood." [*Id.* at 193:11-19]

3 **d. Recall Obligations**

4 Another critical way in which the NRSP ensures safety is that it allows Harley-Davidson to
5 provide recall notices and other safety information to end-users. The vast majority of recalls are
6 for safety reasons. [TM. 79:24-80:18] Mr. McGowan testified at length about the risk analyses
7 Harley-Davidson employs to decide whether to issue recalls, pointing out the particular dangers
8 inherent in motorcycle riding (e.g., that a tire blowout or caster wobble can be life threatening).⁷⁷
9 He explained:

10 We don't do recalls just for fun or because they are good publicity.
11 We devote an enormous amount of time, and manpower, and special
12 testing in order to study these issues when they come to our
attention, and to do a risk analysis to determine if we think there's an
unreasonable risk. [TM. V:143:10-16]

13 Recalls are critical to consumer safety.⁷⁸ [See, e.g., TM. V:92:7-97:1] Consumers have
14 been injured or killed by problems Harley-Davidson safety recalls have been designed to address.
15 [*Id.*] Unfortunately, *Harley-Davidson cannot provide essential recall information if the person*
16 *Harley-Davidson notifies (based on SWR information provided by the dealer) is not the end-*
17 *user.* [TM. V:88:8-92:6] In the present case, 27 of the 59 Export Violation and Rental Violation
18 sales are subject to safety recall campaigns that remain "open" -- meaning that the work has not
19 been performed.⁷⁹ Harley-Davidson's records, based on SRW information provided by Laidlaw's
20 show, inaccurately, that the Export Violation motorcycles are still in the United States. [TM.

21 _____
22 ⁷⁷ See, TM. V:75:5-77:23.

23 ⁷⁸ Laidlaw's expert, Edward Stockton, seemed to question the importance of Harley-Davidson
24 recalls to consumer safety. He testified that a large recall for a brake defect currently underway is
25 an "experiment" regarding "how likely is this defect to cause an injury to a person." [ES. IX:71:8-
16] There is no evidence that Mr. Stockton has any expertise or data regarding Harley-Davidson
26 recalls and the risks they are designed to address. He was unaware of Harley-Davidson's policy
27 for determining whether to announce a safety recall. [ES. XI:72:25-73:7]

28 ⁷⁹ This consists of the 25 sales for which an open recall is shown on Ex. 200 (column 3), plus two
more sales that Mr. McGowan identified from among the Extras, corresponding to the sales
jackets in Exs. 262 and 263. [TM. V:137:3-138:14]

1 V:91:15-92:6] The operation of motorcycles with unperformed safety recall work jeopardizes the
2 safety of the true end users, including the unfortunate end-users of Violation Sales motorcycles
3 sold by Laidlaw's.

4 **2. Customer Satisfaction**

5 The sale of motorcycles directly to domestic end-users by authorized Harley-Davidson at
6 their facilities – reflecting what Harley-Davidson calls its "close to the customer philosophy"⁸⁰ –
7 also enhances customer satisfaction and increases after sales business for authorized dealers. This
8 is true for a number of reasons.

9 **a. Ensuring the Proper Fit**

10 First, the NRSP facilitates the "proper fit" of customer and motorcycle. Harley-Davidson
11 motorcycles are offered in a wide variety of makes and models, with a wide variety of options and
12 accessories. [See, e.g, Exs. 202 and 204 and MK. I:115:20- 117:21.] If a customer receives a
13 motorcycle that does not address his or her unique physique, riding style or needs, the expectations
14 of the customer may not be met. [See TM. V:97:2-98:2. See also, Ex. 204 at pp. 11746-11753.]
15 Direct sale by an authorized Harley-Davidson dealer to the end-user facilitates an informed
16 decision that will achieve the proper fit between customer and motorcycle.⁸¹

17 **b. PDI and Satisfaction With the Motorcycle**

18 Second, the PDI procedures described above – including proper set-up, testing and
19 inspection of motorcycles prior to sale, proper inspection and communication with customers at
20 the point of sale, and sign-off by the customer – enhance satisfaction (as well as safety). *See, e.g.,*
21 Ex. 175 ¶¶ 34-36.] Customers who purchase motorcycles with the types of mechanical problems
22 described above, such as motorcycles with wobbles, improperly affixed steering heads, electrical
23 issues and the like, obviously are unlikely to be satisfied. Customer dissatisfaction also may result
24 from the failure to inspect and sign off on motorcycle condition and finish at point of delivery.

25 _____
26 ⁸⁰ See Ex. 14, final bullet point on page 1.

27 ⁸¹ Laidlaw's own webpage boasts the importance of having a large inventory of products and
28 selling by "highly trained and experienced Harley-Davidson salesmen." Ex. 289 at HDMC11185.

1 Customers who are ill-informed, or misinformed, about operational features, proper maintenance,
2 warranty coverage, or recall campaigns also are unlikely to be satisfied.

3 **c. The "Harley-Davidson Lifestyle"**

4 Third, sale by authorized dealers to domestic customers enhances the customer experience
5 by promoting participation in the Harley-Davidson lifestyle. Harley-Davidson is perhaps unique
6 among motorcycle manufacturers in the degree to which its consumers participate in a brand-
7 based lifestyle, expressed, for example, through a line of Harley-Davidson products (such as
8 MotorClothes® products and accessories) and high levels of participation in Harley-Davidson
9 Owner Group (H.O.G.) chapters around the world. These groups, among other things, organize
10 rides and excursions that typically originate from an authorized dealer's location. They also
11 promote interest in the Harley-Davidson brand.

12 Both sides agree about the importance of the Harley-Davidson lifestyle and role authorized
13 dealers play in promoting it. Brent Laidlaw, for example, testified that the lifestyle "is life itself to
14 many people," i.e., vital to customers' self-identity. [BL. VII:58:7-59:11] He also testified at
15 length about the efforts Laidlaw's makes to promote the lifestyle. [See, e.g., BL I:48:17-52:8;
16 57:12-63:9; 68:14-70:3.] Mike Kennedy testified similarly about the "Harley-Davidson
17 experience," and the role authorized dealers play. [MK. I:131:15-133:11] He noted that when he
18 meets a person wearing a Harley-Davidson shirt, he asks: "'Who is your dealer?' That's all you
19 have to say...and they'll go on about how proud they are of their dealer...It's our dealer who drives
20 the execution of [the] brand." [See MK. I:158:2-13.]

21 The bottom line is that Harley-Davidson depends on its authorized dealers to promote the
22 Harley-Davidson brand and lifestyle through the sale of the full line of Harley-Davidson products,
23 and sponsorship and promotion of rider activities, such as the H.O.G. chapters. Non-authorized
24 grey market resellers have no such obligations.

25 **d. Post-Sale Servicing and Sales of Parts and Accessories**

26 Finally, end-users who purchase new motorcycles directly from authorized Harley-
27 Davidson dealers are more likely to return to those authorized dealers for subsequent service by
28 properly trained Harley-Davidson personnel using proper equipment. [Ex. 175 ¶40] This is likely

1 to enhance safety and satisfaction as well. Such end-users also are more likely to buy parts,
2 accessories and MotorClothes® products from authorized Harley-Davidson dealers. In the present
3 case, retail sales in California are likely to generate more service and product related business for
4 California dealers.

5 3. Compliance with State, Federal and Foreign Laws and Regulations

6 Another purpose of the NRSP is to ensure compliance with state, federal and foreign laws
7 and regulations.⁸² [See, e.g., MK. I:158:16-159:2; TM. V:87:14-88:7.] This includes compliance
8 with laws related to exporting and importing (such as the import tax and duties laws of Thailand
9 and Vietnam discussed above, which grey market importers and resellers cleverly avoid) and laws
10 related to proper vehicle homologation. "Homologation" refers to the manufacture of a vehicle to
11 be in compliance with the laws, regulations and standards of a particular state or country. Harley-
12 Davidson has a Homologation Department in Milwaukee tasked with learning and keeping abreast
13 of the changing laws, regulations and other requirements of markets within the United States and
14 around the globe and making sure Harley-Davidson motorcycles are properly homologated for
15 particular markets. [TM. V:85:24-86:9] Authorized dealers have obligations relating to
16 homologation as well. The Dealer Contract of Mr. Guthrie's Thai dealership, for example,
17 requires that, before products are sold there, the dealership shall, at its expense, "make all
18 modifications," including installing special equipment supplied by Harley-Davidson "that may be
19 required to conform to local and/or national governmental regulations." [Exs. 285 ¶9 and 285A at
20 HDMC11470-1] It must also, at its expense, obtain "all certifications and/or homologation
21 approvals that may be required" and keep Harley-Davidson "fully informed of all such
22 modifications required by such regulations." [Ex. 285A at HDMC11470-1]

23 Different states and countries have widely different laws, regulations and standards
24 relevant to homologation. These affect things such as braking and lighting systems, mufflers and
25

26 ⁸² Mr. McGowan testified that compliance with local laws and regulations promotes "good
27 relationships with the governments in all the countries we work with....Harley-Davidson basically
28 just wants to play by the rules." [TM. V:87:14-88:7]

1 noise control systems, safety features (such as side stand interlock requirement that prevents
2 operation when the kickstand is down), permissible external projections, labeling requirements,
3 and evaporative and tailpipe emissions systems. [TM. V:81:3-85:14] California, for example, has
4 stricter emissions control laws than other U.S. states. Harley-Davidson, therefore, specially builds
5 motorcycles for California. Thailand, as another example, has stricter emissions and noise
6 controls than many other countries. [TM. V:85:1-14; *See also* Ex. 285 ¶18; Ex. 175 (Hanssens
7 Report) at ¶47, citing Thai Pollution Control Department Website] Harley-Davidson thus
8 specially builds and allocates motorcycles for Thailand. By requiring that motorcycles be sold
9 only by authorized dealers (who, as noted above, have homologation related obligations)⁸³ and not
10 for shipment abroad (*i.e.*, to jurisdictions with different laws, regulations and standards than those
11 of the U.S.), the NRSP facilitates compliance with state, federal and foreign laws.

12 **4. Integrity of Harley-Davidson's Worldwide Distribution Network**

13 The NRSP also is designed to protect the integrity of Harley-Davidson's worldwide
14 distribution network. There are two major components to this: First, the NRSP facilitates the
15 proper allocation of product, specially homologated for different jurisdictions. Second, it protects
16 the enormous efforts and investments of Harley-Davidson's authorized dealers to make sales and
17 promote the brand.

18 **a. Product Allocation**

19 The shipment of product homologated and allocated for one geographic area into another
20 interferes with Harley-Davidson's carefully determined allocation decisions, and denies customers
21 in the markets from which product is shipped vehicles specially homologated for them. Harley-
22 Davidson's production and allocation policy is to "supply one less [vehicle] than total demand."⁸⁴

23 _____
24 ⁸³ In addition to having homologation related requirements, Harley-Davidson requires its dealers
25 to sign the Foreign Corrupt Practices Act, basically forbidding dealers from using illegal means
26 for achieving business goals. This reflects the Company's view that both it and its dealers must
27 "play by the rule[s]." [FA. VI:191:8-192:10]
28 ⁸⁴ Thus, for example, the Company significantly and rapidly cut production following the
economic crisis in 2008. [*See* Ex. 206 and MK. II:11:22-13:14]

1 [MK. I:113:17-23] As a result, supply and demand are tight. This is true in California, where,
2 due to the State's unique homologation requirements, "dealers are allocated units from a separate
3 pool of available production consisting of motorcycles built to California state law specifications."
4 [Ex. 212 at p. 10414; *See also* MK. II:13:2-15:25] In 2010, the year in which most Laidlaw's
5 Export and Rental Violation occurred, Southern California dealers asked Harley-Davidson to
6 "build us more product" so they could "sell more motorcycle[s]." [MK. II:93:14-17] These facts
7 (tight supply and special allocation for special markets such as California) mean that Laidlaw's 59
8 Export and Rental Violations denied California end users 59 motorcycles specially built for them.
9 [MK. I:113:17-23 and II:92:18-93:20] The same problem arises in any jurisdiction from which
10 grey market sales are exported.

11 Additionally, any manufacturer must have accurate information upon which to base
12 production and allocation decisions. [*See* DH. VI:81:20-82:20. *See also*, MK. II:8:14-10:11]
13 Exporting motorcycles in violation of the NRSP denies Harley-Davidson such information. The
14 retail sales performance of dealerships, such as Laidlaw's, that commit NRSP violations is
15 improperly inflated. [*See* MK. II:8:14-10:11] Meanwhile, the true demand in markets to which
16 such sales are exported is understated. [*Id.*] This is because the export sales are not made by
17 authorized dealerships in those markets and are not reported to Harley-Davidson as sales there.
18 [*Id.*] As Mr. Kennedy explained, if dealers were allowed to sell for shipment abroad, the impact
19 on production planning and fair allocation "would be absolute chaos in terms of trying to run the
20 business." [MK. II:9:4-5]

21 **b. Interference With Efforts of Authorized Dealers to Promote the**
22 **Brand and Develop Markets**

23 There is little disagreement that Harley-Davidson depends upon the efforts and
24 investments of its authorized dealers to sell product and promote the brand. This is true both
25 domestically and internationally. In order to maintain an effective and mutually-beneficial
26 network of dealers, Harley-Davidson must be able to promote investment by its authorized
27 dealers.

28 As two illustrations, the declarations of Messrs. Guthrie and Abry recount the efforts and

1 investments they have made to promote the brand in great detail. [See Ex. 283 ¶¶5-17; Ex. 285
2 ¶¶4-14]

3 In Thailand, Mr. Guthrie's dealership (Harley-Davidson of Bangkok Thailand or "HDT")
4 has been in operation since 2006. Prior to that time there was no Harley-Davidson dealer in
5 Thailand, except for two years in the 1990s. Thus HDT has had to develop the Thai market
6 essentially from scratch, competing against already established brands, such as BMW and Ducati.
7 [Ex. 285 ¶4] HDT has had to invest heavily to (among other things) build and renovate its current
8 facility, purchase special diagnostic and service equipment, stock adequate inventory, train sales
9 and service personnel, maintain liability and casualty insurance, advertise, sponsor activities that
10 promote the Harley-Davidson lifestyle, and comply with its homologation related obligations
11 (including paying to send Thai government inspectors to the United States once or twice a year to
12 witness test procedures for motorcycles homologated for Thailand). Last year alone, HDT spent
13 \$530,000 on advertising and promotional events. [Ex. 285 ¶11] HDT currently is building a new,
14 state-of-the-art, 2,500 square meter facility that it plans to open next year. [Exs. 285 ¶14 and
15 285D]

16 The efforts and investments of Harley-Davidson's Jordanian dealer, Claude Abry, and his
17 dealership, Harley-Davidson of Amman Jordan ("HDJ"), are equally impressive. Jordan
18 prohibited the sale of large motorcycles prior to May 2010. Mr. Abry worked with the King of
19 Jordan (whom he had served as personal chef) to have the law changed. HDJ then had to develop
20 the market from scratch, facing competition from entrenched manufacturers already selling other
21 brands of smaller motorcycles. Mr. Abry and HDJ have made numerous substantial investments
22 similar to those of HDT. [See Ex. 283 ¶¶5-17.] Among other things, it built a new state-of-the-art
23 facility which it opened last year. [Ex. 283C] HDJ also provides extensive motorcycle rider
24 training to its customers. [CA. V:48:16-25]

25 Grey market activity undermines the efforts of authorized dealers, such as Mr. Guthrie and
26 Mr. Abry, in a number of ways. First, it negatively impacts the Harley-Davidson brand, which
27 authorized dealers strive so hard to promote. In Thailand and Jordan, for example, the Harley-
28 Davidson brand is adversely affected by the problems discussed above, such as improper

1 disassembly and reassembly, improper or non-existent PDI, poorly or mis-informed end-users,
2 end-users who lack recall and other important information. Even though these problems result
3 from the actions of grey market exporters and resellers (and the enabling actions of dealers such as
4 Laidlaw's), grey market purchasers are likely to blame the brand for the problems, as much as, or
5 more than, the grey market resellers. [Ex. 283 ¶46 and Ex. 285 ¶18; DH. VI:84:8-95:4]⁸⁵ This is
6 consistent with principals of marketing and brand value discussed by Professor Hanssens, who
7 notes in his report:

8 Regardless of the process by which these gray-market Harley-
9 Davidson motorcycles are brought into foreign markets, they all
10 carry the Harley-Davidson brand and are marketed to the ultimate
11 consumer as such. Therefore, consumers within the gray-market
12 motorcycle with regards to both performance and safety. [Exhibit
13 175 (Hanssens Report) at ¶44]

14 Second, "free-riding" by grey marketers undermines the efforts of authorized dealers, such
15 as Mr. Guthrie and Mr. Abry. "Free-riding" refers to a phenomenon in distribution in which a low
16 investment seller exploits the efforts of a high investment seller. Consumers obtain information
17 and form brand opinions based on the efforts of the high investment seller and then purchase the
18 product more cheaply from the low investment seller. The low investment seller "rides for free"
19 off of the promotion efforts of the high investment seller. An example in the present case is that
20 Mr. Abry's grey market competitor, Alaa Alsharif, has actually brought prospective Harley-
21 Davidson customers into Mr. Abry's state-of-the-art showroom in order to familiarize them with
22 various products. He has then sold his grey market imported Harley-Davidson motorcycles to
23 these prospects at a lower grey market price. [Ex. 283 ¶23] Mr. Abry's investments thus have
24 subsidized Mr. Alsharif.

25 Due to free-riding and other questionable practices (such as the disassembly and
26 reassembly of motorcycles in Southeast Asia to avoid taxes and tariffs and reselling in small

27 ⁸⁵ People in developing countries, moreover, have higher expectations on premium brands than in
28 other countries. [DH. VI:92:13-93:22]

1 quantities from ground floor shophouses to avoid Value Added Taxes),⁸⁶ grey marketers often are
2 able to undersell authorized dealers. This makes it more difficult for authorized dealers to recoup
3 their substantial investments and succeed against other competing brands. [Ex. 283 ¶¶47-49, Ex.
4 285 ¶17; Ex. 287 (Declaration of Nick Colledge) ¶¶6-11; Ex. 175 (Hanssens Report) at ¶¶49-51
5 and 53] Laidlaw's own expert, Edward Stockton, agreed that grey market free-riding erodes, in
6 the long run, the profits and undermines the investments of authorized dealers [ES. XI:47:20-
7 48:24] and that "virtually any dealer would be upset by" free riding. [ES. XI:83:17-84:5]

8 Grey market selling also threatens Harley-Davidson's ability to find persons willing to
9 make the investments necessary to establish a presence in new markets (such as Vietnam or
10 several Middle Eastern countries) in which there currently is no Harley-Davidson dealer, but
11 where Harley-Davidson may wish to enter. [Ex. 287 ¶6; Ex. 175 (Hanssens Report) at ¶53] In the
12 long run, grey marketing threatens to disincentivize authorized dealers from undertaking
13 obligations and making necessary investments necessary to promote the brand. [Ex. 283 ¶¶47-49;
14 Ex. 285 ¶13] This threatens the entire distribution network, both in developing markets, such as
15 Jordan and Thailand, and elsewhere, *e.g.*, domestically, including in California.

16 5. Protecting the Brand Generally.

17 Finally, the NRSP is designed to protect the Harley-Davidson brand – a highly valuable
18 asset. As Mr. Kennedy explained, Harley-Davidson:

19 frequently referred to as a top 100 brand. More times than not it is
20 compared to brands like your laptop, Apple Computer... And people
21 really – you know, there's a T-shirt we sell that says, "if I have to
22 explain it, you wouldn't understand," And if you've ever met a
23 Harley rider then I could probably just stop and move on to the next
24 subject. They are all in. They love the product. They love the
25 lifestyle. [MK I:112:19-113:4]

26 The continued strength of the brand, depends, in large part, on the efforts of Harley-
27 Davidson's authorized dealers. As Mr. Kennedy put it: "The dealer is our brand locally." [MK.
28 I:126:25] As Professor Hanssens opined:

27 ⁸⁶ See p. 52, n. 73 above.

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For a global organization such as Harley-Davidson, which depends upon independent [authorized] dealerships to serve as the primary liaison between the Company and its consumers, each of these objectives [stated in the NRSP above] represents a vital component of the Company's more general efforts towards building and maintaining a global brand. [Ex. 175 ¶23]⁸⁷

The value of the Harley-Davidson brand is affected by all of the concerns discussed above – safety, customer satisfaction, compliance with laws and regulations, and the integrity and health of Harley-Davidson's distribution network. Harley-Davidson is the last major American motorcycle manufacturer. It faces stiff international competition. One of its advantages is the high brand value global customers attach to its products and the allure of the Harley-Davidson lifestyle. The protection of that brand value benefits Harley-Davidson, its hundreds of authorized dealers, their employees and the public, which enjoys greater inter-brand competition and the option to consume high quality Harley-Davidson products and authorized service.

B. Reasons for Relevant NRSP and FSP Provisions re Sales to Rental Companies

The NRSP and FSP provisions regarding sales to rental companies that are at issue in this case are supported by reasons similar to those discussed above. First, the proper PDI, sale and completion of paperwork at dealership facilities for motorcycles sold to rental companies promotes safety and customer satisfaction. [MK. II:24:2-26:14] This is true even though rental companies are not the riders of the bikes. Direct delivery to rental companies at dealership facilities allows dealers to ensure that rental companies follow procedures designed to insure the safety of their riders. [*Id.*]

Second, the proper sourcing of rental sales is critical to Harley-Davidson's allocation system. Harley-Davidson's rental and retail allocation systems are completely different. Rental motorcycles are "specially built at the factory" upon the request of a dealer, who must call Harley-Davidson and place an order. [MK. II:26:17-27:12] A dealer's individual pleasure unit allocation,

⁸⁷ See also DH. VI:64:21-79:17 and 84:8-95:4.

1 by contrast, is determined at the beginning of the year "based on the dealer's market area, based on
2 the retail sales performance, [and] based on their inventory as it relates to other dealers in the
3 area." [MK. II:28:24-29:3] All allocation, moreover, is subject to Harley-Davidson's policy of
4 "trying to supply motorcycles at a rate of one less than total demand because we don't want our
5 product to become a commodity." [MK. I:113:17-23] This means that the improper sourcing of
6 rental sales from pleasure unit allocation denies motorcycles to retail customers, such as the
7 Californians who lost out on Laidlaw's 17 Rental Violation motorcycles. The improper sourcing
8 of fleet sales from the pleasure unit allocation, and the reporting of such sales as "retail" sales (as
9 Laidlaw's did), also inflates the violating dealer's reported retail sales performance. Since
10 allocation is based on reported retail sales performance, this interferes with proper allocation in
11 subsequent months and years.

12 **VI. The Balance of Evidence Establishes Good Cause for Termination.**

13 The balance of evidence establishes good cause to terminate Laidlaw's Dealer Contract
14 under the factors set forth in Cal. Veh. Code Sec. 3061.

15 **A. Section 3061(a): Amount of Business Transacted by the Franchisee, as**
16 **Compared to the Business Available to the Franchisee**

17 Laidlaw's transacts a moderate volume of business. But it has failed to transact business
18 appropriately by selling 59 new motorcycles specially built and allocated for California end users
19 to exporters, resellers and rental companies in violation of the NRSP and FSP. Laidlaw's should
20 have focused its efforts on making these sales locally, as its Dealer Contract provides [Ex. 2 at
21 LLA10712], and the sales should have been made to retail customers as its Dealer Contract and
22 the NRSP require. Large volume dealers, moreover, should not be allowed to violate the NRSP
23 simply because of their size. Such a rule would interfere with the continued consistent
24 enforcement of the Policies. There are roughly one hundred U.S. dealers that sell more new retail
25 Harley-Davidson motorcycles than Laidlaw's. [Ex. 315; AS XI.86:17-88:17⁸⁸; MK II:96:11-12]

26 _____
27 ⁸⁸ Specifically, Ms. Stewart testified that Ex. 315 shows that Laidlaw's ranked 101 nationally in
28 2011 in the retail sales of pleasure units.

1 If large volume dealers were allowed to commit NRSP violations, Harley-Davidson "would have
2 not only chaos on [its] hands in terms of the number of violation[s], but then [it] wouldn't be
3 treating smaller dealers in a consistent way." [MK. II:96:22-25] Indeed, if all large volume
4 dealers, or dealers of all sizes, were allowed to sell 59 motorcycles in violation of the NRSP, this
5 would result in significant magnification of all of the risks discussed above, to the tune of
6 thousands of violations per year. Also the harm caused by NRSP violations is proportional to the
7 number of violations, not the size of the violating dealership.

8 **B. Sections 3061(b) and (c): Investment Necessarily Made and Obligations**
9 **Incurred by the Franchisee to Perform Its Part of the Franchise;**
10 **Permanency of the Investment**

11 Laidlaw's has not presented relevant or credible evidence regarding the extent to which it
12 will suffer any investment loss if it is terminated. Its only evidence as to the dollar amount of any
13 such loss is the slender report of its purported expert on this topic, Carl Woodward, and his trial
14 testimony. Mr. Woodward claims that, if terminated, Laidlaw's will sustain a \$2,000,000
15 diminution in the value of its real estate (the "real estate loss") plus a \$6,000,000 loss in
16 "goodwill" value (the "goodwill value loss").

17 **1. The Alleged Real Estate Loss**

18 The alleged \$2,000,000 real estate loss is neither relevant nor credible for several reasons.
19 First, as is explained in Respondent's January 6, 2012 Brief Regarding the Relevance of Non-
20 Franchisee Investments, Laidlaw's does not own its facility and underlying real estate. Any real
21 estate loss therefore is not a loss of an investment "made by the franchisee" and is not cognizable
22 under Cal. Veh. Code §3061.

23 Second, Mr. Woodward's \$2,000,000 figure is without credible evidentiary support. Mr.
24 Woodward is not a real estate appraiser, and has no expertise in appraising facilities. [CW.
25 X(afternoon session):53:25-54:12] His report provided no explanation of how he arrived at the
26 \$2,000,000 figure. At trial, he explained his methodology as follows:⁸⁹

27 ⁸⁹ See *Id.* at 23:17-27:9.

- 1 • He began with an appraisal done by someone else prior to litigation that valued the facility
and real estate at \$6,640,000.⁹⁰
- 2 •
- 3 • Then he assumed that after termination, the real estate holding companies that own the
property would be unable to sell it for three years, and the property would remain vacant.
4 [Id. at 25:11-15] That assumption, he first testified, was based on the fact that "maybe
5 five" of his customers had not been able to sell their properties for three years. [Id. at
25:13-15] Later, on cross, he conceded that at his deposition he could remember only four
6 such customers, and that all of them were GM and Chrysler dealers in the Midwest. [Id.
55:14-57:9]
- 7 • He next assumed that the real estate companies that own the Laidlaw's facility would incur
an annual "holding cost" equivalent to 10% of the \$6,640,000 appraised value. He testified
8 that the 10% figure is based on "a typical mortgage payment that you might have with an
interest rate today – I don't know what it would be today necessarily -- somewhere less
9 than 10 percent, the holding cost, which is what the mortgage payment would be, plus
property taxes and insurance, minimal utilities to keep the building back where I live so it
10 doesn't freeze up, which I don't think you folks have that issue out here, that's roughly 10
percent a year." [Id. at 24:20-25:15]
- 11 • Thus, assuming vacancy for three years and certain holding costs, he calculated a total
expense equal to 30% of the \$6,640,000 value, \$1,990,000, which he rounded up to
12 \$2,000,000. [Id. 26:4-14; 33:3-34:5]

13 Mr. Woodward's \$2,000,000 figure lacks adequate foundation and is highly speculative.
14 The assumption that Laidlaw's facility will remain unsold and vacant is based on the experiences
15 of a few dealers in a different region of the country, selling the automobiles of GM and Chrysler,
16 two manufacturers that experienced bankruptcy in 2009 and shed hundreds of their dealers
17 nationwide within a very short period of time. The 10% per year "holding cost" reflects an
18 assumption about a "typical mortgage payment." Mr. Woodward admitted he does not know what
19 that would be. It is not based on any mortgage payments by the real estate holding companies that
20 own the Laidlaw's facility. It also reflects, in part, assumptions about property taxes and utilities
21 in regions of the country that freeze for much of the year. It is not based on the property taxes
22 paid by the real estate holding companies that own the Laidlaw's facility, nor does it reflect
23

24 ⁹⁰ Harley-Davidson objected at trial to Mr. Woodward's testimony about a valuation he did not do.
25 [Id. at 23:15-24:9] See *People v. Campos* (1995) 32 Cal. App. 4th 304, 308 ("An expert witness
26 may not, on direct examination, reveal the content of reports prepared or opinions expressed by
non-testifying experts... The reason for this is obvious. The opportunity of cross-examining the
27 other doctors as to the basis for their opinion, etc., is denied the party as to whom the testimony is
adverse.") (*internal quotation and citations omitted*)

1 heating costs (if any) in sunny Southern California.

2 Finally, the assumption of vacancy ignores the fact, which we discuss below, that Harley-
3 Davidson intends to fill Laidlaw's Baldwin Park point after Laidlaw's Dealer Contract is
4 terminated, and indeed, has offered to assist Laidlaw's in selling its assets and/or allow the real
5 estate holding companies to lease the Laidlaw's facility to a new dealer. [Ex. 223; MK. II:101:21-
6 103:10] If the holding companies agree to sell or lease its facility to the new dealer, soon after
7 termination, there should be little or no facility-related loss.

8 2. The Alleged Goodwill Loss

9 The claimed \$6,000,000 goodwill value loss, similarly, is neither relevant nor credible.

10 It is not relevant because Section 3061 requires the Board to consider "investments
11 necessarily made" and the "permanency" of such investment. The \$6,000,000 figure is not an
12 "investment made" by the dealership; it is an alleged *value*. An example of a goodwill
13 "investment made" might be what Bob Laidlaw's paid, if anything, for goodwill value when he
14 purchased the dealership. Such evidence often is presented in Board hearings. But there is no
15 such evidence here.

16 The \$6,000,000 figure is not credible for several reasons. Mr. Woodward's report provided
17 little information about how it was calculated, and his trial testimony shed no light on the matter.
18 [CW. X(afternoon session):6:25-13:5] Apparently he arrived at the \$6,000,000 figure (actually
19 the midpoint of a range between \$4,000,000 and \$8,000,000)⁹¹ by applying a multiple of "five" to
20 Laidlaw's annual "normalized pre-tax earnings." [*Id.* at 10:4-9; 11:15-17] These he "weighted" *in*
21 *some unspecified manner* that gave more weight to the dealership's normalized pre-tax earnings
22 prior to 2008. There is no evidence of *what* precisely Mr. Woodward calculated the dealership's

23

24 ⁹¹ He also testified that he "cross-check[ed]" his \$6,000,000 figure by assuming that motorcycle
25 dealerships have a goodwill value equivalent to \$10,000 to \$15,000 per vehicle sold and
26 multiplying those numbers times Laidlaw's units sold. [See CW. X(afternoon session):12:19-13:5]
27 He conceded on cross that, at his deposition, he could recall only two motorcycle dealerships that
28 he had ever evaluated that might somehow support this approach. [CW. X(afternoon
session):41:3-45:11] Mr. Rasmussen did not ask on re-direct whether he could recall any other
motorcycle dealerships that he had evaluated.

28

1 normalized pre-tax earnings to be for each of the years he weighted. Nor is there any evidence of
2 *how* Mr. Woodward weighted the years, other than that he gave more weight to years before 2008.
3 Mr. Woodward's calculations should be discarded due to lack of foundational evidence, which
4 presumably was available had Laidlaw's wished to present it.

5 Additionally, assuming goodwill value can be determined by multiplying some measure of
6 earnings against a "multiple" of some sort, it is improper to discount recent earnings performance.
7 To the contrary, as Dr. Hanssens⁹² testified, recent performance is more relevant to business
8 valuation than distant performance. [DH. VI:104:22-106:5] Mr. Woodward conceded that
9 Laidlaw's goodwill value is only about \$1,000,000 when based on the "normalized pre-tax
10 earnings" for any of the most recent years, e.g., 2008, 2009, 2010, or the first part of 2011. [CW.
11 X(afternoon session):53:8-53:24] Surely, this is a more credible figure than values based on the
12 unspecified weighting of distant past years.

13 **C. Section 3061(d): Whether it is Injurious or Beneficial to the Public Welfare**
14 **for the Franchise to be Modified or Replaced or the Business of the**
15 **Franchisee Disrupted**

16 The public welfare factor weighs heavily in favor of termination. Terminating Laidlaw's
17 Dealer Contract will not injure the public because Harley-Davidson intends to fill Laidlaw's point
18 with a new dealer of comparable quality promptly after this Protest is overruled. [MK. II:99:12-
19 103:23] Harley-Davidson has a list of people who are "both qualified and interested in becoming
20 a dealer" in Laidlaw's market. [MK. II:100:15-18] It will begin contacting prospective
21 replacements immediately upon Laidlaw's termination. [*Id.* at 101:1-6] At present, Harley-
22 Davidson would not object to the leasing of Laidlaw's facility to the new dealer. [MK. II:101:21-
23 25. Indeed, it told Laidlaw's that it would help the real estate holding companies sell or lease the
24 facilities. [Ex. 223; MK. II:101:21-103:10] As an alternative, Harley-Davidson, working with a
25 vehicle industry consulting company, Urban Science, has driven the market and identified 12 or
26 15 other possible locations in the Baldwin Park area for a replacement dealership. [AS. IV:125:5-

27 ⁹² Dr. Hanssens, a professor at the Anderson School of Management at UCLA since 1977, testified
28 that he has "written a fair amount" on financial valuation. [DH. VI:104:14-17]

1 126:8 and 137:22-138:23] Some of these facilities are adjacent to I-10, like Laidlaw's, some are
2 empty lots and some contain buildings that could be converted into a dealership. [*Id.*] During any
3 period required for the new dealer to begin operations, local consumers can turn to the several
4 Harley-Davidson dealers in Laidlaw's vicinity. [MK. II:103:11-23; AS. IV:126:9-131:1]⁹³ They
5 therefore will not be inconvenienced by Laidlaw's termination.

6 Meanwhile, terminating Laidlaw's Dealer Contract is in the public interest for several
7 reasons. Laidlaw's Export and Rental Violations have denied California consumers 59
8 motorcycles specially built and allocated for the California market. Given the tight relationship
9 between the supply and demand for Harley-Davidson's motorcycles, including in California, these
10 59 sales likely would have been made to end-users here, but for the violations. [MK. I:113:17-23
11 and II:92:18-93:20] The 59 violations also have cost California dealers sales of General
12 Merchandise and Parts and Accessories that they would have made if the vehicles had been sold to
13 California end-users. The loss of sales in California have cost state and local governments money
14 that otherwise would be obtained in sales taxes and registration fees.⁹⁴

15 More broadly, termination of Laidlaw's Dealer Contract serves the public welfare because
16 the continued consistent enforcement of the NRSP is critical to the safety and satisfaction of
17 consumers, and to compliance with laws and regulations, everywhere – in Thailand, Jordan, and
18 Vietnam, and in other places, such as California. Messrs. Albrecht, Guthrie and Abry have
19 testified about how grey market activity harms consumers (and the brand) in Asia and the Middle
20 East. But the same types of harm can happen here. Though most NRSP violations involve
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22 _____
23 ⁹³ In 2010 and the first half of 2011 respectively, 72% and 74% of Laidlaw's sales were registered
24 to customers outside its own territory. [Exs. 98 and 99; AS. IV:128:10-13:1.] These customers
25 can go to their local dealers if there is any interruption in service in the Baldwin Part area prior to
26 appointment of a replacement dealer. Ex. 281 shows the distances from Laidlaw's to the
27 surrounding dealers that provide service to customers in the area. [AS. IV:127:13-128:9]

28 ⁹⁴ See, e.g., Ex. 279, showing that Laidlaw's failed to collect \$13,559 in registration fees (\$9,397
for the Export Violations and \$4,162 for the Rental Violations) and \$85,871 in sales taxes
(\$59,517 Export Violations and \$26,354 for the Rental Violations). See also SV. III:209:11-
210:11 (explaining preparation of Ex. 279).

1 exports, nearly 50% involve sales within the United States, including sales into California. [SV.
2 II:213:4-217:3] If enforcement of the NRSP is eroded, there will be little to stop grey marketers
3 from selling improperly PDI'd motorcycles to Californians, or from importing into this state non-
4 California-compliant motorcycles from states with less stringent emissions laws. Furthermore, if
5 the policy and the Harley-Davidson's critical SWR requirements are undermined, Harley-
6 Davidson will have greater difficulty providing critical information, such as recall notices to
7 consumers everywhere, including in California.

8 It also is in the public interest for the Harley-Davidson brand to remain strong and for
9 Harley-Davidson to continue to have a strong and effective distribution network. Most of the
10 witnesses in this case, including the dealers in Jordan and Thailand, and many of Laidlaw's
11 witnesses, have testified, in one way or another, about the special obligations authorized Harley-
12 Davidson dealers have and the extraordinary investments they make. Several have extolled the
13 Harley-Davidson lifestyle in glowing terms. A healthy Company, valuable brand and a strong
14 dealer body benefits everyone. It benefits California dealers and their employees, and it benefits
15 the public, which, among other things, can expect greater inter-brand competition, greater choice,
16 better service, and greater safety. The alternative, a system in which authorized dealers are
17 disincentivized by grey market activity from investing to promote the brand and achieve the
18 highest levels of customer satisfaction and safety, serves nobody's interest.

19 **D. Section 3061(e): Whether the Franchisee Has Adequate Motor Vehicle**
20 **Sales and Service Facilities, Equipment, Vehicle Parts, and Qualified**
21 **Service Personnel to Reasonably Provide for the Needs of the Consumers**
for the Motor Vehicles Handled by the Franchisee and Has Been and Is
Rendering Adequate Services to the Public

22 This is not a typical case in which a manufacturer seeks to terminate a poorly performing
23 dealer. Harley-Davidson has not offered evidence that Laidlaw's lacks adequate sales and service
24 facilities, equipment, parts, and qualified service personnel, or that it has been rendering
25 inadequate services to the public.⁹⁵ Nevertheless, we observe that because this litigation is largely

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27 ⁹⁵ Other than by failing to fulfill PDI and SWR-related obligations in connection with the Export
28 and Rental Violations, and knowingly selling bikes that will be disassembled and reassembled
(footnote continued)

1 about Harley-Davidson's ability to protect the efforts and investments of all its authorized dealers,
2 the policy concerns underlying Section 3061(e) are implicated. If Harley-Davidson's authorized
3 distribution network is eroded by grey market resellers who have no obligation to the system,
4 franchisees everywhere, including in California, will have less incentive to do the things necessary
5 to promote the brand and serve the public in ways the Vehicle Code is intended to encourage.

6 **E. Section 3061(f): Whether the Franchisee Fails to Fulfill the Warranty**
7 **Obligations of the Franchisor to be Performed by the Franchisee**

8 Laidlaw's has failed to fulfill its warranty obligations to Harley-Davidson by submitting
9 false and inaccurate SWR information. This violates paragraph F(3) of Laidlaw's Dealer Contract
10 which requires it to:

11 register with Seller all Harley-Davidson Motorcycles...sold by
12 Dealer for purposes of establishing warranty protection, providing
13 essential information in the event of a recall of Harley-Davidson
14 Products...all in accordance with Seller's written procedures from
15 time to time. [Ex. 2, at LLA10717]

16 It also violates the NRSP and the instructions on the SWR Forms, both of which expressly require
17 the submission of accurate SWR information, *on penalty of possible termination*.

18 **F. Section 3061(g): Extent of Franchisee's Failure to Comply With the Terms**
19 **of the Franchise**

20 Laidlaw's 59 Export and Rental Violations, and its related breaches of PDI and SWR-
21 related obligations, represent a massive failure by Laidlaw's to comply with the terms of its
22 franchise. The evidence shows that Laidlaw's knew it was selling to exporters; knew or should
23 have known that it was selling to non-end users; and knew it was selling to rental companies in
24 violation of the Sourcing Rule. The evidence of Laidlaw's notice of the relevant policies is
25 overwhelming and un rebutted.

26 There also is considerable evidence of misrepresentation and concealment. This includes
27 reporting false SWR information; obtaining incentives and allowances for non-retail sales; Brent

28 _____
abroad unsafely.

1 Laidlaw's failure to reveal the Rental Violations (i.e., his failure to confirm with Harley-Davidson
2 Mr. Svensson's alleged advice); Laidlaw's false representation in February 2011 that it had merely
3 sold to exporters, but not resellers, even though it must have known better;⁹⁶ and Laidlaw's failure
4 to report NRSP violations of which it was aware until being asked about them by Harley-Davidson
5 and audited.⁹⁷

6 In terms of relevant contract provisions, Laidlaw's has violated paragraph 1(A) of its
7 Dealer Contract [Ex. 1] which grants Laidlaw's the right to purchase and resell vehicles at retail,
8 and the following paragraphs of the General Conditions of Sales and Services [Ex. 2]:

9 ¶B(6), which provides that it shall not sell for resale to non-retail
10 customers and that it shall comply with policies and position
statements in that regard;

11 ¶F(2), which requires compliance with the PDI and customer
12 signature requirements discussed in this brief;

13 ¶F(3), which requires compliance with SWR-related requirements
discussed in this brief;

14 ¶M(4)(b), which permits termination for, among other things, the
15 submission of information that contains material misrepresentations;

16 ¶M(6)(c), which permits termination for, among other things,
17 conduct that may impair the goodwill associated with the Harley-
Davidson trademark; and

18 ¶M(6)(f), which permits termination for failure to fulfill any other
responsibilities under the Contract.

19 VII. Conclusion

20 The NRSP is a core requirement derived from Laidlaw's foundational contractual
21 obligation to "sell at retail" – an obligation tied to Laidlaw's authorized role to be a *dealer* – not
22 some sort of middleman, wholesaler, or distributor to foreign lands. The continued enforcement
23 of the NRSP and related obligations is vital to Harley-Davidson, its distribution network and the

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25 ⁹⁶ Given the Ngo email chain, the large purchases by the Truong, Alsharif and Ahkuputra Groups,
and Brent Laidlaw's own Red Flag about overseas affiliates, Laidlaw's must have known better.

26 ⁹⁷ As was noted above, Chris Tolman told Brent Laidlaw he (Tolman) had violated the NRSP as
27 many as 15 times in the Fall of 2010 and Matt Laidlaw had committed additional violations. [CT.
X(morning session):60:17-61:8]

1 public welfare. Laidlaw's assertions that it failed to "sufficiently understand" or "read" the two-
2 page NSRP (or read its Dealer Contract) are no defense. Accepting such excuses, *particularly*
3 from large and relatively sophisticated enterprises such as Laidlaw's, serves neither Harley-
4 Davidson, the public, nor the hundreds of Harley-Davidson dealers that learn their obligations and
5 play by the rules. Given the materiality of Laidlaw's breaches, the importance of the policies at
6 issue, and Laidlaw's failure to show its investment losses from termination, good cause exists to
7 terminate Laidlaw's Dealer Contract.

8

9 DATED: March 9, 2012

Respectfully submitted,

COOPER, WHITE & COOPER LLP

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By: 

Robert L. Ebe
Attorneys for Respondent

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Appendix A: Exhibit 200 Explained In Detail

Exhibit 200 summarizes much of the critical documentary evidence, including the evidence found in sales jackets for the Export and Rental Violation sales. It is based on the revised spreadsheet to Mr. Verduyn's audit memo. [Ex. 236] The first two pages list chronologically, the 42 Export Violation sales. The third pages lists chronologically the 17 Rental Violation sales. The final page lists chronologically a few sales to the same persons who purchased the Export Violation motorcycles (the "Additional Sales"), about which Harley-Davidson learned in discovery. The Additional Sales either (1) are not violations (because they involved used vehicles) or (2) occurred before or after the period audited (December 2008 though January 2011) and thus were not stated grounds for termination. They show the total volumes of purchases made by some of the Export Violation purchasers, and thus (whether or not used vehicles are involved) are relevant to Laidlaw's awareness that it was selling to resellers. Also, two of the Additional Sales (to Billy Ngo on October 2, 2008 and to Mimi Lai on July 2011) are NRSP violations. If they are included, Laidlaw's sold not 59, but 61 motorcycles in violation of the NRSP.

As regards the Export Violations shown on pages 1 and 2, and moving from left to right, the first column shows the "reference number" Mr. Verduyn internally assigned to each transaction from a list of 70 questionable sales he investigated while visiting the dealership. There are gaps in the numbering, reflecting the fact that some of the sales Mr. Verduyn investigated turned out not to be violations. Color coding indicates the three main destinations of the export violation sales, based on shipping documents found in the deal jackets, and confirmed in most cases by the data obtained from the National Insurance Crime Bureau (NICB). An asterisk in the reference number column appears next to those sales that were the subject of a February 2011 inquiry letter from Steve Verduyn to Brent Laidlaw that preceded the Audit.

The second column shows the trial exhibit number for the sales jacket corresponding to the particular reference number. The third column shows which vehicles currently are subject to an "open recall" – meaning Harley-Davidson has announced a safety recall of the vehicle but the work has not been performed. The fourth column shows the date of sale, as reported by Laidlaw's to Harley-Davidson in Harley-Davidson's electronic SWR database. The fifth column shows the VIN of the motorcycle purchased. The sixth and seventh columns show the first and last names of the purchaser, as reported by Laidlaw's to Harley-Davidson in the electronic Sales and Warranty Registration data base. The eighth column shows that, in all but four cases, Laidlaw's SWR reported the sales as "retail" to Harley-Davidson in the electronic SWR database (thus, among other things, entitling Laidlaw's to certain incentives and allowances and to future allocation available only for retail sales). The ninth column shows how Laidlaw's reported the sales on hard-copy SWR forms maintained in the sales jackets for each sale. The tenth column shows whether Laidlaw's sales jacket for a given sale contains a properly completed and signed pre-delivery inspection ("PDI") checklist. *None do.* The eleventh column shows the type of violation documented, *e.g.*, whether an Export or Rental violation. The twelfth column contains some of Mr. Verduyn's internal notes regarding some of the evidence he found in the sales jackets. Finally, the far right column shows whether a given sale was reported as an export during 2009-2010 per the NICB database, and, if so, to what country. It is based on Exhibits 224 and 225. All but a few of the earliest and latest sales, mostly falling outside of the 2009-10 time frame covered by the NICB database, were so reported. Footnotes in the far right column also show shipping date and shipping vessel information reported by NICB for some of the transactions.

Export Sales Violations

Sources: Exs. 16; 224; 225 and 226.
 Color Key: Red = Shipped to Vietnam; Yellow = Shipped to Jordan; Blue = Shipped to Thailand

REFERENCE NUMBER	TRIAL EXHIBIT	Open Recalls	PURCH DATE	VIN NUMBR	LAST NAME	FIRST NAME	Electronic SWR	Paper/Fils SWR form	POI	Violation Class	NOTES	Export per MCB
3	63	0141 0145	20081227	1HD1FR4319Y646706	INGO	BILLY	Retail	Handwritten to Billy Ngo/UN Motors, marked retail	None in file	Export	Back of MSO made out to Billy Ngo d/ba UN Motors, check number UN Motors, BOL to Vietnam	
4	64		20090225	1HD1JD578Y043825	LAI	MIMI	Retail	marked retail	Incomplete, not signed	Export	Note in file "ship to Vietnam", copy of email from Billy Ngo to Rick Williams on export, BOL to Vietnam	
5	65		20090225	1HD4LE25X9K430882	LAI	MIMI	Retail	marked retail	Incomplete, not signed	Export	Note in file "ship to Vietnam", purchaser Billy Ngo c/o Mimi Lai, BOL to Vietnam	VN
6	68		20090319	1HD1JMS379Y055716	SU	FANGMING	Retail	blank	blank	Export	File in name of Ivan Velasco, BOL to Velasco in Oregon, vehicle paid for by Fangming SU	TW
9	66		20090622	1HD4LE2539K462907	NGO	BILLY	Retail	marked retail	Incomplete, not signed	Export	Back of MSO and CA title reassignment made out to Billy Ngo/Luxury Motorsports, BOL to Vietnam	VN-1
10	67		20090624	1HD1HPH369K807130	NGUYEN	DAVID	Retail	marked retail	None in file	Export	BOL to Vietnam	VN-1
11	50		20090627	1HD1BW5319Y066659	ALSHARIF	MUNEER	Retail	Incomplete signature marked retail	blank	Export	Freight bill to Aqaba, Jordan	JO
12	51	0141	20090627	1HD1FR4319Y689040	ALSHARIF	MUNEER	Retail	marked retail	Incomplete, not signed	Export	Freight bill to Aqaba, Jordan	JO
13	52	0145	20090627	1HD1HPH369K805627	ALSHARIF	MUNEER	Retail	marked retail	Incomplete, not signed	Export	Freight bill to Aqaba, Jordan	JO
14	53		20090627	1HD1HPH369K810477	ALSHARIF	MUNEER	Retail	marked retail	Incomplete, not signed	Export	Freight bill to Aqaba, Jordan	JO
16	69		20090908	1HD1HPH369K807319	TUN	SOUR	Retail			Export	Note to "shipping to Cambodia", copy of business card for Sour Tan on Imports/Exports	KH
17	44		20091212	1HD1JNS36AB025734	PALVATANA	TOY	Retail	marked retail	Incomplete, not signed	Export	Copy of away bill to Bangkok, Thailand	X
18*	55	0145	20100224	1HD1FTM36AB650190	ALSHARIF	MUNEER	Police Demo	marked retail	Incomplete, not signed	Export	Copy of freight bill to Aqaba, Jordan	JO
19*	58	0145	20100225	1HD1FTM37AB650604	ALSHARIF	MUNEER	Police Demo	not copied	Incomplete, not signed	Export	Copy of freight bill to Aqaba, Jordan	JO
22*	56		20100414	1HD1BW532AB036037	ALSHARIF	MUNEER	Retail	marked retail	Incomplete, not signed	Export	Copy of freight bill to Aqaba, Jordan	JO
23*	59		20100414	1HD1JDS30AB036478	ALSHARIF	MUNEER	Retail	marked retail	Incomplete, not signed	Export	Copy of freight bill to Aqaba, Jordan	JO
24*	60	0145	20100414	1HD1FR43XAB655038	ELSHIYAB	FATIMA	Retail	marked retail	Incomplete, not signed	Export	File in name of Muneer Asharif, copy of freight bill to Aqaba, Jordan	JO
25*	61		20100414	1HD1JNS32AB031336	ELSHIYAB	FATIMA	Retail	marked retail	Incomplete, not signed	Export	File in name of Muneer Asharif, copy of freight bill to Aqaba, Jordan	JO
34	125	0145	20100713	1HD1PR668AB656240	SRICHOO	TUPPORN	Retail	marked retail	blank	Export	Copy of away bill to Bangkok, Thailand	X
35	47		20100714	1HD1BX333AB036571	DAHAN	ASHLY	Retail	marked retail	Incomplete, not signed	Export	File in name of Muneer Asharif, copy of freight bill to Aqaba, Jordan	HK
36	48		20100714	1HD4LE237AC433990	DAHAN	ASHLY	Retail	marked retail	blank	Export	File in name of Muneer Asharif, copy of freight bill to Aqaba, Jordan	HK
43	54		20100811	1HD1GV439BC302965	TAMARY	MOUHAMMAD	Retail	marked as retail	blank	Export	File in name of Muneer Asharif, copy of freight bill to Aqaba, Jordan	JO



* = Vehicle was one of the 18 listed in Steve Verdunyn's 2/4/11 Inquiry letter to Brent Laidlaw (Ex. 16)

1 = Shipped on 7/18/09 (See Ex. 224)

2 = Shipped on 11/21/10 on the NYK Terra (See Ex. 225)

Export Sales Violations

REFERENCE NUMBER	TRIAL EXHIBIT	Open Recalls	PURCH DATE	VIN NUMBER	LAST NAME	FIRST NAME	Electronic SWR	Paper/File SWR form	PDI	Violation Class	NOTES	Export per NCB
44 *	19		20100901	1HD4LE23BC408500	TRUONG	AN	Retail	marked as retail	Incomplete, not signed	Export	Copy of commercial shipping invoice and separate seaway bill to Vietnam, dealer worksheet with customer as AMJ Trading Corp	VN
45 *	32		20100908	1HD4LE23BC408201	TRUONG	AN	Retail	marked as retail	Incomplete, not signed	Export	Copy of commercial shipping invoice and separate shipping manifest to Vietnam, dealer worksheet with customer as AMJ Trading Corp	VN
46 *	33		20100908	1HD4LE23BC409441	TRUONG	AN	Retail	marked as retail	blank	Export	Copy of shipping manifest to Vietnam, dealer worksheet with customer as AMJ Trading Corp	VN
47	45	0145	20100916	1HD1FRM38B608799	PALVATANA	TOY	Retail	marked as retail	Incomplete, not signed	Export	Copy of shipping receipt to Stam International Freightlines File in the name of Munier	TH
48 *	57		20101026	1HD1HPH34BC801972	ALSHARIF	ALAA	Retail	marked as retail	Incomplete, not signed	Export	Aleharif, copy of freight bill to Agaba, Jordan Different name in the Yonyyuth Khantassamboon, copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$ 109,500	JO
49 *	34	0144	20101030	1HD1JMS33BB023263	AHKUPUTRA	ART	Retail	marked as retail	blank	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$109,500 from Art Ahkuputra	TH 2
50 *	35	0145	20101030	1HD1KBM36B616785	AHKUPUTRA	ART	Retail	marked as retail	Incomplete, not signed	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$109,500 from Art Ahkuputra	TH 2
51	37	0144	20101030	1HD1JMS37BB019720	SAYANATH	JONATHAN	Retail	marked as retail	Incomplete, not signed	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$109,500 from Art Ahkuputra	TH 2
52	38	0145	20101030	1HD1KBM36B622848	SAYANATH	JONATHAN	Retail	marked as retail	Incomplete, not signed	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$109,500 from Art Ahkuputra	TH 2
53 *	36	0145	20101102	1HD1PZB30BB951954	AHKUPUTRA	ART	Retail	marked as retail	Incomplete, not signed	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$109,500 from Art Ahkuputra	TH 2
54 *	39		20101106	1HD1HPH30BC801984	BENCHARIT	PANPONG	Retail	marked as retail	Incomplete, not signed	Export	Thailand, copy of check to Laidlaw for \$49,100	TH 2
55 *	40	0144	20101106	1HD1JMS30BB018676	BENCHARIT	PANPONG	Retail	marked as retail	blank	Export	Thailand, copy of check to Laidlaw for \$49,100	TH 2
56 *	41	0144	20101106	1HD1JMS31BB018122	BENCHARIT	PANPONG	Retail	marked as retail	blank	Export	Thailand, copy of check to Laidlaw for \$49,100	TH 2
57 *	20		20101119	1HD1HPH38BC802283	LY	MUJOI	Retail	marked as retail	blank	Export	Copy of BOL to Bangkok Thailand, copy of check to Laidlaw for \$49,100	X
EXTRA	46		20101214	1HD1LC33BC418230	PHOMMASAYSY	MANISENGKEO	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH
EXTRA	260		20101114	1HD1LD631BC419799	SINGAPAN	TARRA	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH
EXTRA	281		20101112	1HD1LC331BC417968	PHOMMASAYSY	THOTSAGJANH	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH
EXTRA	262		20101114	1HD1KH33BB620459	SINGAPAN	PRIN	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH
EXTRA	263		20101120	1HD1MAAM33BB852851	PHOMMASAYSY	LONG	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH
EXTRA	264		20101120	1HD1JMS36BB028559	PHOMMASAYSY	CHANTHANAKPHONE	Retail	not copied	not copied	Export	payment on account, email acknowledgement by dealer	TH

* = Vehicle was one of the 18 listed in Steve Verdunyn's 2/4/11 inquiry letter to Brent Laidlaw (Ex. 16)

1 = Shipped on 7/16/09 (See Ex. 224)

2 = Shipped on 11/21/10 on the NYK Terra (See Ex. 225)

Rental Sales Violations

REFERENCE NUMBER	TRIAL EXHIBIT	Open Recalls	PURCH DATE	VIN NUMBER	LAST NAME	FIRST NAME	Electronic SWR	Paper/File SWR form	PDI	Violation Class	NOTES
7	242	0145	20090421	1HD1FB4389Y666748	JC BROMAC DBA EAGLERIDER	BUSINESS SALE	Business	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	RG sold as Rental
8	243	0145	20090421	1HD1FR4369Y646104	JC BROMAC DBA EAGLERIDER	BUSINESS SALE	Business	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	RG sold as Rental
20	244	0145	20100324	1HD1GF436AC320113	LAIDLAW'S RENTAL CTR VEHICLES	BUSINESS SALE	Retail	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
21	245	0145	20100324	1HD1MBM34AB852459	LAIDLAW'S RENTAL CTR VEHICLES	BUSINESS SALE	Retail	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	Trike sold as Rental
26	246	0145	20100429	1HD1FB431AB636787	LAIDLAW'S RENTAL CTR VEHICLES	BUSINESS SALE	Retail	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	RG sold as Rental
27	247	0145	20100429	1HD1FF432AB626353	LAIDLAW'S RENTAL CTR VEHICLES	BUSINESS SALE	Retail	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	Could not locate sales file
28	248	0145	20100615	1HD1FF431AB660594	LAIDLAW RENTAL CENTER, INC.	BUSINESS SALE	Retail	marked retail	Incomplete, not signed	Unauthorized Retail to Rental	Could not locate sales file
29	249	0145	20100617	1HD1FB438AB632672	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
30	250	0145	20100617	1HD1FF432AB620301	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
31	251	0145	20100617	1HD1KB435AB656259	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	RG sold as Rental
32	252	0145	20100617	1HD1KH435AB648911	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
33	253	0145	20100617	1HD1KH436AB646908	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	RG sold as Rental
37	254	0145	20100719	1HD1BW533AB015181	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
38	255	0145	20100719	1HD1BW534AB015593	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
39	256	0145	20100719	1HD1BW535AB041491	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	blank	Unauthorized Retail to Rental	RG sold as Rental
40	257	0145	20100719	1HD1BX634AB046123	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental
41	258	0145	20100719	1HD1BX639AB045727	EAGLERIDER FINANCE, LLC	BUSINESS SALE	Retail	blank	Incomplete, not signed	Unauthorized Retail to Rental	SA sold as Rental

* = Vehicle was one of the 18 listed in Steve Verduyn's 2/4/11 inquiry letter to Brent Laidlaw (Ex. 16)
 1 = Shipped on 7/16/09 (See Ex. 224)
 2 = Shipped on 11/21/10 on the NYK Terra (See Ex. 225)

Additional Vehicle Sales to Some of Same Purchasers Referenced in Steve Verduyn's Audit

Trial Exhibit	Purchase Date	VIN Number	Last Name	First Name	Notes
43	5/19/2008	1HD1FC4588Y656422	Truong	An	New
42	5/20/2008	1HD4CR2388K437215	Truong	An	New
62	10/2/2008	1HD1HPH389K802106	Ngo	Billy	New
49	4/30/2009	1HD1FR4319Y617335	Alsharif	Muneer	Used
266	5/7/2011	1HD1FHM189Y605403	Sayanath	Jonathan	Used
267	5/7/2011	1HD1FHM1X7Y697353	Sayanath	Jonathan	Used
268	5/10/2011	1HD1FHM107Y698298	Sayanath	Jonathan	Used
269	5/10/2011	1HD1FHM107Y617221	Sayanath	Jonathan	Used
21	7/26/2011	1HD1PR833BB958025	Lai	Mimi	New

1 **PROOF OF SERVICE**

2 **CASE NAME:** In the Matter of the Protest of
3 **LIDLAW'S HARLEY-DAVIDSON SALES, INC., dba**
4 **LIDLAW'S HARLEY-DAVIDSON**
5 **v.**
6 **HARLEY-DAVIDSON MOTOR COMPANY**
7 **COURT:** STATE OF CALIFORNIA, NEW MOTOR VEHICLE BOARD
8 **CASE NO.:** Protest No.: PR-2299-11

9 I am a resident of the State of California. I am over the age of eighteen years, and not a party
10 to this action. My business address is 201 California Street, Seventeenth Floor, San Francisco,
11 California 94111-5002.

12 On March 9, 2012, I served the following document(s): **RESPONDENT HARLEY-DAVIDSON**
13 **MOTOR COMPANY'S POST-TRIAL BRIEF** on each of the parties listed below at the following
14 addresses:

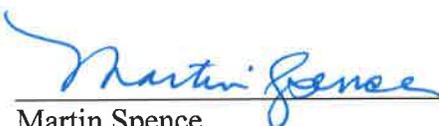
15 New Motor Vehicle Board 16 Attn: Legal 17 1507 21 st Street, Suite 330 18 Sacramento, California 95811	Telephone: (916) 445-1888 Facsimile: (916) 323-1632 Email: nmvp@nmvp.ca.gov
19 Halbert B. Rasmussen 20 Franjo M. Dolenac 21 Crystal Yagoobian 22 Manning, Leaver, Bruder & Berberich 23 5750 Wilshire Blvd., Suite 655 24 Los Angeles, California 90036	Attorneys for Protestant Laidlaw's Harley- Davidson Sales, Inc., dba Laidlaw's Harley- Davidson Telephone: (323) 937-4730 Facsimile: (323) 937-6727 Email: hasmussen@manningleaver.com fdolenac@manningleaver.com cyagoobian@manningleaver.com

25 **BY MAIL:** I am readily familiar with the business practice at my place of business for collection and
26 processing of correspondence for mailing with the United States Postal Service. Correspondence so collected
27 and processed is deposited with the United States Postal Service that same day in the ordinary course of
28 business. On the date specified above, as to each of the parties identified in the above service list, a true copy
of the above-referenced document(s) were placed for deposit in the United States Postal Service in a sealed
envelope, with postage fully prepaid; and on that same date that envelope was placed for collection in the firm's
daily mail processing center, located at San Francisco, California following ordinary business practices.

BY ELECTRONIC DELIVERY: On the date specified above, by or before 5:00 p.m., I transmitted from
electronic notification address mspence@cwclaw.com, a true copy of the above-referenced document(s) to the
notification address(es) identified in the above service list, each of which electronic notification address is the
last electronic notification address given on any document filed in the cause by the party served. The described
transmission was reported as complete and without error.

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

Executed on March 9, 2012, at San Francisco, California.



Martin Spence