

**DECLARATION OF FREDERIC AUDET**

I, FREDERIC AUDET, declare as follows:

1. I am the Manager of Network Operations for Bombardier Recreational Products Inc. (“BRP”). I have been employed at BRP for approximately 18 years and have been the Manager of Network Operations since March 2010. Except for any facts noted to be upon information and belief, I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to such facts under oath.

2. Respondent BRP US Inc. is a subsidiary of BRP. BRP US Inc. distributes products to dealers that are designed, developed and manufactured by BRP.

3. As Manager of Network Operations, I am responsible for and oversee the entire BRP Dealer Network for North America, which includes Canada and the United States. This includes, among many other things, the opening and closing of BRP dealers and managing the business relationships with BRP dealers. As part of this process, I am intimately involved with and have firsthand knowledge of the profiles of each dealer within the BRP network and of market analyses done for existing and potential markets for the distribution of BRP products. I also am responsible for ensuring that BRP is in compliance with applicable state laws as it pertains to dealers and the sale of BRP products within a given state or territory. I also have substantial firsthand knowledge of the BRP US Inc. Dealer Agreements for all dealers in North America, including the operative Dealer Agreement with Protestant Fun Bike Center. In sum, in my capacity as Manager of Network Operations for BRP, I am intimately involved with all aspects of the relationship between BRP/BRP US Inc. and its dealers, including the dealer relationship between BRP/BRP US Inc. and Fun Bike Center.

4. Fun Bike Center is an authorized dealer of Bombardier vehicles with its principal place of business at 5755 Kearny Villa Road, San Diego, California 92123. BRP US Inc. is a distributor of new motor vehicles licensed by the California Department of Motor Vehicles.

5. On or about December 10, 2013, Fun Bike Center entered into a BRP US Inc. Dealer Agreement (the “Dealer Agreement”) with BRP. Attached as **Exhibit A** is a true and correct copy of the Dealer Agreement.

1           6.       The Dealer Agreement expressly makes part of and incorporates into it the BRP US  
2 Inc. Dealer Agreement General Provisions ("General Provisions"). Attached as **Exhibit B** is a  
3 true and correct copy of the General Provisions.

4           7.       On or about July 28, 2014, BRP sent a letter via certified mail to Fun Bike formally  
5 notifying it of a modification to its Primary Market Area ("PMA") based on the potential  
6 appointment of another BRP dealer, Vey's Motorsports Inc., to be located at 690 N. 2nd Street, El  
7 Cajon, California. Attached as **Exhibit C** is a true and correct copy of this July 28, 2014 letter to  
8 Fun Bike.

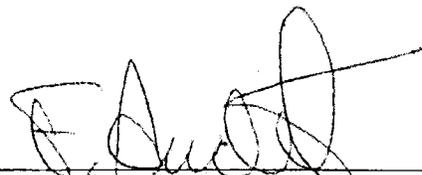
9           8.       On or about July 28, 2014, BRP sent a letter via certified mail to the New Motor  
10 Vehicle Board notifying it that pursuant to California Motor *Vehicle Code* Section 3060(B)(1),  
11 BRP intended to modify the PMAs of two BRP dealers, Fun Bike Center and South Bay  
12 Motorsports, due to the potential appointment of a new BRP dealer, Vey's Motorsports Inc., to be  
13 located at 690 N. 2nd Street, El Cajon, California. Attached as **Exhibit D** is a true and correct  
14 copy of this July 28, 2004 letter to the New Motor Vehicle Board.

15           9.       On August 26, 2014, BRP sent a letter via certified mail to Fun Bike Center  
16 clarifying its original notice of July 28 concerning the modification of Fun Bike Center's Primary  
17 Market Area ("PMA") and which informed Fun Bike Center that the proposed new BRP dealer,  
18 Vey's Motorsports Inc., was located 11.6 miles as the crow flies from Fun Bike Center. Attached  
19 as **Exhibit E** is a true and correct copy of the August 26 letter.

20           10.       Through market analyses conducted by BRP in determining to appoint a new dealer  
21 in the El Cajon, California area, I learned and confirmed that Vey's Motorsports Inc. was located  
22 approximately 11.6 miles "as the crow flies" from Fun Bike Center.

23           Executed on November 10, 2014, at Sherbrooke, Quebec, Canada.

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

26  
27  
28  
  
\_\_\_\_\_  
FREDERIC AUDET

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**EXHIBIT "A"**



691246

**BRP US INC.  
DEALER AGREEMENT**



**BRP US INC.  
DEALER AGREEMENT**

**THIS DEALER AGREEMENT** ("Agreement") is made by and between **BRP US INC.**, a Delaware corporation ("BRP"), having a place of business located at 1111, J. A. Bombardier Boulevard SW, Palm Bay, Florida 32908 and **FUN BIKE CENTER**, doing business as **FUN BIKE CENTER** (691246) with its place of business described in Addendum A to this Agreement ("Dealer"). BRP and Dealer are hereafter referred to individually as a "Party" and collectively as the "Parties".

In consideration of the mutual agreements hereafter made in this Agreement, the Parties hereto agree as follows:

**1. Appointment**

(a) Appointment of Non-Exclusive Dealer. BRP hereby appoints Dealer as an authorized non-exclusive retail dealer of Products, as defined in paragraph (c) of this Section 1, at the approved location designated in Addendum A to this Agreement ("Dealer Location"). BRP expressly reserves its right, in its sole discretion, to appoint or relocate other dealers of any Products in any location, including within or outside Dealer's Primary Market Area. In addition, BRP also reserves its right to sell Products through alternative or additional retailers or channels and to promote Products on the Internet, other multi-media networks or otherwise.

(b) Dealer Location. Unless permitted by BRP, Dealer agrees not to directly or indirectly sell, display or service Products or otherwise act as an authorized BRP dealer at any location other than the Dealer Location. Dealer shall not, without the express written approval of BRP: (i) move or operate at another location; or (ii) make any material change in or modification to any of Dealer's premises. BRP has no obligation to approve any request from Dealer to establish or operate any alternate BRP dealership.

(c) Products Covered by the Agreement. This Agreement authorizes Dealer to be a BRP Dealer only for the BRP product line(s) for which BRP and Dealer have duly executed a specific Addendum B to this Agreement. The Addenda B for each BRP product line are respectively the following:

- (i) Addendum B-1 for Ski-Doo® snowmobiles;
- (ii) Addendum B-2 for Sea-Doo® personal watercraft;
- (iii) Addendum B-3 for Can-Am® all-terrain vehicles;
- (iv) Addendum B-4 for Can-Am® side-by-side vehicles.
- (v) Addendum B-5 for Can-Am® roadsters

This Agreement is independent and separately enforceable for each product line and the use of this common Agreement for all product lines is intended to simplify the execution of the Agreement(s). This Agreement grants no rights to purchase or sell other Vehicles and PAC than those specifically covered by an Addendum B duly executed by the Parties (collectively referred herein as the "Products").

## **2. General Provisions and BRP Dealer Operation Standards**

(a) Other Dealer Documents. The BRP US Inc. Dealer Agreement General Provisions ("General Provisions") and the BRP US Inc. Dealer Operation Standards ("Operation Standards") are collectively referred to as the Other Dealer Documents ("Other Dealer Documents"), and are hereby expressly made a part of this Agreement and incorporated herein. Throughout the term of this Agreement, the Operation Standards are subject to revision or modification by BRP at its discretion. Dealer expressly acknowledges that copies of the Other Dealer Documents have been provided to Dealer by BRP and have been read and agreed to by Dealer.

(b) Capitalized Word or Sentence. Any capitalized word or sentence not defined in this Agreement has the meaning given to such word or sentence in the Other Dealer Documents.

## **3. Ownership and Management**

(a) Owners, Officer(s) and Director(s). To induce BRP to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Addendum C, are Dealer Owner(s), officer(s), director(s) and general manager. It is intended that this Agreement be interpreted as a personal service agreement. BRP is entering into this Agreement in reliance upon Dealer's representations as to Dealer ownership and management, and upon the continued provision by Dealer's Owner(s), officer(s), director(s) and general manager of their personal services in the fulfillment of Dealer's obligation under this Agreement. No change, directly or indirectly, intentionally or otherwise, may be made to Dealer's Owner(s), officer(s) or director(s) without first complying with the requirements of this Agreement for such changes.

(b) Personal Qualifications. The Owner(s), officer(s) and director(s) identified in Addendum C possess and will maintain the personal qualifications, experience, skill and commitment necessary to ensure that Dealer will perform its obligation under this Agreement in the most effective manner.

## **4. Due Authorization and Validity**

This Agreement shall bind BRP only when it bears the signatures of two (2) authorized BRP employees and a duplicate original thereof is delivered personally, by mail, email or fax to Dealer or to Dealer's place of business.

## **5. Term**

This Agreement shall take effect when executed by both Parties (the "Effective Date") This Agreement shall expire on January 31, 2015 ("Term"), unless otherwise terminated or renewed as provided in the General Provisions.

**6. Additional Terms and Conditions**

This Agreement, including the Addenda A, B, C and if applicable Addendum D and the Other Dealer Documents incorporated herein by reference, contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior understanding or written or oral agreements among them with respect thereto. No representations or statements other than those expressly set forth or referred to in these documents, or in Dealer's written application documents, were made or relied upon in entering into this Agreement. Each Addendum may be amended at any time by mutual agreement of Dealer and BRP, through the later execution by both Parties of a replacement, which then shall be deemed part of this Agreement. This Agreement shall not be modified except as expressly authorized in writing signed by both Parties hereto; provided, however, that the Parties agree that any and all changes that BRP may make to the Operation Standards (as applicable to all of its Dealers) shall be binding upon Dealer as if such changes were adopted expressly in writing by Dealer as amendments to this Agreement.

**7. Governing Law and Severability**

This Agreement shall be construed in accordance with the laws of the State of Florida. If any provision contained herein contravenes the laws or regulations of any state or other jurisdiction wherein this Agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.

***SIGNATURES ARE ON THE NEXT PAGE***

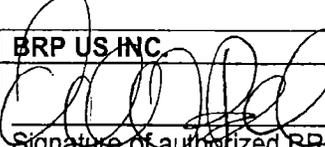
**8. Signature**

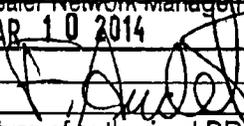
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement in duplicate as of the day and year written below.

By signing on behalf of Dealer, the person(s) that sign(s) represent(s) and guaranty(ies) that he (she or they) have the authority to bind Dealer.

DEALER:	<b>FUNBIKE CENTER</b>
By:	 Signature of Authorized Dealer Representative
Printed Name:	<b>Loay C. Roundy</b>
Corporate Title:	<b>C.O.O</b>
Date:	<b>12-10</b> , 20 <b>13</b>

By:	Signature of Authorized Dealer Representative
Printed Name:	
Corporate Title:	
Date:	, 20

Accepted by BRP:	<b>BRP US INC.</b>
By:	 Signature of authorized BRP representative
Printed Name:	<b>DELTON BOHLMAN</b>
Corporate Title:	Director <del>Dealer Network Management</del>
Date:	<b>MAR 10 2014</b> , 20

By:	 Signature of authorized BRP representative
Printed Name:	<b>FRÉDÉRIC AUDET</b>
Corporate Title:	Manager <del>Network Development</del>
Date:	<b>MAR 10 2014</b> , 20



DEALER AGREEMENT  
ADDENDUM A

DEALER LOCATION

1. General Information on Dealer

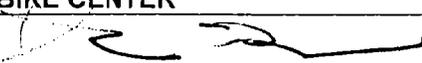
- (a) Legal Entity Name of Dealer : FUN BIKE CENTER
- (b) D.B.A Name of Dealer : FUN BIKE CENTER

2. Approved Dealer Location

BRP has approved the location of the following premises, and no others, for dealership operations by Dealer:

5755 KEARNY VILLA ROAD, SAN DIEGO, California, 92123-1111  
[Dealership's address] Street name, City, State, Zip Code

Dealer hereby certifies that the foregoing information is true and complete as of 12-10, 2013. This Addendum cancels and replaces any prior understanding on Dealer Location, including any prior executed Addendum A.

<b>FUN BIKE CENTER</b>	
By: 	Signature of Authorized Dealer Representative
Date: <u>12-10-2013</u>	
By: _____	Signature of Authorized Dealer Representative
Date: _____	



**DEALER AGREEMENT  
ADDENDA B PRODUCTS**

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**ADDENDUM B-2**

(Sale and Service of the Sea-Doo® Personal Watercraft)

By the execution of this Addendum B-2 by BRP and Dealer, BRP authorizes Dealer and Dealer agrees to sell at retail and service the Sea-Doo® personal watercraft and the related parts, accessories and clothing.

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**ADDENDUM B-3**

(Sale and Service of the Can-Am® All-terrain Vehicles)

By the execution of this Addendum B-3 by BRP and Dealer, BRP authorizes Dealer and Dealer agrees to sell at retail and service Can-Am® all-terrain vehicles and the related parts, accessories and clothing.

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**ADDENDUM B-4**

(Sale and Service of the Can-Am® Side-by-Side Vehicles)

By the execution of this Addendum B-4 by BRP and Dealer, BRP authorizes Dealer and Dealer agrees to sell at retail and service Can-Am® side-by-side vehicles and the related parts, accessories and clothing.

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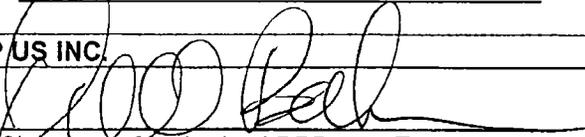
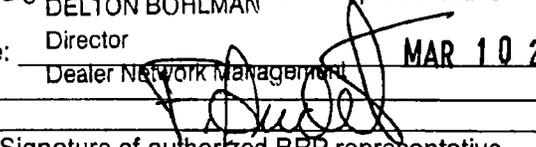
**ADDENDUM B-5**

(Sale and Service of the Can-Am® Roadsters)

By the execution of this Addendum B-5 by BRP and Dealer, BRP authorizes Dealer and Dealer agrees to sell at retail and service Can-Am® roadsters and the related parts, accessories and clothing.

The Parties expressly acknowledge and understand that this Agreement is independent and separately enforceable for each product line listed in the above Addenda B and the use of this common Agreement is intended to simplify the execution of the Agreement(s). The Parties acknowledge and agree that some Products may be subject to specific laws or regulations which may prescribe, among others, more restrictive requirements for the termination or the non-renewal of this Agreement. The Parties agree that the format of this Agreement or the execution of more than one Addendum B shall in no case be interpreted in such manner that requirements applicable to regulated Products are applicable to unregulated Products.

The above Addenda B cancel and replace any prior understanding on Products covered by the Agreement, including any prior executed Addenda B.

<b>FUN BIKE CENTER</b>	
By: 	Signature of Authorized Dealer Representative
Date: <u>12-10-13</u>	
By: _____	Signature of Authorized Dealer Representative
Date: _____	
<b>BRP US INC.</b>	
By: 	Signature of authorized BRP representative
Date: _____	Director
Date: _____	Dealer Network Management <b>MAR 10 2014</b>
By: 	Signature of authorized BRP representative
Date: _____	FRÉDÉRIC AUDET
Date: _____	Manager <b>MAR 10 2014</b>
Date: _____	Network Development



**DEALER AGREEMENT  
ADDENDUM C**

**STATEMENT OF OWNERSHIP AND MANAGEMENT**

1. Legal Entity Name of Dealer:      FUN BIKE CENTER
2. D.B.A Name of Dealer:            FUN BIKE CENTER
3. Dealer is a:
- Proprietorship
  - Partnership, formed on \_\_\_\_\_ under the laws of the State of \_\_\_\_\_
  - Limited liability company, formed on \_\_\_\_\_ under the laws of the State of \_\_\_\_\_
  - Corporation, incorporated on 7-5-73 under the laws of the State of CA
  - Other: \_\_\_\_\_

4. The following persons are the Owners of Dealer:

Name and Address of Each Owners of Dealer	Percentage of Ownership (% of voting shares if applicable)
Name: <u>LOANN E. Roundy</u> Address: <u>2223 OLD STAGECOACH TRL - ALPHEE CA</u> Email: <u>LORoundy@Funbike.com</u>	49%
Name: <u>ELIZABETH Roundy</u> Address: <u>16229 WINECREAK RD. S.D. CA 92127</u> Email: <u>LIZROUNDY@YAHOO.COM.</u>	51%
Name: _____ Address: _____ Email: _____	

Name: _____ Address: _____ Email: _____	_____
Name: _____ Address: _____ Email: _____	_____

5. The following persons are Dealer officer(s), director(s) and general manager:

Name, Personal Address and Email Address of Dealer officer(s), director(s), and general manager	Title
Name: <u>Earl C. Randy</u> Personal Address: _____ Email: <u>ERandy@Funbike.com</u>	<u>C.O.O</u>
Name: _____ Personal Address: _____ Email: _____	_____
Name: _____ Personal Address: _____ Email: _____	_____
Name: _____ Personal Address: _____ Email: _____	_____
Name: _____ Personal Address: _____ Email: _____	_____

6. The following persons are Authorized Representative of Dealer, and as such shall be physically present at Dealer's Location at such times as are required by this Agreement:

Name, Address and Email Address of Authorized Representative(s)	Title
Name: _____ Address: _____ Email: _____	_____
Name: _____ Address: _____ Email: _____	_____

Name: _____ Address: _____ Email: _____	_____
Name: _____ Address: _____ Email: _____	_____
Name: _____ Address: _____ Email: _____	_____

7. Any of the Dealer Owner(s), officer(s), director(s) and general manager, including the Authorized Representative, shall have the authority to execute documents relating to dealership operations and receive communications on behalf of Dealer. These persons shall be agents of Dealer, and BRP is entitled to rely on the authority of any one or more of these people to make any decision on behalf of Dealer with respect to Dealer's operations. BRP has entered into this Agreement in reliance upon the qualifications of the persons identified in this Addendum C and their continued provision of personal services in the ownership and management of Dealer.

Dealer hereby certifies that the foregoing information is true and complete as of 12-10, 2012. This Addendum cancels and replaces any prior understanding on Ownership and Management of the Dealer, including any prior Addendum C.

<b>FUN BIKE CENTER</b>
By:  Signature of Authorized Dealer Representative
Date: <u>12-10-12</u>
By: _____ Signature of Authorized Dealer Representative
Date: _____



**BRP US INC. DEALER AGREEMENT  
CALIFORNIA ADDENDUM**

The BRP US INC. Dealer Agreement 2013 – V.1 signed between BRP US INC. ("BRP") and the undersigned dealer ("Dealer") is supplemented and amended as follows:

1. BRP and Dealer entered into the Dealer Agreement referenced above ("Dealer Agreement"). Dealer declares having a copy of such Dealer Agreement.
2. BRP and Dealer acknowledge that the State of California Air Resources Board ("CARB") enact emissions regulations for marine engines, off-highway recreational vehicles and highway motorcycles. Among other things, these regulations require that engines and/or vehicles sold in California bear certain label(s), hang tag(s) and carry a special warranty on emission components.
3. In regards to the sale of BRP Sea-Doo® personal watercraft ("PWC"), Can-Am® all terrain vehicle ("ATV"), Can-Am® side-by-side vehicles ("SSV") and Can-Am® roadsters ("Roadsters") in the state of California, Dealer hereby agrees to the following in addition to the obligations contained in the Dealer Agreement and any BRP Policies (as defined in the Dealer Agreement General Provisions) which may be issued regarding California sales:
  - a) Dealer agrees to sell only those PWC, ATV, SSV and Roadsters produced for sale in California ("BRP California Products"). BRP California Products will bear proper markings indicating that the equipped engine was produced for sale in California.
  - b) Prior to displaying, selling and/or delivering a PWC, verify that the vehicle:
    - (i) bears a California Star label on the port bow, a hang tag describing the meaning of the California Star label, and an emission control information label (near the engine compartment) containing a statement of compliance to California emission(s) regulation(s).
  - c) Prior to displaying, selling and/or delivering an ATV, a SSV or a Roadster, verify that the vehicle:
    - (i) bears an emission control information label (near the engine compartment) containing a statement of compliance to California emission(s) regulation(s).
  - d) In the event an engine or a vehicle lacks one of the foregoing, Dealer agrees not to sell such BRP California Product and agrees to comply with the written Policies and instructions issued by BRP pertaining to such situations.
  - e) Immediately notify BRP if Dealer receives BRP products from any source that does not comply with any of the requirements listed in paragraphs 3(b) and 3(c) above or in Policies issued by BRP regarding the sale of BRP California Products.

- a) Provide warranty service in accordance with the BRP California Emissions warranty statement and BRP's warranty policies issued from time to time.
  - b) Not to install labels or hang tags covered by this Addendum on a BRP California Product without receiving prior, written consent from BRP to do so.
4. This Addendum shall expire or terminate at the same time than the Dealer Agreement referenced above.
  5. Should any term of this Addendum conflict with the terms of the Dealer Agreement between the parties, the terms of this Addendum shall govern. All other terms of the Dealer Agreement shall remain in full force and effect unless amended in writing and signed by both parties.

<b>FUN BIKE CENTER</b>
By: _____ Signature of Authorized Dealer Representative
Date: <u>12-10-13</u>
By: _____ Signature of Authorized Dealer Representative
Date: _____
<b>BRP US INC.</b>
By: _____ Signature of authorized BRP representative
Date: _____
By: _____ Signature of authorized BRP representative
Date: _____

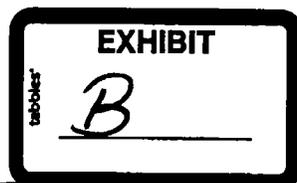
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**EXHIBIT "B"**



**BRP US INC.  
DEALER AGREEMENT  
GENERAL PROVISIONS**

November 2013





**DEALER AGREEMENT  
GENERAL PROVISIONS**

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## DEALER AGREEMENT GENERAL PROVISIONS

### GENERAL PURPOSE AND OBJECTIVES

This Dealer Agreement represents a covenant between BRP and Dealer to deliver to current and future BRP customers the most extraordinary recreational experience that is driven by the BRP vision: "Passion and innovation that move the powersports world".

BRP dedicates itself to the design, engineering, manufacture, marketing and supply of BRP products and services to achieve this vision. Similarly, Dealer dedicates itself to serving the BRP customer and ensuring that BRP products are sold and serviced in a manner that promotes the BRP experience while increasing customer loyalty and customer satisfaction.

BRP has appointed Dealer as an authorized BRP dealer in reliance upon, among others, Dealer undertaking to conduct its BRP dealership operations in the following manner:

- In accordance with the requirements and standards set forth in this Agreement and the BRP US Inc. Dealer Operation Standards, and
- Through exemplary, sound and ethical business practices and through conscientious regard for quality customer service.

Dealer acknowledges that in becoming an authorized BRP dealer, Dealer will become part of a dealer network that is designed to provide, at designated locations, dealerships that are qualified to fulfill needs of BRP customers through:

- The sale of BRP products, including knowledgeable presentations of their features (including safety features) and benefits, operation, proper inspection and preparation prior to delivery; and
- Prompt, efficient and courteous service for owners of BRP products so that interruptions of use of such BRP products are minimized.

Dealer also acknowledges the importance of the BRP Dealer Certification Program incentive and other programs adopted by BRP, from time to time, which are intended to influence key business practices that enhance the customer experience and promote dealership profitability and recognizes that it should take full advantage of the benefits of these programs in order to deliver the ultimate customer experience in its dealership.

### 1. Definitions

Throughout this Agreement various abbreviations and abbreviated phrases are used. Their meanings are:

- (a) "Authorized Representative" means a qualified representative of Dealer, which may be as a General Manager, whose full-time professional efforts are devoted to the conduct of Dealer Operations, who is authorized on behalf of Dealer to execute documents and make all operational decisions with respect to Dealer Operations, on whose authority BRP is entitled to rely, and who is physically present at Dealer Location during most of Dealer's customary operating hours. The Dealer Owner(s), officer(s), director(s) and general manager are deemed to be Authorized Representative of Dealer.

- (b) "BRP" means BRP US Inc.
- (c) "Dealer Binder" means BRP Dealer Binders issued by BRP from time to time for each Product and available on the BRP dealer portal.
- (d) "BRP Dealer Certification Program" means a point based program that includes a number of weighted criteria set by BRP and in which Dealer can earn points, and from such points incentive rewards and recognition, based upon a series of scaled performance indexes.
- (e) "Dealer Location" means the premises used by Dealer for the Dealer Operations as set forth in Addendum A of this Agreement.
- (f) "Dealer Operations" means all activities of Dealer relating to the promotion, sale, warranty, service of Products and all other activities of Dealer pursuant to this Agreement.
- (g) "Dealer Owners" means the persons or entities who have beneficial or record ownership of Dealer, as well as any other person or entity who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.
- (h) "Dealer Primary Market Area" or "PMA" means an assigned, non-overlapping geographical area designated by BRP in its sole discretion in which Dealer is responsible for retailing, servicing, and otherwise representing Products to a collection of past, current and potential consumers. BRP may designate a PMA, for each Product, by sending a notice to Dealer. BRP may modify, alter or adjust Dealer's PMA at any time.
- (i) "Manufacturer" means Bombardier Recreational Products Inc.
- (j) "Operation Standards" means the BRP Dealer Operation Standards issued by BRP to its BRP dealers, including any replacements, amendments, revisions or additions issued during the Term of this Agreement. BRP may review or modify the Operation Standards, at any time.
- (k) "PAC" means the BRP parts, accessories and clothing specifically related to each Product line.
- (l) "Policies" means all policies, procedures, programs, guides, manuals, technical specifications and terms and conditions issued by BRP to its dealers from time to time, including without limitation the Warranty Service Guide. BRP may review or modify the Policies at any time.
- (m) "Products" means the Vehicles, together with PAC, that are covered by this Agreement, as set forth in Paragraph 1 (c) of the BRP US Inc. Dealer Agreement.
- (n) "Service" means all work performed on Products including, without limitation, set-up, warranty work, maintenance, repair work, inspection, safety campaigns and modification services.
- (o) "Share of Wallet" means the share of the annual revenue generated by each major OEM to the Dealer gross annual revenue.
- (p) "Term" means the term of this Agreement set forth in Section 5 of the BRP US Inc. Dealer Agreement.

- (q) "Trademarks" means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or BRP.
- (r) "Vehicles" means the BRP vehicles that are covered by this Agreement, as set forth in Paragraph 1 (c) of the BRP US, Inc. Dealer Agreement.
- (s) "Warranty Service Guide" means the BRP Warranty Service Guide issued and updated by BRP from time to time.

## **2. Purchase of Products and Delivery**

- (a) Orders. Dealer shall order Products from BRP in such quantities and assortment as are necessary to fulfill Dealer's responsibilities under this Agreement. Such Dealer's orders of Products ("Orders") shall be sufficient to achieve adequate market penetration, to maintain an adequate inventory of Products and to meet its sales responsibilities under Paragraph 5 (a). Dealer shall place Orders in accordance with the ordering process established by BRP. BRP may cancel, accept or reject, in whole or in part, or decrease quantities in any Order without any liability to Dealer. BRP will notify Dealer of any changes to its Orders.
- (b) Product Changes. The Manufacturer may discontinue the manufacture or sale of any Products or change the specifications, materials, design, color or appearance or add improvements to any Product or add Products at any time, and as a result, BRP reserves the right to discontinue the distribution of any Products or to distribute such modified Products all without notice to Dealer and without incurring any liability or obligation to Dealer or Dealer's customers with respect to Products previously ordered or purchased by Dealer or otherwise.
- (c) Cancellation of Orders. Dealer may not cancel, change, or refuse delivery of any Products, or return ordered Products to BRP without BRP prior authorization. Dealer shall be subject to cancellation fees for such conduct as set forth in the Dealer Binder. Dealer shall also reimburse BRP for any costs incurred in returning Products to BRP. No Products may be returned unless they are unused and resalable, in accordance with BRP's applicable Policy. The fees or costs referenced in this Paragraph are a reasonable reimbursement for any loss BRP suffers from such cancellations, refused deliveries, changed orders or returns, and are not a penalty.
- (d) Delivery. Dealer shall accept delivery of Products according to the prevailing shipping schedule as set forth in the Dealer Binder or in the Order. All delivery dates agreed upon by the Parties are tentative, notwithstanding any terms contained in any Order or other communication by either Party. BRP shall not be in breach of any duty to Dealer if it fails to meet such delivery dates for any reason. BRP may ship Orders as Products become available and in advance of the expected delivery date upon notice to Dealer. Dealer shall have equipment and facility for unloading Products. Dealer may receive delivery of Products off-site, provided Dealer obtains BRP's prior written consent.
- (e) Shipment and Risk of Loss. All shipment of Products shall be delivered as per INCOTERMS® 2010 ICC "FCA BRP's factory or BRP's selected shipping point of origin, customs cleared" for the applicable Products. However, BRP will select and contract the carrier for carriage. Transfer of risks will remain as per "FCA BRP's factory or BRP's selected shipping point of origin". Transport charges will be invoiced to Dealer by BRP. The title transfer of Products will take place upon delivery to the carrier at BRP's factory or BRP's selected shipping point of origin.

### 3. Price, Payment and Financial Requirements

- (a) Price. Dealer shall purchase Products at such prices, taking into account such discounts, terms and conditions, as may be established by BRP from time to time. All sales are subject to availability of Products, to the provisions of this Agreement and to the Operation Standards and Policies, including without limitation BRP's current general sales terms and conditions. Unless otherwise stated by BRP, prices do not include sales, use, excise or other tax which shall be a separate charge paid by Dealer, as applicable. Dealer shall pay the price in effect on the date of shipment, regardless of when the Order was submitted or accepted. BRP may change Product prices, terms, Policies and conditions of sale upon notice to Dealer.
- (b) Payment. The purchase price for Products shall be paid in accordance with the terms and conditions set forth on the invoice at the time of shipment or as otherwise provided in the Operation Standards and Policies.
- (c) Financial Arrangements. BRP will not extend credit to Dealer or finance Dealer's purchase of any Product. Dealer shall make financial arrangements for the payment of Products with any financial institution of Dealer's choice, if such financial institution and the terms of its arrangements to finance Dealer are accepted in advance in writing by BRP. These financial arrangements must allow Dealer to (i) place Orders of Products sufficient to meet its responsibilities under this Agreement, (ii) pay for the purchase of Products and (iii) accept delivery of Products when available. BRP may pre-approve floor plan and financial arrangements with one or more financial institutions and may provide that information to its Dealers from time to time. Products must be fully paid to BRP prior to shipment. This Agreement will not become effective unless notice of final approval of Dealer credit is received by BRP and those arrangements have been accepted in writing by BRP. Acceptance of an Order or signing of this Agreement by BRP will not constitute acceptance of Dealer's financial arrangements. Dealer will receive separate written notification in the event that its financial arrangements for payment of Products are no longer acceptable to BRP.
- (d) Unauthorized Changes to Financial Arrangements. BRP reserves the right to terminate or discontinue any shipment or delivery of Products and to stop delivery of any Products already in shipment immediately and without notice to Dealer if: (i) the financial arrangements for payment of Products are discontinued, interrupted or curtailed, (ii) BRP believes that its ability to obtain payment for its Products is insecure or (iii) the financial situation of Dealer has otherwise deteriorated. Any such cessation of shipment or delivery of Products shall not constitute a termination of this Agreement or a substantial change in the competitive circumstances of this Agreement. BRP may recommence shipment or delivery of its Products if all the reasons for termination or discontinuance of shipments stated above are cured within thirty (30) days from notification by BRP. If any of the situations stated above is not cured within the required delay, BRP may, at its sole discretion, terminate this Agreement.
- (e) Credit Reports. Dealer authorizes BRP or its agent to run a credit report on Dealer, Dealer Owner(s) and any Dealer affiliate(s) in connection with this Agreement or in connection with BRP's evaluation of Dealer's performance under this Agreement. Dealer authorizes BRP to disclose such credit report in accordance with Paragraph 11 (c).
- (f) Subrogation. Upon termination or expiration of this Agreement, credits due to Dealer from BRP for any amount, including credits for warranty work, parts, returned Products or other credits shall be promptly paid. Dealer's right to receive payments for any such credits shall be subrogated to the right of any financial institution that has provided credit

or financing for Dealer's acquisition of Products. Dealer hereby authorizes BRP to notify any such financial institution of the amount of such credits upon reasonable demand and reasonable proof of the right of subrogation by such institution. Dealer's right to receive payment for any such credits is also subject to the restocking charges and rights of offset set forth in Section 16.

- (g) Insurance. Dealer shall obtain and maintain at its sole cost and expense throughout the Term and also for two years after the expiration or termination of this Agreement, customary property, theft and comprehensive commercial general liability insurance from a reputable solvent insurance company. This insurance shall cover Dealer facility, fixtures, equipment and all other property of Dealer for the full value thereof and shall not have a limit of less than two million dollars (\$2,000,000 USD) per occurrence and in the aggregate. Such insurance shall name BRP, its parents, its affiliates, and their respective directors, officers and employees as additional insured against any and all claims, demands, causes of action, or damages including reasonable attorney's fees for Dealer Operations performed by Dealer. Dealer shall provide a certificate of insurance evidencing such coverage upon BRP request.

#### **4. Reporting of Shortages or Defects**

Dealer must inspect all Products immediately upon arrival. Dealer shall make all claims for shortages and damaged Products at time of delivery and shall forward this notification to BRP within seven (7) days after receipt of shipment, as described in the Operation Standards and Policies, including without limitation the Warranty Service Guide. Failure of Dealer to make said notification shall constitute a waiver of any such claim.

#### **5. Dealer Responsibilities**

- (a) Dealer Sales Responsibilities. Dealer shall devote its best efforts to actively and adequately promote, display, sell at retail a full-line of only those Products it is authorized to sell under this Agreement. Dealer shall meet sales performance goals satisfactory to BRP and agrees that meeting and maintaining such sales performance is a material condition to BRP entering into and continuing this Agreement. BRP may evaluate whether Dealer is meeting its sales goals based on criteria determined by BRP in its sole discretion. By way of example only, such criteria may include the following: the volume of Dealer sales of Products as compared to competitive products in Dealer's PMA or market area; the volume of Dealer's sales of Products as compared to other dealers of Products; the actual sales volume of the Products by Dealer as compared to the annual sales performance goals established by BRP for Dealer; the trend over a reasonable period of time of Dealer's sales; and the volume of Dealer's sales of Products as compared to Dealer's agreed goals. If Dealer handles brands which are competitive with the Products, Dealer shall afford to the sale of the Products either as much effort as Dealer gives to any direct competitive products handled by Dealer or efforts in proportion to the Share of Wallet that the Products represent, whichever is greater.
- (b) Dealer Location. Dealer shall maintain, at the Dealer Location, sales and Service facilities that are at all times satisfactory and acceptable to BRP and that meet the requirements set forth in the Operation Standards and Policies including, without limitation, requirements for the size or square footage of the facility, the appearance of the facility, signage, Product display and business hours. Dealer shall make such alterations, improvements and upgrades to the Dealer Location as BRP may specify from time to time or in agreement(s) entered into with Dealer. Dealer hereby grants to BRP permission to inspect and photograph all parts of the Dealer Location to ensure compliance with this Agreement. Dealer shall execute, upon request from BRP, a report of the Dealer Location or other document specified by BRP, which may include, without

limitation, a description of the Dealer Location and a comparison with the requirements set forth in the Operation Standards and Policies.

- (c) Pre-Delivery Responsibilities. Dealer shall assemble, set-up, test and inspect Products to ensure that they are in proper operating condition prior to delivery to any retail customer. Dealer agrees that it will not deliver to anyone, other than another authorized BRP dealer, any Products which are either in shipping crates, or not fully set-up, Serviced, and that have not successfully passed the pre-delivery inspection in accordance with the Operation Standards and Policies, including without limitation the BRP Pre-Delivery Inspection Checklist and the Warranty Service Guide. Dealer agrees to deliver Products and review their features with each retail customer in person. Dealer's responsibilities to properly set-up, test and inspect Products shall survive the termination or expiration of this Agreement.
- (d) Service of Products.
- (i) Dealer shall provide to purchasers of Products the terms of the applicable BRP warranty, including any territorial limitations to warranty coverage. After delivery of any new and unused unit(s) to the customer, Dealer shall promptly and accurately file electronically with BRP true and complete warranty registration information, in accordance with the Operation Standards and Policies, including without limitation the Warranty Service Guide. Subject to applicable law, BRP may utilize the information provided by Dealer for any purpose including, without limitation, establishing warranty protection, providing essential information in the event of a safety campaign and providing BRP with useful marketing information.
  - (ii) Dealer shall perform promptly, any necessary Service including all extended warranty services pursuant to any applicable BRP extended service contract owned by the consumer. Such Service shall be performed without charge to retail customer when prescribed by BRP. As soon as informed, Dealer shall not sell any Product that is affected by a safety campaign until modifications have been duly performed on the Product, the whole as instructed by BRP. Dealer shall be responsible for, and hold BRP harmless from, any costs or other damages incurred by BRP as a result of any failure by Dealer to comply with this Paragraph.
  - (iii) Dealer shall process warranty claims on Products in accordance with the procedure set forth in the Operation Standards and Policies, including without limitation the Warranty Service Guide, BRP instructions and technical publications. When Service is made on Products, only replacement parts approved by BRP shall be used. Dealer shall not sell or offer for sale or use in the Service of any Products, as a genuine new BRP part, any part that is not in fact a genuine new BRP part.
  - (iv) Dealer shall not refuse to provide Service to a customer for the sole reason that the Product was purchased from another dealer. Dealer shall assume sole responsibility for the workmanship of any Service performed by its employees or representatives, and shall not hold BRP responsible in any way if any failure or damage is caused to the Products as a direct or indirect result of their acts or omissions including but not limited to Dealer's failure to perform Service as required.
  - (v) All Service shall be provided only by Dealer and its employees. Dealer shall perform all Service in accordance with the Operation Standards and Policies, including without limitation the Warranty Service Guide, BRP instructions and technical publications. Dealer agrees that performing Service in a manner satisfactory to BRP is a condition to BRP entering into and continuing this Agreement. BRP reserves its

right to evaluate the Dealer's Service in accordance with the Operation Standards and Policies, including without limitation the Warranty Service Guide.

- (e) Dealer Staff and Training. Dealer shall employ, at all times, adequate numbers of qualified employees trained in sales, Service and customer satisfaction in order to meet the anticipated demands of the market served by Dealer, the whole as set forth in the Operation Standards and the Policies. Dealer shall ensure that each of its sales employees and Service technicians complete the mandatory training programs offered or sponsored by BRP. Dealer shall be responsible for all out-of-pocket expenses incurred by such personnel, including, without limitation transportation and lodging.
- (f) Tools and Equipment. Dealer shall maintain, at all times, adequate tools, Service equipment, BRP manuals and Service publications in order to meet Dealer Service obligations under this Agreement. This obligation includes, without limitation, acceptance and payment of new tools, Service equipment, manuals and publications uniquely designed to meet the Service needs for newly introduced Products.
- (g) Advertising.
  - (i) Dealer shall develop, utilize and participate in various advertising and sales promotions of its dealership and the Products in a manner consistent with the terms of the Operation Standards and Policies in order to fulfill its responsibilities for selling, promoting and advertising Products set forth in the Operation Standards and Policies. To assist Dealer in fulfilling Dealer advertising and promotion responsibilities, BRP may develop and offer various advertising and sales promotion Policies to promote the sale of Products for the mutual benefit of BRP and Dealer.
  - (ii) In recognition of the need to maintain the highest standards of ethical advertising and business practice, Dealer shall avoid in every way any deceptive, misleading, confusing or illegal advertising or business practice or advertising that is or might be detrimental to the Products, BRP, its Trademarks or the public.
- (h) Data Transmission Systems. Dealer shall maintain and utilize a computer system that permits direct communication between Dealer and BRP in the manner prescribed by BRP. Dealer shall submit Orders and Order changes for Products, warranty registrations, claims for warranty reimbursement, inventory information, traffic and retail sales information, and such other information as BRP may designate, through the BRP designated systems.
- (i) Dealer Management System. Dealer shall utilize a BRP approved dealer management system and, subject to applicable law, shall allow BRP to access selected information, the whole as set forth in the Operation Standards and Policies.
- (j) Compliance with Law. Dealer shall maintain all necessary licenses and permits, and comply with all federal, state and local laws and regulations applicable to the Dealer Operations and respect all laws and regulations pertaining to the protection of the environment. Dealer is responsible for all local, state and federal or other applicable taxes and tax returns related to Dealer business and holds BRP harmless from any related claims or demands made by any taxing authority. Dealer shall collaborate and execute any document submitted by BRP in order to obtain Dealer's tax status from relevant authorities regarding, without limitation, its payment of tax returns and payroll deductions.

(k) Restrictions on Sales of Products.

- (i) Dealer shall not directly advertise or directly or indirectly sell Products, whether new, current or non-current, in another country than the one in which it was last invoiced, or sell Products to any person who intends to sell or distribute Products outside the country in which it was last invoiced.
- (ii) Dealer acknowledges and agrees to sell Vehicles only to customers residing in the country in which the Vehicles were last invoiced, for personal use or primary commercial use other than for resale, as set forth in the Operation Standards and Policies. Furthermore, Dealer shall not knowingly assist others in importing or exporting Vehicles inside or outside the country in which the Vehicles were last invoiced.
- (iii) Dealer shall not establish directly or indirectly an associate or sub-dealer for the sale, Service or display of Products and shall not wholesale, bulk sell or otherwise transfer Products to any person, business or other dealer except those dealers authorized by BRP to sell and Service the Products within the U.S.A. However, Dealer may sell parts to repair shops for repair use only and not for resale. Dealer agrees that any breach of this Paragraph would cause irreparable harm to BRP and injunctive relief against a violation would be appropriate and reasonable.
- (l) Records. Dealer shall maintain the following records for a minimum of seven (7) years: (i) all proof of sales of Products or Services, (ii) all warranty records, (iii) profit and loss statements, (iv) tax returns of Dealer dealership; and (v) all records relating to rebates and promotional Policies. Dealer shall make such records available to BRP upon BRP request.
- (m) General Obligations. Dealer shall perform all other responsibilities and obligations expressed in this Agreement. Dealer shall comply with the Operation Standards and all Policies, including but not limited to those related to warranty registration, sale of Products, minimum advertised price for BRP vehicles and PAC and the export of Products. Failure to comply with the Operation Standards or any Policy may lead to sanctions including, without limitation, the termination of this Agreement.

6. Safety

Dealer shall comply with the following safety requirements:

- (a) Safety Campaigns. Dealer shall perform all Product safety campaigns as instructed by BRP.
- (b) Products and Labels. Dealer shall inspect all Products upon arrival and at reasonable intervals when in stock, to ensure all safety and compliance labels and hangtags, as BRP may require, are affixed to each Product and that each label is located in the appropriate place on the Product. If a label or hangtag is misplaced, missing, or not in the appropriate language, Dealer shall correctly affix such label or hangtag in the appropriate place on the Product. Any discretionary labels Dealer wishes to affix to a Product must be placed so as not to detract from any safety and compliance label and hangtags.
- (c) Regulatory Changes. Dealer recognizes and agrees that BRP may install or require Dealer to install, on Products, any additional equipment or accessory required by any applicable federal, state or local law, rule or regulation, for safety considerations or other mandatory requirements. Such regulatory change shall be made at no cost to BRP. Dealer declares and agrees that any modification of requirements pertaining to the sale

or servicing of the Products required by any applicable federal, state or local law, rule or regulation, shall be incorporated herein by this reference and shall become the responsibility of Dealer.

- (d) Disseminate and Display Safety Materials. Dealer shall disseminate or display, as directed, all point-of-purchase Product safety materials supplied by BRP and any Product trade association, including without limitation literature, videos and posters.
- (e) Advertisements. Advertisements and promotional materials used by Dealer, including without limitation in social media initiatives, shall depict practices in conformity with BRP safety guidelines and industry recommendations.
- (f) No Inconsistent Safety Representations. Dealer shall not make inconsistent safety representations and shall not contradict the safe practices related to the Products recommended by BRP. Dealer shall only offer or sell modifications or accessories which preserve the safety of the users.
- (g) Safety Training. Dealer recognizes that knowledge saves life and that it shall ensure that all its employees are appropriately trained and informed on the safe use of the Products. Dealer shall undertake to have its employees complete safety training programs offered by BRP or industry associations if BRP requires so. Dealer shall be responsible for all out-of-pocket expenses incurred for attending such training programs, including, without limitation, transportation and lodging.
- (h) Customers of Can-Am ATV. If Dealer is appointed by BRP to sell Can-Am all-terrain vehicles, Dealer recognizes and agrees that it shall not market, sell or offer to sell Can-Am all-terrain vehicles to customers who are under the age referred on the warning labels on such Product. BRP may perform undercover investigations and if, through an undercover investigation or otherwise, Dealer or its employees are found to infringe this Paragraph, BRP may, at its sole discretion: (i) charge Dealer a fee of five hundred dollars (\$500 USD) and any other amount connected to BRP's investigation cost for each follow-up investigation that BRP deems appropriate to perform, (ii) charge such fees and impose any other sanctions or obtain compensation for any other damages as BRP may deem appropriate and (iii) terminate this Agreement.
- (i) Potential Safety Issues. Dealer shall report promptly to BRP any accident or incident which may involve a potential safety issue and to collaborate with BRP during any safety investigation.

## **7. Product Warranty**

BRP makes no representations or warranties, expressed or implied, with respect to the products either for itself, or where applicable for the Manufacturer, except as may be provided in a current standard written or printed limited warranty offered by the Manufacturer to the retail customer with respect to one or more of the Products. BRP reserves its right to amend or rescind the applicability of such warranty at all times. The Products sold by BRP to Dealer shall carry no warranties other than the warranties of the Manufacturer. It is understood and agreed that all warranties of BRP, either expressed or implied, including any implied warranty of merchantability and any implied warranty of fitness for a particular purpose, are hereby excluded and disclaimed. Neither Dealer, nor any other person, shall have authority to bind BRP to any other representation or warranty. Dealer shall indemnify BRP for all losses, damages, liabilities, reasonable attorneys' fees, or expenses which BRP may incur as a result of, or in connection with, any claim under such warranty by reason of any act or omission or different warranty given by Dealer, Dealer's employees or agents. BRP neither assumes nor authorizes anyone to assume for it any other obligation or liability in connection with its Products.

## 8. Trademarks and Name

- (a) Use of Trademarks and Name. BRP hereby grants to Dealer the license to use the Trademarks at Dealer's Location and on items such as, without limitations, Dealer's sign, Dealer's stationery and Dealer marketing material. Dealer, Dealer's officers, Dealer's owners and Dealer personnel must not make any other use of the Trademarks that may be confusingly similar to it. Accordingly, and not by way of limitation, the Trademarks may only be used by Dealer at its present and precise Dealer Location. Dealer shall not use the words "Bombardier", "Bombardier Recreational Product", "BRP", "Can-Am", "Sea-Doo", "Ski-Doo", or any combination of such words, or any word or words confusing or similar thereto or any other Trademark as the whole or any part of its Dealer corporate or domain name. Upon prior written consent of BRP and during the Term only, Dealer may use such Trademark in connection with Dealer's trade or business name, which permission may be revoked at any time or withheld at BRP sole discretion. When requested by BRP, Dealer shall provide BRP with an updated list of all domain names used containing Trademarks. Upon termination or expiration of this Agreement, Dealer rights of use as provided herein shall be automatically revoked unless otherwise agreed to in writing by BRP and if requested by BRP, Dealer shall promptly assign to BRP any rights that Dealer has in any domain names or websites containing Trademarks.
- (b) Ownership and Licensing. Dealer acknowledges that BRP and its affiliated companies are the sole and exclusive owner or licensee of the Trademarks. Dealer further acknowledges that Dealer right to use said trademarks is strictly limited to such use as contemplated by this Agreement and inures to the benefit of BRP and not of Dealer. Dealer further acknowledges that it is not authorized to license or sub-license or otherwise permit the use of Trademarks without BRP prior written consent. Dealer agrees and covenants not to contest in any way the validity of any rights of BRP or its affiliated companies in such Trademarks or names.
- (c) Protection. The protection of the Trademarks and their distinguishing characteristics is important to BRP. Dealer must immediately notify BRP of any notice of infringement received by Dealer or other challenge to use of any Trademark, or any other claims of rights to any trademark identical or confusingly similar to the Trademarks. Dealer may not communicate with any person other than BRP regarding any such matter. BRP is not required to take any affirmative action when notified of any infringement, challenge, use or claim relating to the Trademarks, and may take whatever action BRP considers appropriate. BRP has the sole right to control any administrative proceeding or litigation involving the Trademarks. Dealer must fully cooperate with BRP in such matters, and must sign any and all documents BRP believes are necessary to obtain protection for the Trademarks. BRP's decision as to the prosecution, defense and settlement of any dispute relating to the Trademarks will be final. All recoveries made as a result of disputes with third parties regarding the Trademarks will be for the account of BRP.
- (d) After the End of the Agreement. If any such Trademarks are used in signs, advertising or in any other manner by Dealer, Dealer shall, upon termination or expiration of this Agreement, immediately discontinue, at its expense, all such use and display thereof. Thereafter, Dealer shall not use, either directly or indirectly, any such Trademarks or any other marks so resembling such Trademarks as to be likely to cause confusion as to the business relationship between the Parties or mistake to deceive the public.
- (e) Liquidated Damages. In addition to injunctive relief provided in Section 23 (e), if Dealer shall refuse or neglect to comply with the provisions of this Section 8, Dealer shall pay to BRP as liquidated damages and not as penalty, BRP costs, attorney's fees, and all other

expenses incurred by BRP in connection with any legal action to require Dealer to comply therewith.

#### **9. Reports**

- (a) Financial Reports. Dealer shall provide to BRP, on a monthly, quarterly or annual basis as BRP may request, financial reports or any other relevant operation reports giving BRP a complete, true and accurate report of Dealer Operations for the time periods requested. Dealer shall provide all Dealer, Dealer Owners and Dealer affiliates financial reports in the manner prescribed by BRP.
- (b) Audit. Dealer shall also allow BRP to audit all information and documentation related to the Products, including without limitation Dealer's financial records, at Dealer's Location, upon receipt of a twenty-four (24) hour notice.

#### **10. Relationship with BRP**

For all purposes, Dealer is an independent business, not an agent or employee of BRP. The term "partners" as may be commonly used by either Party shall not constitute the establishment of a legal partnership or give rise to fiduciary duties by either Party to the other. Dealer also agrees that this Agreement does not constitute the grant of a franchise or franchise rights, and acknowledges that it has not been required to, nor has it paid any franchise fee in connection with the execution of this Agreement. Dealer must conduct Dealer Operations on its own behalf and for its own account. Dealer has no power or authority to act for BRP. Dealer shall have the sole right to determine the manner in which Dealer performs its responsibilities under this Agreement, except as otherwise expressly provided in this Agreement.

#### **11. Confidential Information**

- (a) Confidential Information. Dealer shall strictly maintain the confidentiality of all non-public information and documents provided to it by or on behalf of BRP, or to which it has access through BRP, including information and documents in any form or format now or hereafter developed regarding product development, new Products, production and delivery schedules, pricing, marketing plans, methods of accessing internal information (electronically or otherwise) and other proprietary matters as well as any retail sales data coming from industry associations such as the Motorcycle Industry Council. Dealer shall not disclose any such confidential information or documents to any other person, including to any competitors or customers. Dealer shall take all necessary steps to ensure that Dealer's employees, officers, agents, shareholders or partners maintain the confidentiality of such information, and not disclose it to any other party during or after the expiration or termination of this Agreement.
- (b) Consulting Services. Neither Dealer nor any of its employees, agents, directors and officers shall provide consulting services or assistance to any person or entity or any attorney or agent for such person or entity related to any cause of action, claim dispute, litigation, arbitration or other action involving BRP products. Consulting services and assistance which Dealer is prohibited from providing pursuant to this Section include, but are not limited to, services as an expert witness, advisor or counselor in connection with litigation or claims against BRP arising out of or related to the use, manufacture, design, production, marketing or sale of any Products, parts components, technical specifications, or any similar activities which would assist any such person or entity or its attorney or agent in prosecuting or pursuing any claim or dispute which would adversely affect BRP or its products, unless required by law.

- (c) Disclosure by BRP. Notwithstanding the above, Dealer acknowledges and agrees that BRP may disclose confidential information on Dealer to its parents, subsidiaries, divisions, affiliates, related entities and shareholders and to any business partner, including without limitation any pre-approved financial institution.
- (d) Privacy. Dealer shall comply with BRP's processes and requirements concerning the privacy and confidentiality of consumer data and personal information as set forth in the Operation Standards and Policies from time to time. This may include providing notices to Dealer's customers concerning BRP's policies and procedures in the form prescribed by BRP and obtaining required customer consents.

## 12. Change in Dealer Ownership

- (a) Procedure. Dealer shall give BRP prior written notice, complete explanation of any and all proposed transfer or sale of its principal assets or of any proposal of change in Dealer Owner(s), officer(s) or director(s) or in its approved ownership structure and shall submit all information required by BRP to evaluate the proposal. No such notice or change may be made or shall be effective against BRP unless and until BRP gives its prior written approval. Dealer acknowledges that BRP cannot and will not begin to review the proposal until all such information has been submitted to BRP. In determining whether the proposal is acceptable, BRP will take into account factors including but not limited to, the willingness and proven capability or track record of the proposed Owner(s), officer(s) or director(s) to accept and comply with this Agreement, the Operation Standards and Policies, the ability of the proposed Owner(s), officer(s) or director(s) to meet BRP standards for capital or financial capability, the personal qualifications, the business experience, the demonstrated commitment to the full time on-site management of Dealer Operations and the proposal's effect on competition. In such evaluation, BRP may consult the proposed Owner(s), officer(s) or director(s) on any aspect of the transaction or their proposed dealership operations and Dealer shall hold BRP harmless for any such consultation or other discussions with the proposed Owner(s), officer(s) or director(s).
- (b) Approval by BRP. Once Dealer has provided to BRP all applications and information reasonably requested by BRP to evaluate Dealer proposal, BRP will notify Dealer in writing within ninety (90) days (i) of BRP's approval or disapproval of the proposal by Dealer for transfer or sale of its principal assets or change of any Owner(s), officer(s) or director(s) or (ii) of BRP's intention to exercise its right of first refusal under Paragraph 12 (d). Dealer understands and agrees that BRP's approval of a proposed Owner(s), officer(s) or director(s) who otherwise meets BRP reasonable and consistently applied requirements will be conditioned upon Dealer meeting all outstanding commitments and obligations to BRP, including without limitation the payment by Dealer in full of all amounts owed to BRP and compliance with the Operation Standards and Policies. BRP's approval of Dealer's proposal may be conditioned on the proposed Owner(s), officer(s) or director(s) agreeing to provide existing or new facilities for their BRP operations in compliance with the Operations Standards and Policies.
- (c) Publicly-Owned Corporation. Except for BRP or Bombardier Recreational Products Inc., no publicly-owned corporation may, directly or indirectly, in whole or in part, own or operate any BRP dealership, unless otherwise permitted in writing by BRP.
- (d) Right of First Refusal. Whenever Dealer proposes to transfer its principal assets or a majority change in the Owner(s), officer(s) or director(s), BRP shall have a right of first refusal to purchase the dealership assets related to BRP and to cancel this Agreement and all rights granted to Dealer, except if a proposed transfer has been approved by BRP under a succession plan pursuant to Paragraph 13. BRP right of first refusal is not dependent upon whether the proposed buyer is qualified to be a dealer or an Owner,

officer or director. BRP may elect to exercise its right of first refusal by written notice to Dealer within sixty (60) days after Dealer has provided to BRP all applications and information reasonably requested by BRP to evaluate Dealer's proposal. BRP may assign its right of first refusal to any third party it chooses and may disclose the terms of any pending buy/sell agreement between Dealer and the proposed Owner(s), officer(s) or director(s) and any other relevant Dealer performance information to any potential assignee.

### **13. Succession Plan**

Dealer shall provide, upon request by BRP, either (i) a written succession plan in the event of death or incapacity of any Dealer Owner(s), officer(s) or director(s) or (ii) a written plan detailing such person's plans for eventual retirement and the proposed succession to such person's interest. All such plans shall be subject to BRP's prior written approval.

### **14. Death or Incapacity of Dealer Owner**

- (a) Notification. Dealer shall give BRP immediate notice of the death or incapacity of any of its Dealer Owner(s), officer(s) or director(s). As used in this Agreement, "incapacity" shall refer to a lack of ability to perform professional obligations or functions due to a physical or mental ailment.
- (b) Succession. Notwithstanding Paragraph 16 (e) (iii) (c), in the event of death or incapacity of any of Dealer Owner(s), officer(s) or director(s), BRP will not terminate this Agreement if:
  - (i) The interest in Dealer of such deceased or incapable Dealer Owner(s), officer(s) or director(s) passes directly as specified in any succession plan approved in advance in writing by BRP; or
  - (ii) Within thirty (30) days after the death or incapacity of such Dealer Owner(s), officer(s) or director(s), the Dealer gives written notice to BRP of the qualified individual proposed by the Dealer as a successor. That notification shall include information about the proposed successor's personal and financial information, personal and business qualifications and any other information requested by BRP. The nomination of the proposed successor shall not be effective unless accepted in writing by BRP. In the event that BRP determines that the proposed successor does not meet the qualifications and other requirements necessary to become an Owner, officer or director, the Agreement will be terminated, unless the remaining Owner(s), officer(s) or director(s), if any, can prove to BRP satisfaction, that the Dealer can maintain at least the same level of Dealer Operations as before the death or incapacity of one of the Owner, officer or director and can meet all the requirements under this Agreement.

### **15. Renewal, Termination or Non-renewal**

- (a) Expiration. This Agreement shall automatically expire at the end of the Term unless otherwise renewed with respect to any or all of the Products.
- (b) Mutual Termination. This Agreement may be terminated as to one or more of the Products, at any time, by mutual agreement of the Parties.
- (c) Termination by Dealer. This Agreement may be terminated by Dealer as to one or more of the Products at any time, by giving BRP thirty (30) days prior written notice of such termination.

- (d) Renewal/Non-renewal. If BRP decides to renew this Agreement as to one or more of the Products, it will do so by giving Dealer written notice, at least thirty (30) days prior to expiration of this Agreement, of its intention to renew this Agreement. Dealer must consent to such renewal in writing by executing a current dealer agreement within thirty (30) days thereafter. BRP offer to renew shall occur only in the form of a letter signed by a duly authorized representative of BRP. Nothing shall prohibit BRP from offering to renew upon terms and conditions different from the terms and conditions of this Agreement. If for any reason this Agreement is not renewed in writing, it will automatically expire by its terms without the need to give a written notice to the Dealer, as set forth in Paragraph 15(a).
- (e) Termination by BRP.
- (i) Immediate Termination. This Agreement may be immediately terminated by BRP as to one or more of the Products upon the occurrence of any of the following:
- a. Dealer becomes insolvent, or a petition in bankruptcy is filed, or Dealer makes a general assignment for the benefit of creditors, or a receiver, an assignee, referee or a trustee is appointed for any significant portion of Dealer's property, or a petition for dissolution or for an assignment or for the reorganization of its affairs is filed;
  - b. There is any finding or charge by a governmental agency, or court, or a settlement, or plea, that Dealer, Dealer Owner(s), officer(s), director(s) or any of Dealer's employees or agents, committed a misdemeanor, or unfair or deceptive business practice, or a felony, which, in BRP sole business judgment, may affect the reputation or interests of BRP in a materially adverse manner;
  - c. Dealer submits to BRP any false application, registration, claim or report, including without limitation false warranty claims, transfers of Orders for Products, reports of delivery, warranty registrations, allowance or rebate claims, payment or reimbursement claims or any other claims under applicable BRP Policies;
  - d. The U.S. Consumer Product Safety Commission requires termination of Dealer due to Dealer's failure to respect safety obligations;
  - e. Failure or inability by Dealer to comply with, adopt, promote or implement any safety program, material or procedure as required by BRP, or any other act or omission which may adversely affect the safety or reliability of the Products, the health or safety of the consumers and the public, the image or the reputation of BRP or its products;
  - f. Imminent danger to the public health or safety.
- (ii) Termination with thirty (30) days notice. This Agreement may be terminated by BRP as to one or more of the Products, in its sole discretion upon sending of a written notice thirty (30) days prior to the effective date of the termination, based on any of the following grounds:
- a. Dealer enters into any agreement, collusion, understanding or contract, verbal or written, with any other party with the purpose of fixing prices of Products;

- b. Dealer engages in conduct which materially impairs the goodwill associated with Trademarks, including without limitation, making disparaging or defamatory remarks about BRP or the Products through any means or media whatsoever;
  - c. Any other act or failure that impairs the purpose of the relationship created by this Agreement or any other act or omission that adversely affect the trust BRP puts into Dealer and in their business relationship;
  - d. Failure of Dealer to act in good faith or in a commercially reasonable manner with BRP or with any third party, including without limitation other BRP authorized dealers;
  - e. Disclosure of confidential information including but not limited to BRP prices or Policies to other dealers or any third parties including Dealer employees for whom such knowledge is not relevant to their position at Dealer;
  - f. Failure by Dealer to conduct sales and Service operations for seven (7) consecutive days;
  - g. There is, without BRP prior written approval, any change in Dealer Location, the sale or transfer of all or substantially all of Dealer's assets or of Dealer Owner(s), officer(s) or Director(s) or otherwise in Dealer executive management, ownership or control;
  - h. Representation for sales, promotion, advertising and/or sales by the Dealer as a new Product or any Product that has been used or operated for demonstration purposes or is otherwise a used Product;
  - i. Dealer refuses to provide BRP with information it is required to provide under this Agreement, to timely provide sales, Service, or financial information upon demand, or to permit BRP to audit Dealer's accounts and records;
  - j. Non-payment upon the agreed terms of any sum due to BRP by Dealer or from any financial institution that has provided financing to Dealer for Products or failure by Dealer to maintain financial arrangements adequate and acceptable to BRP for the payment of Products;
  - k. Death or incapacity of any of the persons listed in Addendum C of the Dealer Agreement, unless the provisions of Section 14 have been satisfied;
  - l. Violation of any Policy by Dealer;
  - m. Dealer breaches in any material respect any other provision of this Agreement, including without limitation the provisions of Section 5, or acts to prevent BRP from exercising its rights under this Agreement. No provision of this Agreement that states or suggests that a particular breach is material is intended to imply that other breaches are not material.
- (f) Transactions after Termination or Expiration. Upon sending of a written notice of termination or non-renewal for any or all Product lines or after the date of the expiration of this Agreement, BRP shall have the right to cancel all pending Orders, whether previously accepted by BRP or not. Notwithstanding the foregoing, if BRP chooses to fill an Order, it shall not be obligated to fill any additional Orders. BRP shall not be precluded from changing the terms of any Order covered by this Paragraph. After termination or expiration of this Agreement, any act or verbal communication whatsoever, including but

not limited to requests or acceptance of Orders by BRP, requests for sales projections, invitations to meetings, continuance or acceptance of any business transaction or processing of warranty claims, shall not be construed as a renewal of the Agreement nor as a waiver of its termination or expiration. However, any transactions subsequent to termination or expiration shall be governed by terms identical to the terms and provisions of this Agreement. No termination or expiration of this Agreement shall affect the liability of Dealer to BRP for the purchase price of any Products covered by this Agreement nor shall it affect the liability of either Party to the other for breach of the provisions of this Agreement.

- (g) Obligations upon Termination or Expiration. Upon expiration or termination of this Agreement by either Party for any reason, Dealer will:
- (i) Immediately pay BRP all amounts that are due. Dealer and Dealer's guarantors shall also remain obligated under any agreements between Dealer, or them, and BRP or a financing institution;
  - (ii) Promptly return to BRP or destroy, at its own expense, all BRP Service or other manuals and promotional and advertising materials (including, but not limited to, indoor and outdoor signs and logos) provided by BRP;
  - (iii) Immediately cease, at its own expense, to represent itself as an authorized Dealer for the Product(s) for which this Agreement has been terminated or non-renewed, and therefore cease immediately to market, promote and distribute the involved Product(s) and cease any and all use of the respective Trademarks.
- (h) Repurchase of Inventory. Upon termination or expiration of this Agreement, BRP shall have no obligation but shall have the option to repurchase any portion or all of the Products in Dealer's inventory.
- (i) Grounds for Termination. When BRP believes grounds exist for termination of this Agreement, BRP may in its sole discretion specify any of or all the grounds it believes exist for termination, whether or not other grounds may then exist or later come to exist. BRP shall not be precluded from later establishing that termination is also supported by additional grounds which were not set forth in BRP's original notice of termination.
- (j) No Waiver by Failure to Terminate. Should BRP be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of BRP's right to terminate this Agreement.

#### **16. Repurchase of Products, Restocking Charges and Credits Due**

- (a) Repurchase of Products and Restocking Charges. If BRP repurchases or otherwise reacquires any Products, including through a repurchase agreement with any financial institution, then the amount to be paid by Dealer to BRP as restocking charges shall be the amount voluntarily agreed upon between Dealer and BRP or, if no agreement is reached, the restocking charge as that term is defined in the Dealer Binder, the Operation Standards or the Policies.
- (b) Credits Due. Credits due to Dealer for warranty work, parts, returned Products or any other credits shall be paid to Dealer as provided in this Agreement. However, BRP may off set any amounts owed to Dealer by BRP against amounts Dealer owes to BRP.

## **17. Limitation of Remedies**

- (a) No Damages from Termination, Non-renewal or Expiration. If this Agreement expires, is not renewed or is terminated, Dealer agrees that no compensation is due by BRP for goodwill, reputation, reimbursements or damages on account of the loss of prospective profits, or anticipated sales or on account of expenses, investments, inventory, leases, property improvements or any other commitment in connection with the business of Dealer.
- (b) No Liability for Damages. It is expressly understood that in no event and under no circumstances shall BRP ever be liable to Dealer or to any other person for consequential or incidental damages or in any amount greater than the purchase price of the Products, whether liability be predicated in tort, contract, strict liability theory, or any other theory.

## **18. Indemnity**

Dealer shall defend, indemnify, and hold BRP and Manufacturer and their subsidiaries, and affiliates, and their officers, directors, agents, employees, shareholders, legal representatives, successors and assigns and each of them harmless from and against any and all claims, losses, damages, liabilities, judgments, and expenses relating to, or arising out of, (a) Dealer's Operations, (b) any breach of this Agreement by Dealer, or (c) any other act, omission or negligence by Dealer, Dealer's employees or agents. This provision applies to any act, omission or negligence including those related to sales, repairs, leases, rentals, loans and demonstration rides. This Section shall survive expiration or termination of this Agreement by any Party for any reason.

## **19. Force Majeure**

BRP and Dealer shall not be responsible or liable for failure to perform their respective obligations under this Agreement because of any force majeure (defined as, without limitation, any governmental laws, regulations, orders, decrees or other governmental acts, wars, sabotage, communication line or power failure, plant shutdown or equipment failure, labor disputes or shortage, inability to obtain material, equipment or transportation, fire or any natural disaster (excluding lack of snowfall)). The Party unable to perform its obligations shall promptly give notice to the other Party, and the Party awaiting performance may, at its option, so long as such inability to perform continues either (i) obtain such performance at its own expense from other sources; and / or (ii) suspend its own performance. In addition, if such period continues for more than thirty (30) days, the Party who has not suffered the force majeure may, upon written notice to the other Party, elect to terminate the obligations for which the performance is no longer possible. Neither Party shall be liable to the other for any damages or other claims resulting from a force majeure under this Section.

## **20. Notices**

Except where provided otherwise, all notices required or permitted by this Agreement shall be addressed to the recipient in writing, if to Dealer at the addresses stated in Addendum A of the Dealer Agreement, and if to BRP at the address specified by BRP from time to time, and shall be either hand delivered or sent to the other Party via email or by fax, sent by mail whether by first-class, certified, registered mail, or sent by a reputable private shipper. If such notice remains undelivered more than three (3) days after the date of the postal stamp showing on the envelope, the receipt date will be deemed to be the date of the postal stamp. Notices and invoices that BRP posts on the BRP dealer portal, are deemed to be proper notices and invoices under this Agreement for all purposes, and Dealer shall check for any such notices or invoices at least once each working day. When a notice is posted on the BRP dealer portal, the notice is deemed to be received by Dealer twenty-four (24) hours after posting.

## **21. Counterparts, Signature**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. A signature of a party transmitted by fax or in a scanned copy of the Agreement attached to an email or affixed to the Agreement by other electronic method such as by electronic document signature program shall constitute an original for all purposes.

## **22. Arbitration**

Any controversy or dispute whatsoever between BRP and Dealer, whether arising under contract, statutory, tort or other law, including, but not limited to, any cause of action, claim, suit or demand by either Party, arising or allegedly arising from or relating to the terms, interpretation or enforcement of this Agreement, Dealer or BRP performance hereunder, or in any way related to the relationship between the Parties (collectively "Dispute"), shall be settled by mutual consultation between the Parties in good faith as promptly as possible. In the event an amicable resolution of any Dispute is not possible, such Dispute shall be governed by Florida law and submitted exclusively to arbitration for resolution in Orlando, Florida, before a single arbitrator mutually agreed upon by the Parties. If the Parties cannot agree upon an arbitrator, either Party may petition the circuit court for Orange County, Florida, requesting the court to appoint an arbitrator, which petition the other Party shall not oppose. Arbitration shall be conducted in accordance with the commercial arbitration rules and procedures of the American Arbitration Association except that full discovery shall be permitted and the Florida rules of civil procedure shall apply to discovery. The decision of the arbitrator shall be final and binding upon BRP and Dealer and no appeal shall be taken from such decision. BRP and Dealer each waive all rights to appeal the arbitrator's decision. The arbitrator shall have no authority to award punitive or exemplary damages. Arbitration shall be the sole and exclusive method of resolving any and all Disputes. The decision of the arbitrator may be entered in the circuit court for Orange County, Florida, or if the award is against Dealer, in any court which has jurisdiction over Dealer. Each Party shall bear its own attorney's fees and costs and the costs of its own expert witnesses. Each Party shall be responsible for one half of the arbitrator's fees, as well as any costs as may be mutually agreed upon such as translator and stenographer fees. This Section shall survive the termination or expiration of this Agreement.

## **23. Miscellaneous**

- (a) No Third-Party Rights. This Agreement is not enforceable by any third parties and is not intended to convey any rights or benefits to anyone who is not a party to this Agreement, except as provided in Section 18.
- (b) Responsibility for Employees. Dealer shall take full responsibility for its employees' strict compliance to this Agreement.
- (c) Loans, Leases, Rentals or Demonstrators. If Dealer loans, leases, rents or supplies demonstrator Products to any person or entity, Dealer does so as an independent business and at Dealer own risk and without any liability to BRP. Dealer shall give written notice to such person or entity that any such loan, lease, rental or demonstrator is provided by Dealer and not by BRP. Dealer should follow the guidelines contained in the Dealer Binder, the Operation Standards and the Policies.
- (d) Consumer Information received from BRP. BRP may provide to Dealer individual consumer information, including names and addresses of consumers who have obtained BRP products or services. Dealer shall not use or disclose any such consumer information obtained from BRP for any purpose other than to carry out its obligations

under this Agreement. Dealer shall maintain the security and confidentiality of all such consumer information in compliance with applicable privacy laws. Dealer also agrees that all consumer information obtained from BRP is the exclusive property of BRP. Upon the termination or expiration of this Agreement, Dealer shall promptly destroy all copies of such consumer information and cease using it for any purpose. BRP may establish Policies from time to time to carry out the purposes and intent of this provision.

- (e) Injunctive Relief. Dealer acknowledges that the remedy at law for any breach or threatened breach of the provisions of Sections 8 and 11 by the Dealer shall be inadequate, and that accordingly, BRP will, in addition to all other available remedies, be entitled to injunctive relief, without being required to post bond or other security and without having to prove the inadequacy of the available remedies at law. Dealer agrees not to plead or defend on grounds of adequate remedy at law or any similar defense in any action by BRP against Dealer for injunctive relief or for specific performance of any of its obligations hereunder. Nothing contained herein shall be construed as prohibiting BRP from pursuing any other remedies for such breach or threatened breach
- (f) Modification. No modifications of this Agreement shall be effective unless it is documented and signed by Dealer and an authorized representative of BRP.
- (g) Modification Due to Other Laws or Regulations. If any provision of this Agreement contravenes or is prohibited by the laws or regulations of the U.S.A. or of its States or other jurisdiction wherein this Agreement is to be performed, such provision shall be deemed to be modified only to the extent necessary to conform to such laws or regulations, and all other terms and provisions of this Agreement shall remain in full force and effect. The Parties agree that this Paragraph shall be interpreted as narrowly as lawfully allowed to carry out the full intent of the Parties as expressed by this Agreement.
- (h) Entire Agreement. Unless expressly incorporated herein, this Agreement cancels and supersedes all prior written and unwritten agreements and understandings between the Parties pertaining to the matters covered in this Agreement. No obligations or agreements shall be implied from any of the terms and provisions of this Agreement. No representations or statements, other than those expressly set forth herein, were made or relied upon by the Parties in entering into and performing this Agreement. It is expressly agreed and understood that the following documents, are incorporated herein by reference and have the same binding effect as this Agreement: the Addenda to this Agreement, the Operation Standards, the Warranty Service Guide, the Dealer Binder, the BRP invoices, and all other Policies. In case of conflict, the order of precedence shall be: 1) Addenda to this Agreement; 2) this Agreement (including the General Provisions); 3) the Operation Standards; 4) the current Warranty Service Guide; 5) the other BRP Policies and documents.
- (i) Policies. BRP reserves its right to issue from time to time new Policies or modify existing Policies without any prior notice to dealers. These Policies shall be communicated to Dealer by a way of a general communication made to all BRP dealers. Once communicated, these Policies shall be incorporated herein and shall have the same binding effect as this Agreement.
- (j) Non-waiver. The failure of any Party to enforce at any time any of the provisions of this Agreement or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof or the right of any such Party thereafter to enforce each and every provision of this Agreement.

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**EXHIBIT "C"**



Bombardier Recreational Products Inc.  
565 de la Montagne Street  
Valcourt, Québec, Canada J0E 2L0  
[www.brp.com](http://www.brp.com)

BY CERTIFIED MAIL

FUN BIKE CENTER  
d.b.a. FUN BIKE CENTER  
5755 KEARNY VILLA ROAD  
SAN DIEGO, CA 92123  
Attn: MR. GARY ROUNDY

July 28, 2014

**Subject: Dealer # 691246 - FUN BIKE CENTER; Notice of Modification of Primary Market Area(s)**

**NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.**

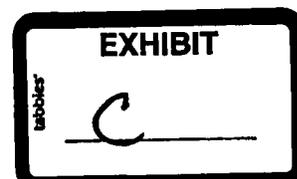
Dear Mr. Roundy,

Primary Market Areas (PMA) are assigned, non-overlapping territories based on your dealership location, historical customer sales, surrounding population densities, statistical consumer travel propensities, your local infrastructure and geography as well as the proximity of other BRP dealers.

As a result, your BRP PMA aligns you with those customers who have the greatest probability of visiting your dealership. We wish to remind you that PMAs do not restrict your sales activities, and they are a great tool for optimizing your marketing, sales and promotional efforts.

Due to the fact that the above mentioned variables such as population density, infrastructure, industry trends and neighbouring BRP dealer locations are primary factors in the calculation of PMA, a change in any of these variables can have an impact on the size and shape of your PMA over time. As a result, BRP wishes to formally notify you of a modification to your Primary Market Area. This modification is based on the potential appointment of Vey's Powersports Inc. for Can-Am® ATVs, Side-by-Side vehicles and roadsters, to be located at 690 N 2nd Street, El Cajon, CA as of fall 2014.

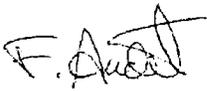
Ski-Doo  
Lynx  
Sea-Doo  
Evinrude  
Johnson  
Rotax  
Can-Am



Enclosed are your revised PMA maps. As the PMA maps are product specific, there may be some variation for each of the BRP product lines you carry. As always, your BRP District Sales Manager and Dealer Network Coordinator are available to answer any questions that you may have.

If you agree with this PMA modification, we would appreciate it if you could sign this letter and scan and e-mail it back to [network.development@brp.com](mailto:network.development@brp.com) or fax it back to (819) 566-3377 to the attention of the undersigned.

Your business is greatly appreciated.



Frederic Audet  
Network Operations Manager  
On behalf of BRP US Inc.

c.c. Board of Motor Vehicles

This is to acknowledge that, FUN BIKE CENTER (691246) agrees with the PMA modification for Can-Am® ATVs, Side-by-Side vehicles and roadsters.

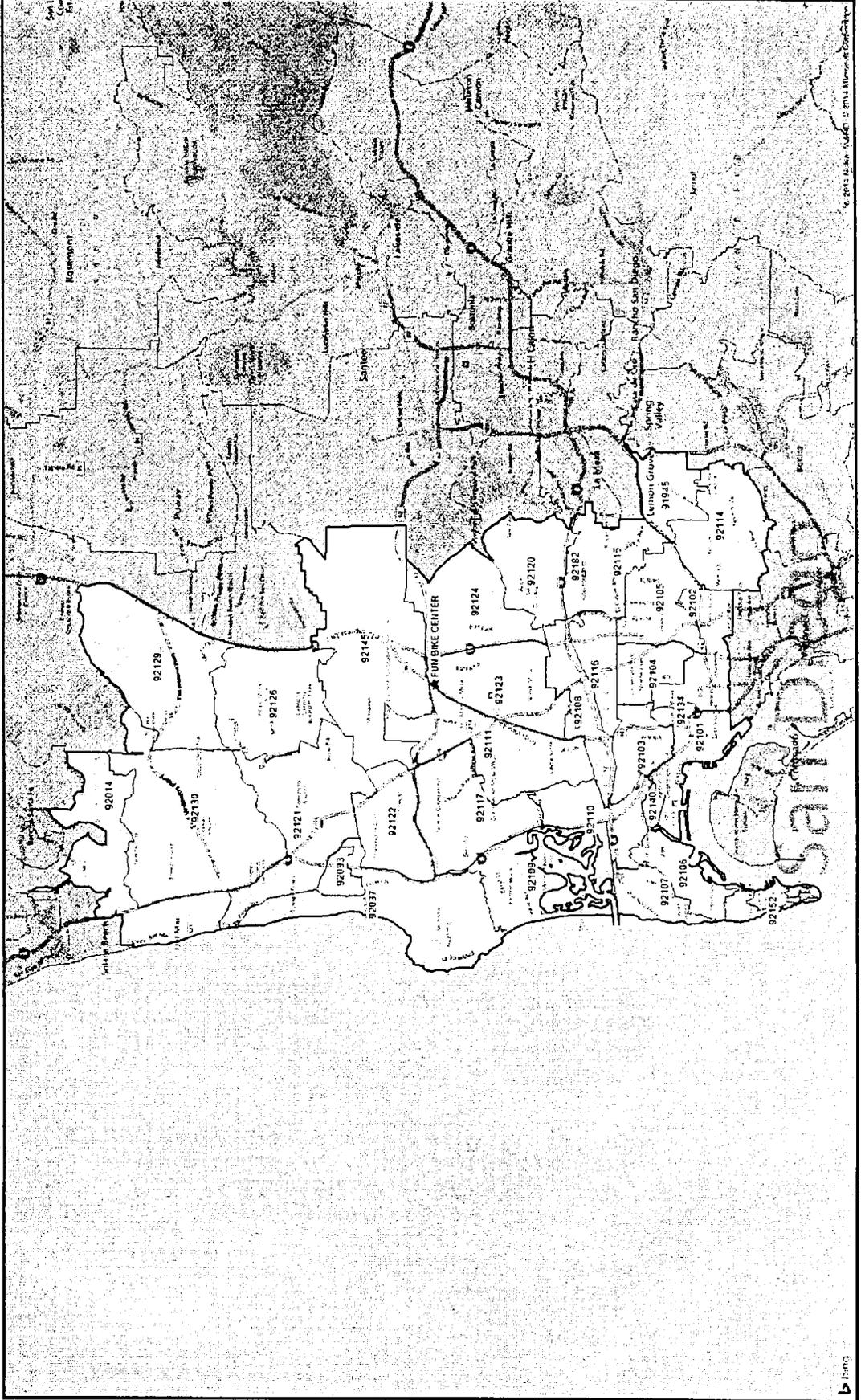
\_\_\_\_\_  
Dealer Principal Signature

\_\_\_\_\_  
Date





# Fun Bike Center Can-Am Roadster Primary Market Area



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**EXHIBIT "D"**



Bombardier Recreational Products Inc.  
565 de la Montagne Street  
Valcourt, Québec, Canada J0E 2L0

www.brp.com

BY CERTIFIED MAIL

New Motor Vehicle Board  
1507 21<sup>st</sup> Street Suite 330,  
Sacramento, California  
95811, USA  
Att: William G. Brennan, Executive Director

July 28, 2014

**Subject: Modification of Primary Market Areas**

Dear Mr. Brennan:

Pursuant to California Motor Vehicle Code statute § 3060(B)(1), BRP US Inc. is submitting this letter, and accompanying documents, as notice of its intention to modify the PMAs (areas of responsibility) for two BRP dealers. This modification is due to the potential appointment of a new dealer, Vey's Powersports for Can-Am® ATV, Side-by-Side vehicles and roadsters, to be located at 690 N 2<sup>nd</sup> Street, El Cajon, CA as of fall 2014.

The two affected dealers are:

**FUN BIKE CENTER – 5755 KEARNY VILLA ROAD, SAN DIEGO, CA 92123**

**SOUTH BAY MOTORSPORTS. – 1890 AUTO PARK PL., CHULA VISTA, CA 91911**

Certified notifications of the modification of PMAs have been sent to both of the affected BRP dealers. Attached for your reference is a copy of each dealer's product line PMA maps and notice of the modification of PMAs.

We will await the 60 day protest period to expire, as well as further instructions from the state on the next steps in the process.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Audet", is written over a faint, larger version of the signature.

Frederic Audet  
Network Operations Manager  
On behalf of BRP US Inc.

E-mail: [frederic.audet@brp.com](mailto:frederic.audet@brp.com)

Office: 819-566-3051

Enclosures: Notices sent to BRP dealers, and PMA maps

Ski-Doo  
Lynx  
Sea-Doo  
Evinrude  
Johnson  
Rotax  
Can-Am



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**EXHIBIT "E"**



Bombardier Recreational Products Inc.  
565 de la Montagne Street  
Valcourt, Québec, Canada J0E 2L0

www.brp.com

BY CERTIFIED MAIL

FUN BIKE CENTER  
5755 KEARNY VILLA ROAD  
SAN DIEGO, CA 92123  
Attn: Mr. Gary Roundy

August 26, 2014

**Subject: Dealer # 691246 - FUN BIKE CENTER; Notice of Modification of Primary Market Area(s) ("PMA")**

**NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived.**

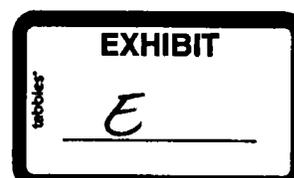
Dear Mr. Roundy,

This letter serves to clarify our original notice of July 28, 2014 concerning the modification of the primary market area for Fun Bike Center. It has come to our attention that the original notice sent to you did not have the appropriate statutory language outlining your protest right for the notice of modification. This has now been corrected and is reflected in the language in the box at the top of this page.

We also wish to clarify that the disclosure of the establishment of Vey's Powersports Inc. included in our original letter of July 28th, was as a matter of an informative nature only. Our market studies have concluded that Vey's Powersports' new location at 690 N 2nd Street, El Cajon, CA 92020 is located 11.6 miles as the crow flies from Fun Bike Center, and therefore does not contravene the 10 mile radius RMA statute as outlined by the State of California New Motor Vehicle Board.

To ensure that all the proposed changes are understood we are re-sending your Primary Market Area maps. As the PMA maps are product specific, there may be some variation for each of the BRP product lines you carry. As always, your BRP District Sales Manager and Dealer Network Coordinator are available to answer any questions that you may have.

Ski-Doo  
Lynx  
Sea-Doo  
Evinrude  
Johnson  
Rotax  
Can-Am



Your business is greatly appreciated.

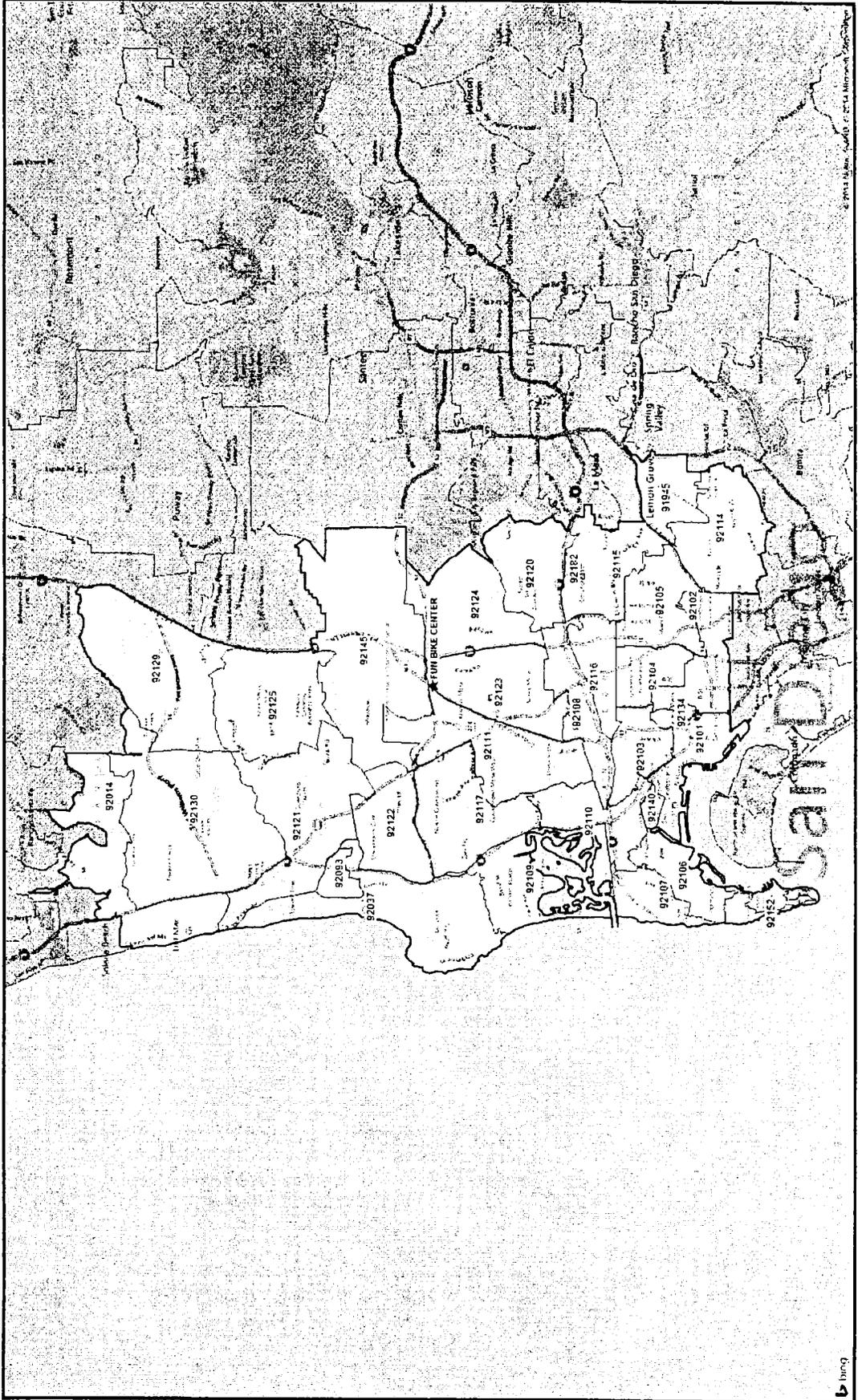
A handwritten signature in black ink, appearing to read "F. Audet". The signature is stylized with a large, sweeping initial "F" and a cursive "Audet".

Frederic Audet  
Network Operations Manager  
On behalf of BRP US Inc.

c.c. California Board of Motor Vehicles



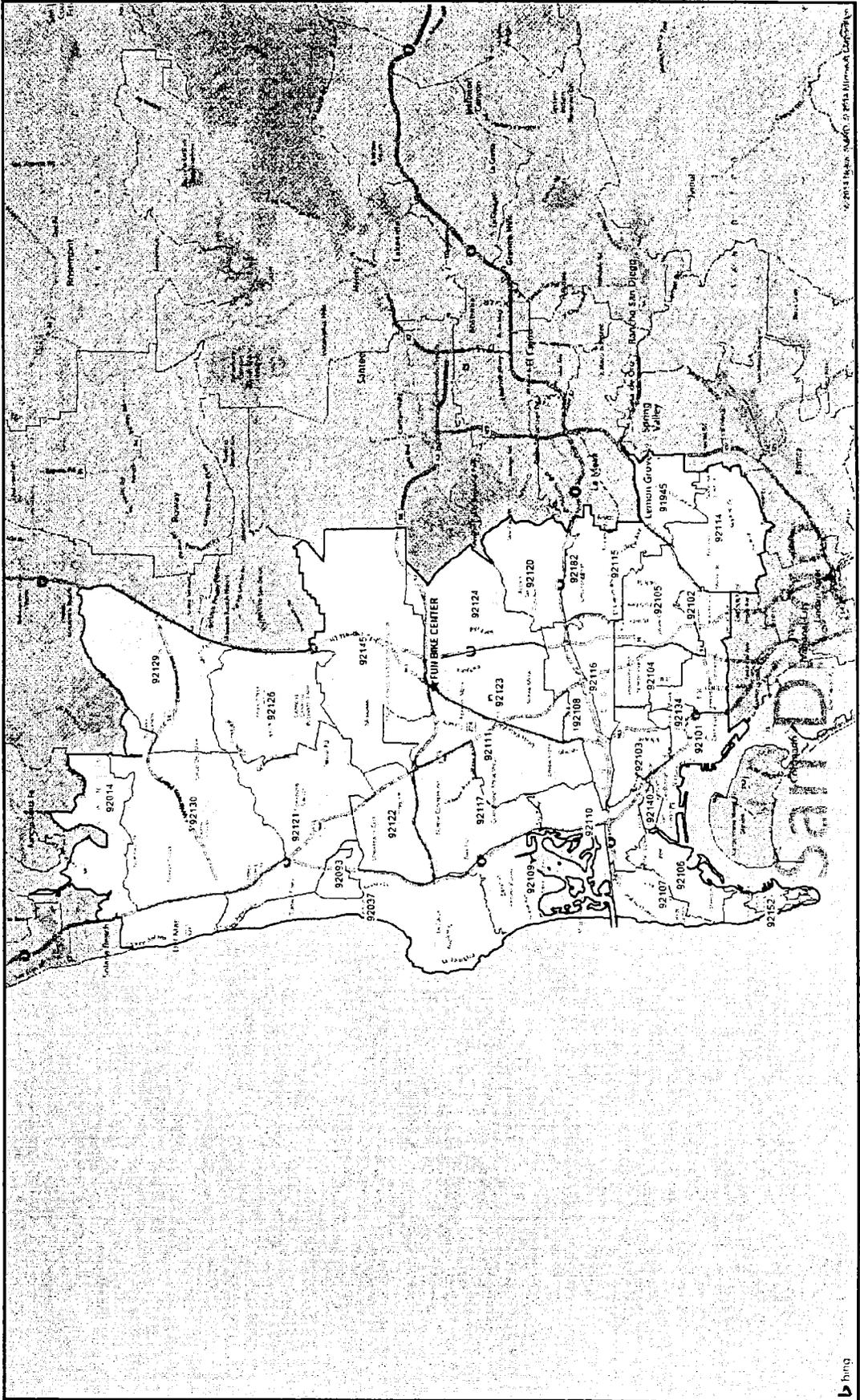
# Fun Bike Center Sea-Doo Primary Market Area







# Fun Bike Center Can-Am Roadster Primary Market Area



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**DECLARATION OF R. BRYAN MARTIN**

I, R. BRYAN MARTIN, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California. I am a partner in the law firm of Haight, Brown & Bonesteel LLP, attorneys of record for Respondent BRP US Inc. in this action. I have personal knowledge of the matters stated herein, except as to those matters stated on information and belief, and if called upon to testify as a witness I could and would testify competently thereto.

2. Attached as **Exhibit F** is a true and correct copy of Protestant Fun Bike Center’s *Vehicle Code* Section 3060 Protest No.: PR-2405-14, filed with the New Motor Vehicle Board on August 15, 2014.

3. Attached as **Exhibit G** is a true and correct copy of Protestant Fun Bike Center’s *Vehicle Code* Section 3062 Protest No.: PR-2404-14, filed with the New Motor Vehicle Board on August 15, 2014.

4. Attached as **Exhibit H** is a true and correct copy of Protestant Fun Bike Center’s October 7, 2014 Request for Dismissal of its *Vehicle Code* Section 3062 Protest No.: PR-2404-14.

5. Attached as **Exhibit I** is a true and correct copy of the Board’s October 9, 2014 Order of Dismissal of Protestant Fun Bike Center’s *Vehicle Code* Section 3062 Protest No.: PR-2404-14.

6. Attached as **Exhibit J** is a true and correct copy of the Transcript of the December 3, 2014, Telephonic Hearing on Respondent’s Motion for Reconsideration of Denial of Motion to Dismiss.

7. Attached as **Exhibit K** is a true and correct copy of Protestant’s January 22, 2015, Request for Production of Documents – Set Number 2.

8. Attached as **Exhibit L** is a true and correct copy of Respondent’s January 30, 2015, responses to Protestant’s January 22, 2015, Request for Production of Documents – Set Number 2. Respondent produced 1,546 documents concurrently with its responses.

1           9.       Attached as **Exhibit M** is a true and correct copy of the 2013 BRP Dealer  
2 Operation Standards.

3           Executed on May 18, 2015 at Irvine, California.

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

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R. Bryan Martin

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**EXHIBIT "F"**

HAND DELIVERED

1 CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP  
2 MICHAEL M. SIEVING, Esq. (SBN 119406)  
3 1545 River Park Drive, Suite 405  
4 Sacramento, California 95815  
5 Tel : (916) 649-3500  
6 Fax : (916) 999-8560  
7 Email : msieving@ctscelaw.com

8 Attorneys for Protestant

FILED  
NEW MOTOR VEHICLE BOARD  
DATE 8-15-14  
BY sl

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

10 FUN BIKE CENTER

11 Protestant.

12 v.

13 BOMBARDIER RECREATIONAL  
14 PRODUCTS, INC. ; BRP US INC.,

15 Respondents.

Protest No.: PR- 2405-14

PROTEST

[Vehicle Code Section 3060]

17 Protestant, FUN BIKE CENTER, ("Protestant") through its attorney, files this protest  
18 under the provisions of California Vehicle Code section 3060 and alleges as follows:

19 1. Protestant is a new motor vehicle dealer selling and servicing Bombardier brand  
20 motor vehicles, and is located at 5755 Kearny Villa Road, San Diego, California 92123.  
21 Protestant's telephone number is 858-278-6635.

22 2. Respondents BOMBARDIER RECREATIONAL PRODUCTS, INC. and BRP  
23 US INC. ("Respondent") distribute Bombardier brand products and are the franchisor of  
24 Protestant.

25 3. Protestant is represented in this matter by Callahan, Thompson, Sherman &  
26 Caudill, LLP, and Michael M. Sieving, whose address is 1545 River Park Drive, Sacramento,  
27 California 95815, and telephone number is 916-649-3500.

28 4. By letter dated July 28, 2014, Respondent notified Protestant of Respondent's

PROTEST

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CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP

EXHIBIT  
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1 intention to modify the Primary Market Area assigned to Protestant.

2 5. Protestant protests the proposed modification, as it would substantially affect  
3 Protestant's sales and service obligations and investment in the franchise.

4 6. Protestant asserts that good cause does not exist for permitting Respondent to  
5 undertake the proposed action on the following grounds:

6 (a) Protestant has transacted and is transacting an adequate amount of Bombardier  
7 business compared to the business available to it.

8 (b) Protestant has made all necessary investments and incurred all necessary  
9 obligations to perform its part of the franchise.

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

11 (d) It would be injurious to the public welfare for the franchise to be modified.

12 (e) Protestant has adequate motor vehicle sales and service facilities, equipment,  
13 vehicle parts, and qualified service personnel to reasonably provide for the needs of Bombardier  
14 consumers and owners in the market area and is rendering adequate services to the public.

15 (f) Protestant has fulfilled the warranty obligations to be performed by it.

16 (g) The Protestant has not failed to comply with the terms of the franchise. Any  
17 alleged failure of Protestant to comply with the terms of the franchise agreement is immaterial.

18 7. Protestant and its attorney desire to appear before the Board and estimate that the  
19 hearing in this matter will take 10 days to complete.

20 8. A Pre-Hearing Conference is requested.

21 WHEREFORE, Protestant prays as follows:

22 1. That the Board sustain this protest and order that Respondent not make the  
23 proposed alteration to Protestant's Primary Market Area

24 2. That pending the hearing in this matter as mandated by Vehicle Code Section  
25 3066, the Board or its authorized representative immediately order Respondent not modify  
26 Protestant's franchise until such time as Respondent has established good cause for such action  
27 under the provisions of Vehicle Code sections 3060, 3061 and 3066.

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DATED: August 15, 2014

CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP

By: 

MICHAEL M. SIEVING  
Attorneys for Protestant

CISCO LAW  
CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP

PROOF OF SERVICE

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO )

I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not a party to the within action; my business address is 1545 River Park Drive, Suite 405, Sacramento, California.

On this date, August 15, 2014, I served the foregoing documents described as:

**3060 PROTEST**

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

  x   (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

       (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

       (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

       (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

       (By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

       (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

       (By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served through [Insert Electronic Service Provider] addressed to all parties appearing on the [Insert Electronic Service Provider] electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the [Insert Name of Electronic Service Filing Receipt] pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied

CISC LAW  
CALIFORNIA BAR NUMBER 000000000000000000

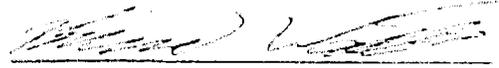
CISC LAW  
COURT REPORTERS, TRANSCRIBERS & VIDEO

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with California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is available for review and copying at the request of the court or any party.

Executed on August 15, 2014, in Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



BRIAN WAIBEL, paralegal

SERVICE LIST

Frederic Audet  
Bombardier Recreational Products, Inc.  
565 Rue de la Montagne  
Valcourt, Quebec, Canada J0E 2L0

---

**EXHIBIT "G"**

HAND DELIVERED

1 CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP  
2 MICHAEL M. SIEVING, Esq. (SBN 119406)  
3 1545 River Park Drive, Suite 405  
4 Sacramento, California 95815  
5 Tel : (916) 649-3500  
6 Fax : (916) 999-8560  
7 Email : [msieving@ctsclaw.com](mailto:msieving@ctsclaw.com)

8 Attorneys for Protestant

9 STATE OF CALIFORNIA  
10 NEW MOTOR VEHICLE BOARD

FILED  
NEW MOTOR VEHICLE BOARD  
DATE 8-15-14  
SL

11 FUN BIKE CENTER

12 Protestant.

13 v.

14 BOMBARDIER RECREATIONAL  
15 PRODUCTS, INC.; BRP US INC.

16 Respondents.

Protest No.: PR- 2404-14

PROTEST

[Vehicle Code Section 3062]

17 Protestant, FUN BIKE CENTER, ("Protestant") through its attorney, files this protest  
18 under the provisions of California Vehicle Code section 3062 and alleges as follows:

19 1. Protestant is a new motor vehicle dealer selling and servicing Bombardier brand  
20 motor vehicles, and is located at 5755 Kearny Villa Road, San Diego, California 92125.  
21 Protestant's telephone number is 858-278-6635.

22 2. Respondents BOMBARDIER RECREATIONAL PRODUCTS, INC. and BRP  
23 US INC. ("Respondent") distribute Bombardier brand products and are the franchisor of  
24 Protestant.

25 3. Protestant is represented in this matter by Callahan, Thompson, Sherman &  
26 Caudill, LLP, and Michael M. Sieving, whose address is 1545 River Park Drive, Sacramento  
27 California 95815, and telephone number is 916-649-3500.

28 4. By letter dated July 28, 2014, Respondent notified Protestant of the potential

PROTEST

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CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP

EXHIBIT  
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CTSC LAW  
CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP

1 appointment of another franchisee, to be located at 690 N. 2nd Street, El Cajon, California 92020,  
2 as of fall 2014.

3 5. Protestant is located within the relevant market area of the proposed dealer.

4 6. Protestant asserts that good cause does not exist for permitting Respondent to  
5 undertake the proposed action on the following grounds:

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

7 (b) The proposed action would have an injurious effect on the retail motor vehicle  
8 business and the consuming public.

9 (c) The proposed action would be injurious to the public welfare.

10 (d) The Bombardier dealers in the relevant market area are providing adequate  
11 competition and convenient customer care for consumers in the market area.

12 (e) Establishment of an additional franchise would not foster more competition in the  
13 relevant market area.

14 7. Protestant and its attorney desire to appear before the Board and estimate that the  
15 hearing in this matter will take 10 days to complete.

16 8. A Pre-Hearing Conference is requested.

17 WHEREFORE, Protestant prays as follows:

18 1. That the Board sustain this protest and order Respondent not to appoint another  
19 dealer within the relevant market area.

20 2. That pending the hearing in this matter as mandated by Vehicle Code Section  
21 3066, the Board or its authorized representative immediately order Respondent not to appoint an  
22 additional franchisee in the relevant market area until such time as Respondent has established  
23 good cause for such action under the provisions of Vehicle Code sections 3062, 3065 and 3066.

24  
25 DATED: August 15, 2014

CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP

26  
27  
28 By: 

MICHAEL M. SIEVING  
Attorneys for Protestant

PROTEST

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF SACRAMENTO )

I am employed in the County of Sacramento, State of California. I am over the age of 18 years and not a party to the within action; my business address is 1545 River Park Drive, Suite 405, Sacramento, California

On this date, August 15, 2014, I served the foregoing documents described as:

**3062 PROTEST**

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

  x   (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

       (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

       (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

       (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

       (By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

       (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

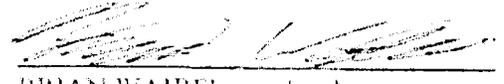
       (By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served through [Insert Electronic Service Provider] addressed to all parties appearing on the [Insert Electronic Service Provider] electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the [Insert Name of Electronic Service Filing Receipt] pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied

CTSC LAW  
CORPORATION  
1000 P STREET, SUITE 100  
SACRAMENTO, CA 95811

1 with California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is  
2 available for review and copying at the request of the court or any party.

3 Executed on August 15, 2014, at Sacramento, California.

4 I declare under penalty of perjury under the laws of the State of California that the above is true  
5 and correct. I further declare that I am employed in the office of a member of the bar of this  
6 court at whose direction the service was made.



BRIAN WAIBEL, paralegal

7  
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10 SERVICE LIST

11  
12 Frederic Audet  
13 Bombardier Recreational Products, Inc.  
14 565 Rue de la Montagne  
15 Valcourt, Quebec, Canada J0E 2L0  
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CTSC law  
COURT REPORTERS & VIDEO

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**EXHIBIT "H"**

1 MICHAEL M. SIEVING, Esq. (SBN 119406)

2 Attorney at Law

3 8865 La Riviera Drive, Unit B

4 Sacramento, CA 95826

5 Tel: (916) 942-9761

6 E-mail: msievinglaw@att.net

7 Attorneys for Protestant

8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

10 In the Matter of the Protest of:

Protest Number: PR-2404-14

11 FUN BIKE CENTER,

12 Protestant,

13 **REQUEST FOR DISMISSAL**  
14 **WITHOUT PREJUDICE**

15 v.

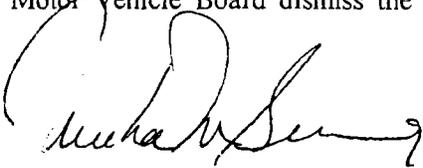
16 BOMBARDIER RECREATIONAL  
17 PRODUCTS, INC., BRP US INC,

18 Respondents.

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Protestant hereby requests that the New Motor Vehicle Board dismiss the above-referenced  
21 protest without prejudice.

22 DATED: October 7, 2014

23 By: 

24 MICHAEL M. SIEVING  
25 Attorney for Protestant

26 --1--

27 REQUEST FOR DISMISSAL WITHOUT PREJUDICE

28 EXHIBIT

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**PROOF OF SERVICE**

STATE OF CALIFORNIA        )  
  )  
COUNTY OF SACRAMENTO    )

I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not a party to the within action; my business address is 8865 La Riviera Drive, Unit B, Sacramento, California 95826.

On this date, October 7, 2014, I served the foregoing documents described as:

**REQUEST FOR DISMISSAL WITHOUT PREJUDICE**

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

\_\_\_\_ (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

\_\_\_\_ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

\_\_\_\_ (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

\_\_\_\_ (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

\_\_\_\_ (By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

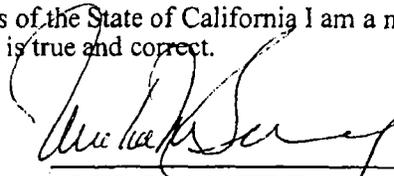
\_\_\_\_ (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

x \_\_\_\_ (By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served through [Insert Electronic Service Provider] addressed to all parties appearing on the [Insert Electronic Service Provider] electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the

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[Insert Name of Electronic Service Filing Receipt]) pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied with California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is available for review and copying at the request of the court or any party.

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



MICHAEL M. SIEVING

**SERVICE LIST**

R. Bryan Martin  
Haight Brown & Bonesteel LLP  
250 Main Street, Suite 600  
Irvine, CA 92614  
[bmartin@HBBLaw.com](mailto:bmartin@HBBLaw.com)

---

**EXHIBIT "I"**

1 NEW MOTOR VEHICLE BOARD  
1507 - 21<sup>ST</sup> Street, Suite 330  
2 Sacramento, California 95811  
Telephone: (916) 445-1888  
3  
4  
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6  
7

8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD  
10

11 In the Matter of the Protest of

12 FUN BIKE CENTER,

13 Protestant,

14 v.

15 BOMBARDIER RECREATIONAL PRODUCTS,  
16 INC. ; BRP US INC.,

17 Respondent.

Protest No. PR-2404-14

**ORDER OF DISMISSAL**

18 To: Michael M. Sieving, Esq.  
19 Attorney for Protestant  
ATTORNEY AT LAW  
20 8865 La Riviera Drive, Unit B  
Sacramento, California 95826

21 R. Bryan Martin, Esq.  
22 HAIGHT BROWN & BONESTEEL  
2050 Main Street, Suite 600  
23 Irvine, California 92614-8261

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IT IS HEREBY ORDERED that pursuant to Protestant's Request for Dismissal without Prejudice,  
the above-entitled Protest is dismissed without prejudice.

There will be no further proceedings in this case before the New Motor Vehicle Board.  
SO ORDERED.

DATED: October 9, 2014

NEW MOTOR VEHICLE BOARD

By William G Brennan  
WILLIAM G. BRENNAN  
Executive Director

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

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In the matter of the Protest	)	
of	)	
	)	
FUN BIKE CENTER,	)	
	)	
Protestant,	)	
	)	
vs.	)	Protest No. PR-2405-14
	)	
BOMBARDIER RECREATIONAL	)	
PRODUCTS, INC.; BRP US INC,	)	
	)	
Respondent.	)	
_____		)

TELEPHONIC HEARING

DATE: December 3, 2014

LOCATION: Telephonic

REPORTED BY: Kathryn S. Swank, CSR 13061



1 APPEARANCES

2 For the Protestant:  
3 LAW OFFICES OF MICHAEL M. SIEVING  
4 BY: MICHAEL M. SIEVING, ESQ.  
5 8865 La Riviera Drive, Unit B  
6 Sacramento, California 95826  
7 (916) 942-9761  
8 msievinglaw@att.net

9 For the Respondent:  
10 HAIGHT BROWN & BONESTEEL  
11 BY: R. BRYAN MARTIN, ESQ.  
12 2050 Main Street, Suite 200  
13 Irvine, California 92614  
14 (714) 426-4600  
15 bmartin@hbblaw.com

16 ADMINISTRATIVE LAW JUDGE:  
17 ANTHONY SKROCKI  
18 NEW MOTOR VEHICLE BOARD  
19 1507 21st Street, Suite 330  
20 Sacramento, California 95811  
21 (916) 445-1888

22 NEW MOTOR VEHICLE BOARD SENIOR COUNSEL:  
23 ROBIN B. PARKER, ESQ.  
24 1507 21st Street, Suite 330  
25 Sacramento, California 95811  
(916) 445-1888

ALSO PRESENT:  
NICOLE ANGULO  
DANIELLE VARE, Staff Counsel

---o0o---

1 again.

2 The issue has definitely been briefed more than  
3 adequately on both sides. I don't want to spend a lot  
4 of time. I will just make a couple points.

5 The motion -- the hearing on the last motion to  
6 dismiss, there was some discussion as to whether the  
7 fact that the AOR in the BMW case, that it was not  
8 contained in the agreement, whether that distinguished  
9 the case from our present matter, where the PMA is  
10 referred to within the franchise agreement, and there  
11 seems to be some discussion as to whether that  
12 distinguished the case and rendered BMW not controlling.

13 The purpose of the reconsideration motion, just  
14 to bring to the court's attention and emphasize, that in  
15 Ri-Joyce versus New Motor Vehicle Board, that we did  
16 discuss during the hearing, it also contained the exact  
17 circumstance that the -- I guess it's APR, in that case,  
18 which is similar to the OAR and PMA in this matter, was,  
19 in fact, contained in the franchise agreement between  
20 Ri-Joyce and Mazda.

21 And the Court, in Ri-Joyce, said that this is a  
22 distinction that lacked any legal significance, that it  
23 was irrelevant to the determination as to whether the  
24 franchise was attempting to be modified. In the  
25 Ri-Joyce, the Court really simplified the matter and

1 PROCEEDINGS

2 ADMINISTRATIVE LAW JUDGE SKROCKI: My name is  
3 Anthony M. Skrocki. I'm an administrative law judge for  
4 the New Motor Vehicle Board. This is the time set for  
5 the hearing of Respondent BRP U.S. Inc.'s motion for  
6 reconsideration of denial of motion to dismiss protest.

7 Will counsel please state their names for the  
8 record, please, and their appearances.

9 MR. SIEVING: This is Michael Sieving,  
10 S-I-E-V-I-N-G, on behalf of Protestant Fun Bike Center.

11 ADMINISTRATIVE LAW JUDGE SKROCKI: Thank you.

12 MR. MARTIN: R. Brian Martin, M-A-R-T-I-N, on  
13 behalf of Respondent BRP U.S. Inc.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Thank  
15 you.

16 I have read the pleadings that have been  
17 submitted, and, as you know, we have a reporter present  
18 because this may be dispositive, may not be, but it may  
19 be. So, therefore, now is your chance to build a record  
20 and to make any statements for the reporter for the  
21 record that you would like to add to emphasize what you  
22 have already submitted, starting with moving party  
23 first.

24 Start with Mr. Martin.

25 MR. MARTIN: Yes, thank you. Good morning

1 clarified BMW by saying that any time there's a claim of  
2 modification, the first step, the threshold analysis, is  
3 to determine what rights were granted under the  
4 franchise, meaning, what does the franchise agreement  
5 say as to what the parties can do. That controls. And  
6 it's really simple and to the point.

7 And what's important about the Ri-Joyce case is  
8 that it recognized that the dealer, in Ri-Joyce, and the  
9 dealer in BMW, they made the same contention that Fun  
10 Bike is making in this case, that the alteration of this  
11 APR or AOR by the establishment of another dealer -- and  
12 if this was outside the relevant market area, but  
13 whether that, by itself, would constitute a modification  
14 to trigger a protest under section 3060.

15 In the Ri-Joyce said that in the BMW, it did  
16 not, because, there, again, going back to the terms of  
17 the franchise agreement, BMW reserved an unqualified  
18 power to appoint dealers as they saw fit. And so when  
19 BMW was attempting an appointment dealer outside the  
20 relevant market area, they were simply acting pursuant  
21 to the contract. They were consistent with the contract  
22 because those were the rights that the parties agreed to  
23 under that dealer agreement.

24 The Ri-Joyce case said, if those same  
25 circumstances, meaning the unqualified power to modify

1 existed in the Ri-Joyce case, the court specifically  
2 said that the BMW decision would be directly  
3 controlling. But the reason it was not is because,  
4 again, going back to the terms of the franchise  
5 agreement, the Ri-Joyce court analyzed what Ri-Joyce --  
6 I'm sorry, what Mazda was attempting to do in relation  
7 to the terms of the contract.

8 And they said there were two points that  
9 rendered it different than BMW. And so it essentially  
10 said that Ri-Joyce contained a qualified power, whereas  
11 BMW had an unqualified power, and then specifically with  
12 respect to the Ri-Joyce case, they said there was a term  
13 in the contract that said BMW could -- I'm sorry. Not  
14 BMW. Mazda had the right to establish a dealer near --  
15 another dealer near the location of the Ri-Joyce  
16 dealership. So there was a question as to what "near"  
17 meant, meaning it was not undisputed. It was ambiguous  
18 such that parol evidence or extrinsic evidence was  
19 proper to define that. And there was also a requirement  
20 built into the contract that said that Mazda had to  
21 confer with Ri-Joyce, in good faith, to determine if  
22 there was any other alternative that they could reach  
23 before Mazda took action.

24 And so because Mazda was not attempting to do  
25 either of those points, meaning there was a question as

1 to what "near" meant and because they weren't conferring  
2 in good faith, the Court said, it's a qualified power to  
3 appoint. So therefore it made a difference. The terms  
4 of the contract made it different, and that's what was  
5 the distinguishing factor between Ri-Joyce and BMW.

6 Here, in our case, there's no dispute that BRP,  
7 through the terms of the contract, has reserved to  
8 itself an unqualified right, just like with BMW, there's  
9 no contract terms that are claimed to be ambiguous.  
10 There's no claim that BRP is not doing -- they are not  
11 attempting to do anything that they are not allowed  
12 under the contract. They are acting consistent with the  
13 terms of the contract. They are doing exactly what the  
14 parties agreed to.

15 So this case is squarely within BMW and not the  
16 Ri-Joyce case, but the Ri-Joyce case focuses what the  
17 threshold is and what the contract said. So if we look  
18 at what rights were granted under the franchise  
19 agreement, in this case, and those rights are that BRP  
20 has designated Fun Bike as a nonexclusive dealer, and  
21 BRP has the right, and its sole discretion, to appoint  
22 or relocate other dealers, either within or outside an  
23 existing dealer's PMA, and they are allowed to modify,  
24 change, or alter that PMA as they see fit.

25 That is the rights that BRP has. Those are the

1 rights that Fun Bike agreed to. So now, Fun Bike is  
2 trying to change the terms, saying, even though we  
3 agreed to that action, you can't do it because it  
4 doesn't constitute the modification of the relationship.  
5 Not a modification of any term, but of the relationship.  
6 And that's not the law.

7 So we would submit that this case, the present  
8 matter, is controlled by BMW, and that there's no  
9 modification as a matter of law, which makes it  
10 appropriate for summary disposition, which was  
11 recognized not only in BMW, but in the Ri-Joyce case,  
12 which expressly approved and recognized the power to  
13 summarily dismiss as a matter of law, whether there is  
14 no modification.

15 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Thank  
16 you. This is Judge Skrocki.

17 Mr. Sieving, your turn.

18 MR. SIEVING: This is Michael Sieving.

19 BRP has suggested, in both sets of papers, as  
20 well as oral arguments, that in reading Ri-Joyce, we  
21 have to look first at the rights that were granted under  
22 the franchise, and that is the language under Ri-Joyce.

23 However, I think that that should reasonably be  
24 read to say that what we need to do is look at not only  
25 the rights but the obligations of the parties under the

1 sales and service agreement, and the obligations being  
2 more significant because that complies with the  
3 provisions of 3060 that says that the franchisor cannot  
4 modify a franchise that substantially affects the sales  
5 or service obligations or investment of a dealer without  
6 giving notice and going through the process.

7 I put in my opposition to the motion for  
8 reconsideration several instances where there are  
9 obligations imposed upon the dealer that specifically  
10 relate to the assigned PMA. And just to recap this  
11 paragraph 5(a) of the general provisions dealing with  
12 sales responsibility, again, based on the PMA; paragraph  
13 5(e) of the general provisions dealing with the training  
14 requirements; paragraph 15(m) dealing with breaches and  
15 potential termination, based upon the failure of the  
16 dealer to comply with various provisions, including  
17 those related to the sales responsibility in the PMA; in  
18 the operating standards we have paragraph 2(a) that also  
19 deal with sales performance; we have 2(b), the stocking  
20 requirements; and we have paragraph 5 dealing with the  
21 facilities themselves.

22 So in this case, we do have instances, whereby  
23 virtue of the modification of the PMA, it specifically  
24 modifies the obligations of the dealer related to what  
25 it has to do under the terms of the sales and service

much bigger  
obtain  
must modify  
terms

1 agreement.

2 Now, in oral arguments, Mr. Martin also  
3 suggested that the Ri-Joyce case determined that if the  
4 facts were similar to BMW, specifically related to the  
5 inclusion in the sales and service agreement of an  
6 unqualified right to appoint additional dealers,  
7 irrespective of whether they are in a PMA or not, the  
8 case definitely would have been decided the same way.  
9 That's not what Ri-Joyce says. Ri-Joyce says that it  
10 may have been decided the same way.

11 Of course Ri-Joyce decided the case  
12 differently, and they specifically distinguished the BMW  
13 case, and, in a number of respects -- one of which I've  
14 included in my papers -- where they specifically said --  
15 and I'm looking at page 4 of my opposition -- that the  
16 unilateral establishment of the nearby dealership,  
17 without conferring with Ri-Joyce, and without any  
18 attempt at justification pursuant to the contract would  
19 constitute an attempted modification of the contract.  
20 So therefore, under Ri-Joyce, there doesn't have to be  
21 any specific change in the language of the contract. It  
22 is by operation of the conduct of the parties that  
23 creates the modification.

24 So, again, I think we're rehashing a lot of  
25 what we've talked about during the original motion to

1 franchisor was acting pursuant to, and not in conflict  
2 with, the agreement, whereas, in Ri-Joyce, there's no  
3 question that franchisor was acting contrary to the  
4 terms of what was required, as opposed to in congruence  
5 with it. So those were the facts that distinguished it.

6 So I don't -- I strongly disagree with the  
7 characterization of Ri-Joyce, and we talked about the  
8 obligations under the sales and service agreement. I  
9 dealt with that in the reply brief. I mean, that was  
10 exactly the same issue because we're dealing with the  
11 same types of systems. Whether it's the AOR, the APR,  
12 or the PMA in this case, the Ri-Joyce and the BMW case  
13 specifically said that sales and service obligations  
14 were tied to those markers, those OARs and APRs. And so  
15 that was irrelevant to the courts in both BMW and  
16 Ri-Joyce.

17 What was relevant was, is the franchisor doing  
18 something that he's not entitled to do under the  
19 contract. That's really the only question, and it's a  
20 simple question. Is what BRP doing, is it allowed under  
21 the contract? Did Fun Bike agree to it? And they did.  
22 They agreed that BRP could change the PMA, and they  
23 agreed that if that PMA changes, that the sales and  
24 service obligations would change correspondingly with  
25 it.

1 dismiss, and I think this case has been briefed, it has  
2 been argued, and I will submit.

3 ADMINISTRATIVE LAW JUDGE SKROCKI: All right.  
4 Thank you.

5 Mr. Martin, anything in rebuttal?

6 MR. MARTIN: Well, with respect to Ri-Joyce,  
7 that's not what it says.

8 The contract itself, I mean, the analysis that  
9 Ri-Joyce went under, that the Court went through, was  
10 that you look to the terms of the contract, and the  
11 terms of the contract said what -- it basically set  
12 forth that Mazda could not unilaterally establish a  
13 dealer if there was a question as to whether it was near  
14 the existing dealership or whether they engaged in a  
15 good faith conferring with each other. That's strictly  
16 out of the terms of the contract.

17 And so what the dealer -- I'm sorry, not the  
18 dealer, but what Mazda was doing was directly contrary  
19 to what the terms required, so it was looking strictly  
20 at the terms. And there was -- you know, we've already  
21 talked about that.

22 But I'm surprised to hear Counsel say that the  
23 terms of the contract, there doesn't have to be a change  
24 to it or action that's contrary to it. It's really more  
25 basic, that as BMW -- the Court said is that there, the

1 It's the same thing that happened in Ri-Joyce;  
2 it's the same thing that happened in BMW, and the  
3 courts, they said, what did the contracts say? Not,  
4 what sales and service obligations changed?

5 And what the courts found, that irrespective of  
6 those changes, in the likely changes, the necessary  
7 changes that would accompany a PMA reduction or  
8 expansion or AOR or APR, that that was not a  
9 modification, because they were only doing what they  
10 were allowed to do under the contract.

11 That's really the only question.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: This is  
13 Judge Skrocki again.

14 Mr. Sieving, any comment to that?

15 MR. SIEVING: Yes, just briefly.

16 I disagree with Mr. Martin. The BMW case most  
17 certainly did look at the terms of the sales and service  
18 agreement, in particular, looking for the provisions  
19 dealing with the AOR, and found they were not in there.  
20 And as we discussed last time on the hearing of the  
21 motion to dismiss, that case was decided primarily based  
22 upon implication of the parol evidence rule. So,  
23 unquestionably, they looked at the terms of the  
24 contract, as did Ri-Joyce. And Ri-Joyce determined that  
25 there was a provision in the contract subject to

1 interpretation.

2 They didn't -- Ri-Joyce didn't find it  
3 necessary to get into whether or not the various  
4 obligations set forth in the contract were subject to  
5 modification by virtue of the conduct of the factory.  
6 They held that the dealer had a right to protest, and,  
7 obviously, it was -- and distinguished BMW in the  
8 process.

9 So I disagree with Mr. Martin, that under the  
10 facts of our case, this particular case with Bombardier,  
11 that the contract is not susceptible to a determination  
12 that the obligations have been modified by virtue of the  
13 conduct of the franchisor.

14 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Thank  
15 you.

16 Anything further? Either side?

17 MR. MARTIN: I think we would just be repeating  
18 ourselves at this point.

19 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. Thank  
20 you.

21 MR. SIEVING: This is Michael Sieving.

22 And since we are trying to build a record here,  
23 I did want to make reference to my footnote number 2 on  
24 paragraph 5, dealing with the provisions of section 7 of  
25 the dealer agreement -- and we talked about this last

1 MR. SIEVING: And Your Honor, who is to blame  
2 for both of those decisions?

3 ADMINISTRATIVE LAW JUDGE SKROCKI: Not me. The  
4 parol evidence rule wasn't even raised at either the  
5 board hearing or in superior court. And it was the  
6 third DCA that brought up parol evidence rule on its own  
7 motion, because it's a matter of law. And when that  
8 decision came out of the third DCA, everybody looked at  
9 it and said, parol evidence rule? Who raised that?

10 MR. SIEVING: My reference is more to the fact  
11 that you were involved in the BMW and I was involved in  
12 the Ri-Joyce.

13 ADMINISTRATIVE LAW JUDGE SKROCKI: Well,  
14 anyway, yeah. So I don't think anybody's responsible.  
15 We did our best with what the law was before us and the  
16 arguments before us.

17 MR. SIEVING: That's what I've been saying for  
18 years.

19 ADMINISTRATIVE LAW JUDGE SKROCKI: Right. Both  
20 times.

21 But anyway, I want -- because I don't want to  
22 do anything that's going to leave the third DCA  
23 wondering, what's it going to take to beat those people  
24 over the head with it before they understand the parol  
25 evidence rule, I went back over the materials that we

1 time -- which it specifically says that if any of the  
2 provisions of the dealer agreement are contrary to any  
3 state or local law, the dealer agreement is, by its  
4 terms, modified to eliminate the terms that are not in  
5 compliance. So I think that is an issue that needs to  
6 be addressed at the evidentiary hearing as well.

7 MR. MARTIN: I would just respond that that's a  
8 term, again, that the dealer expressly agreed to. So  
9 any action -- really, that's the question. Any action  
10 that BRP has attempted to take in this case was already  
11 agreed to by Fun Bike, and that's really the -- that's  
12 the threshold question. Are we doing something that Fun  
13 Bike didn't agree to? And if we are, then we're  
14 modifying it. If we're not doing something that Fun  
15 Bike agreed to, then there's no modification. Not at  
16 all.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: This is  
18 Judge Skrocki again.

19 Okay. Thank you both.

20 I'm sensitive to the fact that the third DCA in  
21 BMW said that the board didn't decide it properly, and  
22 then, in Ri-Joyce, the third DCA said, well, you tried  
23 but you still went the other way. You still didn't  
24 decide it properly. And so I don't want to go O for 3  
25 here.

1 looked at before, including the franchise agreement and  
2 all of its component parts, and I reread BMW and I  
3 reread Ri-Joyce, and I'm still at the same quandary of  
4 the tension between the language in 3060 that says  
5 notwithstanding the terms of any franchise, no  
6 franchisor shall modify if the modification will  
7 substantially affect the sales or service obligations or  
8 investment.

9 And the fact that the courts -- in some of the  
10 pleadings, the focus is upon the establishment. And the  
11 two opinions from the court, they focus upon the  
12 establishment. And they point out that they -- this is  
13 an establishment and they've got every right to  
14 establish additional dealers because the protestor is  
15 not within the PMA -- the RMA, rather, of the new  
16 dealer.

17 The pleadings here are focused not upon the  
18 establishment. I think Mr. Sieving concedes that they  
19 have no standing. This just -- was the case in Watkins,  
20 that there's no right to protest the establishment. But  
21 yet the opinions seem to talk about the establishment  
22 because there was no exclusive territory.

23 The problem here is, the effect of an  
24 establishment upon, in this case, the PMA, and what the  
25 PMA is used for in this case by Bombardier. And I'm

1 looking at the language in the Watkins case, and I don't  
 2 have an official version of it, so I can't really give  
 3 you a page number or anything. But it's the second to  
 4 the last paragraph, where it says that Watkins and the  
 5 board would rewrite the franchise to read that BMW  
 6 reserves the right to create other dealers in the  
 7 present dealer's geographic area. Then they had a  
 8 quote: Provided that the new dealership does not change  
 9 the area of responsibility or units in operation.

10 And that's the problem, that there is an  
 11 additional dealership established and the existing  
 12 dealers beyond the 10-mile radius, beyond the RMA, of  
 13 that proposed new location. There almost is always  
 14 going to be a change in the case of Bombardier with PMA.

15 And so is this a protest against a change in  
 16 the PMA, or is this a disguised protest against the  
 17 establishment with the incidental effect being used as  
 18 the crux to get into a protest of, because they are  
 19 going to put a new dealer in, they are going to change  
 20 my PMA?

21 Well, there's some merit to that position, but  
 22 it looks like, in Watkins, the Court is saying that you  
 23 can't split these two theories. You can't split the  
 24 change in the ARA and calling it a modification, if it's  
 25 caused by an establishment, because the establishment is

1 effectiveness includes -- while it's penetrating former  
 2 PMA No. 2 and former PMA No. 3.

3 Now, that, to me, would clearly be a  
 4 modification of the PMA that would substantially affect  
 5 the dealer's sales or service obligations or investment.  
 6 It might even result in a termination, because sales  
 7 performance is so low, because facilities guides are so  
 8 low.

9 The dealer is just now between a rock and a  
 10 hard spot of not being able to perform well by servicing  
 11 his new PMA, which has been expanded threefold. Well,  
 12 here, we're not expanding the PMA; we're contracting the  
 13 PMA.

14 I think I made the comment at the last hearing,  
 15 this might even be advantageous to the dealer. He won't  
 16 have to stock as much inventory; he won't have to have  
 17 as many sales reps or hoists or whatever was involved,  
 18 based upon the EIOs or technicians. And the sales  
 19 effectiveness may go up significantly because now he can  
 20 be measured solely by and while penetrating his own PMA,  
 21 and he may not become a superstar.

22 But we don't know any of that. And so that's  
 23 the tension I see between 3060 and a modification of the  
 24 PMA, where it is slowly a modification, versus a PMA  
 25 modification being caused by an establishment which

1 subject to 3062 and not 3060.

2 On the other hand, I could see where there  
 3 could be times when changing a PMA, all by itself, could  
 4 come within 3060. With the example that comes to mind  
 5 of a dealer who's been established at its existing  
 6 location, and there are one or two unfilled open points  
 7 already declared by the franchisor at location 2 and  
 8 location 3.

9 It could be that the franchisor says, we're not  
 10 going to fill those open points ever and, therefore, the  
 11 original PMA that we assigned to the existing dealer is  
 12 now going to be expanded to include a geographic area  
 13 that previously had been assigned to the proposed new  
 14 dealer if they ever came into existence.

15 The effect of that isn't subject to 3060 for  
 16 the termination, but it could wind up being a  
 17 termination because the new existing dealer could now be  
 18 held accountable for when it used to have a relatively  
 19 small PMA, and its sales effectiveness was being judged  
 20 by its sales within its relatively small PMA, is now  
 21 going to be charged with expanding its facilities  
 22 threefold to pick up the new PMA that now includes the  
 23 open point 2 and open point 3 PMAs.

24 And it's going to be last in its sales  
 25 effectiveness based upon PMA, because now its sales

1 should come under 3062, if at all.

2 And there's my concern, and I'm reading  
 3 Watkins, which is telling me that the Court in Watkins  
 4 would not like to split those two, and we can't have the  
 5 tail wagging the dog, and you can't say that they can  
 6 appoint a new dealership, as long as you are not closer  
 7 than 10 miles, provided that there's no change in the  
 8 Watkins case, the AOR, or, in this case, the PMA.

9 So that's part of my problem.

10 I went over the franchise again, and you have  
 11 also gone over it, so you know what's in it. And maybe  
 12 this is something that you thought about more than I, or  
 13 maybe you haven't thought about it at all. And I think  
 14 Mr. Sieving mentioned paragraph number 7 on page 4, or  
 15 he mentioned it in severability, but I'm looking at it  
 16 now for governing law, and I'm looking at it now, the  
 17 beginning of it, that says, this agreement shall be  
 18 construed in accordance with the laws of the State of  
 19 Florida. Of course it's subject to California's Motor  
 20 Vehicle Act.

21 But for the parol evidence rule, should we be  
 22 concerned about what the laws of Florida are for  
 23 construction, or does that mean interpretation as well  
 24 of this contract? Or are we still looking at California  
 25 law for the parol evidence rule?

1 And I don't expect an answer to that, but I  
2 just looked at that and said, hmm, what about this one?

3 If so, then if this does go to the preliminary  
4 hearing on is there a modification, and is the parol  
5 evidence rule going to govern, then maybe there ought to  
6 be some initial thought given as to whether the State of  
7 Florida parol evidence rule will apply to the  
8 construction of this agreement.

9 I looked at what is included in the agreement  
10 again, and I got them tabbed to the point where there's  
11 so damn many of them -- darn many of them that I can't  
12 immediately find the right tab.

13 But page 19, the merger clause there of the  
14 entire agreement under subparagraph (h), and I think I  
15 mentioned this at our last get-together, that it is  
16 expressly agreed and understood that the following  
17 documents are incorporated herein by reference and have  
18 the same binding effect as this agreement.

19 Then it lists, in addition to the agreement,  
20 the addenda to the agreement -- and I think I've got all  
21 of the addenda to the agreement, A, B, C, and D, which  
22 is the California addenda: One is location; one is  
23 owners; one's product; and I think D is the California  
24 addenda.

25 Then the general provision is this agreement

1 product. And as I recall, each product had its own PMA,  
2 which was kind of interesting.

3 Of course it also has the definition of the  
4 "dealer PMA" in (h); has a definition of "operation  
5 standards" in (i); and has a definition of "policies" in  
6 (l). And so we've got those various documents that are  
7 all part of the contract and all have their own order of  
8 precedence over the others that are mentioned in the  
9 contract, that I just read in somewhat inartfully.

10 And so when I looked at all that, and I reread  
11 your briefs, and reread the cases. I'm of the opinion,  
12 still, that as was mentioned in Ri-Joyce and included in  
13 Mr. Martin's reply, that Ri-Joyce is telling us -- when  
14 I fumble through it, I think Mr. Sieving may have  
15 mentioned this as well, that -- I can't give you a page  
16 or a paragraph number because I don't have the official  
17 version, again.

18 Again, it's about the last paragraph in  
19 Ri-Joyce, where it says, like the trial court, we do not  
20 mean to suggest a particular result or otherwise limit  
21 the discretion of the board, where a franchisee asserts  
22 that a franchisor is attempting to modify its  
23 franchise -- which is what we have here, a franchisor  
24 serving a modification -- the first step is to determine  
25 what rights were granted under the franchise.

1 including the -- and then -- I'm sorry. The operation  
2 standards; the warranty service guide; the dealer  
3 binder; the invoices; and all other policies.

4 And then maybe taking the bow here to the Mazda  
5 case, the Ri-Joyce case, that in the case of conflict,  
6 they give us a pecking order as to which should take  
7 precedence: The addenda is going to control the  
8 agreement itself. Then the agreement, including the  
9 general provisions, will control the operation  
10 standards. Then the operation standards will control  
11 the warranty service guide, which will then control the  
12 other BRP policies and documents.

13 And so we've got these various things, all of  
14 which are included within the definition of the  
15 contract, the agreement, whatever it may be, and we've  
16 got a listing of which is going to control out of those  
17 listed ones.

18 What I don't know is what these all are, and I  
19 went back to my definitions, and there is a definition  
20 of the dealer binder on page 2 that means dealer BRP --  
21 dealer binders issued by BRP, from time to time, for  
22 each product and available on the BRP dealer portal.  
23 I'm not sure if that dealer binder would include the PMA  
24 or the PMA maps, but it might, that is going to be  
25 applicable to each dealer and it would apply to each

1 Mr. Sieving included that maybe we looked at  
2 the responsibilities, but I think the rights are  
3 reflective of the responsibilities because the rights of  
4 Bombardier are what the responsibilities are of Fun  
5 Bike. So what rights or responsibilities were granted  
6 or assumed under the franchise?

7 Then going back to the case: Within the  
8 meaning of section 3060, a franchise is a written  
9 agreement of the parties which is subject to the normal  
10 rules relating to the interpretation of contracts, where  
11 a franchise agreement is reasonably susceptible to the  
12 meaning urged by a franchisee, the board must hear and  
13 consider such extrinsic evidence that the franchisee can  
14 produce in order to determine what rights were granted  
15 under the agreement. Only then can it be determined  
16 whether the franchisor's proposed action constitutes a  
17 modification of the franchise. If it does not, then the  
18 franchisor is entitled to prevail, which is the result  
19 in the BMW case.

20 Back to the quote: If it does not -- if it  
21 does -- back to the quote, sorry. If it does, then the  
22 board must proceed with the further consideration of the  
23 protest. The remainder, then it says, since, in this  
24 case, the franchise agreement is reasonably susceptible  
25 to the meaning urged by Ri-Joyce, it was entitled to an

1 evidentiary hearing, by which, it could produce evidence  
2 in support of that interpretation.

3 So, at this point, I'm wondering whether I have  
4 enough in front of me to rule, again, as a matter of  
5 law, that the protest should be dismissed because there  
6 is no modification that comes within 3060. I know the  
7 claim is, this will be the tail wagging the dog, because  
8 this is really an establishment case. And Ri-Joyce and  
9 Watkins looked at it that way and said, there's no  
10 exclusive territory; franchisor is free to establish.  
11 Same is conceded here.

12 But the problem is, what's the effect of  
13 changing that, in this case, the PMA? And the reading I  
14 started with, of the Court in Watkins, is indicating, at  
15 least by way of dicta, that you can't separate the two,  
16 and, therefore, you can't add on the tail, but if this  
17 is an establishment, you can't add on the tail that you  
18 can establish outside the 10-mile radius, but only if it  
19 doesn't change the PMA.

20 And that's what the concern is, that the PMA is  
21 being changed because there's establishment and the  
22 protesting dealer is not in the RMA, the ten-mile radius  
23 of the proposed new dealership.

24 But, on the other hand, can we tell or suggest,  
25 or will it have the effect of impeding a franchisor's

1 to be admissible to show modification. If that ALJ at  
2 that level, initial level, will be in a better position  
3 than I am now, to make that decision, because, by then,  
4 he will have answered all of the concerns that I have  
5 expressed, if you think they are worth answering, or you  
6 would have at least presented to that ALJ all of the  
7 documents that comprise the franchise, and given that  
8 ALJ the opportunity to hear the claimed arguments for  
9 why there is an ambiguity. Or the more modern test, you  
10 don't have to show an ambiguity, but merely that the  
11 language in the franchise is reasonably susceptible --  
12 the PG&E versus Thomas Drayage language -- of that  
13 alternative interpretation.

14 So I still hark it back to the requirement of  
15 ambiguity, but I know better than that, because the  
16 newer standard is, which isn't so new anymore, that of  
17 being reasonably susceptible.

18 So I think Mr. Sieving should have the  
19 opportunity to do some preliminary discovery, limited to  
20 the potential parol evidence rule issues, if that can be  
21 done; that the matter should be presented to the ALJ of  
22 the board on the initial threshold question of whether  
23 there is a modification or whether it's barred by the  
24 parol evidence rule; taking into account all of the  
25 listed portions of the, quote, agreement, end quote; and

1 ability to use things like PMAs to determine  
2 effectiveness and guides and facilities, requirements,  
3 and everything else that goes with it? Is that going to  
4 upset the apple cart?

5 Maybe these all are unfair to a dealer who has  
6 assumed that when you build to a certain standard, and  
7 you perform to a certain standard, that changing the  
8 requirements of my franchise will substantially affect  
9 my sales and service obligations or investment, whether  
10 the cause of that is expanding my PMA, under my  
11 hypothetical, or reducing my PMA, based upon the  
12 establishment of, in one case you don't have 3060  
13 involved at all -- I'm sorry. Don't have 3062 involved  
14 at all, but only 3060. Here, we have a 3062 action that  
15 impacts 3060, and there's my dilemma.

16 So at this point, what I am intending to do is  
17 to, again, deny the motion to dismiss on the theory that  
18 this should be presented to an ALJ at the initial stage  
19 of what is required that is stated in Ri-Joyce; that  
20 there must be, anyway, a preliminary hearing. We don't  
21 have a jury; the ALJ is going to be deciding, as a  
22 matter of law, based upon what evidence Mr. Sieving can  
23 present to show that there is an ambiguity or some other  
24 reason to not decide it, based upon the parol evidence  
25 rule, and determine whether extrinsic evidence is going

1 then you would be in a position, again, essentially, to  
2 have a better review of what the issue is before me now,  
3 of the dismissal of the protest because of, in this  
4 case, the parol evidence rule, because there is no  
5 modification of whether the language of not withstanding  
6 the terms of any franchise, there shall be no  
7 modification if it substantially impairs franchisee's  
8 sales or service obligations or investment.

9 So that long monologue is too long and over.

10 MR. MARTIN: I appreciate that, Your Honor.

11 And I just want to clarify. It seems to -- the  
12 way I understood it, you are essentially, obviously  
13 denying the motion as a matter of law right now. But in  
14 a sense, putting the same legal determination, matter of  
15 law determination, as to whether there's a modification  
16 over, into the future, after all the parties have  
17 exchanged -- we can establish that all the documents  
18 making up the agreement, or the franchise agreement, are  
19 before the next ALJ, meaning the dealer binder, all the  
20 addenda, everything that will be exchanged in discovery  
21 that makes up the franchise agreement, to the extent  
22 there's any other documents that do.

23 And if those documents do not show any type of  
24 am ambiguity, or if they are not reasonably susceptible  
25 to an interpretation supported by the protestant, then

1 you would expect, as a matter of law, the matter to be  
2 summarily dismissed at that point and not go on to a  
3 full evidentiary hearing.

4 And on the opposite spectrum, if such documents  
5 are produced, and they create an ambiguity, the  
6 protestant is able to raise an ambiguity, then, at that  
7 point, it goes to a full evidentiary hearing.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: I think  
9 Mr. Sieving will agree to that.

10 MR. SIEVING: Right. Except for the word  
11 "summarily." I think there has to be an evidentiary  
12 hearing on the issue of whether there has been a  
13 modification, which substantially affect sales or  
14 service obligation and investment, and a determination  
15 made -- I don't see a motion for summary judgment, the  
16 inclusion of that, saying it's not here, dismissed. I  
17 think there has to be a proposed decision on that issue.

18 ADMINISTRATIVE LAW JUDGE SKROCKI: That's what  
19 I understood Mr. Martin to say, that there be a limited  
20 hearing solely on the parol evidence rule issue, which  
21 is what you are looking at. Is there a modification?

22 MR. MARTIN: Right.

23 Meaning that that -- I understand your concern  
24 here, today, Your Honor, is that you would like to see  
25 what's in the dealer binder. What are these other

1 documents that are referred to in the agreement? And  
2 had those documents -- we haven't exchanged discovery.  
3 We haven't gotten to that phase.

4 But had the universe of documents been  
5 presented to you, and if you were confident that they  
6 showed that BRP had the unqualified right to take  
7 action, based on all these documents, that as a matter  
8 of law, a summary disposition would be appropriate.

9 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. I'm  
10 not sure I would go that far. I think Mr. Sieving  
11 should have the opportunity to take some depositions as  
12 well, and then he could ferret out the effect of a  
13 change in the PMA, as to whether that is, in fact, a  
14 modification under the terms of the franchise, whether  
15 that is -- term is reasonably susceptible of extrinsic  
16 evidence to show why that is going to be a modification,  
17 should then be submitted at an evidentiary hearing to  
18 the ALJ at that initial hearing as to whether there is a  
19 modification or not. I think that that's -- you have  
20 got to go at least that far.

21 MR. MARTIN: Well, but I think, when you quoted  
22 the Ri-Joyce Court, you said -- you looked -- first, you  
23 looked to what rights were granted under the franchise,  
24 and it says that if -- if the agreement -- where a  
25 franchise agreement is reasonably susceptible to the

1 meaning urged.

2 Well, what if the agreement is not reasonably  
3 susceptible? Then the flip side would be that there's  
4 no modification, then no evidentiary hearing would be  
5 appropriate or be warranted.

6 So I guess the question I have is, the next  
7 step, is it strictly to determine whether it's based on  
8 the dealer binder and any information that may exist out  
9 there, that if it doesn't change what we looked at here  
10 today, as far as what the rights are under the franchise  
11 agreement, then how can there be a meaning that's  
12 reasonably susceptible? I mean, that's really the first  
13 question, is whether there's a reasonably susceptible  
14 interpretation.

15 So isn't that strictly based off of what the  
16 contract is in a matter of law, as opposed to the  
17 evidence, whether there's a change in the obligation or  
18 sales. Because that -- those are the same issues  
19 that -- the Ri-Joyce Court and the BMW Court, they could  
20 have said the exact same thing because it was the exact  
21 same circumstance, meaning a reduction of a PMA or AOR  
22 but still beyond the relevant market area.

23 So I guess the question I have is -- those  
24 Courts could have said the same thing, but they didn't,  
25 and they really focused on what the terms of the

1 contract are.

2 And so my understanding, hearing your ruling,  
3 is that you were just not comfortable that we have all  
4 the terms of the contract, and that you would like to  
5 see if there's any other terms that are in the dealer  
6 binder or something that would conflict with what  
7 Bombardier or BRP is trying to do.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: I think  
9 Mr. Sieving should have the opportunity to present  
10 something to show why a particular term could be  
11 reasonably susceptible to some other meaning.

12 And I don't know how he could do that other  
13 than at the mini hearing on the parol evidence rule  
14 issue itself, before that ALJ, whether you want to call  
15 it equivalent to an in camera hearing at the superior  
16 court or at the administrative level, with just the ALJ,  
17 anyway. That he should be able to put somebody on to  
18 say, here's why, when I read that, I thought it was  
19 susceptible to mean this.

20 And I think the ALJ could then make a  
21 determination that that is not reasonably susceptible of  
22 that meaning. But if, on its face, it's not reasonably  
23 susceptible -- you know, it's a little bit like saying,  
24 with your client in particular, that the price is  
25 \$15,000.

1 MR. MARTIN: Right.

2 ADMINISTRATIVE LAW JUDGE SKROCKI: On its face,

3 that's not reasonably susceptible to mean anything other

4 than \$15,000. But the problem, because of who your

5 client is, what would be reasonably susceptible if you

6 told the judge who your client was.

7 MR. MARTIN: Sure.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: What's the

9 answer?

10 MR. MARTIN: I may not be following, actually.

11 Sorry.

12 ADMINISTRATIVE LAW JUDGE SKROCKI: All right.

13 Where's your client located?

14 MR. MARTIN: My client is -- BRP US Inc. is in

15 Wisconsin.

16 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. How

17 about the parent manufacturing facility?

18 MR. MARTIN: They are in Canada.

19 ADMINISTRATIVE LAW JUDGE SKROCKI: Okay. So

20 the term \$15,000, on its face, is not reasonably

21 susceptible to anything but \$15,000. But guess what?

22 Does it mean Canadian or U.S.?

23 MR. MARTIN: Right.

24 ADMINISTRATIVE LAW JUDGE SKROCKI: I mean,

25 that's the problem I've got, is that something on its

1 law, one way or the other, whether there's a

2 modification. If there is determined to be a

3 modification, then we get into the full evidentiary

4 hearing as to whether it substantially impairs sales

5 obligations, and whether there's good cause and all

6 that.

7 ADMINISTRATIVE LAW JUDGE SKROCKI: That is

8 correct.

9 Mr. Sieving has two steps he has to proceed

10 through. The first is, he has to show a modification,

11 and that's where we are, that's where he will be.

12 If he can't show a modification of whether

13 there's a substantial effect upon the sales and service

14 obligations or investment, doesn't matter. You never

15 get that far.

16 After he shows the modification, then the ALJ

17 should say, okay, I think there's a modification. I so

18 rule. And now, Mr. Sieving, tell me why there's a

19 substantial effect.

20 If he can't prove both of those, he loses. If

21 he can't prove the first one, he loses.

22 MR. MARTIN: Right.

23 ADMINISTRATIVE LAW JUDGE SKROCKI: And so he

24 may have a very difficult time proving the first one,

25 and he may have even a more difficult time proving the

1 face would seem to have, what used to be called, a plain

2 meaning. But once you offer evidence to show -- but

3 it's not so plain because the underlying fact is, this

4 is a Canadian manufacturer vehicle and, therefore,

5 \$15,000, when you are getting a price quote from Quebec,

6 or wherever your main office or main manufacturing

7 facility is -- I've forgotten where it is. But anyway,

8 I used to know. But anyway, my mind is blank.

9 But you see the point, is that you can't just

10 look at the document to listen to what's reasonably

11 susceptible. You have got to hear the claim that's

12 being made. Whether the claim is being made just by

13 Mr. Sieving or made by his client or another witness at

14 the hearing, I think he's got the right to show why it's

15 reasonably susceptible to alternative interpretations.

16 That's why I don't want to just say on the

17 documents alone, because I might be missing

18 Canadian dollars versus U.S. dollars.

19 MR. MARTIN: I guess my point -- I appreciate

20 that.

21 I guess my point was, as far as getting into a

22 full-blown evidentiary hearing as far as, you know,

23 sales and service obligations, the different, you know,

24 sales over the years, because really, what you are

25 saying is, we still need to determine, as a matter of

1 second one, but those are all going to be factually

2 related after you get past that first one.

3 MR. MARTIN: Okay. I appreciate it.

4 And the only reason I ask is, one of the

5 arguments we've been making throughout is that the term

6 "modification" has been used -- it's really used in two

7 different contexts. There's modification, as a matter

8 of law, meaning, there has to be a legal modification to

9 trigger the statute 3060, but we've also talked about

10 "modification" in terms of more general, like alteration

11 or change in PMA. But, you know, a change in the

12 relationship or a change in the PMA doesn't necessarily,

13 you know, by definition, mean "modification."

14 And what you are saying is, there has to be a

15 threshold legal determination of, there's a modification

16 before we go further.

17 ADMINISTRATIVE LAW JUDGE SKROCKI: Yes, sir.

18 MR. MARTIN: Okay. Thank you.

19 ADMINISTRATIVE LAW JUDGE SKROCKI: Mr. Sieving,

20 anything you want to clarify again? Because I've been

21 known to make mistakes.

22 MR. SIEVING: No.

23 Yes. In answer to your question, yes. There's

24 a couple of issues. One being, the first being, that,

25 again, based on the comments Your Honor made, there are,

1 in my mind, additional ways that the franchise can be  
 2 modified by virtue of a change in the PMA other than the  
 3 two we've discussed, and that is to reduce the size of  
 4 the PMA or, in your hypothetical, to increase the size  
 5 of the PMA. There are yet other types of changes to the  
 6 PMA that could constitute modifications to the sales and  
 7 service agreement. And that would be -- I will throw  
 8 out a hypothetical. The actual area size of the PMA  
 9 itself doesn't change. However, whether it be census  
 10 tracts or, in our case, ZIP codes that determine what  
 11 constitutes a PMA, it could very well be, and I believe  
 12 the evidence is going to establish it, in this case,  
 13 that there is a slight reduction in the PMA.

14 However, the ZIP codes that are now being taken  
 15 away from my client and assigned to this  
 16 yet-to-be-established dealer are those areas or ZIP  
 17 codes in which there are many more sales and many more  
 18 units in operation than the ZIP codes that we retained.

19 So in other words, there can be a situation,  
 20 and I think we may have that here, where the actual size  
 21 change itself, because there's a slight reduction, is  
 22 not the key element of the modification; it is the  
 23 actual ZIP codes that are being changed, ones that are  
 24 being taken away from us.

25 And I believe, and I haven't seen the evidence

1 expansive.

2 And I think that the Ri-Joyce case, which was  
 3 obviously decided subsequent to BMW, eliminated some of  
 4 this tension that was created by the dicta in Ri-Joyce  
 5 relating to the interrelationship between the two code  
 6 sections, and, essentially, by that quote, it said that  
 7 there can be a factual situation that a dealer -- the  
 8 dealer's franchise is being modified where the  
 9 underlying reason for that modification is the  
 10 establishment. The dealer does not have a right to  
 11 protest because that dealer is not located within the  
 12 relevant market area, as a new point. However, the  
 13 change in the AOR, APR, or PMA, is something that is  
 14 protestable and irrespective of the reasons behind that  
 15 proposed hearings.

16 So again, these are issues that will be  
 17 addressed at phase one of the hearing. I just wanted to  
 18 raise those concerns and comments for the record.

19 MR. MARTIN: For the record, I just want to  
 20 clarify, that quote, that part of the quote was  
 21 incomplete, because the Court was saying that -- and it  
 22 gave the specific example. If you continue to read from  
 23 your quote, you basically say that BMW decision was not  
 24 so expansive, but then the Court continues. It says,  
 25 there, the franchisor had expressly reserved the

1 on this yet, because we haven't done any discovery. But  
 2 I believe that there may actually be ZIP codes that are  
 3 assigned to us under this modification that we didn't  
 4 have before. But I do know that the ZIP codes that are  
 5 being taken away are those where there are higher sales,  
 6 which would impact the dealer's obligations under the  
 7 terms of the contracts. So it is more than simply a  
 8 reduction or an expansion. It is the actual ZIP codes  
 9 themselves.

10 That was just one point. And again, we will  
 11 get into that in discovery, in phase one.

12 The other comments I wanted to make relates to  
 13 your concerns about the tension reflected in BMW between  
 14 3060 and 3062. And I think the Ri-Joyce Court addressed  
 15 that contention. And on page 4 of my brief, I cited  
 16 Ri-Joyce. It's at page 4, 5, 6 of Ri-Joyce, that says,  
 17 initially, we must clarify an apparent misconception  
 18 concerning the extent of the holding in the BMW case.  
 19 And again, this is the same Court, the third district.

20 The board and Mazda seemed to believe that we  
 21 held in BMW that the board has no jurisdiction to  
 22 consider a protest upon the establishment of a new  
 23 dealership beyond an existing dealer's relevant market  
 24 area, regardless of the terms of the existing dealer's  
 25 franchise agreement. The BMW decision was not so

1 unqualified power to establish new dealerships, and we  
 2 held that nothing in the New Motor Vehicle Board Act  
 3 precluded a franchisor from reserving such power, or  
 4 that it entitled a franchisee to object to the exercise  
 5 of such reserve power.

6 And then it said, we do not hold the act --  
 7 precluded a franchisor from granting exclusive trading  
 8 area in the alpha dealer's relative market area, or that  
 9 a franchisee would be precluded from protesting the  
 10 modification to such an agreement by establishment of a  
 11 new dealer within such an exclusive trading area.

12 So he said, that's a matter that's left, again,  
 13 to the agreement of the party, so they're saying that if  
 14 a franchise agreement does grant exclusivity in  
 15 unmodifiable trading areas, so then if a manufacturer  
 16 tries to change something contrary to that exclusive  
 17 term, meaning they are going to make it not exclusive or  
 18 they are going to modify the area, when they said they  
 19 wouldn't, well then, yeah, what the Ri-Joyce Court is  
 20 saying is, we're going to defer to the terms of the  
 21 contract. We're going to -- whatever the agreement of  
 22 the parties is what controls.

23 So I don't think it stands the proposition at  
 24 all that was just offered. It was simply supporting the  
 25 facts to the contract. As long as the contract terms

1 are consistent with 3062, then the Court -- I'm sorry,  
2 the parties can do what they want.

3 ADMINISTRATIVE LAW JUDGE SKROCKI: Thank you,  
4 Mr. Martin.

5 I think you made that same point in your reply,  
6 didn't you? That it was an unfinished quote.

7 MR. MARTIN: I did.

8 ADMINISTRATIVE LAW JUDGE SKROCKI: I remember  
9 reading that.

10 Okay. I appreciate both of your positions and  
11 I think you have both done a very good job. So unless  
12 you have something further, I'm going to tell the  
13 reporter we can go off the record.

14 And I will issue an order, on behalf of the  
15 board, denying the motion and the board staff will get  
16 in contact with you to do the next step in getting this  
17 thing to the preliminary hearing.

18 MR. SIEVING: That would be tomorrow. We have  
19 a prehearing.

20 ADMINISTRATIVE LAW JUDGE SKROCKI: Oh, okay.  
21 All righty. You know more than I do.

22 MR. MARTIN: I want to thank you, Your Honor,  
23 for entertaining the motion for reconsideration, and  
24 also, Mr. Sieving, for -- as well, I appreciate it. It  
25 was not meant to create any extra work for anyone. I

1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand Reporter  
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the  
5 foregoing hearing was reported in shorthand by me,  
6 Kathryn S. Swank, a Certified Shorthand Reporter of the  
7 State of California, and thereafter transcribed into  
8 typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said hearing nor in  
11 any way interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this  
13 9th day of December 2014.

14  
15  
16  
17  
18 \_\_\_\_\_  
19 KATHRYN S. SWANK, CSR  
20 Certified Shorthand Reporter  
21 License No. 13061

1 just think that given the legal issues we're dealing  
2 with, it was imperative to exhaust our arguments on  
3 that.

4 ADMINISTRATIVE LAW JUDGE SKROCKI: Mr. Martin,  
5 it would be a pleasure to have you appearing before me  
6 again, any time in the future, and the more often, the  
7 better. You have done a very good job.

8 MR. MARTIN: I appreciate that.

9 ADMINISTRATIVE LAW JUDGE SKROCKI: Appreciate  
10 your attitude and your comments and everything else that  
11 you have done in this regard.

12 All right. Thank you, sir, and let's go off  
13 the record.

14 THE REPORTER: Before we go off the record, Mr.  
15 Martin, would you like a copy of the transcript?

16 MR. MARTIN: Please.

17 THE REPORTER: Thank you.

18 And Mr. Sieving?

19 MR. SIEVING: Oh, sure. Why not?

20 (Proceedings concluded at 10:59 a.m.)

21 ---000---

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7 Attorney for Protestant

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

10 In the Matter of the Protest of

11 FUN BIKES CENTER,

12 Protestant,

13 v.

14 BOMBARDIER RECREATIONAL  
15 PRODUCTS, INC., BRP US INC.,

16 Respondent.

**Protest No. PR-2405-14**

**PROTESTANT'S REQUEST FOR  
IDENTIFICATION AND PRODUCTION  
OF DOCUMENTS - SET NUMBER 2**

17 PROPOUNDING PARTY: PROTESTANT FUN BIKES CENTER

18 RESPONDING PARTY: RESPONDENTS BOMBARDIER RECREATIONAL  
19 PRODUCTS, INC.; BRP US INC.

20 SET NUMBER: TWO

21 TO: RESPONDENTS BOMBARDIER RECREATIONAL PRODUCTS, INC.; BRP US INC.

22 and its attorneys of record:

23 Pursuant to the provisions of Vehicle Code Section 3050.1(b), Code of Civil Procedure Section  
24 2030.010, and Board's Amended Pre-Hearing Conference Order issued in this matter, Protestant FUN  
25 BIKES CENTER ("Protestant" or "Fun Bike"), hereby files and serves its Request for Identification  
26 and Production of Documents in Protest Number PR-2405-14 as follows:  
27  
28



1 Protestant hereby requests that Respondents BOMBARDIER RECREATIONAL PRODUCTS,  
2 INC. ("Bombardier") and BRP US INC. ("BRP") (collectively referred to herein as "Respondent")  
3 identify the Documents, papers, books, accounts, letters, photographs or tangible things in the  
4 categories specified below, which are in the possession, custody, or control of Respondent and  
5 produce and permit the inspection and copying or photographing of same. The Documents requested  
6 in the categories below are relevant to the subject matter of the above-entitled action or are reasonably  
7 calculated to lead to the discovery of admissible evidence.  
8

9 In accordance with the date set forth in the Board's Pre-Hearing Conference Order, you are  
10 required to serve a written response setting forth your responses to the requests enumerated below,  
11 identifying any objection to the production of the Documents, papers, books, accounts, letters,  
12 photographs, objects or tangible things falling within the category specified in these requests which are  
13 in the possession, custody, or control of Respondent. Said response shall further state that the  
14 inspection and related activities will be permitted as requested, unless the request is objected to, in  
15 which event the reasons for the objection shall be stated. If any objection is made to part of an item or  
16 category, the part shall be specified.  
17

18 All items so identified shall be mailed or delivered to the counsel for Protestant at the above-  
19 referenced address in a manner to be mutually agreed upon. In responding to this Request, the  
20 responding party may send or deliver the originals of requested Documents and other items. In the  
21 alternative, true and correct copies of the requested Documents and other items may be sent or  
22 delivered by the date and at the address indicated above. The Requests herein are deemed to  
23 incorporate all introductory matter, including, but not limited to, the definitions of certain terms as set  
24 forth below.  
25  
26  
27

28 //

1 **INSTRUCTIONS**

2 1. The requests contained herein are directed to Respondent and to persons or  
3 organizations having control of responsive Documents under contract or other forms of agreement  
4 with Respondent, including but not limited to, Respondent its affiliates, and its vendors (including  
5 Urban Science Applications, Inc. ("USAI") and the Polk Company/IHS Automotive, or any similar  
6 service).

7 2. Responses to the requests detailed below should include data not only for Respondent's  
8 dealerships currently in operation, but also for any dealerships that would fit the request, but that are  
9 no longer in operation.

10 3. Unless otherwise specified, response to each request detailed below is to include  
11 Documents/data from 2009 to the present.

12 4. To the extent that Documents responsive to the requests detailed below are available in  
13 computer-readable form, please provide them in that form along with sufficient information in the  
14 form of data layout files to make possible the computer manipulation of such computer-based data.  
15 Please see the last section of this document ("Magnetic Media Documentation Request").

16 **DEFINITIONS**

17 The following words, terms, and phrases as used herein shall have the meaning ascribed to  
18 them as follows:

19 5. The term "Protestant" or "Fun Bike" shall mean and refer to Protestant FUN BIKE  
20 CENTER, Protestant in Protest Number PR-2405-14, as well as any employees, agents, consultants,  
21 attorneys, accountants, investigators, entities, or anyone else acting on behalf of Protestant.

22 6. The term "Respondent" shall mean and refer to Respondent BOMBARDIER  
23 RECREATIONAL PRODUCTS, INC., and BRP US INC. as well as any employees, agents,  
24 consultants, attorneys, accountants, investigators, entities, or anyone else acting on behalf of  
25 Respondent, and each of Respondent's successors.

26 7. The terms "You" and "Your" shall mean and refer to Respondent, its present and  
27 former employees, attorneys, agents, accountants and representatives, and all other persons acting on  
28

1 its behalf or under its direction, any parent corporation or other business entity, both foreign and  
2 domestic, as well as any successors in interest.

3 8. The terms "Document" or "Writing" are used herein in their broadest sense to include  
4 any medium upon or with which information is recorded or preserved which belongs to, or is in or  
5 subject to the possession, custody, or control of Respondent, whether generated or received and  
6 includes without limitation: Writings, printings, drawings, graphs, charts, notes, typewritings,  
7 photographs, slides, motion pictures, videotapes or cassettes, phonographic records, tape or  
8 mechanical recordings, computer records, information storage devices, disks, printouts, brochures,  
9 pamphlets, books, includes, binders, periodicals, letters, memorandums, electronic-mails or "e-mails",  
10 telegrams, reports, intra-office or inter-office communications including memoranda, letters,  
11 handwritten or other notes, working papers, transcriptions, drafts, account ledgers, cancelled checks or  
12 other negotiable instruments, check registers, bank statements, journals, notices, catalogs, invoices,  
13 bills, purchase orders, memoranda of telephone communications, telegrams, telexes or "TWX's",  
14 telecopies, drafts or preliminary versions of the foregoing, communication to or from any  
15 governmental or law enforcement agency or subdivision or officer, applications, permits, specification  
16 designs, engineering plans, dealership contact reports, papers, studies, surveys, indexes, tapes, lab  
17 reports, data sheets, data processing cards, computer printouts, computer program and data files,  
18 microfilms, microfiche, correspondence, mailers, ledger cards, business records, diaries, calendars,  
19 address and telephone records, telephone recordings, and data compilations of any nature whatsoever,  
20 including any carbon, photographic, microfilm, or other type of copy of such items, whether or not  
21 such copy is different from the original by reason of any markings, additions, commentaries, revisions,  
22 deletions, or substitutions. The terms "Document" or "Writings" shall mean and include all writings  
23 (as that term is used in Section 250 of the California Evidence Code) in your possession, custody or  
24 control, as well as drafts and copies of writings described herein which are not identical with the  
25 original, all "originals" or "duplicates" (as those terms are defined in Sections 255 and 260 of the  
26 California Evidence Code) of such writings, and recordings of meetings, conversations, or other  
27 communications. The terms "Document" and "Documents" shall have the same meaning as and shall  
28 be used interchangeably with the terms "Writing" and "Writings".

1           9.       Whenever the context so requires in this request, the masculine refers to and includes  
2 the feminine and the neuter, the singular refers to and includes the plural, and the plural refers to and  
3 includes the singular.

4           10.      The term "all" shall include the terms "any" and "any and all." The term "any" shall  
5 include the terms "all" and "any and all."

6           11.      The conjunction "and" shall include the conjunctions "or" and "and/or." The  
7 conjunction "or" shall include the conjunctions "and" and "and/or."

8           12.      Reference to any corporate or business entity shall be deemed a reference to its  
9 respective agents, officers, directors, servants and employees.

10          13.      Any reference to a natural person shall be deemed a reference to his or her agents,  
11 representatives, servants, employees and attorneys.

12          14.      Each request which seeks Documents to, from or within a business and/or corporate  
13 entity should be construed to include all such Documents by and between employees, agents, or  
14 representatives of the business and/or corporate entity.

15          15.      For each document that you claim is privileged, please state fully:

- 16                   a.       The type of privilege asserted;
- 17                   b.       The factual basis for the claim of privilege;
- 18                   c.       The subject matter of the document;
- 19                   d.       The date of the document;
- 20                   e.       Each author, recipient and addressee of the document;
- 21                   f.       The current or last known location of the document;
- 22                   g.       Name of the current or last known custodian of the document; and
- 23                               The number of pages of the document.

24          16.      For each document that you claim was lost or destroyed, please state fully:

- 25                   a.       The subject matter of the document;
- 26                   b.       The date of the document;
- 27                   c.       The date the document was lost or destroyed;

28

- d. The name(s) and address(es) of the person(s) who ordered the destruction of the document;
- e. The reason for the loss or destruction of the document;
- f. Each author, recipient and addressee of the document;
- g. The last known location of the document;
- h. The name of the last known custodian of the document; and
- i. The number of pages of the document, to the extent such information is known to you.

17. For each document that you claim you are not otherwise required to produce, please state fully:

- a. All facts on which you rely in claiming that you are not required to produce the document;
- b. The subject matter of the document;
- c. The date of the document;
- d. Each author, recipient and addressee of the document;
- e. The current or last known location of the document;
- f. The name of the current or last known custodian of the document; and
- g. The number of pages of the document.

18. All Documents shall be organized and labeled to correspond with the categories in this Request. If, for any category, no document is identified or produced, please state that fact in a written response.

19. The term "Refer or Relate to" means: consist of, refer to, pertain to, evidence, support, reflect, constitute, describe, or be in any way logically or factually connected with the matter discussed.

20. Unless otherwise specified herein, the scope of these requests are all Documents responsive to each individual request from January 1, 2009 to the present.

21. As used herein, the term "Respondent" shall refer either Bombardier or BRP vehicle line-makes.

1           22.     The terms "Primary Market Area" or "PMA" are terms used by Respondent, and it  
2 understood to refer to the geographic area assigned by Respondent to any one Bombardier or BRP  
3 dealership within a Multiple Point Market or any such similar designation.

4           23.     The terms "Single Point Market" or "SP" are terms used by Respondent, and it  
5 understood to refer to the geographic area assigned by Respondent to any one Bombardier or BRP  
6 dealership that is not within a Multiple Point Market or any such similar designation.

7           24.     The terms "Multiple Point Market" or "MP" are terms used by Respondents, and it  
8 understood to refer to the geographic area assigned in common to two or more Respondent's  
9 dealerships, and thereby consisting of two or more PMAs.

10          25.     As used herein, the term "Relevant Area" shall refer to both the District and Region,  
11 collectively and independently, in which Protestant is located.

12          26.     The term "District" is a term used by Respondents, and herein shall refer to any  
13 Respondent District in which Protestant has been located at any time since January 1, 2009.

14          27.     The term "Region" is a term used by Respondent, and herein shall refer to the San  
15 Diego California Region, or any other Respondent Region in which Protestant has been located at any  
16 time since January 1, 1999.

17          28.     The term "Dealer File" is a term used by Respondent and the new motor vehicle  
18 industry as a whole, and shall herein refer to the compilation of Documents (as defined above) which  
19 are maintained by Respondent in its ordinary course of business which relate directly to all aspects of  
20 the operations of Protestant.

21          29.     The terms "Notice of Modification" ("NOM") shall refer to the letter from Respondent  
22 to Protestant dated July 28, 2014 (or any subsequent notice), which purports to be the statutory notice  
23 pursuant to Vehicle Code Section 3060 of the intent of Respondent to modify the franchise of  
24 Protestant.

25          30.     The term "Can-Am" shall refer to the "Can-Am ATVs, Side-by-Side vehicles and  
26 roadsters". as referenced in the NOT.

27  
28 //



1 parties, including but limited to any and all letters, memoranda, records of telephone communications,  
2 notes, e-mails, or other Documents which Refer or Relate to communications between any  
3 representative of Respondent and any representative of Protestant.

4 9. Any and all Documents that refer or relate to evaluations of the sales performance of  
5 Protestant.

6 10. Any and all Documents that consist of summaries or compilations of the sales  
7 performance of third-party Can-Am dealers within the PMA of Protestant.

8 11. Any and all Documents that consist of summaries or compilations of the sales  
9 performance of third-party Can-Am dealers within the Region in which Protestant is located.

10 12. Any and all Documents that Refer or Relate to the service performance of Protestant.

11 13. Any and all Documents that consist of summaries or compilations of the service  
12 performance of third-party Can-Am dealers within the PMA of Protestant.

13 14. Any and all Documents that consist of summaries or compilations of the service  
14 performance of third-party Can-Am dealers within the Region in which Protestant is located.

15 15. Any and all Documents that Refer or Relate to the customer satisfaction performance of  
16 Protestant.

17 16. Any and all Documents that consist of summaries or compilations of the customer  
18 satisfaction performance of third-party Can-Am dealers within the PMA of Protestant.

19 17. Any and all Documents that consist of summaries or compilations of the customer  
20 satisfaction performance of third-party Can-Am dealers within the Region in which Protestant is  
21 located.

22 18. Any and all Documents that Refer or Relate to the overall dealership performance of  
23 Respondent.

24 19. Any and all Documents that consist of summaries or compilations of the overall  
25 dealership performance of third-party Can-Am dealers within the PMA of Respondent.

26 20. Any and all Documents that consist of summaries or compilations of the overall  
27 dealership performance of third-party Can-Am dealers within the Region in which Protestant is  
28 located.

1           21. Any and all Documents that Refer or Relate to communications between Protestant and  
2 Respondent concerning any alleged deficiencies in Protestant's sales performance.

3           22. Any and all Documents that Refer or Relate to communications between Protestant and  
4 Respondent concerning any alleged deficiencies in Protestant's service performance.

5           23. Any and all Documents that Refer or Relate to communications between Protestant and  
6 Respondent concerning any alleged deficiencies in Protestant's customer satisfaction scores.

7           24. Any and all Documents that Refer or Relate to communications between Protestant and  
8 Respondent concerning any alleged deficiencies in Protestant's overall dealership performance.

9           25. Any and all Documents that Refer or Relate to internal communications of Respondent  
10 concerning the alleged deficiencies in Protestant's sales performance.

11           26. Any and all Documents that Refer or Relate to internal communications of Respondent  
12 concerning the alleged deficiencies in Protestant's service performance.

13           27. Any and all Documents that Refer or Relate to internal communications of Respondent  
14 concerning the alleged deficiencies in Protestant's customer satisfaction scores.

15           28. Any and all Documents that Refer or Relate to internal communications of Respondent  
16 concerning the alleged deficiencies in Protestant's overall dealership performance.

17           29. Any and all Documents that consist of market studies done by, for, or at the behest of  
18 Respondent, where such market studies Refer or Relate to the PMA of Protestant.

19           30. Any and all Documents that consist of market studies done by, for, or at the behest of  
20 Respondent, where such market studies Refer or Relate to the Region in which Protestant is located.

21           31. Any and all Documents which support Your position that good cause exists to modify  
22 the Can-Am franchise(s) of Protestant in consideration of the factors set forth in California Vehicle  
23 Code section 3061.

24           32. Any and all Documents which support Your position that good cause exists to modify  
25 the Can-Am franchise(s) of Protestant in consideration of the "existing circumstances" referred to in  
26 California Vehicle Code section 3061.  
27  
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1 33. Any and all Documents that Refer or Relate to whether the proposed modification to  
2 Protestant's franchise(s) would substantially affect Protestant's sales or service obligations or  
3 investment.

4 34. Documents/reports which reflect the number of new retail registrations (including  
5 leases) for all industry line makes, by models within segments in which Respondent competes,  
6 including segment sums, line make totals, import totals, and industry totals, for the years 2009 through  
7 present. This request is for data that is owned or controlled by Respondent, directly or through its  
8 agents or contractors, including Urban Science Applications, Inc., the Polk Company, and/or the  
9 Motorcycle Industry Council. Such Documents may include, but are not limited to, IHS / R. L. Polk  
10 reports and reports entitled "Market Area Registrations". Documents/reports should be provided for  
11 all of the following areas:

- 12
- 13 a. The U.S. as a whole;
  - 14 b. The state of California as a whole;
  - 15 c. The Region;
  - 16 d. Each District in the Region in which Protestant is located;
  - 17 e. Each Can-Am market in the Region, including MPs and individual PMAs within  
those MPs as well as SP Markets;
  - 18 f. Each census tract in the State of California.

19 35. Documents in computer readable form which for each census tract in the State of  
20 California reflect the number of new retail registrations (including leases) for all industry line makes,  
21 by models within segments in which Respondent competes, including segment sums, line make totals,  
22 import totals, and industry totals, for the years 2009 through present. This request is for data that is  
23 owned or controlled by Respondent, directly or through its agents or contractors, including Urban  
24 Science Applications, Inc., IHS/the Polk Company and/or the Motorcycle Industry Council.

25 36. Documents that define the motor vehicle product segments in which Respondent or its  
26 vendors contend that its products compete. These Documents should include a list of the Respondent  
27 products that Respondent or its vendors contend compete in each product segment, as well as the  
28

1 products from other line makes that compete in each product segment. This request is for data for the  
2 years 2009 to present.

3 37. Any and all Documents that were used to define or support the motor vehicle segment  
4 definitions referred to in the previous request.  
5

6 38. Documents in computer readable format showing Respondent retail registrations by  
7 selling dealer for each census tract in the State of California for the years 2009 through present. This  
8 data is sometimes referred to as retail in-sell and retail buyer behavior (cross-sell) by dealer.  
9

10 **To the extent that responsive Documents are available in computer readable form, please**  
11 **provide them in that form along with sufficient information in the form of data layout files to**  
12 **make possible the computer processing of such computer based data.**

13 39. Documents showing the number of nationwide new Respondent retail vehicle sales  
14 (including retail leases) made by each Respondent dealership located in the Region for the years 2009  
15 through present.

16 40. Documents showing the number of nationwide used retail vehicle sales made by each  
17 Respondent dealership located in the Region for the years 2009 through present. Please also provide  
18 Documents showing the number of nationwide used retail Respondent sales made by each of these  
19 dealers for each of these years.  
20

21 41. Documents used by Respondent to compare the operating performance, revenues, gross  
22 profits, or expenses of any dealer in the State of California to the Region, District, a competitive group  
23 designated by Respondent, or in other geographic areas, or with general guides or standards from 2009  
24 to the present date. Response to this request should include any year-end fixed operations analysis  
25 reports and all Documents analyzing these dealers' Respondent sales and registration performance.  
26 Response should also include all year-end financial composite reports. To the extent that dealerships  
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1 are compared to groups of dealerships defined by other than geography, provide Documents  
2 identifying the dealerships in the comparison group.

3 42. All Documents containing information regarding the performance of any dealer in the  
4 State of California from 2009 through the present. Response to this request should include all  
5 Documents concerning any alleged inadequacies of any of these dealers.  
6

7 43. Documents from 2009 to the present ranking any or all of the dealers in the Region on  
8 any performance measure, such as new vehicle sales, service sales, sales satisfaction, and/or service  
9 satisfaction.  
10

11 44. All Documents from 2009 to the present listing, ranking, or comparing Respondent  
12 market performance on any basis for all Respondent dealers in California.

13 45. All Documents from 2009 to the present listing, ranking, or comparing Respondent  
14 market performance on any basis for all Respondent dealers in the U.S.

15 46. Documents analyzing Respondent sales and registration performance for the U.S., the  
16 state of California, the Region, each District in the Region, and each Respondent dealer in the Region,  
17 for each month from January 2009 to the present.  
18

19 47. Documents showing on-ground inventories of Can-Am vehicles by model for each  
20 month (or any other smaller time increments for which Respondent breaks out data) from January  
21 2009 to present for each dealer in the Region.  
22

23 48. Documents showing days-supply by model for each month (or any other smaller time  
24 increments for which Respondent breaks out data) from January 2009 to present for each dealer in the  
25 Region.  
26  
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1           49. Documents showing orders placed by model for each month (or any other smaller time  
2 increments for which Respondent breaks out data) from January 2009 to present for each dealer in the  
3 Region.

4           50. Documents showing the number of units allocated by model for each month (or any  
5 other smaller time increments for which Respondent breaks out data) from January 2009 to present for  
6 each dealer in the Region.

7           51. Documents showing the number of units refused by model for each month (or any other  
8 smaller time increments for which Respondent breaks out data) from January 2009 to present for each  
9 dealer in the Region.

10           52. Documents showing the re-distribution of allocated vehicles that were refused by  
11 Respondent dealers in the Region for each year from 2009 to present.

12           53. Documents that describe Respondent's current allocation system and how units are  
13 allocated to the Region and to each dealer. Include documentation on procedures used for distributing  
14 discretionary allocation.

15           54. All Documents which relate to Respondent production schedules from 2009 to present.

16           55. Copies of the monthly Dealer Performance Evaluations for Protestant from 2009 to the  
17 present.

18           56. A copy of the Dealer Agreement between Protestant and Respondent and all current  
19 addenda thereto.

20           57. A copy of the current Operations Standards currently applicable to Protestant.

21           58. A copy of the current Warranty and Service Guide applicable to Protestant.

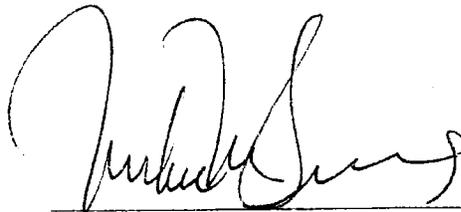
22           59. A copy of the "Dealer Binder" applicable to Protestant, as that term is used in  
23 paragraph 23(h) of the Dealer Agreement, General Provisions, applicable to Protestant.  
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1           60.    A copy of the "BRP invoices", as that term is used in paragraph 23(h) of the Dealer  
2 Agreement, General Provisions, applicable to Protestant.

3           61.    A copy of the "other Policies", as that term is used in paragraph 23(h) of the Dealer  
4 Agreement, General Provisions, applicable to Protestant.  
5

6           62.    A copy of the "other BRP Policies and documents", as that term is used in paragraph  
7 23(h) of the Dealer Agreement, General Provisions, applicable to Protestant.

8  
9 DATED: January 22, 2015

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12 MICHAEL M. SIEVING  
13 Attorney for Protestant  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA            )  
  )  
NEW MOTOR VEHICLE BOARD )

I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not a party to the within action; my business address is 8865 La Riviera Drive, Unit B, Sacramento, California 95826.

On this date, January 22, 2015, I served the foregoing documents described as:

**PROTESTANT'S REQUEST FOR PRODUCTION OF DOCUMENTS – SET NUMBER 2**

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

X (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

\_\_\_\_\_ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

\_\_\_\_\_ (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

\_\_\_\_\_ (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

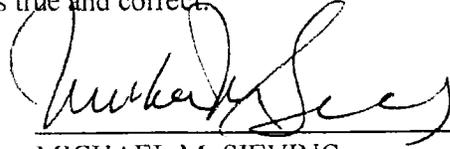
\_\_\_\_\_ (By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

\_\_\_\_\_ (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

X By ATT E-Mail I caused the above-entitled documents to be served through ATT E-Mail addressed to all parties appearing on the ATT E-Mail electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the ATT E-Mail pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied with California Rules of Court, Rule 2.257(a) and the original,

signed Proof of Service is available for review and copying at the request of the court or any party.

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

A handwritten signature in black ink, appearing to read "Michael M. Sieving", written over a horizontal line.

MICHAEL M. SIEVING

**SERVICE LIST**

R. Bryan Martin, Esq.  
2050 Main Street, Suite 600  
Irvine, CA 92614  
[bmartin@HBBLaw.com](mailto:bmartin@HBBLaw.com)

1 R. Bryan Martin (Bar No. 221684)  
2 HAIGHT BROWN & BONESTEEL LLP  
3 2050 Main Street, Suite 600  
4 Irvine, California 92614-8261  
5 Telephone: 714.426.4600  
6 Facsimile: 714.754.0826  
7  
8 Attorneys for Respondent  
9 BRP US INC.

10  
11 **STATE OF CALIFORNIA**  
12 **NEW MOTOR VEHICLE BOARD**

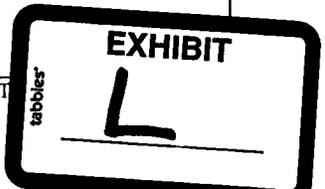
13 FUN BIKE CENTER, ) Protest No.: PR-2405-14  
14 Protestant, ) (Consolidated with. Protest No.: PR-2404-14)  
15 v. )  
16 BOMBARDIER RECREATIONAL ) **RESPONDENT BRP US INC'S**  
17 PRODUCTS, INC.; BRP US INC., ) **RESPONSES TO PROTESTANT'S**  
18 Respondents. ) **REQUEST FOR IDENTIFICATION AND**  
19 ) **PRODUCTION OF DOCUMENTS (SET**  
20 ) **TWO)**

21  
22 **PROPOUNDING PARTY: PROTESTANT, FUN BIKE CENTER**  
23 **RESPONDING PARTY: RESPONDENT BRP US INC.**  
24 **SET NUMBER: TWO**

25 Respondent Bombardier Recreational Products, Inc., ("BRP" or "Respondent") pursuant to  
26 California *Code of Civil Procedure* § 2031.010 and the Board's Amended Pre-Hearing Conference  
27 Order dated May 11, 2014 hereby submits its evidentiary objections to Protestant's Request for  
28 Documents (Set Two):

**PREFATORY STATEMENT**

RESPONDENT has not yet completed its investigation and discovery of all facts,  
documents, witnesses and tangible things related to the subject matter of this litigation.



1 RESPONDENT hereby expressly reserves the right to continue its investigation and discovery so  
2 long as permitted by law. RESPONDENT further expressly reserves the right to introduce at the  
3 time of hearing of this matter any after-acquired facts, documents, witnesses and/or tangible  
4 things. The responses contained herein are based upon information that is currently in the  
5 possession, custody and/or control of RESPONDENT. Without waiving the foregoing,  
6 RESPONDENT responds as follows:

7 **GENERAL OBJECTIONS**

8 RESPONDENT objects to each Request for Production of Documents on the grounds and  
9 to the extent that it seeks the production of documents that are not relevant to the subject matter of  
10 this action nor reasonably calculated to lead to the discovery of admissible evidence.  
11 RESPONDENT further objects on the grounds that the Requests seek information that is protected  
12 by the attorney-client privilege and the attorney-work product doctrine.

13 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

14 **REQUEST FOR PRODUCTION NO. 1:**

15 The Dealer File for Protestant. Response to this request should include copies of all  
16 correspondence between the Protestant and Respondent. The response should also include (as  
17 applicable): Contact reports, performance analyses, sales rankings, satisfaction ratings, market  
18 studies, market analyses, internal memoranda, correspondence, notes from meetings, and notes  
19 from telephone calls. Please be sure to include copies of the current and all versions of the Dealer  
20 Sales and Service Agreements and Addendums, as well as Dealer Sales and Service Agreement  
21 Standard Provisions. By way of limitation, Documents relating to routine business between the  
22 dealership and Respondent, such as vehicle orders, warranty forms, and the like are not sought.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

24 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
25 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
26 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
27 The parties agreed present discovery would be limited to the legal modification issue and if  
28 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery

1 as to whether the proposed modification would substantially affect Protestant's sales or service  
2 obligations or investment, and whether good cause exists for the modification, which will be  
3 determined at a second Protest Hearing to be set by the Board.

4 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
5 and overbroad as phrased, and seeks documents equally available to Protestant. Respondent  
6 further objects to this Request on the grounds that it seeks documents that are neither relevant to  
7 the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible  
8 evidence. Respondent further objects to this Request to the extent that it seeks documents  
9 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
10 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
11 information and violates the Board's Amended Pre-Hearing Conference Order.

12 **REQUEST FOR PRODUCTION NO. 2:**

13 Any and all Documents that Refer or Relate to the proposed modification of the franchise  
14 of Protestant.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

16 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
17 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
18 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
19 The parties agreed present discovery would be limited to the legal modification issue and if  
20 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
21 as to whether the proposed modification would substantially affect Protestant's sales or service  
22 obligations or investment, and whether good cause exists for the modification, which will be  
23 determined at a second Protest Hearing to be set by the Board.

24 Respondent further objects to this Request to the extent it seeks documents protected by  
25 the attorney-client privilege and/or the attorney work product doctrine. Respondent further objects  
26 to this Request to the extent it seeks the premature disclosure of expert witness information and  
27 violates the Board's Amended Pre-Hearing Conference Order.

28

1 **REQUEST FOR PRODUCTION NO. 3:**

2 Any and all Documents that Refer or Relate to the grounds relied upon by Respondent to  
3 propose the modification of the franchise of Protestant.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

5 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
6 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
7 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
8 The parties agreed present discovery would be limited to the legal modification issue and if  
9 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
10 as to whether the proposed modification would substantially affect Protestant's sales or service  
11 obligations or investment, and whether good cause exists for the modification, which will be  
12 determined at a second Protest Hearing to be set by the Board.

13 Respondent further objects to this Request to the extent it seeks documents protected by  
14 the attorney-client privilege and/or the attorney work product doctrine. Respondent further objects  
15 to this Request to the extent it seeks the premature disclosure of expert witness information and  
16 violates the Board's Amended Pre-Hearing Conference Order.

17 **REQUEST FOR PRODUCTION NO. 4:**

18 Any and all Documents that Refer or Relate to internal communications of Respondent  
19 which Refer or Relate to the proposed modification of the franchise of Protestant.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

21 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
22 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
23 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
24 The parties agreed present discovery would be limited to the legal modification issue and if  
25 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
26 as to whether the proposed modification would substantially affect Protestant's sales or service  
27 obligations or investment, and whether good cause exists for the modification, which will be  
28 determined at a second Protest Hearing to be set by the Board.

1 Respondent further objects to this Request to the extent it seeks documents protected by  
2 the attorney-client privilege and/or the attorney work product doctrine. Respondent further objects  
3 to this Request to the extent it seeks the premature disclosure of expert witness information and  
4 violates the Board's Amended Pre-Hearing Conference Order.

5 **REQUEST FOR PRODUCTION NO. 5:**

6 Any and all Documents that Refer to or Relate to communications between Respondent  
7 and Protestant which Refer or Relate to the proposed modification franchise of Protestant's  
8 franchise.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

10 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
11 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
12 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
13 The parties agreed present discovery would be limited to the legal modification issue and if  
14 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
15 as to whether the proposed modification would substantially affect Protestant's sales or service  
16 obligations or investment, and whether good cause exists for the modification, which will be  
17 determined at a second Protest Hearing to be set by the Board.

18 Respondent further objects to this Request to the extent it seeks documents protected by  
19 the attorney-client privilege and/or the attorney work product doctrine. Respondent further objects  
20 to this Request to the extent it seeks the premature disclosure of expert witness information and  
21 violates the Board's Amended Pre-Hearing Conference Order.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 Any and all Documents that Refer or Relate to communications between Respondent and  
24 any third-party which Refer or Relate to the proposed modification of the Respondent franchise of  
25 Protestant.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

27 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
28 scope of the current Protest, which the parties agreed would be limited to the issue of whether

1 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
2 The parties agreed present discovery would be limited to the legal modification issue and if  
3 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
4 as to whether the proposed modification would substantially affect Protestant's sales or service  
5 obligations or investment, and whether good cause exists for the modification, which will be  
6 determined at a second Protest Hearing to be set by the Board.

7 Respondent further objects to this Request to the extent it seeks documents protected by  
8 the attorney-client privilege and/or the attorney work product doctrine. Respondent further objects  
9 to this Request to the extent it seeks the premature disclosure of expert witness information and  
10 violates the Board's Amended Pre-Hearing Conference Order. Respondent further objects to this  
11 Request on the grounds that it seeks the production of documents that are proprietary in nature,  
12 privileged and confidential.

13 **REQUEST FOR PRODUCTION NO. 7:**

14 Any and all Documents that Refer or Relate to any alleged failure by Protestant to comply  
15 with the terms of the franchise agreement between Protestant and Respondent.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

17 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
18 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
19 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
20 The parties agreed present discovery would be limited to the legal modification issue and if  
21 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
22 as to whether the proposed modification would substantially affect Protestant's sales or service  
23 obligations or investment, and whether good cause exists for the modification, which will be  
24 determined at a second Protest Hearing to be set by the Board.

25 Respondent further objects to this Request on the grounds that it is overbroad and not  
26 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
27 that it seeks information that is neither relevant to the subject matter of this litigation nor  
28 reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects

1 to this Request to the extent it seeks documents protected by the attorney-client privilege and/or  
2 the attorney work product doctrine. Respondent further objects to this Request to the extent it  
3 seeks the premature disclosure of expert witness information and violates the Board's Pre-Hearing  
4 Conference Order.

5 **REQUEST FOR PRODUCTION NO. 8:**

6 All Documents, including executed versions, drafts and amendments, which Refer or any  
7 efforts to work with Protestant to resolve any issues outstanding disputed issues between the  
8 parties, included but not limited to any and all letters, memoranda, records of telephone  
9 communications, notes, e-mails or other Documents which Refer or Relate to communications  
10 between any representative of Respondent and any representative of Protestant.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

12 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
13 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
14 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
15 The parties agreed present discovery would be limited to the legal modification issue and if  
16 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
17 as to whether the proposed modification would substantially affect Protestant's sales or service  
18 obligations or investment, and whether good cause exists for the modification, which will be  
19 determined at a second Protest Hearing to be set by the Board.

20 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
21 and unintelligible as phrased. Respondent further objects to this Request on the grounds that it is  
22 overbroad and not reasonably limited in scope or time. Respondent further objects to this Request  
23 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
24 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
25 further objects to this Request to the extent it seeks documents protected by the attorney-client  
26 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
27 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
28 Amended Pre-Hearing Conference Order.

1 **REQUEST FOR PRODUCTION NO. 9:**

2 Any and all Documents that refer or relate to evaluations of the sales performance of  
3 Protestant.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

5 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
6 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
7 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
8 The parties agreed present discovery would be limited to the legal modification issue and if  
9 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
10 as to whether the proposed modification would substantially affect Protestant's sales or service  
11 obligations or investment, and whether good cause exists for the modification, which will be  
12 determined at a second Protest Hearing to be set by the Board.

13 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
14 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
15 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
16 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
17 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
18 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
19 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
20 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
21 Conference Order.

22 **REQUEST FOR PRODUCTION NO. 10:**

23 Any and all Documents that consist of summaries or compilations of the sales performance  
24 of third-party Can-Am dealers within the PMA of Protestant.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

26 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
27 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
28 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.

1 The parties agreed present discovery would be limited to the legal modification issue and if  
2 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
3 as to whether the proposed modification would substantially affect Protestant's sales or service  
4 obligations or investment, and whether good cause exists for the modification, which will be  
5 determined at a second Protest Hearing to be set by the Board.

6 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
7 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
8 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
9 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
10 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
11 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
12 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
13 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
14 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
15 production of documents that are proprietary in nature, privileged and confidential.

16 **REQUEST FOR PRODUCTION NO. 11:**

17 Any and all Documents that consist of summaries or compilations of the sales performance  
18 of third-party Can-Am dealers within the Region in which Protestant is located.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

20 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
21 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
22 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
23 The parties agreed present discovery would be limited to the legal modification issue and if  
24 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
25 as to whether the proposed modification would substantially affect Protestant's sales or service  
26 obligations or investment, and whether good cause exists for the modification, which will be  
27 determined at a second Protest Hearing to be set by the Board.

28

1 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
2 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
3 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
4 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
5 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
6 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
7 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
8 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
9 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
10 production of documents that are proprietary in nature, privileged and confidential.

11 **REQUEST FOR PRODUCTION NO. 12:**

12 Any and all Documents that Refer or Relate to the service performance of Protestant.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

14 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
15 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
16 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
17 The parties agreed present discovery would be limited to the legal modification issue and if  
18 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
19 as to whether the proposed modification would substantially affect Protestant's sales or service  
20 obligations or investment, and whether good cause exists for the modification, which will be  
21 determined at a second Protest Hearing to be set by the Board.

22 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
23 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
24 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
25 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
26 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
27 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
28 product doctrine. Respondent further objects to this Request to the extent it seeks the premature

1 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
2 Conference Order.

3 **REQUEST FOR PRODUCTION NO. 13:**

4 Any and all Documents that consist of summaries or compilations of the service  
5 performance of third-party Can-Am dealers within the PMA of Protestant.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

7 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
8 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
9 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
10 The parties agreed present discovery would be limited to the legal modification issue and if  
11 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
12 as to whether the proposed modification would substantially affect Protestant's sales or service  
13 obligations or investment, and whether good cause exists for the modification, which will be  
14 determined at a second Protest Hearing to be set by the Board.

15 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
16 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
17 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
18 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
19 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
20 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
21 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
22 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
23 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
24 production of documents that are proprietary in nature, privileged and confidential.

25 **REQUEST FOR PRODUCTION NO. 14:**

26 Any and all Documents that consist of summaries or compilations of the service  
27 performance of third-party Can-Am dealers within the Region in which Protestant is located.  
28

1           **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

2           Respondent objects to this Request on the grounds that it is overbroad and beyond the  
3 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
4 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
5 The parties agreed present discovery would be limited to the legal modification issue and if  
6 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
7 as to whether the proposed modification would substantially affect Protestant's sales or service  
8 obligations or investment, and whether good cause exists for the modification, which will be  
9 determined at a second Protest Hearing to be set by the Board.

10           Respondent further objects to this Request on the grounds that it is vague and ambiguous  
11 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
12 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
13 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
14 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
15 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
16 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
17 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
18 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
19 production of documents that are proprietary in nature, privileged and confidential.

20           **REQUEST FOR PRODUCTION NO. 15:**

21           Any and all Documents that Refer or Relate to the customer satisfaction performance of  
22 Protestant.

23           **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

24           Respondent objects to this Request on the grounds that it is overbroad and beyond the  
25 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
26 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
27 The parties agreed present discovery would be limited to the legal modification issue and if  
28 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery

1 as to whether the proposed modification would substantially affect Protestant's sales or service  
2 obligations or investment, and whether good cause exists for the modification, which will be  
3 determined at a second Protest Hearing to be set by the Board.

4 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
5 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
6 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
7 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
8 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
9 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
10 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
11 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
12 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
13 production of documents that are proprietary in nature, privileged and confidential.

14 **REQUEST FOR PRODUCTION NO. 16:**

15 Any and all Documents that consist of summaries or compilations of the customer  
16 satisfaction performance of third-party Can-Am dealers within the PMA of Protestant.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

18 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
19 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
20 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
21 The parties agreed present discovery would be limited to the legal modification issue and if  
22 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
23 as to whether the proposed modification would substantially affect Protestant's sales or service  
24 obligations or investment, and whether good cause exists for the modification, which will be  
25 determined at a second Protest Hearing to be set by the Board.

26 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
27 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
28 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks

1 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
2 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
3 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
4 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
5 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
6 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
7 production of documents that are proprietary in nature, privileged and confidential.

8 **REQUEST FOR PRODUCTION NO. 17:**

9 Any and all Documents that consist of summaries or compilations of the customer  
10 satisfaction performance of third-party Can-Am dealers within the Region in which Protestant is  
11 located.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

13 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
14 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
15 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
16 The parties agreed present discovery would be limited to the legal modification issue and if  
17 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
18 as to whether the proposed modification would substantially affect Protestant's sales or service  
19 obligations or investment, and whether good cause exists for the modification, which will be  
20 determined at a second Protest Hearing to be set by the Board.

21 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
22 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
23 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
24 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
25 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
26 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
27 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
28 disclosure of expert witness information and violates the Board's Amended Pre-Hearing

1 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
2 production of documents that are proprietary in nature, privileged and confidential.

3 **REQUEST FOR PRODUCTION NO. 18:**

4 Any and all Documents that Refer or Relate to the overall dealership performance of  
5 Respondent.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

7 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
8 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
9 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
10 The parties agreed present discovery would be limited to the legal modification issue and if  
11 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
12 as to whether the proposed modification would substantially affect Protestant's sales or service  
13 obligations or investment, and whether good cause exists for the modification, which will be  
14 determined at a second Protest Hearing to be set by the Board.

15 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
16 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
17 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
18 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
19 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
20 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
21 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
22 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
23 Conference Order.

24 **REQUEST FOR PRODUCTION NO. 19:**

25 Any and all Documents that consist of summaries or compilations of the overall dealership  
26 performance of third-party Can-Am dealers within the PMA of Respondent.

27  
28

1                   **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

2                   Respondent objects to this Request on the grounds that it is overbroad and beyond the  
3 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
4 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
5 The parties agreed present discovery would be limited to the legal modification issue and if  
6 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
7 as to whether the proposed modification would substantially affect Protestant's sales or service  
8 obligations or investment, and whether good cause exists for the modification, which will be  
9 determined at a second Protest Hearing to be set by the Board.

10                  Respondent further objects to this Request on the grounds that it is vague and ambiguous  
11 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
12 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
13 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
14 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
15 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
16 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
17 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
18 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
19 production of documents that are proprietary in nature, privileged and confidential.

20 **REQUEST FOR PRODUCTION NO. 20:**

21                  Any and all Documents that consist of summaries or compilations of the overall dealership  
22 performance of third-party Can-Am dealers within the Region in which Protestant is located.

23                   **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

24                  Respondent objects to this Request on the grounds that it is overbroad and beyond the  
25 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
26 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
27 The parties agreed present discovery would be limited to the legal modification issue and if  
28 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery

1 as to whether the proposed modification would substantially affect Protestant's sales or service  
2 obligations or investment, and whether good cause exists for the modification, which will be  
3 determined at a second Protest Hearing to be set by the Board.

4 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
5 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
6 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
7 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
8 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
9 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
10 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
11 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
12 Conference Order. Respondent further objects to this Request on the grounds that it seeks the  
13 production of documents that are proprietary in nature, privileged and confidential.

14 **REQUEST FOR PRODUCTION NO. 21:**

15 Any and all Documents that Refer or Relate to communications between Protestant and  
16 Respondent concerning any alleged deficiencies in Protestant's sales performance.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

18 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
19 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
20 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
21 The parties agreed present discovery would be limited to the legal modification issue and if  
22 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
23 as to whether the proposed modification would substantially affect Protestant's sales or service  
24 obligations or investment, and whether good cause exists for the modification, which will be  
25 determined at a second Protest Hearing to be set by the Board.

26 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
27 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
28 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks

1 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
2 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
3 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
4 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
5 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
6 Conference Order.

7 **REQUEST FOR PRODUCTION NO. 22:**

8 Any and all Documents that Refer or Relate to communications between Protestant and  
9 Respondent concerning any alleged deficiencies in Protestant's service performance.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

11 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
12 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
13 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
14 The parties agreed present discovery would be limited to the legal modification issue and if  
15 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
16 as to whether the proposed modification would substantially affect Protestant's sales or service  
17 obligations or investment, and whether good cause exists for the modification, which will be  
18 determined at a second Protest Hearing to be set by the Board.

19 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
20 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
21 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
22 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
23 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
24 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
25 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
26 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
27 Conference Order.

28

1 **REQUEST FOR PRODUCTION NO. 23:**

2 Any and all Documents that Refer or Relate to communications between Protestant and  
3 Respondent concerning any alleged deficiencies in Protestant's customer satisfaction scores.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

5 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
6 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
7 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
8 The parties agreed present discovery would be limited to the legal modification issue and if  
9 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
10 as to whether the proposed modification would substantially affect Protestant's sales or service  
11 obligations or investment, and whether good cause exists for the modification, which will be  
12 determined at a second Protest Hearing to be set by the Board.

13 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
14 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
15 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
16 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
17 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
18 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
19 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
20 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
21 Conference Order.

22 **REQUEST FOR PRODUCTION NO. 24:**

23 Any and all Documents that Refer or Relate to communications between Protestant and  
24 Respondent concerning any alleged deficiencies in Protestant's overall dealership performance.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

26 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
27 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
28 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.

1 The parties agreed present discovery would be limited to the legal modification issue and if  
2 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
3 as to whether the proposed modification would substantially affect Protestant's sales or service  
4 obligations or investment, and whether good cause exists for the modification, which will be  
5 determined at a second Protest Hearing to be set by the Board.

6 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
7 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
8 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
9 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
10 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
11 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
12 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
13 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
14 Conference Order.

15 **REQUEST FOR PRODUCTION NO. 25:**

16 Any and all Documents that Refer or Relate to internal communications of Respondent  
17 concerning the alleged deficiencies in Protestant's sales performance.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

19 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
20 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
21 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
22 The parties agreed present discovery would be limited to the legal modification issue and if  
23 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
24 as to whether the proposed modification would substantially affect Protestant's sales or service  
25 obligations or investment, and whether good cause exists for the modification, which will be  
26 determined at a second Protest Hearing to be set by the Board.

27 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
28 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably

1 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
2 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
3 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
4 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
5 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
6 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
7 Conference Order.

8 **REQUEST FOR PRODUCTION NO. 26:**

9 Any and all Documents that Refer or Relate to internal communications of Respondent  
10 concerning the alleged deficiencies in Protestant's service performance.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

12 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
13 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
14 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
15 The parties agreed present discovery would be limited to the legal modification issue and if  
16 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
17 as to whether the proposed modification would substantially affect Protestant's sales or service  
18 obligations or investment, and whether good cause exists for the modification, which will be  
19 determined at a second Protest Hearing to be set by the Board.

20 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
21 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
22 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
23 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
24 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
25 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
26 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
27 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
28 Conference Order.

1 **REQUEST FOR PRODUCTION NO. 27:**

2 Any and all Documents that Refer or Relate to internal communications of Respondent  
3 concerning the alleged deficiencies in Protestant's customer satisfaction scores.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

5 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
6 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
7 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
8 The parties agreed present discovery would be limited to the legal modification issue and if  
9 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
10 as to whether the proposed modification would substantially affect Protestant's sales or service  
11 obligations or investment, and whether good cause exists for the modification, which will be  
12 determined at a second Protest Hearing to be set by the Board.

13 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
14 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
15 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
16 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
17 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
18 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
19 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
20 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
21 Conference Order.

22 **REQUEST FOR PRODUCTION NO. 28:**

23 Any and all Documents that Refer or Relate to internal communications of Respondent  
24 concerning the alleged deficiencies in Protestant's overall dealership performance.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

26 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
27 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
28 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.

1 The parties agreed present discovery would be limited to the legal modification issue and if  
2 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
3 as to whether the proposed modification would substantially affect Protestant's sales or service  
4 obligations or investment, and whether good cause exists for the modification, which will be  
5 determined at a second Protest Hearing to be set by the Board.

6 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
7 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
8 limited in scope or time. Respondent further objects to this Request on the grounds that it seeks  
9 documents that are neither relevant to the subject matter of this litigation nor reasonably calculated  
10 to lead to the discovery of admissible evidence. Respondent further objects to this Request to the  
11 extent it seeks documents protected by the attorney-client privilege and/or the attorney work  
12 product doctrine. Respondent further objects to this Request to the extent it seeks the premature  
13 disclosure of expert witness information and violates the Board's Amended Pre-Hearing  
14 Conference Order.

15 **REQUEST FOR PRODUCTION NO. 29:**

16 Any and all Documents that consist of market studies done by, for, or at the behest of  
17 Respondent, where such market studies Refer or Relate to the PMA of Protestant.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

19 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
20 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
21 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
22 The parties agreed present discovery would be limited to the legal modification issue and if  
23 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
24 as to whether the proposed modification would substantially affect Protestant's sales or service  
25 obligations or investment, and whether good cause exists for the modification, which will be  
26 determined at a second Protest Hearing to be set by the Board.

27 Respondent further objects to this Request on the grounds that it is compound, overbroad  
28 and not reasonably limited in time. Respondent further objects to this Request on the grounds that

1 it seeks documents that are neither relevant to the subject matter of this litigation nor reasonably  
2 calculated to lead to the discovery of admissible evidence. Respondent further objects to this  
3 Request on the grounds that the documents are already in the possession of Protestant.

4 **REQUEST FOR PRODUCTION NO. 30:**

5 Any and all Documents that consist of market studies done by, for, or at the behest of  
6 Respondent, where such market studies Refer or Relate to the Region in which Protestant is  
7 located.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

9 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
10 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
11 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
12 The parties agreed present discovery would be limited to the legal modification issue and if  
13 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
14 as to whether the proposed modification would substantially affect Protestant's sales or service  
15 obligations or investment, and whether good cause exists for the modification, which will be  
16 determined at a second Protest Hearing to be set by the Board.

17 Respondent further objects to this Request on the grounds that it is compound, overbroad  
18 and not reasonably limited in time. Respondent further objects to this Request on the grounds that  
19 it seeks documents that are neither relevant to the subject matter of this litigation nor reasonably  
20 calculated to lead to the discovery of admissible evidence. Respondent further objects to this  
21 Request to the extent it seeks documents protected by the attorney-client privilege and/or the  
22 attorney work product doctrine. Respondent further objects to this Request to the extent it seeks  
23 the premature disclosure of expert witness information and violates the Board's Amended Pre-  
24 Hearing Conference Order. Respondent further objects to this Request on the grounds that it seeks  
25 the production of documents that are proprietary in nature, privileged and confidential.

26  
27  
28

1 **REQUEST FOR PRODUCTION NO. 31:**

2 Any and all Documents which support Your position that good cause exists to modify the  
3 Can-Am franchise(s) of Protestant in consideration of the factors set forth in California Vehicle  
4 Code section 3061.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

6 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
7 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
8 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
9 The parties agreed present discovery would be limited to the legal modification issue and if  
10 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
11 as to whether the proposed modification would substantially affect Protestant's sales or service  
12 obligations or investment, and whether good cause exists for the modification, which will be  
13 determined at a second Protest Hearing to be set by the Board.

14 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
15 and constitutes a legal conclusion, and are documents already in the possession of Protestant.  
16 Respondent further objects to this Request to the extent it seeks documents protected by the  
17 attorney-client privilege and/or the attorney work product doctrine. Respondent further objects to  
18 this Request to the extent it seeks the premature disclosure of expert witness information and  
19 violates the Board's Amended Pre-Hearing Conference Order.

20 **REQUEST FOR PRODUCTION NO. 32:**

21 Any and all Documents which support Your position that good cause exists to modify the  
22 Can-Am franchisees) of Protestant in consideration of the "existing circumstances" referred to in  
23 California Vehicle Code section 3061.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

25 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
26 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
27 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
28 The parties agreed present discovery would be limited to the legal modification issue and if

1 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
2 as to whether the proposed modification would substantially affect Protestant's sales or service  
3 obligations or investment, and whether good cause exists for the modification, which will be  
4 determined at a second Protest Hearing to be set by the Board.

5 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
6 and constitutes a legal conclusion, and are documents already in the possession of Protestant.  
7 Respondent further objects to this Request to the extent it seeks documents protected by the  
8 attorney-client privilege and/or the attorney work product doctrine. Respondent further objects to  
9 this Request to the extent it seeks the premature disclosure of expert witness information and  
10 violates the Board's Amended Pre-Hearing Conference Order.

11 **REQUEST FOR PRODUCTION NO. 33:**

12 Any and all Documents that Refer or Relate to whether the proposed modification to  
13 Protestant's franchise(s) would substantially affect Protestant's sales or service obligations or  
14 investment.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

16 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
17 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
18 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
19 The parties agreed present discovery would be limited to the legal modification issue and if  
20 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
21 as to whether the proposed modification would substantially affect Protestant's sales or service  
22 obligations or investment, and whether good cause exists for the modification, which will be  
23 determined at a second Protest Hearing to be set by the Board.

24 Respondent further objects to this Request on the grounds that it is compound, vague and  
25 ambiguous and constitutes a legal conclusion, and are already documents in the possession of  
26 Protestant. Respondent further objects to this Request to the extent it seeks documents protected  
27 by the attorney-client privilege and/or the attorney work product doctrine. Respondent further  
28

1 objects to this Request to the extent it seeks the premature disclosure of expert witness information  
2 and violates the Board's Amended Pre-Hearing Conference Order.

3 **REQUEST FOR PRODUCTION NO. 34:**

4 Documents/reports which reflect the number of new retail registrations (including leases)  
5 for all industry line makes, by models within segments in which Respondent competes, including  
6 segment sums, line make totals, import totals, and industry totals, for the years 2009 through  
7 present. This request is for data that is owned or controlled by Respondent, directly or through its  
8 agents or contractors, including Urban Science Applications, Inc., the Polk Company, and/or the  
9 Motorcycle Industry Council. Such Documents may include, but are not limited to, IHS / R. L.  
10 Polk reports and reports entitled "Market Area Registrations". Documents/reports should be  
11 provided for all of the following areas:

- 12 a. The U.S. as a whole;
- 13 b. The state of California as a whole;
- 14 c. The Region;
- 15 d. Each District in the Region in which Protestant is located;
- 16 e. Each Can-Am market in the Region, including MPs and individual PMAs within  
17 those MPs as well as SP Markets;
- 18 f. Each census tract in the State of California.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

20 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
21 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
22 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
23 The parties agreed present discovery would be limited to the legal modification issue and if  
24 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
25 as to whether the proposed modification would substantially affect Protestant's sales or service  
26 obligations or investment, and whether good cause exists for the modification, which will be  
27 determined at a second Protest Hearing to be set by the Board.

28

1 Respondent further objects to this Request on the grounds that it is compound, redundant,  
2 vague and ambiguous and overbroad. Respondent further objects to this Request on the grounds  
3 that it is not reasonably limited in scope or time. Respondent further objects to this Request on  
4 the grounds that it is unduly burdensome, oppressive and harassing. Respondent further objects to  
5 this Request on the grounds that it seeks documents that are neither relevant to the subject matter  
6 of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.  
7 Respondent further objects to this Request to the extent it seeks documents protected by the  
8 attorney-client privilege and/or the attorney work product doctrine. Respondent further objects to  
9 this Request to the extent it seeks the premature disclosure of expert witness information and  
10 violates the Board's Amended Pre-Hearing Conference Order.

11 **REQUEST FOR PRODUCTION NO. 35:**

12 Documents in computer readable form which for each census tract in the State of  
13 California reflect the number of new retail registrations (including leases) for all industry line  
14 makes, by models within segments in which Respondent competes, including segment sums, line  
15 make totals, import totals, and industry totals, for the years 2009 through present. This request is  
16 for data that is owned or controlled by Respondent, directly or through its agents or contractors,  
17 including Urban Science Applications, Inc., IHS/the Polk Company and/or the Motorcycle  
18 Industry Council.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

20 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
21 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
22 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
23 The parties agreed present discovery would be limited to the legal modification issue and if  
24 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
25 as to whether the proposed modification would substantially affect Protestant's sales or service  
26 obligations or investment, and whether good cause exists for the modification, which will be  
27 determined at a second Protest Hearing to be set by the Board.

28

1 Respondent further objects to this Request on the grounds that it is compound, vague and  
2 ambiguous, particularly as to “census tract,” and overbroad. Respondent further objects to this  
3 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
4 objects to this Request on the grounds that it is unduly burdensome, oppressive and harassing.  
5 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
6 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
7 admissible evidence. Respondent further objects to this Request to the extent it seeks the  
8 premature disclosure of expert witness information and violates the Board’s Amended Pre-  
9 Hearing Conference Order.

10 **REQUEST FOR PRODUCTION NO. 36:**

11 Documents that define the motor vehicle product segments in which Respondent or its  
12 vendors contend that its products compete. These Documents should include a list of the  
13 Respondent products that Respondent or its vendors contend compete in each product segment, as  
14 well as the products from other line makes that compete in each product segment. This request is  
15 for data for the years 2009 to present.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

17 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
18 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
19 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
20 The parties agreed present discovery would be limited to the legal modification issue and if  
21 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
22 as to whether the proposed modification would substantially affect Protestant’s sales or service  
23 obligations or investment, and whether good cause exists for the modification, which will be  
24 determined at a second Protest Hearing to be set by the Board.

25 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
26 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
27 limited in scope or time. Respondent further objects to this Request on the grounds that it is  
28 overly burdensome, oppressive and harassing. Respondent further objects to this Request on the

1 grounds that it seeks documents that are neither relevant to the subject matter of this litigation nor  
2 reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects  
3 to this Request to the extent it seeks documents protected by the attorney-client privilege and/or  
4 the attorney work product doctrine. Respondent further objects to this Request to the extent it  
5 seeks the premature disclosure of expert witness information and violates the Board's Amended  
6 Pre-Hearing Conference Order. Respondent further objects to this Request on the grounds that it  
7 seeks the production of documents that are proprietary in nature, privileged and confidential.

8 **REQUEST FOR PRODUCTION NO. 37:**

9 Any and all Documents that were used to define or support the motor vehicle segment  
10 definitions referred to in the previous request.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

12 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
13 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
14 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
15 The parties agreed present discovery would be limited to the legal modification issue and if  
16 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
17 as to whether the proposed modification would substantially affect Protestant's sales or service  
18 obligations or investment, and whether good cause exists for the modification, which will be  
19 determined at a second Protest Hearing to be set by the Board.

20 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
21 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
22 limited in scope or time. Respondent further objects to this Request on the grounds that it is  
23 overly burdensome, oppressive and harassing. Respondent further objects to this Request on the  
24 grounds that it seeks documents that are neither relevant to the subject matter of this litigation nor  
25 reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects  
26 to this Request to the extent it seeks documents protected by the attorney-client privilege and/or  
27 the attorney work product doctrine. Respondent further objects to this Request to the extent it  
28 seeks the premature disclosure of expert witness information and violates the Board's Amended

1 Pre-Hearing Conference Order. Respondent further objects to this Request on the grounds that it  
2 seeks the production of documents that are proprietary in nature, privileged and confidential.

3 **REQUEST FOR PRODUCTION NO. 38:**

4 Documents in computer readable format showing Respondent retail registrations by selling  
5 dealer for each census tract in the State of California for the years 2009 through present. This data  
6 is sometimes referred to as retail in-sell and retail buyer behavior (cross-sell) by dealer.

7 **To the extent that responsive Documents are available in computer readable form,**  
8 **please provide them in that form along with sufficient information in the form of data layout**  
9 **files to make possible the computer processing of such computer based data.**

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3834:**

11 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
12 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
13 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
14 The parties agreed present discovery would be limited to the legal modification issue and if  
15 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
16 as to whether the proposed modification would substantially affect Protestant's sales or service  
17 obligations or investment, and whether good cause exists for the modification, which will be  
18 determined at a second Protest Hearing to be set by the Board.

19 Respondent further objects to this Request on the grounds that it is vague and ambiguous,  
20 particularly as to "census tract," and overbroad. Respondent further objects to this Request on the  
21 grounds that it is not reasonably limited in scope or time. Respondent further objects to this  
22 Request on the grounds that it is overly burdensome, oppressive and harassing. Respondent  
23 further objects to this Request on the grounds that it seeks documents that are neither relevant to  
24 the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible  
25 evidence. Respondent further objects to this Request on the grounds that it seeks the production of  
26 documents that are proprietary in nature, privileged and confidential.

27

28

1 **REQUEST FOR PRODUCTION NO. 39:**

2 Documents showing the number of nationwide new Respondent retail vehicle sales made  
3 by each Can-Am dealership located in the Region for the years 2009 through present.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

5 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
6 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
7 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
8 The parties agreed present discovery would be limited to the legal modification issue and if  
9 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
10 as to whether the proposed modification would substantially affect Protestant's sales or service  
11 obligations or investment, and whether good cause exists for the modification, which will be  
12 determined at a second Protest Hearing to be set by the Board.

13 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
14 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
15 limited in scope or time. Respondent further objects to this Request on the grounds that it is  
16 overly burdensome, oppressive and harassing. Respondent further objects to this Request on the  
17 grounds that it seeks documents that are neither relevant to the subject matter of this litigation nor  
18 reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects  
19 to this Request on the grounds that it seeks the production of documents that are proprietary in  
20 nature, privileged and confidential.

21 **REQUEST FOR PRODUCTION NO. 40:**

22 Documents showing the number of nationwide used retail vehicle sales made by each Can-  
23 Am dealership located in the Region for the years 2009 through present. Please also provide  
24 Documents showing the number of nationwide used retail Respondent sales made by each of these  
25 dealers for each of these years.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3540:**

27 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
28 scope of the current Protest, which the parties agreed would be limited to the issue of whether

1 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
2 The parties agreed present discovery would be limited to the legal modification issue and if  
3 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
4 as to whether the proposed modification would substantially affect Protestant's sales or service  
5 obligations or investment, and whether good cause exists for the modification, which will be  
6 determined at a second Protest Hearing to be set by the Board.

7 Respondent further objects to this Request on the grounds that it is vague and ambiguous  
8 and overbroad. Respondent further objects to this Request on the grounds that it is not reasonably  
9 limited in scope or time. Respondent further objects to this Request on the grounds that it is  
10 overly burdensome, oppressive and harassing. Respondent further objects to this Request on the  
11 grounds that it seeks documents that are neither relevant to the subject matter of this litigation nor  
12 reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects  
13 to this Request on the grounds that it seeks the production of documents that are proprietary in  
14 nature, privileged and confidential.

15 **REQUEST FOR PRODUCTION NO. 41:**

16 Documents used by Respondent to compare the operating performance, revenues, gross  
17 profits, or expenses of any dealer in the State of California to the Region, District, a competitive  
18 group designated by Respondent, or in other geographic areas, or with general guides or standards  
19 from 2009 to the present date. Response to this request should include any year-end fixed  
20 operations analysis reports and all Documents analyzing these dealers' Respondent sales and  
21 registration performance. Response should also include all year-end financial composite reports.  
22 To the extent that dealerships are compared to groups of dealerships defined by other than  
23 geography, provide Documents identifying the dealerships in the comparison group.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

25 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
26 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
27 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
28 The parties agreed present discovery would be limited to the legal modification issue and if

1 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
2 as to whether the proposed modification would substantially affect Protestant's sales or service  
3 obligations or investment, and whether good cause exists for the modification, which will be  
4 determined at a second Protest Hearing to be set by the Board.

5 Respondent further objects to this Request on the grounds that it is compound, vague and  
6 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
7 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
8 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
9 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
10 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
11 further objects to this Request to the extent it seeks documents protected by the attorney-client  
12 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
13 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
14 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
15 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
16 confidential.

17 **REQUEST FOR PRODUCTION NO. 42:**

18 All Documents containing information regarding the performance of any dealer in the State  
19 of California from 2009 through the present. Response to this request should include all  
20 Documents concerning any alleged inadequacies of any of these dealers.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

22 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
23 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
24 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
25 The parties agreed present discovery would be limited to the legal modification issue and if  
26 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
27 as to whether the proposed modification would substantially affect Protestant's sales or service  
28

1 obligations or investment, and whether good cause exists for the modification, which will be  
2 determined at a second Protest Hearing to be set by the Board.

3 Respondent further objects to this Request on the grounds that it is compound, vague and  
4 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
5 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
6 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
7 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
8 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
9 further objects to this Request to the extent it seeks documents protected by the attorney-client  
10 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
11 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
12 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
13 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
14 confidential.

15 **REQUEST FOR PRODUCTION NO. 43:**

16 Documents from 2009 to the present ranking any or all of the dealers in the Region on any  
17 performance measure, such as new vehicle sales, service sales, sales satisfaction, and/or service  
18 satisfaction.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

20 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
21 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
22 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
23 The parties agreed present discovery would be limited to the legal modification issue and if  
24 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
25 as to whether the proposed modification would substantially affect Protestant's sales or service  
26 obligations or investment, and whether good cause exists for the modification, which will be  
27 determined at a second Protest Hearing to be set by the Board.

28

1 Respondent further objects to this Request on the grounds that it is compound, vague and  
2 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
3 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
4 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
5 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
6 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
7 further objects to this Request to the extent it seeks documents protected by the attorney-client  
8 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
9 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
10 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
11 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
12 confidential.

13 **REQUEST FOR PRODUCTION NO. 44:**

14 All Documents from 2009 to the present listing, ranking, or comparing Respondent market  
15 performance on any basis for all Respondent dealers in California.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

17 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
18 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
19 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
20 The parties agreed present discovery would be limited to the legal modification issue and if  
21 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
22 as to whether the proposed modification would substantially affect Protestant's sales or service  
23 obligations or investment, and whether good cause exists for the modification, which will be  
24 determined at a second Protest Hearing to be set by the Board.

25 Respondent further objects to this Request on the grounds that it is compound, vague and  
26 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
27 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
28 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request

1 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
2 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
3 further objects to this Request to the extent it seeks documents protected by the attorney-client  
4 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
5 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
6 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
7 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
8 confidential.

9 **REQUEST FOR PRODUCTION NO. 45:**

10 All Documents from 2009 to the present listing, ranking, or comparing Respondent market  
11 performance on any basis for all Respondent dealers in the U.S.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

13 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
14 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
15 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
16 The parties agreed present discovery would be limited to the legal modification issue and if  
17 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
18 as to whether the proposed modification would substantially affect Protestant's sales or service  
19 obligations or investment, and whether good cause exists for the modification, which will be  
20 determined at a second Protest Hearing to be set by the Board.

21 Respondent further objects to this Request on the grounds that it is compound, vague and  
22 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
23 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
24 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
25 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
26 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
27 further objects to this Request to the extent it seeks documents protected by the attorney-client  
28 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to

1 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
2 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
3 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
4 confidential.

5 **REQUEST FOR PRODUCTION NO. 46:**

6 Documents analyzing Respondent sales and registration performance for the U.S., the state  
7 of California, the Region, each District in the Region, and each Respondent dealer in the Region,  
8 for each month from January 2009 to the present.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

10 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
11 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
12 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
13 The parties agreed present discovery would be limited to the legal modification issue and if  
14 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
15 as to whether the proposed modification would substantially affect Protestant's sales or service  
16 obligations or investment, and whether good cause exists for the modification, which will be  
17 determined at a second Protest Hearing to be set by the Board.

18 Respondent further objects to this Request on the grounds that it is compound, vague and  
19 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
20 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
21 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
22 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
23 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
24 further objects to this Request to the extent it seeks documents protected by the attorney-client  
25 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
26 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
27 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
28

1 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
2 confidential.

3 **REQUEST FOR PRODUCTION NO. 47:**

4 Documents showing on-ground inventories of Can-Am vehicles by model for each month  
5 (or any other smaller time increments for which Respondent breaks out data) from January 2009 to  
6 present for each dealer in the Region.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

8 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
9 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
10 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
11 The parties agreed present discovery would be limited to the legal modification issue and if  
12 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
13 as to whether the proposed modification would substantially affect Protestant's sales or service  
14 obligations or investment, and whether good cause exists for the modification, which will be  
15 determined at a second Protest Hearing to be set by the Board.

16 Respondent further objects to this Request on the grounds that it is compound, vague and  
17 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
18 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
19 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
20 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
21 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
22 further objects to this Request to the extent it seeks documents protected by the attorney-client  
23 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
24 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
25 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
26 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
27 confidential.

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1 **REQUEST FOR PRODUCTION NO. 48:**

2 Documents showing days-supply by model for each month (or any other smaller time  
3 increments for which Respondent breaks out data) from January 2009 to present for each dealer in  
4 the Region.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4836:**

6 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
7 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
8 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
9 The parties agreed present discovery would be limited to the legal modification issue and if  
10 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
11 as to whether the proposed modification would substantially affect Protestant's sales or service  
12 obligations or investment, and whether good cause exists for the modification, which will be  
13 determined at a second Protest Hearing to be set by the Board.

14 Respondent further objects to this Request on the grounds that it is compound, vague and  
15 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
16 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
17 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
18 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
19 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
20 further objects to this Request to the extent it seeks documents protected by the attorney-client  
21 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
22 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
23 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
24 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
25 confidential.

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1 **REQUEST FOR PRODUCTION NO. 49:**

2 Documents showing orders placed by model for each month (or any other smaller time  
3 increments for which Respondent breaks out data) from January 2009 to present for each dealer in  
4 the Region.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

6 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
7 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
8 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
9 The parties agreed present discovery would be limited to the legal modification issue and if  
10 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
11 as to whether the proposed modification would substantially affect Protestant's sales or service  
12 obligations or investment, and whether good cause exists for the modification, which will be  
13 determined at a second Protest Hearing to be set by the Board.

14 Respondent further objects to this Request on the grounds that it is compound, vague and  
15 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
16 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
17 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
18 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
19 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
20 further objects to this Request to the extent it seeks documents protected by the attorney-client  
21 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
22 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
23 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
24 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
25 confidential.

26 **REQUEST FOR PRODUCTION NO. 50:**

27 Documents showing the number of units allocated by model for each month (or any other  
28 smaller time increments for which Respondent breaks out data) from January 2009 to present for

1 each dealer in the Region.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

3 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
4 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
5 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
6 The parties agreed present discovery would be limited to the legal modification issue and if  
7 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
8 as to whether the proposed modification would substantially affect Protestant's sales or service  
9 obligations or investment, and whether good cause exists for the modification, which will be  
10 determined at a second Protest Hearing to be set by the Board.

11 Respondent further objects to this Request on the grounds that it is compound, vague and  
12 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
13 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
14 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
15 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
16 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
17 further objects to this Request to the extent it seeks documents protected by the attorney-client  
18 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
19 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
20 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
21 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
22 confidential.

23 **REQUEST FOR PRODUCTION NO. 51:**

24 Documents showing the number of units refused by model for each month (or any other  
25 smaller time increments for which Respondent breaks out data) from January 2009 to present for  
26 each dealer in the Region.

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1                   **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

2                   Respondent objects to this Request on the grounds that it is overbroad and beyond the  
3 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
4 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
5 The parties agreed present discovery would be limited to the legal modification issue and if  
6 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
7 as to whether the proposed modification would substantially affect Protestant's sales or service  
8 obligations or investment, and whether good cause exists for the modification, which will be  
9 determined at a second Protest Hearing to be set by the Board.

10                  Respondent further objects to this Request on the grounds that it is compound, vague and  
11 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
12 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
13 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
14 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
15 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
16 further objects to this Request to the extent it seeks documents protected by the attorney-client  
17 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
18 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
19 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
20 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
21 confidential.

22                   **REQUEST FOR PRODUCTION NO. 52:**

23                   Documents showing the re-distribution of allocated vehicles that were refused by  
24 Respondent dealers in the Region for each year from 2009 to present.

25                   **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

26                   Respondent objects to this Request on the grounds that it is overbroad and beyond the  
27 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
28 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.

1 The parties agreed present discovery would be limited to the legal modification issue and if  
2 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
3 as to whether the proposed modification would substantially affect Protestant's sales or service  
4 obligations or investment, and whether good cause exists for the modification, which will be  
5 determined at a second Protest Hearing to be set by the Board.

6 Respondent further objects to this Request on the grounds that it is compound, vague and  
7 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
8 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
9 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
10 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
11 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
12 further objects to this Request to the extent it seeks documents protected by the attorney-client  
13 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
14 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
15 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
16 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
17 confidential.

18 **REQUEST FOR PRODUCTION NO. 53:**

19 Documents that describe Respondent's current allocation system and how units are  
20 allocated to the Region and to each dealer. Include documentation on procedures used for  
21 distributing discretionary allocation.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

23 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
24 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
25 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
26 The parties agreed present discovery would be limited to the legal modification issue and if  
27 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
28 as to whether the proposed modification would substantially affect Protestant's sales or service

1 obligations or investment, and whether good cause exists for the modification, which will be  
2 determined at a second Protest Hearing to be set by the Board.

3 Respondent further objects to this Request on the grounds that it is compound, vague and  
4 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
5 reasonably limited in scope or time. Respondent further objects to this Request on the grounds  
6 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
7 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
8 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
9 further objects to this Request to the extent it seeks documents protected by the attorney-client  
10 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
11 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
12 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
13 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
14 confidential.

15 **REQUEST FOR PRODUCTION NO. 54:**

16 All Documents which relate to Respondent production schedules from 2009 to present.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

18 Respondent objects to this Request on the grounds that it is overbroad and beyond the  
19 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
20 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
21 The parties agreed present discovery would be limited to the legal modification issue and if  
22 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
23 as to whether the proposed modification would substantially affect Protestant's sales or service  
24 obligations or investment, and whether good cause exists for the modification, which will be  
25 determined at a second Protest Hearing to be set by the Board.

26 Respondent further objects to this Request on the grounds that it is compound, vague and  
27 ambiguous and overbroad. Respondent further objects to this Request on the grounds that it is not  
28 reasonably limited in scope or time. Respondent further objects to this Request on the grounds

1 that it is overly burdensome, oppressive and harassing. Respondent further objects to this Request  
2 on the grounds that it seeks documents that are neither relevant to the subject matter of this  
3 litigation nor reasonably calculated to lead to the discovery of admissible evidence. Respondent  
4 further objects to this Request to the extent it seeks documents protected by the attorney-client  
5 privilege and/or the attorney work product doctrine. Respondent further objects to this Request to  
6 the extent it seeks the premature disclosure of expert witness information and violates the Board's  
7 Amended Pre-Hearing Conference Order. Respondent further objects to this Request on the  
8 grounds that it seeks the production of documents that are proprietary in nature, privileged and  
9 confidential.

10 **REQUEST FOR PRODUCTION NO. 55**

11       Copies of the monthly Dealer Performance Evaluations for Protestant from 2009 to the  
12 present.

13       **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

14       Respondent objects to this Request on the grounds that it is overbroad and beyond the  
15 scope of the current Protest, which the parties agreed would be limited to the issue of whether  
16 there has been a legal modification to the Franchise Agreement under *Vehicle Code* Section 3060.  
17 The parties agreed present discovery would be limited to the legal modification issue and if  
18 Protestant prevails on that issue at the May 11, 2015 Hearing, the parties will re-engage discovery  
19 as to whether the proposed modification would substantially affect Protestant's sales or service  
20 obligations or investment, and whether good cause exists for the modification, which will be  
21 determined at a second Protest Hearing to be set by the Board.

22       Respondent further objects to this Request on the grounds that it is compound, vague and  
23 ambiguous and overbroad, and is redundant of earlier requests. Respondent further objects to this  
24 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
25 objects to this Request on the grounds that it is overly burdensome, oppressive and harassing.  
26 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
27 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
28 admissible evidence. Respondent further objects to this Request to the extent it seeks documents

1 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
2 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
3 information and violates the Board's Amended Pre-Hearing Conference Order.

4 **REQUEST FOR PRODUCTION NO. 56:**

5 A copy of the Dealer Agreement between Protestant and Respondent and all current  
6 addenda attached thereto.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

8 Respondent objects to this Request on the grounds that it seeks documents equally  
9 available to Protestant.

10 Without waiving and subject to the foregoing objections, Respondent responds as follows:  
11 Responding will produce all non-privileged documents in its possession, custody or control that  
12 are responsive to this Request.

13 **REQUEST FOR PRODUCTION NO. 57:**

14 A copy of the current Operations Standards currently applicable to Protestant.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

16 Respondent objects to this Request on the grounds that it is vague and ambiguous.  
17 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
18 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
19 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
20 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
21 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
22 information and violates the Board's Amended Pre-Hearing Conference Order. Respondent further  
23 objects to this Request on the grounds that it seeks the production of documents that are  
24 proprietary in nature, privileged and confidential.

25 Without waiving and subject to the foregoing objections, Respondent responds as follows:  
26 Responding will produce all non-privileged documents in its possession, custody or control that  
27 are responsive to this Request.

28

1 **REQUEST FOR PRODUCTION NO. 58:**

2 A copy of the current Warranty and Service Guide applicable to Protestant.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

4 Respondent objects to this Request on the grounds that it is vague and ambiguous.

5 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
6 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
7 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
8 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
9 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
10 information and violates the Board's Amended Pre-Hearing Conference Order. Respondent further  
11 objects to this Request on the grounds that it seeks the production of documents that are  
12 proprietary in nature, privileged and confidential.

13 Without waiving and subject to the foregoing objections, Respondent responds as follows:

14 Responding will produce all non-privileged documents in its possession, custody or control that  
15 are responsive to this Request.

16 **REQUEST FOR PRODUCTION NO. 59:**

17 A copy of the "Dealer Binder" applicable to Protestant, as that term is used in paragraph  
18 23(h) of the Dealer Agreement, General Provisions, applicable to Protestant.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

20 Respondent objects to this Request on the grounds that it is compound, vague and  
21 ambiguous and overbroad, and is redundant of earlier requests. Respondent further objects to this  
22 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
23 objects to this Request on the grounds that it is overly burdensome, oppressive and harassing.  
24 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
25 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
26 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
27 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
28

1 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
2 information and violates the Board's Amended Pre-Hearing Conference Order.

3 Without waiving and subject to the foregoing objections, Respondent responds as follows:  
4 Responding will produce all non-privileged documents in its possession, custody or control that  
5 are responsive to this Request.

6 **REQUEST FOR PRODUCTION NO. 60:**

7 A copy of the "BRP invoices," as that term is used in paragraph 23(h) of the Dealer  
8 Agreement, General Provisions, applicable to Protestant.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

10 Respondent objects to this Request on the grounds that it is compound, vague and  
11 ambiguous and overbroad, and is redundant of earlier requests. Respondent further objects to this  
12 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
13 objects to this Request on the grounds that it is overly burdensome, oppressive and harassing.  
14 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
15 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
16 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
17 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
18 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
19 information and violates the Board's Amended Pre-Hearing Conference Order.

20 Without waiving and subject to the foregoing objections, Respondent responds as follows:  
21 Responding will produce all non-privileged documents in its possession, custody or control that  
22 are responsive to this Request.

23 **REQUEST FOR PRODUCTION NO. 61:**

24 A copy of the "other policies," as that term is used in paragraph 23(h) of the Dealer  
25 Agreement, General Provisions, applicable to Protestant.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 61:**

27 Respondent objects to this Request on the grounds that it is compound, vague and  
28 ambiguous and overbroad, and is redundant of earlier requests. Respondent further objects to this

1 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
2 objects to this Request on the grounds that it is overly burdensome, oppressive and harassing.  
3 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
4 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
5 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
6 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
7 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
8 information and violates the Board's Amended Pre-Hearing Conference Order.

9 Without waiving and subject to the foregoing objections, Respondent responds as follows:  
10 Responding will produce all non-privileged documents in its possession, custody or control that  
11 are responsive to this Request.

12 **REQUEST FOR PRODUCTION NO. 62:**

13 A copy of the "other BRP Policies and documents," as that term is used in paragraph 23(h)  
14 of the Dealer Agreement, General Provisions, applicable to Protestant.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 62:**

16 Respondent objects to this Request on the grounds that it is compound, vague and  
17 ambiguous and overbroad, and is redundant of earlier requests. Respondent further objects to this  
18 Request on the grounds that it is not reasonably limited in scope or time. Respondent further  
19 objects to this Request on the grounds that it is overly burdensome, oppressive and harassing.  
20 Respondent further objects to this Request on the grounds that it seeks documents that are neither  
21 relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of  
22 admissible evidence. Respondent further objects to this Request to the extent it seeks documents  
23 protected by the attorney-client privilege and/or the attorney work product doctrine. Respondent  
24 further objects to this Request to the extent it seeks the premature disclosure of expert witness  
25 information and violates the Board's Amended Pre-Hearing Conference Order.

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Without waiving and subject to the foregoing objections, Respondent responds as follows:  
Responding will produce all non-privileged documents in its possession, custody or control that  
are responsive to this Request.

Dated: January 30, 2015

HAIGHT BROWN & BONESTEEL LLP

By:   
R. BRYAN MARTIN  
Attorneys for Respondent  
BRP US INC.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF ORANGE ) ss.:

4 *Fun Bike Center v. Bombardier Recreational Products, Inc., et al.*  
5 *Protest No. PR-2404-14 (Consolidated with Protest No.: PR-2405-14)*

6 I am employed in the County of Orange, State of California. I am over the age of  
7 18 and not a party to the within action. My business address is 2050 Main Street, Suite  
8 600, Irvine, California 92614.

9 On **January 30, 2015**, I served the foregoing document described as

10 **RESPONDENT BRP US INC'S RESPONSES TO PROTESTANT'S  
11 REQUEST FOR IDENTIFICATION AND PRODUCTION OF DOCUMENTS  
12 (SET TWO)** on the interested parties in this action as follows:

11 Michael M. Sieving, Esq. Attorney for *Protestant*  
12 CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP Telephone: 916.649.3500  
13 1545 River Park Drive, Ste 405 Facsimile: 916.999.8560  
Sacramento, CA 95815 E-Mail: msieving@ctselaw.com

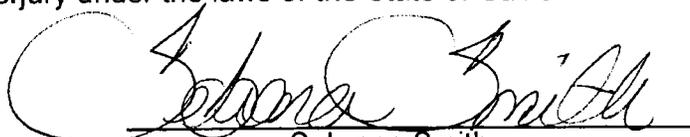
14 New Motor Vehicle Board  
15 1507 – 21st Street, Suite 330  
16 Sacramento, CA 95811

17  **(By E-mail or Electronic Transmission)** I caused the documents to be sent to the  
18 persons at their e-mail address(es) . I did not receive, within a reasonable time after  
19 the transmission, any electronic message or other indication that the transmission  
20 was unsuccessful.

21  **(By Mail)** I am "readily familiar" with this firm's practice of collection and processing  
22 correspondence for mailing. Under that practice it would be deposited with the U.S.  
23 postal service on that same day with postage thereon fully prepaid at Irvine,  
24 California, in the ordinary course of business. I am aware that on motion of the party  
25 served, service is presumed invalid if postal cancellation date or postage meter date  
26 is more than one day after date of deposit for mailing in affidavit.

27 Executed on **January 30, 2015**, at Irvine, California.

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

  
Sebrina Smith



# 2013 BRP DEALER OPERATION STANDARDS



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## 2013 BRP Dealer Operation Standards

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### (i) Introduction

The 2013 BRP Dealer Operation Standards document clearly identifies the minimum standards that a BRP dealer is required to meet on subjects such as business operations, unit sales, parts, accessories and clothing, service, facility and advertising. Not only is compliance with the Operation Standards a first step towards delivering the ultimate customer experience in your dealership, it will also allow participation in the BRP Certification Program.

Each of these standards will be phased in on specific dates in order to allow dealers adequate time to implement the Operation Standards in their dealership. Please refer to Appendix 1 for the details on the phase in dates for each of the standards.

This document shall remain in effect until such time as it is superseded by a subsequent publication. This document is incorporated into the BRP US Inc. Dealer Agreement (the "Agreement"). In case of conflict between this document and the Agreement, the Agreement shall prevail.

Throughout the term of the Agreement signed with Dealer, the Operation Standards are subject to revision or modification by BRP at its discretion. All changes that BRP may make to the Operation Standards (as applicable to all of its Dealers) shall be binding upon Dealer as if such changes were adopted expressly in writing by Dealer as amendments to the Agreement. Capitalized words or sentences that are not defined in this document shall have the meaning ascribed to them in the BRP Dealer Agreement and General Provisions.



### 1. Business Operations

- (a) Financial Reports (*Effective November 1, 2013*) Dealer shall submit yearly financial statements to BRP. In U.S.A., financial statements shall be submitted to TCF Inventory Finance, Inc., or to BRP if another financial institution is used, no later than one hundred and twenty (120) days following the close of Dealer fiscal year. In Canada, financial statements shall be submitted to TCF Commercial Finance Canada, Inc., or to BRP if another financial institution is used, no later than one hundred and eighty (180) days following the close of Dealer fiscal year.
- (b) Technology Infrastructure (*Effective November 1, 2013*) Dealer shall have and maintain operational at all times a computer system equipped with the following mandatory configuration:
- (i) Hardware:
    - a. Processor of 1 GHz or faster;
    - b. High speed internet connection;
    - c. 1 GB of RAM minimum.
  - (ii) Software:
    - a. Vista, Windows 7 or Windows 8 Professional Editions;
    - b. BOSSWeb is optimized for Microsoft Internet Explorer 7, 8, 9 or 10 in compatibility view;
    - c. Adobe Acrobat Reader 9 or newer.
- (c) Website (*Effective February 1, 2015*) Dealer shall have and maintain operational at all times a website to promote BRP Products, display address, hours of operations and contact information.
- (d) Dealer Management System ("DMS") (*Effective August 1, 2015*) The Dealer shall operate a DMS software that provides the following minimum functionality:
- (i) Major unit sales and inventory management;
  - (ii) Parts sales and inventory management;
  - (iii) Service sales and management;
  - (iv) Customer record management;
  - (v) Departmental and transaction reporting capabilities.

### 2. Unit Sales

- (a) Minimum Sales Performance (*Effective February 1, 2015*) For each Product line carried, excluding Can-Am side-by-side vehicles, Dealer market share in PMA shall not be less than twenty-five percent (25%) of the average peer market share in PMA (on a twelve (12) month rolling period). Dealer's peers are defined as dealers with similar urbanicity within their respective region.



## 2013 BRP Dealer Operation Standards

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- (b) Minimum Line Representation ("MLR") (Effective February 1, 2014) For each Product line carried, Dealer agrees to place Orders and stock on premises an adequate representation of a range of vehicles based on market potential in Dealer's PMA, the whole as set forth by the MLR requirements in the Dealer Binder.
- (c) Interior Display (Effective February 1, 2015) Dealer shall provide an exclusive BRP interior zone, per product line, dedicated to the display of new units. This zone shall be at least six hundred (600) square feet (55.74 square meters) for each product line carried, in season, as defined in Appendix 2. For Dealers carrying three (3) Product lines or more, this minimum requirement shall never exceed twelve hundred (1,200) square feet (111.48 square meters) at any time. For the purpose of this Paragraph, the Can-Am ATV and Can-Am side-by-side products shall be considered as one Product line.
- (d) Demonstrator Units (Effective November 1, 2013) Dealer shall ensure that demonstrator vehicles are clean, in good conditions, well cared for and free of any outstanding warranty campaigns.
- (e) Documented Sales Process (Effective February 1, 2014) Dealer shall have a documented sales process and provide it to BRP upon request.
- (f) Sales Training (Effective November 1, 2013) Dealer shall have at least one (1) sales employee trained as a BRP brand specialist, per product line carried. To be trained as a brand specialist, a sales employee needs to successfully complete all applicable online training prior to the applicable deadline specified in the training schedules on BRPTI for each product line carried.

### 3. Accessories and/or Clothing and Riding Gear

- (a) Accessory and/or Clothing and Riding Gear Display (Effective February 1, 2015) Dealer shall provide an area dedicated to the exclusive display of BRP accessories and / or clothing and riding gear. Dealer shall represent each product line carried. For the purpose of this Paragraph, the Can-Am ATV and Can-Am side-by-side Products shall be considered as one (1) product line. This area must be at a minimum twelve (12) linear feet (3.66 linear meters) (4 x [3' x 8'] (4 x [0.91 m x 2.44 m]) wall panels or 2 x [3' x 6'] (2 x [0.91 m x 1.83 m]) floor display fixtures (i.e. display fixtures or gondolas) or a combination) for each product line carried.

### 4. Service

- (a) Technical Training (Effective November 1, 2013) Dealer shall have at least one (1) service technician trained at the BRP technician level, per product line carried. To be a trained at the BRP technician level, a service technician needs to successfully complete all applicable online training prior to the applicable deadline specified in the training schedules on BRPTI for each product line carried.
- (b) Special tools (Effective November 1, 2013) For each product line carried, Dealer shall have all mandatory tools specified in each BRP shop manual.
- (c) Documented Service Process (Effective February 1, 2015) Dealer shall have a documented service process which shall integrate a formal check into BOSSWeb Info center in order to validate that the Product that is being Serviced is not affected by a campaign or a bulletin before delivering it back to the consumer.



### 5. Facility

- (a) Exterior Signage (Effective November 1, 2013) Dealer shall identify itself as an authorized Products Dealer by means of current permanent exterior illuminated BRP brand signage(s), the whole as per BRP Dealer Signage Program. All BRP signage and Dealer specific signs shall be exempt of damages at all times. All outdated signage shall be removed.
- (b) General Facility Appearance (Effective November 1, 2013) Dealer is required to provide, at all times, clean and well organized facilities, both interior and exterior, that are adequate to accommodate units and PAC displays, stocking of parts and service of Products.
- (c) Service Reception and Write-Up Area (Effective February 1, 2015) Dealer shall have a service reception and write-up area clearly identified and readily apparent to the customers.
- (d) Service Department (Effective February 1, 2015) Dealer shall have a service area of sufficient size to meet its Service responsibilities. The service area shall be equipped with a minimum of one (1) service bay or work station per Product line carried. For the purpose of this Paragraph, the Can-Am ATV and Can-Am side-by-side products shall be considered as one product line. If the Dealer carries all BRP Product lines, a minimum of three (3) service bays or work stations are required, due to seasonality of the Products. These service bays or work stations do not have to be dedicated solely to the service of BRP Products.
- (e) Storage Area for Parts (Effective February 1, 2015) Dealer shall have a storage area for BRP parts, accessories and clothing back stock.
- (f) Interior Floors and Walls (Effective February 1, 2015) All interior floors and walls shall be finished, as defined in the BRP Retail Environment Guidebook\*.
- (g) Restrooms (Effective February 1, 2015) Dealer shall provide a clean, functional and well-maintained customer restroom(s).
- (h) Hours of Operation (Effective August 1, 2014) Dealer hours of operation for all departments shall be clearly posted at the main customer entrance.

### 6. Advertising

- (a) Point of Purchase (P.O.P) and Promotional Displays (Effective November 1, 2013) Dealer shall accept the shipment and billing of P.O.P elements and promotional displays for every product Line carried. Dealer shall update P.O.P elements and promotional displays as new materials are provided by BRP and shall promptly remove outdated materials.

\* The BRP Retail Environment Guidebook will be available early 2014.



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### Appendix 1 – Operation Standards Phase in Dates

<b>Application starting November 1, 2013</b>	1 (a) Financial Reports
	1 (b) Technology Infrastructure
	2 (d) Demonstrator Units
	2 (f) Sales Training
	4 (a) Technical Training
	4 (b) Special tools
	5 (a) Exterior Signage
	5 (b) General Facility Appearance
<b>Application starting February 1, 2014</b>	2 (b) Minimum Line Representation
	2 (e) Documented Sales Process
<b>Application starting August 1, 2014</b>	5 (h) Hours of Operation
<b>Application starting February 1, 2015</b>	1 (c) Website
	2 (a) Minimum Sales Performance
	2 (c) Interior Display
	3 (a) Accessories and/or Clothing and Riding Gear
	4 (c) Documented Service Process
	5 (c) Service Reception and Write-Up Area
	5 (d) Service Department
	5 (e) Storage Area for Parts
<b>Application starting August 1, 2015</b>	5 (f) Interior Floors and Walls
	5 (g) Restrooms
<b>Application starting August 1, 2015</b>	1 (d) Dealer Management System



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### Appendix 2 – In and Off Season Dates

<b>Ski-Doo snowmobile</b>	<b>In Season</b>	<b>Off Season</b>
	November 1 to January 31	February 1 to October 31
<b>Sea-Doo personal watercraft</b>	<b>In Season</b>	<b>Off Season</b>
	May 1 to July 31	August 1 to April 30
<b>Can-Am roadster</b>	<b>In Season</b>	<b>Off Season</b>
	May 1 to August 31	September 1 to April 30
<b>Can-Am ATV and SSV</b>	<b>In Season</b>	<b>Off Season</b>
	All year	n/a

