

STATE OF CALIFORNIA



MEMO

To: ALL BOARD MEMBERS

**From: TIMOTHY M. CORCORAN
NEW MOTOR VEHICLE BOARD
(916) 445-1888**

Subject: UPCOMING EVENTS

Date: December 28, 2021

The following highlights the upcoming Board events:

- January 12, 2022, General Meeting (via Zoom and teleconference)
- March 10-13, 2022, NADA Show 2022 (Las Vegas)
- March 30, 2022, General Meeting (Sacramento)
- June 15, 2022, General Meeting (Glendale)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 445-1888.



R O S T E R
NEW MOTOR VEHICLE BOARD

P.O. Box 188680
Sacramento, California 95818-8680

<u>NAME</u>	<u>APPOINTING AUTHORITY</u>	<u>STATUS</u>
Ramon Alvarez C. Term exp. 1-15-22	Governor's Office	Dealer Member
Anne Smith Boland Term exp. 1-15-23	Governor's Office	Dealer Member
Kathryn Ellen Doi Term exp. 1-15-25	Governor's Office	Public Member
Inder Dosanjh Term exp. 1-15-21	Governor's Office	Dealer Member
Ryan Fitzpatrick Term exp. 1-15-23	Governor's Office	Dealer Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-22	Senate Rules Committee	Public Member
Nanxi Liu Term exp. 1-15-23	Speaker of the Assembly	Public Member
Bismarck Obando Term exp. 1-15-22	Governor's Office	Public Member
Jacob Stevens Term exp. 1-15-23	Governor's Office	Public Member

P.O. Box 188680
Sacramento, California 95818-8680
Telephone: (916) 445-1888
Board staff contact: Robin Parker
www.nmvb.ca.gov
DMV press contact: (916) 657-6438
dmvpublicaffairs@dmv.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
NOTICE OF GENERAL BOARD MEETING

Wednesday, January 12, 2022 at 9:30 a.m.
Via Zoom and Teleconference

Through January 31, 2022, Government Code section 11133 authorizes the New Motor Vehicle Board ("Board") to hold meetings through teleconference and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the Board. The requirements that each teleconference location be accessible to the public and that members of the public be able to address the Board at each teleconference location have temporarily been suspended.

The Board Meeting will be conducted via Zoom and teleconference. Board members will participate in the meeting from individual remote locations. Members of the public can attend the meeting remotely via one of several options listed below. Written comments, if any, can be submitted at nmvb@nmvb.ca.gov or during the meeting. Items of business scheduled for the meeting are listed on the attached agenda. Recesses may be taken at the discretion of the Chairperson and items may be taken out of order.

To request a reasonable modification or accommodation for individuals with disabilities at this or any future Board meeting or to request any modification or accommodation for individuals with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Robin Parker at Robin.Parker@nmvb.ca.gov or (916) 445-1888.

Join Zoom Meeting

<https://us02web.zoom.us/j/87000999221?pwd=ODg1WllkQnoxUUUyWNVhWRE9XUFNxUT09>

Meeting ID: 870 0099 9221

Passcode: 018878

One tap mobile

+16699009128,,87000999221#,,,,*018878# US (San Jose)

+13462487799,,87000999221#,,,,*018878# US (Houston)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 870 0099 9221

Passcode: 018878

Find your local number: <https://us02web.zoom.us/j/kcUcGP1Lx>

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

AGENDA

GENERAL MEETING

Wednesday, January 12, 2022 at 9:30 a.m.

Via Zoom and Teleconference

<https://us02web.zoom.us/j/87000999221?pwd=ODg1WllkQnoxUUUYwNVhWRE9XUFNxUT09>

Please note that Board action may be taken regarding any of the issues listed below. As such, if any person has an interest in any of these issues, he or she may want to attend.

The Board provides an opportunity for members of the public to comment on each agenda item before or during the discussion or consideration of the item as circumstances permit. (Gov. Code § 11125.7) However, comments by the parties or by their counsel that are made regarding any proposed decision, order, or ruling must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. Members of the public may not comment on such matters.

1. **9:30 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Presentation of Resolution to Daniel P. Kuhnert, former Public Board Member.**
4. **Board member education concerning Statement of Incompatible Activities (Gov. Code § 19990; *Fisher v. State Personnel Bd.* (2018) 25 Cal. App. 5th 1) by John T. McGlothlin, Deputy Attorney General assigned to the Board - Board Development Committee.**
5. **2022 Election of Board President and Vice President - Executive Committee.**
6. **Annual review and appointment of Committee members to the Administration Committee, Board Development Committee, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, and Policy and Procedure Committee, and Ad Hoc Committee (if applicable), by the incoming Board President.**

7. **Appointment of Board Member designee in compliance with the Board's 1997 "Revised Board Policy Regarding Representation in Court Actions" by the incoming Board President.**
8. **Status report on the Board's intended move to DMV's headquarters in Sacramento - Administration Committee.**
9. **Report on the Board's financial condition for the 1st quarter of Fiscal Year 2021-2022 - Fiscal Committee.**
10. **Discussion regarding the 2022 New Motor Vehicle Board Industry Roundtable to encompass the Workshop on Equity, Justice and Inclusion - Government and Industry Affairs Committee.**
11. **Annual report concerning Board adopted policies - Policy and Procedure Committee.**
12. **Consideration of 2022 Rulemaking Calendar - Policy and Procedure Committee.**
13. **Annual report on the assignment of cases to Board Administrative Law Judges - Policy and Procedure Committee.**
14. **Executive Director's Report.**
 - A. Administrative Matters.
 - B. Case Management.
 - C. Judicial Review.
 - D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
 - E. Other.
15. **Public Comment. (Gov. Code § 11125.7)**
16. **Closed Executive Session.**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

Consideration of annual performance review for Executive Director - Executive Committee.
17. **Open Session.**

18. **Oral Presentation before the Public Members of the Board.**

- a. SANTA MONICA MOTOR GROUP dba SANTA MONICA CHRYSLER JEEP DODGE RAM v. FCA US LLC
Protest Nos. PR-2652-20, PR-2653-20, PR-2654-20, and PR-2655-20
- b. WESTERN TRUCK PARTS & EQUIPMENT COMPANY LLC DBA WESTERN TRUCK CENTER, a California limited liability company v. VOLVO TRUCKS NORTH AMERICA, a division of VOLVO GROUP NORTH AMERICA, LLC, a Delaware limited liability company
Protest No. PR-2740-21

19. **Closed Executive Session deliberations.**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

a. **Consideration of Proposed Decision.**

SANTA MONICA MOTOR GROUP dba SANTA MONICA CHRYSLER JEEP DODGE RAM v. FCA US LLC
Protest Nos. PR-2652-20, PR-2653-20, PR-2654-20, and PR-2655-20

Consideration of the Administrative Law Judge's Proposed Decision, by the Public Members of the Board.

b. **Consideration of Proposed Order.**

WESTERN TRUCK PARTS & EQUIPMENT COMPANY LLC DBA WESTERN TRUCK CENTER, a California limited liability company v. VOLVO TRUCKS NORTH AMERICA, a division of VOLVO GROUP NORTH AMERICA, LLC, a Delaware limited liability company
Protest No. PR-2740-21

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss, by the Public Members of the Board.

20. **Open Session.**

21. **Adjournment.**

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New Motor Vehicle Board RESOLUTION

WHEREAS, Mr. Daniel P. Kuhnert was appointed to the Board in February 2020, by Governor Gavin Newsom, to serve as a public member of the **NEW MOTOR VEHICLE BOARD**; and,

WHEREAS, Mr. Kuhnert served on several committees and has served as Chair of the Policy and Procedure Committee and member of the Administration Committee, and distinguished himself thereby; and

WHEREAS, Mr. Kuhnert actively engaged in the Board's business by providing sound advice and leadership, was thoughtful, friendly and outgoing to staff and fellow members; and

WHEREAS, the foremost concern of Mr. Kuhnert is public service to the people of the State of California, being active in political and community affairs, with exemplary service and dedication in the best interest of his fellow citizens, which merits the highest praise and recognition, and

WHEREAS, Mr. Kuhnert has given with great unselfishness and dedication of his time and expertise to matters concerning the motor vehicle industry and helped direct and protect the welfare of the automotive industry in this State, which is vital to California's economy and public welfare, thereby enhancing the respect of the auto industry and public for the Board; and,

THEREFORE, **BE IT RESOLVED** that each and every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to Mr. Daniel P. Kuhnert for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

Dated this 7th day of December 2021


BISMARCK OBANDO, PRESIDENT


ARDASHES KASSAKHIAN, VICE PRESIDENT


RAMON ALVAREZ C.


ANNE SMITH BOLAND


KATHRYN ELLEN DOI


INDER DOSANJH

RYAN FITZPATRICK


NANXI LIU


JACOB STEVENS



PRINT OR TYPE
LAST 4 DIGITS OF YOUR SOCIAL SECURITY NUMBER _____

EMPLOYEE'S NAME _____

STATEMENT OF INCOMPATIBLE ACTIVITIES

It is the policy of the Department of Motor Vehicles (DMV) that all employees comply with **Government Code §19990** pertaining to employee conduct. Furthermore, DMV employees may be subject to disciplinary action for causes and conduct delineated in **Government Code §19572**. Employees shall not engage in any employment, activity, or enterprise, which is clearly inconsistent with, incompatible with, in conflict with, or inimical (detrimental) to their duties. All state officers and employees of the DMV are expected to comply with this policy during their employment.

Effective January 1, 2005, the following activities constitute the grounds for which an employee may be subject to disciplinary action. The department also reserves the right to request that criminal charges be filed for violations.

A. Government Code §19572 - Section 19572 provides for disciplinary action against an employee or person whose name appears on any employment list. The causes include: fraud in securing appointment; incompetency; inefficiency; inexcusable neglect of duty; insubordination; dishonesty; drunkenness on duty; intemperance; addiction to the use of controlled substances; inexcusable absence without leave; conviction of a felony or conviction of a misdemeanor involving moral turpitude, a plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section; immorality; discourteous treatment of the public or other employees; improper political activity; willful disobedience; misuse of state property; refusal to take any oath or affirmation required by law as a condition of employment; the use, during duty hours, for training or target practice of any material which is not authorized by the appointing power; unlawful discrimination, including harassment, on any basis listed in subdivision (a) of **Government Code §12940**, as those bases are defined in §§12926 and 12926.1, against the public or other employees while acting in the capacity of a state employee; unlawful retaliation against any other state officer, employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job; other failure of good behavior during or outside of duty hours which is of such a nature that it causes discredit to the department; and violation of the prohibitions set forth in accordance with **Government Code §19990**.

B. Government Code §19990 - Section 19990 provides that a state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical (detrimental) to their duties as a state officer or employee.

1. Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain, or advantage or the private gain of another.
2. Using state time, facilities, equipment, or supplies for private gain or advantage.
3. Using, or having access to confidential information, available by virtue of state employment, for private gain or advantage, or providing confidential information to persons to whom issuance of this information has not been authorized.
4. Receiving or accepting money or any other consideration from anyone other than the state for the performance of their duties as a state officer or employee.
5. Performance of an act in other than their capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the officer or employee.
6. Receiving or accepting, directly or indirectly, any gift, including money or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority, or whose activities are regulated or controlled by the department under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in their official duties or was intended as a reward for any official actions performed by the officer or employee.
7. Subject to any other laws, rules, or regulations, not devoting their full time, attention, and efforts to their state office or employment during their hours of duty as a state officer or employee.

STATEMENT OF INCOMPATIBLE ACTIVITIES

C. **Additional Authorization** - In addition to the provisions of **Government Code §§19572 and 19990**, the director of the DMV may define or determine activities which, for employees of the department, are inconsistent, incompatible or in conflict with their duties as departmental employees. These prohibited activities and enterprises are:

1. Using their employment at the department (e.g., symbol, badge, identification card, records, information, etc.) to obtain any special treatment or favors, either during or outside office hours.
2. Using their working hours, state facilities, equipment, or materials for private activities.
3. Accessing, selling, altering, or sharing vehicle registration, driver license, or any type of confidential information, except as part of their duties. Employees cannot reveal confidential information acquired as a result of working for the state before the information is made public; nor can employees reveal confidential management information used as the basis for decision-making.
4. Processing, controlling, inspecting, reviewing, auditing, or enforcing in their capacity as a state employee, any type of act, document, or transaction (e.g., registration, driver license, personnel, payroll, etc.) for themselves, family, an individual with whom the employee has a close personal relationship, coworker, or an outside entity in which the employee has a material financial interest. Employees that have any documents or transactions that need to be processed, reviewed, or audited will submit the documents or transactions to their unit manager. The unit manager will assign the work to a technician of their choosing. Exceptions may be granted to accommodate circumstances such as for employees working in field offices located in smaller communities where prohibiting the processing of a document or transaction may be impractical.

Personal relationship means any relationship so personal that other DMV employees may reasonably perceive that one of the employees may be motivated to treat the other one more favorably than other employees for reasons other than prior job performance, work history or job qualifications. That includes, but is not limited to, any familial relationship established by blood, adoption, marriage, or registered domestic partnership. For the purpose of this policy, personal relationships are not limited to familial relationships, but also include employees who reside together or have other close personal bonds. Family includes spouses, parents, brothers, sisters, children, stepchildren, grandparents, aunts, uncles, nieces, nephews, cousins, parents-in-law, grandparents-in-law, daughters-in-law, sons-in-law, sisters-in-law, brothers-in-law, or individuals who reside in the same household.

5. Supervisory employees shall not use their authority to influence any other employee to perform any act that would violate section C.4 of this document.
6. Purchasing goods or services at special discounts or special concessions from businesses or agents who operate under certificates or licenses issued by the department, or businesses which do business with the department, unless the same discounts/concessions are also generally available to other state employees. For example, employees cannot accept discounts from such businesses as automobile dealerships, driving schools, or dismantlers unless the same discounts are also generally available to other state employees.
7. Engaging in or having a material financial interest in any outside activity/employment (e.g., owning, receiving income from, being employed by, etc.), which is clearly inconsistent, incompatible, in conflict with or inimical (detrimental) to their duties at the department. These duties include, but are not limited to:
 - a. Processing and/or reviewing registration documents.
 - b. Processing and/or reviewing driver license documents.
 - c. Conducting driver license examinations and/or driver safety reviews.
 - d. Auditing outside entities.
 - e. Procuring merchandise/services for the department.
 - f. Processing and/or reviewing contractual documents.
 - g. Making vehicle inspections, engine verifications, or vehicle appraisals.
 - h. Holding positions which may influence such duties.

STATEMENT OF INCOMPATIBLE ACTIVITIES

Examples of activities which are incompatible include, but are not limited to:

- (1.) Employees whose duties include processing driver license transactions are prohibited from owning, being employed by, or having a material financial interest in a private driving school.
 - (2.) Employees whose duties include processing or reviewing procurement documents are prohibited from owning, being employed by, or having a material financial interest in a business that sells materials or services to the department.
 - (3.) Employees whose duties include processing registration documents are prohibited from owning, being employed by, or having a material financial interest in a business which has been delegated to process these transactions (e.g., registration services, motor vehicle dealers, dismantlers, etc.).
8. Soliciting or receiving any kind of political contribution in connection with department-related activities, or using any official authority/influence in order to coerce the vote, contribution, or political action of any state employee or person on an employment list.

Employees can be politically active as long as they do so as a private citizen and not, in the course of those activities, present themselves as representing DMV. Departmental offices cannot display political signs or symbols. All supervisors and managers must refrain from influencing the political decisions of their employees.

9. Accepting anything from any customer or client or potential customer or client if the purpose is to obtain special favors, faster service, exception processing, or advantage not available to other customers or potential customers. However, a representative of the department, designated by the Director, may accept, on behalf of the department, awards, certificates of appreciation, and commendations that are not of a quid pro quo nature and have monetary value attached.

If an employee is engaged in or intends to enter into an activity that could be considered incompatible or any activity associated with a departmental program or licensee, the employee shall bring that activity to the immediate attention of their supervisor. It will be the supervisor's responsibility to determine whether the activity is incompatible. Employees may appeal the prohibitions contained in this statement. Appeals must be in writing and branch/regional level management will conduct the first review. Deputy Directors will be the second and final level of appeal.

If the provisions of this statement are in conflict with the provisions of a memorandum of understanding reached pursuant to **Government Code §3517.5**, the memorandum of understanding will be controlling.

I have read the foregoing Statement of Incompatible Activities and understand that I may be subject to disciplinary action and/or criminal charges for any violation of the prohibitions contained herein.

EMPLOYEE SIGNATURE

DATE

STATE OF CALIFORNIA



MEMO

To : NEW MOTOR VEHICLE BOARD

Date: December 9, 2021

**From : BISMARCK OBANDO
PRESIDENT**

Subject: COMMITTEE ASSIGNMENTS

At the January 12, 2022, General Meeting, we are going to review committee assignments. The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Ardy Kassakhian, Chair
Ryan Fitzpatrick, Member

BOARD DEVELOPMENT COMMITTEE

Nanxi Liu, Chair
Kathryn Ellen Doi, Member

EXECUTIVE COMMITTEE

Bismarck Obando, President
Ardy Kassakhian, Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair
Nanxi Liu, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Ramon Alvarez C., Chair
Anne Smith Boland, Member
Kathryn Ellen Doi, Member
Ryan Fitzpatrick, Member

LEGISLATIVE COMMITTEE

Bismarck Obando, Chair
Ardy Kassakhian, Member

POLICY AND PROCEDURE COMMITTEE

Inder Dosanjh, Chair
Jake Stevens, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Bismarck Obando, Chair
Ramon Alvarez C., Member
Anne Smith Boland, Member
Kathryn Ellen Doi, Member
Inder Dosanjh, Member
Jake Stevens, Member

The description of the standing committees are as follows:

- **Executive Committee** – comprised of the Board President and Vice President includes approval of Board meeting Agendas, meeting with Department and Agency Directors, monitoring the Business, Transportation & Housing Agency audit of Board activities, and other matters requiring Board representation.
- **Administration Committee** – personnel, hiring, internal operations (as they relate to administration), office forms (including letterhead) and the Board’s website.
- **Board Development Committee** – Board Member education, welcoming new Board Members, meeting with the CNCDA (all Board members, as their schedules allow, may volunteer for this activity) and the employee recognition program.
- **Fiscal Committee** – budget and finance matters related to Board operation.
- **Government and Industry Affairs Committee** – expanding efforts related to government and industry outreach, including the Industry Roundtable. Review industry related advertising laws.
- **Legislative Committee** – comprised of the Board President and Vice President unless otherwise designated by the President. Provides analyses on legislation that directly affects the Board’s laws and functions.
- **Policy and Procedure Committee** – regulations, Board protocol (including parliamentary procedures and meeting minutes), legal action participation, case management and internal operations (as they relate to policy and procedure).

If you have any questions, please do not hesitate to contact me or Tim Corcoran at (916) 445-1888.

STATE OF CALIFORNIA



MEMO

To: BISMARCK OBANDO

Date: December 9, 2021

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS", BY BOARD PRESIDENT

In response to the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, the former Judicial Policies and Procedures Committee (members Livingston and Skobin) developed the initial policy regarding representation in court actions that was adopted by the Board at its October 22, 1996, General Meeting. One aspect of the initial policy concerning the Office of the Attorney General filing a "perfunctory answer with the court" was problematic as the Attorney General's Office was reluctant to make any appearance on the Board's behalf without thoroughly reviewing the underlying action. At its February 12, 1997, General Meeting, the Board adopted the attached "Revised Board Policy Regarding Representation in Court Actions" (hereinafter collectively referred to as "Policy").

According to the Policy, the Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. The Policy specifically provides that:

When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important state interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding (the petitioner and the real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. (See attached Revised Policy, paragraph 2).

However, in mandamus actions in which an important state issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the state interest ... In such situations, prior to Board

participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff, and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board ... Any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel ... (See attached Policy, paragraph 4, pages 2-3).

The above policy was modified in 2008 to provide that when a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.

The designation of a Board Member by the Board President consistent with this Policy is being agendaized for the January 12, 2022, General Meeting.

If you have any questions, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachments



MEMO

To : ALL BOARD MEMBERS

Date: January 29, 1997

From : NEW MOTOR VEHICLE BOARD
Judicial Policies and Procedures Committee
(Committee members: Dan Livingston and Alan Skobin)
(916) 445-2080

Subject: REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

At its General Meeting of October 22, 1996, the members of the Board adopted a policy regarding legal representation of the Board and Board appearances in court proceedings. A copy of the memorandum which sets forth the Board's policy in this regard is attached hereto.

Since the time that the Board's policy has been adopted and implemented, it has been determined that one aspect of this policy has not worked in the manner that we had hoped. Specifically, the policy requires that, in mandamus actions in which an important state issue is not raised, the office of the Attorney General would file a perfunctory answer with the court, and advise the court of the Board's policy not to file a memorandum of points and authorities in opposition to the petition or to present oral arguments on the issues raised. The problem that has arisen is the Attorney General's understandable reluctance to make any appearance on the Board's behalf without thoroughly reviewing the pleadings and Board decision in the underlying action to determine if any significant policy or legal issues are raised by the mandamus action. Accordingly, it is recommended that the Board's policy in this regard be revised as follows. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important state interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding (the petitioner and real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. In all other respects, the policy regarding legal representation of the Board and Board appearances in court proceedings, as set forth in the attached memorandum, would remain unchanged.

This matter will be discussed at the General Meeting of the Board scheduled for February 12, 1997. Your interest in this matter is greatly appreciated.



MEMO

To : ALL BOARD MEMBERS

Date: October 17, 1996

From : NEW MOTOR VEHICLE BOARD
Judicial Policies and Procedures Committee
(Committee members: Dan Livingston and Alan Skobin)
(916) 445-2080

Subject: BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

This memorandum is in reference to the agenda item discussed at the last Board meeting, specifically the legal representation of the Board in court proceedings. The relevant issues involve the question as to when and to what extent the Board should participate in mandamus actions in which a Board decision is challenged, as well as whether Board staff or the Office of the Attorney General should represent the Board in those actions in which the Board participates¹. The members of the Board referred this matter to the Board's Judicial Policies and Procedures Committee (the "Committee") for further evaluation and recommendation back to the full Board for consideration. The Committee has thoroughly reviewed the law and policies regarding these issues, and the following recommendations are a result of this analysis.

Government Code sections 11042 and 11043 require that all state agencies utilize the services of the Office of the Attorney General in all legal matters in which the agency is involved. Government Code section 11040 provides that the agency may employ independent legal counsel only after having obtained the written consent of the Attorney General. Section 11041 enumerates several agencies which are exempt from these requirements. The Board is not contained in the list of exempted agencies.

The Committee has reviewed and discussed the circumstances relating to mandamus actions in which the Board may be involved. There are often two distinct phases to the proceedings. In the first phase, the party challenging the decision would seek a court order staying the effect of the Board decision. This would either be done ex parte (with as little as 4 hours notice to the Board), or by noticed motion giving the Board 10 to 15 days notice. In the past, staff of the Board has appeared at the ex parte matters because of the difficulty with getting a Deputy Attorney General assigned to the matter and/or knowledgeable about the case with such short notice. However, as a result of the state of the law

¹ Pursuant to Vehicle Code sections 3058 and 3068, as well as Code of Civil Procedure section 1094.5, any party to a final decision of the Board may challenge the Board decision by filing a petition for writ of administrative mandamus in the superior court.

regarding the Office of the Attorney General discussed above, it is the Committee's position that, in all future ex parte matters, that staff contact the Attorney General's office to apprise them of the pendency of the ex parte proceedings but to take no further action in representing the Board before the court without the consent of the Attorney General.

The second phase of the proceedings would be the briefing and hearing on the merits of the mandamus actions, ie. whether the Board's decision was supported by substantial evidence and whether the Board's actions were proper procedurally. In the past, the Attorney General's office has represented the Board in these matters, and the Board's staff has provided assistance by way of research and drafting of pleadings, as well support in court. The Committee has reviewed this practice and recommends that it be retained in all future cases, subject to the limitations below.

The second issue which was reviewed by the Committee pertains to when, and to what extent, the Board should participate in mandamus actions challenging a Board decision. An analogy was drawn between the Board and a civil action initiated and tried in the superior court. When the superior court renders a judgment in a civil action and a party files a petition for an extraordinary writ with the Court of Appeal, the superior court is named as the responding party, much the same as in those actions challenging a Board decision. The court, however, does not make an appearance in the writ proceeding before the Court of Appeal, but instead allows the real party in interest to present the relevant arguments to the appellate court supporting the actions taken by the superior court. The Committee has determined that this practice should be utilized by the Board and, as a result, recommends the following policy.

The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. There are a number of sound reasons for such a policy. In most of the mandamus actions in which the Board is named as a respondent, the interests of both parties are adequately represented by their respective counsel. In addition, the appearance by the Board in such cases would lead to an unnecessary expenditure of state resources. Instead, the Attorney General (or Board attorneys, if permission is given by the Attorney General), should be requested to file only a perfunctory answer to the Petition for Writ of Administrative Mandamus, advising the court of the Board policy and that it is not appropriate for the Board to file a memorandum or points and authorities in opposition to the petition or to present oral arguments on the issues raised.

However, in mandamus actions in which an important state issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the state interest. Examples of important state issues could include challenges to the jurisdiction of the Board, a decision which could affect future Board cases, unusual issues concerning the standard of review in the mandamus action, as well as serious matters of public safety. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board Member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff, and the matter would be scheduled for discussion at either the next general

meeting of the Board or, if three public members request, then at a special meeting of the Board. The same policy would apply to ex parte hearings for a stay of the Board's order, as well as law and motion proceedings in which a stay order is sought. In any event, any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel.

The Committee has considered the various aspects regarding these issues, and believes that the policies, as set forth above, will ensure that the interests of the State and Board are adequately represented when appropriate.

STATE OF CALIFORNIA



MEMO

To: FISCAL COMMITTEE
ANNE SMITH BOLAND, CHAIR
NANXI LIU, MEMBER

Date: December 16, 2021

From: TIMOTHY CORCORAN
DAWN KINDEL
SUZANNE LUKE

Subject: REPORT ON THE BOARD’S FINANCIAL CONDITION FOR THE 1ST
QUARTER OF FISCAL YEAR 2021-2022 AND RELATED FISCAL
MATTERS

The following is a financial summary of the Board’s expenditures and revenues through the 1st quarter of Fiscal Year (FY) 2021-2022.

Expenditures Fiscal Year 2021-22						
Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$1,876,032	\$427,813	TBD	TBD	TBD	\$1,448,219	77%

Revenue Fiscal Year 2021-22						
Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year	Projected Revenue for Fiscal Year	**Projected Surplus or (Deficit) Revenue/Appr.	Projected Surplus or (Deficit) %
*\$2,636,661	\$511,624	\$3,148,285	\$1,763,721	\$1,592,962	\$7,902	0.5%

*Pending prior year adjustments

**Projected total expenditures based on prior FY 2020-2021 (\$1,585,060)

Current Reserve Balance - \$2,720,472 balance after 1st Quarter Expenditures.

The Board expended 23% of its appropriated budget in the 1st quarter.

For further information, I’ve attached revenue and expenditure details as well as the Board’s fund condition breakdown as compared to last FY.

Given the current reserve balance, staff does not see a need for an adjustment to the Board's fee structure at this time. However, as a result of the pandemic and resulting computer chip shortages and shipping backlogs, new vehicle sales have slowed. Additionally, since a large portion of the Board's reserve fund will be allocated for construction and moving costs related to moving the Board's offices to a different location, staff will continue to closely monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.

- Arbitration Certification Program (ACP) Annual Fee – Regulations are pending for the ACP Fee collection with the Office of Administrative Law. The fee will be \$1.00 per vehicle. Invoices will be sent as soon as the regulation change is approved.
- New Motor Vehicle Board (NMVB) Annual Fee - The NMVB annual collection of fees from manufacturers and distributors began in August. Staff have collected \$807,400.35 from manufacturers and distributors under NMVB jurisdiction.

As a follow up to the December 7, 2021, General Meeting question raised by President Obando regarding the higher than usual budget expenditure, below is a comparison between last fiscal year 20-21 and the previous fiscal year 19-20 which show the areas with the most significant increase in expenses.

- Expenditures Fiscal Year 19-20
Salaries – Part Time Staff (Administrative Law Judges): +3,815 balance remaining
Facilities Planning: +6,196 balance remaining
Professional Services (Attorney General): **-11,473**
- Expenditures Fiscal Year 20-21
Salaries – Part Time Staff (Administrative Law Judges): **-53,140**
Facilities Planning: **-13,019**
Professional Services (Attorney General): **-22,535**

The increase to part time staff salaries is attributed to the increase in workload for the Administrative Law Judges. Facilities Planning cost increase are associated with the Board's relocation efforts. Professional Services (Attorney General) expenses are the result of various writs, appeals and litigation brought against the Board.

This memorandum is being provided for informational purposes only, and no Board action is required. If you have any questions prior to the Board Meeting, please contact me at (916) 445-1888 or Dawn Kindel at (916) 612-5428.

Attachments as stated

cc: Bismarck Obando, President

First Quarter Revenue and Expenditure Summary

Fiscal Year 2021-2022

Covers July 1, 2021 to September 30, 2021

REVENUES

New Dealer Licensing Fee:	\$147,619
Manufacturer and Distributor Fee	\$362,405
NMVB Filing Fee	\$1,600
Year-to-date total:	\$511,624

EXPENDITURES

Payroll

Full-Time staff salaries:	Budgeted Amount \$971,063	Expended \$222,934	Remaining Balance \$748,129
Part-Time staff salaries:	Budgeted Amount \$81,000	Expended \$34,252	Remaining Balance \$46,748
Benefits:	Budgeted Amount \$544,941	Expended \$113,045	Remaining Balance \$431,896

Operating Expense and Equipment

General Expense (includes equipment, in-state travel, dues, legal library, etc.)
Budgeted Amount \$24,000 Expended \$1,969 Remaining Balance \$22,031

Rent: Budgeted Amount \$165,000 Expended \$39,534 Remaining Balance \$125,466

Facilities Planning: Budgeted Amount \$10,000 Expended \$506 Remaining Balance \$9,494

Professional Services (Attorney General): Budgeted Amount \$12,000 Expended \$7,271
Remaining Balance \$4,729

Professional Services (Court Reporters): Budgeted Amount \$18,000 Expended \$0 Remaining
Balance \$18,000

TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount \$263,188; Expenditure Year to Date \$50,576.00 – 19%; Balance
Remaining \$212,612 – 81%

GRAND TOTAL – Fiscal Year 2021-2022

Budgeted Amount \$1,876,032; Expenditure Year to Date \$427,813.00 - 23%; Balance
Remaining \$1,448,219 - 77%

STATE OF CALIFORNIA



MEMO

To: POLICY AND PROCEDURE COMMITTEE **Date:** December 9, 2021
INDER DOSANJH, CHAIR
JAKE STEVENS, MEMBER

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES

Over the past 20 years, the Board has adopted a wide range of policies pertaining to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff. They may be modified or abolished as the Board deems appropriate. The staff has consolidated the policies into a single document for purposes of consistency and to educate new members.

The attached summary provides the Board with an opportunity to review the policies. The changes from 2021 are noted in underline and strikeout font, and pertain to:

- The Board Delegations were updated to reflect legislative changes (Assembly Bill 179; effective January 1, 2020) and staff promotions.
- The Board policy requiring the periodic publication of The In-Site was eliminated.
- The *Guide to the New Motor Vehicle Board, Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- The mission and visions statements were reviewed.

This matter is being agendized for informational purposes only and no Board action is required. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachment

cc: Bismarck Obando

NEW MOTOR VEHICLE BOARD ADOPTED POLICIES

Since 1996, the New Motor Vehicle Board (“Board”) has adopted a wide range of policies pertaining to Board operations and practices. They supplement State and Department of Motor Vehicles (herein “Department” or “DMV”) policies and pertain to issues unique to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff.

BOARD MEETINGS		
CATEGORY	POLICY	DATE
Bagley-Keene Open Meeting Act Education and Compliance	<p>The Office of the Attorney General recommended that the Board appoint a full-time employee of the Board who is an attorney as the Bagley-Keene compliance officer, rather than hire outside services. In order to comply with this recommendation, the General Counsel¹ is the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.</p> <p>The Bagley-Keene Open Meeting Act requires that all state bodies “designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting.” In order to ensure compliance, the General Counsel is responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.</p>	July 12, 1996; May 25, 2000
Board Meeting Procedures	<p>The Board approved Parliamentary Procedures are to be utilized in the conduct of its meetings. In the event that a procedural issue arises which is not covered by the Parliamentary Procedures, the relevant provision(s) of Robert’s Rules of Order, The Modern Edition (1989 Version) will control the situation to which the issue applies. The Board revised the Parliamentary Procedures to reflect the changes in organizational structure and the procedure for debate and voting.</p> <p>At the December 2, 2019, General Meeting,</p>	March 18, 1997 - Business, Transportation & Housing Agency ² Audit Recommendation 7; January 8, 2003; September 27, 2011 December 2, 2019;

¹ Robin Parker, Chief Counsel, is performing all of the duties previously assigned to the Board’s General Counsel including but not limited to the Bagley-Keene Compliance Officer, maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act, the Audit Compliance Officer, and coordinating with the DMV’s Chief Counsel in the event the Board elects to request DMV to take disciplinary actions against a licensee for failure to file statutorily mandated schedules and formulas.

² Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.

CATEGORY	POLICY	DATE
Board Meeting Procedures -continued-	<p>changes were approved to automatically fill vacant committee Chair positions with the Member. At the November 4, 2020, General Meeting, the reference to “appeals” in Article 5 (debate and voting) was deleted due to the repeal of appeals effective January 1, 2020.</p> <p>The presiding Administrative Law Judge (“ALJ”) shall prepare a decision cover sheet/analysis which is provided to members with their meeting materials when a proposed decision or ruling is agendized. The decision cover sheet/analysis should be limited to two pages and not contain a recommendation.</p>	<p>November 4, 2020</p> <p>December 8, 1998; May 25, 2000</p>
Dealer Member Participation in Recreational Vehicle (“RV”) Protests and Petitions	<p>Dealer Board members may not participate in petitions involving RV licensees. Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the Dealer Member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.</p>	<p>December 11, 2003; January 31, 2007; March 28, 2007; November 15, 2007</p>
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act	<p>In compliance with section 11125.7, each agenda item other than an item that requires Board consideration of a proposed decision, ruling, or order, the President or presiding officer shall invite public comment after the item has been presented by staff. The President or presiding officer of the meeting may limit the number and/or the duration of the public comment or comments depending on the time constraints and size of the agenda. The following language is to be inserted into the President’s or presiding officer’s introductory statement prior to Board consideration of a proposed decision, ruling or order, as follows:</p> <p>“Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.</p>	<p>September 10, 2009; February 4, 2010</p>

CATEGORY	POLICY	DATE
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act -continued-	Members of the public may not comment on such matters.”	
BOARD MEMBERS		
Board Development	In order to ensure familiarity with Board operations and the new motor vehicle industry in general, the Board will provide new member orientation and ongoing educational seminars to new and existing members.	July 18, 2000
Gifts and Honoraria	<p>The Board shall comply with the statutory requirements of the Political Reform Act. In general, the Act provides for a limitation on gifts received by state board members as follows:</p> <ul style="list-style-type: none"> ▪ Gifts provided for or arranged by a lobbyist or lobbying firm if the lobbyist or firm are registered to lobby the member or the employee’s agency are prohibited if the aggregate value exceeds \$10 per calendar month from a single lobbyist or lobbying firm. ▪ State board members and designated staff may not accept gifts aggregating more than \$420³ from any other single source if that gift would have to be reported on the recipient’s Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of “single source” is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission July 3, 2013, and the Secretary of State on July 24, 2013. The amendments were operative August 23, 2013. 	April 27, 2001; March 23, 2010

³ The gift amount is \$520.00 (2 CCR §§ 18700 and 18940.2). For purposes of Government Code section 89503, the adjusted annual gift limitation of \$520.00 is in effect January 1, 2021, through December 31, 2022.

CATEGORY	POLICY	DATE
Gifts and Honoraria -continued-	With regards to honoraria, the Act provides that members of state boards may not receive honoraria from any source that would be required to be reported on the Form 700 for that official.	
COURT PROCEEDINGS		
Court Participation on Issues of Interest to the Board	<p>The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important State interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court and keep it on the proof of service list. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. However, in mandamus actions in which an important State issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the State interest. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his or her designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board. Any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's</p>	<p>October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5</p>

CATEGORY	POLICY	DATE
Court Participation on Issues of Interest to the Board -continued-	own counsel. When a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.	June 26, 2008
Filing Amicus Briefs	The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency ("Agency"). As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request for consent will be withdrawn.	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4
CONSUMER MEDIATION PROGRAM		
Consumer Mediation Program	The goal of the Consumer Mediation Program is to informally mediate solutions to disputes between consumers and new car dealers, manufacturers, and distributors. Staff will provide consumers information on the Lemon Law and refer such complaints to the appropriate entity for resolution. Complaints for which other agencies have exclusive jurisdiction will also be referred to those agencies. Program activities will not be advertised, nor will consumer newsletters be disseminated. Rather, activities will be based on referrals from other agencies and sources. Vehicle Code section 3078 requires that the staff recommend to a member of the public that he or she consult with the Department of Consumer Affairs when seeking a refund involving the sale or lease of, or a replacement of, a recreational	December 8, 1998 - Business, Transportation & Housing Agency Audit Recommendation 1 and 10. April 22, 2004

CATEGORY	POLICY	DATE
Consumer Mediation Program -continued-	<p>vehicle. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The checklist will enable staff to guide the consumer through key Lemon Law criteria and enable the consumer to choose the proper course of action to pursue.</p> <p>An inter-agency memo will be sent to agencies the Board refers to and those that refer to the Board to reinforce the Board’s jurisdiction and services offered by the Consumer Mediation Program.</p>	May 26, 2011
HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES⁴		
Appointment of Hearing Officers	<p>Under section 590 of Title 13 of the California Code of Regulations, Robin Parker, Chief Counsel, was appointed by the Board as a hearing officer for the purposes of conducting pre-hearing conferences, rulings on discovery objections, and mandatory settlement conferences. Anthony Skrocki was designated the Law and Motion Administrative Law Judge responsible for hearing all pre-hearing and discovery motions. In the event of Judge Skrocki’s unavailability, an “Alternate Law and Motion ALJ Assignment Log” was established. Robin Parker was added to the “Alternate Law and Motion ALJ Assignment Log” and authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate.</p> <p>In January 2005, the Board appointed three Administrative Law Judges: Richard J. Lopez;⁵ Jerold A. Prod;⁶ and Norman Gregory (Greg) Taylor.⁷ Marybelle Archibald⁸ was also appointed, as was Diana Woodward Hagle. Linda Waits was</p>	<p>August 21, 1997; September 30, 2004; June 26, 2008; November 20, 2008</p> <p>January 26, 2005; September 21, 2005; April 5, 2006; December 13, 2007;</p>

⁴ The term hearing officer and Administrative Law Judge are used interchangeably throughout this document. Effective January 1, 2004, references to “hearing officer” were changed to “administrative law judge” in Vehicle Code sections 3000 et seq. The Board’s regulations and job classifications for hearing officer were also changed to Administrative Law Judge.

⁵ Due to a work-related conflict, Judge Lopez resigned from the Board effective June 30, 2007. Judge Lopez was removed from the MSC and Merits Judge Assignment Logs.

⁶ Judge Prod retired in August 2013, so he was taken off the assignment logs.

⁷ Due to a work-related conflict, Judge Taylor resigned from the Board. However, in August 2006, Judge Taylor was hired on a contract basis and was available on an initial six-month basis. An extension of this contract was granted until May 14, 2007. On May 1, 2007, Judge Taylor was removed from the MSC and Merits Judge Assignment Logs.

⁸ In March 2011, Judge Archibald resigned effective after the completion of the Proposed Decision and Proposed Decision Following Remand in *Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.*, Protest No. PR-2265-10.

CATEGORY	POLICY	DATE
<p>Appointment of Hearing Officers -continued-</p>	<p>also appointed as an ALJ (she resigned in October 2010). In September 2011, the Board appointed three Administrative Law Judges: Lonnie M. Carlson (he resigned in October 2014), Kymberly M. Pipkin and Victor D. Ryerson (resigned effective August 1, 2017). In January 2017, the Board appointed Evelyn M. Matteucci and Dwight V. Nelsen as administrative law judges. These judges have been added to the assignment logs. In December 2019, four Board Members appointed Steven Smith as an administrative law judge subject to checking his references and being ratified by the full Board at its March 5, 2020, General Meeting.</p>	<p>September 27, 2011; January 18, 2017; December 2, 2019; March 5, 2020</p>
<p>Case Assignments</p>	<p>The Board ALJs (excluding Robin Parker and Anthony Skrocki) will preside over merits hearings. To preserve the random selection of ALJs as well as the even distribution of cases, ALJs will be assigned on a rotational basis at the Hearing Readiness Conference utilizing an assignment log similar to the Merits Judge Substitution Log adopted by the Board at its January 8, 2003, meeting. If the judge selected to preside over the next hearing is not available, the Board will attempt to schedule the merits hearing with the next Board ALJ on the log. If for any reason no judge is available, the hearing will be scheduled with an OAH Judge. The new ALJs will be assigned utilizing this process.</p> <p>On an interim basis, ALJs will be assigned based upon a Merits and MSC Judge Assignment Log. All of the ALJs (Archibald, Lopez and Prod until they resigned) were assigned to the respective logs. The effectiveness of this interim system was reported at the March 8, 2006, General meeting. Diana Woodward Hagle was added to the assignment logs, as was Judge Taylor until his contract expired. Judge Wong requested that she be added to the MSC Log.</p> <p>The assignment logs were updated as follows:</p> <ul style="list-style-type: none"> ▪ If an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ is inserted first in the rotation so that he or 	<p>September 30, 2004; April 21, 2005</p> <p>November 16, 2005; April 5, 2006; September 28, 2006</p> <p>February 4, 2014</p>

CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>she would be the next ALJ to receive the first opportunity to preside over a merits hearing.</p> <ul style="list-style-type: none"> ▪ If an ALJ must decline presiding over a merits hearing because he or she was the Mandatory Settlement Conference ALJ, then the ALJ is inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing. <p>Merilyn Wong, on an interim basis, was designated the Mandatory Settlement Conference ALJ starting in June 2016. In November 2017, she was designated the permanent Mandatory Settlement Conference ALJ due to her success in settling protests. An Alternative MSC Judge Assignment Log was established in the event ALJ Wong is unavailable. Additionally, at ALJ Wong's request, she was taken off the Alternative Merits Judge Assignment Log and the Alternative Law & Motion Judge Assignment Log so her focus would be exclusively on settlement.</p>	June 28, 2016, January 18, 2017, July 19, 2017, November 7, 2017
Cited Proposed Decisions/ Rulings/Orders	Historically, the Board staff has prepared two versions of proposed decisions, rulings, and orders. One version contained citations to the record and the other version did not. The Board staff will prepare only one version of proposed decisions, rulings, and orders that contains citations to the record. Additionally, the following sentence will be included in all Board issued proposed decisions, rulings, and orders: "The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding, and are not intended to be all-inclusive."	January 26, 2006
Hearing Officer Selection	<p>The following process shall be used in the examination and selection of Board Hearing Officers.</p> <p>(1) The civil service testing panel for the hearing officer classification shall consist of, at a minimum, one member of the Board, one Board employee approved by the Board, the Department's</p>	December 8, 1998; November 28, 2000

CATEGORY	POLICY	DATE
Hearing Officer Selection -continued-	<p>designated representative from its Human Resources Branch (who serves as panel chairman), and a public member assigned from a list certified by the State Personnel Board.</p> <p>(2) Once the civil service list for the classification has been certified by the Department, the actual hiring interview will be conducted by the Administration Committee of the Board. (The Board may also wish to appoint an alternate Board member to this committee in the event that one of the committee members is unavailable for the hiring interview). This committee may request that a member of the Board's executive staff participate in this process as well.</p> <p>(3) Once the hiring committee selects one or more qualified and desirable applicants from the list, these individual(s) will be requested, if practical, to attend the next scheduled General Meeting of the Board, at which time they will be asked to make a brief presentation to the Board concerning their qualifications and experience. Members of the Board will be given an opportunity to ask questions of these applicants. The Board members will then vote on whether to actually hire these individuals as hearing officers. If one or more of the applicants are hired, the Board will then modify the numerical designation on the hearing officer list to assign a number or numbers to the new hearing officers.</p>	
Reclassification of Hearing Officer to Administrative Law Judge	<p>The Hearing Officer series specification which includes Hearing Officer I, Hearing Officer II, and Chief Hearing Officer was changed to an Administrative Law Judge class with two salary ranges, Range A and Range B. This change was necessitated by the passage of Assembly Bill 1718 (Chaptered September 22, 2003) that transferred the authorization granted to a hearing officer to an Administrative Law Judge and deleted references to hearing officer in the Vehicle Code. Also, the responsibilities and duties assigned to incumbents of the Hearing Officer class were no longer an accurate representation. Implementation of this change will require approval of the State Personnel Board and the Department of Personnel Administration, which was completed September 2012.</p>	November 7, 2003

CATEGORY	POLICY	DATE
Source of Board Hearing Officers	The Board will utilize Board Hearing Officers (Administrative Law Judges) as opposed to judges from the Office of Administrative Hearings (“OAH”) because it is more efficient, cost effective, and affords the parties an effective means to resolve disputes. Using Board Hearing Officers that have a full understanding of the franchise relationship, the automotive industry, terminology, practices, and the law, is of obvious benefit to the Board and litigants. Other factors include: (1) costs for hearing officers, court reporters, and transcripts; (2) turnaround time for hearing dates and proposed decisions or rulings; and (3) unlike the Board, OAH is not involved in discovery unless the parties file a motion requesting its involvement.	August 20, 1996; December 8, 1998; May 25, 2000 – Business, Transportation & Housing Agency, Audit Recommendation 1
Separation of Powers	The Board rules prevent the Administrative Law Judge at a settlement conference from presiding at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties (13 CCR § 551.11).	September 9, 1998
CASE PROCESSING		
Administrative Procedure Act	<p>To ensure compliance with the Administrative Procedure Act, the Board has adopted the following discretionary procedures:</p> <ul style="list-style-type: none"> ▪ Alternative Dispute Resolution (Government Code section 11420.10, et seq.), which allows the Board, with the consent of all the parties, to refer a dispute to mediation by a neutral mediator, binding arbitration by a neutral arbitrator, or nonbinding arbitration by a neutral arbitrator. ▪ Informal Hearings (Government Code section 11445.10, et seq.), which allows the Board to permit informal hearings in certain limited instances. The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer. ▪ Declaratory Decisions (Government Code section 11465.10, et seq.), which provides for issuance of a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the Board. 	August 21, 1997

CATEGORY	POLICY	DATE
Case Management Procedures	In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate ALJ for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment. In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance which would violate the above referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time will also be referred to the assigned "merits" ALJ for review.	April 27, 2001
Case Assignment Reports	In order to ensure that the mechanism for assigning cases to Board ALJs is working fairly and efficiently, the Board will receive periodic updates on the status of assigning cases to Board ALJs.	September 12, 2000; November 28, 2000
Review of Case Status	The legal staff will review the status of all cases that are at least one-year old no less frequently than once each quarter. The parties will be contacted informally, or a telephonic Status Conference will be noticed to ascertain what action, if any, the Board can take to resolve the dispute.	July 12, 1996
ADMINISTRATION		
Acceptance of Credit Card Payments	The Board will allow the acceptance of credit card payments for all Board fees and costs subject to Master Service Agreements (13 CCR § 553.40).	April 26, 2002; February 2005
Administrative Law Judge Guide	The Board will establish and maintain a <i>New Motor Vehicle Board Administrative Law Judges' Benchbook</i> .	April 26, 2002; March 11, 2003; March 9, 2004; March 8, 2005; March 8, 2006;

CATEGORY	POLICY	DATE
Administrative Law Judge Guide -continued-		March 28, 2007; May 2, 2008; April 23, 2009; June 15, 2010; December 13, 2011; March 20, 2012; March 13, 2013; July 15, 2014; March 25, 2015; February 10, 2016; July 19, 2017; March 13, 2018
Annual Board Fee in Light of Two-Year License Renewal	The Annual Board fee of \$225.00 for dealers and \$0.338 per vehicle sold in California, with a minimum of \$225.00, for manufacturers and distributors will remain unchanged in light of the Department of Motor Vehicles two-year Occupational License renewal. ⁹	September 21, 2005
Annual Board Fee Waiver Criteria	The Board will exempt from collection of its annual fee all manufacturers or distributors of motor vehicles (including motorcycles, recreational vehicles, and all-terrain vehicles) within the purview of its jurisdiction who do not have independent dealers in California or do not sell vehicles in California (13 CCR § 553(b)). Although a manufacturer or distributor may be exempt from collection of the annual Board fee, the Board will continue to exercise jurisdiction over these licensees. An annual questionnaire (Data Summary Form) will be sent to all exempted licensees concerning whether they have dealers or sold vehicles in California during the prior calendar year.	September 6, 2001; see also amendment to 13 CCR § 553(b) operative September 2003
Arbitration Certification Program Fee Collection	The Board will exercise its discretion to collect or not collect fees when the amount to be collected is nominal, and provide the Department of Consumer Affairs, Arbitration Certification Program with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion.	January 31, 2007
Audit Compliance Officer	The Board has designated the General Counsel ¹⁰ to service as its Audit Compliance Officer to ensure	November 20, 2008; May 26,

⁹ At its February 4, 2011, General Meeting, the members approved reinstating the Annual Board Fee per manufacturer or distributor to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee to \$300.00. This proposed rulemaking was effective March 30, 2012.

¹⁰ See footnote 1.

CATEGORY	POLICY	DATE
Audit Compliance Officer -continued-	that all facets of the 1996 Business, Transportation & Housing Agency Performance Audit are complied with. This includes the Corrective Action Plan Committee's proposal which was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting. This report was made an exception report.	2011
Budget Process	The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendized each June. This enables the Board to take a more active role in the budget process.	September 7, 2007
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency	<p>The Audit recommended that "Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals". In November 1996, the Budget and Finance Committee (Joe Drew and Lucille Mazeika) prepared an analysis of the duties of the Board members and staff that was adopted by the Board at its March 18, 1997, General Meeting. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals.</p> <p>At its November 20, 2008, General Meeting, the members adopted revised delegations with updated statutory language and formal Board delegations of duties that occurred at noticed meetings.</p> <p>At its September 10, 2009, General Meeting, the members adopted the revised delegations that included minor grammatical changes. Additionally, the "Administrative Duties" delegation pertaining to "Procurement" was revised to delegate to the Executive Director "the authority to procure any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's</p>	<p>March 18, 1997 - Business, Transportation & Housing Agency Audit Finding 15</p> <p>November 20, 2008</p> <p>September 10, 2009</p>

CATEGORY	POLICY	DATE
<p>Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-</p>	<p>approved budget. If, due to extenuating circumstance, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting.”</p> <p>This matter was made an exception report.</p> <p>Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014), made a number of non-substantive and substantive changes that resulted in updated delegations being adopted at the July 15, 2014, General Meeting.</p> <p>Effective January 1, 2016, a number of changes were made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted dealers (Assembly Bills 759 and 1178). The revised delegations reflecting these changes were adopted at the February 10, 2016, General Meeting.</p> <p>Effective January 1, 2017, Vehicle Code section 3065 was amended (Assembly Bill 287) to specify that warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall repair.</p> <p>Article 6 of the Vehicle Code was repealed effective January 1, 2019. The Board revised its Legislative Policy, which contained three delegations to the Executive Director.</p> <p><u>Effective January 1, 2020, Assembly Bill 179 re-lettered Vehicle Code section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the methodology for calculating a franchisee’s “retail labor rate” or “retail parts rate” in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board’s authority to hear Article 6 Export or Sale-for-Resale Prohibition</u></p>	<p>May 26, 2011</p> <p>July 15, 2014</p> <p>February 10, 2016</p> <p>January 18, 2017</p> <p>June 7, 2019</p> <p><u>February 16, 2021</u></p>

CATEGORY	POLICY	DATE
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-	<u>Policy protests and made many conforming changes. Updates were made to reflect Dawn Kindel's promotion to Staff Services Manager II and Robin Parker's promotion to Chief Counsel.</u>	
Delegation of Authority Concerning Promulgating Regulations	The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.	April 26, 2002
Document Requests	The Board will charge fees for document requests that are consistent with Evidence Code section 1563, and all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director.	October 22, 1996; September 6, 2001; December 13, 2006
Document Retention Policy	<p>The Board adopted Document Retention Policy:</p> <ul style="list-style-type: none"> ▪ The Board's judicial and administrative case files will be retained in their entirety, including exhibits and transcripts, at the Board's offices for a period of ten years after the case is no longer active. ▪ After the expiration of the ten-year period, all Final Decisions along with all briefs submitted at the close of the administrative record will be separately retained as permanent public records and stored at the Board's offices. The remainder of each file, i.e., exhibits and transcripts, will then be confidentially destroyed. ▪ Records of consumer complaints that are received by the Mediation Services Program will be retained for three years after the case is closed followed by confidential destruction. Administrative records including, but not limited to, budget reports, travel expense claims, purchase agreements, and property survey 	October 29, 2002

CATEGORY	POLICY	DATE
Document Retention Policy -continued-	<p>reports will be retained, in the Board's offices for eight years from the end of the fiscal year in which the document was prepared, followed by confidential destruction.</p> <ul style="list-style-type: none"> ▪ Employee personnel files, which include documents relating to health benefits, payroll deductions, performance appraisals, and the like, will be retained for eight years beyond separation followed by confidential destruction. 	
Electronic Public Mailing List	The Board will maintain a permanent Electronic Public Mailing List.	September 6, 2001
Employee Recognition	The Board will utilize an Employee Recognition Award Program to recognize staff members for their outstanding accomplishments. On at least an annual basis, employee nominations based on merit are submitted to the Board Development Committee and a recipient is selected in coordination with the Executive Director. The Employee Recognition Award program was renamed the "Solon C. Soteras Employee Recognition Award".	July 18, 2000; September 30, 2004; March 8, 2006
Facsimile Document Requests	There will be no charge for document requests sent via facsimile. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney support service.	December 13, 2006
Financial Reports	In order to keep the Board apprised of its financial condition, the Board will receive quarterly financial updates at regularly scheduled Board meetings.	May 25, 2000; July 18, 2000
In-Site Newsletter	In order to advise dealers, manufacturers, distributors, and other interested parties about the Board, a newsletter, the <i>In-Site</i>, will be published bi-annually (January and August.) The <i>In-Site</i> should emphasize Board activities, cases, and decisions.	June 8, 1999; November 28, 2000; June 17, 2015
Information Security	The Executive Director is the Liaison Information Security Officer and responsible for ensuring compliance with information security procedures. This ensures that the Board complies with the Government Code that requires each agency have an officer who is responsible for ensuring that the organization's systems and procedures are in compliance.	August 20, 1996; December 12, 2000
Informational Materials	The Board will establish and maintain a <i>Guide to the New Motor Vehicle Board</i> and any necessary related materials. (February 12, 1997 - Business, Transportation & Housing Agency Audit	February 26, 1999; September 6, 2001; December 5, 2002; December 11,

CATEGORY	POLICY	DATE
<p>Informational Materials -continued-</p>	<p>Recommendation 13)</p> <p>The Board will establish and maintain an <i>Informational Guide for Manufacturers and Distributors</i> that assists factory personnel in complying with California’s franchise laws including the statutorily required notices.</p> <p>The Board will establish and maintain an <i>Export or Sale-for-Resale Prohibition Policy Protest Guide</i> that assists associations, as defined, in filing a Vehicle Code section 3085 protest.</p>	<p>2003; December 16, 2004; January 26, 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010; September 27, 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; <u>February 16, 2021</u></p> <p>September 6, 2001; January 8, 2003; March 9, 2004; January 26, 2005 and 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010 and 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; <u>February 16, 2021</u></p> <p>March 5, 2020; <u>February 16, 2021</u></p>
<p>Internal Board Audits</p>	<p>In order to ensure that the Board is scheduled for audits at predetermined fixed intervals, the Board will be considered one of the divisions of DMV for purposes of scheduled compliance audits.</p>	<p>February 12, 1997</p>

CATEGORY	POLICY	DATE
Legislative Committee	<p>A Legislative Committee was created. The composition is the Executive Committee unless otherwise designated by the Board President. The Legislative Committee will provide California State Transportation Agency (CalSTA) with its own analysis, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The Committee will be provided a copy of the analysis and fully briefed.</p> <p>The Committee will continue to provide the Department with bill analyses at the Department's request, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The committee will be provided a copy of the analysis and fully briefed.</p> <p>In the bill analyses provided to CalSTA, the Committee will not take a formal position on any bill, with the exception of Legislation of Special Interest that proposes to drastically increase or reduce the Board's statutory authority and/or workload or intends to eliminate the Board. Absent CalSTA approval, the Committee will not publicly take a position on any bill.</p> <p>The Committee delegates to the Executive Director the ability to discuss pending Legislation of Special Interest with stakeholders or sponsors regarding technical input without prior Committee approval.</p> <p>A Legislative Committee analysis will not be subject to disclosure under the Public Records Act.</p>	June 7, 2019
Legislative Policy	The Board staff will provide technical and procedural advice to stakeholders on pending legislation. The Board will participate in industry discussions of legislation, if requested. This will ensure that the Board explains its operations and helps the parties better understand what the fiscal	August 20, 1996 June 7, 2019

CATEGORY	POLICY	DATE
Legislative Policy -continued-	and operational ramifications, if any, will be. The full Board will be apprised of legislation of both special and general interest (as defined) at noticed Board Meetings. Absent CalSTA approval, the Board would not publicly take a position on any bill.	
Licensees for Purposes of Collecting Annual Board Fees	In an effort to ensure those entities that can benefit from the Board's assertion of jurisdiction are properly assessed fees, those licensees that manufacture or distribute products that are legally outside of the Board's jurisdiction because they do not produce motor vehicles regularly used on highways, would be eliminated from the Board's jurisdiction for purposes of collecting the annual Board fee (13 CCR § 553).	April 27, 2001
Mission and Vision Statements	<p>The Board's mission is: To enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.</p> <p>The Board's vision is: To demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes.</p>	March 6, 2001; April 24, 2003; April 22, 2004; March 8, 2005; March 8, 2006; March 28, 2007; June 26, 2008; April 24, 2009; June 5, 2009; March 23, 2010; March 29, 2011; March 20, 2012; May 22, 2012; March 13, 2013; April 9, 2014; March 25, 2015; March 16, 2016; March 15, 2017; March 13, 2018; June 7, 2019; December 2, 2019; <u>December 7, 2021</u>
Out-Of-State Travel	The Board will approve the budgetary allotment for and participation in any out-of-state travel. It will review all out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations.	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 19

CATEGORY	POLICY	DATE
Performance Rating Criteria	Formalize performance appraisal criteria for the Executive Director position.	September 16, 2020, General Meeting
Statutorily Mandated Schedules or Formulas	In light of the amendments to Vehicle Code section 3065 (Assembly Bill 179, ch. 796, effective January 1, 2020), the Board revised its existing policy to provide for the return of an Annual Notice to educate manufacturers and distributors concerning their filing requirements pursuant to Vehicle Code sections 3064/3074 and 3065/3075.	December 13, 2007; December 2, 2019
Proposed Stipulated Decisions and Orders (Confidential, Filed under Board Seal)	If the parties have jointly agreed that the terms of a Proposed Stipulated Decision and Order are confidential and should be maintained under Board seal to affect the agreed upon terms and conditions, then that is the criteria used by the Board.	June 7, 2019
Transcript Policy	<p>The Board will allow the parties to purchase transcripts directly from the court reporter. The Board will continue to purchase transcripts from the court reporting service. For all merits hearings and dispositive motions, reporting costs including transcript fees, appearance and transcript delivery fees, per diem costs, Realtime set-up fees, expedite rates, and cancellation fees will be allocated as follows:</p> <ol style="list-style-type: none"> 1. For the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. 2. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fees, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired. 3. In any other instance, where any party or parties deem reporting services necessary (including 	March 12, 2002, April 26, 2002, March 20, 2012, June 26, 2013, March 13, 2018

CATEGORY	POLICY	DATE
Transcript Policy -continued-	requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.	
Website	On the Board's website, consumers can access the Board's Consumer Mediation Pamphlet in Spanish.	September 21, 2005
William G. Brennan Hearing Room	In remembrance of the Board's previous Executive Director, William (Bill) G. Brennan, who passed away November 2, 2017, the Board renamed Hearing Room #1 The "William G. Brennan Hearing Room" as a symbolic gesture to solidify his legacy.	March 13, 2018

STATE OF CALIFORNIA

MEMO



TO: POLICY AND PROCEDURE COMMITTEE **Date:** December 10, 2021
INDER DOSANJH, CHAIR
JAKE STEVENS, MEMBER

From: TIMOTHY M. CORCORAN
DANIELLE R. PHOMSOPHA

Subject: CONSIDERATION OF 2022 RULEMAKING CALENDAR

Government Code section 11017.6 requires that every state agency prepare a rulemaking calendar that identifies proposed regulations implementing statutes enacted during the year 2021 and the years prior to 2021. The rulemaking calendar (Attachment 1) is submitted for approval to the Board members, California State Transportation Agency, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law. The text of proposed regulations to be promulgated in 2022 is reflected in Attachment 2.

This matter is being agendized for consideration at the January 12, 2022, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Danielle at (916) 327-3129.

Attachments

cc: Bismarck Obando

**New Motor Vehicle Board
2022 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR
TO THE YEAR 2021**

Subject: Certified Mail

California Code of Regulations Title and Section Affected: Title 13, Section 550.20

Statute(s) Being Implemented: Repeal of Vehicle Code sections 3052-3058

Responsible Agency Unit: New Motor Vehicle Board

Contact Person and Phone Number: Danielle R. Phomsopha (916)327-3129

Projected Notice Publication Date: February 2022

Projected Public Hearing Date: To be determined

Projected Adoption by Your Agency Date: June 2022

Projected To OAL for Review Date: August 2022

**Report on the Status of all Uncompleted Rulemaking Described on Previous
Calendars: N/A**

PROPOSED TEXT

~~§ 550.20. Use of Certified Mail in Lieu of Registered Mail.~~

~~Any notice or other communication required by Chapter 6 of Division 2 of the Vehicle Code to be mailed by registered mail shall be deemed to be in compliance with the requirements of said Chapter if mailed by certified mail.~~

~~Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 29, 3052, 3057, 3058 and 3066-3068, Vehicle Code.~~

STATE OF CALIFORNIA

MEMO



TO: POLICY AND PROCEDURE COMMITTEE **Date:** December 15, 2021
INDER DOSANJH, CHAIR
JAKE STEVENS, MEMBER

From: TIMOTHY M. CORCORAN
DANIELLE R. PHOMSOPHA

Subject: ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD
ADMINISTRATIVE LAW JUDGES

The Board currently has seven Administrative Law Judges (Judge) appointed to preside over matters. The table below represents the assignments of each Judge, as designated by the Board, and the matters that were heard by each Judge in 2021.¹

JUDGE	CURRENT ASSIGNMENT	#CASES PRESIDED OVER IN 2021 ²
Matteucci	<ul style="list-style-type: none">▪ Presides over Merits Hearings in rotation.▪ Presides over Law and Motion Hearings in rotation.▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).	<ul style="list-style-type: none">▪ <u>1</u> Merits Hearing³▪ <u>0</u> Law and Motion Hearings▪ <u>0</u> Discovery Hearings
Nelsen	<ul style="list-style-type: none">▪ Presides over Merits Hearings in rotation.▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).	<ul style="list-style-type: none">▪ <u>1</u> Merits Hearings▪ <u>0</u> Law and Motion Hearings▪ <u>0</u> Discovery Hearings

¹ The hearings and conferences are counted by the case; not by the occurrence. For example, if the hearing of a Motion to Dismiss was resumed three times, only a single hearing is counted. Similarly, if six protests were consolidated for purposes of a single hearing for Ruling on Objections, the single hearing is counted. In addition, Pre-Hearing Law and Motion in relation to a merits hearing is not counted separately.

² Since this memorandum was finalized prior to December 31, 2021, any updates to Judge assignments that occur after the date of this memorandum will be provided at the Board Meeting.

³ Judge Matteucci was assigned a dispute pursuant to a Stipulated Decision and Order adopted by the Board. While the matter is not a traditional merits hearing, it is being counted as such for these statistical purposes.

JUDGE	CURRENT ASSIGNMENT	#CASES PRESIDED OVER IN 2021
Parker	<ul style="list-style-type: none"> ▪ Presides over Law and Motion Hearings (as needed on a back-up basis). ▪ Presides over Discovery Hearings (as needed on a back-up basis). ▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> ▪ <u>0</u> Law and Motion Hearings ▪ <u>0</u> Discovery Hearings ▪ <u>0</u> Mandatory Settlement Conferences
Pipkin	<ul style="list-style-type: none"> ▪ Presides over Merits Hearings in rotation. ▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). ▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis). ▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> ▪ <u>0</u> Merits Hearings ▪ <u>0</u> Law and Motion Hearings ▪ <u>0</u> Discovery Hearings ▪ <u>0</u> Mandatory Settlement Conferences
Skrocki	<ul style="list-style-type: none"> ▪ Presides over all Law and Motion. ▪ Presides over all Discovery Hearings. ▪ Presides over Procedural Matters as needed. 	<ul style="list-style-type: none"> ▪ <u>4</u> Law and Motion Hearings ▪ <u>7</u> Discovery Hearings
Smith	<ul style="list-style-type: none"> ▪ Presides over Merits Hearings in rotation. ▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). ▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis). ▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> ▪ <u>0</u> Merits Hearing ▪ <u>0</u> Law and Motion Hearing ▪ <u>0</u> Discovery Hearings ▪ <u>0</u> Mandatory Settlement Conferences
Wong ⁴	<ul style="list-style-type: none"> ▪ Presides over Mandatory Settlement Conferences. 	<ul style="list-style-type: none"> ▪ <u>5</u> Mandatory Settlement Conferences
Woodward-Hagle	<ul style="list-style-type: none"> ▪ Presides over Merits Hearings in rotation. ▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). ▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis). ▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> ▪ <u>1</u> Merits Hearing ▪ <u>1</u> Law and Motion Hearing⁵ ▪ <u>0</u> Discovery Hearings ▪ <u>0</u> Mandatory Settlement Conferences

⁴ At the June 28, 2016, General Meeting, Marilyn Wong was temporarily designated the Mandatory Settlement Conference ALJ. At the November 7, 2017, General Meeting, Judge Wong was designated as the permanent Mandatory Settlement Conference ALJ.

⁵ Judge Woodward-Hagle presided over a law and motion hearing in connection with a Merits Hearing which she had been assigned.

Hearing Type	2021 Total
Law and Motion	5
Discovery	7
Mandatory Settlement Conference	5
Merit Hearings	3
Merit Hearing Days	31

This matter is for information only at the January 12, 2022, General Meeting.

If you have any question or require additional information, please contact me at (916) 445-1888 or Danielle at (916) 327-3129.

cc: Bismarck Obando, President



***EXECUTIVE
DIRECTOR'S
REPORT***

January 12, 2021

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Revise the Board's Logo</u> Tim Corcoran, Dawn Kindel; Administration Committee	Consider whether to revise the Board's current logo that is on publications and letterhead to reflect the logo used in the Industry Roundtable marketing materials.	March 2022	In progress. This will be discussed at the March 30, 2022, General Meeting.
2. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	March 2022	In progress. The revised Guide will be considered at the March 30, 2022, General Meeting.
<u>Discuss Options to Move the Board's Offices</u> Tim Corcoran, Dawn Kindel; Administration Committee	Discuss options to move the Board's offices upon the expiration of the current lease.	December 2021	Completed The members approved the move to the DMV's headquarters in Sacramento.
BOARD DEVELOPMENT COMMITTEE			
<u>Solon C. Soteras Employee Recognition Award Recipient</u> Tim Corcoran; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	December 2021	Completed At the December 7, 2021, General Meeting, the members approved Holly Victor as the recipient.
<u>Schedule Board Member Education Presentations</u> Danielle Phomsopha; Policy and Procedure Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	December 2021	Completed This was discussed at the December 7, 2021, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
FISCAL COMMITTEE			
1. <u>Quarterly</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly reports on the Board’s financial condition and related fiscal matters.	Ongoing	In progress.
2. <u>Report</u> - Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2022-2023.	March 2022	In progress. This will be discussed at the March 30, 2022, General Meeting.
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	December 2021	<u>Completed</u> A status report was presented at the December 7, 2021 General Meeting.
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss the Board’s proposed Budget for fiscal year 2021-2022.	December 2021	<u>Completed</u> The budget allotments provided by the Department of Finance were discussed at the December 7, 2021 General Meeting.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
1. <u>Host Industry Roundtable</u> Tim Corcoran, Dawn Kindel, Danielle Phomsopha; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/ distributors, dealers, in-house and outside counsel, associations and other government entities.	TBD	In progress. The Industry Roundtable for 2022 will be discussed at the January 12, 2022, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Host Board Administrative Law Judge Roundtable</u> Robin Parker, Danielle Phomsopha; 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.	TBD	In progress. An ALJ Roundtable will be scheduled in 2022.
<u>Report on the Recent Industry Roundtable</u> Tim Corcoran, Danielle Phomsopha; Government and Industry Affairs Committee	A survey was created in order to identify who attended the September 8-9, 2021, Industry Roundtable and to solicit feedback on the topics presented.	December 2021	<u>Completed</u> A recap of the Industry Roundtable was presented at the December 7, 2021 General Meeting.
LEGISLATIVE COMMITTEE			
<u>Review of Enacted and Pending Legislation</u> Tim Corcoran, Danielle Phomsopha; Legislative Committee	The staff will provide an overview of enacted and pending legislation of special interest and general interest.	December 2021	<u>Completed</u> A report was presented at the December 7, 2021 General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Danielle Phomsopha; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	January 2022	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 12, 2022, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Annual Rulemaking Calendar</u> Danielle Phomsopha; Policy and Procedure Committee	Consideration of the annual rulemaking calendar.	January 2022	In progress. The revised Guide will be presented at the January 12, 2022, General Meeting.
3. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	March 2022	In progress. The revised Guide will be presented at the March 30, 2022, General Meeting.
4. <u>Draft the Export or Sale-For-Resale Prohibition Policy Guide</u> Robin Parker; Policy and Procedure Committee	Draft the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	March 2022	In progress. The revised Guide will be presented at the March 30, 2022, General Meeting.
5. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Administrative Law Judge's Benchbook</i> .	March 2022	In progress. The revised ALJ Benchbook will be considered at the March 30, 2022, General Meeting.
6. <u>Promulgate Amendment to the Board's Conflict of Interest Code</u> Danielle Phomsopha;	In compliance with the Administrative Procedure Act, amend the Board's Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations.	June 2022	In progress. The Board approved the text at the February 16, 2021, General Meeting. Approval is pending with the

		Estimated Completion Date	Status
Policy & Procedure Committee	Staff identified language that needs to be updated to reflect Dawn Kindel's promotion to a Staff Services Manager II.		Fair Political Practices Commission.
<u>7. Promulgate Regulatory Amendments to Sections 550.20 and 564 of Title 13 of the California Code of Regulations</u> Danielle Phomsopha; Policy & Procedure Committee	In compliance with the Administrative Procedure Act, repeal Section 550.20 of the Board's regulations and amend Section 564 to delete the reference to registered mail.	December 2022	In progress. The Board approved the text at the December 7, 2021 General Meeting. The staff will proceed with rulemaking.
Regulatory Amendments to Sections 550.20 and 564 of Title 13 of the California Code of Regulations		December 2021	<u>Completed</u> The proposed text was approved at the December 7, 2021, General Meeting.
EXECUTIVE COMMITTEE			

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION			
<p>1. <u>Develop Strategies for Board Consideration</u> Tim Corcoran, Danielle Phomsopha; Ad Hoc Committee</p>	<p>Develop strategies for the Board’s consideration, which advance California State Transportation Agency’s stated goal of “Enhancing the lives of all Californians – particularly people of color and disadvantaged communities...” Draft a Mission Statement for consideration by the full Board.</p>	<p>Ongoing</p>	<p>In progress. At the February 16, 2021, General Meeting, the full Board revised the Mission Statement previously adopted by the Ad Hoc Committee at its January 19, 2021, meeting. This statement was reviewed and amended at the August 27, 2021, Special Meeting. Workshops on equity, justice and inclusion in the motor vehicle industry are pending for 2022.</p>

B.
CASE
MANAGEMENT

CASE VOLUME

NOVEMBER 17, 2021 THROUGH DECEMBER 27, 2021

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	1	0	10
3060	Modification	0	1	4
3062	Establishment	1	1	10
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	2	0	8
3065.1	Incentive Program Reimbursement	0	0	9
3065.3	Performance Standard	0	1	2
3065.4	Retail Labor Rate or Retail Parts Rate	0	0	12
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
3085	Export or Sale-for-Resale	0	0	0
3050(b)	Petition	0	0	1
TOTAL CASES:		4	3	56

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	CMH	Continued Merits Hearing
RMH	Resumed Merits Hearing	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	POS	Proof of Service
PSDO	Proposed Stipulated Decision and Order	ROB	Ruling on Objections
CROB	Continued Ruling on Objections	RROB	Resumed Ruling on Objections
SC	Status Conference	CSC	Continued Status Conference
RFD	Request for Dismissal		
* Consolidated, non-lead case			

Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2501-17 1-19-17	Parties working on settlement agreement	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Randy Oyler, Bob Davies, Mary Stewart	Modification
2. PR-2506-17* 1-23-17	Parties working on settlement agreement	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	P: Christian Scali R: Randy Oyler, Bob Davies, Mary Stewart	Modification
3. PR-2570-18 8-22-18 Reopened 9-4-20	PSDO dispute submitted to ALJ for decision	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson, Crispin Collins	Termination/ PSDO Dispute

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
4. PR-2652-20* 1-10-20	Proposed Decision Pending Board Consideration	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
5. PR-2653-20* 1-10-20	Proposed Decision Pending Board Consideration	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
6. PR-2654-20* 1-10-20	Proposed Decision Pending Board Consideration	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
7. PR-2655-20* 1-10-20	Proposed Decision Pending Board Consideration	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
8. PR-2673-20 6-4-20	Remand Hearing: 1-6-22	Bonander Auto, Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC	P: Andrew Stearns R: Megan O. Curran, Dyana K. Mardon, Roberta F. Howell	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
9. PR-2697-20* 9-14-20	MH: 1-18-22 (16 days)	Fox Hills Auto, Inc., d/b/a Airport Marina Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick R: Steven M. Kelso, H. Camille Papini- Chapla, Christopher Mair	Establishment
10. PR-2698-20* 9-14-20	MH: 1-18-22 (16 days)	Central Ford Automotive, Inc., d/b/a Central Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick, Gavin Hughes R: Steven M. Kelso, H. Camille Papini- Chapla, Christopher Mair	Establishment
11. PR-2701-20 9-14-20	Parties choosing new hearing date.	Central Ford Automotive, Inc., dba Central Ford v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Marcus McCutcheon, Elizabeth McNellie	Performance Standard
12. PR-2704-20 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
13. PR-2705-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
14. PR-2706-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
15. PR-2707-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
16. PR-2708-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
17. PR-2709-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
18. PR-2710-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
19. PR-2711-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
20. PR-2717-20 11-19-20	RSC: 1-25-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (15-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
21. PR-2718-20* 12-9-20	RSC: 1-25-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (60-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
22. PR-2719-21 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
23. PR-2720-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
24. PR-2721-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
25. PR-2722-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
26. PR-2723-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
27. PR-2724-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
28. PR-2725-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
29. PR-2726-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
30. PR-2727-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
31. PR-2728-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
32. PR-2729-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 II, LLC, a California limited liability company dba Russell Westbrook Hyundai of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
33. PR-2730-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
34. PR-2731-21* 1-22-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, fdba Genesis of Huntington Beach v. Genesis Motor America, LLC, a California limited liability company	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
35. PR-2732-21 2-11-21	RSC: 1-25-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Warranty
36. PR-2733-21* 2-11-21	RSC: 1-25-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Franchisor Incentive
37. PR-2735-21 4-22-21	HRC: 5-4-22 MH: 6-20-22 (5 days)	Nissan Automotive of Mission Hills, Inc., dba Nissan of Mission Hills v. Nissan North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Dean A. Martoccia	Warranty
38. PR-2736-21 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
39. PR-2737-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
40. PR-2738-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
41. PR-2739-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
42. PR-2740-21 5-19-21	Proposed Order Pending Board Consideration	Western Truck Parts & Equipment Company LLC dba Western Truck Center, a California limited liability company v. Volvo Trucks North America, a division of Volvo Group North America, LLC, a Delaware limited liability company	P: Victor P. Danhi, Franjo M. Dolenac R: Billy Donley, Marcus McCutcheon	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
43. PR-2742-21 6-17-21	Settlement discussions pending	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick	Termination
44. PR-2743-21 7-12-21	Settlement discussions pending	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick	Performance Standard
45. PR-2744-21 9-23-21	HRC: 8-10-22 MH: 9-26-22 (15 days)	Downey Hyundai, Inc., dba Downey Hyundai v. Hyundai Motor America	P: Gavin Hughes, Robert Mayville, Jr. R: John P. Strelman, Jacob F. Fischer, Crispin Collins	Warranty
46. PR-2745-21 9-24-21	ROB: 1-14-22 HRC: 7-22-22 MH: 9-19-22 (5 days)	D&G Lin, LLC v. Maserati North America, Inc.	P: Jason B. Cruz R: Randy Oyler, Travis Eliason, Alissa Brice Castaneda	Termination
47. PR-2746-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
48. PR-2747-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
49. PR-2748-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
50. PR-2749-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
51. PR-2750-21 10-26-21	ROB: 3-21-22 HRC: 9-9-22 MH: 11-1-22 (4 days)	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Buick)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
52. PR-2751-21* 10-26-21	ROB: 3-21-22 HRC: 9-9-22 MH: 11-1-22 (4 days)	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Cadillac)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
53. PR-2752-21* 10-26-21	ROB: 3-21-22 HRC: 9-9-22 MH: 11-1-22 (4 days)	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Chevrolet)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
54. PR-2753-21* 10-26-21	ROB: 3-21-22 HRC: 9-9-22 MH: 11-1-22 (4 days)	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (GMC)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
55. PR-2754-21 12-7-21	IFU: 1-14-22 Parties working on path for protest	Auto Gallery, Inc., dba Auto Gallery Mitsubishi - Corona v. Mitsubishi Motors North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Dean A. Martoccia	Warranty
56. PR-2755-21* 12-7-21	IFU: 1-14-22 Parties working on path for protest	Soraya, Inc., dba Auto Galley Mitsubishi - Murrieta v. Mitsubishi Motors North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Dean A. Martoccia	Warranty
57. PR-2756-21 12-8-21	CPHC: 1-24-22	Emergency Vehicle Group, Inc., a Nevada Corporation v. REV Ambulance Group Orlando, Inc., a Florida corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: Mark T. Clouatre, Crispin Collins	Termination

PENDING CASES

BY CASE NUMBER

Petitions

CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
1. P-462-21 7-12-21	Answer due: 2-4-22	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick

C. JUDICIAL REVIEW

Judicial Review

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

1. BARBER GROUP, INC., dba BARBER HONDA, a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC., a California corporation, and GALPINSFIELD AUTOMOTIVE, LLC
Court of Appeal, Third Appellate District No. C095058
Sacramento County Superior Court No. 34-2020-80003479
New Motor Vehicle Board No. CRT-279-20
Protest No. PR-2539-17

At the July 10, 2020, Special Meeting, the Public Members of the Board adopted ALJ Dwight Nelsen's Proposed Decision as the Board's final Decision. The Decision overruled the protest and permitted American Honda to proceed with the establishment of Galpinsfield Automotive, LLC at the proposed location in North Bakersfield.

On August 27, 2020, Barber Honda filed a "Verified Petition for Writ of Administrative Mandate, Traditional Mandate and Seeking Stay." The writ was served on September 14, 2020. A copy of the record has been requested.

Barber Honda contends that the Board's actions in adopting the Proposed Decision constitute an abuse of discretion because: (1) The Board's Decision is not supported by the evidence; (2) The Decision is not supported by the findings; (3) Barber Honda was not provided a fair hearing; and (4) The Board's hearing did not proceed in a manner required by law.

Barber Honda requests that the Superior Court consider additional evidence that could not have been produced during the merits hearing or that was improperly excluded at the hearing including the COVID-19 pandemic, higher unemployment in Bakersfield, sharp declines in automotive sales, and the impact to the oil and gas industry in Bakersfield.

Barber Honda seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. In the alternative, the issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. Also, alternatively, Barber Honda seeks the issuance of a writ of administrative or traditional mandate directing the Board to set aside and vacate its Decision and to "consider evidence improperly excluded from the underlying hearing and to issue findings required by Sections 3063 and 11713.13(b)." Barber

Honda also seeks the issuance of a stay pending the judgment of the writ of administrative mandate directing the Board to stay the operation of the Decision until judgment by the court.

Kathryn Doi, Board President, determined that there is an interest in participating in the writ via the Attorney General's Office to address several procedural issues.

The Board's counsel, Michael Gowe, received the bates stamped record on November 30, 2020. Therefore, the Board's answer was filed December 30, 2020. Barber Honda's opening brief was filed Tuesday, April 6, 2021. American Honda's and the Board's opposition briefs were filed Monday, April 26, 2021. Barber Honda's reply briefs were filed Thursday, May 6, 2021. On May 20, 2021, the Court issued a tentative ruling denying the writ. At the May 21, 2021, hearing, the Court took the matter under submission.

On May 26, 2021, the Court requested additional briefing from the Board and Barber Honda on what appears to be an issue of first impression. One of Barber Honda's arguments is that Section 11713.13 required the Board to determine whether certain performance standards established by American Honda are reasonable before it could rely on those standards in reaching its decision. According to the Court, it appears that "registration effectiveness" was critical to both American Honda and to the Board, and was used to establish, at least in part, that there was sufficient opportunity in the Bakersfield market to support a second Honda dealership. The issues to be addressed are:

- Whether an open point protest like the one at issue here is a "proceeding" within the meaning of section 11713.13;
- Whether the Board believes that section 11713.13 is applicable or relevant to this case;
- If the Board believes that section 11713.13 is applicable or relevant to this case, whether section 11713.13 required Honda to prove at the protest hearing that the two performance measures it established – i.e., "registration effectiveness" and, to a lesser extent, "retail sales effectiveness" – are reasonable in light of the factors identified in section 11713.13;
- If the Board believes that section 11713.13 is applicable to this case and that it required Honda to prove that the two performance measures are reasonable, whether the Board's decision must specifically include an analysis of reasonableness or whether the Court may rely on other matters within the Board's decision to conclude that the Board either did or did not determine the reasonableness of the two performance measures.

The Board's supplemental brief was filed on June 18, 2021 and Barber Honda's response was filed June 25. American Honda already addressed this issue in its opposition brief and Galpinsfield had the opportunity to do so they were not permitted to file supplemental briefs.

On July 26, 2021, the Court issued its final order denying the petition for writ of mandate. The following provides an overview of the Court's conclusions:

- a. The Board did not err in allowing Galpinsfield to exercise a peremptory challenge.
- b. The Board was not required to take official notice of the pandemic and its effects and was not required to grant Barber Honda's request for official notice.
- c. Vehicle Code section 3065.3 did not and could not apply to Barber Honda's protest because it did not go into effect until January 1, 2020, and Barber Honda's protest was filed in 2017.
- d. The reasonableness of American Honda's performance standards is not one of the circumstances or issues the Board is directed to consider when determining whether Barber Honda met its burden of proof. Similarly, the Board is not directed to consider whether Barber Honda is or is not meeting American Honda's performance standards. Instead, the critical issue in this case is whether the market can support another dealer. Section 3066 assigns Barber Honda the burden of proof to establish there is good cause not to allow American Honda to open another dealership in the area, and that burden remains with Barber Honda at all times. The Court found that "the Board was not required to explicitly determine or make findings about whether American Honda's performance standards are reasonable before relying on them - at least in part - when deciding this case."
- e. The findings and decision are supported by the evidence. The Court was unpersuaded by Barber Honda's arguments and spent a number of pages detailing why.

The Notice of Entry of Judgment was served on August 23, 2021. The time to file a Notice of Appeal was October 23, 2021.

On October 13, 2021, the Board received Barber Honda's Notice of Appeal. In general, Barber Honda's Opening brief is due 40 days after the record on appeal is completed and filed with the Appellate Court. The Board's brief is due 30 days after Barber Honda's brief is filed. Barber Honda's reply brief is due 20 days after the Board's brief is filed. If oral argument is requested, then the Appellate Court will schedule it and the decision would follow within 90 days thereafter. The appeal could take six months or longer.

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

NOVEMBER 17, 2021 THROUGH DECEMBER 27, 2021

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

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW (includes Mini)	
FCA (Chrysler, Jeep, Dodge, RAM)		FCA (Chrysler, Jeep, Dodge, RAM)	
FCA (Alfa Romeo, FIAT)		FCA (Alfa Romeo, FIAT)	
FCA (Maserati)		FCA (Maserati)	
FERRARI		FERRARI	
FORD		FORD	
GM (Buick, Cadillac, Chevrolet, GMC)		GM (Buick, Cadillac, Chevrolet, GMC)	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	4
HYUNDAI/GENESIS		HYUNDAI	
INFINITI		INFINITI	
JAGUAR		JAGUAR/LAND ROVER	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	1
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MINI		MINI	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	
POLARIS		POLARIS	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU		SUBARU	2
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO TRUCKS		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	1	MISCELLANEOUS	
TOTAL	1	TOTAL	7