

1 LAW OFFICES OF MICHAEL J. FLANAGAN
2 MICHAEL J. FLANAGAN State Bar #93772
3 GAVIN M. HUGHES State Bar #242119
4 2277 Fair Oaks Boulevard, Suite 450
5 Sacramento, CA 95825
6 Telephone: (916) 646-9100
7 Facsimile: (916) 646-9138
8 E-mail: lawmjf@msn.com

9 ATTORNEYS FOR RESPONDENT

10 STATE OF CALIFORNIA

11 NEW MOTOR VEHICLE BOARD

12 In the Matter of the Protest of:

13 D&A AUTOMOTIVE , O.C. GENUINE
14 SCOOTERS OF SANTA ANA,

15 Protestant,

16 v.

17 GENUINE SCOOTERS,

18 Respondent.

19 **Protest No: PR-2355-12**

20 **MOTION TO DISMISS**

21 In the Matter of the Protest of:

22 D&A AUTOMOTIVE , O.C. GENUINE
23 SCOOTERS TUSTIN,

24 Protestant,

25 v.

26 GENUINE SCOOTERS,

27 Respondent.

28 **Protest No: PR-2356-12**

1 Respondent, Genuine Scooters, LLC. (“Genuine” or Respondnet”), submits the following
2 Motion to Dismiss Protest in the above captioned matter and respectfully moves for an order
3 dismissing the Protest initiating this proceeding.

4 **I. INTRODUCTION**

5 Protestant has been provided every opportunity to pursue this Protest and/or to secure
6 counsel to assist it in doing so. Protestant has all but abandoned this matter and at this point, the
7 needless waste of both the Board’s and Respondent’s valuable time and resources must come to an
8 end.

9 **II. BACKGROUND**

10 On or about December 14, 2012, Protestant filed the above captioned Protests¹ against
11 Respondent’s proposed establishment of a Genuine Scooter franchise in Costa Mesa, California.
12 Protestant is represented in *pro per* by its owner, Terry Tuchman. On or about April 2, 2013, the
13 Law Offices of Michael J. Flanagan (“LOMJF”) were retained to represent Genuine, with notice to
14 Mr. Tuchman.

15 On April 3, 2013, counsel for Genuine filed their Response to Protestant’s Requests For
16 Discovery (“Response”) as well as Genuine’s Mandatory Settlement Conference Statement
17 (“MSCS”). Protestant failed to file either of these documents on behalf of Protestant.

18 On April 4, 2013, LOMJF contacted Mr. Tuchman via telephone and informed him that
19 LOMJF would be representing Genuine, that our office had not received Protestant’s Response to
20 discovery or its MSCS. Mr. Tuchman was further advised of the date of the MSC and the fact that
21 LOMJF would not oppose Protestant’s untimely submission of documents. This information was
22 confirmed in an email. (Attached as Exhibit A.) Moreover, the email provided date, time and
23 location of the MSC, as well as parking spaces assigned by the Board.

24 On April 5, 2013, LOMJF had a follow up discussion with Mr. Tuchman where he once
25 again confirmed that he would be attending to MSC. Nevertheless, Protestant promptly contacted
26 the Board and made an *ex parte* request to continue the MSC. Later that afternoon, a conference
27 call was held with Board counsel, Dana Winterrowd, Esq., Mr. Tuchman and Mr. Hughes, Esq. of

28 _____
1 These Protests have since been consolidated.

1 LOMJF, concerning Mr. Tuchman's request to postpone the MSC. At the close of the conference
2 Mr. Tuchman indicated he would be attending the MSC as scheduled. *At no time* did Mr. Tuchman
3 indicate that he had any medical problem that might prevent his attendance at the MSC.

4 On April 8, 2013, Mr. Tuchman provided LOMJF and the Board a prescription pad note
5 from his doctor stating that Mr. Tuchman was "unable to travel due to medical condition." (See
6 Attached Exhibit B.) The dubious circumstances surrounding this note are cause for concern. The
7 note invites the recipient of this note to call with any questions. LOMJF has not yet spoken with Dr.
8 Steinberg, and does not anticipate Dr. Steinberg will be willing to speak with LOMJF without a
9 subpoena from the Board. However, counsel intends to request a subpoena so that it may obtain
10 information necessary in its pursuit of sanctions against Protestant.

11 Pursuant to the Board's Pre-Hearing Conference Order establishing the discovery schedule,
12 a hearing was held on Thursday, May 2, 2013, at 10:00 a.m. whereby the Board was to rule upon the
13 parties' objections to discovery requests. The Board and counsel waited until 10:25 a.m. before it
14 became apparent that Mr. Tuchman would not be appearing. Moreover, during the hearing, Board
15 counsel, Robin Parker, Esq., contacted Mr. Tuchman directly, whereby he reported that he would be
16 calling in shortly—he did not. On May 3, the Board issued its Order Vacating May 5, 2013. Pre-
17 Hearing Conference Order Due to Protestant's Failure to File Documents and Participate in Hearing
18 on Discovery Objections. (See Attached Exhibit C.)

19 During the May 2, 2013, hearing, as reflected in the Board's May 5th Order, LOMJF
20 informed the Board that it would be filing this Motion to Dismiss. In an effort to provide Protestant
21 reasonable time to secure counsel, Respondent waited *three weeks* to file this Motion to Dismiss.

22 On May 23, 2013, it was brought to LOMJF's attention that Protestant had engaged in a
23 series of *ex parte* communications with the Board dated May 6, May 7 and May 26, 2013. (See
24 Attached Exhibit D.) In these mostly incoherent ramblings Mr. Tuchman appears to claim he is in
25 fact represented by counsel in these Protest—which has been shown to be demonstrably false. (See
26 Attachment E.) In other places, Mr. Tuchman makes several other misrepresentations concerning
27 his contacts with the Board, which the Board staff is in the superior position to address and will
28 therefore not be addressed in this Motion to Dismiss. Finally, Mr. Tuchman represents that a

1 conflict of interest exists in LOMJ's representation of Respondent in this matter.

2 Despite Mr. Tuchman's representations, the reality is that Mr. Tuchman contacted LOMJF
3 on June 20, 2012, and engaged in a phone conversation with Mr. Flanagan that would have lasted
4 between 1-6 minutes as reflected in the billing entry of .1 of an hour. (See Attached Exhibit F.) The
5 billing entry shows "Telephone conference with Terry Tucker re dispute with distribution." There
6 is no indication of what the specific issue concerned or which distributor was implicated. A file
7 was never opened and no documentation was ever received. Had there been any indication that Mr.
8 Tuchman was calling in regard to a conflict with Genuine, LOMJF would have immediately notified
9 Mr. Tuchman that Genuine is an existing client and there would have been no further discussions
10 with Mr. Tuchman. Mr. Tuchman's claim of conflict is utter nonsense.

11 In addition, based upon the fact that the LOMJF website plainly shows Genuine to be a
12 represented client, it is more likely than not, that Mr. Tuchman was aware of this fact before he
13 placed the call to LOMJF.

14 **III. ARGUMENT**

15 **A. The Board Has the Authority to Decide a Motion to Dismiss a Protest Without a** 16 **Full Merits Hearing.**

17 Protestant's refusal to pursue its Protest has resulted in an unreasonable waste of time and
18 resources for both the Board and Respondent. Protestant refused to attend the MSC despite
19 promising its attendance on at least three separate occasions. Respondent was willing to engage in
20 meaningful settlement discussions in an effort to resolve this matter, but as a result of Protestant's
21 conduct, it has been denied such opportunity.

22 In addition, had Respondent been provided the right to engage in discovery it would have
23 had the opportunity to demonstrate to the Board that Protestant does not operate a service facility, it
24 does not maintain regular business hours, it makes sales from unauthorized locations and submits
25 inaccurate customer warranty information. Had discovery been completed in this matter, the
26 evidence would unequivocally demonstrate all of these things to be true, and would itself be the
27 basis for a Motion to Dismiss. However, it is now apparent that because Protestant cannot show
28 good cause to prevent the establishment of a full service Genuine dealer, it has engaged in a course

1 of conduct designed to deliberately postpone the resolution of this Protest indefinitely, and to
2 withhold any and all discoverable information.

3 Although this is not a termination Protest, it probably should be. Respondent's efforts to
4 establish the proposed dealer are an attempt to provide a cure for the inadequate services currently
5 offered Genuine owners in the Orange County Market. Protestant's continued refusal to pursue this
6 Protest prevents to Board from considering the impact the proposed establishment will have upon
7 the public welfare.

8 It is within the Board's authority to dismiss the subject Protest without a full merits hearing.
9 *Duarte & Witting v. New Motor Vehicle Board* (2004) 104 Cal. App. 4th 626. The Court of Appeals
10 in *Duarte & Witting* held that the Board has the implied authority to dismiss a Protest upon motion
11 of the Respondent, where there is an overriding issue that renders a merits hearing on the standard
12 good cause factors moot. *ID* at 637.

13 In the matter presently before the Board, Protestant's refusal to participate in discovery
14 renders a full merits hearing of no use or value. Simply stated, there can be no hearing if there is no
15 evidence.

16

17 **IV. CONCLUSION**

18 For these reasons, the Protest should be dismissed due to Protestant's repeated failure to
19 pursue this matter. The Board's import public policy role in regard to the public welfare cannot be
20 effectuated if this Protest is permitted to continue. Further, Respondent requests a subsequent
21 opportunity to submit documents evidencing costs and expenses should the Board determine that an
22 award of sanctions is appropriate under these circumstances.

23

24

25 Dated: May 24, 2013

26

27

28

LAW OFFICES OF
MICHAEL J. FLANAGAN

By 
GAVIN M. HUGHES

Exhibit A

April 10 Settlement Conference

From: Law Offices of Flanagan (lawmjf@msn.com) You moved this message to its current location.

Sent: Thu 4/04/13 12:16 PM

To: Terry Tuchman (genuinescooters@aol.com)

Bcc: Trey Duren (trey@genuinescooters.com); Dorothy Hanley (dhanley@genuinescooters.com)

Terry-

As discussed this morning, the Board's order entitled Notice of Mandatory Settlement Conference, required the parties to submit Settlement Conference Statements on or before April 3, 2013, in preparation for the Mandatory Settlement Conference scheduled to occur on April 10, 2013.

Apparently you were unaware that a Settlement Conference Statement was required to be filed and have not filed one. Per our discussion, we have agreed not to oppose your late filing of a Settlement Conference Statement, assuming the Board permits you to do so. The Board's counsel will contact both of us tomorrow to discuss such submission.

In addition, you confirmed that you will be attending the Mandatory Settlement Conference to be held at the offices of the New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento California. **The conference is scheduled to begin at 10:00 A.M. on April 10, 2013.** The Board has assigned you parking spaces 9 and 10.

Finally, you also confirmed that you have received our office's Notice of Appearance on behalf of Genuine Scooters and that you are aware that all future filings in this matter must be directed to our office. We have yet to receive your objections to Respondent's document requests. You indicated that you would fax these to our office. Please do so immediately.

Thank you. Please call if you have questions.

-Gavin

Law Offices of Michael J. Flanagan
2277 Fair Oaks Boulevard, Suite 450
Sacramento, CA 95825
Phone: 916.646.9100
Facsimile: 916.646.9138

NOTICE: *This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution or copying of this communication is prohibited. Please reply to the sender that you have received the message in error, then delete it.*

Exhibit B

NEW MOTOR VEHICLE BOARD
1507 21ST ST. Suite 330
Sacramento, California 95811
Ph 916 445-1838

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

D & A AUTOMOTIVE, O.C. GENUINE
SCOOTERS CF SANTA ANA

Protestant,

Vs.

GENUINE SCOOTERS, LLC, dba, GENUINE
SCOOTER COMPANY

Respondent,

Case No.# PR-2355-12

Due to doctor's orders (Please see attachment of doctor's note), I hereby request a 30 day continuance of the settlement conference for my health. In addition, I am invoking my right to obtain legal counsel and bring them up to speed. This second request is due to the Respondent, changing from an In Pro Per status to obtaining legal counsel. I was only informed of this change in status on Thursday April, 4th and have had no time to locate adequate counsel.

Terry Tuchman

LEON I. STEINBERG, Pharm. D., M.D., F.A.C.P.
Diplomate, American Board of Internal Medicine
801 N. Tustin Ave., Suite 206 Santa Ana, California 92705
(714) 558-6881 Fax: (714) 558-1877

NAME Terry F. Tuchman DATE 04/08/2013
ADDRESS _____ DOB: 11/21/1939

R

My patient Terry F. Tuchman is
unable to travel due to medical
condition. If you have any questions
please call my office.

- DO NOT SUBSTITUTE
- LABEL
- NO REP.

REFILL _____ TIMES
Calif. Lic. No. G20737
DEA No. A56832B95

 M.D.

Exhibit C

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
3
4
5
6
7

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 D&A AUTOMOTIVE, O.C. GENUINE
SCOOTERS OF SANTA ANA,

13 Protestant,

14 v.

15 GENUINE SCOOTERS,

16 Respondent.
17

Protest No. PR-2355-12

**ORDER VACATING MARCH 5, 2013,
PRE-HEARING CONFERENCE
ORDER DUE TO PROTESTANTS'
FAILURE TO FILE DOCUMENTS
AND PARTICIPATE IN HEARING ON
DISCOVERY OBJECTIONS**

18 In the Matter of the Protest of
19 D&A AUTOMOTIVE, O.C. GENUINE
SCOOTERS TUSTIN,

20 Protestant,

21 v.

22 GENUINE SCOOTERS,

23 Respondent.
24

Protest No. PR-2356-12

25 To: Terry Tuchman
In Pro Per
26 O.C. GENUINE SCOOTERS OF SANTA ANA
230 E Dyer Road #E
27 Santa Ana, California 92707
28 ///

1 Terry Tuchman
In Pro Per
2 O.C. GENUINE SCOOTERS TUSTIN
230 E Dyer Road #E
3 Santa Ana, California 92707

4 Michael J. Flanagan
Gavin M. Hughes
5 Attorneys for Respondent
LAW OFFICES OF MICHAEL J. FLANAGAN
6 2277 Fair Oaks Boulevard, Suite 450
Sacramento, California 95825
7

8 1. This matter came on regularly for telephonic hearing on Thursday, May 2, 2013, before
9 Administrative Law Judge Anthony M. Skrocki. Terry Tuchman, in Pro Per, was expected to participate
10 in behalf of Protestant, but, as stated below, did not do so. No appearance was made in behalf of
11 Protestant. Gavin M Hughes, Esq., of the Law Offices of Michael J. Flanagan, represented Respondent.

12 2. Despite the Pre-Hearing Conference Order which established the discovery schedule (with
13 the participation and consent of Mr. Tuchman), and subsequent notices to Mr. Tuchman [and Protestant],
14 as well as e-mail communications and telephone contacts with the Staff Counsel of the Board, the Board
15 did not receive the following:

- 16 A. Protestant's Requests for Production of Documents
17 B. Protestant's Objections to Respondent's Requests for Production of Documents
18 C. Protestant's Statement of Disputed Discovery Requests
19 D. Respondent's Statement of Disputed Discovery Requests

20 3. The scheduled telephonic hearing to rule on the parties' respective objections to the other's
21 discovery requests was to begin at 10:00 a.m. on Thursday, May 2, 2013, with Anthony M. Skrocki, an
22 administrative law judge of the Board, presiding. At the designated time, ALJ Skrocki was joined
23 telephonically by Gavin M. Hughes, Esq. representing Respondent.

24 4. After waiting several minutes, the Board's Senior Staff Counsel, Robin Parker, was asked
25 to join the telephonic conference and was then asked to attempt to make contact with Mr. Tuchman. Ms.
26 Parker did make telephonic contact with Mr. Tuchman and then rejoined the telephonic conference with
27 ALJ Skrocki and Mr. Hughes. Ms. Parker stated that Mr. Tuchman had informed her that he was not
28 aware that the telephonic hearing had been scheduled for today but would call in to join it.

1
2 5. ALJ Skrocki and Mr. Hughes waited until approximately 10:25 a.m. but Mr. Tuchman did
3 not join the telephonic conference or otherwise make contact with the staff of the Board.

4 6. In light of the absence of the needed documents and in light of the failure of a
5 representative of Protestant to participate in the hearing, there was nothing that could be done to further
6 proceed with the discovery process regarding the production of documents.

7 7. Mr. Hughes stated that Respondent would be filing a Motion to Dismiss both Protests due
8 to the failure of Protestant to comply with the Pre-Hearing Conference Order of the Board regarding
9 discovery, including the failure of Protestant to participate in the telephonic hearing of May 2, 2013.

10 **ORDER VACATING PRE-HEARING CONFERENCE ORDER OF MARCH 5, 2013**

11 In light of the above, the dates and the events established by the Board's Pre-Hearing Conference
12 Order of March 5, 2013, are hereby vacated.

13 A briefing schedule and hearing date for Respondent's Motion to Dismiss the Protests will be
14 established upon receipt of Respondent's Motion.

15 SO ORDERED.

16
17 DATED: May 3, 2013

NEW MOTOR VEHICLE BOARD

18
19 By 

20 ANTHONY M. SKROCKI
21 Administrative Law Judge
22
23
24
25
26
27
28

Exhibit D

O.C. Genuine Scooters

D and A Auto

**TO: Dana Winterrowd
Staff Counsel
Fax: (916)323-1632**



**From: Terry F. Tuchman
Phone Number (714) 641-1413 Cell # (714) 345-3626
Fax Number: (714) 832-5265**

Web Address: www.OCGenuineScooters.com

Fax Transmittal Form

Number of Pages: 4

Date Sent: 5/6/13

Message I am faxing this to you because you can't open my e mail as I can't open yours either.

Terry

To: Dana Winterrowd, and Judge Victor Ryerson
From: Terry Tuchman: O.C. Genuine Scooters
Subject: Pre-Hearing Conferences PR-2355-12 & PR-2356-12 D&A Automotive, O>C> Genuine Scooters of Santa/Tustin VS Genuine Scooters
CC lawmjf@msn.com, Parker, RobinP.@NMVB, Angulo, Nicole@NMVB, Ohta, EugenE.@NMVB

Upon receiving your e-mail I understood that due to my poor health and being under Doctors care that the Discovery/hearing dates were being placed on hold, per your e-mail to me.

Dear Mike and Terry,

Relative to Mike's e-mail (below) and Terry's faxed correspondence, I have spoken with Administrative Law Judge Victor Ryerson, who is assigned to the Mandatory Settlement Conference in the subject protest.

Under the circumstances, the Board will issue an appropriate order taking the Mandatory Settlement Conference off calendar.

Terry, if you are able, with relative certainty, to commit to dates for a rescheduled settlement conference, please provide those dates, or work with Mike and Gavin to select mutually acceptable dates.

Dana Winterrowd

Staff Counsel

CA New Motor Vehicle Board

1507 21st St., Ste. 330

Sacramento, CA 95811

(916) 327-3129 direct

(916) 445-1888 main

(916) 323-1632 fax

I have a few questions:

1. I requested 30 days on or about March 17, 2013 to find council. On April 17, 2013, I was able to secure council. I found that Genuine Scooters LLC had broken the law, so I directed my council to file a law suit. That suit is still open and not settled. Shouldn't that suit be settled before we continue with a request to add a new dealer in my sales area?
2. The law office of Michael Flanagan was called by me regarding the pending case No. PR-2355-12 before it was given a case number. I discussed confidential information with them regarding this same matter, for which they have a record of and have billed me for services. They did have the incorrect name on the bill, but correct address, which is the address to Genuine Scooters, Tustin. They billed and took my information under Terry Tuchman, 15401 Red Hill Ave, Tustin, CA. The phone number they have on record is 714-641-1413. This also is the same number for Genuine Scooters for which they have contacted me on. I called their office and spoke to someone regarding the wrong name, which they informed me, did not matter as the billing

address and phone number contacts were correct. This is a direct conflict of interest, as they have already received confidential information from me regarding the same matter. This took place in November 2012, prior to the current suit. How can Mr. Flanagan advise me and then take on Genuine Scooters LLC which is against me? Is that ethical?

3. Shouldn't my council be informed, by the new car board as well as myself? They have her name, number and contact information. Robin Boren-Coleman Sexton, Esq. 181517.

I am not sure if opposing council has informed you of the law suit I have that is pending against Genuine Scooters LLC who has broken the laws in the State of California, where there is no question as to their guilt. It is superfluous to continue Genuine Scooter LLC's request to invade my sales territory with another dealer until the law suit is heard and ruled on in the court system

I am sending you copies of the documents previously faxed to you on March 20, 2013 and April 2, 2013 and Genuine Scooters LLC. Note the dates when faxed.

Dana, the New Car Board and Genuine Scooters LLC also received the above mentioned faxes which included my objections.

Previously when there was a phone conference you sent several notes to me giving me the date, time and code. My attorney Robin Boren-Coleman Sexton was never contacted, as well. There was no the mention of the conference call for May 2, 2013 from the beginning of February on. There is no mention of the phone number I was to call or the code to join the conference. When I was called at 10:15 on May 2, 2013, I was in my doctors office and could not join the conference call at that moment. I immediately got dressed and ran out of the office to a quiet place to make that call. It was approximately 10:25 A.M. when I attempted to make the call. I used the given phone number and code which I received at 10:15 am. I called several times and could not get through. I called Ms. Parker and she informed me that the judge only waited 10 minutes for me and ended the meeting.

I am requesting a motion that the New Car Board suspend all actions in this matter until my court case is settled or heard, and a judgment is handed down. I am also sending a copy of my complaint against Genuine Scooters LLC.

As mentioned in previous e-mail communications, I am unable to open any attachments or documents sent via e-mail. Therefore, I have not been properly informed of the matters before us. Documents should be mailed to me and my attorney in hard copy so that I am able to properly receive and read them to respond as necessary.

MOTION TO DROP ACTION BY GENUINE SCOOTERS LLC

OC. Genuine Scooters of Santa Ana, Tustin requests dismissal of Genuine Scooter LLC case No PR-2355-12 for the following reasons:

1. Failure to notify me of the telephonic conference within 30 days of the conference. The New Car Board sent several memos to inform me of the first phone conference. for the one on Jan 9th. The last time I was notified of up coming dates was at the last week of January.

2. On May 2nd at 10:15 A.M., I received a phone call for the telephone conference while sitting in my doctor's patient room waiting to be seen, After being given the phone # and code I went down stairs to call and be part of the conference call. I called at approximately 10:25A.M., as to no avail. The Judge ended the conference call. Opposing Council was given information days before the call was to take place but not me or my attorney.

3. Genuine Scooter LLC. has violated their contract with me by putting dealers in my assigned area, without my consent.
4. Genuine Scooters LLC has broken the law in two areas. See a copy of my complaint for complaint details. They have also violated the Federal Trade Commission act and recent protections by divulging electronic privacy information which leads to identify theft. The policing of this practice falls under the New Car Board jurisdiction. In other words you will be directed by the court to investigate this matter and report to the court and the FTCA, for disciplinary action.
5. Genuine Scooters ILLC failed to respond to my request to produce documents necessary to present my case. They did not provide any response to such request.
6. I will provide supporting documents that back up my claim of wrong doing by Genuine Scooter LLC. via hard copy sent by Fed Ex .

My motion is for dismissal of this matter Case No PR-2355-12 until the Superior Court of the State of California County of Orange hears my case against Genuine Scooters LLC. The violation they have committed are horrendous and demand justice. They have broken the law and there is no excuse for this.

O.C. Genuine Scooters

D and A Auto

TO:

From: Terry F. Tuchman

Phone Number (714) 641-1413

Fax Number: (714) 832-5265

Web Address: www.OCGenuineScooters.com



Fax Transmittal Form

Number of Pages: 4

Date Sent: 5/7/13

Message Info you requested and more.

Law Judge Victor Ryerson
Anthony M Skrocki, Administrative Law Judge
Dana Winterrowd, Staff Counsel of the New Car Board
Michael J. Flanagan, Attorney

Case No. PR-2355-12

May 7, 2013

As I look over your memo's and e-mails which I must go to a Kinkos to read, I find a major problem. First of all, you notified me on 4 occasions and so did Ms. Parker of the phone conference on March 3rd. For the conference on May 2nd you told me you notified me of the conference on March 5th which would take place on May 2nd. It seems Mr. Flanagan law firm did not come on board to represent Genuine Scooters LLC until the later part of April. When did you notify them of the phone conference? Couldn't you send me a notice by U.S. Mail to remind me of the conference also? Also, my attorney Robin Boren-Coleman Sexton **was not notified**. Her address is 3943 Irvine Boulevard, #436 Irvine, California 92602, (714) 615-7799. Michael Flanagan was well aware that Robin Boren-Coleman Sexton was representing me and had this information.

When I couldn't make the meeting on March 17th due to really being ill, I got a note saying that Mr Duren couldn't make the meeting due to a snow storm. I checked the airlines and all planes in his area were getting out. It looks like Mr. Flanagan was setting me up to spend money and when I got to the meeting they were going to come up with a lame excuse that Mr. Duren couldn't make the meeting because of a snow storm, and I would have to come back for another meeting. Mr. Flanagan told me when I told him that I may not be able to make the meeting that Mr. Duram has hotel rooms reserved and paid for and that it would be a hardship for him, when in reality that was a ploy.

I called Mr. Flanagan's office several months before being contacted by Genuine Scooters LLC. and I asked advice on this matter. Mr. Flanagan gave me advise and then billed me. How can he give me advise and then represent the other party?

The other area that needs attention by the Bar Association is that Michael Flanagan's Law Firm advised me on this matter, billed me and then took on Genuine Scooters LLC. against me which is unethical and a conflict of interest. There should be a review of this matter by the California Bar Association for possible disbarment. He is suppose to know the law, and there is no excuse for overlooking what is taking place.

I am trying to feed my family and work full time and deal with a full time law firm who

is receiving massive amounts of money to ram rod their point of view. Justice is not who can produce the most money, but it is suppose to represent justice.

I am requesting that Mr Flanagan withdraw from the case due to conflict of interest. I am also requesting that the California Bar Association look into my allegations and render a verdict. I am also requesting that this matter of adding a dealer in my sales area be dropped until the case against Genuine Scooters LLC for breaking the law be settled in Superior Court in Orange County, California.

Terry Tuchman

1 ROBIN BOREN-COLEMAN SEXTON (SBN 181517)
 2 LAW OFFICE OF ROBIN BOREN-COLEMAN SEXTON
 3 3943 IRVINE BOULEVARD, #436
 4 IRVINE, CALIFORNIA 92602
 5 (714) 615-7759

6 Attorneys for Plaintiff
 7 Terry Mr. Tuchman, Owner D & A
 8 Automotive, DBA OC Genuine
 9 Scooters

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF ORANGE**

12 -o0o-

13 TERRY TUCHMAN, an individual,

14 Plaintiffs,

15 v.

16 GENUINE SCOOTERS, LLC; PHILLIP MCCALED,
 17 an individual; TREY DOREN, an individual;
 18 CAROLYN MEYER, an individual, LEE
 19 MATIGIAN, an individual, SHERI MATIGIAN, an
 20 individual, DOE INDIVIDUALS 1 through 10; and
 21 DOE CORPORATIONS AND ORGANIZATIONS 1
 22 through 10, inclusive,

23 Defendants.

No.

AMOUNT DEMANDED EXCEEDS \$10,000

VERIFIED COMPLAINT FOR VIOLATION OF
 CALIFORNIA UNIFORM TRADE SECRETS
 ACT, CALIFORNIA CODE OF CIVIL
 PROCEDURE, §§ 3426, ET. SEQ.; BREACH OF
 CONTRACT; BREACH OF COVENANT OF
 GOOD FAITH AND FAIR DEALING;

[Jury Trial Demanded]

24 COME NOW PLAINTIFF Terry Tuchman who hereby allege as follows:

25 **THE PARTIES**

26 1. Plaintiff TERRY TUCHMAN ("Plaintiff" or "Mr. Tuchman") is a resident of Orange
 27 County, California. Mr. Tuchman is the owner of "D & A Automotive, DBA OC Genuine
 28 Scooters" ("Genuine") located in Santa Ana, Orange County, California and "D & A
 Automotive, DBA OC Genuine Scooters" in Tustin, California.

O.C.GENUINE SCOOTERS

D & A AUTOMOTIVE

TO: New Car Board

From: Terry F. Tuchman

Phone Number (714) 641 1413 Cell # (714) 345-3626

Fax Number: (714) 832-5265

E Mail TFTuchman@aol.com

Web sight www.ocgenuinescooters.com



Fax Transmittal Form

Number of Pages: 3

Date Sent: 5/22/13

Message: Have no idea who to send this to from genuine scooters llc

Date 5/22/13

To: New Car Board

Law Judge Victor Ryerson

Law Judge Anthony M. Skrocki

From Terry Tuchman

Subject Documents exchanged

Documents exchanged following ROB:

Case No PR 2355-12

On 3/21/13 I faxed production of documents to Genuine Scooters LLC due to the fact that they can't open my documents.

On 4/3/13 I faxed my objections to their request to production of documents. Genuine Scooters LLC did not object to any of my objections.

On or about 4/17/13 I got a call from the law office of Michael Flanagan that his firm was taking over the dealing with this case and that I was not to contact Genuine Scooters LLC any longer regarding this case. Mr Flanagan told me I had to meet with him and the new car board on 4/17/13 to go over matters pertaining to the case in point. Mr. Flanagan was badgering me to appear due to the fact that several people from Genuine Scooters LLC had made non cancelable plain reservations and hotel reservations.

I am suffering from vertigo and went to my doctor to see if I could make the trip. He recommended that I not fly or drive at this time. I sent a note to the new car board and to Judge Victor Ryerson with a note from my doctor advising me not to travel. The case was taken off calendar and tabled until the parties arranged to get together and solve the problem. I later found out that none of the people from Genuine Scooters LLC made the trip. They said there was a storm and no one could get to Sacramento for the meeting. I called the air lines and found out that on that date no flights were canceled to Sacramento. This action by Mr. Flanagan was a ploy to get me to Sacramento for a meeting that was a set up to waste my time and money.

I later realized that I had contacted Mr. Flanagan's office for advice about this case months before he accepted representing Genuine Scooters LLC. I casually

mentioned this fact to my attorney that is dealing with Genuine Scooters LLC for a civil matter. She explained that it was a conflict of interest that Mr. Flanagan represent Genuine Scooters LLC for the same matter. I also found out from the California Bar Association that what Mr. Flanagan's firm did was a conflict of interest and they could be disbarred for taking that case. I was told that firms research clients before they take a case. Obviously Mr. Flanagan failed to do this.

On 5/22/13 Genuine Scooters LLC and I are to exchange documents that I have already given them. Since Genuine Scooters LLC has no council there is no reason to re send what was previously sent. All actions by Mr. Flanagan's office must be dismissed as not relevant due to their violation, conflict of interest. To date Genuine Scooters LLC has not responded to any of the actions past 3/21/13. With this in mind all dates agreed up on by both parties have not been met by Genuine Scooters LLC. This problem is due to their council.

At this point Genuine Scooters LLC really has no case.

Exhibit E

Re: PR-2255-12/PR-2256-12 O.C. Genuine Scooters of Santa Ana/Tustin v. Genuine Scooters

From: **Robin Boren-Coleman Sexton** (lecourtjester@aol.com) You moved this message to its current location.

Sent: Tue 5/07/13 2:09 PM

To: Parker, Robin P.@NMVB (Robin.Parker@nmvb.ca.gov)

Cc: LawOffices FlanaganMichael (lawmjf@msn.com); <tftuchman@aol.com> (tftuchman@aol.com); <GenuineScooters@aol.com> (GenuineScooters@aol.com); Winterrowd, Dana@NMVB (Dana.Winterrowd@nmvb.ca.gov)

Good Afternoon Ms. Parker,

I am currently representing Mr. Tuchman and O.C. Genuine Scooters in a civil matter filed with the Orange County Superior Court against Genuine Scooters. I am not representing Mr. Tuchman in the matter now before the New Motor Vehicle Board. I have spoken with Mr. Tuchman to take action to clarify this as well.

If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

Robin Boren-Coleman Sexton

The Law Office of Robin Boren-Coleman Sexton
3943 Irvine Boulevard, #436
Irvine, California 92602
(714)615-7799

On May 7, 2013, at 11:31 AM, "Parker, Robin P.@NMVB" <Robin.Parker@nmvb.ca.gov> wrote:

Good morning Ms. Boren-Coleman Sexton,

In response to a May 6, 2013, fax sent by Mr. Tuchman (attached), he indicated that you were now representing Protestants in the above-referenced matters. If that is the case, please file a substitution of counsel with a proof of service. Section 551.25 of Title 13 of the California Code of Regulations provides as follows:

§ 551.25. Substitution or Withdrawal of Counsel.

(a) The party to a protest, petition or appeal may substitute counsel of record at any time. It shall be evidenced by a writing signed by the party and new counsel of record and filed with the board. The writing shall be served on all other parties named in the proceeding.

(b) Counsel of record for a party may not withdraw from a protest, petition, or appeal without permission from the board. To obtain permission, counsel must file and serve a written request to withdraw, stating with particularity the factor or factors as set forth in Rule 3-700 of the Rules of Professional Conduct and Code of Civil Procedure section 284, justifying the request. Declarations of counsel may be filed under seal, but must be served on the party of the moving counsel, who then has an opportunity to be heard.

(c) Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; Rule 3-700, Rules of Professional Conduct; and Section 284, Code of Civil Procedure.

Until we receive a proper Stipulation of Counsel, Mr. Tuchman will continue to represent Protestants.

For your information, attached is the May 3, 2013, order vacating all of the dates in the March 5, 2013, Pre-Hearing Conference Order. This Order was e-mailed to Mr. Tuchman and the Law Offices of Michael J. Flanagan on Friday, May 3; it was also sent via regular mail to Mr. Tuchman on Monday, May 6. The March 5, 2013, Pre-Hearing Conference Order is also attached. This was e-mailed to Mr. Tuchman on three separate occasions. The New Motor Vehicle Board is a quasi-judicial administrative agency that functions much like a court. We do not send "reminders" to the parties that they need to participate in a conference or telephonic hearing, or file pleadings. The Board issues orders and notices which are in effect unless amended, continued, or vacated.

Mr. Tuchman's fax also contains a "motion that the New Car Board (sic) suspend all actions in this matter until my court case is settled or heard, and judgment is handed down", a "Motion to Drop Action by Genuine Scooters LLC", and a motion for dismissal. The Board has specific provisions pertaining to motions and the format required (see 13 CCR §§ 551.19 and 594 et seq., and Gov. Code § 11400, et seq.) In the event proper motions

are filed, the Board will set up a briefing schedule and date for telephonic hearing.

Whatever civil suit may be pending between the parties is irrelevant to these proceedings unless the Board is ordered by the court to stay the protests or the parties stipulate to a stay. These protests were filed by O.C. Genuine Scooters of Santa Ana and O.C. Genuine Scooters of Tustin. There is an automatic statutory stay in place that precludes Genuine Scooters from establishing a same line-make dealer in the relevant market area until the Board has held a hearing, nor thereafter, if the Board determines that there is good cause for not permitting the establishment (Veh. Code §§ 507 and 3062). In light of that and in keeping with the Board's mission, disputes filed with the Board are resolved in "an efficient, fair and cost-effective manner".

If you have any questions or require additional information, please let me know.

Robin

Robin P. Parker

New Motor Vehicle Board

Senior Staff Counsel
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct
(916) 445-1888 main
(916) 323-1632 fax

<PR-2355-12 fax from protestant 5-6-13.pdf>

<PR-2355-12 order vacating 3-5-13 pho.pdf>

<PR-2355-12 pho 3-5-13.pdf>

Exhibit F

Selection Criteria

Clie.Selection Include: OC Geniune Scooter
 Slip.Classification Open
 Slip.Transaction Dat 5/1/2012 - 5/20/2013

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
62817	6/20/2012	Billed	TIME G:11273 Telephone conference with Terry Tucker re dispute with distribution	#1- MJF service 7/5/2012 OC Geniune Scooter RE: General Matters	0.10 0.00	430.00 T@2	43.00
Grand Total				Billable Unbillable Total	0.10 0.00 0.10		43.00 0.00 43.00

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DECLARATION OF SERVICE BY ELECTRONIC MAIL

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California, 95825.

I declare that on May 24, 2013, I caused to be served a true and complete copy of:

MOTION TO DISMISS

D&A Automotive, O.C. Genuine Scooters of Santa Ana

V

Genuine Scooters

Protest No. PR-2355-12

Consolidated

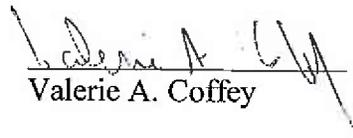
By Electronic Mail:

*Also First Class Mail
And Facsimile*

Terry Tuchman
230 E Dyer Road E
Santa Ana, CA 92707
Fax 714.832.5265

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

Executed this 24 May, 2013, Sacramento, California.


Valerie A. Coffey