State of California
New Motor Vehicle Board

GUIDE
TO THE
NEW MOTOR VEHICLE BOARD

February 2012

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

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PREAMBLE

This publication provides general information only as to the most pertinent Vehicle Code sections as they relate to practice before the New Motor Vehicle Board ("Board"). There are many other important Vehicle Code sections and Department of Motor Vehicles ("Department") regulations not covered in this publication. The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation. Practitioners as well as the general public are invited to comment on the forms and contents of procedures. Please note the Board's address is different from the address of the Department. The Board only has one office in Sacramento. All correspondence, protests, petitions, and appeals should be sent to:

New Motor Vehicle Board
ATTN: Legal Department
1507 21st Street, Suite 330
Sacramento, California 95811

Correspondence can also be sent via e-mail at nmvb@nmvb.ca.gov or facsimile at (916)-323-1632. The telephone number of the Board is (916) 445-1888 and the website address is http://www.nmvb.ca.gov. Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

PREFACE

The purpose of this publication is to familiarize the reader with the organization and jurisdiction of the Board, including the Board's operations and procedures. All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at www.leginfo.ca.gov. References to regulations are to Title 13 of the California Code of Regulations. The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's website (www.oal.ca.gov). Once you reach the OAL site, under "Sponsored Links", select California Code of Regulations. You will be taken to the California Code of Regulations "Welcome" page. Once there you have four search options; search by title and specific regulation, a word, select from a list of titles, or select from a list of agencies. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code § 11400 through 11529) are applicable. The provisions of the APA are available at www.leginfo.ca.gov or at the Office of Administrative Hearings website (www.oah.dgs.ca.gov). Citations to relevant court decisions are interspersed throughout.

The Board also publishes the *Informational Guide for Manufacturers and Distributors* to assist manufacturers and distributors in clarifying California's vehicle franchise laws. It is designed for personnel in manufacturer or distributor market representation departments, dealer development departments, or legal departments. The *Informational Guide for Manufacturers and Distributors* is available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website, http://www.nmvb.ca.gov.

INTRODUCTION

PURPOSE

The New Motor Vehicle Board ("Board") is a program within the Department of Motor Vehicles ("Department"). The Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board. At that time, the Board's only function was hearing appeals from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative.[1] In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, cha. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry. The constitutionality of this regulatory scheme has survived a due process challenge in the United States Supreme Court (*NMVB v. Orrin W. Fox Co.* (1978) 439 U.S. 96, 58 L.Ed.2d 361, 99 S.Ct. 403).

ORGANIZATION

The organization of the Board is prescribed in Vehicle Code sections 3000 to 3016. The Board is comprised of nine members. The chart below identifies the composition of the Board.

Who	Qualifications	Appointment
Four licensed new motor vehicle dealers. (Dealers that deal exclusively in motorcycles or recreational vehicles are excluded from membership on the Board.)	Must have been licensed as a new motor vehicle dealer for not less than five years.	All by the Governor.
Five members from the general public.	One must be an attorney who has been a member of the California Bar for at least 10 years.	Three by the Governor. One by the Senate Rules Committee. One by the Speaker of the Assembly.

[1] Throughout this Guide, the terms dealer, protestant, and franchisee are used interchangeably, as are the terms manufacturer/distributor, respondent, and franchisor.

MEETINGS

The Board meets at least twice during each calendar year, with supplemental meetings held as necessary. Board meetings are open to the public with the exception of executive sessions, which are held to deliberate on pending matters before the Board. As public meetings conducted by a state entity, the Bagley-Keene Open Meeting Act (Gov. Code §§ 11120 through 11132) covers all requirements for public notice, agendas, public testimony and the conduct of Board meetings. To the extent practicable, the Board conducts business at meetings using a modern interpretation of procedures set forth in *Robert's Rules of Order*.

JURISDICTION

The Board's statutory jurisdiction under Vehicle Code 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. In the past, the courts construed this jurisdiction as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the franchise relationship before the Board prior to seeking judicial relief (*Yamaha Motor Company v. Superior Court* (1986) 185 Cal. App. 3d 1232, 230 Cal. Rptr. 382; *Yamaha Motor Company v. Superior Court* (1987) 195 Cal. App. 3d 652, 240 Cal. Rptr. 806; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal. App. 4th 51, 12 Cal. Rptr. 2d 598; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal. App. 4th 288, 21 Cal. Rptr. 2d 325). However, subsequent court decisions have held otherwise (*Miller v. Superior Court* (1996) 50 Cal. App. 4th 1665, 58 Cal. Rptr. 2d 584); *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal. App. 4th 585, 60 Cal.Rptr.2d 583; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal.App.4th 506, 67 Cal.Rptr.2d 145; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 CalApp.4th 1527, 67 Cal.Rptr.2d 794). As a consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the Legislature in 1997 and became effective in 1998. It provides that the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

In 2003, the Board's petition jurisdiction under Vehicle Code section 3050(c) was further narrowed by the Third District Court of Appeal in *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal. App. 4th 1451; 2 Cal.Rptr.3d 866. The court held that the Board's jurisdiction for licensee versus licensee petitions is limited to those in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(1) or (3). Subdivision (c)(1) allows the Board to direct the Department to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board to order the Department to "exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation" of the occupational license of a manufacturer or distributor. The Board's jurisdiction under Vehicle Code section 3050, subdivision (c)(2), which provides that the Board may "undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint [i.e., hold a hearing]

existing between any member of the public and any new motor vehicle dealer, manufacturer, … distributor branch…", is now limited to petitions brought by members of the public, and does not include licensees as petitioners.

Effective January 1, 2004, the Vehicle Code was amended to bring new recreational vehicles ("RVs") as defined in Health and Safety Code section 18010(a) under the jurisdiction of the Board for purposes of dispute resolution and fee collection (SB 248, Stats. 2003, cha. 703 § 11). This Guide integrates current Board processes and procedures to the extent they can be used to resolve disputes in the RV segment of the new motor vehicle industry, and sets forth unique procedures that pertain to RV issues exclusively.

NEW AS OF 2012

LEGISLATION

Senate Bill 642, effective January 1, 2012, amends subdivisions (g), (o), (u), and (x) of Vehicle Code section 11713.3. These changes are substantive and may require consultation with legal counsel to ensure compliance.

It is a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed by the Department to obtain from a dealer or enforce against a dealer an agreement, provision, release, assignment, novation, waiver, or estoppel that does any of the following:

- *Modifies or disclaims a duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch or representative, or a right or privilege of a dealer pursuant to Vehicle Code Section 11700, et seq. and Section 3000, et seq.*
- *Limits or constrains the right of a dealer to file, pursue, or submit evidence in connection with a protest before the Board.*
- *Requires a dealer to terminate a franchise.*
- *Requires a controversy between a manufacturer, manufacturer branch, distributor, distributor branch or representative and a dealer to be referred to a person for a binding determination. However, arbitration before an independent arbitrator is allowed in specified circumstances. (Veh. Code § 11713.3(g)(1)(D))*

An agreement, provision, release, assignment, novation, waiver, or estoppel prohibited by subdivision (g) is unenforceable and void.

Subdivision (g) does not do any of the following:

- *Limit or restrict the terms upon which parties to a protest before the Board, a civil action, or other proceeding can settle or resolve, or stipulate to evidentiary or procedural matters during the course thereof.*
- *Affect the enforceability of any stipulated order or other order entered by the Board.*
- *Affect the enforceability of any provision in a contract if the provision is not prohibited under subdivision (g) or any other law.*

- *Affect the enforceability of a provision in any contract entered into on or before December 31, 2011.*
- *Prohibit a dealer from waiving its right to file a protest pursuant to Vehicle Code section 3065.1 if the waiver agreement is entered into after a franchisor incentive program claim has been disapproved by the franchisor and the waiver is voluntarily given as part of an agreement to settle that claim.*
- *Prohibit a voluntary agreement supported by valuable consideration, other than granting or renewing a franchise, that does both of the following:*

    - *Provides that a dealer establish or maintain exclusive facilities, personnel, or display space or provides that a dealer make a material alteration, expansion, or addition to a dealership facility; and,*
    - *Contains no waiver or other provision prohibited by subparagraph (A), (B), (C) or (D) of paragraph (1) of subdivision (g).*

- *Prohibit an agreement separate from the franchise agreement that implements a dealer's election to terminate the franchise if the agreement is conditioned only on a specified time for termination or payment of consideration to the dealer.*
- *Prohibit a voluntary waiver agreement, supported by valuable consideration, other than the consideration of renewing a franchise, to waive the right of a dealer to file a protest under Vehicle Code section 3062 for the proposed establishment or relocation of a specific proposed dealership, if the waiver agreement provides all of the following:*

    - *The approximate address at which the proposed dealership will be located.*
    - *The planning potential used to establish the proposed dealership's facility, personnel, and capital requirements.*
    - *An approximation of projected vehicle and parts sales, and number of vehicles to be serviced at the proposed dealership.*
    - *Whether the franchisor or affiliate will hold an ownership interest in the proposed dealership or real property of the proposed dealership, and the approximate percentage of any franchisor or affiliate ownership interest in the proposed dealership.*
    - *The line-makes to be operated at the proposed dealership.*
    - *If known at the time the wavier agreement is executed, the identity of the dealer who will operate the proposed dealership.*
    - *The date the waiver agreement is to expire, which may not be more than 30 months after the date of execution of the waiver agreement.*

- *Notwithstanding the provisions of a waiver agreement entered into pursuant to the provisions of Vehicle Code section 11713.3(g)(3)(H), a dealer may file a protest under Section 3062 if any of the information provided above pursuant to Section 11713.3(g)(3)(H)(i)(I)-(VII) has become materially inaccurate since the waiver agreement was executed. Any determination of the enforceability of a waiver agreement shall be determined by the Board and the franchisor shall have the burden of proof.*

Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius of a privately owned dealership of the same line-make. There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The factory notices that are filed with the Board have been amended and provide as follows:

- *Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates a dealership for a temporary period (not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months) shall give written notice to the Board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.*
- *Vehicle Code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined shall give written notice to the Board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.*

Subdivision (u) of Vehicle Code section 11713.3 expands the definition of unfair discrimination to include, but not be limited to, the furnishing to a franchisee or dealer that is owned or controlled, in whole or in part, by a manufacturer, branch, or distributor sales or service incentives, discounts, or promotional programs that are not made available to all California franchises of the same line-make on an equal basis.

Subdivision (x) of Vehicle Code section 11713.3 makes it unlawful and a violation of this code for a licensed manufacturer, manufacturer branch, distributor, or distributor branch to unfairly discriminate against a franchisee selling a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate. Unfair discrimination is defined in subdivision (x) along with what does not include unfair discrimination

CASE LAW

The parties are required to participate in Board ordered discovery and the failure of a party to do so without substantial justification can result in sanctions being imposed pursuant to Vehicle Code section 3050.2(b), one of which is that the protest may be dismissed. The Board's authority to dismiss a protest for the failure of the party to comply with its discovery obligations was upheld in the published opinion of Nader Automotive Group, LLC, et al. v. New Motor Vehicle Board ("Nader") (2009) 178 Cal. App. 4th 1478.

REGULATIONS

The Board recently promulgated a number of regulatory amendments that were operative March 17-26, 2011, that mainly pertain to case management and the format of pleadings. The Board's regulations, Sections 550 through 598, are under Title 13 (Motor Vehicles), Division 1 (Department of Motor Vehicles), Chapter 2 (New Motor Vehicle Board) of the California Code of Regulations ("CCR"). There are separate and different regulation provisions for appeals (Articles 3 and 4), petitions (Articles 2 and 4), and protests (Article 5).

The following summarizes, in part, these regulatory changes:

13 CCR § 550 - a number of definitions have been added including ALJ, appeal, appellant, hearing, motion, papers, petition, protest, and serve or service of papers. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable laws and regulations.

13 CCR § 551.11 - pertains to settlement conferences and mandatory settlement conference ("MSC") statements. Unless the parties agree orally or in writing that the statements shall be submitted only to the Board for use by the assigned settlement conference administrative law judge ("ALJ") and designated "confidential", the settlement conference statement filed with the Board shall be accompanied by a proof of service showing service on all other parties.

There are now two choices in regard to the submission of MSC statements: (1) serve on opposing counsel and submit a proof of service; or (2) with an oral or written agreement, file without a proof of service and designate "confidential"; meaning the statement has not been exchanged on opposing counsel. Regardless of which choice is made MSC statements are confidential, not shared with the merits/law and motion ALJ, and are not subject to disclosure.

13 CCR § 551.19 - fills a gap in the Board's case management procedures concerning motions. All motions shall be in writing and filed with the Board with an attached proof of service on all parties (unless made during a hearing while on the record). Motions and any response including an opposition to the motion and a reply to the opposition shall conform to the requirements of Article 6 of the Board's regulations. The motion and any response shall state in plain language the relief sought and the facts, circumstances, and legal authority that support the motion or the response. Briefing may be permitted by stipulation of the parties or by Board order.

Government Code section 11440.30(a) of the APA provides that "[t]he presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe the exhibits." Subsection (b) goes on to provide that "[t]he presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects." The regulation exempts the Board's hearings from this optional provision and clarifies that all motion hearings are conducted by telephone, television, or other electronic means

unless otherwise determined by the ALJ. However, in the event of live testimony, the proposed regulation provides that the hearing shall be conducted in person before the ALJ.

13 CCR § 551.20 - pertains to the conduct of a hearing and protective orders consistent with Government Code section 11425.20 and Rule 2.550 and 2.551 of the California Rules of Court. A motion seeking an order for closure or other protective order for all or part of a hearing, including a motion to seal designated portions of the record shall be made before the ALJ presiding at the hearing to which the order will apply. The motion may be made by separate writing or it may be made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. In any case, the provisions of Government Code section 11425.20 shall be applicable. The motion shall clearly identify the relief sought and the facts, circumstances, legal authority, and shall include declarations or other evidence that support the motion. An oral or written opposition to the motion may be permitted in the discretion of the ALJ. The ALJ shall set forth on the record the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close all or part of the hearing to the public.

13 CCR § 551.21 - pertains to sanctions for bad faith actions. The ALJ may recommend ordering a party, a party's representative or both, to pay reasonable sanctions, including attorney's fees and costs, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. "Actions or tactics" include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board. "Frivolous" means: totally without merit; or for the sole purpose of harassing an opposing party. The ALJ shall not recommend an award of sanctions without providing notice and an opportunity to be heard.

Whether there has been bad faith by a party shall be determined by the ALJ based upon testimony under oath or other evidence. Any proposed order recommending sanctions by the ALJ shall be on the record, or in writing, setting forth the factual findings on which the sanctions are based, as well as setting forth the factual findings as to the reasonableness of the amount(s) to be paid. A proposed order recommending an award of sanctions shall be considered by the Board members at their next regularly scheduled meeting.

A determination not to award sanctions is not considered by the Board members and is final upon issuance by the ALJ. The Board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

13 CCR § 551.24 - formalizes how proof of service can be accomplished in Board proceedings. This regulation is consistent with Section 1013a of the Code of Civil Procedure and current Board practice that provides for service via facsimile and electronic mail. Where service is by facsimile the proof of service shall state the

method of service upon each party, the date and time sent, and the facsimile telephone number to which the document was sent. Where service is by electronic-mail the proof of service shall state the method of service upon each party, the date and time of electronic service, and the name and electronic notification address of the person served. (Samples are available on the Board's website.)

13 CCR § 551.25 - ensures the parties and counsel are aware of the parameters permitting a substitution or withdrawal of counsel. It is consistent with the Rules of Professional Conduct (Rule 3-700) and Section 284 of the Code of Civil Procedure. 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. 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. Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

13 CCR § 551.2 - clarifies the Board's issuance of subpoenas, updates obsolete statutory references when the California Civil Discovery Act was reorganized, and references electronically stored information (Section 1985.8 of the Code of Civil Procedure). A motion to quash pursuant to Government Code section 11450.30 shall be made in compliance with 13 CCR § 551.19 of the Board's regulations. The motion shall be made within a reasonable time after receipt of the subpoena.

13 CCR § 583 - clarifies who can sign a protest, and who can represent a protestant that is a corporation or is a natural person or other legal entity. It is consistent with the opinion that allows non-attorneys to represent corporations in administrative proceedings.

13 CCR § 593.1 - encompasses termination/refusal to renew and modification notices in addition to establishment, relocation, and off-site sales notices. The amendments mandate that these statutorily required notices be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. Notices shall not be combined to include more than one franchisee nor combined to include more than one line-make.

13 CCR §§ 594, 595, and 597- pertains to format of pleadings. Except as otherwise provided by statute or regulation, the Board may accept for filing papers, documents, and exhibits that bear a copy of a signature (13 CCR § 597(d)). Dates of the hearing and future pre-hearing or settlement conference dates should be on the first page of each pleading.

- Papers can be filed via facsimile or e-mail, unless required by order of the Board.
- Papers delivered by the U.S. Postal Service or other means are deemed filed on the date actually received by the Board.
- Papers hand-delivered and complete papers received by facsimile or e-mail during regular business hours will be filed on the date received.
- Papers received after regular business hours are deemed filed on the next regular business day.
- Protests sent by U.S. Postal Service certified or registered mail are deemed received by the Board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

The following chart is useful to determine when documents are filed based on the method of delivery:

METHOD OF DELIVERY OF PAPERS	FILED WHEN RECEIVED
Electronic mail (e-mail) during regular business hours	Yes
Facsimile during regular business hours	Yes
Hand-delivered during regular business hours	Yes
Regular mail or overnight mail	Yes
Certified mail or registered mailing of protest (13 CCR § 595(f))	No, filed as of the date of the certified or registered mail
Electronic mail (e-mail) after regular business hours	No, filed next regular business day
Facsimile after regular business hours	No, filed next regular business day
Hand-delivered after regular business hours	No, filed next regular business day

POWERS AND DUTIES IN GENERAL

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. New vehicle dealers, manufacturers, and distributors under the jurisdiction of the Board are charged fees to fund the Board's activities (Veh. Code §§ 3016 and 3077; 13 CCR § 553). In addition to delegating rulemaking authority to the Board, Vehicle Code section 3050 empowers the Board to resolve disputes arising in the form of protests, petitions, or appeals.

As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

ENFORCEMENT OF BOARD ORDERS

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts (Veh. Code § 3050.2(a)). Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or petition or suspend the proceedings pending compliance (see discussion of Nader on page 4). Vehicle Code section 11726 provides for enforcement of Board orders by permitting any licensee to recover damages, attorney fees, and injunctive relief in any court of competent jurisdiction for a willful failure to comply with a Board order.

MANDATORY SETTLEMENT CONFERENCES

In any protest or petition filed with the Board, the Board, its Executive Director, or an ALJ may order a mandatory settlement conference (Veh. Code § 3050.4). For any particular proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties (13 CCR § 551.11). The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party (Veh. Code § 3050.4).

DISPUTES BETWEEN THE DEALER AND THE FRANCHISOR

The Vehicle Code gives the Board jurisdiction to resolve disputes involving the following:

Type of Case	**Vehicle Code Authority**	**Pages**
Attempts by the franchisor to terminate, modify, or refuse to continue (renew) the franchise.	3060, 3070	17-25
Attempts by the franchisor to establish a new, or relocate an existing, dealer (of the "same line-make") if the current franchisee is within a radius of 10 air miles of the proposed location (called the "relevant market area").	3062(a)(1), 3072(a)(1)	26-30
Attempts by the franchisor to establish a satellite warranty facility at, or relocate an existing satellite warranty facility to, a location that is within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)	3062(a)(2)	31-34
Disputes relating to the dealers' delivery and preparation obligations, and compensation for such services.	3064, 3074	35-36
Disputes relating to reimbursement for warranty work performed by the dealer.	3065, 3075	37-39
Disputes relating to reimbursement for franchisor incentive programs.	3065.1, 3076	40-41
All other disputes concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, or distributor submitted by any member of the public[2] or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(c)	47-52

NOTE: Vehicle Code section 3050(d) prohibits a dealer member from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed "pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise." Vehicle Code section 3066(d) states: "[a] member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other

[2] Members of the public have the option to seek informal mediation of their disputes (13 CCR § 551.14 et seq.) as well as administrative hearings on the merits pursuant to the Board's petition process.

members upon, or decide, a matter involving a protest filed pursuant to this article [Article 4, i.e., protests involving motor vehicles other than RVs] unless all parties to the protest stipulate otherwise." These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions. The dealer members may participate in those matters not involving a dispute between a franchisee and franchisor such as a petition filed by a member of the public or an appeal from a Department decision. For matters before the Board in which relief is sought pursuant to Vehicle Code section 3050(c), dealer members may not participate and there are no provisions to allow parties to stipulate and permit participation.

In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

PROTESTS IN GENERAL

STATUTORY AUTHORITY

Vehicle Code section 3050(d) provides for the Board to hear and decide any protest presented by a franchisee against a franchisor.

STATUTORY BASES FOR PROTEST

A protest can arise as a result of disputes contemplated by the following statutory provisions:

Vehicle Code Section	Provision
3060, 3070	The franchisor attempts to terminate, modify, or refuses to continue the franchise.
3062(a)(1), 3072(a)(1)	The franchisor attempts to establish an additional dealer or relocate an existing dealer within the relevant market area (any area within a radius of 10 miles from the site of a potential new dealership) where the same line-make is already represented.
3062(a)(2)	The franchisor attempts to establish an additional satellite warranty facility or relocate an existing satellite warranty facility within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)
3064, 3074	Disputes relating to the dealer's delivery and preparation obligations, and compensation for such services.
3065, 3075	Disputes relating to reimbursement for warranty work performed by the dealer.
3065.1, 3076	Disputes relating to reimbursement for franchisor incentive programs.

SEPARATE PROTESTS

A separate protest is required if there is more than one franchise.[3] For example, if a franchised dealer files a single protest to the attempted termination of its Chrysler, Jeep and Dodge franchises, consistent with Vehicle Code section 3050 and 13 CCR § 583, the Board would require the dealer to file an amended protest for one of its franchises, i.e., Chrysler, and new protests for the other two franchises, i.e., Jeep and Dodge.

FILING PROTEST

Most protests have specific statutorily imposed time limits for filing. A protest is deemed filed upon its receipt by the Board via regular mail, e-mail or facsimile, or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be either personally filed or mailed by certified or registered mail.

FRANCHISOR'S NOTICE OF APPEARANCE

The respondent shall file a written notice of appearance within 15 days of receipt of the protest (13 CCR § 585.1). Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

FILING FEE

A filing fee of $200, which should be in the form of a check, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. In the event of a financial hardship, either the protestant or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are

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[3] Vehicle Code section 331 defines a "franchise" in part as follows: "…a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor's distribution system.

(4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

A recreational vehicle franchise is defined in Vehicle Code section 331.3 as a written agreement between two or more persons having both of the following conditions: (a) A commercial relationship of definite duration or continuing indefinite duration; and (b) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail, new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, that are manufactured or distributed by the franchisor, or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

available on the Board's website.)

INTERESTED INDIVIDUALS

Per Vehicle Code section 3066, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

MOTION FOR INTERVENTION

Any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative may file a motion to intervene in a pending proceeding subject to the conditions set forth in 13 CCR § 551.13.

CHALLENGE TO PRESIDING OFFICER

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12 entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier (13 CCR § 551.12). Parties are not entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

TABLE OF CONTENTS FOR PROTEST SECTION

The chart below identifies the section and page numbers for procedural requirements particular to each type of protest, but should be relied on only as a guide.

Protest Section of Guide	Page
Termination of the Franchise	17-21
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Compensation for Delivery and Preparation	35-36
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TERMINATION OF FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3060 and 3070 give the dealer the right to protest an attempt by the manufacturer or distributor to terminate or refuse to continue an existing franchise agreement.

FRANCHISOR'S NOTICE OF TERMINATION

Vehicle Code sections 3060 and 3070 provide that no franchisor (manufacturer or distributor) shall terminate or refuse to continue a franchise (sales and service agreement) unless written notice of the franchisor's intent to terminate has been received by both the franchisee (dealer) and the Board. The notice must set forth the specific grounds for termination and must contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, one of the following statements:

(When a 60-day notice of termination is given.)

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

(When a 15-day notice of termination is given.)

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

Termination notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if American Honda seeks to terminate a motorcycle/ATV/scooter dealership and has a separate franchise for each line-make, then there should be three separate termination notices sent to the franchisee and the Board.

TIME FOR FILING A PROTEST

It is essential not to confuse the time within which to file a protest with the Board with the time at which a termination becomes effective. The time at which the termination will become effective is governed by the reasons for termination. The chart below identifies the reasons for termination, corresponding protest filing periods, and effective dates of termination.

Reason for Termination	**Filing Period**	**Effective Date of Termination**
Transfer of any ownership or interest in the franchise without the consent of the franchisor. The consent shall not be unreasonably withheld.	10 days from dealer's receipt of notice or 10 days after the end of any appeal procedure provided by the franchisor.	15 days after dealer's receipt of notice.
Misrepresentation by the franchisee in applying for the franchise.	As above.	As above.
Insolvency of the franchisee, or the filing of any petition by or against the franchisee under any bankruptcy or receivership law.	As above.	As above.
Any unfair business practice after written warning thereof.	As above.	As above.
Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle (recreational vehicle) dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle (recreational vehicle) dealer or by order of the Department.	As above.	As above.
Any other reason.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, e-mail or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive

Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in automatic termination of the franchise as of the time indicated in the notice of termination. Filing a timely protest will prevent the termination from becoming effective until the protest is resolved by the Board.

REQUIRED ELEMENTS OF A PROTEST

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest to the proposed termination or non-renewal of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[4]	13 CCR § 583
Must be responsive to the specific grounds of the termination set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall set forth a request for a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

[4] If the franchisee is a natural person, not a corporation or other legal entity, the protest shall be signed by that person or by the franchisee's attorney or representative. If the franchisee is a corporation or other legal entity, the protest shall be signed by an attorney representing the entity, or by an authorized representative of the entity (13 CCR § 583).

If a timely protest is filed, the manufacturer or distributor cannot terminate the franchise until a hearing has been held and the Board acts on the proposed decision. At a hearing, the manufacturer or distributor will have the burden of proving "good cause" for termination. In making a determination of good cause under Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to all of the following:

Circumstances	**Vehicle Code Section**
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

DETERMINATION OF PROTEST

If the franchisor, having the burden, cannot establish good cause for terminating the franchise, the protest will be sustained and the termination will not be permitted.

MODIFICATION OF FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3060(b) and 3070(b) give the dealer the right to protest an attempt by the manufacturer or distributor to modify or replace an existing franchise such that the modification substantially affects the dealer's sales or service obligations or investment.

FRANCHISOR'S NOTICE OF MODIFICATION

Vehicle Code sections 3060 and 3070 provide that no franchisor shall modify or replace an existing franchise with a succeeding franchise if the modification or replacement would substantially affect the existing franchisee's sales or service obligations or investment, unless written notice of modification or replacement is given to each affected franchisee and the Board at least 60 days prior to the modification or replacement.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

"**NOTICE TO DEALER**: **Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor[5] or your protest rights will be waived."**

Modification notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

TIME FOR FILING A PROTEST

Filing a timely protest will prevent the modification from becoming effective until the protest is resolved by the Board. It is essential not to confuse the time within which to file a protest with the Board with the time at which a modification becomes effective. The chart below identifies the protest filing period and effective date of modification:

[5] Vehicle Code section 3070(b)(2) refers to "franchiser" instead of "franchisor". The statutorily required notice sent to impacted recreational vehicle dealers should contain "franchiser" until clean-up legislation is enacted.

Reason for Modification	Filing Period	Effective Date of Modification
As stated by franchisor.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice

The protest shall be considered filed on the date of receipt via regular mail, e-mail or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in the modification becoming effective as stated in the notice. Filing a timely protest will prevent the modification or replacement from becoming effective until the protest is resolved by the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest of modification or replacement of an existing franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[6]	13 CCR § 583
Must be responsive to the specific grounds of the modification or replacement set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot modify the franchise if such modification would substantially affect a dealer's sales or service obligations or investment until a hearing has been held by the Board. At the hearing, the dealer has the initial burden

[6] See footnote 6.

to establish that there is a proposed modification, which would substantially affect the dealer's sales or service obligations or investment. If the dealer meets this burden, the burden of proof shifts to the manufacturer or distributor to prove "good cause" for the modification. In making a determination of good cause pursuant to Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

DETERMINATION OF PROTEST

The modification will not be permitted if the Board decides the manufacturer or distributor failed to establish good cause for the intended modification.

If a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the Board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

ADDITIONAL OR RELOCATED FRANCHISE

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code sections 3062(a)(1) and 3072(a)(1) give a dealer the right to protest the establishment of an additional dealership or relocation of an existing dealership of the same line-make within a ten-mile radius of the proposed new or relocating dealership. Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its dealers.

NOTE: The proposed new dealer, or the existing dealer seeking to relocate, may appear in the proceedings as an interested individual. The rights of an interested individual to participate in the proceedings are somewhat limited, and subject to the ALJ's management of the hearing. In general, interested individuals have no right to formal discovery or right of cross-examination at the hearing.

FRANCHISOR'S NOTICE OF ADDITIONAL OR RELOCATED FRANCHISE

Vehicle Code sections 3062(a)(1) and 3072(a)(1) require that the manufacturer or distributor must first give written notice to the Board and to dealerships of the "same line-make" within the "relevant market area" of the proposed new or relocating dealership.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director[7], upon a showing of good cause, may grant you an additional 10 days to file the protest."

Establishment and relocation notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if General Motors LLC seeks to establish an additional Buick/Cadillac/GMC dealership and has a separate franchise for each line-make, then there should be separate establishment notices sent to each franchisee of any of the three line-makes within the

[7] Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to RV dealers should continue to reference secretary until the statute is amended.

relevant market area of the proposed new location (as defined in Vehicle Code section 507) and the Board.

For motor vehicles other than RVs, “line-make” is not defined in the code. What is or is not a same “line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the Department as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado, Impala, and Tahoe “lines” or models.

For the RV industry, which lacks uniformity, "recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.” It is therefore essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure that their makes are registered with the Department.

Relevant market area is defined in Vehicle Code section 507 as “any area within a radius of 10 miles from the site of a potential new dealership.” The distance is determined by a straight-line measurement between the nearest points of the new dealership’s location and the protesting dealership’s location. There are times when a survey will be necessary to determine whether a dealer desiring to protest is within the relevant market area.

EXCEPTIONS TO THE RIGHT TO PROTEST

New Motor Vehicle Dealers (including RVs)

There are exceptions to the requirement of notice to existing dealers within the relevant market area of a franchisor’s intent to establish or relocate a dealership. These exceptions are located in Vehicle Code sections 3062 and 3072, and provide that no notice is required to be given, and there is no right to protest, if:

1. The relocation is of an existing dealership to a location that is both within the same city as, and is within one mile from, the existing (relocating) dealership location;
2. The establishment of a dealership at the same location of a dealership that has been out of operation for less than one year;
3. The relocation entails the establishment at a location of a dealership that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days; or
4. The establishment entails a display of vehicles at fairs, expositions, or similar exhibits provided that no actual sales are made at the event and the display does not exceed 30 days.

Vehicle Code sections 3062 and 3072 requires that if an “off-site sale” is intended, the

manufacturer or distributor must give notice to all dealers of the same line-make within 10 miles of the proposed site. Such dealers would have a right to protest the off-site sale, even though a financial institution and a licensed dealer sponsor the event.

Recreational Vehicle Dealers Only

For RVs, the exceptions to notice requirements are found in Vehicle Code section 3072. The exceptions are essentially the same as provided in Vehicle Code 3062 as stated above with the addition of one more exception. That one exception is for an annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Vehicle Code section 11713.15 (Veh. Code § 3072(b)(4)).

TIME FOR FILING A PROTEST

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the dealership until the Board resolves the protest.

The chart below identifies the protest filing period and effective date of the relocation or establishment of a dealership.

Type of Notice	**Filing Period**	**Effective Date of Relocation/ Establishment**
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

If, within the above filing period, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed within the statutory filing period, the manufacturer or distributor will be able to establish the proposed dealership or relocate the existing dealership without proceeding before the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest pursuant to Vehicle Code sections 3062 and 3072 is set forth in detail in 13 CCR § 585. A protest of the relocation or establishment of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[8]	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

[8] See footnote 6.

If a timely protest is filed, the manufacturer or distributor cannot establish an additional franchise or relocate an existing franchise until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional dealer or relocation of an existing dealership. In making a determination of good cause pursuant to Vehicle Code sections 3063 or 3073, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Permanency of the investment.	3063(a), 3073(a)
Effect on the retail motor vehicle (recreational vehicle) business and the consuming public in the relevant market area.	3063(b), 3073(b)
Whether it is injurious to the public welfare for an additional franchise to be established.	3063(c), 3073(c)
Whether the franchisees of the same line-make or same recreational vehicle line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the same line-make or recreational vehicle line-make in the market area. This includes the adequacy of motor vehicle or recreational vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel. (Note: For RVs, adequate sales shall be considered, however, not all RV franchise agreements require service facilities, equipment, supply of vehicle parts, and qualified service personnel.)	3063(d), 3073(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e), 3073(e)

DETERMINATION OF PROTEST

If the Board decides the protesting dealer cannot prove good cause to prevent the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY

STATUTORY AUTHORITY FOR PROTEST

Vehicle Code section 3062(a)(2) gives a new motor vehicle dealer the right to protest an additional satellite warranty facility or the relocation of an existing satellite warranty facility within 2 miles of any dealership of the same line-make. Satellite warranty facility is defined as "a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place." (Veh. Code § 3062(e)(2)) Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its satellite warranty facilities. There are no comparable statutory provisions for RV dealers for such protests.

FRANCHISOR'S NOTICE OF ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY

Vehicle Code section 3062(a)(2) requires that the manufacturer or distributor must first give written notice to the Board and to dealerships of the same line-make within 2 miles of the proposed location.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

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

The notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

TIME FOR FILING A PROTEST

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the satellite warranty facility until the protest is resolved by the Board. The chart on the next page identifies the protest filing period and effective date of the relocation or establishment of a satellite warranty facility.

If, within the filing period set forth in the table, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good

cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed in time, the manufacturer or distributor will be able to establish the proposed satellite warranty facility or relocate the existing satellite warranty facility without proceeding before the Board.

Type of Notice	**Filing Period**	**Effective Date of Relocation/ Establishment**
A notice by franchisor of intent to establish or relocate satellite warranty facility.	20 days from dealer's receipt of notice, or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3062(a)(2) is described in 13 CCR § 585. A protest of the relocation or establishment of a satellite warranty facility must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[9]	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation of the satellite warranty facility set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

If a timely protest is filed, the manufacturer or distributor cannot establish an additional satellite warranty facility or relocate an existing satellite warranty facility until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional satellite warranty facility or relocation of an existing satellite warranty facility.

[9] See footnote 6.

In making a determination of good cause pursuant to Vehicle Code section 3063, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	**Vehicle Code Section**
Permanency of the investment.	3063(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area.	3063(b)
Whether it is injurious to the public welfare for an additional franchise to be established.	3063(c)
Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.	3063(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e)

DETERMINATION OF PROTEST

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation of the satellite warranty facility, the manufacturer or distributor will be permitted to proceed with its intended action.

COMPENSATION FOR DELIVERY AND PREPARATION

STATUTORY AUTHORITY

Vehicle Code sections 3064 and 3074 require every new motor vehicle or recreational vehicle manufacturer and distributor to specify the dealer's delivery and preparation obligations prior to the delivery of new motor vehicles or new recreational vehicles to retail buyers.

FRANCHISOR'S NOTICE OF COMPENSATION FOR DELIVERY AND PREPARATION

Manufacturers and distributors are required to file with the Board a copy of the delivery and preparation obligations and a schedule of compensation to be paid to the dealers for the work and services they shall be required to perform in connection with the delivery and preparation obligations. The schedule of compensation must be reasonable with the issue of reasonableness being subject to the approval of the Board. In order to initiate Board action, a franchisee must file a protest with the Board.

TIME FOR FILING A PROTEST

There is no specific statutory time period in the Vehicle Code within which to file a protest involving delivery and preparation obligations and compensation. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code sections 3064 and 3074 is described in 13 CCR § 586. A protest involving delivery and preparation obligations must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[10]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

DETERMINATION OF PROTEST

If a dealer files a protest challenging the reasonableness of the schedule, the Board will resolve the dispute in light of all the relevant circumstances including, but not limited to, the time required to perform each function and the appropriate labor rate.

If there is a hearing, the dealer has the burden of proving that the schedule of compensation is not reasonable (Veh. Code § 3066(c)).

[10] See footnote 6.

COMPENSATION FOR WARRANTY REIMBURSEMENT

STATUTORY AUTHORITY

Vehicle Code sections 3065 and 3075 require every new motor vehicle or recreational vehicle manufacturer or distributor to properly fulfill every warranty agreement made by it and adequately and fairly compensate its dealers for labor and parts used to perform warranty service.

FRANCHISOR'S NOTICE OF COMPENSATION FOR WARRANTY REIMBURSEMENT

The manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board. The schedule or formula must be reasonable with respect to the time and compensation allowed for the performance of warranty work.

APPROVAL OF WARRANTY CLAIMS

Vehicle Code sections 3065(d) and 3075(d) also require that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day.

Approved warranty claims must be paid within 30 days of approval. However, both Vehicle Code section 3065(d) and 3075(d) state: "Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article. The word "article" refers respectively to Article 4, pertaining to motor vehicles other than RVs, and Article 5, pertaining to RVs.

DISAPPROVAL OF WARRANTY CLAIMS

Vehicle Code sections 3065(c) and 3075(c) require that the franchisor that disallows a franchisees warranty claim for a defective part on the basis that the part was not defective must return such part to the dealer at the franchisor's expense, or reimburse the dealer for the part, at the franchisor's option.

The dealer is also entitled to written notice of disapproval within 30 days after the warranty claims are received by the franchisor. The notice must contain the specific grounds for disapproval (Veh. Code §§ 3065(d) and 3075(d)).

AUDITS OF FRANCHISEE WARRANTY RECORDS

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or a credit issued (Veh. Code §§ 3065(e) and 3075(e)). Any chargeback to a franchisee for warranty parts or service

compensation shall be made within 90 days of the completion of the audit. However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

TIME FOR FILING A PROTEST

Protests involving warranty disputes are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code section 3065 or 3075 is described in 13 CCR § 586. A protest involving warranty disputes must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[11]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR§ 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

[11] See footnote 6.

GOOD CAUSE

Franchisee claims for warranty compensation shall not be disapproved except for good cause such as performance of nonwarranty repairs, lack of material documentation, or fraud.

DETERMINATION OF PROTEST

If a protest is filed, the Board shall determine whether the schedule or formula is reasonable, taking into account the dealer's labor rate to its retail customers. If there is a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule is not reasonable, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material (Veh. Code § 3066(c)).

FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

STATUTORY AUTHORITY

Pursuant to Vehicle Code section 3065.1 or 3076, all claims made by a new motor vehicle or recreational vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days from the date of receipt of the claim by the franchisor.

FRANCHISOR'S NOTICE OF DENIAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Vehicle Code sections 3065.1(a) and 3076(a) require that a franchisor who denies payment under the terms of a franchisor incentive program, shall notify the franchisee within 30 days and provide specific grounds on which the disapproval was based.

APPROVAL/DISAPPROVAL OF FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT

Any claim not specifically disapproved in writing within 30 days shall be deemed approved on the 30th day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code sections 3065.1(a) and 3076(a) each provide that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of the respective articles referred to. The word "article" refers respectively to Article 4, pertaining to motor vehicles other than RVs, and Article 5, pertaining to RVs.

AUDITS OF FRANCHISEE INCENTIVE PROGRAM RECORDS

Vehicle Code sections 3065.1(b) and 3076(b) provide for audits of franchisee incentive program records if reasonable and for a period of 18 months after a claim is paid or a credit issued. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of completion of the audit. However, if a false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for the audit and any resulting chargeback may be permitted if the franchisor obtains an order to that effect from the Board.

TIME FOR FILING A PROTEST

Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal and file a protest with the Board.

REQUIRED ELEMENTS OF PROTEST

The required content of a protest under Vehicle Code sections 3065.1 or 3076 is described in 13 CCR § 586. A protest involving franchisor incentive program disputes must contain all of the following (see Appendix for sample Form A):

Content Requirements	**Regulatory authority**
Must be in writing and be signed by a franchisee or its attorney.[12]	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit as exhibits to the protest photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

GOOD CAUSE

Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud.

DETERMINATION OF PROTEST

The franchisee has the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material.

[12] See footnote 6.

HEARING PROCEDURES

PRE-HEARING PROCEDURE

Upon receiving a protest, the Board shall institute hearing proceedings akin to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

DISCOVERY

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). 13 CCR § 551.6 implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

The enactment of the Electronic Discovery Act (Assembly Bill 5, Stats. 2009, cha. 5, "Act"), effective June 29, 2009, broadens the categories of discoverable materials (documents, tangible things, land or other property) by adding "electronically stored information" (ESI). The Act also permits discovery by copying, testing or sampling the discoverable materials, in addition to inspection.

SUBPOENAS

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2.

13 CCR § 551.2(b) specifically incorporates Code of Civil Procedure section 1985, et seq., excepting the provisions of section 1985(c). Section 1985.8 imposes additional requirements on the parties, (or the court, if necessary), to resolve ESI issues as to the form, burdens and expenses of production, shifting or allocation of costs, and issues arising from other characteristics of ESI. The Act requires the parties, or the court, to weigh various cost/benefit factors in light of the amount in controversy in the proceeding to shape and limit the scope and nature of requests to produce ESI.

Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a nonparty witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b), and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a nonparty, are issued by the Board in accordance with Code of Civil Procedure section 2016.010 et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b) (13 CCR § 551.2(c)). No affidavits are required. Counsel for the parties can issue notices of depositions to parties (Code Civ. Proc. §§ 2025.010 through 2025.570). Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court (Code Civ. Proc. §§ 2026.010(a) through 2026.010(f)).

Government Code section 11450.30 and 13 CCR § 551.2(e) permits a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the original subpoena on the witness or deponent, a copy of the subpoena and an original executed proof of service shall be filed with the Board (13 CCR § 551.2(d)).

SUMMARY OF BOARD ACTION

All hearings on protests filed pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, may be considered by the entire Board or may, at its discretion be conducted by one of the Board's ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section 3066. The Board on receiving a protest does the following:

Step	Action
1	By order fix a time, within sixty (60) days of the order, and place of hearing.
2	Send a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions by the Board. • Except in the case of a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may accelerate or postpone the date initially established for the hearing. • For the purpose of accelerating or postponing the hearing date, good cause must be established and in no event may the rescheduled hearing date be more than 90 days after the Board's initial order. • "Good cause" for accelerating or postponing a hearing includes, but is not limited to, the effects on, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. • Application for continuance shall be in writing and filed with the Executive Director at least 10 days prior to the date of hearing. No continuances otherwise will be granted except in extreme emergencies such as serious accident or death.
3	All hearings on protests filed may be considered by the entire Board or may, at its discretion, be conducted by one of the Board's ALJs.

STIPULATION OF FACT

A hearing initiated by the filing of a protest may be held in whole or in part on a stipulation of fact, which is essentially an agreement between the parties defining points that are not in contention, and other parts of the dispute that have been resolved. Stipulations are of value in that they tend to facilitate and expedite conflict resolution. See 13 CCR § 587 for procedural details of stipulation of fact before the Board.

STIPULATED DECISIONS

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code section 3066 to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required (Veh. Code § 3050.7(b)). The provisions of Vehicle Code section 3050.7 do not apply to RV termination protests (Veh. Code § 3070) as there is currently no explicit reference thereto.

HEARINGS OPEN TO THE PUBLIC; PROTECTIVE ORDERS

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. The motion shall clearly identify the relief sought and the facts, circumstances, legal authority, and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

FAILURE TO APPEAR AT A HEARING

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding (13 CCR § 589).

DECISION OF THE BOARD

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported (Veh. Code § 3008; 13 CCR § 588).

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. If the Board fails to act within 30 days after the close of the hearing, within 30 days after the Board receives a proposed decision where the case is heard before an ALJ, or within a period which may be mutually agreed on by the parties, then the proposed action of the franchisor shall be

deemed to be approved (Veh. Code § 3067).

COURT REPORTING AND TRANSCRIPTS OF BOARD PROCEEDINGS

The Board funds and arranges for a court reporter for all Board meetings, all hearings on the merits of a protest or a petition and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter. Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion.

For pre-hearing conferences, rulings on objections to production of documents or other non-dispositive matters, such as motions for change of venue, consolidation, continuation, etc., the Board does not request a court reporter or order transcripts. Individuals wishing to have such proceedings recorded and transcribed must make arrangements with Board staff for scheduling of the services. Payment and delivery of the transcripts is to be arranged directly between the parties and the court reporter.

PETITIONS

STATUTORY AUTHORITY FOR PETITIONS

Vehicle Code section 3050(c) provides for any person to petition the Board to consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

FILING A PETITION WITH THE BOARD

A licensee or member of the public wishing to bring a dispute before the Board pursuant to Vehicle Code section 3050(c) is required to file a petition (see Appendix for sample Form B). In the past, petitions filed with the Board have alleged such things as the unreasonable refusal of a franchisor to approve a change in ownership, unreasonable refusal of a franchisor to approve a relocation, discrimination in allocation of products, failure to supply products authorized to be sold under the terms of the franchise, and other violations of the Vehicle Code. Such petitions requested a hearing before the Board and sought relief in the form of a Board order that required the respondent to either do, undo, or refrain from doing some action that caused harm to the licensee petitioner.

As a result of *Mazda Motor of America, Inc., v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal. App. 4th 1451; 2 Cal.Rptr.3d 866, the Board's jurisdiction to hold hearings and issue such orders is now limited to petitioners who are members of the public under Vehicle Code section 3050(c)(2). In all instances where licensees are the petitioners, the Board may only direct the Department to investigate or take a licensing action against the respondent under Vehicle Code section 3050(c)(1) and (3).

In all circumstances, the petition shall be served on the respondent and proof of service filed with the Board.

TIME FOR FILING A PETITION

There are no specific statutory time limits in the Vehicle Code within which a petition must be filed, but failure to file the petition within a reasonable time after the occurrence of events giving rise to the basis for the petition could result in the Board refusing to take any action.

The respondent shall file a written answer within 30 days of the date the petition is served on the respondent (13 CCR § 558).

PETITION FILING FEE

A filing fee of $200, which should be in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, must accompany the petition and answer. In the event of a financial hardship, either the petitioner or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)

REQUIRED ELEMENTS OF PETITION

The required content of a petition under Vehicle Code section 3050(c) is described in 13 CCR § 555 (see Appendix for sample Forms B1 and B2).

Content Requirements	**Regulatory authority**
Must set forth in clear and concise language the nature of the matter, which the petitioner wishes the Board to consider.	13 CCR § 555
Must contain the petitioner's name, mailing address and telephone number; the name, mailing address and telephone number of the petitioner's attorney or authorized agent, if any; and the name and address of the licensee or applicant for license (respondent) whose activities or practices are in question. All correspondence and notices to the petitioner shall thereafter be addressed to petitioner's address, if the petitioner appears in person, or to the address of the petitioner's attorney or agent, if so represented.	13 CCR § 555(a)
Must include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved.	13 CCR § 555(b)
Shall include a concise recitation of applicable law and citation to the applicable statutes and authorities if the actions or practices described in the petition are alleged to be a violation of law.	13 CCR § 555(c)
For petitioners who are members of the public only, petitioner shall state if the petitioner desires that the Board hear mediate, arbitrate, or resolve a difference between the petitioner and respondent, and describe the relief sought.	13 CCR § 555(d)
Petitioner may submit as exhibits to the petition photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the petition.	13 CCR § 555(e)
For petitioners who are members of the public only, petitioner shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 555(f)
For petitioners who are members of the public only, petitioner shall request a pre-hearing conference if one is desired.	13 CCR § 555(g)
Petitioner shall simultaneously deliver a $200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board , or a request for a fee waiver.	13 CCR § 553.40
Petitioner shall serve a copy of the petition on the respondent and proof of service shall accompany the petition submitted to the Board.	13 CCR § 555.1 13 CCR § 551.24

FIRST CONSIDERATION

If the petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), upon the filing of a petition with the Board, a copy shall be forwarded by the Executive Director of the Board to each Board member for consideration. Within 10 days of receipt of a copy of the petition, unless any member of the Board notifies the Executive Director of an objection, the Executive Director shall set the matter for a hearing.

RESOLUTION OF PETITIONS WITHOUT A HEARING

If the petitioner is a licensee or member of the public seeking relief under Vehicle Code section 3050(c)(1) and/or (3), these petitions would not be submitted to the Board for first consideration, as the authority for first consideration (13 CCR § 557), limits first consideration to matters in which a hearing is sought, i.e., Vehicle Code section 3050(c)(2) petitions. These petitions would be agendized for consideration of the relief requested by the Petitioner at the next regularly scheduled meeting. Such petitions are not assigned to an ALJ and are not subject to the normal evidentiary hearing process. The Board members, at a noticed meeting, would hear from the parties by way of written and oral arguments, and consider granting the relief requested. After consideration, the public members of the Board shall take final action and issue a written decision that either grants the appropriate relief pursuant to Vehicle Code section 3050(c)(1) or (c)(3), or orders the petition dismissed (13 CCR § 562(b), (d), and (e)). The public members of the Board may also request further briefing and/or the submission of further evidence and continue the matter to a later open meeting for consideration and final action.

CHALLENGE TO PRESIDING OFFICER

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12 entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier (13 CCR § 551.12). Parties would not be entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

MOTION FOR INTERVENTION

13 CCR § 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file a motion to intervene in a pending petition.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

SUMMARY OF BOARD ACTION

For petitions seeking relief under Vehicle Code section 3050(c)(1) and/or (3) brought by a franchisee, including RV franchisees, a member of the Board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any petition (Veh. Code § 3050(c)). For petitions brought by members of the public seeking Vehicle Code section 3050(c)(1) and/or (3) relief, all members of the Board may participate.

After considering this type of petition, the Board may do any one or any combination of the following:

(1) Direct the Department to conduct an investigation and submit a written report;
(2) Order the Department to exercise any and all authority or power that the Department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of respondent; and/or
(3) Order the petition dismissed, with or without prejudice.

As stated above, if the petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), the Board retains the authority to hear and or mediate the matter.

HEARING PROCEDURES

The Board's powers in relation to petitions are discretionary, and there is no automatic right to a hearing for a member of the public seeking relief under Vehicle Code section 3050(c)(2). If the Board orders a hearing, the pre-hearing procedures are similar to those involving protests. For procedural details for hearings on petitions, see 13 CCR § 580.

INFORMAL MEDIATION

Prior to a member of the public initiating a petition seeking relief under Vehicle Code section 3050(c)(2), a party or parties may request the Board informally mediate the potential dispute, that is, the activities or practices of a licensee or applicant for a license that are in question (13 CCR §§ 551.14 - 551.17). If both parties consent to informal mediation, then a mutually agreeable date for the mediation is calendared. Each party files and serves a pre-mediation statement setting forth the facts, issues and proposed resolution of the matter. The Board, its Executive Director, or an ALJ designated by the Board or its Executive Director preside over the informal mediation and may authorize discovery (other than interrogatories) as appropriate. Evidence in the form of declarations may also be considered. All communications, negotiations, and settlement discussions between the participants of an informal mediation are confidential. At any time during this process, either party may request that the informal mediation be converted to a formal

petition.

MEMBERS OF THE PUBLIC IN RELATION TO NEW RECREATIONAL VEHICLE TRANSACTIONS

Members of the public have all the rights and remedies available in disputes with licensees in new recreational vehicle transactions as they do in transactions with other types of new motor vehicles under the jurisdiction of the Board with one distinction. Vehicle Code section 3078(a) states:

> If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a motor vehicle dealership, as defined in paragraph (1) of subdivision (e) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

Thus, if a member of the public specifically seeks a refund or a replacement of a new recreational vehicle, the Board shall recommend that the complaint be referred to the Department of Consumer affairs, rather than the Board. However, nothing precludes a member of the public from seeking help from the Board in resolving the dispute as is available for any other new motor vehicle purchaser.

APPEALS FROM DECISIONS OF THE DEPARTMENT OF MOTOR VEHICLES

STATUTORY AUTHORITY FOR APPEALS

Vehicle Code sections 3050(b) and 3052 provide for the right of an applicant for, or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file an appeal with the Board after any final decision of the Director of the Department which adversely affects the occupational license of the appellant, such as the refusal to renew, suspension, or revocation of the license (see Appendix for sample Form C). All Vehicle Code sections providing Board authority for appeals are applicable to new recreational vehicle licensees.

BOARD'S RESPONSIBILITIES IN AN APPEAL FROM A DECISION OF THE DEPARTMENT

The Board acts as an appellate body reviewing the record of Departmental proceedings, and in deciding the appeal, may also consider any other evidence properly brought before the Board. There are no restrictions in the Vehicle Code on dealer member participation in appeal hearings. Briefs on the disputed issues are filed by the appellant and the Department (Veh. Code § 3053).

FILING APPEALS WITH THE BOARD

In general, the notice of appeal must be filed with the Board on the 10th day after the last day on which reconsideration of the final decision of the Department can be ordered (Veh. Code § 3052(a) and 13 CCR § 566). A filing fee of $200 which should be in the form of a check, money order or authorized credit card charge payable to the New Motor Vehicle Board, must accompany the appeal. In the event of a financial hardship, the appellant appellant may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the $200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.) A copy of the notice of appeal shall be served on the Department and proof of service shall accompany the notice filed with the Executive Director of the Board (13 CCR §§ 570 and 551.24). An appeal is deemed filed upon its receipt by the Board via regular mail, e-mail or facsimile, or upon mailing of the appeal, if it is sent by either certified or registered mail. Accordingly, it is suggested that all appeals be either personally filed or mailed by certified or registered mail.

REQUIRED ELEMENTS OF AN APPEAL

The contents of the notice of appeal are contained in 13 CCR § 568 to which the reader is referred for detailed information.

MOTION FOR INTERVENTION

Title 13 CCR § 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative

to file a motion to intervene in a pending appeal.

AMICUS CURIAE BRIEFS

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs (13 CCR § 551.13).

ACTIONS BOARD MAY TAKE IN AN APPEAL RE: PENALTY

Vehicle Code section 3054 gives the Board the power to reverse or amend the decision of the Department for any of the following reasons:

(1) The Department has proceeded without or in excess of its jurisdiction.
(2) The Department has proceeded in a manner contrary to the law.
(3) The decision is not supported by the findings.
(4) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the Board.
(5) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.
(6) The determination or penalty, as provided in the decision of the Department is not commensurate with the findings.

The Board also has the power to amend, modify, or reverse the penalty imposed by the Department (Veh. Code § 3055). This power has been construed by the courts to include the ability to increase penalties set by the Department (*Toyota of Visalia v. Department of Motor Vehicles* (1984) 155 Cal. App. 3d 315 (202 Cal. Rptr. 190), *appeal after remand*, (1987) 188 Cal. App. 3d 872 (233 Cal. Rptr. 708)).

In all cases, the Board shall enter its order within 60 days after the appeal is filed unless there is unavoidable delay in receiving the administrative record. Should the Board issue an order reversing the decision of the Department, the Board may direct the Department to reconsider the matter and take further action (Veh. Code § 3056).

The Board's order must be in writing and becomes final on delivery or mailing of copies to the parties. There are no provisions for reconsideration or rehearing. The Board shall fix an effective date for its orders not more than 30 days from the day the order is served or remand the matter back to the Department for fixing an effective date (Veh. Code § 3057).

HEARING PROCEDURES

For procedural details for hearings on appeals, see 13 CCR § 580.

JUDICIAL REVIEW

APPEAL TO SUPERIOR COURT

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code sections 3058 and 3068 and local rules of court.

APPENDIX

Form A - Protest
Form B1 - Petition (Veh. Code § 3050(c)(2))
Form B2 - Petition (Veh. Code § 3050(c)(1) or (c)(3))
Form C - Appeal

SAMPLE FORM A - PLEADING FORMAT OF PROTEST

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, http://www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self.

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Protestant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court.

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case.

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number.

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action.

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer.

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed page. The footer must contain in at least 10-point font the title of the paper or some clear and concise abbreviation.

.

In the Matter of the Protest of	)	
	)	
NAME OF FRANCHISEE,	)	Protest No. PR-
	)	
Protestant,	)	PROTEST
	)	
vs.	)	[Vehicle Code section 3060, 3062,
	)	3064, 3065, 3065.1, 3070, 3072,
NAME OF FRANCHISOR,	)	3074, 3075, and 3076]
	)	[Dates of the hearing and any future
Respondent.	)	pre-hearing or settlement
	)	conferences, if known]

Introduction.

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

Protestant, [NAME OF PARTY/DEALERSHIP NAME], files this protest under the provisions of the California Vehicle Code section [applicable code section] with reference to the following facts:

Body.

Using numbered paragraphs, state the allegations in a clear and chronological order.

1. Protestant is a new motor vehicle dealer selling [type of new motor vehicle or recreational vehicle], and is located at [address]. Protestant's telephone number is [telephone number].

2. Respondent distributes/manufacturers [type/model of product] and is the franchisor of Protestant.

3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].

4. On or about [date of occurrence(s)], Protestant received from Respondent a notice that Respondent intends to [terminate/modify/relocate/establish] its existing franchise agreement effective [number of days] from Protestant's receipt of said notice. A copy of said letter is attached as Exhibit A.

5. Protestant generally denies each and every allegation contained in the written notice of [termination/modification/relocation/establishment].

6. Respondent does not have good cause to [terminate/modify/relocate/establish] the franchise by reason of the following facts:

   (a) [Specific facts upon which Protestant bases the allegations].

7. Protestant and its attorneys of record desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.

8. A Pre-Hearing Conference is requested.

Dated: Signed:

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, http://www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self.

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court.

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case.

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number.

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action.

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer.

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed page. The footer must contain in at least 10-point font the title of the paper or some clear and concise abbreviation.

In the Matter of the Petition of	)	
	)	
NAME OF INDIVIDUAL,	)	Petition No. P-
	)	
Petitioner,	)	
	)	
vs.	)	**PETITION**
	)	[Vehicle Code section 3050(c)(2)]
NAME OF LICENSEE,	)	
	)	[Dates of the hearing and any future
Respondent.	)	pre-hearing or settlement
	)	conferences, if known]

[NAME OF INDIVIDUAL], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm, or other representative).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (A hearing and relief available under Vehicle Code section 3050(c)(2)).

Dated: Signed:

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, http://www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self.

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3_____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court.

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case.

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number.

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action.

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer.

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed page. The footer must contain in at least 10-point font the title of the paper or some clear and concise abbreviation.

11 In the Matter of the Petition of	)	
	)	
12 NAME OF INDIVIDUAL/LICENSEE,	)	Petition No. P-
	)	
13 Petitioner,	)	
	)	
14 vs.	)	**PETITION**
	)	[Vehicle Code section 3050(c)(1)]
15 NAME OF INDIVIDUAL/LICENSEE,	)	[Vehicle Code section 3050(c)(3)]
	)	
20 Respondent.	)	
	)	

19 [NAME OF INDIVIDUAL/LICENSEE], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California or is an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (That the Board provide relief available under Vehicle Code section 3050(c)(1) or 3050(c)(3).)

Dated: Signed:

SAMPLE FORM C - PLEADING FORMAT OF AN APPEAL

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website: http://www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self.

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single-space this section.

Skip one line then add which party is filing this document. In the case of an appeal, the individual filing the appeal would be the "Appellant."

1_____ [name of attorney and state bar number, or name of party representing self]
2_____ [address]
3 _____ [telephone number, fax number and e-mail address, if available]
4_____ Attorney for [Appellant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court.

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case.

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number.

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action.

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer.

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed page. The footer must contain in at least 10-point font the title of the paper or some clear and concise abbreviation.

In the Matter of the Appeal of	)	
	)	Appeal No. A-
NAME OF APPLICANT FOR OR LICENSEE,	)	
	)	**NOTICE OF APPEAL**
Appellant,	)	[Vehicle Code section 3052]
	)	
vs.	)	
	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
	)	[Dates of the hearing and any future
Respondent.	)	pre-hearing or settlement
	)	conferences, if known]

Body.

Using numbered paragraphs, state the allegations in a clear and chronological order.

TO THE DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES:

PLEASE TAKE NOTICE that [name of party] herein appeals from the Decision of the Director filed [date] pursuant to [applicable Vehicle Code section].

This Appeal is based on the following grounds:

1. The Department has proceeded without or in excess of its jurisdiction;
2. The Department has proceeded in a manner contrary to the law;
3. The determination of penalty, as provided in the Decision of the Department, is not commensurate with the findings.

This appeal is further based on the pleadings and papers, exhibits, transcripts and related documents included in the record herewith, together with such other evidence, oral or documentary, as may be introduced at the hearing of this Appeal.

Appellant hereby requests an appearance before the above-entitled Board to present oral argument herewith, pursuant to the provisions of Vehicle Code section 3053.

Appellant is an [applicant for or licensee] within the purview of Vehicle Code, Division 5, Chapter 4, section 11700, et seq.

Dated: Signed: