NEW MOTOR VEHICLE BOARD
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Sacramento, California 95811
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of BURBANK KAWASAKI, INC., Protestant, v. KAWASAKI MOTORS CORP., U.S.A., a Corporation, Respondent.	**Protest Nos. PR-2328-12 and PR-2333-12**

DECISION

At its regularly scheduled meeting of November 12, 2013, the Public Members of the Board met and considered the administrative record and Proposed Decision Following Remand in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision Following Remand as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER 2013.

BISMARCK OBANDO
President
New Motor Vehicle Board

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CERTIFIED MAIL

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

BURBANK KAWASAKI, INC.,

Protestant,

v.

KAWASAKI MOTORS CORP., U.S.A., a Corporation,

Respondent.

Protest Nos. PR-2328-12 and PR-2333-12

PROPOSED DECISION FOLLOWING REMAND

PROCEDURAL BACKGROUND

Statement of the Case

1. By letter dated January 4, 2011 [sic], Kawasaki Motors Corp., U.S.A. ("KMC" or "Respondent"), gave notice to Burbank Kawasaki, Inc. ("BKI" or "Protestant") pursuant to California Vehicle Code section 3060[1] of its intention to terminate Protestant's motorcycle and ATV Dealer Agreement.[2] The New Motor Vehicle Board ("Board") received the notice on January 9, 2012.

2. By letters dated January 24, 2012, KMC issued two separate Notices of Termination, one

[1] Unless otherwise indicated, all statutory references are to the California Vehicle Code.
[2] This notice combined more than one franchise and thus was not in compliance with Section 593.1 of Title 13 of the California Code of Regulations.

pertaining to BKI's Kawasaki motorcycle franchise and one pertaining to its Kawasaki ATV franchise. BKI and the Board received these notices on January 26, 2012. (Stipulation and [Proposed] Order Regarding Filing and Consolidation of Protests)

3. The notices stated identical reasons for termination, as follows:

> This termination is based upon, but not limited to, [BKI's]: 1) failure to maintain model inventory, 2) failure to meet sales requirements, 3) failure to provide equal representation for Kawasaki products and 4) failure to maintain a wholesale financing line of credit (flooring) in an amount sufficient to permit [BKI] to purchase an adequate inventory of the full line of Kawasaki products. (Exhs. R301 and R302)[3]

The notices went on to state that "KMC reserves the right to supplement [these] notices if it becomes aware of additional grounds for termination under the Sales and Service Agreement[s] and/or any applicable statute." (Exhibits R301and R302) The notices were not subsequently amended by KMC.

4. On February 23, 2012, BKI filed Protest No. PR-2328-12, which challenged both of the intended terminations. However, as the Board requires a separate protest be filed with respect to each Notice of Termination and each franchise, the parties stipulated that Protest No. PR-2328-12 would apply to the motorcycle franchise and that a new protest (No. PR-2333-12) would apply to the ATV franchise. The parties also stipulated to the consolidation of the two protests and the Board, on May 31, 2012, issued its order of consolidation. (Stipulation and [Proposed] Order Regarding Filing and Consolidation of Protests)

5. A three-day hearing on the merits (Merits Hearing") was held February 5-7, 2013, before Administrative Law Judge Jerold A. Prod ("ALJ Prod").

6. On May 8, 2013, pursuant to Section 3067 and Government Code section 11517, counsel for the parties stipulated to allow the Board to consider the Proposed Decision 34 days from the date ALJ Prod submitted the Proposed Decision to the Board.

7. ALJ Prod submitted a Proposed Decision dated May 23, 2013, which would overrule the protests and permit KMC to terminate BKI's franchises for motorcycles and ATVs.

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[3] Citations throughout this decision pertaining to the Merits Hearing refer to oral testimony by reporter's transcript volume number (RT), page, and line, and by exhibit number (Exh.), page(s) and line(s). Other documents in the record are identified by their titles, as specifically denoted in the text. The exhibits from the Remand Hearing are identified as "Exh. RP" for Protestant's and "Exh. RR" for Respondent's. The Transcript from the Remand Hearing is designated "RRT" without reference to a volume number.

8. At the June 26, 2013, General Meeting, the Board did not have a quorum of Public Members to consider the Proposed Decision.

9. On June 28, 2013, counsel for the parties stipulated to allow the Board to consider the Proposed Decision 63 days from the date ALJ Prod submitted the Proposed Decision to the Board.

10. At its July 25, 2013, Special Meeting, the Public Members of the Board met and considered the administrative record and Proposed Decision dated May 23, 2013. After such consideration, the Board rejected the Proposed Decision and remanded the matter for a settlement conference and further proceedings.

11. In its "Order Rejecting the Proposed Decision Dated May 23, 2013, and Remanding the Matters for a Settlement Conference and Further Proceedings" (herein "Remand Order") dated August 6, 2013, the Board set forth the following instructions:

> a. Within 30 days of the date of this Order, the parties shall participate in a Mandatory Settlement Conference to attempt to resolve the flooring issue. Resolution shall require addressing both the amount of flooring needed and the time within which the flooring must be established. The Settlement Conference shall be before an administrative law judge ("settlement conference ALJ") designated by the Board and shall occur prior to submission of additional evidence and briefing in the hearing on remand.
>
> b. This matter is remanded to the Administrative Law Judge ("merits hearing ALJ") to consider thereafter additional evidence in the form of briefs with declarations and exhibits and/or testimony, in the ALJ's discretion, to determine the reasonable amount of flooring required for Protestant to perform its contractual obligations and a reasonable timeframe to secure such flooring.[4] (Footnote 2 in the Remand Order)
>
> c. In addition to the flooring issues, the ALJ shall also determine what will be needed for Protestant to meet its franchise obligations to stock a complete line of Kawasaki products as well as the extent of Protestant's future sales penetration into its SEA (Statistical Evaluation Area) and recommendations as to conditions that would be appropriately within Section 3067.
>
> d. Upon receipt of the above information, the Board will be in a better position to determine whether to issue a decision pursuant to Section 3067 which will "...sustain, conditionally sustain, overrule, or conditionally overrule the protest."
>
> e. The Board is mindful that the statutes operate to prevent termination of the franchises until the minimum requirements of the statutes are met. As such, time is of the essence in complying with the terms of this order. The Board anticipates this matter being heard and resolved at its November 12, 2013, General Meeting, in Sacramento.

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[4] The merits hearing ALJ may determine both the amount of flooring required and the timeframe for obtaining the flooring based upon an agreement of the parties if such agreement occurred as a result of a settlement conference. If there are no such agreements, the merits hearing ALJ will need to make determinations on these issues based upon the record and any additional evidence and arguments submitted, with the usual rules applicable regarding the admissibility of settlement negotiations.

...

12. Pursuant to the Board's Remand Order, a Mandatory Settlement Conference was held on August 23, 2013; a settlement agreement was not reached between the parties.

13. This matter was subsequently assigned to Administrative Law Judge Lonnie M. Carlson to convene the Merits Hearing as ALJ Prod had retired. A Pre-Hearing Conference was held on August 27, 2013.

14. The Remand Hearing was held on September 17 and 18, 2013. Post-hearing briefs were filed on October 15, 2013, at which point the record was closed and the matter was submitted.

Parties and Counsel

15. BKI is an authorized Kawasaki dealership located at 1329 North Hollywood Way, Burbank, California. (Exhs. R301 and R302) It is owned by Leon Bellissimo. (Exh. R303, Appendix B) Protestant is a "franchisee" within the meaning of Sections 331.1 and 3060(a)(1).

16. Protestant is represented by Michael M. Sieving, Esq. of Callahan Thompson Sherman & Caudill, LLP, 1545 River Park Drive, Suite 405, Sacramento, California.[5]

17. Respondent is a "franchisor" within the meaning of Sections 331.2 and 3060(a)(1).

18. Respondent is represented by Maurice Sanchez, Esq. and Kevin M. Colton, Esq. of Baker & Hostetler LLP, 600 Anton Boulevard, Suite 900, Costa Mesa, California.

ISSUES PRESENTED

19. The issues presented were imposed by the Remand Order as follows:

a. The reasonable amount of flooring required for Protestant to perform its contractual obligations;

b. A reasonable timeframe to secure such flooring;

c. What will be needed for Protestant to meet its contractual obligations to stock a complete line of Kawasaki products;

d. The extent of Protestant's future sales penetration into its Statistical Evaluation Area; and,

e. Recommendations that would be appropriately within Section 3067.

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[5] Leon Bellissimo, in pro per, represented BKI until August 5, 2012; Mr. Sieving was substituted as counsel on August 6, 2012.

RESPONDENT'S CONTENTIONS

20. Respondent contends that BKI "has failed to meet its material contractual responsibilities to maintain adequate financing to run its business, to stock and sell Kawasaki Products, and to positively promote Kawasaki products and Kawasaki's reputation in the market place." According to Respondent, BKI during the Remand Hearing admitted that its lack of financing and inventory are not the cause of any loss of sales. KMC contends that the premise on which the Remand Hearing was ordered has been shown to be false and KMC has good cause to terminate BKI's franchise agreements. It urges the Board to adopt ALJ Prod's Proposed Decision dated May 23. (Respondent's Post-Hearing Brief on Remand Redacted, p. 21, lines 8-14)

21. If the Board issues a conditional decision, KMC argues that those conditions "must reflect the contractual obligations that already exist between the parties as set forth in testimony given at [the] hearing: $885,219 in flooring, two weeks to obtain it, 116 motorcycles and 2 ATVs in inventory and sales of 232 motorcycles and 5 ATVs annually. Any other requirements are beyond the scope of the Board's power to grant and are unfair to the other Kawasaki dealers whose requirements are uniformly calculated and applied." (Respondent's Post-Hearing Brief on Remand Redacted, p. 21, lines 15-21)

PROTESTANT'S CONTENTIONS

22. Protestant contends that a reasonable amount of flooring would be between $80,000-$100,000, to keep its "showroom full of current inventory." (Protestant's Post-Remand Brief, p. 12, lines 9-12) It would take Protestant 60 days from the effective date of the Board's decision to secure this flooring. (Protestant's Post-Remand Brief, p. 12, lines 16-20) Protestant contends that Paragraph 5 of the franchise (quoted below in paragraph 85), requires that BKI "use its best efforts and due diligence to energetically and aggressively develop and promote the sale of [Kawasaki] Products". Furthermore, "[a]ny future sales requirements imposed upon BKI under the terms of the franchise must keep this limitation in mind – specifically that there are no requirement [sic] for specific unit or market-share sales under the agreement (nor should there be), but simply that the dealer used its best efforts. BKI has done so, and will continue to do so. The only impediment to successful sales operations at BKI is the lack of available flooring, which will be resolved once a reasonable level of flooring is established based upon the existing circumstances that exist with respect to this dealer." (Protestant's Post-Remand Brief, p. 13,

lines 6-16)

SUMMARY OF WITNESS' TESTIMONY AT REMAND HEARING[6]

23. Protestant called Leon Bellissimo, dealer principal of BKI.

24. Protestant called Bruce Gill, KMC Regional Sales Director for the western region as an adverse witness pursuant to Evidence Code Section 776.

25. Respondent called Leon Bellissimo as an adverse witness pursuant to Evidence Code Section 776.

26. Respondent called Bruce Gill and Martin Keller, Senior Regional Credit Supervisor for Kawasaki Motors Finance Corporation[7] ("KMFC").

LEON BELLISSIMO[8]

27. Mr. Bellissimo has been a Kawasaki dealer and owner of Protestant since 1978. He purchased the dealership in that year for about $100,000. Prior to that, Mr. Bellissimo and his brother operated a motorcycle repair shop in the Hollywood area. He had also worked for his brother's successful Kawasaki dealership in Hollywood. He testified he is proud to be a Kawasaki dealer and has floored with KMFC since 1978. (RRT 322:13-23)

28. In the early years as a Kawasaki franchisee, Mr. Bellissimo enjoyed success and had good relations with Respondent. Mr. Bellissimo stated he was one of the largest police motorcycle dealers in the country, with police department customers from Bakersfield to San Diego. He also promoted Respondent and its products to the movie industry and became, in his words, a dealer to the stars. Mr. Bellissimo did business with governmental agencies and movie studios.

29. In the early years, Mr. Bellissimo also had good relationships with employees of Respondent. They would all go to lunch, have drinks, and they would have dinners together. Protestant would be given an extra allocation of bikes and Respondent would do other favors such as providing Protestant with additional jet skis for its inventory.

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[6] The section is a summary only.

[7] The Board's jurisdiction under Section 3050(c) extends over any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. Therefore, a finance company such as KMFC is not within the Board's jurisdiction or a party to these protests.

[8] Selected provisions of the Proposed Decision dated May 23, 2013, are incorporated herein by reference.

30. According to Mr. Bellissimo, there were good people at KMC in those days. When BKI would get out of trust, behind in payments due Respondent, or fail to send in required financial statements on time, he was told to ignore warning letters about those things and just take care of them later when he could. Respondent would accept purchase orders from government agencies and ship units based thereon in lieu of normal flooring and credit arrangements.

31. In later years, particularly in the last few years, things changed. According to Mr. Bellissimo, Respondent would not accept purchase orders as a basis for shipment and would insist on normal flooring and credit arrangements or payment in cash for inventory purchases.

32. In June of 2011, Protestant's credit line was suspended by KMFC for failure to provide financial statements. Mr. Bellissimo was informed by KMFC that he needed to obtain an irrevocable line of credit (ILOC) for $212,000 to establish a credit line of $848,000.[9] Mr. Bellissimo testified that he never signed an agreement with KMFC to impose an ILOC. (RRT 326:21-25) Since that time he has been unable to secure flooring through KMFC due to the inability to provide an ILOC. He has been told on several occasions by KMC that he can purchase product from Respondent only on a COD (cash) basis.[10] According to Mr. Bellissimo during the Merits Hearing, these requirements have caused BKI to lose sales for which it had been awarded bids.

33. Mr. Bellissimo has been unable to obtain and provide the ILOC required by KMFC. The following are his attempts to obtain the ILOC to satisfy KMFC and obtain flooring through them. It is KMFC that is insisting on the ILOC. He stated that Bank of America (four branches) and Wells Fargo have terrible customer relations and did not know what an ILOC was. He also testified that now and in the last few years, as opposed to earlier times when there were "good people at Kawasaki", the people there and at KMFC cannot do their jobs properly and they work against their dealers. Mr. Bellissimo contends that the KMC district manager was never able to explain the reports periodically provided by Respondent. Mr. Bellissimo asserted that the reason for Protestant's poor sales performance (which was

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[9] This at some point was designated $765,000 (see Exh. R305). Collateral required would be lowered to 25% of that figure if agreed between BKI and KMC.

[10] It should be noted that BKI can obtain a flooring line from any lender as long as such lender meets with approval of KMC. BKI is not required to use KMFC for flooring. Whether other lenders would also require an ILOC as additional collateral is unknown.

not denied) is Respondent's refusal to provide inventory. (Testimony in Paragraphs 27-33 of this decision are, in part, incorporated from ALJ Prod's decision at pp. 6-7)

34. Mr. Bellissimo testified that he did not know or understand the meaning of the Statistical Evaluation Area (SEA) for his Kawasaki dealership. He stated that he asked his KMC District Manager, Steve Fischer, what it meant but Mr. Fischer never explained it correctly. (RRT 32:15-22; 33:4-25; 34:1-2; 34:18-25; and 35:1-6)

35. In 2009, Mr. Bellissimo had a warehouse to store his inventory but BKI "got buried" in aged inventory. (RRT 342:8-18) He was told by KMC to keep ordering and it affected BKI's business considerably. (RRT 342:19-343:1) When the market declined, BKI was flooring an aged inventory in excess of its needs. According to Mr. Bellissimo, BKI no longer has a warehouse and BKI presently is not overstocked. (RRT 345:1-5) He stated that he can only store 8 to 12 motorcycles and one or two ATVs at the sales facility. He testified that he does not need to have offsite storage because KMC has storage and he can pick up bikes within one hour on the same day. (RRT 51:13-15)

36. Mr. Bellissimo testified that he was applying for credit for flooring with AFC and it would finance BKI for $50,000 or $100,000. He filed a completed application with AFC with his brother as a guarantor but is unsure about how many new or used motorcycles or scooters he sold for purposes of the application. Mr. Bellissimo listed his home as additional collateral. (RRT 62-66) He did not fix an amount for flooring on the application and he has no idea about any limits on the amounts AFC would lend him. (RRT 70:3-24)

37. Mr. Bellissimo testified that BKI can get cash orders for motorcycles delivered the same day 90% of the time and that it does not need a warehouse. (RRT 346:8-11; 348:3-8) Mr. Bellissimo indicated that he used to order once a year but now he can order every month or every other month. The vehicles are readily available. (RRT 51:16-19)

38. Presently BKI's inventory is purchased through dealer trades and direct cash purchases from KMC. Mr. Bellissimo indicated that BKI has not lost any sales due to a product not being on the showroom floor. (RRT 348:9-349:3)

39. As to flooring, Mr. Bellissimo testified that BKI now needs less flooring because it does not need to stock as many units. (RRT 356:1-24) According to Mr. Bellissimo, a reasonable amount of

flooring would be $125,000 because BKI now orders every other month and motorcycles are available from KMC, so BKI does not need a six month supply. Mr. Bellissimo is willing to continue to pay cash for bikes or establish an ILOC for his flooring needs. Mr. Bellissimo prefers to use KMFC as they have the best flooring available. (RRT 360:5-6)

40. According to Mr. Bellissimo, AFC is willing to issue BKI a flooring line but no amount has been set as AFC is waiting for the Board to determine what a reasonable amount is. (RRT 360:7-361:1; Exh. RP2)

41. Mr. Bellissimo wants BKI to remain a Kawasaki dealer and loves being a Kawasaki dealer - he has done it all of his life and it is his livelihood. (RRT 362:4-10)

EXAMINATION OF LEON BELLISSIMO BY RESPONDENT UNDER EVIDENCE CODE SECTION 776

42. Solely for purposes of impeaching earlier statements by Mr. Bellissimo, and not for any other purpose including support of a finding for good cause to terminate BKI's franchise, in response to his earlier statement about being a loyal and devoted Kawasaki dealer, Mr. Bellissimo admitted to posting a statement on the internet stating, "Please do not buy Kawasaki products"; he also made several disparaging remarks about KMC business practices and corporate individuals.

BRUCE GILL

43. Since 2004, Mr. Gill has been the Regional Sales Director for KMC's Western Region. His duties include supervising seven district managers assigned to the 13 states which comprise the Western Region.

44. In addition to visiting dealerships, district managers provide dealers with (among other things) explanations of call reports, sales performance reports, and other data. These reports and data are distributed through a network entitled K Dealer. Protestant has received and reviewed the reports with KMC employees. District managers explain and discuss them with dealer principals or other responsible individuals at dealerships.

45. Mr. Gill testified that there is no measure by which Protestant could be said to be performing adequately in terms of sales. Mr. Gill believes that the public would benefit by the termination of Protestant's franchises. He sees no way to turn around BKI's attitude and treatment of

customers.

46. Protestant's line of credit for flooring was suspended by KMFC as of June 2011, and remained suspended as of the date of the commencement of the Merits Hearing in February 2013. Protestant can purchase products from Respondent only on a COD basis.

47. Protestant was informed on September 26, 2011, that it needed to obtain a line of credit for flooring by November 30, 2011, sufficient to purchase an adequate inventory of Kawasaki products. An adequate inventory consists not only of raw numbers of vehicles but a reasonable representation of product types and models. For example, 100 vehicles of the same make and model would not satisfy the requirement. Protestant has not obtained a satisfactory line of credit. Mr. Bellissimo has on one or more occasions asked to have vehicles delivered to BKI based on purchase orders from the State of California and/or other government agencies. He has also asked to have his credit line opened up based on the offer of his home as collateral. Both of these requests were denied by KMFC.

48. Mr. Gill testified that the only way for Protestant, or for that matter any dealer, to purchase product is through an approved line of credit (flooring) or payment in cash. Neither Respondent nor KMFC will accept other forms of collateral.

49. As indicated previously, Respondent KMC and KMFC[11] are two separate entities. Although they communicate and cooperate, one company does not control the actions of the other. KMC decides whether or not a dealer's credit or flooring line is adequate, and KMFC decides whether the flooring line will be issued or be suspended and whether collateral is required. KMC is free to accept cash as payment for shipment of product, and to decide for how long it will do so.

50. According to Mr. Gill, Respondent does not seek to terminate a franchise immediately upon suspension or loss of credit. A period of time is given for a dealership on a COD basis to obtain credit or negotiate a buy-sell of the dealership. In this instance, the notices of termination were issued nearly six months after the flooring was suspended. (Testimony of Mr. Gill in Paragraphs 43-50 of this decision was incorporated from ALJ Prod's decision at pp. 8-10)

51. Mr. Gill stated the district in which BKI is located is one of the largest in the country.

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[11] See footnote 8; in the Proposed Decision, the reader is referred to footnote 7.

(RRT 91:2-6) BKI is one of the "smallest dealers" in terms of prior sales performance. (RRT 92:4-6) BKI's goal during a sales incentive contest was 25 vehicles and it sold 20 units. With bonus points, BKI exceeded the goal of 25 points. BKI came in 27th out of approximately 100 dealers. (RRT 93:2-4) During the period April 1 through August 31, BKI sold 20 units. (RRT 92:11-93:19)

52. Mr. Gill testified that the expected sales for BKI in 2008, in the SEA, was 384 units but actual sales were 159, or 41.4% of expected sales. (RRT 99:7-25; Exh. R319) In 2009, BKI's sales performance was 25.3% of expected sales in the SEA. BKI's sales performance was poor as it should have been selling 75% more. (RRT 101:9-25) BKI's sales in 2010 were 32.66% and in 2011 they were 22.4%. (RRT 102:1-7; Exh. R321 and R322) BKI's sales performance dropped from 24.7% to 24.1% and then to 18.3% of expected for the period 2010 through 2012. (RRT 109:8-14; Exh. RR1, p. 6)

53. Mr. Gill testified that through June 2013, the minimum expected sales for BKI were 231vehicles and it performed at a rate of 17.3% of expected sales. (RRT 113:13-114:2; Exh. RR3)

54. Mr. Gill opined that industry sales are expected to increase so expected sales of 231or 232 vehicles are reasonable. (RRT 114:10-115:10) In terms of inventory, BKI should have on hand a six month supply or 116 vehicles (RRT 125:2-8) with fluctuations in inventory occurring due to seasonal purchasing variations. (RRT 116-120)

55. Mr. Gill testified that due to limitations on space and the need to carry more inventory than available space allows, 85% of metro dealers use either a storage facility or delivery service to store their inventory. (RRT 126:13-23; Exh. RR7) With a low monthly rent factor for BKI it should be able to afford renting a storage facility for its inventory as it has done in the past. (RRT 128-129)

56. Mr. Gill testified that on June 10, 2011, BKI's minimum flooring requirement was $760,500. (RRT 131:24-135:23; Exh. RR7) BKI due to expected sales in the SEA has one of the higher minimum flooring requirements. (RRT 134:14-21) On September 9, 2013, BKI's flooring requirement was determined to be $885,219 (the average cost per vehicle was $7,200 and the expected sales was 232 vehicles). The minimum flooring required for ATV's is $50,000. (RRT 1410:6-141:24; Exh. RR8)

57. Mr. Gill testified that flooring is determined by taking 50% of expected sales times the dollar amount of the average vehicle. Minimums in place for motorcycles were $100,000 and all other segments were $50,000. (RRT 134:22-135:22; Exh. RR7) This is done for every dealer in the nation.

(RRT 135:18-19)

58. Mr. Gill testified concerning Paragraph 14 of the Kawasaki Authorized Sales and Service Agreement ("Dealer Agreement"), that a dealer must maintain and employ a line of credit with a financing institution satisfactory to KMC and the credit line shall be of amounts not less than the minimum standards established by KMC. (RRT 136-138; Exh. R303)

59. Mr. Gill testified that depending on the line of products a Kawasaki dealer sells within its SEA, its line of credit will be set accordingly. A dealer selling jet skis in Wyoming will have a lower line of credit than a dealer selling jet skis in Florida. Dealers selling motorcycles would have a higher line of credit. (RRT 139:7-23; Exh. RR7)

60. Mr. Gill testified that of the 10 California dealers in the Western Region falling short of their flooring requirements, eight of them were below expected sales requirements and that failure to have at least the minimum required flooring has an effect on dealer sales. (RRT 143:5-22; Exh. RR8)

61. Mr. Gill testified that for any dealer whose flooring had been reduced to $10, its credit has been suspended by KMFC until they meet KMFC's criteria in order to reestablish a line of credit. KMC has no role in this process. (RRT 148-149)

62. Mr. Gill testified that dealers with no line of credit can purchase vehicles on the basis of cash in advance which is the way that BKI has continued to operate when its flooring credit was reduced to $10. (RRT 155:11-25) He disagreed with Mr. Bellissimo's testimony that BKI could order a vehicle from KMC through Kpay and get it delivered within a matter of hours; it could take three days. Purchasing a vehicle from another dealer could occur immediately. (RRT 164:1-17)

63. Mr. Gill testified that paying cash for motorcycles and ATVs was an available means for dealer purchases. (RRT 169:15-170:1; Exh. RP1)

64. According to Mr. Gill, in a comparison of the minimum required flooring between June 10, 2011, and September 9, 2013, BKI has the 7th highest requirement for minimum flooring of all Kawasaki dealers in California. (RRT 170:16-172:9; Exh. RR9) There are 25 California dealers with a minimum flooring requirement of less than $150,000. (Exh. RR9)

65. Mr. Gill testified that the requirement KMC has imposed on BKI for flooring is largely based on the location of that dealership in Los Angeles County. (RRT 177:20-178:4) Sales expectations

are based on current location, the proximity of surrounding dealers, and the average cost of motorcycles and the industry within the SEA. (RRT 178:7-9) The size of a dealership or the length of time the dealership has been in business are not factors. (RRT 179:15-18) BKI has been in business for 35 years and KMC has not demanded any increases in the size of the dealership or requested it relocate. (RRT 180:14-24)

66. Mr. Gill testified that he could not recall the size of BKI's showroom but did not disagree with Mr. Bellissimo's testimony that it would only hold 10 to 12 vehicles. (RRT 181:7-11) BKI's expected annual sales are 232 vehicles so according to Mr. Gill it should have a peak six month inventory of 116 motorcycles and two ATVs. (RRT 182:23-183:2) He also testified that not every dealer stocks a full line of Kawasaki products; some stock street bikes and others stock dirt bikes and the assumption is that the dealer will stock products necessary to meet the needs of its market. If the market is primarily street or off-road sales, expectations would be for the dealer to concentrate its inventory and sales in those areas. Every dealer does not have to have every model in stock at all times. (RRT 185:1-25; 186-187) Street motorcycles are the type primarily sold in BKI's SEA. (RRT 188:22-25; Exh. RR1) On average they are more expensive than off-road motorcycles. (RRT 189:1-3) But KMC takes an average of all on-road and off-road motorcycle costs to establish a minimum flooring line. (RRT 189:5-15)

67. Mr. Gill testified that all dealers are required to have a line of flooring regardless of the "bulletin" saying that a dealer can purchase vehicles on a cash basis. Being able to pay cash gives dealers who exceed their flooring limit further opportunity to purchase additional vehicles. (RRT 192:3-23)

MARTIN KELLER[12]

68. Mr. Keller is the Senior Regional Credit Supervisor for KMFC in the active section and has been with KMFC for approximately five years.[13] (RRT 210:9-16; 212:4-10) Mr. Keller indicated that additional collateral in the form of an ILOC was necessary for KMFC to establish BKI's flooring. The ILOC would be in the amount equal to 25% of the flooring credit required by KMC. (RRT 217:3-10; 220:7-13; Exh. RP3) In terms of BKI's financial performance, Mr. Keller testified that he would have

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[12] Mr. Keller does not work in the collection section at KMFC and his testimony is not as pertinent as Cheryl Mottel's.

[13] According to Cheryl Mottel, senior supervisor in the collection section, KMFC has two sections that deal with floor plans. One is the active section for dealers that are trouble-free and the other is the collection section for dealers that are not trouble-free. (ALJ Prod's Proposed Decision, paragraph 52)

rated it at a "D", the lowest rating, and if BKI was a new dealer, he would not have approved BKI for financing at all. However, because BKI is a longstanding dealer, it received the benefit of doubt. (RRT 224:5-21)

69. Mr. Keller indicated that KMC sets the minimum flooring amounts for its dealerships. (RRT 234:8-20) He has never seen a situation where a dealer has applied for a flooring amount less than the amount set by KMC. (RRT 235:14-23)

70. Mr. Keller testified that KMFC has not provided flooring credit to BKI for over 2 years. (RRT 237:21-23)

71. Mr. Keller indicated that he did not review BKI's file to see if it had been in monetary default or had not paid KMFC during its 35 year history. (RRT 242:4-12)

72. Mr. Keller testified there are no distinctions by region or otherwise made by KMFC as to whether or not to grant flooring or require an ILOC. (RRT 269:22-25; 260:1-3) BKI's credit limit in August 2006 was $1.25 million and adjusted up or flexed to $1.563 million; this would apply to an "A" or "B" rating dealer. (Exh. R305 and R315) According to Mr. Keller, BKI had a "B" rating at that time and Mr. Keller opined that based on $1.5 million credit line, BKI was not a small dealer. (RRT 270:17-20; 273:5-24) He stated that BKI was a larger dealer and that aged inventory did not impact its "B" Rating. (RRT 274:1-4)

73. Mr. Keller testified that an individual that has no substantial net worth outside of a home or some other personal effects would need something more liquid like an ILOC. (RRT 289:18-290:2; Exh. RP3) He testified that requiring an ILOC could occur when, after an audit, it was found that items were missing that had not been paid for, i.e., the dealer was out of trust. (RRT 2901:8-292:3; Exh. RP3)

74. Mr. Keller testified that he does not report to anyone at KMC and they do not tell him what to do with respect to financial requirements or ILOCs. KMC comes up with the flooring requirement that is based on a formula of expected sales of product lines and the average prices of vehicles in that line. (RRT 314:8-24)

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CHERYL MOTTEL[14]

75. Cheryl Mottel, Respondent's rebuttal witness at the Merits Hearing, has been employed by KMFC for about 17 years, the last 3-4 years as a senior supervisor in the collection section. KMFC has two sections that deal with floor plans. One is the active section for dealers that are trouble-free and the other is the collection section for dealers that are not trouble-free. When a dealership is switched from the trouble-free active section to the collection section, Ms. Mottel's first step is to explain why the dealership was switched and what steps are needed to facilitate a return to the active section. The goal of the collection section is to have the dealer returned to the active section (become trouble-free).

76. BKI was first switched to the collection section because required financial statements had not been submitted (they were finally forthcoming at the close of 2012). BKI's flooring line of credit was suspended on June 27, 2011. Being switched to the collection section is standard practice when required financial statements are not on file.

77. All dealerships on collection status are comprehensively reviewed on an annual basis. The annual review is not limited to the original reason for assignment to the collection section such as failure to timely file financial statements. It is a comprehensive examination of all aspects of the dealership's operation.

78. The first annual review of BKI subsequent to the June 27, 2011 suspension was performed in late November or early December of 2011. Included in BKI's review were its level of performance, timeliness of payments, number of units not paid for or paid late, and the history of dealings with KMC. The goal of the review was the assessment of risk to Respondent and KMFC flowing from the overall condition of the dealership. BKI was found to be a very poor sales performer. Mr. Bellissimo was not present during floor checks and the location of many vehicles could not be ascertained without his help.

79. The decision to suspend BKI's flooring credit was made by Ms. Mottel after review of an analysis and recommendation from a staff person. The report and Ms. Mottel's decision were reviewed by the collections manager and then the general manager of KMFC, both of whom concurred.

80. KMC set the amount of flooring needed at $828,000. KMFC determined that for it to

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[14] Paragraphs 52-59 of the Proposed Decision are incorporated by reference.

extend that amount of credit for a flooring line that collateral of 25%, or $212,000, was required in the form of an irrevocable letter of credit (ILOC) from another bank or lending entity. The requirement of 25% as collateral is fairly standard. Ms. Mottel knows of multiple instances where the collateral requirement is higher than 25% of the flooring line. BKI has been unable to obtain the $212,000 ILOC so as of the Merits Hearing its flooring is suspended and it remains on a COD basis with KMC. Mr. Bellissimo's request to open a line of credit for $20,000 was denied as KMFC does not grant a line of credit at that low of a figure.

81. Ms. Mottel does not find credible Mr. Bellissimo's assertion that neither Bank of America or Wells Fargo Bank knew what an ILOC was. She knows of several dealerships that have ILOCs with Bank of America. ILOCs are common.

82. KMFC does not accept purchase orders from governmental agencies as collateral. It also does not accept a mortgage on a home as collateral. KMFC is not a mortgage lender. Ms. Mottel knows of no instance where BKI or any other dealer on a COD basis is refused inventory if the dealership can pay cash.

RULING ON INTRODUCTION OF EXHIBIT RP3

83. Exhibit RP3 (BKI Credit Line Review dated November 11, 23, 2011), was admitted not as a Business Record as an exception to the Hearsay Rule because there was no foundation for its entry nor were the authors present to testify about how the document was prepared, or that it was an accurate statement as to the contents of the source documents and whether or not it was prepared in the regular course of business. Its use and content as a hearsay statement will be given its appropriate weight in the absence of corroborating evidence.

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FINDINGS OF FACT[15]

Stipulated Facts

84. Protestant and Respondent stipulated that the following facts are undisputed:

1. Protestant [BKI] is a new motor dealer selling Kawasaki motorcycles, all-terrain vehicles and related Products.

2. Respondent [KMC] is the distributor of Kawasaki Products in the United States.

3. [BKI] (through its owner, Leon Bellissimo) has been a Kawasaki dealer in Burbank for approximately 33 years. The dealership is and has, since its inception, been located at 1329 North Hollywood Way, Burbank, California, 91505.

4. [BKI] is a Kawasaki dealer pursuant to a [Dealer Agreement] with [KMC]. The basic terms of the Dealer Agreement have not changed during [BKI]'s tenure as a Kawasaki dealer.

5. On or about June, 2011, [BKI]'s flooring line of credit for new motor vehicle purchases was suspended by [KMFC]. KMFC accomplished this suspension by reducing the amount of available flooring credit from $750,000 to $10.

6. [BKI]'s existing inventory of Kawasaki vehicles was not repossessed by KMFC when the flooring line was suspended. [BKI] has remained in business by selling off its existing Kawasaki inventory, and by purchases from other Kawasaki dealers and cash purchases from [KMC].

7. On or about September 26, 2011, [KMC] sent [BKI] a letter via Certified Mail, Return Receipt Requested, stating that [BKI]had "failed to maintain a wholesale line of credit (flooring)...in breach of paragraph 14 of the Dealer Agreement," and that [BKI] needed to correct this deficiency by obtaining flooring in the amount of $765,500 as soon as possible, but in no event later than November 30, 2011. [BKI] has not had flooring since then.

8. On or about January 24, 2012, [KMC] sent, and Protestant received, two Notices of Termination (one for motorcycle and one for ATV) in compliance with Vehicle Code 3060. In those Notices, [KMC] identified 4 independent reasons for the termination of Protestant's Dealer Agreement: (1) Failure to maintain adequate model inventory, (2) Failure to meet sales requirements, (3) Failure to provide equal representation of Kawasaki products, and (4) Failure to maintain floor plan financing adequate to fulfill its obligations under the Dealer Agreement.

9. [BKI] filed a timely protest.

10. [BKI] leases the facility from which it conducts Kawasaki operations. [BKI]'s rent payment for the facility is approximately three to four thousand dollars per month.

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[15] References to testimony, exhibits or other parts of the record are intended to be examples of evidence relied upon to reach a finding, and not to be exhaustvie. Findings of Fact are organized under topical headings for readability only, and not to indicate an exclusive relationship to an issue denoted by the topic heading. The Board may apply a particular finding to any "existing circumstance" or "good cause" factor under Section 3061.

Citations to the record are for convenience of the Board. The absence of a citation generally signifies that the underlying facts are foundational or uncontested, or that the finding is an ultimate fact finding of the Board based upon other facts in the record and reasonable inferences therefrom.

11. The [Board's] jurisdiction in this matter extends to motorcycle and all-terrain vehicle units only, and not to any other Kawasaki products.

12. [BKI] is contractually permitted to obtain floor plan financing with any financial institution acceptable to [KMC]; it has no obligation to secure financing with [KMFC].

(Stipulated Facts – Remand Hearing, dated September 10, 2013)

KAWASAKI AUTHORIZED SALES AND SERVICE AGREEMENT

85. The relevant terms of the BKI/KMC Dealer Agreement are contained in paragraphs 5, 14A, 15, and 18. They are set forth here as follows:

5. SALES PERFORMANCE

DEALER agrees, at its own cost and expense, to use its best efforts and due diligence to energetically and aggressively develop and promote the sale of Products, including each model and type thereof. DEALER and DISTRIBUTOR agree that DISTRIBUTOR shall evaluate DEALER'S development and promotion of the sale of Products, both as a whole and separately for each model and type based on such reasonable criteria as DISTRIBUTOR may determine from time to time, which may include but not be limited to: (a) fair and reasonable sales objectives which may be established from time to time by DISTRIBUTOR for DEALER after review with DEALER; (b) the ratio of sales of Products by DEALER to sales of other makes of similar products as compared with (i) such ratio on a local, state, and/or nationwide bases, (ii) the average ratio for all Kawasaki dealers appointed by DISTRIBUTOR, and (iii) such ratios for at least two other comparable Kawasaki dealers; (c) the development of DEALER'S sales and performance over a reasonable period of time; and (d) particular conditions in DEALER'S area of primary responsibility, if any, affecting such performance or potential sales performance.

14. FINANCIAL RESPONSIBILITY

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

15. MODEL INVENTORY

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

18. REPORTS AND FINANCIAL INFORMATION

DEALER will provide DISTRIBUTOR, by the 30th day of the month following the end of DEALER'S calendar or fiscal business year, a complete and accurate financial and operating statement covering DEALER'S preceding calendar or fiscal year

> operations and showing the true and accurate conditions of DEALER'S business. DEALER further agrees to furnish to DISTRIBUTOR, at the time and on the forms prescribed by DISTRIBUTOR, such other complete, accurate and true statements of the financial condition and operating results of DEALER'S business as DISTRIBUTOR may request. DEALER will also furnish to DISTRUBUTOR, on such forms and at such times as DISTRIBUTOR reasonably may require complete and accurate reports of DEALER'S sales activity and stock of Products then being held by DEALER.

(Exh. R303)

FINDINGS RELATING TO A REASONABLE AMOUNT OF FLOORING REQUIRED FOR PROTESTANT TO PERFORM ITS CONTRACTUAL OBLIGATIONS

86. The Dealer Agreement requires KMC to apply reasonable criteria in determining a fair and reasonable sales objective. (Exh. R303)

87. BKI contends it only needs a line of credit in the amount of $50,000 to $100,000. (Exh. R305 and R307)

88. BKI's SEA is one of the largest and most important markets for KMC. KMC set BKI's flooring requirement at $885,219 on September 9, 2013, using a standard formula of expected sales (232 vehicles) times the average wholesale price per motorcycle ($7,200) times 50% ($835,200). To this subtotal an additional $50,000 is added as the minimum flooring required for ATVs for a total flooring requirement of $885,219.

89. All Kawasaki dealer financing requirements are established under this same formula. This formula is reasonable as 80 of the 94 Kawasaki dealers in California choose to obtain financing in excess of the minimum amount required by KMC. This holds true even though inventories fluctuate seasonally and not all dealers carry a full line of Kawasaki products. (Exh. RR1, RR2, and RR3)

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90. The table below illustrates the current minimum flooring requirements for the following Kawasaki dealers that sell vehicles in BKI's SEA including BKI:

City	2013 Minimum Required Flooring	2013 Actual Flooring
Covina	$852,774	$2,000,000
Hollywood	$741,617	$1,200,00
Redondo Beach	$724,159	$1,100,000
San Gabriel	$668,412	$1,000,000
Long Beach	$664,812	$1,000,000
Thousand Oaks	$585,908	$800,000
Santa Clarita	$389,682	$600,000
Simi Valley	$520,808	$400,000
Marina del Rey	$510,810	(suspended flooring)
Burbank	$885,219	(suspended flooring)

(Exh. RR2 and RR9)

91. The minimum flooring amount suggested by BKI of $50,000-$100,000 is unreasonable in light of the flooring minimums highlighted above. Accordingly, based on BKI's SEA, the flooring requirements for other Kawasaki dealers selling within BKI's SEA, and the terms and conditions of the Dealer Agreement, a reasonable amount of flooring for BKI is $885,219. Even if one were to take the average of all the other dealers, the sum would be $628,775, an amount of flooring that BKI does not have and has not had since its flooring was suspended in June 2011.[16]

FINDINGS RELATING TO A RESONABLE TIMEFRAME FOR BKI TO SECURE FLOORING

92. Protestant has been without flooring since June 2011 to date. A period of more than 2 years has already elapsed during which Protestant claims it was attempting to obtain flooring. Given Protestant's experience as a dealer, its knowledge of the importance of flooring to the ability to function in the area in which it is located, and especially when confronted with a notice of termination, and having gone through the Merits Hearing and the Remand Hearing, granting any additional period of time to accomplish what has not been done in over 2 years would likely be fruitless. However, given the seriousness of the impending termination, it is determined that Protestant should have an additional 45 days from the effective date of this decision to secure flooring with a financial institution acceptable to

[16] If KMC decided that a lesser sum of flooring would be adequate, and if KMFC were the lender, the amount of the ILOC required by KMFC would then be 25% of this lesser sum.

KMC.

FINDINGS RELATED TO WHAT WILL BE NEEDED FOR PROTESTANT TO MEET ITS CONTRACTUAL OBLIGATIONS TO STOCK A COMPLETE LINE OF KAWASAKI PRODUCTS AND TO OTHERWISE COMPLY WITH THE OBLIGATIONS OF THE FRANCHISE

93. For the Protestant to meet its contractual obligations to stock a complete line of Kawasaki products, it needs the minimum required flooring set by KMC. The formula established by KMC is reasonable (expected sales times the average wholesale price per motorcycle times 50% plus an additional $50,000).

94. Under the Dealer Agreement, BKI has agreed to use "its best efforts and due diligence to energetically and aggressively develop and promote sale of Products, including each model and type thereof." BKI also, under the terms of the Dealer Agreement, "shall at all times maintain and employ, in connection with its business and operations under this Agreement, such working capital and net worth together with a line of credit with a financing institution satisfactory to DISTRIBUTOR which will permit DEALER to properly and fully carry out and perform "DEALER'S duties and obligations under this AGREEMENT, including an inventory of Products commensurate with annually set objectives established by DISTRIBUTOR and DEALER." Furthermore, BKI agreed to maintain an inventory of then available models and at no time stock less than the number of products reasonably established by KMC in consultation with BKI. And finally, BKI has agreed to provide complete, accurate and timely financial, sales, activity and stock of product reports to Kawasaki

95. Mr. Bellissimo has made disparaging remarks on the internet towards KMC and its employees; BKI has failed for over a two year period to have a line of credit with a financial institution satisfactory to KMC; Mr. Bellissimo has failed to use due diligence to be available when Mr. Fischer was visiting his dealership to discuss stocking and other matters; BKI has failed to maintain a reasonable inventory of available Kawasaki Products; and BKI has failed to timely provide financial statements to KMC. Each of these actions constitutes a failure of BKI to meet its contractual obligations under the terms of the Dealer Agreement and could lead to further action by KMC if these performance issues persist in the future.

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FINDINGS RELATING TO THE EXTENT OF PROTESTANT'S FUTURE SALES PENETRATION INTO THE STATISTICAL EVALUATION AREA

96. KMC asserts that during peak season, BKI should have a six month's supply of vehicles in inventory. In support of this contention, KMC argues that the production cycle for motorcycles and their availability due to demand dictates that a successful dealer order different types of motorcycles at different times of the year and that not every product is available from KMC every two months. (RRT 116:8-20; Exh. RR10; RT II, 126:17-22)

97. BKI argues that a six month supply is an excessive inventory. This contention is based on BKI's limited showroom space; the over broad SEA assigned to BKI by KMC; and ignores the easy and timely availability of products when needed.

98. Call reports are made regarding every visit to every dealer. These include handwritten notes prepared by Mr. Fischer at the time of the visit, and also a number of documents generated by KMC. Among these documents is a sales performance report covering the past 12-month period. This report is discussed with every dealership falling below 100% of expected sales.

99. The call report for the January 13, 2010, visit to Protestant contained a sales performance report reflecting sales of only 26.3% of what was expected. Mr. Bellissimo's explanation for the sub-par performance was that BKI was having trouble finding and keeping employees. Mr. Bellissimo seemed to understand the reports and what was in them. During this and other visits, Mr. Bellissimo never told Mr. Fischer that the reports were not sufficiently explained. Mr. Fischer believed his relationship over time with Mr. Bellissimo was cordial.

100. Mr. Fischer visited Protestant on February 5, 2013. At that time, BKI's inventory consisted of 8 bikes and 3 ATVs, 7 of which were aged. Even an inventory of 25 bikes and 10 ATVs would not be adequate to represent the full line of Kawasaki products or to meet expected demand. A more reasonable inventory would be 75 to 100 bikes and 10 ATVs, although these numbers are subject to variance due to seasonality and location. (ALJ Prod's Proposed Decision, pp. 7-8)

101. BKI does not maintain an inventory even remotely adequate to represent the Kawasaki line of products or to meet expected demand. On the day before commencement of the Merits Hearing, Protestant's inventory consisted of 11 vehicles; eight of which were motorcycles and three of which were

ATVs. (RT II, 118) Of these 11 vehicles, seven were aged, i.e., not current year models. (RT II, 81-82) An aged unit is one that had been invoiced to the dealership more than 12 months in the past. (R II, 82) In earlier times, BKI had stocked over 100 Kawasaki vehicles. (RT II, 117) For an inventory to be adequate, there must be on hand both a product mix representing the Kawasaki product line, and a sufficient number of vehicles in the mix represented on hand to meet reasonably expected demand. (RT II, 25-26; 109-110) Protestant would need at least 75 Kawasaki vehicles in inventory to meet these requirements. (ALJ Prod's Proposed Decision, p. 21)

102. Buying a motorcycle is at times an impulse purchase so adequate representative samples of Kawasaki's product line must be available to close deals quickly or sales are potentially lost. The record established that substantial efforts were made by KMC to review with Mr. Bellissimo reasonable sales objectives. Furthermore, ALJ Prod found that BKI would need at least 75 Kawasaki vehicles in inventory to meet expected product demand. KMC promotes that a six month supply be in inventory during peak times. Accordingly, BKI should carry an inventory of 75 motorcycles at peak times and a potentially lesser amount during non-peak times.

103. Because BKI's showroom has limited space and can only display 10 to 12 vehicles, BKI will have to make arrangements for storage of its inventory. Eighty-five percent of Kawasaki's metro dealerships have either storage facilities or a delivery service to store their inventory. This appears to be a reasonable alternative and places BKI in a better position to meet consumer demand during the peak season.

104. BKI should have 75 motorcycles in inventory during the peak sales season beginning in March and use its best efforts to promote and sell 150 motorcycles annually including any future fair and reasonable sales objectives established by KMC and reviewed with BKI.

DETERMINATION OF ISSUES

105. The reasonable amount of flooring required for Protestant to perform its contractual obligations is $885,219. If BKI seeks financing through KMFC, then it must meet their ILOC requirement.

106. The reasonable timeframe for Protestant to secure such flooring is 45 days after the effective date of the Board's decision.

107. The reasonable amount of inventory the Protestant should have stored or available through a delivery service during the peak buying season beginning each March is 75 motorcycles; and BKI should use its best efforts to promote and sell 150 motorcycles annually.

PROPOSED DECISION FOLLOWING REMAND AND ORDER

The protests of *Burbank Kawasaki, Inc. v. Kawasaki Motors Corp., U.S.A.*, Protest Nos. PR-2328-12 and PR-2333-12, are sustained subject to the following conditions, which, in accordance with Section 3067 are conditions "for the purpose of assuring performance of [the] binding contractual agreements between" BKI and KMC, as well as "otherwise serving the purposes of this article" by providing BKI one last opportunity to continue as a KMC franchisee and provide the public with the benefits of its experience in selling and servicing Kawasaki motorcycles in its area.

(A) Within 45 calendar days of the effective date of this order, BKI must obtain a line of credit from a financing institution satisfactory to KMC in an amount not less than the minimum standard established by KMC for dealers similarly situated. At the time of the Remand Hearing, this amount was $885,219. Paragraph 14.A. of the Dealer Agreement is applicable to this requirement. The failure of BKI to comply with this condition within the time stated shall result in termination of the franchise(s) without further recourse to or action by the Board.

(B) No later than six months after obtaining the line of credit required by (A) above, BKI must purchase from KMC, and at all times thereafter must maintain an inventory of then available models of Products, which inventory shall at no time be less than the number of Products reasonably established by KMC after consultation with BKI. At the time of the hearing, it was determined that, at peak times, this would be an inventory of 75 motorcycles, but the number potentially would be less during non-peak times. Paragraph 15 of the Dealer Agreement shall apply to this condition.

The number of products required to be purchased and maintained in satisfaction of this condition shall not exceed the number that can be financed within the minimum line of credit required by (A) above. Whether BKI stores the required inventory in a rented or owned storage area or uses a delivery service is left to the discretion of BKI.

The Board reserves the right to evaluate whether any failure of BKI to comply with this condition shall result in termination of the franchise(s).

(C) BKI must use its best efforts to sell the Products to meet the sales objectives established by KMC after review by BKI. At the time of the hearing, the reasonable sales objective was determined to be 150 Kawasaki motorcycles per year. Paragraph 5 of the Dealer Agreement shall apply to this condition.

The Board reserves the right to evaluate whether the failure of BKI to comply with this condition shall result in termination of the franchise(s).

I hereby submit the foregoing which constitutes my Proposed Decision Following Remand in the above-entitled matters, as the result of a hearing before me, and I recommend this Proposed Decision Following Remand be adopted as the decision of the New Motor Vehicle Board.

DATED: November 5, 2013

By: _____
LONNIE M. CARLSON
Administrative Law Judge

Jean Shiomoto, Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV