CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Dana F. Winterrowd Attorney at Law 1812 Shelfield Dr. Carmichael, CA 95608 TELEPHONE NO.: 916-768-4773 FAX NO.: ATTORNEY FOR (Name): Terry Doe	FILED Superior Court Of California, Sacramento 05/13/2013 awoodward By _____, Deputy Case Number:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth St. MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME:	
CASE NAME: Terry Doe v. Department of Motor Vehicles, et al.	CASE NUMBER: 34-2013-80001488

CIVIL CASE COVER SHEET	Complex Case Designation	
☑ Unlimited (Amount demanded exceeds $25,000) ☐ Limited (Amount demanded is $25,000 or less)	☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☑ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☐ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: 1
5. This case ☐ is ☑ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: May 13, 2013

DANA F. WINTERROWD
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Superior Court Of California,
Sacramento
05/13/2013
awbodward
By _____, **Deputy**
Case Number:
34-2013-80001488

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Department of Motor Vehicles, New Motor Vehicle Board, Does 1 to 50, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Terry Doc

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): California Superior Court
Sacramento County, 720 Ninth Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Dana F. Winterrowd, Esq., 1812 Shelfield Dr., Carmichael, CA 95608, Telephone: 916-768-4773

DATE: *(Fecha)* MAY 13 2013 Clerk, by *(Secretario)* _____, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

Dana F. Winterrowd
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916-768-4773

Attorney for Petitioner

FILED
Superior Court Of California,
Sacramento
05/13/2013
awbodward
By _____, Deputy
Case Number:
34-2013-80001488

California Superior Court

Sacramento County

Terry Doe, Petitioner, vs. Department of Motor Vehicles, New Motor Vehicle Board, and Does 1 to 50, inclusive, Respondents.	Case No. Petition for Writ of Mandate AND COMPLAINT

1. This petition concerns a state agency's extralegal imposition of a purportedly official record of discipline against a state government employee, despite that agency's failure to abide and comply with many provisions of law enacted to assure that an official record of discipline is established only pursuant to law, in a fair and impartial manner.

2. Terry Doe is a fictitious name for Petitioner that is used to avoid disclosure of the name associated with the above-described illegitimate record of discipline, because this petition seeks a remedy that would prevent improper retention and disclosure of that illegitimate record. Petitioner is a permanent, full-time, non-probationary employee of the New Motor Vehicle Board ("NMVB"), which is a program within the Department of Motor Vehicles ("DMV"). (See Govt. Code, § 3000, et seq.)

3. A Memorandum of Understanding (MOU) between the State and Unit 2 employees defines the terms of Unit 2 employment (hereinafter simply the "MOU"). The MOU has been ratified by the Unit 2 membership, adopted by the Legislature and signed by the Governor. Section 6.3 of the MOU provides, in relevant part:

> The following shall apply to employees/classifications assigned to Work Week Groups E and SE....
>
> D. Employees shall not: ...
>
> 5. Have absences of less than one (1) day recorded for attendance record keeping or compensation purposes.

Petitioner is a member of State of California Bargaining Unit 2 and withing the terms of the Unit 2 MOU petitioner is a "Work Week Group 'SE'" employee.

4. On February 8, 2013, petitioner heard a person yelling what sounded like petitioner's first name. The yelling sounded to petitioner like the voice of William G. Brennan ("Brennan"), the Executive Director of NMVB. Before petitioner could respond, Brennan appeared at petitioner's office door and said, "Come into my office." After petitioner was seated in Brennan's office, in the presence of Dawn Kindle ("Kindle"), the Staff Services Manager I of NMVB, Brennan initiated an interrogation of petitioner about events alleged to have occurred the day before the interrogation. After the interrogation, Brennan verbally informed petitioner that a complaint had been made against petitioner about those alleged events, that Kindle and others had witnessed some or all of the events, that Kindle, on behalf of NMVB had investigated the complaint, and that Brennan would sustain the complaint. Kindle then informed petitioner that Brennan would issue a " counseling memo" which would recite pertinent alleged events and the conclusions of Brennan, which would be placed in the petitioner's Official Personnel File (OPF), and which would remain in the petitioner's OPF for three years. On February 13, 2013, petitioner received a memorandum bearing that date (hereinafter referred to as "Letter of Reprimand" or simply "LR") The LR is not attached as an exhibit to this petition because petitioner contends

that it is not an official record of discipline and therefore should not be published. At the appropriate time and under the appropriate circumstances, petitioner will submit the LR to the Court.

5. In pertinent part, the LR states that, (a) a complaint was asserted against petitioner, (b) NMVB conducted an investigation of the complaint, (c) NMVB concluded that petitioner, (d) acted discourteously during the hours of petitioner's employment with NMVB, and (e) was absent from the offices of NMVB during hours of work dictated and imposed by NMVB (though no alleged absence was alleged to have lasted eight hours or more), (f) the LR will be placed in petitioner's OPR, and (g) the LR will remain in petitioner's OPF for three years.

6. The LR recites that it will be maintained in petitioner's OPF which is maintained by DMV in DMV's administrative offices which are distant and apart from the offices of NMVB.

7. Respondents had a duty to follow the Government Code sections and other applicable law that regulate the imposition of discipline against state employees. As regards issuance and maintenance of the LR respondents failed to follow the Government Code sections and other applicable laws that regulate the imposition of discipline against state employees

8. At no time prior to the interrogation described above, was petitioner provided with notice that a complaint had been made against petitioner, that an investigation had been initiated relative to any complaint made against petitioner, or of any right to request and receive representation by Bargaining Unit 2 representatives relative to the complaint purportedly asserted against petitioner and its sequelae.

9. At no time prior to the issuance of the LR, was petitioner provided a written specification of allegations made against petitioner, or a written statement advising petitioner of the right to answer the LR orally or in writing, or a written specification of the particular facts that were alleged to support NMVB's issuance of the LR, or any notice of any right to request and receive a hearing before a neutral arbiter concerning the allegations, or any opportunity to cross-examine witnesses or present evidence relative to the allegations.

10. At no time did NMVB provide petitioner with a written statement advising petitioner of the time within which an appeal of the LR must be filed.

11. At no time has petitioner received any notice that the LR was filed with the State Personnel Board.

12. The filing and retention of the LR in petitioner's OPF constitutes the functional equivalent of an official record of an adverse action, within the meaning of the Government Code, but in disregard of the rights afforded petitioner by law. Retention of the LR in petitioner's OPF constitutes NMVB's attempt to establish in petitioner's OPF an official record of discipline while NMVB avoids having to comply with, and face the scrutiny provided through, applicable law. In short, through the method of issuing the LR without meaningful review and placing the LR in petitioner's OPF, NMVB was able to smear petitioner's reputation without NMVB having to follow the law and without NMVB having to make an honest, forthright effort to present sufficient facts to support an adverse action - facts that NMVB knew did not exist. Instead, NMVB pursued a "kangaroo court" procedure where NMVB allowed a witness to conduct the semblance of an investigation and enabled NMVB's own Executive Officer to be the arbiter of all alleged facts and outcome in a matter that involved the NMVB itself and its employees.

13. At a meeting among Brennan, Kindle and petitioner on or about February 18, 2013, petitioner protested the issuance of the LR and protested respondents' stated intention of maintaining the LR in petitioner's OPF. Respondents ignored petitioner's protest.

14. As such, the filing and retention of the LR in petitioner's OPF constitutes an illegitimate, lawless act. Were the Court to sanction the actions of NMVB and DMV complained about herein, the Court would sanction a method of lawless discipline that disregards petitioner's rights, in that the Court would enable the establishment of a lawless method of purportedly "official" discipline of a California State employee that would render essentially nugatory the existing system of lawful discipline that has been carefully crafted by the legislative and executive branches of California government.

15. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law other than the relief sought in this petition in that the action taken against petitioner by respondents in issuing the LR and maintaining it in petitoner's OPF are without legal support. Thus, there is no specific, legally recognized means for challenging such action. And, absent the relief sought herein, respondents' conduct threatens to, and petitioner reasonably expects it to, expose petitioner to unjustified, unwanted, and annoying scrutiny, criticism, and damage.

16. The foregoing discloses NMVB's disregard for, and constitutes NMVB's violation of petitioner's rights afforded by section 6.3 of the MOU.

WHEREFORE, petitioner prays,

1. For a hearing of this matter and that the Court issue an order commanding NMVB and DMV to remove the LR from petitioner's OPF and to not further place the LR, or any semblance of it, in petitioner's OPF, unless and until NMVB and DMV successfully comply with applicable law, for costs.

2. For costs and for such other relief as the Court deems just and proper.

Dated: May 13, 2013

Dana F. Winterrowd
Attorney for Petitioner

Verification

I, Terry Doe, am the petitioner in this proceeding. I have read the foregoing petition and know the contents. The facts stated therein are true and are within my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my personal knowledge.

Dated: May 13, 2013

Terry Doe
Terry Doe

Dana F. Winterrowd
Attorney at Law, CSB#99586
1812 Shelfield Dr.
Carmichael, CA 95608
916-768-4773

Attorney for Petitioner

FILED
Superior Court Of California,
Sacramento
05/13/2013
awoodward
By _____, Deputy
Case Number:
34-2013-80001488

California Superior Court

Sacramento County

Terry Doe, Petitioner, vs. Department of Motor Vehicles, New Motor Vehicle Board, and Does 1 to 50, inclusive, Respondents.	Case No. Memorandum of Points and Authorities in Support of Petition for Writ of Mandate

Petitioner submits the following points and authorities in support of petitioner's petition for writ of mandate in this action.

Law Defining Relationship Between Petitioner and Respondents

State agencies may lawfully exercise only those powers allocated to them by law. (*Aylward v. State Board, etc.* (1948) 31 Cal.2d 833, 839.)

In California, the terms and conditions of public employment are determined by law, not by contract. (*Miller v. State of California* (1977) 18 Cal.3d 808, 818-814.

A Memorandum of Understanding (MOU) between the State and Unit 2 employees defines the terms of Unit 2 employment (hereinafter simply the "MOU"). The MOU effective April 1, 2011 to July 1, 2013, was agreed to by State representatives and representative of

Bargaining Unit 2 on March 7, 2011. The former Department of Personnel Administration, now CalHR, submitted the MOU to the Legislative Analyst and the Members of the Legislature on March 8, 2011. The provisions of the MOU, prepared pursuant to section 3517.5 of the Government Code, were incorporated in Senate Bill 151 (SB 151) for approval for the purposes of subdivision (b) of section 3517.6 of the Government Code. Bargaining Unit 2 membership ratified the agreement on April 1, 2011. The Legislature passed SB 151 and the bill was enrolled on May 16, 2011. The Governor signed SB 151 on May 16, 2011. (Stats. 2011, ch. 25.)

Required Discipline Procedures and Related Rights

The procedure by which a permanent employee may be dismissed or otherwise disciplined is described in sections 19570 through 19589 of the Government Code. All following citations to statutes are to sections of the Government Code, unless otherwise stated.

The "appointing power," (in this instance NMVB) or its authorized representative, may take "adverse action" against an employee for one or more of the causes for discipline specified in section 19572.

Section 19570 provides in pertinent part, " . . . 'adverse action' means dismissal, demotion, suspension, *or other disciplinary action*." (Emphasis added).

"The law provides that *all* disciplinary actions of state employees, including those involving peace officers, are to be filed with the [State Personnel] Board." (Emphasis in original.) (Appeal of JH (2003) 03-05, State Personnel Board Case No. 01-4078, Board Decision [Precedential] No. 03-05, p.17, http://spb.ca.gov/content/precedential/03-05%20H_J.pdf.)

"Adverse action" means an action taken by an appointing power to discipline an employee and includes formal reprimand, transfers for disciplinary reasons, suspension, reduction-in-salary, demotion and dismissal. (2 Cal. Code Regs. § 51.2, subd. (b).)

It is incumbent upon agencies, if they intend to take adverse action, to document any specific instances of misconduct, note those specific instances in the Notice of Adverse Action, and present supporting evidence of those instances at the hearing. (Appeal of Steven Richins,

(1994) State Personnel Board Case No. 32334, Board Decision No. 94-09; http://spb.ca.gov/content/precedential/richins.pdf.) An agency cannot make a case against an employee without setting forth in the Notice of Adverse Action specific instances or details which form the basis for the adverse action and proving the underlying facts by competent evidence. (Ibid.)

Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by rule of the State Personnel Board. The notice must be served upon the employee either personally or by mail and shall include: (a) a statement of the nature of the adverse action; (b) the effective date of the action; (c) a statement of the reasons therefor in ordinary language; (d) a statement advising the employee of the right to answer the notice orally or in writing; and (e) a statement advising the employee of the time within which an appeal must be filed. The notice must be filed with the board not later than 15 calendar days after the effective date of the adverse action. (§ 19574.)

If an employee is not told what acts were being punished, the employee is hampered in the employee's ability to prepare a defense. (Appeal of Leah Korman, State Personnel Board Case Nos. 29827 and 30245, Board Decision [Precedential] 91-04, p.6, http://spb.ca.gov/content/precedential/korman.pdf). Without clear charges, the trier of fact is unable to determine what evidence is relevant to the reasons for the adverse action. (Ibid.) The right to be notified of the charges is a critical element in due process of law. (Ibid.)

As a principal basis for the Letter of Reprimand (LR) challenged in the petition herein, the LR contends that petitioner acted "discourteously." Also, the LR contends that petitioner was absent from work during hours of work dictated by NMVB, referring to such absences as "tardiness." Such a contention, could be interpreted as an allegation of "insubordination." Discourteous conduct is a ground for adverse action. (Govt. Code, § 19572, subd. (m).) Insubordination is also a ground for adverse. (Govt. Code, § 19572, subd. (e).)

Thus, in issuing and retaining the LR in petitioner's OPF, respondents failed to comply

with law applicable to employee discipline.

A state must afford due process when it attaches a "stigma" to an employment decision concerning that individual. (*Board of Regents v Roth* (1972) 408 US 564, 573.) Respondents' issuance and retention of the LR in petitioner's OPF constitutes attaching a "stigma" to an employment decision concerning petitioner in that it brand's petitioner with statements that petitioner acted discourteously toward another state employee.

Also, when a statutorily prescribed procedure exceeds minimum due process standards, the statute must be followed. (*People v Johnson* (1941) 42 Cal.App.2d Supp. 827, 833.) Thus, even if petitioner enjoyed no due process rights relative to issuance and retention of the LR, NMVB was constrained to follow the procedures prescribed by the Government Code relative to state employee discipline when NMVB sought to issue and retain the LR.

Role of Applicable Law

As stated in the Appeal of JH, "Removal of a disciplinary action from an employee's OPF provides a distinct benefit to the employee in the event he or she should transfer to another state agency, as it is the OPF that is provided to the future state employer upon an employee's transfer." (Appeal of JH (2003) 03-05, State Personnel Board Case No. 01-4078, Board Decision [Precedential] No. 03-05, *supra*, p.17, see also Govt. Code, § 19574.) In addition, under the opinion filed in *Marken v. Santa Monica-Malibu Unified School District, et al.* (2012) 202 Cal. App. 4th 1250 (*Marken*), if a complaint has been upheld by an agency involved or discipline imposed, even if only a private reproval, it must be disclosed in response to a California Public Records Act request. (*Marken*, 202 Cal. App. 4th at pp. 1271-1276.) Moreover, although disclosure is mandated if there has been a true finding by the agency, even without such a finding, if the information in the agency's files is reliable and, based on that information, the court can determine the complaint is well founded and substantial, it must be disclosed. (*Ibid.*)

Many considerations compel the requirement that public agencies abide legal requirements, including legal procedures. For example,

> "Permitting a public agency to circumvent the established special statutory procedure by filing an ordinary declaratory relief action against a person who has not yet initiated litigation would eliminate statutory protections and incentives for members of the public in seeking disclosure of public records, require them to defend civil actions they otherwise might not have commenced, and discourage them from requesting records pursuant to the [California Public Records] Act, thus frustrating the Legislature's purpose of furthering the fundamental right of every person in this state to have prompt access to information in the possession of public agencies." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 423.)

Similarly, in the instant case, permitting respondents to circumvent the established, specific statutory procedure for imposing discipline on state employees, by issuing the LR and maintaining the LR in petitioner's OPF outside the provisions of law, would eliminate statutory protections for state government employees and require them to file actions such as the instant action they otherwise would not need to commence, and word discourage agencies from abiding the disciplinary procedures established by law, thus frustrating the Legislature's purpose of furthering the right of every state government employee to have the protections afforded by law.

Conclusion

Unfortunately, respondents have a documented practice of ignoring the rights of parties before them. (See *Volkswagen Group of America v New Motor Vehicle Board, et al.*, California Superior Court, Sacramento County case number 34-2012-80001045, Ruling on Submitted Matter: Petition for Writ of Administrative Mandamus.)

Respondents followed that practice in their disciplinary dealings with petitioner. If the respondents seek to establish an official record of discipline against petitioner, respondents should be required to follow the law rather than resorting to the illegitimate practices disclosed in the petition filed in this action.

Dated: May 13, 2013

Dana F. Winterrowd
Attorney for Petitioner

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Department of Motor Vehicles, New Motor Vehicle Board, Does 1 to 50, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Terry Doe

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILE ENDORSED
13 JUN -4 AM 8:34
LEGAL PROCESS #3

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): California Superior Court
Sacramento County, 720 Ninth Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):
34-2013-80001488

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Dana F. Winterrowd, Esq., 1812 Shelfield Dr., Carmichael, CA 95608, Telephone: 916-768-4773

DATE: JUN - 4 2013 *(Fecha)*
Clerk, by *(Secretario)* A Macias, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

Dana F. Winterrowd
Attorney at Law, CSB#99586
1812 Shelfield Dr.
Carmichael, CA 95608
916-768-4773

Attorney for Petitioner

FILED
ENDORSED
13 JUN -4 AM 8:32
LEGAL PROCESS #3

California Superior Court

Sacramento County

Terry Doe, Petitioner, vs. Department of Motor Vehicles, New Motor Vehicle Board, and Does 1 to 50, inclusive, Respondents.	Case No. 34-2013-80001488 First Amended Petition for Writ of Mandate And Complaint

1. This petition concerns a state agency's extralegal imposition of a purportedly official record of discipline against a state government employee, despite that agency's failure to abide and comply with many provisions of law enacted to assure that an official record of discipline is established only pursuant to law, in a fair and impartial manner.

2. Terry Doe is a fictitious name for Petitioner that is used to avoid disclosure of the name associated with the above-described illegitimate record of discipline, because this petition seeks a remedy that would prevent improper retention and disclosure of that illegitimate record. Petitioner is a permanent, full-time, non-probationary employee of the New Motor Vehicle Board ("NMVB"), which is a program within the Department of Motor Vehicles ("DMV"). (See Govt. Code, § 3000, et seq.)

3. A Memorandum of Understanding (MOU) between the State and Unit 2 employees defines the terms of Unit 2 employment (hereinafter simply the "MOU"). The MOU has been ratified by the Unit 2 membership, adopted by the Legislature and signed by the Governor. Section 6.3 of the MOU provides, in relevant part:

> The following shall apply to employees/classifications assigned to Work Week Groups E and SE....
>
> D. Employees shall not: ...
>
> 5. Have absences of less than one (1) day recorded for attendance record keeping or compensation purposes.

Petitioner is a member of State of California Bargaining Unit 2 and withing the terms of the Unit 2 MOU petitioner is a "Work Week Group 'SE'" employee.

4. On February 8, 2013, petitioner heard a person yelling what sounded like petitioner's first name. The yelling sounded to petitioner like the voice of William G. Brennan ("Brennan"), the Executive Director of NMVB. Before petitioner could respond, Brennan appeared at petitioner's office door and said, "Come into my office." After petitioner was seated in Brennan's office, in the presence of Dawn Kindle ("Kindle"), the Staff Services Manager I of NMVB, Brennan initiated an interrogation of petitioner about events alleged to have occurred the day before the interrogation. After the interrogation, Brennan verbally informed petitioner that a complaint had been made against petitioner about those alleged events, that Kindle and others had witnessed some or all of the events, that Kindle, on behalf of NMVB had investigated the complaint, and that Brennan would sustain the complaint. Kindle then informed petitioner that Brennan would issue a " counseling memo" which would recite pertinent alleged events and the conclusions of Brennan, which would be placed in the petitioner's Official Personnel File (OPF), and which would remain in the petitioner's OPF for three years. On February 13, 2013, petitioner received a memorandum bearing that date (hereinafter referred to as "Letter of Reprimand" or simply "LR") The LR is not attached as an exhibit to this petition because petitioner contends

that it is not an official record of discipline and therefore should not be published. At the appropriate time and under the appropriate circumstances, petitioner will submit the LR to the Court.

5. In pertinent part, the LR states,

(a) that a complaint (express as a "report" about petitioner's "conduct") was asserted against petitioner,

(b) the results of an investigation conducted by NMVB of the complaint,

(c) that NMVB concluded that petitioner,

(i) acted discourteously during the hours of petitioner's employment with NMVB (stating that "further violations" of "DMV's Core Values" could lead to action against petitioner based on the incident alleged n the LR and any future incident), and

(ii) was absent from the offices of NMVB during hours of work dictated and imposed by NMVB (though no alleged absence was alleged to have lasted eight hours or more), and

(d) the LR will be placed in petitioner's OPR (expressed as "cc: Employee file.").

6. Petitioner understands that petitioner's OPF is maintained by DMV in DMV's administrative offices which are distant and apart from the offices of NMVB.

7. Respondents had a duty to follow the Government Code sections and other applicable law that regulate the imposition of discipline against state employees. As regards issuance and maintenance of the LR respondents failed to follow the Government Code sections and other applicable laws that regulate the imposition of discipline against state employees

8. At no time prior to the interrogation of petitioner described above, was petitioner provided with notice that a complaint had been made against petitioner, that an investigation had been initiated relative to any complaint made against petitioner, or of any right to request and receive representation by Bargaining Unit 2 representatives relative to the complaint purportedly

asserted against petitioner and its sequelae.

9. At no time prior to the issuance of the LR, was petitioner provided a written specification of allegations made against petitioner, or a written statement advising petitioner of the right to answer the LR orally or in writing, or a written specification of the particular facts that were alleged to support NMVB's issuance of the LR, or any notice of any right to request and receive a hearing before a neutral arbiter concerning the allegations, or any opportunity to cross-examine witnesses or present evidence relative to the allegations.

10. At no time did NMVB provide petitioner with a written statement advising petitioner of the time within which an appeal of the LR must be filed.

11. At no time has petitioner received any notice that the LR was filed with the State Personnel Board.

12. The filing and retention of the LR in petitioner's OPF constitutes the functional equivalent of an official record of an adverse action, within the meaning of the Government Code, but in disregard of the rights afforded petitioner by law. Retention of the LR in petitioner's OPF constitutes NMVB's attempt to establish in petitioner's OPF an official record of discipline while NMVB avoids having to comply with, and face the scrutiny provided through, applicable law. In short, through the method of issuing the LR without meaningful review and placing the LR in petitioner's OPF, NMVB was able to smear petitioner's reputation without NMVB having to follow the law and without NMVB having to make an honest, forthright effort to present sufficient facts to support an adverse action - facts that NMVB knew did not exist. Instead, NMVB pursued a "kangaroo court" procedure where NMVB allowed a witness to conduct the semblance of an investigation and enabled NMVB's own Executive Officer to be the arbiter of all alleged facts and outcome in a matter that involved the NMVB itself and its employees.

13. At a meeting among Brennan, Kindle and petitioner on or about February 18, 2013, petitioner protested the issuance of the LR and protested respondents' stated intention of maintaining the LR in petitioner's OPF for three years. Respondents ignored petitioner's protest.

14. As such, the issuance of the LR as well as the filing and retention of the LR in petitioner's OPF, or in the records of the DMV or NMVB, constitute illegitimate, lawless acts. Were the Court to sanction the actions of NMVB and DMV complained about herein, the Court would sanction a method of lawless discipline that disregards petitioner's rights, in that the Court would enable the establishment of a lawless method of purportedly "official" discipline of a California State employee that would render essentially nugatory the existing system of lawful discipline that has been carefully crafted by the legislative and executive branches of California government.

15. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law other than the relief sought in this petition in that the actions taken against petitioner by respondents in issuing the LR and maintaining it in petitioner's OPF are without legal support. Thus, there is no specific, legally recognized means for challenging such action. And, absent the relief sought herein, respondents' conduct threatens to, and petitioner reasonably expects it to, expose petitioner to unjustified, unwanted, and annoying scrutiny, criticism, and damage.

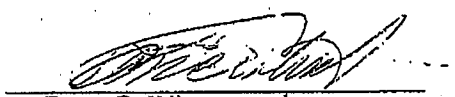
16. The foregoing also discloses NMVB's disregard for, and constitutes NMVB's violation of petitioner's rights afforded by section 6.3 of the MOU.

WHEREFORE, petitioner prays,

1. For a hearing of this matter and that the Court issue an order commanding NMVB and DMV to remove the LR from petitioner's OPF and to not further place the LR, or any semblance of it, in petitioner's OPF or in any records of NMVB or DMV, unless and until NMVB and DMV successfully comply with applicable law.

2. For costs and for such other relief as the Court deems just and proper.

Dated: June 3, 2013



Dana F. Winterrowd
Attorney for Petitioner

Verification

I, Terry Doe, am the petitioner in this proceeding. I have read the foregoing petition and know the contents. The facts stated therein are true and are within my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my personal knowledge.

Dated: June 3, 2013

Terry Doe