



***EXECUTIVE
DIRECTOR'S
REPORT***

June 26, 2013

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Allocation of Court Reporter Fees in Hearings</u> Robin Parker; Administration Committee	Consider revised policy concerning allocation of court reporter appearance and transcript fees (13 CCR § 551.7) in motion and merits hearings.	June 2013	In progress. A revised policy will be presented at the June 26, 2013, General Meeting.
2. <u>Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074, and 3065/3075 (the Filing of Statutorily Required Schedules and Formulas)</u> Kathy Tomono; Administration Committee	Annually letters are sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations (“PDI”), PDI schedule of compensation, and warranty reimbursement schedule or formula.	December 2013	In progress. A status report concerning manufacturer and distributor compliance will be presented at the December 2013, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Solon C. Soteras Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	June 2013	In progress. The Committee will select a nominee for the Board to consider at the June 26, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Schedule Board Member Education Presentations</u> Robin Parker; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	September 2013	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the September 2013, General Meeting.
3. <u>Host Board Administrative Law Judge Roundtable</u> Bill Brennan, Robin Parker; Board Development Committee	Host a Board Administrative Law Judge (“ALJ”) Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	November 2013	In progress. An ALJ Roundtable will be scheduled for November 2013.
FISCAL COMMITTEE			
1. <u>Quarterly Fiscal Reports</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 st and 2 nd quarter report for fiscal year 2012-2013 were presented at the January 22, 2013, and March 13, 2013, General Meetings. The 3 rd and 4 th quarter reports are tentatively scheduled for the June 26, 2013, and December 2013, Meetings.
2. <u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u> Bill Brennan; Fiscal Committee	In response to Board Member Brooks’ request, a memorandum outlining how the Board fees are calculated every year to ensure the fees are not a tax and are cost-justified, will be presented for Board consideration.	June 2013	In progress. A memorandum will be presented at the June 26, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
3. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	June 2013	In progress. A status report will be provided at the June 26, 2013, General Meeting.
4. <u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2013-2014.	June 2013	In progress. The 2013-2014 budget will be presented at the June 26, 2013, General Meeting.
<u>Consideration of the Annual Board Fee</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	At the January 22, 2013, General Meeting, the staff presented a detailed report concerning the Board's Annual Fee, and various scenarios that increased the fee. Based on feedback from the members, a revised report was presented at the March meeting.	March 2013	<u>Completed</u> At the March 13, 2013, General Meeting, the members approved increasing the Annual Board Fee per manufacturer or distributor to \$.60 per vehicle with a minimum of \$300.00 if 1-250 vehicles were distributed and \$450.00 if 251-806 vehicles were distributed and the dealer fee to \$400.00.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
1. <u>Report on the Board's 10th Industry Roundtable</u> Dawn Kindel; Government and Industry Affairs Committee	Summary of the recent Industry Roundtable including who attended from the various vehicle industries, what topics were well-received, and attendee feedback in general.	June 2013	In progress. A memorandum summarizing the Roundtable will be presented for information at the June 26, 2013, General Meeting.
2. <u>Host Attorney Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Host an Attorney Roundtable in Sacramento that highlights topics of interest to the litigants that regularly appear before the Board.	November 2013	In progress.
<u>Host Industry Roundtable</u> Bill Brennan, Dawn Kindel, Kathy Tomono, Nicole Angulo; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors, dealers, in-house and outside counsel, associations and other government entities.	March 2013	<u>Completed</u> The Industry Roundtable was held on March 14, 2013, in Sacramento.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Annual Rulemaking Calendar</u> Robin Parker; Policy & Procedure Committee	Consideration of the annual rulemaking calendar if the Board decides to go forward with any new proposed regulatory changes.	December 2013	In progress. The 2014 Rulemaking Calendar will be considered at the December 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Draft New Regulations to Clarify and Improve the Board's Case Management Processes</u> Robin Parker, Dana Winterrowd; Policy and Procedure Committee	In an effort to continue to improve and clarify the Board's case management processes, the Board staff has proposed amending four existing regulations and adding one new regulation. The topics encompass definitions, subpoenas, peremptory challenges, sanctions, and adoption and objection to proposed stipulated decisions and orders. If the Board approves the draft regulations, the legal staff will proceed with rulemaking.	December 2013	In progress.
3. <u>Promulgate Proposed Regulations to Increase the Annual Board Fee</u> Dana Winterrowd; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend Section 553 to increase the Annual Board Fee per manufacturer or distributor to \$.60 per vehicle with a minimum of \$300.00 if 1-250 vehicles were distributed and \$450.00 if 251-806 vehicles were distributed and the dealer fee to \$400.00. Conforming changes would also be made to Section 553.20.	March 2014	In progress. The proposed text was approved at the March 13, 2013, General Meeting. The rulemaking process has begun but will take months to complete.
<u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Benchbook</i> .	March 2013	<u>Completed</u> At the March 13, 2013, General Meeting, the members adopted the revised Benchbook.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Amend the Annual Board Fee Regulation (13 CCR §§ 553 and 553.20)</u> Bill Brennan, Robin Parker; Policy and Procedure Committee	In an effort to address the current economic climate and the Board's decreasing reserves, the annual fee charged to dealers and manufacturers within the Board's jurisdiction needs to be amended so that the fees charged are "sufficient to fully fund the activities of the board..." consistent Section 3016.	March 2013	<u>Completed</u> The Board adopted proposed amendments to Sections 553 and 553.20 that increase the Annual Fee.
EXECUTIVE COMMITTEE			

B.
CASE
MANAGEMENT

CASE VOLUME

FEBRUARY 27, 2013 THROUGH JUNE 12, 2013

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	2	15
3060	Modification	1	0	1
3062	Establishment	4	0	6
3062	Relocation	0	0	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	0
3065.1	Incentive Program Reimbursement	0	0	0
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		8	2	26

PENDING CASES

BY CASE NUMBER

Protests

("*" signifies a protest consolidated with another protest)

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	PR-2227-10 4-7-10	Resumed Status Conference: 6-27-13	Michael Cadillac, Inc. dba Michael Porsche v. Porsche Cars of North America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran	Termination
2.	PR-2306-11 6-7-11	Resumed Status Conference: 6-27-13	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
3.	PR-2328-12 2-23-12	Board Action 6-26-13	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
4.	*PR-2333-12 2-23-12	Board Action 6-26-13	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
5.	PR-2337-12 6-19-12	Settlement pending; Informal Follow-Up: 6-14-13	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc. [S St.]	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
6.	PR-2339-12 8-16-12	Merits Hearing: Ongoing	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Toyota)	P: Bert Rasmussen Tim Robinett R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
7.	*PR-2340-12 8-16-12	Merits Hearing: Ongoing	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Scion)	P: Bert Rasmussen Tim Robinett R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
8.	*PR-2341-12 8-22-12	Merits Hearing: Ongoing	Cabe Brothers, a California corporation, dba Cabe Toyota and Cabe Scion v. Toyota Motor Sales, U.S.A., Inc.	P: Greg Ferruzzo Vasko Mitzev R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
9.	PR-2348-12 10-12-12	Stayed due to Petitioner's Bankruptcy Petition	West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC	P: Mike Flanagan Gavin Hughes R: Greg Oxford	Termination
10.	PR-2349-12 10-30-12	Resumed Status Conference: 6-14-13	Veracom Automotive Group, LLC dba Vespa San Mateo v. Piaggio Group Americas, Inc. (Vespa)	P: Philip Branzuela R: Michael Babich	Termination
11.	PR-2351-12 11-15-12	Parties working on Settlement Agreement	Stockton Automotive Development LLC dba Stockton Nissan v. Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
12.	*PR-2354-12 11-28-12	Resumed Status Conference: 6-14-13	Veracom Automotive Group, LLC dba Vespa San Mateo v. Piaggio Group Americas, Inc. (Piaggio)	P: Philip Branzuela R: Michael Babich	Termination
13.	PR-2355-12 12-14-12	Motion to Dismiss Hearing: 6-28-13	D & A Automotive, O.C. Genuine Scooters of Santa Ana v. Genuine Scooters	P: Terry Tuchman R: Mike Flanagan Gavin Hughes Trey Duran	Establishment
14.	*PR-2356-12 12-14-12	Motion to Dismiss Hearing: 6-28-13	D & A Automotive, O.C. Genuine Scooters of Tustin v. Genuine Scooters	P: Terry Tuchman R: Mike Flanagan Gavin Hughes Trey Duran	Establishment

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
15.	PR-2357-12 12-18-12	Settlement pending; Informal Follow-Up: 6-14-13	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen of America (Elk Grove)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Modification
16.	PR-2358-13 1-22-13	Hearing Readiness Conference: 9-16-13 Merits Hearing: 10-14-13	Santa Cruz Nissan, Inc., dba Santa Cruz Nissan v. Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
17.	PR-2359-13 1-22-13	HRC: 9-3-13 Merits Hearing: 10-7-13	Napa Chrysler, Inc. dba Napa Kia v. Kia Motors America, Inc.	P: Larry Miles Brady McLeod R: Colm Moran	Termination
18.	PR-2360-13 1-29-13	Hearing on Motion to Dismiss: Under submission	M&M Automotive Group, Inc., dba Infiniti Of Oakland v. Infiniti West, a Division of Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
19.	PR-2361-13 2-27-13	Motion to Dismiss: 7-17-13	Guarantee Fork Lift, Inc. dba, GFL, Inc. v. Capacity of Texas, Inc.	P: Denise Rosen-Kendrick R: Tim Brownlee Rita Hoop Mo Sanchez	Termination
20.	PR-2362-13 3-15-13	Hearing Readiness Conference: 8-19-13 Merits Hearing: 9-23-13	Napa Chrysler, Inc. dba Napa Volvo v. Volvo Cars of North America	P: Larry Miles Brady McLeod R: Bob Ebe	Termination
21.	PR-2363-13 3-18-13	Status Conference: 7-9-13	Citrus Motors Ontario, Inc., a Corporation, dba Citrus Kia v. Kia Motors America, Inc., a Corporation	P: Bert Rasmussen R: Colm Moran	Relocation

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
22.	PR-2364-13 5-6-13	Motion to Dismiss: 9-19-13 Status Conference: 10-15-13	West Covina Ford, Inc., dba Clippinger Ford v. Ford Motor Company	P: Norm Hoffman R: Don Cram	Termination
23.	PR-2365-13 5-8-13	Ruling on Objections Conference: 7-29-13 Hearing Readiness Conference: 11-7-13 Merits Hearing: 12-9-13	Michael Stead's Auto Depot Inc., dba Michael Stead's Hilltop Chrysler Jeep Dodge v. Chrysler Group LLC (Chrysler)	P: Mike Flanagan Gavin Hughes R: Mark Clouatre Ellen Herzog	Establishment
24.	*PR-2366-13 5-8-13	Ruling on Objections Conference: 7-29-13 Hearing Readiness Conference: 11-7-13 Merits Hearing: 12-9-13	Michael Stead's Auto Depot Inc., dba Michael Stead's Hilltop Chrysler Jeep Dodge v. Chrysler Group LLC (Jeep)	P: Mike Flanagan Gavin Hughes R: Mark Clouatre Ellen Herzog	Establishment
25.	*PR-2367-13 5-8-13	Ruling on Objections Conference: 7-29-13 Hearing Readiness Conference: 11-7-13 Merits Hearing: 12-9-13	Michael Stead's Auto Depot Inc., dba Michael Stead's Hilltop Chrysler Jeep Dodge v. Chrysler Group LLC (Dodge)	P: Mike Flanagan Gavin Hughes R: Mark Clouatre Ellen Herzog	Establishment

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
26.	*PR-2368-13 5-8-13	Ruling on Objections Conference: 7-29-13 Hearing Readiness Conference: 11-7-13 Merits Hearing: 12-9-13	Michael Stead's Auto Depot Inc., dba Michael Stead's Hilltop Chrysler Jeep Dodge v. Chrysler Group LLC (Ram)	P: Mike Flanagan Gavin Hughes R: Mark Clouatre Ellen Herzog	Establishment

CASES REGARDING BREACH OF STIPULATED DECISION AND ORDER

1.	PR-2293-11 Breach Case 8-29-12 SDO dispute	Counsel working on settlement agreement and dismissal	Clippinger Motors, Inc. v. Mazda Motors of America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
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Petitions

	CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
1.			-----None Pending----	

Appeals

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
1.			-----None Pending-----	

C. JUDICIAL REVIEW

Judicial Review

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure, § 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure, § 1084).

1. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001301;
New Motor Vehicle Board Case No. CRT-264-12, Protest No. PR-2201-10.

Background: At the Board's regularly scheduled meeting on August 23, 2012, the Board's public and dealer members, meeting in executive session, decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahan's RV (Mega) on January 29, 2010, [Protest No. PR-2201-10 (Colton/Irvine)]. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of August 23, 2012. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Irvine location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

Current (Writ) Action: On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2201-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

Thus, all further reporting of this case will be made under Board case number CRT-258-12, below ~~at item number 7.~~

2. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001300;
New Motor Vehicle Board Case No. CRT-263-12, Protest No. PR-2199-10.

Background: At the Board's regularly scheduled meeting on August 23, 2012, the Board's public and dealer members, meeting in executive session, decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahan's RV (Mega) on January 29, 2010. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of August 23, 2012. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Colton location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

Current (Writ) Action: On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2199-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

Thus, all further reporting of this case will be made under Board case number CRT-258-12, below ~~at item number 7.~~

3. HARLEY-DAVIDSON MOTOR COMPANY, a Corporation, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, RIVERSIDE MOTORCYCLE, INC., DBA SKIP FORDYCE HARLEY-DAVIDSON, Real Party in Interest.
California Superior Court, Riverside County Case No. R1C1215075;
New Motor Vehicle Board Case No. CRT-262-12, Protest No. PR-2310-11.

Background: On July 20, 2011, Riverside Motorcycle, Inc, dba Skip Fordyce Harley-Davidson (Riverside) filed a protest of a notice, dated June 23, 2011, of the intention of Harley-Davidson Motor Company (HDMC) to terminate Riverside's Harley-Davidson Motorcycle Dealer Contract (franchise) with HDMC. On August 16, 2012, following a hearing on the merits of the protest before Administrative Law Judge Victor D. Ryerson, Judge Ryerson issued a "Proposed Decision," sustaining Riverside's protest. Judge Ryerson found that HDMC had not met its burden of proof under Vehicle Code section 3066(b) to establish that there was good cause to terminate Riverside's franchise, but conditioned the decision on Riverside's reimbursement on some of HDMC's expenses.

At the Board's regularly scheduled meeting on August 22, 2012, the Board adopted Judge Ryerson's Proposed Decision as the Board's final decision in the matter.

Current (Writ) Action: On October 9, 2012, the Board received copies of the Verified Petition for Writ of Mandate and accompanying papers advanced by HDMC for filing in the California Superior Court for Riverside County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision sustaining Riverside's protest and allow the proposed termination to proceed, and (2) for such other relief as the Court deems just and proper.

On November 15, 2012, the Board received Riverside's Notice of Appearance and Preliminary Opposition to Petitioner's Writ of Mandate.

It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.

A case management conference was held on December 10, 2012. The parties are to stipulate to a briefing schedule. A further case management conference was set for February 4, 2013.

As a result of the case management conference on February 4, the parties have agreed on, and the Court has accepted, the following schedule: HDMC's opening brief is due to be filed by August 20, 2013; Riverside's opposition brief is due by September 20, 2013; HCMC's reply brief is due by October 9, 2013; and the hearing on the petition for writ of mandate is scheduled for November 1, 2013.

4. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP. d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-00130525; New Motor Vehicle Board Case No. CRT-261-12, Protest No. PR-2233-10.

Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (Mega) filed protest number PR-2233-10, with the Board on May 11, 2010. The protest alleged that ROADTREK MOTORHOMES, INC. (Roadtrek) had failed to give Mega and the Board timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in Colton, California in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances. On July 30, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protest. Judge Hagle found that Roadtrek had failed to give Mega timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances.

At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

Current (Writ) Action: On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County, seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2233-10 is not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest no. PR-2233-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

Thus, all further reporting of this case will be made under Board case number CRT-258-12, below ~~at item number 7.~~

5. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001280;
New Motor Vehicle Board Case No. CRT-260 -12, Protest Nos. PR-2205-10, PR-2211-10 and PR-2212-10.

Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (Mega) filed protest number PR-2205-10 with the Board on February 9, 2010, and filed protests numbered PR-2211-10 and PR-2212-10, with the Board on February 18, 2010. The protests alleged that ROADTREK MOTORHOMES, INC. (Roadtrek) failed to fulfill an agreement with Mega to pay Mega's claims under the terms of Roadtrek's franchisor incentive program. On July 26, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protests. Judge Hagle found that Roadtrek had failed to fulfill obligations to Mega relative to "franchisor incentive program" claims and that Roadtrek had not timely and appropriately paid approved claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

Current (Writ) Action: On October 1, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest nos. PR-2205-10, PR-2222-10 [sic], and PR-2212-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-

80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

Thus, all further reporting of this case will be made under Board case number CRT-258-12, below ~~at item number 7.~~

6. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001281; New Motor Vehicle Board Case No. CRT-259-12, Protest Nos. PR-2206-10, PR-2208-10 and PR-2209-10.

Background: Protestant MEGA RV CORP, a California corporation doing business as MCMAHON'S RV (MEGA) filed protests number PR-2206-10 with the Board on February 9, 2010, and filed protest numbers PR-2208-10 and PR-2209-10 with the Board on February 18, 2010. The protests alleged essentially that ROADTREK MOTORHOMES, INC. (Roadtrek) failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing. On July 25, 2012, following a hearing on the merits of the protest before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," sustaining Mega's protests. Judge Hagle concluded that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing, that Roadtrek had failed to provide appropriate notice of its purported approval or disapproval of warranty claims, and that Roadtrek had failed to timely and appropriately pay approved warranty claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

Current (Writ) Action: On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to protest nos. PR-2206-10, PR-2208-10, and PR-2209-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no substantial state interest at issue in the writ action. Thus, the Board will not participate in the action.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

Thus, all further reporting of this case will be made under Board case number CRT-258-12, below ~~at item number 7.~~

7. MEGA RV CORP, a California corporation doing business as MCMAHON'S RV, Petitioner vs. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA, Respondent, ROADTREK MOTORHOMES, INC., Real Party in Interest. California Superior Court, Orange County Case No. 30-2012-00602460-CU-WM-CJC; New Motor Vehicle Board Case No. CRT-258-12, Protest Nos. PR-2244-10 and PR-2245-10.

Background: Protestant Mega RV Corp., a California corporation doing business as McMahan's RV (Mega) filed protests PR-2244-10 and PR-2245-10 with the Board on July 13, 2010. The protests alleged that Roadtrek Motorhomes, Inc. (Roadtrek) violated Vehicle Code section 3070 and should not be permitted to terminate Mega's franchises at its California dealership locations in Scotts Valley (PR-2245-10) and in Colton and Irvine (PR-2244-10).

On July 24, 2012, Administrative Law Judge Anthony M. Skrocki issued a proposed order granting Roadtrek's motion to dismiss Protest No. 2245-10. Judge Skrocki concluded that, in light of the circumstances, including the fact that Mega's dealership location in Scott's Valley had not been in operation for over one year and was unlikely to reopen, any decision by the Board on the merits of the protest would not be meaningful and would not effectuate relevant legislative intent.

On July 30, 2012, following a hearing on the merits before Administrative Law Judge Diana Woodward Hagle, Judge Hagle issued a "Proposed Decision," overruling Protest No. PR-2245-10. Judge Hagle concluded that the protest was not viable relative to the Irvine location, inasmuch as Mega had closed that dealership location, relocated the dealership to Westminster, California, and there was no franchise for Mega to sell Roadtrek vans from the Westminster dealership. Judge Hagle also concluded that Roadtrek had established good cause to terminate the Roadtrek franchise of Mega at Colton, California.

At the Board's regularly scheduled meeting on August 23, 2012, the Board adopted Judge Hagle's Proposed Decision and Judge Skrocki's proposed order as the Board's final decisions in the matter.

Current (Writ) Action: On October 2, 2012, Mega filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Orange County (the Court). The petition seeks a judgment (i.e., writ of mandate), that would, (1) direct and compel the Board to set aside its decisions in Protest Nos. PR-2244-10 and

PR-2245-10 dated August 23, 2012, (2) require the Board to sustain those protests and preclude the proposed termination of Mega's Roadtrek franchises with addresses in Colton and Irvine, California, (3) grant Mega an immediate stay of enforcement of the Board's decisions relative to Protest Nos. 2244-10 and 2245-10, (4) order the Board to take no further action relative to the protests pending resolution of the writ petition, (5) award petitioner its costs, and (6) order such other relief as the court may consider just and proper.

The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.

On November 20, 2012, the California Superior Court for the County of Sacramento ordered, (a) consolidation, for all purposes, of that court's cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, (b) case number 34-2012-80001280 designated as the lead case, and (c) transfer of the consolidated cases to the Superior Court of California for the County of Orange for consolidation with the instant case - No. 30-2012-00602460-CU-WM-CJC.

In November 2012, Mega requested that the Court issue a Temporary Restraining Order (TRO) staying the operative effect of the Board's Decision. Roadtrek opposed the request and the Court denied the request, without prejudice in the event Mega wished to present the issue in a noticed motion. Mega filed such a motion. On December 14, 2012, the Court heard the motion and took the matter under submission.

The Court has scheduled a case management conference for March 6, 2013.

On December 19, 2012, Roadtrek's writ petitions [items numbered 1, 2, 4, 5, and 6, above] were transferred to the Orange County Superior Court. However, the Orange County Superior Court assigned these matters with a different case number, 30-2013-00624042-CU-PT-CJC, and assigned the case to Department C18. On January 17, 2013, Roadtrek filed a Notice of Related Case to inform the Court that a related case (Mega's writ petition discussed in this item, number 7) is already assigned to Department C20. By this notice, the Court should be in a position to assign the Mega and Roadtrek writ petitions to one Department. By the time of the Case Management Conference, noted above as set for March 6, 2013, the writs can be formally consolidated in the same department, before a single judge.

On January 16, 2013, Judge David Chaffee, presiding in Department C20 of the Superior Court for the County of Orange, issued a written order denying Mega's motion to temporarily stay enforcement of the Board's "order/decision" with regard to Protest Nos. PR-2244-10 and PR-2245-10 pending the Court's resolution of Mega's Petition for Writ of Administrative Mandamus relative to the same matters. The disputed legal issue pertaining to the motion for temporary stay was whether Code of Civil Procedure (CCP) section 1094.5, subds. (g) or (h) applied. The Court stated that section 1094.5, subd. (g), "allows a stay to be granted as long as the stay is not against the public interest." However, section 1094.5, subd. (h),

"requires that, before a stay can be granted, the moving party must show not only that the stay is not against the public interest, but also that the state agency is unlikely to prevail ultimately on the merits."

Although the Court found that Mega, "made a convincing statutory construction argument, contending that the NMVB decisions at issue satisfy the criteria of CCP [section] 1094.5 (h)(1) because they fall under the definition of an 'administrative order or decision of ... [a] state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act ...' and that the decisions at issue satisfy the criteria set forth in CCP [section] 1094.5 (h)(2) because 'the agency ... adopted the proposed decision of the administrative law judge in its entirety,'" the Court ultimately ruled that a stay is inappropriate, based on the facts unique to this dispute.

The Court ruled against a stay, finding that a stay of the Board's decision "would be against the public interest." The Court noted, "the public's interest is best served by preservation of the status quo. The status quo is that Mega has not been operating as a Roadtrek dealership since the end of 2009, while Mike Thompson RV ("MTRV") in Colton has been doing so continuously since March 2010." The Court found that the stay would be against the public interest because "it increases Mega RV's ability to revive and leverage rights that, for all intents and purposes, became dormant approximately 3 years ago."

The Court noted Mega's concern that Roadtrek will attempt to enfranchise a new Roadtrek dealership before Mega's writ petition is decided. However, the Court also noted that "in light of the fact that Mega RV has not been operating as a Roadtrek dealer for the last 3 years, this does not seem to be a valid reason for implementing a stay."

The Court also found that Mega did not satisfy the requirement under CCP section 1094.5, subd. (h) that the state agency is unlikely to prevail ultimately on the merits. Mega argued that the Board, "purportedly proceeded in excess of jurisdiction." However, the Court found that Mega failed to "lay any foundation explaining the applicable standards and legal implications of these purported errors."

On March 1, 2013, Judge DiCesare (Department C-18) held a Case Management Conference (CMC) in case number 30-2013-00624042 (the Roadtrek petitions). Judge DiCesare continued the CMC to April 19. Judge DiCesare said that he would review the related case notice and talk to Judge Chaffee (Department C-20) about the issues relative to the consolidation of this case (number 30-2012-00602460) with the case concerning the Roadtrek petitions (number 30-2013-00624042) Judge DiCesare suggested that the CMC scheduled for April 19 would be taken off-calendar if the Roadtrek petitions case was transferred to Judge Chaffee.

At a Case Management Conference in the instant case on March 6, 2013, before Judge Chaffee in Department C-20, Judge Chaffee confirmed that case number 30-2013-00624042-CU-PT-CJC (the Roadtrek petitions) had been transferred to

his Department (C-20) and had been consolidated with the instant case (number 30-2012-00602460) To clarify matters, Judge Chaffee stated that the two cases are deemed related so they will retain their original court case numbers (30-2012-00602460-CU-WM-CJC and 30-2013-00624042-CU-PT-CJC), thus any pleadings filed with the court should reference both case numbers, and as a result all dates scheduled in Department C-18 have been taken off-calendar.

Judge Chaffee gave parties until March 25, 2013, to file a stipulated briefing schedule, and set the following time and place for the hearing on the parties' writ petitions: Tuesday, October 15, 2013, at 9:00 a.m. in Department C-20, before Judge Chaffee. The parties have agreed to the following briefing schedule: Roadtrek's opening brief shall be filed and served by June 17, 2013; Mega's opposition brief shall be filed and served by August 16, 2013. Roadtrek's reply brief shall be filed and served by September 16, 2013.

On March 6, 2013, the Board received notice of Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in protest numbers PR-2199-10 and PR-2201-10 (see items 1 and 2, above). Following the hearing of the motion on April 12, 2013, and on April 24, 2013, the Court issued its final ruling on the motion, granting Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in protest numbers PR-2199-10 and PR-2201-10 (see items 1 and 2, above), including the Board's referral for an investigation to the Department of Motor Vehicles.

8. SANTA MONICA AUTO GROUP, dba SANTA MONICA INFINITI, a California Corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, a California State Administrative Agency, Respondent, INFINITI DIVISION, NISSAN NORTH AMERICA, INC. (previously erroneously named as Infiniti West, a Division of Nissan North America, Inc.), Real Party in Interest.
California Superior Court, Los Angeles County Case No. BS138615;
New Motor Vehicle Board Case No. CRT-257-12, Protest No. PR-2330-12.

Background: Protestant Santa Monica Auto Group, dba Santa Monica Infiniti (SMI) filed a protest with the Board on March 29, 2012, alleging that Infiniti Division, Nissan North America, Inc. (Infiniti) should not be permitted to complete its plans to establish a dealer in Beverly Hills.

On April 30, 2012, Infiniti filed a motion seeking dismissal of SMI's protest based on Infiniti's contention that SMI had previously waived its right to protest Infiniti's intended action.

Administrative Law Judge Lonnie M. Carlson heard Infiniti's motion, and on July 6, 2012, Judge Carlson issued his written ruling on the motion, entitled "Proposed Order Granting Respondent's Motion to Dismiss Protest." By order dated July 16, 2012, the Board adopted Judge Carlson's proposed order as the Board's final decision in the matter.

Current (Writ) Action: On July 26, 2012, SMI filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), that would, (a) direct the Board to vacate the Board's decision of July 16, 2012, (b) direct the Board to issue an order denying Infiniti's motion of April 30, 2012, and (c) award such other relief in SMI's favor as the Court deems appropriate. SMI also filed a written petition ("SMI's stay petition") asking the Court for an order staying the operation of the Board's Decision of July 16, 2012. On August 7, 2012, Infiniti served papers opposing SMI's stay petition. On August 7, 2012, the Court held a hearing on SMI's stay petition, and the parties await the Court's ruling on the stay petition. *The Court denied SMI's stay petition.*

On August 31, 2012, the Board received Infiniti's Answer to SMI's writ petition.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

On December 27, 2012, SMI issued a notice (and supporting papers) relative to a second motion seeking an order from the Superior Court that would stay the Board's decision of July 16, 2012. The notice requested ex parte relief and set a hearing date of December 28, 2012. On or about December 27, 2012, Infiniti filed papers in opposition to SMI's motion. The Court denied SMI's motion.

The Court has set the following schedule for the consideration of SMI's writ petition: SMI's opening brief due January 25, 2013, Infiniti's opposition brief due February 6, 2013, SMI's reply brief due February 20, 2013, and the hearing is scheduled to begin at 9:30 a.m., on February 27, 2013.

On January 23, 2013, SMI filed its opening brief. On February 6, 2013, Infiniti served its brief in opposition to SMI's opening brief. On February 20, 2013, SMI filed its brief in reply to Infiniti's opposition brief.

By order dated April 23, 2013, the Court denied SMI's petition for a writ of mandate. The Court ruled that the Board acted appropriately when it assigned an Administrative Law Judge to hear Infiniti's motion to dismiss, which was then reviewed and approved by the Board's public members. The Court further ruled (1) that SMI failed to establish that the Board acted improperly by refusing to invalidate the waiver signed by SMI, and (2) that SMI failed to establish that the waiver was invalid.

9. HARLEY-DAVIDSON MOTOR COMPANY, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, LAIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW'S HARLEY-DAVIDSON, Real Party in Interest.
California Superior Court, Los Angeles County Case No. BS136877;
New Motor Vehicle Board Case No. CRT-256-12, Protest No. PR-2299-11.

Background: On May 12, 2011, Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson (Laidlaw's) filed a protest of a notice, dated April 14, 2011, of the intention of Harley-Davidson Motor Company (HDMC) to terminate Laidlaw's Harley-Davidson Motorcycle Dealer Contract (franchise) with HDMC. On May 9, 2012, following a hearing on the merits of the protest before Administrative Law Judge Marilyn Wong, Judge Wong issued a "Proposed Decision," sustaining Laidlaw's protest. Judge Wong found that HDMC had not met its burden of proof under Vehicle Code section 3066(b) to establish that there was good cause to terminate Laidlaw's franchise.

At the Board's regularly scheduled meeting on May 22, 2012, the Board's public members, meeting in executive session, adopted Judge Wong's Proposed Decision as the Board's final decision in the matter, with the addition of conditions requiring HDMC to comply with specified accounting activities and requiring Laidlaw's to comply with specific training, reporting, compliance and reimbursement activities. On May 24, 2012, the Board issued the written Decision in the matter.

Current (Writ) Action: On July 9, 2012, the Board received copies of the Verified Petition for Writ of Mandate and accompanying papers advanced by HDMC for filing in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision sustaining Laidlaw's protest and allow the proposed termination to proceed, and (2) for such other relief as the Court deems just and proper.

It has been determined that there is no substantial state interest at issue in the writ action. The parties have been informed of that determination, and they have, in turn, informed the Court of the determination. Thus, the Board will not participate in the action.

~~The Court has set the following briefing schedule in the matter: Opening Brief due March 10, 2013; Opposition Brief due April 10, 2013; Reply Brief due May 1, 2013.~~

~~The Court has also scheduled a hearing on the petition, for May 10, 2013 at 9:30 a.m. in Department 86 of the Stanley Mosk Courthouse located at 111 North Hill Street, Los Angeles, CA 90036.~~

~~On February 13, 2013, the Board received a Stipulation and [Proposed] Order Continuing the Briefing and Hearing Schedule, which proposed that the Court adopt the parties' agreed schedule as follows: HDMC's opening brief is due by May 14, 2013, Laidlaw's opposition brief is due by June 12, 2013, HDMC's reply brief due by July 5, 2013, and the hearing on HDMC's petition for writ of mandate is scheduled for July 26, 2013.~~

The action has been assigned to the Honorable Joann O'Donnell, presiding in Department 86 of the Superior Court in Los Angeles.

By order dated April 23, 2013, Judge O'Donnell vacated the existing schedule and set the following new schedule: HDMC's opening brief is due by July 30, 2013,

Laidlaw's opposition brief is due by August 30, 2013, HDMC's reply brief is due by September 20, 2013, and the hearing on HDMC's petition for writ of mandate will be held on October 4, 2013, beginning at 1:30 p.m. in Department 86, Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90036.

10. VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, an administrative agency of the State of California, Respondent, SHAYCO, INC., dba ONTARIO VOLKSWAGEN, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001045;
New Motor Vehicle Board Case No. CRT-255-12, Protest No. PR-2265-10.

Background: At the Board's regularly scheduled meeting on September 27, 2011, the Board's public members, meeting in executive session, decided to sustain the protest filed by Protestant Shayco, Inc., dba Ontario Volkswagen (Ontario VW) on August 13, 2010. At the Board's regularly scheduled meeting on December 13, 2011, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of September 27, 2011. The Board found that Ontario VW had met its burden of proof under Vehicle Code section 3066(b) that there is good cause not to establish a Volkswagen dealership in Montclair and ruled that respondent would not be permitted to proceed with the establishment of the new franchise at the proposed location in Montclair.

Current (Writ) Action: On January 24, 2012, Volkswagen Group of America, Inc. (VWoA) filed a Verified Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision, (2) directing the Board to issue a decision overruling Ontario VW's Protest, thus allowing the establishment of a new Volkswagen dealership in Montclair, (3) awarding VWoA costs of suit and attorney fees, and (4) awarding VWoA such other relief as the Court deems just and proper.

On February 23, 2012, Ontario VW filed its Answer to VWoA's writ petition. On March 2, 2012, Ontario VW filed its Amended Answer to VWoA's writ petition.

On October 23, 2012, VWoA's filed a notice of the hearing on VWoA's petition. The hearing is scheduled to begin at 9:00 a.m., on Friday, December 7, 2012, in Department 31 of the Superior Court.

On October 23, 2012, VWoA also filed, (1) its opening brief in support of its petition, and (2) 273 pages of documents, together with a request that the Court take judicial notice of the documents.

The Board has determined that it will participate in this action, through representation by attorneys from the Office of the Attorney General of California.

On November 9, 2012, VWoA filed notice that VWoA had lodged, with the Court, the record of the administrative proceedings before the Board. Also on November

9, Ontario VW filed a motion seeking postponement of the December 7 hearing. Also on November 9, the Board, acting through the Office of the Attorney General, filed the Board's, (1) notice of its withdrawal of its previous notice of nonparticipating in the proceeding, (2) request for postponement of the December 7 hearing, (3) opposition to VVoA's petition, and (4) answer to VVoA's petition. On November 13, 2012, VVoA filed its opposition to Ontario's motion, and on that same date, the Court denied the motion and confirmed the December 7 hearing date.

On November 19, 2012, Ontario VW filed, (1) its opposition to VVoA's opening brief, and (2) Ontario VW's opposition to VVoA's request for judicial notice.

Following the hearing on December 17, 2012, the Court took the matter under submission.

On January 30, 2013, the Court ruled on the Petition for Writ of Administrative Mandamus. The Court ruled that the Board's procedure in this matter failed to comply with legal requirements, deprived the parties of a fair hearing, and did not contribute to showing all concerned that its decision-making process was careful, reasoned, and equitable. The Court further ruled that the Board must vacate its December 13, 2011, final decision entitled "Order Confirming Decision to Sustain Protest."

On February 22, 2013, at a regularly scheduled meeting, the Board vacated its December 13, 2011, final decision and ordered the matter remanded to the Board with directions to reconsider the protest in compliance with Government Code section 11517, subdivision (c),(2),(E),(ii) by deciding it upon the record after affording the parties an opportunity to present oral or written argument. The Board plans to reconsider the matter at a special meeting of the Board on March 13, 2013.

On March 13, 2013, at a regularly scheduled meeting, the Board, the Board voted to allow both parties leave to present additional evidence which could, at each party's election, be followed by that party's objections to the evidence presented by the opposing party. The parties have submitted additional evidence and objections. Oral arguments before the Board are scheduled for June 26, 2013. The parties have stipulated that the Board will have 60 days following those oral arguments within which to draft and consider the Board's final decision.

11. POWERHOUSE MOTORSPORTS GROUP, INC. and TIMOTHY L. PILG v. YAMAHA MOTOR CORP, INC.; POWERHOUSE MOTORSPORTS, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent, YAMAHA MOTOR CORP INC., Real Party in Interest.

California Court of Appeal, Second District, Ventura Division Case No. B236705;
San Luis Obispo Superior Court Case No. CV09-8090;
New Motor Vehicle Board Case No. CRT-249-09, Protest No. PR-2122-08.

Background: On June 5, 2009, the Board upheld a May 22, 2009, proposed Order granting Yamaha's Motion to Dismiss Powerhouse's Protest against termination of its franchise. The Order found that Powerhouse had failed to timely file its Protest and Powerhouse failed to establish that Yamaha was estopped from terminating the dealership.

The original complaint, filed in Superior Court on March 6, 2009, alleges Yamaha unreasonably withheld its consent for Powerhouse to transfer its dealership in violation of Vehicle Code section 11713.3, intentionally interfered with Powerhouse's contractual relations, intentionally interfered with Powerhouse's business advantage, and breached its contract with Powerhouse. Identical causes of action were alleged in behalf of dealer principal Timothy L. Pilg. In its First Amended Complaint, filed July 7, 2009, Powerhouse added a Petition for a Writ of Administrative Mandamus challenging the Board's June 5, 2009, Final Decision Dismissing Protest No. PR-2122-08. The Petition seeks reversal of the Board's Final Decision, based on allegations that the Board prejudicially abused its discretion and exceeded its jurisdiction.

On July 23, 2009, Board President Flesh determined the Board would not participate in the action by means of the Attorney General's Office. The matters before the court, including a Motion to Strike, a Motion to Bifurcate, and a Demurrer to the First Amended Complaint, were heard November 17, 2009, resulting in a Final Ruling denying the Demurrer and the Motion to Strike, but granting the Motion to Bifurcate. The court further ruled that the Writ Petition would be tried by the court separately prior to the other causes of action, and the court stayed all discovery until the conclusion of the Writ action. Following the hearing of the writ action, the Court ruled on July 2, 2010, that Yamaha prevailed on the Writ action. Based on that ruling, the court entered judgment in the writ action, on August 9, 2010, in favor of Yamaha.

A Hearing on a Motion for Summary Judgment was held on January 4, 2011. The court initially took the matter under submission, and on January 31, 2011, the court entered a ruling denying Yamaha's motion for summary judgment and in the alternative summary adjudication. The ruling is adverse to the Board's jurisdiction and the Judge indicated that the Board does not have jurisdiction over protests and "...invocation of the Board's limited authority [is] optional..."

A jury trial, on the remaining causes of action and scheduled for February 7, 2011, was continued to February 14, 2011, and continued again to May 31, 2011.

On February 7, 2011, Yamaha filed a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief [stay of trial proceedings]," in the Second District of the California Court of Appeal, case number B230699. The Board in consultation with Jeffrey Schwarzschild, Deputy Attorney General and Augustin Jimenez, General Counsel, Business, Transportation & Housing Agency ("Agency") filed a declaration containing statistical information on the types of actions filed with the Board, i.e., protests, petitions, and appeals. On February 10, 2011, the court denied the writ because, "...petitioner neglected to cite or argue the application of Vehicle Code section 3050, subdivision (e), and South Bay

Creditors Trust v. General Motors Acceptance Corp. (1999) 69 Cal.App.4th 1068, 1079-1080.”

On February 14, 2011, Yamaha re-filed the petition in the Second District, case number B230830. This petition included the Board’s declaration and the citations and arguments previously noted by the court. On February 17, 2011, the court denied the writ and request for stay.

On February 28, 2011, Yamaha filed a Petition for Review in the California Supreme Court, case number S190950, seeking review of the denial, by the Second District Court of Appeal, of Yamaha’s writ petition and request for stay. The Board received the necessary approvals from Glenn Stevens, the Public Members of the Board, Agency, and the Governor’s Office to file an amicus curiae letter in support of Yamaha’s petition for review on the jurisdictional issue of whether final Board decisions are binding with regard to other legal proceedings when the underlying writ concerning the final Board decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action. The amicus curiae letter was filed on March 9, 2011. On April 13, 2011, the California Supreme Court denied Yamaha’s Petition for Review and Application for Stay.

In a letter dated May 5, Yamaha asked the superior court to review the Board’s amicus curiae letter. Counsel for Yamaha indicated that it would subpoena Robin Parker to testify concerning the content of the amicus curiae letter around May 31 or June 1. Agency was apprised of this.

A multi-day jury trial began on May 31, 2011. After being subpoenaed by Yamaha, Robin Parker testified on June 13. The jury awarded Powerhouse and Mr. Pilg \$1,136,000 in compensatory damages and \$200,000 in punitive damages. During the course of the trial, the bankruptcy trustee (Namba) was substituted for Mr. Pilg.

A briefing schedule was set on Yamaha’s motion for a judgment notwithstanding the verdict and motion for new trial. An in-person hearing was held on August 2, 2011. Both motions were denied. Counsel for Yamaha indicated that a notice of appeal would be filed.

Plaintiffs filed a “Motion for Prejudgment Interest under Civil Code section 3287(a), or in the Alternative, Civil Code section 3287(b).” A hearing was held on August 9, 2011. The tentative order concluded that attorneys’ fees are allowed under Vehicle Code section 11726(a) but not under the contract. Plaintiffs requested \$703,000 adjusted upward by a 1.7 multiplier. The court indicated this amount will be reduced by the fees incurred in connection with the protest and petition for writ of administrative mandate.

Yamaha filed a “Motion to Tax Costs Requested by Plaintiff’s”. This matter was resolved by counsel based on the court’s ruling on the attorney’s fees.

Powerhouse sought to enforce the \$2,175,000 judgment against Yamaha prior to the deadline for Yamaha to file an appeal, i.e., October 17, 2011. On September

7, 2011, Yamaha filed an Ex Parte Application for an Order Staying Enforcement of Judgment. A hearing was held on September 8, 2011. The motion was granted and enforcement of the judgment was stayed until October 17. On October 6, 2011, the law firm of Gibson, Dunn & Crutcher LLP was associated in as counsel for Yamaha.

Current Appeal: On October 6, 2011, Yamaha filed a Notice of Appeal. On November 7, 2011, plaintiffs filed a Notice of Cross-Appeal, in which plaintiffs appeal from, among other matters, “The judgment entered on August 9, 2011, to the extent that it incorporates the trial court’s ruling of July 2, 2010, denying Powerhouse’s eighth cause of action under Code of Civil Procedure Section 1094.5 for Petition for Administrative Writ of Mandate.”

The Second District of the California Court of Appeal has established case number B236705 for the appeal and cross-appeal. On February 24, 2012, the record of important documents accumulated during the administrative and trial proceedings, was filed in the Court of Appeal.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

The Court of Appeal ordered the following briefing schedule: (1) by April 4, Yamaha may file its opening brief; (2) within the following 30 days, *appellants (collectively, “Powerhouse”)* may file a brief in opposition to Yamaha’s opening brief, and may file an opening brief on cross-appeal; (3) within the following 30 days Yamaha may file a brief in reply to Powerhouse’s brief opposing Yamaha’s appeal, and may file a brief in opposition to Powerhouse’s opening brief on cross-appeal; (4) within the following 20 days Powerhouse may file a brief in reply to Yamaha’s brief in opposition to Powerhouse’s opening brief on cross-appeal. On April 20, 2012, the Court of Appeal noted that on April 10, 2012, appellant had provided that court with a notice (also served and filed in superior court) specifying a portion of the record that the clerk or reporter had omitted and requested that the clerk or reporter prepare, certify, and send that supplemental record to the Court of Appeal. The Court of Appeal expects that it will receive the supplemental record by May 10, 2012. These events have delayed the due date for the filing of Appellant’s opening brief, until 30 days after the filing of the supplemental record.

On May 17, 2012, Yamaha filed appellant’s opening brief. On August 1, 2012, Powerhouse filed respondents’ opening brief.

In a letter to the Board dated May 8, 2012, counsel for Yamaha requested that the Board consider filing, in connection with the pending appellate case, a “friend of the court” (*amicus curiae*) brief. Counsel described the essential objectives of the brief, as follows: “. . . to educate the Court of Appeal regarding the jurisdiction of the Board, explain the expertise of the Board in adjudicating protests, and underscore the mission of the Board to serve all constituents in the new motor vehicle industry: dealers, manufacturers and the general consuming public.” At its

regularly scheduled meeting on May 22, 2012, the Board decided to decline Yamaha's request.

Counsel for Yamaha asked the Board to reconsider the Board's decision to decline Yamaha's request that the Board consider filing an amicus curiae brief in the pending appellate case. Yamaha's request ~~is~~ was scheduled for consideration by the Board at its regularly scheduled meeting on August 23, 2012. At that meeting the Board denied Yamaha's request.

On August 1, 2012, Powerhouse filed its opening brief, and on August 23, 2012, filed amendments to the brief. On November 9, 2012, Yamaha filed its opposition to Powerhouse's opening brief. On December 17, 2012, Powerhouse filed its reply brief.

~~The case is fully briefed. No hearing date has been scheduled.~~

The hearing of arguments of the parties' appeals has been scheduled to begin at 1:30 p.m. on Wednesday, August 14, 2013, before a panel of justices from Division 6 of California's Second District Court of Appeal, Court Place, 200 East Santa Clara Street, Ventura, CA 93001.

D.
NOTICES FILED

PURSUANT TO
VEHICLE CODE SECTIONS
3060/3070 AND 3062/3072

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

FEBRUARY 27, 2013, THROUGH JUNE 11, 2013

These are generally notices relating to termination or modification (sections 3060 and 3070) and establishment, relocation, or off-site sales (sections 3062 and 3072).

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW	
CHRYSLER		CHRYSLER	14
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD		FORD	
GOSHEN		GOSHEN	
GM		GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI		HYUNDAI	4
INFINITI		INFINITI	
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI	1	KAWASAKI	
KTM		KTM	
KIA		KIA	1
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	3
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	3
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	3	MISCELLANEOUS	
TOTAL	4	TOTAL	25