

1 NEW MOTOR VEHICLE BOARD
2415 1st Avenue, MS L242
2 Sacramento, California 95818
3 Telephone: (916) 445-1888

CERTIFIED MAIL

4
5
6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD
8

9
10
11 In the Matter of the Protest of
12 Let's Ride Motorsports Inc,
13 Protestant,
14 v.
15 Textron Specialized Vehicles Inc. ("TSV"),
16 Respondent.
17

Protest No. PR-2815-23

**PROPOSED ORDER GRANTING
"RESPONDENT TEXTRON
SPECIALIZED VEHICLES INC.'S
MOTION TO DISMISS PROTEST"**

18 To: Gavin M. Hughes, Esq.
19 Robert A. Mayville, Jr., Esq.
20 Attorneys for Protestant
LAW OFFICES OF GAVIN M. HUGHES
4360 Arden Way, Suite 1
Sacramento, California 95864

21 Amy M. Toboco, Esq.
22 Attorney for Respondent
NELSON MULLINS RILEY & SCARBOROUGH LLP
23 19191 South Vermont Avenue, Suite 900
Torrance, California 90502

24 Paul T. Collins, Esq.
25 Patrick D. Quinn, Esq.
26 Attorneys for Respondent
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
27 Post Office Box 11070
Columbia, South Carolina 29201

28 ///

1 This matter came on regularly for telephonic hearing on Thursday, May 18, 2023, before Anthony
2 M. Skrocki, Administrative Law Judge for the New Motor Vehicle Board (“Board”). Robert A. Mayville,
3 Jr., Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Patrick D. Quinn, Esq., Paul T.
4 Collins, Esq., and Amy M. Toboco, Esq. of Nelson Mullins Riley & Scarborough LLP represented
5 Respondent.

6 **PRELIMINARY STATEMENT OF ISSUES PRESENTED**

7 1. This Proposed Order addresses whether the protest was or was not timely filed in
8 accordance with the requirements of Vehicle Code Section 3060(a).¹

9 2. For a protest to be timely filed, this statute requires that the protest be filed:

10 a. “within 30 days after receiving a 60-day notice [of termination], satisfying the
11 requirements of this section,” or

12 b. “within 30 days after the end of any appeal procedure provided by the franchisor.”

13 **FACTUAL AND PROCEDURAL BACKGROUND**

14 3. On January 24, 2023, Let’s Ride Motorsports Inc [*sic*] (“Let’s Ride” or “Protestant”) filed
15 a protest in pro per with the Board against Respondent Textron Specialized Vehicles Inc. (“TSV” or
16 “Respondent”). This protest was filed pursuant to Section 3060(a)(1)² protesting the intended termination
17 by TSV of Let’s Ride’s franchise for E-Z-GO vehicles. Let’s Ride is a new motor vehicle dealer located
18 at 5959 Rosedale Highway, Bakersfield, California.

19 4. TSV is a manufacturer and distributor of recreational off-highway vehicles, personal
20 transportation vehicles, and on-road low-speed vehicles.³ (Britt Supp. Decl., ¶ 2, Ex. A, p. 1) TSV is
21 licensed as a manufacturer of E-Z-GO products and is located at 1451 Marvin Griffin Road, Augusta,
22 Georgia. (Britt Supp. Decl., ¶ 2, Ex. A, p. 1)

23
24

¹ All statutory references are to the California Vehicle Code unless otherwise indicated.

25 ² The protest references Sections 3070, 3071 and 3080, which pertain to Article 5 recreational vehicle protests. The
26 appropriate references should be Sections 3060, 3061, and 3066 as those pertain to Article 4 protests (vehicles
other than RVs). (Protest, unnumbered p. 2)

27 ³ Electric and low speed vehicles are within the Board’s jurisdiction if certified with equipment that would enable
28 them to be registered with the Department of Motor Vehicles for use on the public highways including streets.
(Veh. Code §§ 385.5, 3051) All-terrain vehicles including recreational off-highway vehicles and utility terrain
vehicles are also within the Board’s jurisdiction. (Veh. Code §§ 111, 500, 531, 3051)

1 Bakersfield, CA 93308.” (Fulce Decl., Ex. 8; Britt Decl., ¶ 2, Ex. A) Federal Express tracking and receipt
2 of delivery show the NOT was delivered to Protestant on November 30, 2022. (Britt Decl., ¶ 3, Exs. B,
3 C) Contrary to the Federal Express tracking and receipt showing delivery to Let’s Ride on November 30,
4 2022, Let’s Ride stated in its Protest that it received the NOT on or about December 15, 2022.⁵ (Protest, ¶
5 4) The Board received a copy of the NOT via Federal Express on December 1, 2022, and via U.S. Postal
6 Service regular mail on December 6, 2022. The Protest, filed on January 24, 2023, generally denied each
7 allegation in the NOT stated to be reasons for termination. (Protest, ¶ 5)

8 9. The NOT included the following statutorily required provision in the proper form:

9
10 **NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR**
11 **VEHICLE BOARD in Sacramento and have a hearing in which you may protest the**
12 **termination of your franchise under provisions of the California Vehicle Code. You must**
13 **file your protest with the board within 30 calendar days after receiving this notice or**
14 **within 30 days after the end of any appeal procedure provided by the franchisor or your**
15 **protest right will be waived.**

16 10. No claim is made that the NOT did not comply with the “NOTICE TO DEALER” form or
17 language requirements of Section 3060(a)(1).

18 11. The text of the NOT contained the following:

19 By notice dated July 29, 2022, Textron Specialized Vehicles Inc. (“TSV”) notified your
20 dealership, Let’s Ride Motorsports, Inc (“Dealer”), that it was in material breach of the E-
21 Z-GO Retail Dealership Agreement between TSV and Dealer, effective January 1, 2021
22 (the “Agreement”). TSV informed Dealer of numerous violations of the Agreement and
23 gave Dealer ninety (90) days to cure those breaches. Dealer took no corrective action and
24 continues to fail to comply with its obligations as an E-Z-GO dealer. As such, TSV hereby
25 provides sixty (60) days’ advance written notice to Dealer that TSV intends to terminate
26 the Agreement pursuant to Section 24(c) thereof, for good cause.

27 As good cause for the termination, TSV cites Dealer’s failure to comply with the following
28 material terms of the Agreement:

- a. Lack of any retail sales of E-Z-GO vehicles or efforts to promote the same, and failure to maintain an inventory of current E-Z-GO products or display the same to the public, in violation of the sales responsibilities outlined in Sections 3(a) and 3(g) of the Agreement. Dealer has not purchased any representative vehicle inventory of E-Z-GO products in nearly two years and has not sold a new vehicle to a consumer since June 2021.

⁵ As discussed below, the filing of the protest on January 24, 2023 was beyond 30 days from either November 30, 2022 or December 15, 2022. Which of these dates is the correct date of receipt of the NOT by Let’s Ride does not affect the analysis or conclusions stated herein.

- 1 b. Failure to maintain stock inventory of or prominently display a minimum model
2 representation of current-year vehicles Dealer is authorized to sell, as outlined in
3 Section 4(a), 4(b), and 4(d) of the Agreement. In fact, Dealer has no E-Z-GO
4 inventory whatsoever and thus no E-Z-GO vehicles displayed in its showroom.
- 5 c. Poor product sales performance as measured under Section 5(a) of the Agreement.
6 Dealer’s retail sales numbers have steadily declined since 2019, down to zero in 2022.
- 7 d. Failure to properly submit orders, as required by Section 8(a) of the Agreement. Dealer
8 has submitted two minimal orders over the past two years, with both order forms
9 missing necessary information. When prompted to correct those orders, Dealer chose
10 not to do so, and rather continues to hold no inventory.
- 11 e. Failure to maintain satisfactory dealership facilities or adequate display space to enable
12 Dealer to meet its obligations under the Agreement, as set forth in Section 14(a)
13 thereof. Dealer’s showroom does not contain adequate space to display the various E-
14 Z-GO models Dealer is authorized to sell. Dealer committed to expanding the
15 showroom to enable such representation, then made no such changes. To date, Dealer
16 still dedicates its limited space to only competitive-brand vehicles.
- 17 f. Absence of any E-Z-GO signage to identify Dealer’s affiliation with the franchise, as
18 required by Section 18 of the Dealer Agreement, such that the public is unaware
19 Dealer is authorized to sell E-Z-GO products. Dealer’s road sign displays only a
20 competitive brand.

21 In addition to these extensive failures by Dealer to comply with material terms of the E-Z-
22 GO franchise, further good cause for termination of the Agreement exists from: the lack of
23 E-Z-GO business transacted by Dealer; the lack of investment by Dealer in performing its
24 part of the E-Z-GO franchise; and Dealer’s inadequate sales facilities, equipment, and
25 rendering of E-Z-GO services to the public. As a result, it would not be injurious to the
26 public welfare if Dealer’s E-Z-GO franchise were disrupted.

27 Under Cal. Veh. Code § 3060(a)(1), TSV is required to provide Dealer advance written
28 notice of termination, with a termination date not in advance of at least sixty (60) days
following receipt of the notice (the “Notice Period”). This letter, therefore, shall serve as
notice to Dealer of TSV’s intent to terminate the Agreement in good faith, and for good
cause, on January 30, 2023.

If you have any questions, concerns, or issues related to this notice, or if you intend to
waive the Notice Period or otherwise voluntarily terminate the Agreement, please reach out
to your Regional Sales Manager. (Fulce Decl., Ex. 8; Britt Decl., Ex. A)

The Timeliness of Filing of the Protest Based Upon the Allegations of the Protest

12. There are no specific allegations in the protest regarding the timeliness of the filing of the
protest. The protest refers to the alleged date of receipt of the NOT as being on or about December 15,
2022, and indicates the protest was signed by Mr. Fulce, the president of Let’s Ride, on “January 20,
2022” (*sic*). The copy of the protest sent to the Board is stamped “PRIORITY MAIL.” The attached
proof of service upon TSV bears the date of “20 January 2023” and is also signed by Mr. Fulce.

13. Although the protest refers to the approximate date of receipt of the NOT as being on or

1 about December 15, 2022, the protest makes no mention of an “appeal procedure” provided by TSV. As
2 discussed herein, Section 3060(a) provides alternative times for the filing of a timely protest. The first is
3 that filing must occur within 30 days after receipt of the NOT and the second is that a protest will be
4 timely if filed within 30 days after the end of any appeal procedure provided by the franchisor.

5 14. As to the first alternative, filing a protest within 30 days of receipt of the NOT, the parties
6 differ as to the claimed date of receipt by Let’s Ride of the NOT.

7 15. Respondent claims the NOT was received by Protestant at its dealership address on
8 November 30, 2022, via Federal Express overnight delivery. (Motion, p. 4, lines 19-20; Britt Decl. ¶ 3,
9 Ex. C) If the NOT was received by Protestant on November 30, 2022, as alleged by Respondent, and the
10 Board received the NOT on December 1, 2022, the 30-day time to file a protest would begin to run on
11 December 1, 2022. Section 3060(a) would allow Protestant 30 days from that date to file a timely
12 protest (until January 3, 2023).⁶

13 16. The second claimed date of receipt of the NOT is December 15, 2022, as stated by
14 Protestant in its protest. (Protest, ¶ 4)

15 17. If Let’s Ride received the NOT on November 30, 2022, as alleged by TVS, Let’s Ride
16 would have had until January 3, 2023, under the first alternative of Section 3060 to file its protest.⁷ If
17 Let’s Ride received the NOT on December 15, 2022, as Let’s Ride alleges, Let’s Ride would have had
18 until January 16, 2023, to file its protest. As no protest was filed until January 24, 2023, which date is
19 correct is irrelevant as the protest was not filed within 30 days of either date.

20 18. If either claimed date of receipt is used to trigger the start of the 30-day period within
21 which Let’s Ride must file its protest, the protest was not timely filed and must be dismissed.

22 19. The only way the protest can perhaps be deemed timely filed is through the application
23 of the alternative time period provided by Section 3060(a). This would require finding that Protestant
24 filed its protest “within 30 days after the end of any appeal procedure provided by the franchisor . . .”. As
25

26 ⁶ “When the last day for filing any instrument or other document with a state agency falls upon a Saturday or
27 holiday, such act may be performed upon the next business day with the same effect as if it had been performed
28 upon the day appointed.” (Gov. Code § 6707) The 30-day deadline of December 31, 2022, was a Saturday, and the
following Monday was an observed holiday (January 2, 2023).

⁷ See Gov. Code § 6707.

1 stated below, Let's Ride made no such claim until more than three months after it filed its protest, when
2 on May 1, 2023, Let's Ride filed its Opposition to TSV's Motion to Dismiss.

3 **MOTION TO DISMISS**

4 **TSV's Assertions in its Motion to Dismiss Protest - Filed April 3, 2023**

5 20. As there had been no indication of a claim by Let's Ride that the 90-day cure period
6 constituted an "appeal procedure," TSV's Motion to Dismiss, filed on April 3, 2023, addressed only the
7 failure of Let's Ride to file a protest within 30 days of receipt of the NOT.⁸

8 21. TSV argues in its Motion to Dismiss that because the NOT was delivered to Protestant's
9 dealership address on November 30, 2022, and to the Board on December 1, 2022, that Protestant was
10 required to file any protest on or before January 3, 2023, pursuant to Section 3060(a)(2). Protestant
11 did not file its protest until January 24, 2023, 54 days after Protestant and the Board received the NOT
12 and beyond the statutory time to file a protest pursuant to Section 3060(a)(2). Therefore, the Board lacks
13 jurisdiction to hear the protest. (Motion to Dismiss, p. 4, line 19 through p. 5, line 4)

14 22. "TSV's Notice contained the language mandated by Section 3060(a)(1)(C), and it was in
15 the proper format that made the specific content conspicuous." Therefore, since the NOT was properly
16 issued, received by the Board and Protestant, and the protest was filed well beyond the statutory filing
17 deadline, the Board lacks jurisdiction to consider this protest. (Motion to Dismiss p. 4, line 11 through p.
18 5, line 4)

19 23. TSV states that the Board has repeatedly recognized that a dealer's failure to timely file a
20 protest is grounds for dismissal. TSV cites the following Board Decisions in support of this argument:⁹

- 21 a. *Eghtesad v. DaimlerChrysler*, Protest No. PR-1928-04;
22 b. *San Jose Yamaha Powersports v. Yamaha Motor Corp.*, Protest No. PR-2394-14; and

23
24 ⁸ Let's Ride's claim of the existence of an appeal procedure was not mentioned in the protest filed on January 24,
25 2023. Let's Ride's claim of an appeal procedure was not raised until May 1, 2023, about five months after the
26 issuance of the NOT, when Let's Ride filed its Opposition to the Motion. At that time, Let's Ride asserted for the
27 first time that the 90-day cure period was an appeal procedure and raised its claim that the protest was timely due
28 to the alternative time period in Section 3060(a) of allowing a protest to be filed within 30 days after the end of any
appeal procedure provided by the franchisor. TSV denies that the cure period constitutes an appeal procedure and
denies that there was or is any appeal procedure in existence.

⁹ TSV's motion references three Board Decisions as listed. These decisions have not been designated by the Board
as precedent decisions pursuant to Government Code section 11425.60, so they will not be relied upon in this
proposed order.

1 c. *Paul Blanco’s Good Car Company Sacramento v. Kia Motors America, Inc.*, Protest No.
2 PR-2617-19¹⁰ (See Motion to Dismiss, pp. 5-6)

3 24. TSV states that the Board has “repeatedly recognized that a dealer’s failure to timely file a
4 protest is grounds for dismissal” therefore, TSV requests the Board dismiss this protest with prejudice.
5 (Motion to Dismiss, p. 6, lines 21-22)

6 **Let’s Ride’s Assertions in its Opposition**

7 25. Let’s Ride does not challenge TSV’s claim that the filing of the protest on January 24,
8 2023 was beyond 30 days from the date the NOT was received by Let’s Ride, (whether the date of receipt
9 was November 30, 2022 or December 15, 2022).

10 26. However, Let’s Ride asserts the Motion to Dismiss should be denied as Let’s Ride claims
11 that the protest was timely under the alternative stated in Section 3060(a). Let’s Ride claims the protest
12 was timely as it was filed within 30 days after the end of “any appeal procedure provided by the
13 franchisor.” (Protestant’s Opposition, p. 2, line 22 through p. 3, line 7) Let’s Ride asserts that the 90-day
14 cure period is an “appeal procedure.” As discussed below, Let’s Ride also claims that the cure period/
15 appeal procedure not only had not ended when the protest was filed on January 24, 2023, but that the
16 time for the cure period/appeal procedure is still ongoing and has not yet ended. (Protestant’s Opposition,
17 p. 5, lines 20-24, fn. 2; p. 8, lines 3-6)

18 27. On July 29, 2022, TSV, in the Notice of Breach, provided Let’s Ride a “Cure Period” to
19 remedy the alleged breaches of the dealer agreement. (Protestant’s Opposition, p. 4, lines 11-13; Fulce
20 Decl., ¶ 12; Ex. 5) “The Notice of Cure Period provided Let’s Ride the opportunity to cure the alleged
21 breaches within ninety (90) days of the letter.” (Protestant’s Opposition, p. 4, lines 26-27; Fulce Decl., ¶
22 12; Ex. 5)

23 28. Protestant argues it sought to correct the alleged facility deficiencies stated in the Notice
24 of Breach, it removed non-TSV product from its showroom and relocated its official address for a non-
25 TSV manufacturer to another location. Therefore, its entire showroom was dedicated to E-Z- GO

26 _____
27 ¹⁰ Respondent filed a concurrent “Request for Official Notice in Support of Respondent Textron Specialized
28 Vehicles Inc.’s Motion to Dismiss Protest” requesting the Board take official notice of these three Board
Decisions. The Request was denied by ALJ Skrocki.

1 products. In addition, Protestant stated it corrected alleged signage deficiencies. (Protestant’s Opposition,
2 p. 5, lines 1-5; Fulce Decl., ¶¶ 13-14; Exs. 6-7)

3 29. Protestant anticipated that Respondent would ultimately return to determine whether it had
4 cured the alleged facility deficiencies described in the Notice of Breach. However, no representative from
5 TSV ever returned to determine if the alleged deficiencies were cured. (Protestant’s Opposition, p. 5,
6 lines 6-9; Fulce Decl., ¶ 15)

7 30. Protestant argues, “Let’s Ride understood the Cure Period provided for in the [Notice of
8 Breach] to be a type of appeal procedure offered by TSV.” Therefore, “upon receipt of the NOT, Let’s
9 Ride anticipated TSV would return to Let’s Ride’s facility to determine whether any corrective action
10 had been taken and whether it cured TSV’s [*sic*] alleged breaches to TSV’s satisfaction. [citation] Let’s
11 Ride reasonably believed its deadline to file its Protest would begin after TSV’s return visit to determine
12 whether Let’s Ride had cured the alleged facility deficiencies.” (Protestant’s Opposition, p. 7, lines 2-3
13 and line 27 through p. 8, line 2; Fulce Decl., ¶ 16)

14 31. Protestant concludes that the Board possesses jurisdiction to decide this protest because it
15 was filed before TSV’s termination became effective and “is timely based on TSV never returning to end
16 the cure period which constituted an appeal procedure offered by TSV.”¹¹ (Protestant’s Opposition, p.
17 10, lines 13-17)

18 **TSV’s Assertions in its Reply to the Opposition**

19 32. TSV argues that Protestant’s arguments are flawed because they “rel[y] solely on the cure
20 period which it alleges has not expired because TSV allegedly did not return to ‘[Protestant’s] facility to
21 determine whether any corrective action had been taken and whether it cured TSV’s [*sic*] alleged
22 breaches to TSV’s satisfaction.” However, “the cure period provided in the notice of breach was for a
23 limited duration, ninety days of the notice of breach, and thus expired **October 27, 2022.**” [footnote

24 _____
25 ¹¹ Let’s Ride points out that the protest, filed on January 24, 2023, was filed while the franchise was still effective,
26 i.e., the protest was filed prior to the claimed franchise termination date of January 30, 2023. This fact is irrelevant
27 as the time during which a franchise may not be terminated will always continue beyond the time for filing a
28 timely protest. Thus, for a protest to be timely filed requires that it be filed within the statutorily proscribed time
for such filing even though the franchise must continue in existence for some additional time. It is the date
mandated for filing of the protest that determines whether a protest is timely filed, not the date the franchise may
be terminated.

1 omitted] (Emphasis in original) (Respondent’s Reply, p. 3, lines 6-13) In addition, TSV stated in the
2 Notice of Breach that it was within its “sole discretion” to terminate the dealer agreement. TSV chose to
3 do so by issuing the NOT more than thirty (30) days after the expiration of the cure period.

4 (Respondent’s Reply, p. 3, lines 17-20)

5 33. TSV also argues that “the [NOT] superseded the notice of beach and clearly provided
6 Protestant with notice that the Agreement would terminate on January 30, 2023.” (Respondent’s Reply,
7 p. 3, lines 21-24; Britt Decl. ¶ 2, Ex. A)

8 34. Respondent claims that Protestant did not request an appeal nor request TSV visit its
9 facility. “Rather, Protestant alleges that it idly waited for TSV to visit Protestant’s facility and continued
10 to wait after the expiration of the 30-day statutory period to file a protest, before filing the Protest.
11 [citation omitted]” (Respondent’s Reply, p. 4, lines 17-23)

12 35. TSV’s NOT effectively terminated Protestant’s franchise as of January 30, 2023. “The
13 fact that Protestant filed the Protest before the effective date of termination has no bearing on the status of
14 the termination despite Protestant’s contention otherwise.” (Respondent’s Reply, p. 5, lines 18-20)
15 Pursuant to Vehicle Code section 3060(a)(2), Protestant was required to file a protest by January 3, 2023.
16 Protestant waited to file a protest until January 24, 2023. The Board lacks jurisdiction over this matter
17 because the protest was untimely filed and therefore, the protest should be dismissed. (Respondent’s
18 Reply, p., 6, lines 11-15)

19 **APPLICABLE LAW**

20 36. There is no dispute that the E-Z-GO Retail Dealership Agreement is a “franchise” as
21 defined in Section 331(a) and that Let’s Ride and TSV are “franchisee” and “franchisor” respectively as
22 defined in Sections 331.1 and 331.2.

23 37. There is no dispute that the NOT was in the proper format required by Section 3060 and
24 received by Let’s Ride and the Board. Also, there is no dispute that the protest was not filed until January
25 24, 2023. Whether the NOT was received on November 30, 2022, or on or about December 15, 2022, is
26 irrelevant as the filing of the protest on January 24, 2023, was more than 30 days beyond either

27 ///

28 ///

1 date.¹²

2 38. However, there is a dispute as to whether the 90 day “cure period” provided in the Notice
3 of Breach dated July 29, 2022, was an “appeal procedure provided by the franchisor” and if so whether
4 the protest was filed before the expiration of the cure period/appeal procedure or “within 30 days after the
5 end” of the cure period/appeal procedure as permitted by the alternative time period in Section 3060(a).

6 39. Section 3060(a) provides in part as follows:

7 The franchisee may file a protest with the board within 30 days after receiving a 60-day
8 notice, satisfying the requirements of this section, or within 30 days after the end of any
9 appeal procedure provided by the franchisor . . . When a protest is filed, the board shall
10 advise the franchisor that a timely protest has been filed, that a hearing is required pursuant
11 to Section 3066, and that the franchisor may not terminate or refuse to continue until the
12 board makes its findings.

13 40. Section 3050 provides, in part, as follows:

14 The board shall do all of the following:

15 . . .
16 (c) Hear and decide, within the limitations and in accordance with the procedure
17 provided, a protest presented by a franchisee pursuant to Section 3060 . . .¹³

18 . . .
19 41. Section 3060 provides in part as follows:

20 (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms
21 of any franchise, no franchisor shall terminate or refuse to continue any existing franchise
22 unless all of the following conditions are met:

23 (1) The franchisee and the board have received written notice from the franchisor as
24 follows:

25 (A) Sixty days before the effective date thereof setting forth the specific grounds for
26 termination or refusal to continue. (Emphasis added.)

27 . . .
28 42. Section 3060 requires that the NOT be “received” by the franchisee. As the Vehicle
Code has no provision as to when a notice is deemed “received,” which is needed to determine when the
30-day time to file a protest would commence to run under the first alternative time-period of Section
3060, it is necessary to look elsewhere for guidance.

¹² As stated below, it is found that TSV has established that the NOT was received by Let’s Ride on November 30, 2022. If only the first alternative time period contained in Section 3060 is applicable, no timely protest was filed and TSV was permitted to terminate the franchise as of January 30, 2023.

¹³ This language empowers the Board to hear “a protest presented by a franchisee pursuant to Section 3060.” A protest presented beyond the time limits stated in Section 3060 would not be presented “pursuant to Section 3060” and the Board does not have the power to hear such a protest.

1 43. As the franchise is a contract for the sale of goods, it would come within the provisions of
2 Division 2 of the California Uniform Commercial Code (“UCC”). If the contract comes within the scope
3 of Division 2 of the UCC, then the definitions of terms as contained in Division 1 of the UCC would also
4 be applicable.

5 44. Section 3060 states that the NOT must be “received” by the franchisee and the Board,
6 with the time for filing a protest commencing to run from the receipt. The UCC distinguishes between
7 when a notice is deemed to be “given” as compared to when a notice is deemed to be “received.”

8 45. Vehicle Code section 3060 requires that the franchisee “receive” the notice of
9 termination.

10 46. As to when a notice is “received,” UCC section 1202(e) provides as follows:

- 11 (e) Subject to subdivision (f), a person “receives” a notice or notification when:
12 (1) it comes to that person’s attention; or
13 (2) it is duly delivered in a form reasonable under the circumstances at the place of business
14 through which the contract was made or at another location held out by that person as the
15 place for receipt of such communications.

16 47. UCC section 1202(e) means that, Let’s Ride, as the franchisee, is the only “person” that
17 must receive the termination notice under Section 3060. (See Section 331.1 that defines a “franchisee” as
18 a “person” and UCC section 1201(b)(27) that defines “person” to include a corporation.). TSV has
19 established that Let’s Ride, the franchisee, received the NOT on November 30, 2022.

20 **ANALYSIS**

21 **Timeliness of the Filing of the Section 3060(a) Termination Protest**

22 48. As stated above, the NOT received by Let’s Ride contained the following statutorily
23 required language in the proper format:

24 You must file your protest with the board within 30 calendar days after receiving this
25 notice or within 30 days after the end of any appeal procedure provided by the franchisor
26 or your protest right will be waived.

27 As can be seen, the statute provides alternative times for the filing of a timely protest:

- 28 a. A protest may be filed within 30 days after receiving a notice of termination; or
b. A protest may be filed within 30 days after the end of any appeal procedure provided by

the franchisor.

1 49. The following chronological facts are found to exist:

2 a. July 29, 2022 - TSV issued a Notice of Breach that also established a 90-day period for
3 Let's Ride to cure the stated breaches. The 90-day cure period would expire by its terms on about
4 October 27, 2022.

5 b. November 29, 2022 - About 30 days after the end of the stated 90-day cure period, TSV
6 issued the 60-day NOT, with the termination to be effective January 30, 2023.

7 c. November 30, 2022 as alleged by TSV, or December 15, 2022 as alleged by Let's Ride -
8 the NOT dated November 29, 2022 was received by Let's Ride.¹⁴

9 d. January 24, 2023 - Let's Ride's protest was filed. It is undisputed that the protest was not
10 filed within 30 days of either November 30, 2022, or December 15, 2022. The protest stated that the
11 NOT had been received on or about December 15, 2022, but made no mention of an appeal procedure
12 provided by TSV.

13 e. April 3, 2023 - The Motion to Dismiss was filed by TSV. The Motion sought dismissal of
14 the protest solely on the ground that the protest was filed more than 30 days after receipt of the NOT, the
15 first alternative time-period stated in Section 3060(a). As Let's Ride made no claim in its protest of the
16 existence of an appeal procedure, TSV's Motion did not address whether the alternative time-period
17 stated in Section 3060(a) relating to an appeal procedure was applicable.

18 f. May 1, 2023 - Let's Ride filed its Opposition to the Motion to Dismiss and for the first
19 time raised the claim that the 90-day cure period contained in the Notice of Breach was an appeal
20 procedure that came within the alternative in Section 3060(a) as to when a protest may be timely filed.
21 Let's Ride alleged that the 90-day cure period was an appeal procedure that had not yet come to an end,
22 thus its protest filed on January 24, 2023, was timely. This May 1, 2023 claim of an existence of an
23 appeal procedure was not made until about nine months from the July 29, 2022 Notice of Breach
24 containing the cure period, more than four months after the claimed date of receipt of the NOT by Let's
25 Ride on December 15, 2022, more than three months after the date of the filing of the protest on January
26 24, 2023, and four weeks after the Motion to Dismiss was filed by TSV on April 3, 2023.

27 _____
28 ¹⁴ Federal Express records establish that the NOT was received by Let's Ride on November 30, 2022.

1 g. May 8, 2023 - TSV filed its Reply to Let's Ride's Opposition to the Motion to Dismiss.
2 TSV denied that the 90-day cure period was an appeal procedure and even if it were, the protest was filed
3 more than 30 days beyond the expiration of the 90-day cure period. The 90-day cure period by its terms
4 would expire on October 27, 2022, and the protest was not filed until January 24, 2023.

5 **Whether the Protest was Filed within 30 Days of Receipt by Let's Ride of the NOT**

6 50. It is found that the tracking notice and receipt from Federal Express establish that the NOT
7 was received by Let's Ride on November 30, 2022.

8 51. However, the protest filed on January 24, 2023, by Let's Ride alleges that the NOT was
9 not received by Let's Ride until on or about December 15, 2022.

10 52. Although it has been established that the NOT was received by Let's Ride on November
11 30, 2022, whether the NOT was received by Let's Ride on November 30, 2022, as claimed by TSV, or on
12 December 15, 2022, as claimed by Let's Ride, is irrelevant as the protest, filed on January 24, 2023, was
13 not filed "within 30 days" of either date.¹⁵ The January 24, 2023 filing date of the protest was 54 days
14 after November 15, 2022, and 40 days after December 15, 2022.

15 53. TSV's Motion to Dismiss alleges the Board lacks jurisdiction to consider the protest as it
16 was not filed within 30 days after receipt by Let's Ride of the NOT. TSV's motion, filed on April 3,
17 2023, did not address application of an appeal procedure as Let's Ride had made no reference to the
18 existence of such a procedure until May 1, 2023, when Let's Ride filed its Opposition to the Motion to
19 Dismiss.

20 54. Let's Ride's Opposition does not challenge the claim of TSV that, regardless of the true
21 date of receipt of the NOT, the protest was not filed within 30 days after receipt of the NOT.

22 55. It is thus undisputed that the protest was not filed within 30 days of receipt by Let's Ride
23 of the NOT.

24 56. Therefore, if only the first alternative of Section 3060 is applicable, the protest, required to
25

26 ¹⁵ A copy of the protest was sent to TSV on January 20, 2023, by Certified Mail but the protest was sent to the
27 Board via "Priority Mail" and was not received by the Board until January 24, 2023. Had Let's Ride mailed its
28 protest to the Board by Certified or Registered Mail on January 20, 2023, the protest would have been deemed
filed on that date. However, even if this had occurred, the protest would not have been deemed timely filed as
January 20, 2023, is not within 30 days of either November 30, 2022, or December 15, 2022.

1 be filed within 30 days of receipt of the NOT, was not timely filed and the Motion to Dismiss must be
2 granted and the protest dismissed with prejudice.

3 **Whether the Protest was Filed within 30 Days After the End of Any**
4 **Appeal Procedure Provided by the Franchisor**

5 57. Analysis of this issue first requires a determination of whether there was or is “any appeal
6 procedure provided by the franchisor” and, if so, whether the protest was filed within 30 days after the
7 “end” of the appeal procedure.

8 58. The protest, filed on January 24, 2023, was untimely on its face as it stated only that the
9 NOT was allegedly received by Let’s Ride on or about December 15, 2022, and made no mention of a
10 claim by Let’s Ride that there was an “appeal procedure provided by the franchisor.”

11 59. Let’ Ride now asserts the cure period stated in the Notice of Breach was an “appeal
12 procedure provided by the franchisor.”

13 60. Let’s Ride also asserts not only that the cure period was an appeal procedure but, because
14 TSV representatives had never returned to the dealership to determine if the cures had occurred, that the
15 cure period/appeal procedure has never ended thus its protest was timely filed.

16 **Was the 90-day Cure Period an “Appeal Procedure” Provided by TSV?**

17 61. Neither “appeal” nor “appeal procedure” is defined in the Vehicle Code, so the terms must
18 be given their plain and ordinary meaning. A dictionary definition of “appeal” is: “A proceeding
19 undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court’s
20 or agency’s decision to a higher court for review and possible reversal.” (Black’s Law Dict. (11th ed.
21 2019), “Appeal”)

22 62. Pursuant to this definition, an appeal procedure provided by TSV would be a process
23 whereby a dealer could ask a higher level of TSV’s internal hierarchy to reconsider its decision regarding
24 the decision to terminate the dealer agreement. The 90-day cure period did not provide for any internal
25 review to reverse a decision to terminate the franchise. The cure period could not apply to a decision to
26 terminate the franchise as that decision had not been made and would not be made until after the cure
27 period had expired. Successful cure of the breaches would “remedy the breaches” and prevent the
28 issuance of a notice of termination compared to an “appeal procedure” that would reverse a decision to

1 terminate the franchise.

2 63. The Notice of Breach was not a Notice of Termination. There is nothing in the dealer
3 agreement indicating that TSV has an appeal procedure (Transcript, p. 8, lines 15-23)

4 64. There is no language that “cure” of the breaches will entitle Let’s Ride to appeal to a
5 higher level or body to reverse a possible future decision to terminate the franchise.

6 65. The Notice of Breach containing the Cure Period had no stated intention to immediately
7 initiate termination of the franchise. Rather, there was the stated future intention to initiate termination of
8 the franchise but only if the breaches were not cured within the 90-day cure period.

9 66. As there was no stated decision to terminate the franchise there was nothing that granted
10 Let’s Ride a right to “appeal” to seek reversal of any future intention or future decision to terminate the
11 franchise if such a decision were eventually made. TSV stated it would not initiate termination
12 proceedings if the alleged breaches were cured within the 90-day period and thus there would be no need
13 to invoke an “appeal procedure” to reverse a decision that had never been made. The provision, contained
14 in the Notice of Breach (not the NOT), allows Let’s Ride 90 days to cure the alleged breaches and has the
15 effect of granting a right to Let’s Ride to act in such a way as to prevent the issuance of a notice of
16 termination rather than allowing Let’s Ride to seek reversal of a decision constituting a notice of
17 termination, a notice not yet issued when the cure period was created.

18 67. The “cure period” created by the language in the Notice of Breach provides for a time
19 prior to the issuance of any decision to terminate the franchise, whereas an appeal procedure would be for
20 a time period subsequent to a decision to terminate the franchise and seeking to reverse the decision to
21 terminate the franchise. Said another way, the cure period is looking at a time and events prior to TSV
22 making a decision to terminate the franchise that would have the effect of precluding a decision to
23 terminate the franchise. In comparison, an “appeal procedure” would be looking for reasons that would
24 have the effect of reversing a decision to terminate the franchise.

25 68. Complying with the requested cure would have resulted in no decision to terminate the
26 franchise and no Notice of Termination would be issued. An “appeal procedure” would have the effect of
27 reversing a Notice of Termination that had been issued.

28 69. The cure period as stated in the Notice of Breach had nothing to do with appealing or

1 seeking the reversal of a decision to terminate the franchise. Rather the claimed breaches and any timely
2 cure thereof relate solely to whether a notice of termination would be issued and would be relevant as to
3 whether the alleged uncured breaches would support the existence of good cause to terminate the
4 franchise. After receipt of the NOT, had a timely protest been filed, Let's Ride would be challenging
5 whether there was good cause to terminate the franchise with the issues including whether the claimed
6 breaches had been cured during the 90-day time period. With TSV having the burden of proving good
7 cause to terminate, TSV would have to prove that the alleged breaches had not been cured and that the
8 reasons for termination continued beyond the cure period.

9 70. The stated cure period does not apply to operate as an appeal procedure that Let's Ride
10 could utilize in seeking to have TSV revoke the notice of termination.

11 71. It is concluded that the 90-day cure period is not an "appeal procedure provided" by TSV.

12 **Whether the Alleged Cure Period/"Appeal Procedure" had not Ended and Continues**

13 72. Although the cure period is not an appeal procedure, the following is offered to address
14 Let's Ride's claims that the alleged cure period/ "appeal procedure" had not ended and continues to exist.

15 73. Even if the cure period was an appeal procedure, the protest was not timely filed for the
16 following reasons.

17 74. The cure period was created by the Notice of Breach dated July 29, 2022. The cure period
18 was stated to be for 90 days and thus would terminate on or about October 27, 2022. If this was an appeal
19 procedure, a protest to be timely under this alternative time would have to be filed within 30 days after
20 the end of the cure period/appeal procedure which means the protest would have to have been filed on or
21 before November 29, 2022. The protest was not filed until January 24, 2023.

22 75. Let's Ride's claim that the 90-day cure period had not expired and continues to exist to the
23 present is unreasonable and untenable for the following reasons.

24 76. Let's Ride claims that it withheld the filing of a protest as it believed the cure period
25 would continue until representatives of TSV came to the dealership to evaluate whether Let's Ride had
26 accomplished the cures needed. However, there is nothing to indicate TSV had agreed to extend the cure
27 period or that TSV representatives would be coming to the dealership to determine if the cures had been
28 made.

1 77. It is found that the NOT, received by Let’s Ride on November 30, 2022 as established by
2 the tracking information and receipt from Federal Express, clearly indicates the contrary as it states:
3 “Dealer took no corrective action and continues to fail to comply with its obligations as an E-Z-GO
4 dealer.” The NOT concludes that the franchise would terminate as of January 30, 2023.

5 78. As it has been found that there was not and is not an “appeal procedure provided by the
6 franchisor,” the only portion of Section 3060 that is applicable to the filing of a timely protest is that
7 which requires a protest be filed within 30 days of receipt of the NOT. The Motion and documents filed
8 by TSV establish that the protest was not timely filed pursuant to this provision. It has been found that
9 the NOT was received by Let’s Ride on November 30, 2022. This means Let’s Ride would have had until
10 January 3, 2023 to file a timely protest but no protest was filed until January 24, 2023. Let’s Ride in its
11 opposition claims that the NOT was not received until December 15, 2022, but Let’s Ride makes no
12 claim that its protest was timely filed within 30 days of either claimed date of receipt of the NOT. Let’s
13 Ride’s claims that the protest was timely filed due to the existence of an appeal procedure and that the
14 appeal procedure had not ended have been found to be without merit.

15 79. As no timely protest was filed, the statutory stay of the termination, as provided by the
16 Vehicle Code, expired on January 30, 2023. Absent a protest being timely filed prior to that date, TSV
17 was permitted to terminate the franchise as of January 30, 2023. The fact that the protest was filed on
18 January 24, 2023, while the franchise was still in effect, is irrelevant as the time to file a timely protest
19 had lapsed and as stated in Section 3060, the right to protest had been waived.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

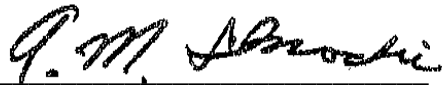
28 ///

1 **PROPOSED ORDER**

2 After consideration of the pleadings, exhibits, and oral arguments of counsel, it is hereby ordered
3 that “Respondent Textron Specialized Vehicle Inc.’s Motion to Dismiss Protest” is granted. As the
4 protest was not timely filed, the Board has no jurisdiction over this matter. *Let’s Ride Motorsports Inc v.*
5 *Textron Specialized Vehicles Inc. (“TSV”)*, Protest No. PR-2815-23, is dismissed with prejudice.
6

7
8 I hereby submit the foregoing which constitutes my
9 proposed order in the above-entitled matter, as the
10 result of a hearing before me, and I recommend this
11 proposed order be adopted as the decision of the
12 New Motor Vehicle Board.

13 DATED: August 16, 2023

14 By 
15 ANTHONY M. SKROCKI
16 Administrative Law Judge
17
18
19
20
21
22
23
24
25
26

27 Steve Gordon, Director, DMV
28 Ailene Short, Branch Chief,
Industry Service Branch, DMV