



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***November 13, 2013***

**A.**  
**ADMINISTRATIVE**  
**MATTERS**

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b><u>1. 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></b> 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.	November 2013	In progress. A status report concerning manufacturer and distributor compliance will be presented at the November 13, 2013, General Meeting.
<b><u>2. Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2014	In progress. The revised Guide will be presented at the January 2014, General Meeting.
<b><u>Allocation of Court Reporter Fees in Hearings</u></b> 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	<b><u>Completed</u></b> The revised policy was adopted at the June 26, 2013, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b><u>1. Schedule Board Member Education Presentations</u></b> Robin Parker; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	November 2013	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the November 13, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Host Board Administrative Law Judge Roundtable</u></b> 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.	January 2014	In progress. An ALJ Roundtable is scheduled for January 9, 2014
<b><u>Solon C. Soteris Employee Recognition Award Recipient</u></b> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	June 2013	<b><u>Completed</u></b> At the June 26, 2013, General meeting, the members of the Board selected Suzanne Luke as the recipient of the Solon C. Soteris Employee Recognition Award.
<b>FISCAL COMMITTEE</b>			
<b>1. <u>Quarterly Fiscal Reports</u></b> 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 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> quarter reports for fiscal year 2012-2013 were presented at the January 22, 2013, March 13, 2013, and June 26, 2013, General Meetings. The 4 <sup>th</sup> quarter report is scheduled for the November 13, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b><u>2. Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2014-2015.	January 2014	In progress. A report will be presented for consideration at the January 2014, General Meeting.
<b><u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u></b> 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	<u>Completed</u> At the June 26, 2013, General Meeting, Bill Brennan determined that the Board funds are properly classified as fees, and the method for determining fee schedules is fair and reasonable.
<b><u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> 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 ("ACP")	June 2013	<u>Completed</u> At the June 26, 2013, General Meeting, the members were provided with a memorandum concerning the collection of fees for the ACP.
<b><u>Proposed Board Budget for the Next Fiscal Year</u></b> 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	<u>Completed</u> The 2013-2014 Budget of \$1.72 million was adopted by the Board at the June 26, 2013, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b><u>Host Attorney Roundtable</u></b> 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.	January 2014	In progress. The tentative Attorney Roundtable is set for January 10, 2014.
<b><u>Report on the Board's 10<sup>th</sup> Industry Roundtable</u></b> 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	<b><u>Completed</u></b> A memorandum concerning the Roundtable was presented for information at the June 26, 2013, General Meeting.
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b><u>1. Annual Rulemaking Calendar</u></b> Robin Parker; Policy & Procedure Committee	Consideration of the annual rulemaking calendar if the Board decides to go forward with any new proposed regulatory changes.	January 2014	In progress. The 2014 Rulemaking Calendar will be considered at the January 2014, General Meeting.
<b><u>2. Draft New Regulations to Clarify and Improve the Board's Case Management Processes</u></b> Robin Parker; 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.	January 2014	In progress. The draft proposed regulations will be considered at the January 2014, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>3. <u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	January 2014	In progress. The updated Guide will be considered at the January 2014, General Meeting.
<b>4. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Dana Winterrowd; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	January 2014	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 2014, General Meeting.
<b>5. <u>Promulgate Proposed Regulations to Increase the Annual Board Fee</u></b> Robin Parker; 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.	June 2014	In progress. The proposed text was approved at the March 13, 2013, General Meeting. The notice was published on October 25, 2013.
<b>EXECUTIVE COMMITTEE</b>			

**B.**  
**CASE**  
**MANAGEMENT**

# CASE VOLUME

JUNE 13, 2013 THROUGH OCTOBER 31, 2013

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	5	6	15
3060	Modification	0	0	1
3062	Establishment	2	4	5
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:		7	10	25

# PENDING CASES

## BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd Mtg	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	MSC	Mandatory Settlement Conference
MTCP	Motion to Compel	MTCN	Motion to Continue
MTD	Motion to Dismiss	PD	Proposed Decision
PHC	Pre-Hearing Conference	POS	Proof of Service
RPHC	Resumption of Pre-Hearing Conference	RFD	Request for Dismissal
PSDO	Proposed Stipulated Decision and Order	RROB	Resumption of Ruling on Objections
RMH	Resumed Merits Hearing	ROB	Ruling on Objections
RSC	Resumed Status Conference	SC	Status Conference
* Consolidated, non-lead case			

## Protests

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	PR-2306-11 6-7-11	MSC: 11-1-13	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
2.	PR-2328-12 2-23-12	PD after Remand 11-12-13 Bd Mtg	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
3.	*PR-2333-12 2-23-12	PD after Remand 11-12-13 Bd Mtg	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving R: Mo Sanchez Kevin Colton	Termination
4.	PR-2337-12 6-19-12	Parties working on Settlement Agreement	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
5.	PR-2339-12 8-16-12	PD 11-12-13 Bd Mtg	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Toyota)	P: Bert Rasmussen Franjo Dolenac 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
6.	*PR-2340-12 8-16-12	PD 11-12-13 Bd Mtg	Aldon, Inc., a California corporation, dba Carson Toyota v. Toyota Motor Sales U.S.A., Inc., a California corporation (Scion)	P: Bert Rasmussen Franjo Dolenac R: Steven McKelvey Keith Hutto Steven McFarland I: Michael Flanagan Gavin Hughes	Relocation
7.	*PR-2341-12 8-22-12	PD 11-12-13 Bd Mtg	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
8.	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
9.	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
10.	PR-2357-12 12-18-12	Parties working on Settlement Agreement	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
11.	PR-2358-13 1-22-13	HRC: 12-19-13 MH: 1-13-14 (10 days)	Santa Cruz Nissan, Inc., dba Santa Cruz Nissan v. Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
12.	PR-2359-13 1-22-13	HRC: 12-16-13 MH: 1-13-14 (10 days)	Napa Chrysler, Inc. dba Napa Kia v. Kia Motors America, Inc.	P: Larry Miles Brady McLeod R: Colm Moran	Termination
13.	PR-2361-13 2-27-13	MTD denied MH: 12-11-13 (2 days)	Guarantee Fork Lift, Inc. dba, GFL, Inc. v. Capacity of Texas, Inc.	P: Mike Flanagan Gavin Hughes R: Tim Brownlee Rita Hoop Mo Sanchez	Termination

# PENDING CASES

## BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
14.	PR-2363-13 3-18-13	RSC: 11-8-13	Citrus Motors Ontario, Inc., a Corporation, dba Citrus Kia v. Kia Motors America, Inc., a Corporation	P: Bert Rasmussen R: Colm Moran	Relocation
15.	PR-2364-13 5-6-13	MTD denied ROB: 12-6-13 HRC: 2-20-14 MH: 4-7-14	West Covina Ford, Inc., dba Clippinger Ford v. Ford Motor Company	P: Larry Miles R: Don Cram	Termination
16.	PR-2365-13 5-8-13	HRC: 11-7-13 MH: 12-9-13 (10 days)	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
17.	*PR-2366-13 5-8-13	HRC: 11-7-13 MH: 12-9-13 (10 days)	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
18.	*PR-2367-13 5-8-13	HRC: 11-7-13 MH: 12-9-13 (10 days)	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
19.	*PR-2368-13 5-8-13	HRC: 11-7-13 MH: 12-9-13 (10 days)	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
20.	PR-2369-13 6-27-13	PD 11-12-13 Bd Mtg	McConnell Chevrolet Buick Inc. v. General Motors, LLC [Chevrolet]	P: Jeff Carter R: Greg Oxford	Termination
21.	PR-2370-13 7-1-13	PD 11-12-13 Bd Mtg	McConnell Chevrolet Buick Inc. v. General Motors, LLC [Buick]	P: Jeff Carter R: Greg Oxford	Termination
22.	PR-2371-13 7-12-13	RROB: 10-24-13 HRC: 2-4-14 MH: 3-4-14 (7 days)	Keldaneri Corp., dba San Leandro Nissan v Nissan North America, Inc.	P: Mike Flanagan Gavin Hughes R: Margie Lewis	Termination

# PENDING CASES

## BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
23.	PR-2372-13 7-16-13	MSC: 11-7-13 HRC: 1-20-14 MH: 2-24-14 (10 days)	Vallejo CJD, LLC dba Momentum Kia v. Kia Motors America, Inc.	P: Mike Sieving R: Colm Moran	Termination
24.	PR-2373-13	HRC: 3-3-14 MH: 3-31-14 (10 days)	Simi Valley Cycles, Inc., a corporation dba Simi Valley Cycles v. Triumph Motorcycles (America), LTD, a Corporation	P: Halbert Rasmussen R: Ryan Mauck, Randall Oyler, Steve Yatvin	Establishment
25.	PR-2374-13	Parties are working on stipulated schedule	Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.	P: Mike Flanagan, Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination

## Petitions

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

## Appeals

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

# **C. JUDICIAL REVIEW**

# Judicial Review

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**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. M&M AUTOMOTIVE GROUP, INC., dba INFINITI OF OAKLAND, Petitioner, NEW MOTOR VEHICLE BOARD, an administrative agency of the State of California, Respondent. INFINITI WEST, a division of NISSAN NORTH AMERICA, INC., Real Party in Interest.  
California Superior Court, Sacramento County Case No. 34-2013-80001551  
New Motor Vehicle Board Case No. CRT-266-13  
Protest No. PR-2360-13.

Protestant M&M Automotive Group, Inc., dba Infiniti of Oakland (IOO) filed a protest with the Board on January 29, 2013, alleging that Infiniti West, a division of Nissan North America, Inc. (Infiniti) should not be permitted to terminate its franchise with IOO. On February 28, 2013, Infiniti filed a motion seeking dismissal of IOO's protest based on Infiniti's contention that IOO had voluntarily terminated its franchise. Administrative Law Judge Kimberly Pipkin heard Infiniti's motion, and on June 13, 2013, Judge Pipkin issued her written ruling on the motion, entitled "Proposed Order Granting Respondent's Motion to Dismiss." By order dated June 26, 2013, the Public Members adopted Judge Pipkin's proposed order as the Board's final decision in the matter.

On July 2, 2013, IOO 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), that would, (a) direct the Board to set aside the Board's decision of June 26, 2013, (b) direct the Board to issue a decision overruling Infiniti's motion of February 28, 2013, (c) stay the Board's decision of June 26, 2013, (d) award costs of suit and attorney fees incurred, and (e) award such other relief in IOO's favor as the Court deems appropriate. IOO also filed a written application requesting that the Court stay the Board's Decision of June 26, 2013, "return the circumstances to the status quo" before the Board's Decision of June 26, and maintain such a stay until the court considers and rules on IOO's petition for writ of mandate.

*It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

*On July 11, 2013, the Court issued a tentative ruling denying Petitioner's application for stay. No oral arguments were requested. On July 12, 2013, the Court adopted the tentative ruling.*

*Petitioner filed a request for dismissal without prejudice on August 6, 2013, which was granted by the court. This matter is closed and will not appear on future reports.*

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. 34-2012-80001301  
New Motor Vehicle Board Case No. CRT-264-12  
Protest No. PR-2201-10

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahon's RV (Mega) [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. The Board found that Roadtrek Motorhomes, Inc. (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).

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.

*It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.*

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.

All further reporting of this case will be made under CRT-258-12, below.

3. 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

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members, decided to sustain the protest filed by Protestant. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest. 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).

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 a state interest at issue in the writ so the Board will participate via the Attorney General's Office.*

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.

All further reporting of this case will be made under CRT-258-12, below.

4. 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. R1C1215074  
New Motor Vehicle Board Case No. CRT-262-12  
Protest No. PR-2310-11

On July 20, 2011, Riverside Motorcycle, Inc., dba Skip Fordyce Harley-Davidson (Riverside) filed a termination protest. On August 16, 2012, Judge Ryerson issued a "Proposed Decision," sustaining Riverside's protest. Judge Ryerson found that Harley-Davidson Motor Company (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 of some of HDMC's expenses.

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

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.

*It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

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

*The parties are attempting to settle this matter. The schedule has been amended twice, most recently, as follows: March 7, 2014, is the last day on which HDMC may file its opening brief; April 7, 2014, is the last day on which Riverside may file its opposition brief; April 28, 2014, is the last day on which HCMC may file its reply brief; and the hearing on the petition for writ of mandate is scheduled to begin on May 19, 2014.*

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. 34-2012-00130525  
New Motor Vehicle Board Case No. CRT-261-12  
Protest No. PR-2233-10

Protestant Mega filed protest number PR-2233-10, with the Board on May 11, 2010. The protest alleged that Roadtrek 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, Judge Hagle issued a "Proposed Decision" sustaining Mega's protest. Judge Hagle found that Roadtrek 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 Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

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 state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

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.

All further reporting of this case will be made under CRT-258-12, below.

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

Protestant Mega filed Protest No. PR-2205-10 with the Board on February 9, 2010 and Protest Nos. PR-2211-10 and PR-2212-10 on February 18, 2010. The protests alleged that 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, 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 Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

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 state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

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.

All further reporting of this case will be made under CRT-258-12, below.

7. 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

Protestant Mega filed Protest No. PR-2206-10 with the Board on February 9, 2010 and filed Protest Nos. PR-2208-10 and PR-2209-10 with the Board on February 18, 2010. The protests alleged 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. On July 25, 2012, 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 Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

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 state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

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.

All further reporting of this case will be made under CRT-258-12, below.

8. 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

Protestant Mega filed Protest Nos. PR-2244-10 and PR-2245-10 with the Board on July 13, 2010. The protests alleged that 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. PR-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, 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 Public and Dealer Members adopted Judge Hagle's Proposed Decision and Judge Skrocki's Proposed Order as the Board's final decisions.

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.

*It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.*

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.

On December 19, 2012, Roadtrek's writ petitions 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 is already assigned to Department C20.

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 hearing for: Tuesday, October 15, 2013, at 9:00 a.m. The parties 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. 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 Nos. PR-2199-10 and PR-2201-10, including the Board's referral for an investigation to the Department of Motor Vehicles.

*This matter has been fully brief and oral arguments were presented on October 15, 2013. The Judge issued detailed tentative rulings at the beginning of the oral arguments. The tentative rulings are to DENY each of the petitions, with some slight caveats.*

9. 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

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 a "Proposed Order Granting Respondent's Motion to Dismiss Protest." By order dated July 16, 2012, the Public Members adopted Judge Carlson's proposed order as the Board's final decision in the matter.

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. The Court denied SMI's stay petition.

*It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

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 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 was scheduled to begin at 9:30 a.m., on February 27, 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.

*The time for appealing the Superior Court's judgment has passed, and the judgment has therefore become final. This matter is closed and will not appear on future reports.*

10. 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

On May 12, 2011, Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson (Laidlaw's) filed a termination protest. On May 9, 2012, Judge Wong issued a "Proposed Decision" sustaining Laidlaw's protest. Judge Wong found that Harley-Davidson Motor Company (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 Public Members adopted Judge Wong's Proposed Decision as the Board's final decision, 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.

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 state interest at issue in the writ so the Board will not participate via the Attorney General's Office.*

*The schedule has been amended several times, most recently, as follows: September 30, 2013, is the last day on which HDMC may file its opening brief; October 30, 2013, is the last day on which Laidlaw's may file its opposition brief; November 20, 2013, is the last day on which HDMC may file its reply brief; and the hearing on the petition for writ of mandate is scheduled to begin on December 11, 2013.*

*On September 25, 2013, the court entered HDMC's request for dismissal without prejudice. This matter is closed and will not appear on future reports.*

11. 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

At the Board meeting on September 27, 2011, the Public Members, decided to sustain the protest filed by Shayco, Inc., dba Ontario Volkswagen (Ontario VW). At the Board's regularly scheduled meeting on December 13, 2011, the Board adopted its written Order Confirming Decision to Sustain Protest. 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 Volkswagen Group of America, Inc. (VWoA) would not be permitted to proceed with the establishment of the new franchise at the proposed location in Montclair.

On January 24, 2012, 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.

The hearing was scheduled to begin at 9:00 a.m., on Friday, December 7, 2012, in Department 31 of the Superior Court.

*Initially it was determined that there was no state interest at issue in the writ so the Board would not participate via the Attorney General's Office. After the filing of VWoA's opening brief, it was decided that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.*

On November 9, 2012, VWoA filed notice that it 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 nonparticipation in the proceeding, (2) request for postponement of the December 7 hearing, (3) opposition to VWoA's petition, and (4) answer to VWoA's petition. On November 13, 2012, VWoA 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 VWoA's opening brief, and (2) Ontario VW's opposition to VWoA's request for judicial notice.

Following the hearing on December 7, 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 planned to reconsider the matter at a special meeting of the Board on March 13, 2013, which was cancelled.

On March 13, 2013, at a regularly scheduled meeting, 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 submitted additional evidence and objections.

*The oral arguments set for the May 7, 2013, Special Meeting were taken off calendar. Counsel for the parties stipulated to file proposed findings of fact in the form of proposed decisions with citations to the administrative record, and to the declarations and exhibits previously filed.*

Oral arguments before the Board were scheduled for June 26, 2013. The parties stipulated that the Board will have 60 days following those oral arguments within which to draft and consider the Board's final decision. *Prior to this meeting, the parties stipulated to a 60-90 day continuance of the oral arguments as VWoA intends to issue a notice establishing a dealership in Claremont. If no protests are filed, then VWoA will withdraw its notice of establishment for the Montclair dealership, which would resolve the Shayco protest and writ. The notice was withdrawn on July 22, 2013.*

*On September 25, 2013, Ontario VW requested dismissal of its protest with prejudice. The Board issued the Order of Dismissal as requested on September 25. On September 30, 2013, Matt Kubicek, Deputy Attorney General, filed an amended return with the Superior Court. This matter is closed and will not appear on future reports.*

12. 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

On June 5, 2009, the Board upheld a May 22, 2009, Proposed Order granting Yamaha's Motion to Dismiss Powerhouse's termination protest. 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 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.4<sup>th</sup> 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.

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.

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 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 hearing was held on August 14, 2013, before a panel of justices from Division 6 of California's Second District Court of Appeal. The matter was taken under submission.*

# 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

JUNE 12, 2013, THROUGH OCTOBER 31, 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	19	BMW	
CHRYSLER	5	CHRYSLER	9
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD		FORD	
GOSHEN		GOSHEN	
GM	403	GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	
KTM	1	KTM	
KIA	1	KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN	1	NISSAN	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI	1	SUZUKI	
TOYOTA		TOYOTA	1
VOLKSWAGEN		VOLKSWAGEN	3
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	30	MISCELLANEOUS	3
TOTAL	461	TOTAL	16