

1 Cenotaph Resources, LLC dba
2 San Jose Yamaha Powersports
3 776 n. 13th Street
4 San Jose, CA 95112
5 408-287-2946
6 Fax 408-287-4560
7 Email: Johnmasi@gmail.com

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10 **3060 Termination (60 Day Notice)**

11
12 **STATE OF CALIFORNIA**
13
14 **NEW MOTOR VEHICLE BOARD**

15 In the Matter of the Protest of
16 San Jose Yamaha Powersports
17
18 Protestant,
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20 v.
21 Yamaha Motors USA,
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23 Respondent.

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25 **Protest No.**
26
27 **PROTEST**
28 **[Vehicle Code §3060]**

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Protestant, San Jose Yamaha Powersports files this protest under the provisions of California Vehicle Code section 3060 and alleges as follows:

1 1. Protestant is a new motor vehicle dealer selling Cycles, Water Craft, ATV and accessories and is
2 located at 776 N. 13th Street, San Jose, CA 95112. Protestant's telephone number is 408-287-2946

3 2. Respondent distributes/manufactures Yamaha products and is the franchisor of
4 Protestant.

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6 3. Protestant is not represented by an Attorney.

7 4. On or about March 24, 2014, Protestant received from Respondent a notice that
8 Respondent intends to terminate its existing franchise agreement effective 60 days from Protestant's
9 receipt of said notice.

10 5. Protestant generally denies each and every allegation contained in the written notice
11 of termination.

12 6. Respondent does not have good cause to terminate the franchise by reason of the
13 following facts:

14 (a) Protestant has made a substantial and permanent investment in the dealership.

15 (b) Protestant has transacted and is transacting an adequate amount of business compared
16 to the business available to it.

17 (c) Protestant has fulfilled the warranty obligations to be performed by it.

18 (d) The extent of any failure of Protestant to comply with the terms of the franchise
19 agreement is immaterial.

20 (e) Protestant has adequate motor vehicle sales and service facilities, equipment, vehicle
21 parts, and qualified service personnel to reasonably provide for the needs of buyers and owners in the
22 market area and is rendering adequate services to the public.

23 (f) It would be injurious to the public welfare for the franchise to be terminated or for
24 Respondent to refuse to continue the existing franchise.

25 7. Protestant desire to appear before the Board and estimate that the hearing in this
26 matter will take 2 days to complete.

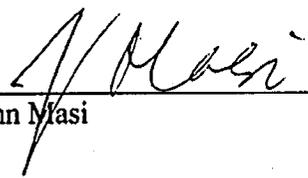
27 8. A Pre-Hearing Conference is requested.
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WHEREFORE, Protestant prays as follows:

1. That the Board sustain this protest and order Respondent not to terminate Protestant's franchise.
2. That pending the hearing in this matter, the Board or its authorized representative immediately order Respondent not to terminate Protestant's franchise until such time as Respondent has established good cause for such actions under the provisions of Vehicle Code sections 3060 and 3061.

DATED: April 22, 2014

By 
John Masi

NEW MOTOR VEHICLE BOARD

PROOF OF SERVICE

Santa Clara COUNTY

STATE OF CALIFORNIA

In the Matter of the Protest of

San Jose Yamaha Power Sports,

Protestant,

v.

Yamaha Motors, USA

Respondent.

Protest No. Vehicle Code 3060

Cheri Koehler declare:

I am a citizen of the United States, a resident of Santa Clara County, California, and over 18 years of age. I am not a party to the above-entitled action. My business/residence address is 776 N. 13th Street, San Jose, CA 95112, California. On April 21, 2014, in the above-entitled action, I served a copy of the attached document(s):

• **PROTEST Vehicle Code 3060**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Morgan Hill, California addressed as set forth below. I am readily familiar with the business' practice for collection and processing correspondence for mailing with the U.S. Postal Service. 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 contained in the affidavit.
- by following ordinary business practices, the envelope was sealed and placed for collection by on this date, and would, in the ordinary course of business, be retrieved by for overnight delivery on this date, addressed as set forth below.
- by transmitting via electronic mail the document(s) listed above to the person(s) at the e-mail address(es), as set forth below on this date before 5:00 p.m. (Pacific Time) and the transmission was reported as complete and without error.

- by transmitting via facsimile the document(s) listed above to the person(s) at the fax number(s), as set forth below on this date before 5:00 p.m. (Pacific Time) and the transmission was reported as complete and without error.
- By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Brian Gable, Counsel for Yamaha; Brian_Gable@Yamaha-Motor.com

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

Date: April 22, 2014



Signature

Cheri Koehler