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Kawasaki Motors Corp., U.S.A.

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of BURBANK KAWASAKI, INC., Protestant, v. KAWASAKI MOTORS CORP., U.S.A., a Corporation, Respondent.	Protest No. PR-2328-12 and PR-2333-12 **RESPONDENT KAWASAKI MOTORS CORP., U.S.A.'S PROPOSED FINDINGS OF FACT**

I. BACKGROUND FACTS.

1. Protestant Burbank Kawasaki, Inc. ("Protestant" or "Burbank") is a new motor vehicle dealer selling Kawasaki motorcycles and all-terrain vehicles. (Stipulated Facts at ¶ 1).

2. Respondent, Kawasaki Motor Corporation, U.S.A. ("Respondent or "Kawasaki") is the distributor of Kawasaki Products in the United States. (Stipulated Facts at ¶ 2).

3. Burbank (through its owner, Leon Bellissimo) has been a Kawasaki dealer in Burbank for approximately 34 years. (RT I, 17: 18-19). The dealership is and has, since its inception, been located at 1329 North Hollywood Way, Burbank, California 91505. (Stipulated Facts at ¶ 3).

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4. Burbank is a Kawasaki dealer pursuant to a Kawasaki Authorized Sales and Service Agreement ("Dealer Agreement") with Kawasaki. (Resp. Exh. 303). The basic terms of the Dealer Agreement have not changed during Burbank's tenure as a Kawasaki dealer. (Stipulated Facts at ¶ 4).

5. On September 26, 2011, Kawasaki sent Burbank a letter via Certified Mail, Return Receipt Requested, stating that Burbank had "failed to maintain a wholesale line of credit (flooring) … in breach of paragraph 14 of the Dealer Agreement," and that Burbank needed to correct this deficiency by obtaining flooring in the amount of $765,500 as soon as possible, but in no event later than November 30, 2011. (Stipulated Facts at ¶ 7) (RT I, 111: 1-9, Resp. Exh. 305).

6. On January 24, 2012, Kawasaki sent, and Protestant subsequently received, Notices of Termination in compliance with Vehicle Code Section 3060. (Resp. Exhs. 301 (motorcycle), 302 (ATV)). In those Notices, Kawasaki identified 4 independent reasons for the termination of Protestant's Dealer Agreement: (1) Failure to maintain adequate model inventory, (2) Failure to meet sales requirements, (3) Failure to provide equal representation of Kawasaki Products and (4) Failure to maintain floor plan financing adequate to fulfill its obligations under the Dealer Agreement. (*Id.*; Stipulated Facts at ¶ 8).

7. Burbank filed a timely protest. (Stipulated Facts at ¶ 9).

II. GOOD CAUSE FACTORS UNDER VEHICLE CODE SECTION 3061.

8. In determining whether good cause has been established for terminating or refusing to continue a franchise, Section 3061 of the Vehicle Code requires the New Motor Vehicle Board ("Board") to take into consideration the existing circumstances, including, but not limited to:

> (a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
>
> (b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
>
> (c) Permanency of the investment.

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(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified 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.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of franchisee's failure to comply with the terms of the franchise.

Vehicle Code Section 3061.

III. FINDINGS OF FACT RELATING TO THE GOOD CAUSE FACTORS FOR THE TERMINATION OF BURBANK'S KAWASAKI DEALER AGREEMENT PURSUANT TO CALIFORNIA VEHICLE CODE SECTION 3061.

A. Burbank Does Not Transact An Adequate Amount of Business Compared to the Business That Is Available To It. [Vehicle Code §3061(a)].

9. The first prong of the statute requires that the Board consider the amount of retail sales of the dealer compared to those sales available to it. Protestant is not transacting an adequate amount of Kawasaki business compared to that which is available to it.

10. When assessing a dealer's performance, Kawasaki does not look merely to the raw numbers of sales. Rather, Kawasaki uses a sales effectiveness calculation, which allows it to more fairly compare its dealers that operate in markets of all sizes, nationwide.

11. Kawasaki, like other motor vehicle manufacturers, evaluates a dealer's sales performance by measuring the dealer's "sales penetration" in relation to the dealer's assigned area, which Kawasaki calls a Statistical Evaluation Area ("SEA"). (Resp. Exh. 325 [SEA for Burbank], RT II, 133: 9-25). The SEA is a set of census tracts that are assigned based on their proximity to each Kawasaki dealer. (RT II, 133: 24-25, 135: 20-22). Sales penetration calculates a dealer's new vehicle sales (regardless of whether they are registered at addresses in the SEA or outside of it) (RT I, 140: 21-22) as a percentage of the registrations of all competitive makes in the dealer's SEA. To gauge sales penetration effectiveness, a dealer's sales penetration

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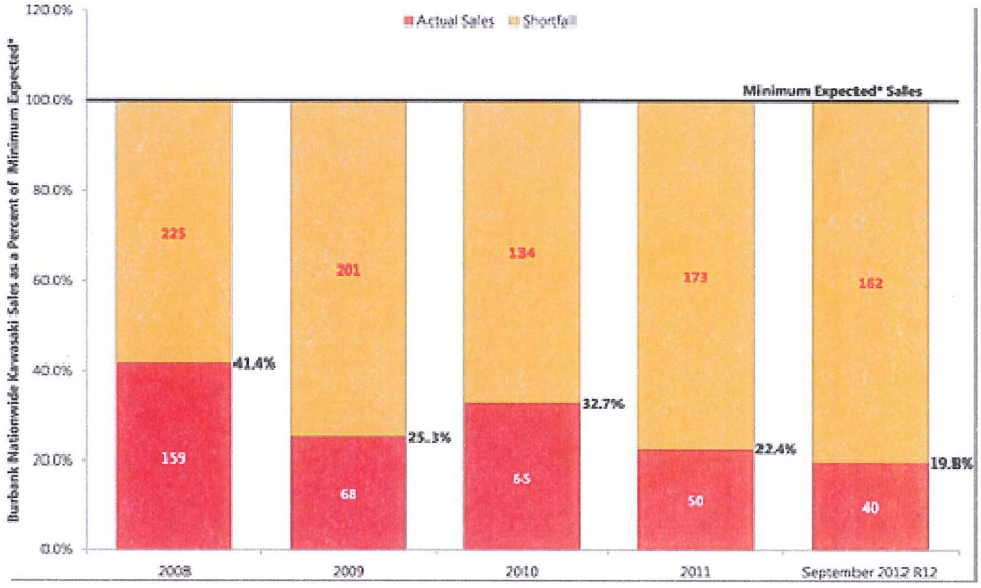
is then compared as a ratio to Kawasaki's sales penetration throughout the nation, to determine whether the dealer being analyzed is penetrating its SEA below, at, or above the average for all Kawasaki dealers. (Resp. Exh. 314; RT II, 139: 15-17). Expressed as a percentage, the resulting quotient calculates a dealer's "sales effectiveness." (RT II, 143: 14-20).

12. Being 100% sales effective, however, only means that a dealer is selling the number of new vehicles it is expected to sell. (RT II, 144: 23-145: 8). It is not a perfect or a maximum score. (*Id.*).

13. Because this calculation shows how a dealer is performing compared to all other Kawasaki dealers, it provides strong evidence of Protestant's sales compared to the business that is available to it.

14. Comparing Protestant's sales to what the average Kawasaki dealer has sold shows that Protestant does not transact an adequate amount of business compared to the business that was available to it. (Resp. Exh. 314) (summarizing Resp. Exhs. 319-325).

15. Even before Burbank lost its floor plan financing, its sales effectiveness was less than half that of the average Kawasaki dealer:



(*Id.*). Since Protestant lost its floor plan financing, its performance has declined even further, so that it now capturing only about 20% of the sales available it, if it performed as well as an average Kawasaki dealer. (*Id.*; *see also* RT I, 130: 1-24).

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16. In fact, Burbank's sales dropped further and faster that the industry declined during the economic downturn of 2008 and 2009. (RT II, 147: 2-7).

17. Use of national average as a comparison point for Burbank is reasonable because it is the lowest average performance of other Kawasaki dealers, as opposed to region or district average, which are both higher. (RT I, 147: 13-148: 3).

18. Based upon a national sales effectiveness expectation, Burbank's lack of sales compared to the sales that were available to it has cost Kawasaki a minimum of 773 sales from 2008 through September 2012. (Resp. Exh. 319-322).

19. As a result, the unrefuted evidence shows that Burbank is not capturing an adequate amount of Kawasaki business compared to what is available to it and Kawasaki has sustained its burden under subsection (a) of Section 3061.

B. Burbank Has Made No Investment, Permanent Or Otherwise, In The Kawasaki Dealership. [Vehicle Code §3061(b), (c)].

20. In 1978, Burbank purchased its Kawasaki dealership from other dealer for an amount in the range of $100,000, which amount was mostly in payment for the then-current inventory of vehicles and parts at the dealership. (RT III, 31: 2-32: 7).

21. Burbank does not own, but rather leases the facility from which it conducts Kawasaki operations. Burbank's rent payment for the facility is three to four thousand dollars per month. (Stipulated Facts at ¶ 10; RT I, 17: 20-24; RT II, 194: 9-13).

22. Burbank has not completed any major renovations to the facility. (RT I, 18: 10-19:3, RT II, 74: 23-75: 4, 83: 7-16 (facility not changed in the last 9 years); Resp. Exhs. 311, 312). At most, Burbank has purchased two Kawasaki signs, done some painting, added a fence, fixed a broken window, and done some cleaning and maintenance. (RT II, 194: 21-195: 2).

23. In addition to Kawasaki, Burbank has franchise agreements for five different motor scooter lines. (RT I, 18: 3-9 (testifying to 5 scooter franchises); RT III, 23: 22-23 (claiming it also does warranty repairs on Vespa scooters)).

24. Mr. Bellisimo's contention that his investment is represented in his dedication to his dealership is belied by the fact that he is not regularly present at the dealership, and does not

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even return telephone calls from Kawasaki representatives. (RT II, 72: 10-73: 19, RT III, 93: 21-94: 4).

25. The evidence shows that the Protestant has made no material investment, permanent or otherwise, in the Kawasaki franchise, and Kawasaki has met these good cause factors for termination. Vehicle Code §3061(b), (c).

C. The Termination of Burbank Will Not Result in Any Injury to the Public Welfare Because Burbank Is Not Currently Serving the Public and Its Current Facilities, Equipment, Parts and Service Are Inadequate and Fail to Provide for the Needs of Consumers. [Vehicle Code §3061(d), (e)].

26. The fact that Protestant is not capturing the vast majority of the sales available to it indicates that Protestant is not operating in the public interest.

27. Burbank is only making 10-15% of the Kawasaki sales in its SEA, indicating that customers are already travelling to other Kawasaki dealers who are more distant from those consumers, and that the termination of Burbank's Kawasaki franchise will not be injurious to the public. (RT I, 142: 7-24, 159: 25-160: 3).

28. Ancillary to Protestant's poor sales performance is its poor customer satisfaction performance. Burbank's sales satisfaction scores are the worst in the district, and second to last in the entire region. (RT I, 152: 16-21, 157: 4-16; Resp. Exh. 328).

29. Even with the low number of sales it makes, Burbank is generating customer complaints at a high level. In December, 2012, Burbank sold two new Kawasaki vehicles, and two customers complained about Burbank to Kawasaki. (RT I, 53: 10-54: 11).

30. Burbank does not maintain anything close to an adequate inventory of current model Kawasaki products and consumers do not have a meaningful selection of vehicles to choose from at the dealership. (RT I, 125: 15-126: 11; *see also* Section E.3 below). Burbank has always had a higher than average inventory of aged vehicles (vehicles that were purchased from Kawasaki more than 12 months prior to each call report). This is contrary to the public interest because customers are generally looking for the newest products to purchase, leading to lower sales and customer satisfaction and higher interest expenses. (RT II, 93: 17-24; Resp. Exh. 315 –

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318, 330).

31. Kawasaki presented strong evidence that the public will be not negatively impacted by the termination of Protestant's Kawasaki Dealer Agreement. Vehicle Code §3061(d), (e).

D. Warranty Obligations [Vehicle Code §3061(f)].

32. Kawasaki does not contend that Burbank has failed to satisfy its warranty obligations.

E. Burbank Has Breached the Kawasaki Dealer Agreement in Several Material Respects. [Vehicle Code §3061(g].

1. Burbank Has Failed to Comply With Its Obligation To Maintain Floor Plan Financing.

33. Protestant's floor plan financing was suspended by its financial institution, Kawasaki Motors Finance Company ("KMFC") on or about June 25, 2011 (Protestant's Exh. 8), and has not been reinstated since then. KMFC accomplished this suspension by reducing the amount of available flooring credit from $750,000 to $10. (Stipulated Facts at ¶ 5; RT I, 19: 4-14; Resp. Exh. 304; RT III, 83: 10-21, 25-84: 2).

34. Failure to have floor plan financing is a material breach of Paragraph 14A of the Kawasaki Dealer Agreement. (Resp. Exh. 303) This provision states:

> DEALER shall at all times maintain and employ, in connection with its business and operations under this Agreement, such working capital and net worth *together with a line of credit* with a financing institution satisfactory to DISTRIBUTOR which will permit DEALER to properly and fully carry out and perform DEALER'S duties and obligations under this Agreement, including an inventory of Products . . . . Such working capital, net working capital and/or line of credit shall be of amounts not less than minimum standards established by DISTRIBUTOR from time to time for dealers similarly situated. (Emphasis added.)

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35. Protestant has had approximately 18 months to cure this breach of its Dealer Agreement. Even so, Protestant failed to have its floor plan financing reinstated or to obtain alternative floor plan financing at any time, including to the current date. (RT III, 84: 17-23). Therefore, aside from purchases from other dealers or the occasional cash purchase from Kawasaki, Protestant has not purchased new products from Kawasaki in that period.

36. KMFC is an independent business from Kawasaki that operates under to its own rules, pursuant to which it provides flooring credit to dealers. (RT III, 78: 19-79: 3).

37. KMFC works with dealers in an attempt to rehabilitate their ability to obtain credit. (RT III, 79: 21-80: 13).

38. KMFC suspended Burbank's line of credit because Burbank had failed to provide timely financial statements. (Resp. Exh. 304; RT III, 82: 22-25).

39. After Burbank supplied the required financial statement, KMFC required Burbank to acquire an irrevocable line of credit ("ILOC") as additional collateral in the amount of 25% of the line of credit required by Kawasaki. (RT III, 91: 2-10).

40. KMFC required this additional collateral because of the dealership's recent sales performance deficiencies, problems with the timing of repayment to KMFC after vehicles were sold, and lack of cooperation during inventory checks. (*Id.*; RT III, 92: 7-12, Resp. Exh. 306 at KMC983-984).

41. KMFC's goal is to have dealers return to good standing by obtaining flooring credit, and attempted to assist Burbank in complying with the requirements to do so. (RT III, 79: 21-80: 13). KMFC provided examples of an ILOC to Burbank on multiple occasions. (RT I, 28: 11-24; RT III, 97: 14-21, 100: 12-22).

42. At no time has Burbank obtained an ILOC. (RT I, 29: 19-22, 31: 1-5).

43. Burbank's claim that it could not get an ILOC because several branches of Bank of America and Wells Fargo did not know what an ILOC is, is not credible. (RT III, 38: 1-20; RT III, 98: 6-19 (several other Kawasaki dealers have an ILOC from Bank of America)).

44. Any allegation that KMFC should have agreed to take Protestant's dealer principal's home as collateral is not reasonable, as KMFC is not a mortgage lender and does not

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accept real property as collateral for any dealer. (RT III, 113: 24-114: 10). Furthermore, given that the home collateral offer was not made until after the Notice of Termination (in fact on the day of Mr. Bellisimo's deposition), the offer is not relevant to these proceedings. (Protestant's Exh. 6).

45. Burbank claims to have additional "credit" through Mr. Bellissimo's brother, (RT I, 64: 4-10, Protestant's Exh. 10) but as of the date of the merits hearing has not used that credit to purchase any Kawasaki vehicles. (RT III, 68: 12-69: 8). Mr. Bellissimo's brother is not "a financial institution acceptable to [Kawasaki]," as is required by Paragraph 14A of the Dealer Agreement. (Resp. Exh. 303) Again, however, this alleged offer of "credit" from Mr. Bellissimo's brother did not occur (if it indeed did occur) until January 30, 2013, long after the Notice of Termination and just a few days before the merits hearing, and is, therefore, irrelevant. (Protestant's Exh. 10).

46. Burbank is not required to get credit from KMFC, and could have obtained credit from another source, (RT III, 30: 15-17). Burbank, however, never even applied for alternative flooring credit. (RT I, 65: 20-23).

47. Protestant's claim that is needs 80% less credit (or approximately $50 -$60,000) (RT II, 216: 11-217: 21), than it once did is not credible, nor supported by the evidence.

48. A review of Burbank's prior borrowing history shows that it regularly has used credit above the amount required by Kawasaki ($750,000):

Date	Credit	Adj. Credit	Credit Used	Available
2/7/06	1,150,000	N/A	1,121,617	28,383
5/17/06	1,200,000	N/A	986,068	213,932
7/26/06	1,200,000	N/A	939,646	260,354
8/22/06	1,200,000	N/A	863,989	336,011
12/19/06	1,200,000	N/A	911,839	288,161
1/23/07	1,200,000	N/A	953,329	246,671

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4/17/07	1,200,000	N/A	1,179,682	20,318
5/29/07	1,250,000	N/A	1,149,403	100,597
8/17/07	1,250,000	1,250,000	1,063,714	186,286
12/13/07	1,250,000	1,250,000	920,466	329,534
1/16/08	1,250,000	1,250,000	885,769	364,231
3/11/08	1,250,000	1,250,000	903,635	346,365
8/27/08	1,250,000	1,250,000	629,490	620,510
1/13/09	1,250,000	1,250,000	1,104,562	145,438
3/3/09	1,250,000	1,250,000	730,316	519,684
9/5/09	1,250,000	1,563,000	797,309	765,691
1/13/10	1,250,000	1,250,000	773,364	476,636

(Exh. 315-318, 330). As these numbers reflect, Burbank's flooring credit from 2006 to 2010 was much higher than Kawasaki sought in 2011.

49. Changes in the frequency of vehicle orders accepted by Kawasaki and loss of some lines of Kawasaki products do not mean that Burbank's credit requirements could be cut to the extremely low level suggested by Protestant. Protestant's own testimony regarding the need to respond to customer product demands significantly undermines any such claim. (*See, e.g.,* RT II, 228: 21-229: 1).

50. Moreover, Protestant's suggestion that it could operate with a much lower floor plan and use that line of credit to sell units that it could purchase from other dealership's inventory to meet customer demands (RT III, 72: 1-8) does not meet Protestant's contractual obligations to Kawasaki or satisfy the public interest.

51. The breach related to Protestant's prolonged failure to establish credit goes to the heart of Protestant's ability to serve as a Kawasaki dealer, as the failure to maintain a line of credit means that Protestant cannot purchase, stock and then sell sufficient numbers of new Kawasaki vehicles, as is required by Paragraphs 5 and 15 of the Dealer Agreement.

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2. Burbank Has Failed to Comply With Its Obligations to Maintain Sufficient Sales of Kawasaki Vehicles.

52. Failure to make sufficient sales of Kawasaki products is a material breach of Paragraph 5 of the Kawasaki Dealer Agreement. This provision states:

> Dealer agrees, at its own cost and expense, to use its best efforts and due diligence to energetically and aggressively develop and promote the sale of Products, including each model and type thereof. DEALER and DISTRIBUTOR agree that DISTRIBUTOR shall evaluate DEALER'S development and promotion of the sale of Products, both as a whole and separately for each model and type based on such reasonable criteria as DISTRIBUTOR may determine from time to time, which may include but not be limited to: . . . (b) the ratio of sales of Products by DEALER to sales of other makes of similar products as compared with (i) such ratio on a local, state, and/or nationwide bases . . .

53. In the last five years, Protestant's sales levels have experienced a steep decline against expected levels. (RT II, 143: 21-24). As the expert witness Mr. Palmer of USAI testified, Protestant's sales performance is "extremely poor in terms of adequately and effectively promoting new sales of Kawasaki vehicles." (RT II, 149: 2-7).

54. The Dealer Agreement specifically allows that Kawasaki may evaluate Burbank's performance in comparison to national averages.[1] (Resp. Exh. 303 at 1, ¶5).

55. Expected sales comparison is an industry standard to assess a dealer's performance. (RT II, 149: 21-23). Moreover, this comparison is a more accurate measure of a dealer's performance because the number of expected sales changes in response to fluctuation in the overall marketplace. (RT I, 134: 10-21).

[1] Administrative tribunals in other states have also made comparable findings with regard to Kawasaki's sales effectiveness standard. E.g., *Nissan N. Am., Inc. v. Love Nissan, Inc.* (Fla. DAH July 14, 2005), No. 04-2247 at 14, adopted as final order, No. HSMV-06-379-FOF-DMV, (Fla. DHSMV Apr. 12, 2006) ("Historically, by case law, and by expert testimony in the instant proceeding, it is found that Nissan's method for evaluating its dealers' sales performances is a reasonable, industry-accepted practice for evaluating new car dealers.").

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56. Protestant's suggestion that it was unaware of Kawasaki's expectation for vehicle sales is not credible. Burbank receives quarterly sales reports (RT I, 66: 19-21) that show Burbank's sales as compared to expected sales. (*See, e.g.,* Resp. Exh. 321). These reports are also available to dealers, including Protestant, on a website called "K Dealer." (RT I, 137: 23-138: 14). Burbank has reviewed these reports on line. (RT I, 138: 16-139: 4).

57. These sales reports were reviewed and thoroughly explained to Burbank by Kawasaki employees. (RT II, 88: 1-92: 8).

58. Likewise, Burbank's claim that it was wrongfully prevented from purchasing Kawasaki products for resale is not credible. Kawasaki did not cause Burbank's loss of floor plan financing, and Kawasaki offered to sell Burbank product on a COD basis during the entire time that Protestant's credit has been suspended. (RT II, 100: 2-9). Because inventory levels are directly attributable to dealer operations, that factor was within Protestant's control and not an excuse for poor performance. (RT II, 163: 1-164: 7).

59. As long as Protestant fails and refuses to obtain adequate floor plan financing, there is no possibility that its sales performance can improve. Since losing its floor plan financing, Burbank's inventory of new Kawasaki products has dwindled from over 100 to 11, which were in stock at the time of the hearing of this matter. (RT II, 117: 7-23). Burbank's insistence on relying on purchases from other dealers and sporadic cash purchases of vehicles dooms it to diminished sales performance.

60. Burbank's claim of aggressive promotion of Kawasaki products is likewise not credible, as its owner, Mr. Bellissimo admitted to his actions in denigrating Kawasaki and its products as well. (RT III, 16: 13-15, 21) (Resp. Exh. 309).

61. Burbank's dealer principal is rarely even at the dealership. (RT II, 72: 10-73: 19; (absent unless Mr. Fischer would call ahead and make an appointment); RT III, 89: 17-24, 93: 21-94: 10 (absent on many occasions when floor checker from GE attempted to confirm inventory)).

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3. Burbank Has Failed to Maintain An Adequate Inventory of Kawasaki Vehicles And Provide Equal Representation.

62. Failure to maintain an adequate supply of Kawasaki products is a material breach of Paragraph 15 of the Kawasaki Dealer Agreement. This provision states:

> Subject to the ability of DISTRIBUTOR to supply, DEALER agrees to purchase from DISTRIBUTOR and at all times maintain an inventory of then available models of Products, which inventory shall at no time be less that the number of Products reasonably established by DISTRIBUTOR after consultation with DEALER.

63. Burbank has not stocked a full line of Kawasaki inventory for a significant period. (RT II, 101: 8-11).

64. Protestant would need to stock approximately 75 Kawasaki vehicles to represent the full line of products. (RT II, 120: 17-121: 3).

65. Burbank's existing inventory of Kawasaki vehicles was not repossessed by KMFC when the flooring line was suspended. (RT III, 82: 1-21). Burbank has remained in business by maintaining its scooter business for other brands, and by selling off its existing (mostly aged) Kawasaki inventory, and by purchases from other Kawasaki dealers and occasional cash purchases from Kawasaki. (Stipulated Facts at ¶ 6; RT II, 101: 1-4).

66. Of the 11 Kawasaki vehicles in stock, 7 of them are "aged inventory" in that they were sold to Burbank more than 12 months ago. (RT II, 82: 1-5, 12-14).

67. Burbank has had a chronic problem with aged inventory. (RT II, 93: 17-24; Exh. 315-318, 330).

68. Kawasaki has made repeated requests that aged inventory be displayed so that it can be sold, which were previously ignored by Burbank. (RT II, 94: 17-95: 3).

69. Any claim that inventory levels were not within Burbank's control are not credible. (RT II, 164: 5-7). Despite claiming that it had access to various sources of cash, Protestant has not purchased any significant amount of new Kawasaki products. (RT III, 68: 12-69: 8).

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70. Failure to make provide equal representation of Kawasaki products is a material breach of Paragraph 11 of the Kawasaki Dealer Agreement. This provision states:

> In the event DEALER sells other brands or lines of products which are competitive with those Products purchased by DEALER from DISTRIBUTOR, DEALER agrees to provide the Products with at least an equal representation to that provided other competitive brands or lines.

71. Equal representation is based on display space, not whether the dealer sells competing brands. (RT II, 27: 14-19). As Protestant's display area is and has been in recent times dominated by scooters, (RT II, 27: 24-28: 10), this is a breach of Paragraph 11 of the Dealer Agreement.

72. Kawasaki presented strong evidence that Protestant has committed multiple material breaches of its Kawasaki Dealer Agreement, any of which individually, as well as collectively, are sufficient to show good cause to terminate the Agreement. Kawasaki has met its burden under this provision of Section 3061. Vehicle Code §3061(g).

IV. CONCLUSION

For all of the foregoing reasons, good cause exists for the termination of Burbank's Kawasaki franchise.

Dated: March 18, 2013

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PROOF OF SERVICE

I, Elly Cordero, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On March 18, 2013, I served a copy of the within document(s):

RESPONDENT KAWASAKI MOTORS CORP., U.S.A.'S PROPOSED FINDINGS OF FACT

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

☐ following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

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Attorney for Protestant
BURBANK KAWASAKI INC.

I am readily familiar with the firm's practice of collection and processing correspondence

for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 18, 2013, at Costa Mesa, California.

Elly Cordero

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