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Sacramento, California 95818-8680  
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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**NOTICE OF GENERAL BOARD MEETING**

**Monday, November 7, 2022 at 9:30 a.m.  
Via Zoom and Teleconference**

Through July 1, 2023, 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 [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.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 Danielle Phomsopha at [danielle.phomsopha@nmvp.ca.gov](mailto:danielle.phomsopha@nmvp.ca.gov) or (916) 445-1888.

**Join Zoom Meeting**  
**[Zoom link](#)**

Meeting ID: 854 3406 1395  
Passcode: 525081  
One tap mobile  
+16699009128,,85434061395#,,, \*525081# US (San Jose)  
+16694449171,,85434061395#,,, \*525081# US

Dial by your location  
+1 669 900 9128 US (San Jose)  
+1 346 248 7799 US (Houston)  
+1 253 215 8782 US (Tacoma)  
+1 646 558 8656 US (New York)  
+1 301 715 8592 US (Washington DC)  
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Meeting ID: 854 3406 1395  
Passcode: 525081  
Find your local number: <https://us02web.zoom.us/j/kdoFWvFqZR>

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

**A G E N D A**

**GENERAL MEETING**

**Monday, November 7, 2022 at 9:30 a.m.**  
**Via Zoom and Teleconference**

[Zoom link](#)

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. **Approval of the Minutes from the March 30, 2022, General Meeting and March 30, 2022, and August 25, 2022, Joint Meetings of the Government and Industry Affairs Committee and Ad Hoc Committee on Equity, Justice and Inclusion.**
4. **Status report on the Board's intended move to DMV's headquarters in Sacramento - Administration Committee.**
5. **Annual update on Board Consumer Mediation Services Program - Administration Committee.**
6. **Discussion and consideration of the revised New Motor Vehicle Board logo - Administration Committee.**

7. **Annual report on Board Development Program - Board Development Committee.**
8. **Update concerning the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, and the resultant Corrective Action Plan - Executive Committee.**
9. **Report on the Board's financial condition and related fiscal matters - Fiscal Committee.**
  - a. Report on the Board's Financial Condition for the 4th Quarter of Fiscal Year 2021-2022.
  - b. Status report concerning the Board's collection of the Arbitration Certification Programs' annual fee.
  - c. Discussion and consideration of the Board's proposed budget for the next fiscal year, and whether any dealer/manufacturer fee adjustments are necessary.
10. **Report on adding a virtual payment method for stakeholders' filing fees, document request fees and annual Board fees - Fiscal Committee.**
11. **Report on the New Motor Vehicle Board's recent Industry Roundtable - Government and Industry Affairs Committee and Ad Hoc Committee on Equity, Justice and Inclusion.**
12. **Discussion concerning enacted legislation - Legislative Committee.**
  - a. Enacted Legislation of Special Interest:
    - (1) Assembly Bill 2956 (Assembly Members Friedman, Fong, Berman, Cunningham, Daly, Gipson, Kalra, Nazarian, O'Donnell, and Ward) - Transportation
  - b. Enacted Legislation of General Interest:
    - (1) Assembly Bill 1604 (Assembly Member Holden) - The Upward Mobility Act of 2022: boards and commission: civil service: examinations: classifications
13. **Consideration of the 2022 edition of the *New Motor Vehicle Board Administrative Law Judges' Benchbook* - 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. **Selection of Board meeting dates for 2023.**

16. **Closed Executive Session.**

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

**Discussion and consideration of personnel matters - Administration Committee.**

Discussion and consideration of personnel matters, by all members of the Board.

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

**Discussion and advice from legal counsel concerning pending litigation.**

Discussion and advice from the Board's legal counsel concerning pending litigation, by all members of the Board.

17. **Open session.**

18. **Discussion and consideration of proposed regulation regarding representation in protests or petitions (13 CCR § 551.26) - Policy and Procedure Committee.**

19. **Public Comment. (Gov. Code § 11125.7)**

20. **Closed Executive Session.**

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

**Discussion and advice from legal counsel concerning pending litigation.**

SUBARU OF AMERICA, INC. v. NEW MOTOR VEHICLE BOARD; COURTESY AUTOMOTIVE GROUP, INC., DBA COURTESY SUBARU OF CHICO, Real Party in Interest

California Superior Court, Alameda County Case No. 22CV010968

New Motor Vehicle Board No. CRT-282-22

Protest No. PR-2570-18

Discussion and advice from the Board's legal counsel concerning pending litigation, by the Public Members of the Board.

21. **Open Session.**

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

BONANDER AUTO, TRUCK & TRAILER, INC., a California Corporation v. DAIMLER TRUCK NORTH AMERICA, LLC  
Protest No. PR-2673-20

23. **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.

**Consideration of (Proposed) Findings, Conclusions, and Recommendations Following Order of Remand.**

BONANDER AUTO, TRUCK & TRAILER, INC., a California Corporation v. DAIMLER TRUCK NORTH AMERICA, LLC  
Protest No. PR-2673-20

Consideration of the Administrative Law Judge's (Proposed) Findings, Conclusions, and Recommendations Following Order of Remand, by the Public Members of the Board.

24. **Open Session.**

25. **Consideration of the following by the Public Members of the Board in:**

COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO v. SUBARU OF AMERICA, INC.  
Petition No. P-463-22

a. **Petitioner's Motion to File Unredacted Petition Under Seal.**

Consideration of Petitioner's Motion to File Unredacted Petition Under Seal, by the Public Members of the Board.

b. **Respondent's Request for Official Notice in Support of Verified Response to Petition.**

Consideration of Respondent's Request for Official Notice in Support of Verified Response to Petition, by the Public Members of the Board.

- c. **Consideration of Petition requesting that the Board direct the Department of Motor Vehicles (DMV) to conduct an investigation of the matters contained therein and/or make a determination to order DMV to take action against Respondent's Occupational License pursuant to Vehicle Code section 3050(b)(1) and (3).**

Consideration of Petition requesting that the Board direct DMV to conduct an investigation of the matters contained therein and/or make a determination to order DMV to take action against Respondent's Occupational License pursuant to Vehicle Code section 3050(b)(1) and (3), by the Public Members of the Board.

26. **Public Comment. (Gov. Code § 11125.7)**

27. **Adjournment.**

To request special accommodations for persons with disabilities at this or any future Board meeting or to request any accommodation for persons with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Danielle Phomsopha at (916) 445-1888 or <a href="mailto:danielle.phomsopha@nmvb.ca.gov">danielle.phomsopha@nmvb.ca.gov</a> .
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***R O S T E R***  
***NEW MOTOR VEHICLE BOARD***

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

<b><u>NAME</u></b>	<b><u>APPOINTING AUTHORITY</u></b>	<b><u>STATUS</u></b>
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
Ryan Fitzpatrick Term exp. 1-15-23	Governor's Office	Dealer Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-26	Senate Rules Committee	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



## MEMO

**To: ALL BOARD MEMBERS**

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

**Subject: UPCOMING EVENTS**

**Date:** November 7, 2022

The following highlights the upcoming Board events:

- January 2023, General Meeting (via Zoom and teleconference)
- Spring 2023, General Meeting (via Zoom and teleconference)
- Fall 2023, General Meeting (date and location to be determined)
- Industry Roundtable (date and location to be confirmed)
- Winter 2023, General Meeting (date and location to be determined)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 244-6774.



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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on March 30, 2022, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 10:31 a.m.

Member Obando welcomed everyone to the meeting and stated that the meeting materials are available on the Board's website and hard copies of the materials can be requested by contacting the Board's legal staff at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). Member Obando also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present:

Ramon Alvarez C.  
Anne Smith Boland  
Kathryn Ellen Doi  
Ryan Fitzpatrick  
Ardashes "Ardy" Kassakhian (joined at 11:16 a.m.)  
Bismarck Obando  
Jacob Stevens

Board Staff Present:

Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Holly Victor, Mediation Analyst  
Lee Moore, Mediation Analyst

3. **PRESENTATION OF RESOLUTION TO PETER WELCH, RETIRED PRESIDENT AND CEO OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION (NADA)**

Mr. Welch provided Mr. Corcoran with a note that his plans changed at the last minute

and was unable to join the Board Meeting. Mr. Welch sent his appreciation for the Board's work and partnership over the years during his time in the industry. Board staff will provide him with his resolution.

4. **APPROVAL OF THE MINUTES FROM THE DECEMBER 7, 2021, AND JANUARY 12, 2022, GENERAL MEETINGS**

Member Stevens moved to adopt the December 7, 2021, General Meeting minutes and January 12, 2022, General Meeting minutes. Member Alvarez seconded the motion. The motion carried unanimously.

5. **APPOINTMENT OF COMMITTEE MEMBER TO THE POLICY AND PROCEDURE COMMITTEE BY THE BOARD PRESIDENT**

After a brief discussion off the record, Mr. Obando made the following Policy and Procedure committee appointment:

**POLICY AND PROCEDURE COMMITTEE**

Jake Stevens, Chair

Ramon Alvarez, C. Member

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO NANXI LIU, FORMER PUBLIC BOARD MEMBER**

Member Doi moved to present a Resolution to Nanxi Liu, former Public Member, in recognition of her contribution to the New Motor Vehicle Board. Member Fitzpatrick seconded the motion. The motion carried unanimously. President Obando commented that the document will be sent around electronically for everyone's signature.

7. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO INDER DOSANJH, FORMER DEALER BOARD MEMBER**

Member Stevens moved to present a Resolution to Inder Dosanjh, former Dealer Member, in recognition of his contribution to the New Motor Vehicle Board. Member Doi seconded the motion. The motion carried unanimously.

8. **ANNUAL UPDATE CONCERNING THE USE OF THE BOARD'S WEBSITE**

Ms. Kindel, Ms. Victor and Ms. Moore provided an update concerning the use of the Board's website. Ms. Moore indicated that website traffic is monitored on a monthly basis and content revisions are made throughout the year as needed. Website visitors can subscribe to Board publications, make document requests and review public documents provide at Board meetings. DMV maintains and updates the website as directed by Board staff.

From 2020 to 2021, the total hits to the Board's website increased by 3,109. The Mediation Request Form hits increased by 898 and the mediation program link was viewed 616 times more than the previous year, resulting in an overall increase of 52 more mediation cases. Since website activity is now reported on the Administrative Matters Report, this annual report to the Board will be discontinued.

There was no Board action as this matter was for information only.

9. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Tim Corcoran and Robin Parker.

The annual update of all publications is being held at this meeting since the updates were not yet available at the time of the January meeting, which was held early in the year.

As indicated in the memo, the "New as of 2022" section was updated to reflect recently promulgated regulations that were effective January 1, 2022.

In addition, the following amendments were made:

- On pages 9 and 71 under the heading "Challenge to Presiding Officer," a sentence was added to clarify that if a Board Administrative Law Judge (ALJ) is unavailable to preside over the merits hearing after the filing of a peremptory challenge, an ALJ from the Office of Administrative Hearings will be assigned.
- Footnote 16 on page 45 was revised because Section 586 of the Board's regulations now references Vehicle Code section 3065.4 protests (Retail Labor Rate or Retail Parts Rate).
- New Section 586.5 of the Board's regulations provides the content requirements for filing Section 3065.3 performance standard protests so references to Section 586 on page 60 were changed to Section 586.5 and footnote 22 was deleted.
- On page 68, a sentence was added to reflect newly amended Section 556 of the Board's Regulations that requires a petition to clearly identify the facts, legal authority, and relief sought and include declarations or other evidence or documents that support the petition.
- On page 69, a sentence was added to specify the procedure by which the respondent can file evidence in its answer to a petition.

Member Doi moved to adopt the revised *Guide to the New Motor Vehicle Board*. Member Smith Boland seconded the motion. The motion carried unanimously.

10. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT AND BAGLEY-KEENE OPEN MEETING ACT**

The members were provided with a memorandum from Tim Corcoran and Robin Parker along with summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act. A number of resource materials were also provided electronically. Ms. Parker mentioned that the summaries encompass changes for the past couple years. Previously, there was one combined memo regarding the four bodies of law covered by both Danielle and Robin. However, it made sense to break out the Administrative Procedure Act and Bagley-Keene Open Meeting Act. As indicated in the memo, the substantive changes to the Administrative Procedure Act are as follows:

1. Effective January 1, 2020, Assembly Bill 179 (Stats. 2019, Ch. 796) restored the Board's authority to hear export or sale-for-resale prohibition policy protests in Article 6 of the Vehicle Code commencing with Section 3085. Additionally, the subdivisions in Vehicle Code section 3050 were re-lettered with the repeal of appeals in subdivision (b). Changes in this regard are reflected throughout the summary.
2. Effective January 1, 2022, Sections 551.8 (Dismissals of Protests and Petitions), 551.12 (Notice of Assignment of Administrative Law Judges; Peremptory Challenges), and 590 (Hearings by Board or by Administrative Law Judge) of the Board's regulations were amended.
3. Government Code section 11425.20 requires hearings to be open to public observation unless there is an order closing the hearing or making other protective orders. To the extent a hearing is conducted by telephone, television, or other electronic means and is not closed as otherwise required by law, the meeting is considered open to the public if both of the following apply: the public, at reasonable times, may hear or inspect the agency's record, and inspect any transcript obtained by the agency; and the public is permitted to be physically present at the place where the presiding officer is conducting the hearing. Effective January 1, 2022, the public can also be "virtually" present. The term "present" can be satisfied either by providing a designated location from which members of the public can observe the meeting via a live audio or a video feed of the hearing made available to the public on the internet or by teleconference.
4. Government Code section 11440.30, which pertains to the conduct of hearings by telephone, television, or other electronic means, was amended effective January 1, 2022, but the Board's regulation excepts it from this provision. (13 CCR § 551.19. Motions; Form, Briefing, and Hearings.)

5. Section 11507.6 pertains to requests for discovery. Effective January 1, 2022, discovery of all categories of evidence specified in this section may be conducted electronically by means prescribed by an administrative law judge.
6. Subdivision (b)(3) of Government Code section 11508 allows hearings “virtually by telephone, videoconference, or other electronic means.” This provision is not in conflict with the Vehicle Code or the Board’s regulations so it would apply to Board hearings.

The changes to the Bagley-Keene Open Meeting Act as addressed in the summary, are as follows:

1. Section 11123.5 was added effective January 1, 2019. It permits an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body consisting of three or more members to hold a meeting by teleconference.
2. Until January 31, 2022, Section 11133 authorized the 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. On January 5, 2022, Governor Newsom issued Executive Order N-1-22, which suspends the sunset dates in Government Code section 11133 to March 31, 2022.
3. Subdivision (c)(1) of Section 11125.7 was amended effective January 1, 2022. It includes the use of “other translating technology” to ensure non-English speakers receive the same opportunity to address the Board.
4. Subdivision (e) of Section 11125.7 was reorganized to encompass subdivisions (f)-(h). It clarifies that public comment is not applicable to closed sessions held pursuant to Section 11126 or in decisions regarding proceedings held pursuant to Chapter 5 of the Administrative Procedure Act. This includes personnel matters, consideration of Proposed Orders or Proposed Decisions, and conferring with, or receiving advice from, the Board’s legal counsel regarding pending litigation.
5. There were a number of conforming changes to reflect the reorganization and renumbering of the Public Records Act in Sections 11124.1, 11125.1, 11126, and 11126.1. These amendments were effective January 1, 2022 but are not operative until January 1, 2023.

Member Doi commented that the documents provided were comprehensive but does not feel it is necessary to add copies of all documents since the information is summarized. Mr. Corcoran indicated that all the information was provided to the Board Members for background, but that they could rely exclusively on the summaries if they so choose. Ms.

Parker indicated that the majority of the attachments related to the different versions of the Political Reform Act.

Member Doi suggested staff highlight and discuss any important changes at the meetings so the Board Members are aware of the information they should pay special attention to.

Ms. Parker suggested that staff can just provide the summary and analysis and if any Board Members have a request for resource materials or bodies of law, staff can provide it upon their request. Member Doi and President Obando agreed that would be sufficient.

There was no Board action as this matter was for information only.

11. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE POLITICAL REFORM ACT AND PUBLIC RECORDS ACT**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha along with summaries of the Political Reform Act and Public Records Act. Ms. Phomsopha mentioned that the summaries encompass changes effective after January 1, 2019 through January 1, 2022. As indicated in the memo, the substantive changes to the Political Reform Act are as follows:

1. Section 81005 was added to allow for the extension of the filing deadline for statements where the filing deadline falls on a Saturday, Sunday or official State holiday. The deadline is extended to the next regular business day.
2. Section 81010.5 states that a filing officer or filing official's failure to provide notice of a filing or disclosure obligation does not affect a person's duty to file statements disclosing information required by this Act or any conflict of interest code.
3. The definition of "spouse" was codified in Section 82048.8 to include registered domestic partners recognized by state law.
4. Section 87206.5 describes the information that must be provided when disclosing a leasehold interest.
5. The description of when a gift is both "received" and "accepted" is described in Section 89503.5

In addition, the following relevant regulation changes were made:

1. The gift limit was adjusted to \$520 for the period of January 1, 2021 through December 31, 2022.
2. Bright-line materiality standards were established for evaluating the following:
  - a. Financial interests in a business entity
  - b. Financial interests in real property

- c. Financial interests in a source of income
  - d. Financial interests in a source of gift
  - e. Financial interests in an official's personal finances
- 3. 2 CCR section 18944.1 was amended to clarify the requirements for agency-provided tickets or passes to be exempt from qualification as gifts under the Political Reform Act.
  - a. Relating to this clarification, 2 CCR section 18946 was also amended to clarify how to determine the "fair value" of a ticket when the price on the ticket does not reflect the actual cost for a ticket in a luxury box or suite.
- 4. 2 CCR section 18703 was amended to address how the "public generally exception" (A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment) applies and expands the exception in instances where the only relevant interest is an official's primary residence. Further amendments clarify the application of the special circumstances exception provided in the regulation.

Also, as indicated in the memo, the substantive changes to the Public Records Act are as follows:

- 1. Effective January 1, 2023, all relevant statutes beginning with Government Code section 6250 are repealed and renumbered. Further information regarding the renumbering and any relevant amendments will be provided in the update for 2023.
- 2. Effective January 1, 2020, a requester can use the Board's equipment for copying or reproducing the records on-site without being charged any fees or costs so long as the copying or reproduction does not damage the records or require access to the Board's computer systems.

In addition, relevant case law has also recently held the following:

- 1. The term "extraction" in Government Code section 6253.9(b)(2), is designed to address retrieving responsive data from an unproducible government database. However, the term "extraction" does not cover every process that might be colloquially described as taking information out (i.e., redaction). *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5<sup>th</sup> 488. Thus, the Board cannot charge requesters for any time taken to redact electronic copies of documents.
- 2. In the case of *Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5<sup>th</sup> 528, the 2<sup>nd</sup> District Court of Appeal found that a state agency must disclose records pursuant to the PRA in both its actual and constructive possession, with constructive possession meaning "the right to control the records." However, the

agency must have a possessory interest in the records and only potential access to the information requested is insufficient. The agency must have created or obtained the records, rather than just have the ability to obtain such records.

There was no Board action as this matter was for information only.

12. **DISCUSSION AND CONSIDERATION OF THE AGENDA AND DATES FOR THE 2022 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE**

Mr. Corcoran reported that the Government and Industry Affairs Committee and Ad Hoc Committee on Equity, Justice and Inclusion met this morning to discuss this year's Roundtable event to be focused on equity in the industry as well as electric vehicles. The following is a summary of comments regarding the draft meeting agenda:

- Committee members would like all speakers to be able to have a comprehensive presentation so that all aspects of equity are covered. Staff will work with speakers in advance to ensure their presentations cover as many issues as possible.
- In regard to the presentations speaking about the franchise system, committee members would like to hear about what is being done to encourage further development of minority ownership of dealerships, as well as potential disrupters to the current franchise network system. This includes whether those disruptions are brought about by the proliferation of electric vehicles and any changes to sales models, as well as any other outside effects that might have on the franchise system.
- In regard to alternative fuel vehicles, committee members would like to ensure that all alternative fuels are included in the discussion, not just electric vehicles.
- Finally, committee members would like the automakers to discuss electric vehicles, in addition to diversity in the industry. Therefore, the topic of diversity and inclusion in the industry on Day 1 was broadened to allow automakers to deep dive into diversion, inclusion, and equity in EVs.

Staff are also still working to identify keynote speakers for both days. Committee members would like those speakers to address what is being done to promote equity at the state level through policy, through legislative action and any other influence the state has at the administrative level.

Board staff are anticipating a transition from a purely virtual event to either back in-person or more likely a hybrid event. This will allow Board Members and some guests in-person and then also allow access to guests, members of the public and some speakers virtually. Staff are working to procure equipment and conduct testing to overcome any technological hurdles and challenges in advance of the event.

Committee members provided three potential targeted dates for the event: September 14-15, September 28-29 and October 12-13. The Roundtable will be a two-day event, four hours each day with back-to-back days. Staff will also provide these potential dates to automakers to ensure there are no major industry events that would preclude a number



of industry representatives from participating. After checking with the automakers, staff will then provide the potential dates to our speakers to confirm their availability. [Subsequent to the meeting staff confirmed the dates where automakers and speakers are available are September 28-29.]

Member Stevens commented that Member Boland did an excellent job chairing the meeting and ensuring that the committees were on topic and timely. He also thanked staff for their good work.

Member Smith Boland concurred with Member Stevens and thanked Mr. Corcoran and Ms. Phomsopha for their work to get ready for the meeting. Member Fitzpatrick is also in agreement. He expects a lot of people in attendance and thinks the event will be very informative.

Ms. Phomsopha indicated this item was set up for a vote. However, the Board can take action at a later date once the committees have confirmed dates and the agenda particulars.

President Obando confirmed the tentative dates provided work for his schedule and inquired whether staff will return before the full Board with the proposed dates and more tightened agenda. Mr. Corcoran agreed. He indicated that if one of the three tentative set of dates are chosen, then there is time for one more joint committee meeting to be held in advance of the Roundtable and then one General Meeting of the full Board to lock everything in.

### 13. **DISCUSSION CONCERNING PENDING LEGISLATION**

#### a. Pending Legislation of Special Interest:

- (1) Assembly Bill 1733 (Assembly Member Quirk) – State bodies: open meetings
- (2) Assembly Bill 1795 (Assembly Member Fong) – Open meetings: remote participation
- (3) Assembly Bill 1996 (Assembly Member Cooley) – State government: administrative regulations: review

#### b. Pending Legislation of General Interest:

- (1) Assembly Bill 2600 (Assembly Member Dahle) – State agencies: letters and notices: requirements
- (2) Senate Bill 361 (Senator Umberg) – Electronic transactions: motor vehicle finance

c. Pending Federal Legislation of General Interest:

- (1) United State Senate Bill 2118 (Senator Wyden) – Clean Energy for America Act

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha reported that there has not been any substantial movement on any of the bills listed in the memo.

Ms. Phomsopha also advised that staff are also watching and will report on AB 1604, a reincarnation of last year's Upward Mobility Act, which was ultimately vetoed by the Governor. It would require boards and commissions to maintain a minimum composition of members from an underrepresented community, among other things. Staff are also watching AB 2370, which requires state agencies to retain and preserve all public records, including emails, for at least two years. Also, AB 2788 which would change the amount of time a state agency has to provide an initial response to a Public Records Act request from 10 days to 10 business days.

President Obando added that legislative policy committees are now moving and there are a number of hearings that are occurring. In addition, there are a number of hearings occurring around the budget. Therefore, there will be more discussion regarding budget plays and negotiations between now and May, leading up to the adoption of the budget in June. This is the beginning of a lot of movement with the legislation and the Legislative Committee and staff will continue to keep the Board up-to-date.

There was no Board action as this matter was for information only.

14. **CONSIDERATION OF THE EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE (VEHICLE CODE SECTION 3085, ET SEQ.)**

The members were provided with a memorandum and *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported that there were no substantive changes to the Guide this year. Ms. Parker also advised that there has only been one export or sale-for resale prohibition policy protest filed. The Guide just updates the composition of the Board and the Secretary of the Transportation Agency.

Member Stevens moved to adopt the 2022 *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Member Doi seconded the motion. The motion carried unanimously.

15. **CONSIDERATION OF REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS**

The members were provided with a memo and a revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. Ms. Parker indicated that there were no legislative changes but some updates were made. As indicated in the memo, the changes from the prior version adopted in February 2021 are as follows:

- On page 11, the contact information for Occupational Licensing was updated.
- Footnote 15 on page 16 was added in 2021 to note that Board meetings are being held by Zoom and teleconference. As noted on the agenda for this meeting, until January 31, 2022, Government Code section 11133 authorizes the 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. On January 5, 2022, Governor Newsom issued Executive Order N-1-22, which suspends the sunset dates in Government Code section 11133 to March 31, 2022. In light of this, footnote 15 is being deleted.

Member Stevens moved to adopt the 2022 *Informational Guide for Manufactures and Distributors* as amended. Member Fitzpatrick seconded the motion. The motion carried unanimously.

#### 16. **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.

Mr. Corcoran mentioned that many documents that are updated each year have been removed from the Board's website due to ADA accessibility issues. In the past 2-3 years, staff have taken the time to make sure the documents are accessible. It is important that the Board's website is accessible, transparent and available equally to all. He thanked staff for assisting him in making documents ADA compliant and staff will continue to work to restore the website in coming years.

Mr. Corcoran mentioned that there is pending legislation that may be enacted which could mandate, in some form, that Board Meetings be held in a hybrid format. Also, in the interest of accessibility, the Board can anticipate that meetings will also need to simultaneously put out through Zoom or another format and telephonically accessible to individuals who cannot attend in person. In this regard, there is some work that needs to occur in preparation for this. One way to test the hybrid format before it is required is to do so for our June meeting. It would be less of a stretch to prepare for the first hybrid

meeting in Sacramento so that staff can test out everything beforehand. Therefore, Mr. Corcoran requested that the June meeting be held in Sacramento, rather than Southern California. Member Doi supported having the meeting in Sacramento, or wherever is most convenient for staff.

Mr. Corcoran indicated that once all equipment is procured it will be mobile, including a laptop and small camera. Further research needs to be done on microphones to determine what will meet the Board's needs to pick up everyone's comments, including the public.

Mr. Corcoran provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Specifically, the Board should look forward to reviewing the Board's logo at the June meeting. Options may include the logo used for last year's Roundtable event, another option created by DMV as well as moving away from a logo at all, which may address accessibility concerns. Mr. Corcoran also invited Board Members to assist if they know of any entities familiar with designing logos.

Mr. Corcoran briefly updated the Board on the Board's office move: ground has not been broken but that time is getting close. Ms. Kindel and Mr. Corcoran will do an additional walk-through at the proposed space and will review the draft floor plan for the buildout next week. This will allow staff to provide more information, including total cost involved, at the June Board meeting.

Ms. Parker reported that the next Zoom merits hearing will begin on May 23<sup>rd</sup>. It will be Judge Smith's first hearing with the Board, although he is extremely experienced given his time at the Office of Administrative Hearings. This will also be the Board's first retail labor rate and retail parts rate protests. Finally, Ms. Parker mentioned that the 2018 case of *Courtesy Subaru of Chico v. Subaru of America* was closed last week after Judge Matteucci issued her decision resolving a dispute regarding parties' confidential settlement agreement.

Ms. Phomsopha indicated that since the EDR was published there were ten new BMW motorcycle modification protests filed. Also, President Obando reviewed the writ filed in *Western Truck Parts v. Volvo*, which was heard by the Board at the January meeting. President Obando determined that there is not an important state interest, and the Board will not be participating via the Attorney General's office. Staff will continue to monitor and report back on the status of the matter.

Member Doi indicated that there was some discussion of the number of merits hearing on schedule this year at the joint committee meeting and she was interested in the current workload. Ms. Parker indicated that in addition to the merits hearing set to begin on May 23<sup>rd</sup>, there is a 5-day hearing set for September 19<sup>th</sup>, a 15-day hearing set for September 26<sup>th</sup>, a 4-day hearing set for November 1<sup>st</sup>, a 10-day hearing set for December 5<sup>th</sup>, a 5-day hearing set for the end of January and 10-day hearing set for the beginning of March of next year. After the hearing to be held on May 23<sup>rd</sup>, there is a small break until August. Hearings are time-consuming for staff due the amount of advance work with the judge,

as well as staff sitting through the entire hearing. There is currently a large caseload of 68 or 69 open protests and there is no legal clerical staff.

There was no Board action as this matter was for information only.

17. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

18. **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**

19. **OPEN SESSION**

The Board Members returned to Open Session. There was no announcement made in regard to Agenda Item 18.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:16 p.m.

Submitted by

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TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando  
President  
New Motor Vehicle Board

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee and Ad Hoc Committee on Equity, Justice and Inclusion held a joint meeting on March 30, 2022, via Zoom and teleconference. Anne Smith Boland, Chair of the Government and Industry Affairs Committee and Dealer Member, called the meeting to order at 9:31 a.m.

Ms. Smith Boland welcomed everyone to the meeting.

Mr. Corcoran set forth the parameters of the meeting.

**2. ROLL CALL**

Government and Industry Affairs Committee Members Present:

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

Ad Hoc Committee on Equity, Justice and Inclusion Members Present:

Jake Stevens, Chair  
Ramon Alvarez C., Member  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member  
Bismarck Obando, Member (Joined at 10:21 a.m.)

Board Staff Present:

Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Lee Moore, Mediation Analyst

**3. DISCUSSION OF TOPICS AND SPEAKERS FOR THE 2022 INDUSTRY ROUNDTABLE**

The Ad Hoc Committee on Equity, Justice and Inclusion was created in 2020 and the

Board held its first successful virtual Roundtable in 2021. The Board determined the issues raised by the Equity, Justice and Inclusion Committee go beyond internal measures and it seeks to engage stakeholders and the public on equity issues in the new motor vehicle industry. The Board's annual Industry Roundtable is a forum where it can educate, inform and engage with those stakeholders and the public.

Ms. Phomsopha shared the following overview of the speakers and schedule for each day of the Roundtable:

Day 1:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by the California New Motor Vehicle Board President
- 10:10 a.m. Keynote address
- 10:20 a.m. State of the Industry, with Respect to Diversity in the Automotive Franchise Network
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
  - ❖ Representative, Crane Automotive Resources
- 11:00 a.m. Automaker Discussion of Women, Minorities and other Members of Historically Excluded Groups in the Automotive Franchise Network
- ❖ Representative, Ford Motor Company
  - ❖ Representative, General Motors, LLC
  - ❖ Representative, Nissan North America, Inc.
  - ❖ Representative, Stellantis
  - ❖ Representative, Toyota Motor Sales USA Inc.
- 11:40 a.m. Q & A Session moderated by New Motor Vehicle Board President  
All presenters

Day 2:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by the California New Motor Vehicle Board President
- 10:15 a.m. Welcoming remarks
- 10:30 a.m. Presentations on Equity and EVs
- ❖ Representative, Greenlining Institute
  - ❖ Representative, Access Clean California
  - ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
  - ❖ Representative, California New Car Dealers Association (CNCDA)
  - ❖ Representative, EV Equity Program, San Joaquin Valley
- 11:40 a.m. Q & A Session moderated by New Motor Vehicle Board President  
All presenters

Mr. Stevens inquired as to what Crane Automotive resources would be presenting. Ms. Phomsopha indicated that Candice Crane advises automotive dealers on how to implement diversity in their automotive franchises.

Mr. Corcoran also mentioned that because a new Secretary of the California State Transportation Agency (CalSTA) has been appointed, Toks Omishakin, staff are working to fill in the keynote speakers for both days listed. Equity issues are a priority to Secretary Omishakin so it is likely that he will be willing to provide a keynote address. In addition, Avital Barnea is another lead person at CalSTA that is interested in providing a keynote address. There are also additional opportunities from both state and federal governmental agencies involved in the EV effort that may be added to the agenda.

Ms. Doi pointed out that Day 1 addresses more diversity in dealerships and participation in the industry and Day 2 addresses facilitating a more diverse consumer base for purchasing and accessing EVs. She inquired whether the intention was to facilitate the discussions or if staff would provide the presenters with questions the Board would like addressed.

Mr. Corcoran confirmed Ms. Doi's understanding of the agenda. Day 1 would focus on the industry and what manufacturers have done and continue to do to support minority owned dealerships and what the dealerships have done and continue to do on their end. Day 2 would be a deep dive into equity and EVs. This deep dive is important because historically disadvantaged communities have been disproportionately and adversely impacted in several transportation projects, both in California and the nation. Adoption of EVs is an opportunity to address these inequities. This includes building infrastructure and providing incentives. Speakers will be addressing these issues.

In regard to format of the agenda, each individual will have an allotted amount of time to present and then we can also take questions as they come up through the Q & A session.

Ms. Doi suggested that staff divvy up the issues raised and topics to be addressed so there isn't overlap.

Mr. Fitzpatrick is looking forward to the workshop and interested in addressing the viability of the franchise model and direct-to-consumer sales models that some manufacturers are implementing. Mr. Corcoran believes this can be addressed by speakers on Day 2. Staff will contact the speaker from CNCDA to specifically address this topic.

Mr. Fitzpatrick would also like other zero emission technologies aside from just electricity to be addressed. Ms. Doi would also like the topic broadened to include alternative fuels and learn what each speaker will cover, such as resources and what is being done to address charging issues.

Mr. Fitzpatrick is aware of a study done by AC Transit in the Bay Area that supports moving to hydrogen fuel cells. Mr. Corcoran clarified that hydrogen fuel cell vehicles are technically encompassed in the category of EVs and staff will be certain to have speakers address these alternative fuels.



Mr. Alvarez requested that the Ford representative clarify the division of EVs and regular gasoline vehicles and how this will benefit consumers and its effectiveness.

Ms. Doi suggested that an update on EVs be provided on Day 2. Ms. Phomsopha suggested expanding the topic on Day 1 to include EVs while the manufacturer representatives are present, or the topic could be added to Day 2. Mr. Corcoran agreed with the idea of expanding the topic on Day 1 to include equity in the industry and EVs.

Ms. Smith Boland agrees with Ms. Doi that the manufacturer topic could be expanded so that the Board can take the opportunity to ask the representatives questions on Day 1 regarding equity and EVs. Mr. Corcoran suggested the expansion of the topic on Day 1 to be an automaker discussion of equity, justice and inclusion in the automotive industry. Mr. Alvarez agrees that manufacturers should be addressing these issues and should be held accountable for putting their thoughts into actions.

Ms. Doi wants to be certain that manufacturers also still address the franchise issues, along with the equity issues as discussed when providing them with the expanded topic.

Ms. Smith Boland suggested that some manufacturers may have more to speak about certain topics given the broadened umbrella. For example, Ford may speak more about the EV issue whereas other manufacturers may speak more about other topics. Mr. Alvarez agrees. Mr. Corcoran believes that since Ford recently had a meeting with its dealer body, the dealers' representative can also provide their response.

Ms. Smith Boland would also like a speaker to address the issues surrounding the current gas tax and the issues of consumers being unable to afford EVs while still paying for the gas tax as fewer others do as EVs become more mainstream. This may be an issue to be addressed by Greenlining or a state representative.

Mr. Corcoran wanted to confirm which entity spoke to this issue at last year's Roundtable and determine if they are on this year's agenda and can speak to this issue. Ms. Phomsopha would inquire as to whether last year's speaker is available to address this topic or determine if a speaker that is currently on the agenda can also address this.

Ms. Doi would also like to see a representative from the state to speak to how the administration is addressing these issues. Mr. Corcoran suggested that the state issues can be addressed by the keynote speakers that will likely be from California State Transportation Agency.

Public comment was invited and no comments were made at this time.

#### 4. **DISCUSSION OF DATES FOR THE 2022 INDUSTRY ROUNDTABLE**

Mr. Corcoran recommended the Board host the Roundtable event in the Fall to allow for time to procure equipment and work out logistics to allow it to be a hybrid meeting, meaning both in-person and broadcast virtually, especially in the event legislation passes that would require meetings to be held in a hybrid format.

Mr. Alvarez suggested that Wednesdays and Thursdays worked for last year's Roundtable and could also be considered for this year's planning. Mr. Alvarez also

suggested that staff check with the automakers so that the Roundtable event does not coincide with other automaker events.

Ms. Doi also mentioned that September dates worked for last year's Roundtable as well. Mr. Corcoran suggested Board Members choose three different date options. There was discussion of potential dates throughout September and October. The Committee ultimately suggested the following dates: September 14-15, September 28-29 and October 12-13. Staff will check these dates with automakers before also checking in with presenters.

5. **DISCUSSION OF FUTURE JOINT COMMITTEE MEETING DATES**

In planning for a future Joint Committee Meeting date, members should presume it would be held in-person. Given that there is still work to do to solidify keynote speakers and dates for the Roundtable event, it may be premature to choose a future Joint Committee Meeting date at this time.

Ms. Doi suggested combining the next General Meeting with any future Joint Committee Meetings for convenience of members' travel.

6. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 10:24 a.m.

Submitted by

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TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Anne Smith Boland, Chair  
Government and Industry Affairs Committee  
New Motor Vehicle Board

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee and Ad Hoc Committee on Equity, Justice and Inclusion held a joint meeting on August 25, 2022, via Zoom and teleconference. Jacob Stevens, Chair of the Ad Hoc Committee on Equity, Justice and Inclusion and Public Member, called the meeting to order at 10:32 a.m.

Mr. Stevens welcomed everyone to the meeting.

**2. ROLL CALL**

Government and Industry Affairs Committee Members Present:

Ramon Alvarez, C., Member  
Kathryn Ellen Doi, Member  
Ryan Fitzpatrick, Member

Ad Hoc Committee on Equity, Justice and Inclusion Members Present:

Jake Stevens, Chair  
Ramon Alvarez C., Member  
Kathryn Ellen Doi, Member  
Bismarck Obando, Member (Joined at 10:43 a.m.)

Other Board Members Present:

Ardy Kassakhian, Vice President (Joined at 10:35 a.m.)

Board Staff Present:

Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin Parker, Chief Counsel  
Danielle Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Lee Moore, Mediation Analyst  
Holly Victor, Mediation Analyst  
Alex Martinez, Staff Services Analyst

Mr. Corcoran set forth the parameters of the meeting.

3. **DISCUSSION OF FINAL AGENDA AND SPEAKERS FOR THE 2022 INDUSTRY ROUNDTABLE**

Ms. Phomsopha provided a detailed overview of the draft agenda and speakers for both days of the Roundtable and answered member questions. The draft agenda, as shared by Ms. Phomsopha on her Zoom screen, is as follows:

Day 1

1. **10:00 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Introduction of Board Members, staff and attendees by Bismarck Obando, President, California New Motor Vehicle Board.**
4. **Keynote address, Toks Omishakin, Secretary, California State Transportation Agency.**
5. **Discussion of State of the Industry with Respect to Diversity in the Automotive Franchise Network: Introductions by Ramon Alvarez C., Member, California New Motor Vehicle Board.**
  - a. CANDICE CRANE  
General Manager, Sheridan Honda and Powersports, Wyoming
  - b. DAMON LESTER  
President, National Association of Minority Automobile Dealers (NAMAD)
6. **Automaker Discussion of Equity and Diversity in the New Motor Vehicle Industry: Introductions by Ramon Alvarez C., Member, California New Motor Vehicle Board.**
  - a. FORD MOTOR COMPANY  
Robert Kaffl, Director, U.S. Sales & Market Representation
  - b. GENERAL MOTORS, LLC  
Carlos Latour, Director, Diversity Dealer Relations
  - c. NISSAN NORTH AMERICA, INC.  
David Englen, Director, Dealer Network Development Strategy, Large Group Management

- d. STELLANTIS N.V.  
Eric Wong, Senior Manager, Dealer Market Representation,  
Diversity and Technology
  - e. TOYOTA MOTOR SALES, USA, INC.  
Christopher Price and Laura O'Rourke, Managing Counsels,  
Business Litigation
- 7. **Questions and Answers of all presenters moderated by Jacob Stevens, Chair, Ad Hoc Committee on Equity, Justice and Inclusion, New Motor Vehicle Board.**
  - 8. **Adjournment.**

Day 2:

- 1. **10:00 a.m. -- Meeting called to order.**
- 2. **Roll Call.**
- 3. **Introduction of Board Members, staff and attendees by Ardashes “Ardy” Kassakhian, Vice President, California New Motor Vehicle Board.**
- 4. **Keynote address, Avital Barnea, Deputy Secretary for Transportation Planning, California State Transportation Agency.**
- 5. **Discussion of Equity and Electric Vehicles (EVs): Introductions by Ryan Fitzpatrick, Member, California New Motor Vehicle Board.**
  - a. ACCESS CLEAN CALIFORNIA  
Terea Macomber, Electric Vehicle Director and Project Director
  - b. CALIFORNIA AIR RESOURCES BOARD (CARB)  
Chanell Fletcher, Deputy Executive Officer of Environmental Justice
  - c. CALIFORNIA NEW CAR DEALERS ASSOCIATION (CNCDA)  
Anthony Bento, Director of Legal and Regulatory Affairs
  - d. EV EQUITY PROGRAM AND CENTRAL CALIFORNIA ASTHMA COLLABORATIVE, SAN JOAQUIN VALLEY  
Kevin Hamilton, Co-Founder and Co-Director
  - e. NATIONAL ASSOCIATION OF MINORITY AUTOMOBILE DEALERS (NAMAD)  
Damon Lester, President

6. **Questions and Answers of all presenters moderated by Kathryn Doi, Member, California New Motor Vehicle Board.**
7. **Closing remarks by Anne Smith Boland, Chair, Government and Industry Affairs Committee, New Motor Vehicle Board.**
8. **Adjournment.**

Mr. Corcoran remarked that the agenda includes strong representation from the Board's parent agency, California State Transportation Agency (CalSTA), including Secretary Toks Omishakin who will be keynote speaker for Day 1 and Avital Barnea, Deputy Secretary for Transportation Planning, CalSTA, who will be the keynote speaker for Day 2.

Member Alvarez inquired about the amount of time the speakers will have for their presentations. Ms. Phomsopha indicated that the Board Members will have notes for the timing of each presentation.

Member Alvarez indicated he would like the automakers to speak about how they are implementing the Governor's recent mandate that all passenger vehicles sold in California be zero emission by 2035. Member Doi mentioned that she wanted to ensure each speaker was also focusing on the "equity, justice and inclusion" aspect of the Roundtable's theme. Ms. Phomsopha noted that each concern will be addressed by the speakers on Day 1. Member Doi also noted that the staff should encourage the speakers on each panel to coordinate their presentations so that there is not duplication of the topics discussed.

President Obando indicated that he has been watching the Federal Infrastructure Investment and Jobs Act (IIJA) which will provide money to the State of California, as well as cities and counties for grants, with a slant toward equity. He remarked that the Board should continue to monitor this act, as well as California's climate change bill in the coming weeks.

Mr. Corcoran indicated that he is preparing questions in advance to supplement the audience and member questions so there is a robust discussion during the Roundtable.

Member Doi inquired about how Board staff are promoting the Roundtable. Ms. Phomsopha indicated that the "Save the Date" was sent to the Roundtable email list, the National Association of Motor Vehicle Boards and Commissions email list, the Board's Public Mailing List and Electronic Public Mailing List, as well as a banner has been placed on the Board's website.

In the past, Mr. Corcoran noted that Board staff asked Occupational Licensing at the Department of Motor Vehicles to promote the Industry Roundtable through their Industry Newsletter (OLIN). Mr. Corcoran stated that he will ask DMV to share this year's event.

Member Doi also suggested that staff encourage the speakers to share the information about the Roundtable through their social media, as well as ask the California New Car Dealers Association to also publish information about the event in their newsletter.

After the Roundtable is finished, Mr. Fitzpatrick inquired whether there will be a link to watch the video for those unable to attend. Ms. Phomsopha confirmed that staff will record the event and post it on the Board's website.

Mr. Corcoran suggested that Ms. Kindel research whether staff saw an increase in website visits after the Board's Roundtable event last year.

Mr. Corcoran also clarified that this year's event will not require registration to ensure that attendees are not met with any barriers to participation given that this year's event is a formal public meeting. Mr. Corcoran shared that responses to last year's survey indicated that attendees were split approximately 50/50 regarding whether they wanted to attend the Roundtable in-person versus virtually.

4. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

5. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:03 a.m.

Submitted by

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TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_

Jacob Stevens, Chair  
Ad Hoc Committee on Equity, Justice and Inclusion  
New Motor Vehicle Board



## **STATE OF CALIFORNIA**

# **MEMO**

**To:           ADMINISTRATION COMMITTEE  
              ARDY KASSAKHIAN, CHAIR  
              RYAN FITZPATRICK, MEMBER**

**Date: October 10, 2022**

**From:       DAWN KINDEL  
              HOLLY VICTOR  
              LEE MOORE**

**Subject:     ANNUAL UPDATE ON BOARD CONSUMER MEDIATION SERVICES  
              PROGRAM**

### **INTRODUCTION**

The members of the Board have requested an annual update on the Consumer Mediation Program ("Program"). Below is a summary of the Program updates and case conclusions for the year 2021.

### **PROGRAM OVERVIEW**

The Board's authority to mediate consumer disputes comes from Vehicle Code 3050(c)(2) which requires the Board to undertake and mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer or manufacturer. Mediators inform consumers that, pursuant to the statute, the Board does not have the authority to order a dealer or manufacturer to provide the remedy they are requesting due to the fact that the Board has no specific enforcement powers in mediation matters.

The Program seeks to assist consumers in mediating disputes with new vehicle dealerships and manufacturers in an efficient manner. To accomplish this, the Board's mediators provide consumers with information that allows them to understand their options, and act as a neutral party when working towards amicable resolutions.

The Board's jurisdiction covers all new vehicle manufacturers of passenger vehicles, light duty trucks, low-speed vehicles, motorcycles (street and off-highway), all-terrain vehicles, motor-



driven cycles (Vespas, etc.), motor homes, towable recreational vehicles, 5<sup>th</sup> wheels, medium trucks, heavy duty vehicles (over 10,000 lbs.), hearses, ambulances and limousines. Disputes with new vehicle dealerships are also mediated.

Typical cases received by the Program involve issues with warranty repairs and sales/lease contracts.

## **MEDIATION STATISTICS**

When a case has been received by the Mediation Program, the case is evaluated and determined by the mediator as to whether it is within our jurisdiction. Cases that do not fall within our jurisdiction are referred to the proper agency that can assist the consumer. If the case is within our jurisdiction, the mediator will mediate the case. Mediators will send an initial inquiry to the dealer, or manufacturer, or both and then act as intermediaries that encourage an amicable resolution for all parties involved. Some disputes are resolved for all parties, and some are not resolved and go on to either arbitration or court. Upon closing a case, mediators analyze the outcome of the case and assign a case completion number. Mediators distinguish between non-mediated cases (*for example*: no jurisdiction so the case was referred to another agency) and mediated cases. For all mediated cases, an assessment is completed by the mediator in order to determine whether the mediation process was completed or incomplete.

### **Total Cases Received in the Mediation Program in 2021**

- The Program received a total of 388 cases, of which 193 of those cases were completely mediated and 195 of those cases were unable to be mediated due to no jurisdiction, we received no response from the dealer/manufacturer, or the consumer abandoned the case.
- Out of those 193 cases, 71% were mediated successfully.
- 29% of mediated cases were closed because a successful resolution was not reached.

### **Dealer Cases**

- Of the 193 cases received in Mediation, 113 were dealer related.
- 73% were mediated successfully.
- 27% of dealer cases were closed because a successful resolution was not reached.

### **Manufacturer Cases**

- Of the 193 cases received in Mediation, 80 were manufacturer related.
- 69% of manufacturer cases were mediated successfully.
- 31% of manufacturer cases were closed because a successful resolution was not reached.

## **CONCLUSION**

Since mediation statistics are now reported on the Administrative Matters Report, this annual report to the Board has now become obsolete and will be discontinued.

This matter is for information only and no Board action is required. If you have any comments or questions, please contact Holly Victor at (916) 244-6782

cc: Bismarck Obando, President



**STATE OF CALIFORNIA**

## **MEMO**

**To: ADMINISTRATION COMMITTEE  
ARDY KASSAKHIAN, CHAIR  
RYAN FITZPATRICK, MEMBER**

**Date: October 3, 2022**

**From: DAWN KINDEL  
LEE MOORE  
HOLLY VICTOR**

**Subject: DISCUSSION AND CONSIDERATION OF THE REVISED NEW  
MOTOR VEHICLE BOARD LOGO**

### **BACKGROUND**

The current NMVB logo, displayed at the top of this memo, was adopted by the Board in 2007. The Administration Committee requested that staff propose options to update this logo. NMVB typically relies upon the services of Department of Motor Vehicles (DMV) graphic artists, as we did for the roundtable-specific logo utilized at the 2021 and 2022 Industry Round Table events. Staff requested that DMV design additional options to present to the Board for consideration of replacement of the NMVB logo. Below you will find several proposed options:



**Option 1** – The logo displayed above was designed by DMV and used as the 2021 and 2022 NMVB Industry Round table event logo.



**Option 2** – The logo displayed above was designed by DMV for your consideration.



**Option 3a and 3b** – Displayed above are two variations of a similar design, crafted by DMV for your consideration.

**Option 4** – Decline each proposed alternative logo, and continue using the current NMVB Logo.

**Option 5** – Decline each proposed alternative logo, and request that staff continue to engage with the graphic artist to craft additional designs for proposal.

**Option 6** – Alternatively, the Board may consider retiring the Board logo entirely. While common practice to display an organization logo on memos, letterhead and other publications, it is not required. Graphics, such as logos, can be made ADA-compliant by adhering to color-contrast specifications and by including descriptive alternate text, but given their relatively low practical value, the Board may consider retiring the practice of applying a logo to its various publications.

This matter is scheduled for consideration at the November 7, 2022, General Meeting of the Board. If you have any questions, please contact Holly Victor or Lee Moore at (916) 244-6782 or (916) 244-6785.

cc: Bismarck Obando, President

# STATE OF CALIFORNIA



## MEMO

**To: BOARD DEVELOPMENT COMMITTEE  
KATHRYN ELLEN DOI, CHAIR  
RAMON ALVAREZ C., MEMBER**

**Date:** October 3, 2022

**From: TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA**

**Subject: ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM**

## BACKGROUND

At the July 18, 2000, General meeting, the Board adopted the recommendation of the Board Development Committee with respect to the creation of a structured program of ongoing educational presentations. These presentations would be designed to provide, in an informal manner, information from a variety of sources concerning activities and trends in the new motor vehicle industry. The committee expressed a preference that educational presentations and the remaining administrative Board business be conducted on the same day whenever possible. To implement the Board's decision, a schedule of educational programs is presented to the Board each year.

For Board education and development purposes, we are always looking for suggested topics of interest to the Board Members. We have toured automobile, recreational vehicle, and motorcycle facilities, and invited representatives from their various associations to address the Board.

It is important to note that Executive Order B-06-11 established travel restrictions on all in-state and out-of-state travel unless it is "mission critical"<sup>1</sup> or there is no cost to the State. In addition, due to the ongoing COVID-19 pandemic, travel restrictions are further impaired. However, out-of-state conferences have been listed below for your information.

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<sup>1</sup> Mission critical means directly related to enforcement responsibilities, auditing, revenue collection, a function required by statute, contract or executive directive, job-required training necessary to maintain licensure or similar standards required for holding a position. Mission critical does not mean conferences (even though those that historically have been attended), networking opportunities, professional development courses, continuing education classes and seminars, non-essential meetings, or events for the sole purpose of making a presentation unless approved by the Department Director. No travel is permitted for more than the minimum number of travelers necessary to accomplish the mission-critical objection; even where there is no cost to the State.

## **PLANNED SCHEDULE OF BOARD MEETINGS AND ACCOMPANYING EDUCATIONAL PRESENTATIONS FOR CALENDAR YEAR 2023**

- **January 2023, General Meeting (via Zoom and Teleconference)**

Speaker(s)/anticipated topics:

- Introduction and welcome of Secretary Toks Omishakin, California State Transportation Agency
- Discussion concerning the state of the automotive industry in terms of projections and legislation by manufacturer and dealer representatives.

- **Spring 2023, General Meeting (via Zoom and Teleconference)**

Speaker(s)/anticipated topics: OPEN

- **Fall 2023, General Meeting (location, date to be determined)**

Speaker(s)/anticipated topics: OPEN

- **Fall 2023, Industry Roundtable (location, date to be determined)**

Speaker(s)/anticipated topics: OPEN

- **Winter 2023, General Meeting (Location and date to be determined)**

Speaker(s)/anticipated topics: OPEN

### **IMPLEMENTATION**

The information in this memorandum is provided for informational purposes only. No Board action is required. Board staff will schedule these presentations consistent with the Board's preference, the speakers' availability, and in light of any restrictions on travel.

cc: Bismarck Obando, President

STATE OF CALIFORNIA



**MEMO**

**To: EXECUTIVE COMMITTEE  
BISMARCK OBANDO, CHAIR  
ARDY KASSAKHIAN, MEMBER**

**Date:** September 30, 2022

**From: TIMOTHY M. CORCORAN  
ROBIN P. PARKER**

**Subject: UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996  
PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION  
& HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION  
PLAN**

The legal staff<sup>1</sup> annually reviews the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency<sup>2</sup> ("Agency") and the resulting Corrective Action Plan. At the May 26, 2011, General Meeting, the members made this an exception report. Most recently the members reviewed the Audit at the March 16, 2016, General Meeting. Since there have been several updates, this matter is being agendized for informational purposes at the November 7, 2022, General Meeting,

The attached updated matrix provides an overview of each audit finding, the chronology of each step taken toward Board compliance, and the Department of Motor Vehicles' responses. It further encompasses the Correct Action Plan Committee's proposal that 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 that were adopted at the May 25, 2000, General Meeting. The updates are highlighted yellow.

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<sup>1</sup> At the November 20, 2008, General Meeting, the Audit Compliance Officer duties were assigned to the Board's General Counsel. However, given the General Counsel's resignation in 2011, Robin Parker assumed these duties.

<sup>2</sup> Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

The chart below provides a brief summary of the updates<sup>3</sup> to the corrective action plan taken by the Board:

Finding No.	Description	Update
2	Duty Statements of the principal administrative official are not in conformance with the provisions of the “new” Administrative Procedure Act.	Appointment of Tim Corcoran as Executive Director on January 24, 2018, after the passing of Bill Brennan.
10	The Board should consider referring its consumer inquiries to departments with primary jurisdiction and adequate resources.	In 2014 and 2016, letters were sent to government and private agencies to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Services Program.
15	Board delegations are not formalized.	Reflects updates to the Board adopted delegations at the January 18, 2017, June 7, 2019, and February 16, 2021, General Meetings,
16	The Board should consider distribution of assignments.	In addition to the annual review by the Board President of the committee assignments, periodically Ad Hoc Committees are created. Deletes the reference to the meeting in which committees were most recently updated.
22	The Board does not have an Information Security Officer (ISO).	As of February 5, 2018, Tim Corcoran assumed these duties.
24	The computer system needs additional physical security devices.	Locks have been installed for all laptops, which recently replaced the desktop computers. The server is no longer housed at the Board's offices.
28(29)	Designation of economic conflict-of-interest filing officials is incomplete.	Proposed amendments approved at the February 16, 2021, General Meeting, were approved by the Fair Political Practices Commission in June 2022. The effective date is September 8, 2022.

This matter is for information only at the November 7, 2022, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachment

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<sup>3</sup> Non-substantive changes and updates to current staff titles were not reflected in this chart but are reflected in the Audit Matrix.



## ***Business, Transportation & Housing Agency<sup>1</sup> Performance Audit of the New Motor Vehicle Board***

### **Audit Finding: 1**

The Board does not have statutory authority or budgeted resources to establish a “Lemon Law” consumer protection legal services program.

### **Audit Recommendation**

Settlement and arbitration services to individual Lemon Law related consumers is potentially a very large program. If the Board’s plans include expanding into this program area, we recommend that the Board develop its workload indicators and prepare appropriate budget and policy documents to assure that the proposed activities are in coordination with policies of the Agency, the DMV, which has jurisdiction over licensing of dealers, and Department of Consumer Affairs, which has jurisdiction over certifying the manufacturer’s arbitration program.

### **NMVB Response**

The Board concurs. The Board has not in the past, and does not now have, any intention or interest in regard to establishing a “Lemon Law” consumer protection legal services program. However, the Board provides voluntary consumer mediation service for the benefit of any consumer who has a dispute with a new motor vehicle dealer, manufacturer, or distributor. This mediation service is not related specifically to Lemon Law matters. This service, for which there is no charge to the parties, is provided in order to comply with the legislative mandate of California Vehicle Code section 3050(c)(2).

**NOTE:** The Board has continued to enhance and improve the services offered by its Consumer Mediation Services Program without exceeding the guidelines established by the Corrective Action Plan Committee. It improved the complaint form which has been renamed the Mediation Request Form, which is available on the Board’s website or by calling the Board’s offices. The staff will continue informal mediation and direct consumers to the Lemon-Aid pamphlet on the Department of Consumer Affairs website. Specific “Lemon Law” complaints are referred to the Department of Consumer Affairs. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The members are provided an annual update on the Consumer Mediation Program at a noticed meeting in January.

### **DMV’s Response**

All programs will be reviewed to assure proper policy and budgetary approval.

### **Current Status**

The Board will submit a CAP regarding this finding.

### **Corrective Action Plan Report**

The Board does not plan to expand its informal mediation program into a “Lemon Law” program.

### **DMV’s Response to CAP**

The response indicates an intent to continue the Consumer Newsletter, which provides information on the Lemon Law and advises the consumer as to the existence of the Board and its informal mediation program. The Newsletter and the mediation program appear to be beyond any authority conferred on the Board by statute and should be discontinued. The Board serves as a referral function.

### **Date Completed**

February 1997

### **CAP Committee Proposal**

The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

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<sup>1</sup> All references to Agency refer to Business, Transportation & Housing Agency or California State Transportation Agency (7/1/13).

## **Audit Finding: 2**

Duty Statements of the principal administrative officials are not in conformance with the provisions of the “new” Administrative Procedure Act.

## **Audit Recommendation**

The Board should determine a method of organizing duties which is compatible with the requirements of the Administrative Procedure Act. The Board should work in conjunction with the Department to ensure that any resulting personnel changes follow requirements.

## **NMVB Response**

The Board concurs. The Board President and Executive Secretary have discussed with a representative from Agency the changes necessary for the Board to be in conformance with the “new” Administrative Procedure Act when the Act becomes effective July 1, 1997. NOTE: Duty Statements for the principal administrative officers are in conformance with existing law, and operate with a written Duty Statement for the Executive Secretary that has been in existence since April of 1981, as well as a written Duty Statement for the Assistant Executive Secretary that has been in existence since January 1987.

**NOTE:** At the May 25, 2000, General meeting of the Board, the members adopted the Audit Review Committee’s recommendation that the Board’s organization structure and duties of the Executive Secretary and Assistant Executive Secretary be redefined to eliminate all duties related to hearing Board cases. The Executive Secretary position would be recast as the Board’s Executive Director, with responsibility for all administrative and statutory functions of the Board, including processing cases filed with the Board and conducting informal mediation designed to efficiently and expeditiously settle disputes whenever possible. This would include all statutory responsibilities of the Board’s “secretary.” The Assistant Executive Secretary duties would be changed to that of General Counsel, eliminating any involvement in hearing specific cases. The General Counsel would analyze proposed decisions and rulings and advise the Board thereon. Additionally, the General Counsel would advise the Executive Director and the Board on all other legal matters of interest to the Board. These positions would be designated as Career Executive Assignment. On December 12, 2000, Tom Novi was appointed to the position of Executive Director until he retired in 2005. Howard Weinberg was appointed to the position of General Counsel on January 8, 2002. Mr. Weinberg resigned in February 2010. The Office of the Attorney General is serving in this capacity on an as needed basis. In 2003, the Board sponsored legislation that changed references to “Executive Director” from “secretary” to reflect the current organizational structure and duties of the Board staff and administration. Vehicle Code section 3014 was amended to remove any reference to Assistant Executive Secretary and changed the Executive Director position from a civil service to exempt position. These statutes were effective on January 1, 2004. The Board also promulgated regulations to reflect these changes that were effective on January 1, 2004. On September 8, 2005, the Board appointed William G. Brennan as Executive Director. The Board also promulgated a regulation that deleted the authority of the Executive Director to conduct protest hearings (operative April 23, 2006). *Mr. Brennan passed away in November 2017 and Timothy M. Corcoran was appointed as the Executive Director on January 24, 2018.*

## **DMV’s Response**

None.

## **Current Status**

The Board will submit a CAP regarding this finding.

## **Corrective Action Plan Report**

The separation of power provisions of the “new” APA are not applicable to the Executive Secretary/Chief Administrative Law Judge.

## **DMV’s Response to CAP**

The duty statements are not sufficiently delineated to ensure the separation of functions will occur. Duty statements/functions should be outlined to clearly show that no conflicts will be created or the appearance of a conflict. The mandates of the “new” APA do apply to the Board and its staff.

## **Date Completed**

May 2000

## **CAP Committee Proposal**

At the January 22, 1998, General meeting of the Board, the members adopted a numerical designation for assigning hearing officers. The Executive Secretary and Assistant Executive Secretary may preside over a settlement conference by mutual consent of the parties but they are not given a numerical designation and therefore are not assigned cases.

#### **Audit Finding: 3**

The Board may not provide all due process protections of the “new” Administrative Procedure Act.

#### **Audit Recommendation**

The Board should review its processes to assure compliance with the additional protections required by the Administrative Procedure Act.

#### **NMVB Response**

The Board concurs. The Board President and Executive Secretary have met with a representative from Agency to discuss changes that may be necessary for the Board to be in conformance with the “new” Administrative Procedure Act when the Act becomes effective July 1, 1997.

**NOTE:** The legal staff annually reviews the legislative changes to the APA to ensure Board procedures are in compliance and provides a staff analysis to the Board Administrative Law Judges.

#### **DMV’s Response**

Departmental legal staff will be available for consultation with the “new” Administrative Procedure Act. Staff will review the advantages and disadvantages of referring Board protest hearings to the office of Administrative Hearings and will discuss this option with the Board. If hearings remain within the Board, comprehensive regulations will be developed along with staff reorganization. Privatization will also be explored, given the number of arbitration services available.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

Board staff analyzed the Act, and have implemented efforts to ensure compliance.

#### **DMV’s Response to CAP**

The Board’s analysis of the “new” APA is superficial and incomplete. No contact has been made by Board staff with DMV Legal Office for assistance in complying with the mandates.

#### **Date Completed**

September 1998

#### **CAP Committee Proposal**

On September 23, 1998, Tom Flesh, Fritz Hitchcock and Robin Parker met with then DMV Director, Sally Reed, then Chief Counsel, Marilyn Schaff, and then Assistant Chief Counsel, Madeline Rule concerning the Board’s compliance with the APA. Based upon Departmental input, the Corrective Action Plan Committee determined that the Board was in compliance with the “new” APA.

#### **Audit Finding: 4**

The Board staff did not seek prior approval for filing amicus curiae briefs with the Courts.

#### **Audit Recommendation**

During the field work of the audit, the Board began requesting approval for filings. The Board should continue to remain in compliance and should review its procedures for using the amicus curiae process as a legal and policy strategy.

#### **NMVB Response**

The Board concurred, with a formal policy relating to filing of amicus curiae briefs developed and approved at the July 12, 1996, General meeting. The Board's policy is that the Board will not file any amicus briefs without the consent of 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 decides at a subsequent meeting not to file the amicus brief, the request for consent will be withdrawn.

**NOTE:** On March 9, 2011, the Board filed an amicus curiae letter in support of Yamaha's petition for review in the California Supreme Court in *Powerhouse Motorsports Group, Inc. and Timothy L. Pilg v. Yamaha Motor Corp, Inc.; Powerhouse Motorsports, Petitioner v. New Motor Vehicle Board, Respondent; Yamaha Motor Corp, Inc., Real Party in Interest*. In compliance with this policy, the necessary approvals from the Board Vice President, the Public Members (since this matter involves a dispute between a franchisee and franchisor), Agency, and the Governor's Office were received. It was reported to the full Board at its March 29, 2011, General Meeting. Agency is not the final decision maker for the filing of amicus briefs, rather after Agency review, the filing such briefs must be approved by the Governor's Office of Legal Affairs.

#### **DMV's Response**

None.

#### **Current Status**

As a result of the Corrective Action implemented the Board does not anticipate submitting a CAP regarding this finding.

#### **Corrective Action Plan Report**

None required.

#### **DMV's Response to CAP**

#### **Date Completed**

July 1996

#### **CAP Committee Proposal**

#### **Audit Finding: 5**

The New Motor Vehicle Board does not comply with established policy and law pertaining to legal representation.

#### **Audit Recommendation**

The Board should seek written consent from the Attorney General's Office for each specific case or should seek a general consent before employing legal counsel other than Attorney General's staff for judicial proceedings. Finally, the Board should adopt policies for determination of whether to request permission to participate in judicial proceedings. The policy should include provisions for a discussion by the Board of the merits of the action.

#### **NMVB Response**

The Board concurred and is taking decisive action to adopt policies and procedures so that all legal representation is in full compliance. These actions include, but are not limited to, increased Board participation in policies and procedures, the formation of a Judicial Policies and Procedures Committee of the Board, and a series of meetings that have occurred with the Board President and high level officials within the Office of the Attorney General. Each of the Audit Recommendations is being incorporated into these discussions and subsequent policies and procedures. It should be noted that the officials within the Office of the Attorney General have been very helpful in formulating policies and procedures that are conducive to quality legal representation within limited budget levels.

**NOTE:** Discussion of a Board Designee by the President consistent with this policy was considered at the June 26, 2008, General meeting. As a result, the Board decided that it is only those matters in which the Dealer Member would be disqualified from having heard in the first place that are being delegated. Further, if a Dealer Member is Board President, and a Public Member is Vice President, then the delegation should automatically go to the Vice President. All judicial matters are monitored by the Board legal staff whether it is represented or not, and the status of each case is reported on the Executive Director's Report at each General Board meeting.

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

On October 22, 1996, the Board adopted a policy entitled Board Policy Regarding Representation in Court Actions. On March 18, 1997, the Board revised this policy. All pending court matters are reviewed by the Board President or his designee for the ultimate determination of whether an important State interest/issue is implicated and whether it will participate in the litigation via the Attorney General's Office. Unless an important State issue is implicated, the Board notifies the parties of its policy not to appear in mandamus actions, and further requests that the Court keep it on the proof of service list. If the Court requests the Board's participation, it would retain the services of the Attorney General's Office.

#### **DMV's Response to CAP**

#### **Date Completed**

March 1997

#### **CAP Committee Proposal**

#### **Audit Finding: 6**

The amount of time devoted to hearing cases may be insufficient to allow for full consideration of all issues.

#### **Audit Recommendation**

The Board should review its hearing process to ensure that all Board members understand the policy guidelines used for selection of information presented to them and feel they have sufficient time and information from which to make appropriate decisions.

#### **NMVB Response**

The Board concurs. A high degree of importance has already been focused on the method of placing an item on the agenda, advance availability of materials, and adequate consideration of matters. The Board members are enthusiastically embracing more active participation. At the July 12, 1996, meeting, Board members addressed a lengthy agenda. There was active participation by the various members many of whom expressed a desire to continue working despite the passage of considerable time.

**NOTE:** The Board continues to place a high level of importance on making materials available to Board members and allowing sufficient time to discuss issues at noticed meetings. The staff provides a website link to the Board meeting materials to all members and upon request mails a binder that is tabbed according to the agenda at least 10 days in advance of an upcoming meeting. In general, committee memorandums are disseminated to the appropriate members and blind courtesy copied to the Board President in advance of the materials mailing. Feedback is solicited from the committee members prior to finalizing the memo for dissemination to the full Board.

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

The Board now places a high level of importance on making materials available and having sufficient time to discuss issues.

#### **DMV's Response to CAP**

The Board's response to this finding is non-responsive and includes no corrective action plan.

#### **Date Completed**

July 1996

#### **CAP Committee Proposal**

**Audit Finding: 7**

The Board should adopt parliamentary procedures.

**Audit Recommendation**

The Board should adopt the parliamentary procedures which fit its needs and should appoint a recording secretary to be responsible to assure that minutes are complete and timely prepared.

**NMVB Response**

The Board concurs. Board members were given a copy of Robert's Rules of Order to review at the August 20, 1996, meeting. The issue was discussed, and staff was instructed to prepare a presentation to the Board members, at a subsequent meeting, concerning which provisions of Robert's Rules of Order should be adopted by the Board or, in the alternative, some other parliamentary procedure.

**NOTE:** New members are provided with the Board adopted Parliamentary Procedures. Periodically, on an as-needed basis this topic is agendaized for Board member review.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

At its March 18, 1997, General meeting, the members adopted Board Parliamentary Procedures.

**DMV's Response to CAP**

The Board cannot just adopt "parliamentary rules" at a meeting of the Board; such rules must be properly adopted as administrative regulations, in accordance with the APA.

**Date Completed**

October 1997

**CAP Committee Proposal**

On October 14, 1998, Robin Parker met with Madeline Rule, then Assistant Chief Counsel, DMV. Ms. Rule indicated that the Parliamentary Rules overlapped with other statutes and dealt primarily with internal Board procedures. The Parliamentary Rules did not require to be promulgated as rulemaking.

**Audit Finding: 8**

Board may not always be in compliance with the Bagley-Keene Open Meeting Act.

**Audit Recommendation**

The Board should consider an education program which includes inviting an experienced presenter to cover the requirements of the Act and to describe the risks and typical mistakes which are made by quasi-judicial state entities such as this Board.

**NMVB Response**

The Board concurs. The Bagley-Keene Open Meeting Act and how it applies to meetings of the Board was a specific agenda item at the July 12, 1996, General meeting. The President and the Executive Secretary gave a detailed presentation to the members of the Board regarding the Act, including notice and agenda requirements, limitations and requirements of advisory committees, factors which are considered in determining what constitutes a “meeting”, as well as the prohibition against “serial” or “hub” meetings. In addition, the members of the Board have been provided with the booklet entitled Open Meeting Laws, published in 1989 by the California Attorney General’s Office together with the 1995 supplement. Further, the Executive Secretary is designated to be the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.

**NOTE:** The General Counsel is now the Bagley-Keene Compliance Officer<sup>2</sup> and is responsible for ensuring compliance with the Act in addition to providing guidance, legal opinion, and education to the members and staff. The members are provided an annual update of the Open Meeting Act and a staff analysis. Continuous education on this topic is provided to the members and has been a noticed agenda item on many occasions.

**DMV’s Response**

None.

**Current Status**

As a result of corrective action already implemented the Board does not anticipate submitting a CAP regarding this finding.

**Corrective Action Plan Report**

None required.

**DMV’s Response to CAP**

**Date Completed**

July 1996

**CAP Committee Proposal**

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<sup>2</sup> Robin Parker, Senior Staff Chief Counsel, is performing all of the duties previously assigned to the Board’s General Counsel including the Bagley-Keene Compliance Officer.



#### **Audit Finding: 9**

The Department and the Board should develop an issue memo for Reorganization.

#### **Audit Recommendation**

The Board should meet with Agency and the Department to explore organization alternatives which would provide the best and most efficient resolution of manufacturer and dealer disputes.

#### **NMVB Response**

The Board concurs. This matter was discussed by the Board at its General meeting of August 20, 1996. The Board is in the process of preparing the recommended issue memorandum.

**NOTE:** At its May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation that Board cases should be heard by the Board's Administrative Law Judges. See Audit Finding 2 for discussion concerning the Board's reorganization of its senior management positions.

#### **DMV's Response**

The Director concurs with the recommendation that the Board and the Department meet with Agency to explore organization alternatives. These discussions should include consideration of the primary benefits offered by the Board, the importance of the appellate function to these benefits, and consideration of limiting the appellate function to new vehicle transactions. Further, the report suggests that some functions may be duplicated by both the Department and the Board. Once an organizational structure is determined along with the development of the restructure, duplicative functions will be consolidated or eliminated in the most cost-effective and efficient manner. A more detailed review of comparable Boards in similar states may offer some alternatives to consider for implementation to the Board.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

The Board is to meet with DMV, BT&H Agency and other state agencies to explore organizational alternatives and will prepare an issue paper for reorganization.

#### **DMV's Response to CAP**

Corrective action is different from the Department's proposal. Some are similar but the Board appears to be taking an independent course, not entirely consistent with the Director.

#### **Date Completed**

May 2000

#### **CAP Committee Proposal**

After the Corrective Action Plan Committee reviewed the option of referring all matters to the Office of Administrative Hearings, it determined that the present system as modified with several proposed recommendations would be more efficient, cost effective, and would afford the parties an effective means to resolve disputes.

#### **Audit Finding: 10**

The Board should consider referring its consumer inquiries to departments with primary jurisdiction and adequate resources.

#### **Audit Recommendation**

The Board should meet with the Department of Consumer Affairs, the Department of Motor Vehicles, and the Agency to explore organization alternatives which would provide the best and most efficient consumer services.

#### **NMVB Response**

The Board concurs. The Board looks forward to implementing the audit recommendation, especially in light of the fact that eight other government entities referred 160 written consumer complaints to the Board in fiscal year 1995/96 alone. This number does not include telephone inquiries from other government entities which ultimately resulted in the consumer directly filing a complaint form with the Board. The Board President has already had preliminary discussions with the Agency Secretary of the State Consumer and Services Agency. The Board is confident that future meetings will be very productive.

**NOTE:** In compliance with this Audit Finding, all consumer inquiries are referred to departments with primary jurisdiction. For example, “Lemon Law” complaints are referred to the Department of Consumer Affairs, complaints concerning used vehicle dealers are referred to DMV Investigations, and complaints concerning auto repair facilities that are not also new car dealers are referred to the Bureau of Automotive Repair. However, consumers requesting mediation of disputes with new vehicle dealers and manufacturers are processed by staff in the Consumer Mediation Services Program. In 2004, legislation became effective that brought recreational vehicles (RVs) under the Board’s jurisdiction. The legislation included provisions requiring the Board to recommend that the consumer seeking a refund or replacement of an RV consult with the Department of Consumer Affairs. In May 2011, an inter-agency memo was 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. In **March 2014 and June 2016**, letters similar to those sent out in 2011 were again mailed to government and private agencies to reinforce the Board’s jurisdiction and services offered by its Mediation Program.

#### **DMV’s Response**

The Director concurs with this recommendation. It would require the Board to stay within its statutory and budgetary parameters if the Board remains within the Department. A start toward this objective should also include a review of the Board’s mission and goals to determine essential services.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

Board and staff members should meet with BT&H, DMV and DCA to discuss organizational alternatives with a report to the full Board.

#### **DMV’s Response to CAP**

Corrective plan does not address Department’s recommendation that the Board review its mission and goals to determine essential services. The response indicates that for the time being, the Board will continue doing what it has been doing.

#### **Date Completed**

December 1998

#### **CAP Committee Proposal**

The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

#### **Audit Finding: 11**

The Board does not have a new member introduction program.

#### **Audit Recommendation**

The Board should consider organizing some type of member education program to assure that all members are exposed to the rules, regulations, and procedures governing their areas of responsibility.

#### **NMVB Response**

The Board concurs. The Board is now participating in training for new members as well as ongoing in-service training for current members. At the July 12, 1996, General meeting, the Board specifically discussed member training and education, NMVB's Consumer Mediation Program, the computer system and support services, and Open Meeting Laws. Additionally, the Board discussed availability of specialized Board member training for both new and existing Board members in order to help familiarize the members with issues concerning the responsibilities of Board members, state administrative duties of the members and staff, limitations and restrictions on members to act in certain situations and over certain matters submitted to the Board for determination. The members of the Board were receptive to this type of training and education, and Board staff was instructed to explore, in greater detail, the availability of such programs for future Board member participation. It is anticipated that Board training and education will be part of most future meetings.

**NOTE:** At its July 18, 2000, General meeting, the members of the Board adopted a report from the Board Development Committee, which recommended new member orientation and a Board member education program for new and existing members. The new member orientation program is used for all new Board members. Board member education is scheduled for most, if not all, Board meetings. Annually, a schedule of educational speakers and industry related tours are developed and implemented.

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

Board member education has been discussed at the July and October 1996, General meetings, and is scheduled for most, if not all general Board meetings.

#### **DMV's Response to CAP**

#### **Date Completed**

October 1996

#### **CAP Committee Proposal**

#### **Audit Finding: 12**

The Board should review its case management quality assurance system.h

#### **Audit Recommendation**

The Board should develop a process for reviewing case management activity including the quality, quantity, and timeliness of legal work performed on behalf of the Board. One method is to assign a specific Board member as a case liaison for each case.

#### **NMVB Response**

The Board concurs. Board members have discussed the existing data processing system, including the hardware and software configurations, as well as the advantages and limitations of the system. The Board members were apprised that, at present, the Board does not have a specific automated case management system in place, the existence of which would ensure that matters are handled more expeditiously. At the July 12, 1996, General meeting, staff was authorized to explore implementation of an automated case management system which would utilize existing hardware. Staff work would include an analysis of the cost of such system in relationship to the benefits provided. The Board President recently attended an exhibition on computer software for the legal profession and has provided materials to staff. The Board staff is currently working on an analysis of these materials, as well as independent research. The results of the staff research will be presented for Board consideration at a future meeting.

**NOTE:** Cases are managed by the Board counsel through a calendaring system. Efforts to improve the management of Board cases via software are regularly reviewed internally and tested for compatibility. DMV monitors all acquisitions in this regard and also provides testing services. In addition, the Policy and Procedure Committee, along with input from legal counsel for dealers and manufacturers, recommended revisions to the Board case management procedures which were adopted by the members at the April 27, 2001, General meeting. The recommended changes did not require regulatory and statutory revisions. In March 2002, the Board adopted a proposal to undertake a comprehensive review and analysis of its enabling statutes and regulations that would require revisions. Input was solicited from the Board Administrative Law Judges and legal staff, attorneys that regularly practice before the Board, industry personnel, and Board members. As a result of the review, recommended revisions to the Board case management procedures that require regulatory and statutory changes were approved at the September 10, 2002, and October 29, 2002, General meetings. All of the legislative and regulatory changes have been approved and are effective. The Board's internal procedures, policies, and publications have been updated to incorporate these changes.

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

Board members and staff are currently reviewing the new DMV Legal Office case management system, along with other alternatives. A decision should be made soon.

#### **DMV's Response to CAP**

The CAP does not address quality issues. Even if the Board could use or acquire the DMV Legal Office's new case management system, that would not resolve quality issues associated with substantive legal work, meeting minutes, etc.

#### **Date Completed**

January 1998

#### **CAP Committee Proposal**

### **Audit Finding: 13**

The Board has not adopted an Administrative Enforcement Manual.

### **Audit Recommendation**

The Board should consider whether publication of introductory materials and/or availability of an administrative enforcement manual would be sufficiently helpful to either Board members, new practitioners, or others to justify investment of the required resources.

### **NMVB Response**

The Board concurs. In 1986, the Board published a guide to the New Motor Vehicle Board. However, this guide is presently not up to date. The Board's staff has been working for more than one year on a practice and procedure guide for those who seek to use the Board's services. The Board discussed this issue at the August 20, 1996, General meeting and provided direction to the staff regarding the types of materials the Board feels appropriate. Other avenues of public education are being explored, e.g., continuing education classes, Internet web sites, and educational brochures. The Board is also exploring methods of publishing and disseminating the above materials at no cost to the State by utilizing private sector resources.

**NOTE:** A Guide to the New Motor Vehicle Board was published in July 1997 and revised in April 1999. The Guide functions like a practice manual for attorneys appearing before the Board. It contains the "new" APA, as well as, the applicable Vehicle Code and regulatory sections. Supplements to the Guide have also been published as changes dictate. A March 2001, Supplement was published and disseminated to Board members and staff, the public mailing list, and specific manufacturer and dealer attorneys. In January 2002, the Board staff incorporated all of the changes contained in the Supplement into the Guide along with all statutory changes effective January 1, 2002. A revised Guide dated January 2002 was disseminated to all new motor vehicle and motorcycle dealers, manufacturers, distributors, the public mailing list, and in-house and outside counsel that regularly practice before the Board. At the December 5, 2003, Special meeting, the members adopted a revised Guide. A revised Guide dated January 2003 was disseminated by the DMV to all licensees within the Board's jurisdiction in March 2003. Annually the Board revises its Guide to incorporate all statutory and regulatory changes. The Guide is available on the website and a notice to that effect is disseminated annually.

### **DMV's Response**

None.

### **Current Status**

The Board will submit a CAP regarding this finding.

### **Corrective Action Plan Report**

Draft manual presented to the Board at February 1997 General meeting. Following Board review of the manual titled "Guide to the New Motor Vehicle Board" will be printed and disseminated to interested parties.

### **DMV's Response to CAP**

Under the "new" APA, the Board must make available to interested parties all statutes and regulations pertaining to hearing procedures for matters heard by the Board. It must be noted that the Board cannot simply draft a manual containing substantive procedural requirements; unless adopted as a regulation.

### **Date Completed**

July 1997

### **CAP Committee Proposal**

During a meeting with Madeline Rule, then Assistant Chief Counsel, DMV, it was determined that as long as the Guide was a recitation of the Vehicle Code, regulations, and case law with the authorities referenced thereto, it did not need to be promulgated as rulemaking.

**Audit Finding: 14**

The Board should ensure that all required transaction reports are filed with the Agency.

**Audit Recommendation**

The Board should work with the Department and the Agency to ensure that all required transaction reports are correctly forwarded.

**NMVB Response**

The Board concurs. Action has been taken to bring the Board into compliance with this finding. The Board did not always file the required transaction reports with Agency because, oftentimes, it was not aware of any requirement to do so. It appears that the memorandums setting forth the policy concerning the various transaction reports were sent to the Department, but often the Department didn't forward them to the Board or otherwise make the Board aware of the requirements.

**NOTE:** *Senior Staff Board Chief* Counsel is in contact with Agency counsel concerning the Board's court cases. Agency is also provided with a Week Ahead Report *by Senior Staff Counsel* containing significant issues that may be of interest to the administration.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

The DMV has taken steps to ensure that the Board is provided all necessary information to file the reports. The significant litigation report is filed with BT&H Agency by the 5<sup>th</sup> of each month.

**DMV's Response to CAP**

The Director is being provided reports sent by the Board to Agency.

**Date Completed**

July 1996

**CAP Committee Proposal**

#### **Audit Finding: 15**

Board delegations are not formalized.

#### **Audit Recommendation**

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.

#### **NMVB Response**

The Board concurs. The Board's enabling statutes and regulations, contained in Title 13 of the California Code of Regulations, contain several references to situations where the Board, its secretary, or a hearing officer designated by the Board, can perform certain functions. The Board recognizes the need to develop further formal delegations, and has commenced corrective action.

**NOTE:** The Budget and Finance Committee considered all of the duties of the Board and staff, and recognized those that, by statute or regulation, are retained by the Board or are already delegated to designated individuals. In addition, the Committee report recommended which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendations also contained an indication as to transaction type and dollar limit for procurement of goods and services, where applicable. The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee. At the May 26, 2011, General Meeting the annual review of these delegations was made an exception report. The Board staff continues to review these delegations each year. Revised delegations were adopted at the July 15, 2014, and February 10, 2016, and January 18, 2017, General Meetings to implement legislation (Senate Bill 155, and Assembly Bills 759 and 1178, and Assembly Bill 287, respectively). *Article 6 of the Vehicle Code was repealed effective January 1, 2019, and the Board revised its Legislative Policy so revised delegations were adopted at the June 7, 2019, General Meeting. At the February 16, 2021, General Meeting, revised delegations were adopted to reflect: (1) Section 3050 was re-lettered; (2) Article 3 Appeals were repealed; (3) The methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" (Section 3065.2); (4) Sections 3065.3 and 3065.4 protests; (5) The Board's authority to hear Export or Sale-for-Resale Prohibition Policy protests in Article 6 was restored (Assembly Bill 179); and (6) Updates concerning recent staff promotions.*

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

The Board's Budget and Finance Committee presented recommendations concerning delegation that were adopted at the March 18, 1997, meeting.

#### **DMV's Response to CAP**

The response and corrective action plan are vague and not fully responsive. Further, the absence of an approved organization chart of the Board is not addressed.

#### **Date Completed**

March 1997

#### **CAP Committee Proposal**

#### **Audit Finding: 16**

The Board should consider distribution of assignments.

#### **Audit Recommendation**

The Board should review the amount of routine administrative detail which might be appropriately dealt with by committee or temporary task group in order to ensure that the Board receives all of the information which it desires and that deliberative processes of the Board are not reduced in favor of administrative detail. For instance, the Board might consider whether there is a need for the following types of committees: budget & finance; personnel; ethics; audit; legislative; judicial relations; board education; consumer education; industry education; and intergovernmental relations.

#### **NMVB Response**

The Board concurs. At its General meeting of July 12, 1996, the Board President announced the formation of a Budget and Finance Committee and a Judicial Procedures Committee and appointed members to each Committee. Other committees will be formed as and when appropriate. The Board is also implementing a rotation system whereby all Board members will have the opportunity to be the presiding official at Board hearings.

**NONE:** A number of Board committees have been created over the **past 12** years. At its May 25, 2000, General meeting, the members adopted the Audit Review Committee's proposal to consolidate the existing **ten 10** advisory committees into the following committees: (1) Administration Committee; (2) Policy and Procedure Committee; (3) Board Development Committee; and, (4) Executive Committee. At the September 12, 2000, General meeting, the members adopted the Executive Committee's recommendation of splitting off the budget and finance functions currently assigned to the Administration Committee and created a Fiscal Committee. At the December 5, 2002, Special meeting, the Government and Industry Affairs Committee was created. At the April 21, 2005, General meeting, a Search Committee was created on an ad hoc basis for purposes of filling the Executive Director vacancy upon Tom Novi's retirement. At the February 11, 2008, General meeting, an Ad Hoc Rulemaking Committee was created. Annually, the Board President reviews these committee designations **and periodically creates Ad Hoc Committees. Most recently, these committee designations were revised at the February 10, 2016, General meeting.**

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

At the July 1996, General meeting, Judicial Policies and Procedures, and Budget and Finance Committees were established.

#### **DMV's Response to CAP**

#### **Date Completed**

May 2000

#### **CAP Committee Proposal**



**Audit Finding: 17**

The Board should adopt an audit resolution policy.

**Audit Recommendation**

The Board should adopt an audit resolution policy which involves the Board, management, and program staff in ensuring that corrective actions are satisfactorily resolved. The Audit Office has developed suggested language which can be used if desired.

**NMVB Response**

The Board concurs. The Board President shall prepare initial responses to findings of the draft audit report, and have the responsibility to submit these responses to Agency. The Board should designate a Board employee to oversee audit follow-up, including resolution and corrective action. The designated Board employee shall work with the Board President to develop a written Corrective Action Plan (CAP) for those audit findings which indicated that a deficiency exists in Board operations. The CAP shall be presented to the full Board for approval. The CAP will include targeted improvement measures, responsibility of assignments, and estimated completion times. It will also describe the level of risk assumed by the proposed resolution and the level of loss prevention controls desired. The designated Board employee shall also be responsible for ensuring that prompt and proper implementation of the adopted CAP actually occurs, monitoring corrective action and preparing summary reports that shall be submitted to the full Board for approval. Summary reports should be prepared and filed with Agency at no less than 6-month intervals until the subject of the audit findings is corrected.

**DMV's Response**

None.

**Current Status**

As a result of the corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

**Corrective Action Plan Report**

None required.

**DMV's Response to CAP**

**Date Completed**

July 1996

**CAP Committee Proposal**

#### **Audit Finding: 18**

The New Motor Vehicle Board does not have an adequate audit trail to account for all fees paid to the Board.

#### **Audit Recommendation**

The Board should revise its petition and protest case log and check log formats to ensure that they provide sufficient information to enable internal staff and external auditors to verify that all required fees have been paid and are accounted for. Further, the Board should review the duties of Board staff and revise responsibilities so that sufficient separation of duties exists to ensure adequate internal controls over cash receipts. Specifically, one person who is responsible for billing, accounts receivable detail, general ledger posting, and invoice processing should open all mail and list all checks. That listing should periodically be reconciled with amounts recorded on the deposit log prepared by a different person who records the check deposits. These reconciliations should be available for audit.

#### **NMVB Response**

The Board concurs. Corrective action has been taken to satisfy the concerns raised by this finding.

**NONE:** The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee.

#### **DMV's Response**

None.

#### **Current Status**

The Board will submit a CAP regarding this finding to confirm the action taken adequately addresses the finding.

#### **Corrective Action Plan Report**

The Budget and Finance Committee adopted a policy which addresses this finding at a November 1996, Committee meeting. The Board adopted the Corrective Action Plan Report in which this policy was encompassed at its February 12, 1997, General meeting.

#### **DMV's Response to CAP**

Based on the revisions presented it appears the Board's revised procedures should ensure that all monies received were deposited and that a record of those receipts will be retained for audit purposes. The response appears to have addressed the separation of duties problem. There are four concerns: (1) how the reconciliation will be documented and retained for audit purposes; (2) unsure whether all filing fees for petitions are accounted for; (3) unsure if proper amount was collected for each party; (4) unsure if there is a separation between the person that records the cash receipts and the person that records deposits.

#### **Date Completed**

November 1996

#### **CAP Committee Proposal**

**Audit Finding: 19**

Travel expenses for out of state trips were not approved by the Board.

**Audit Recommendation**

The full Board or its Personnel, Finance, or Program Committee should review out-of-state trip requests before they are submitted through the budget process to the Governor's Office for approval to decide appropriate Board representation if the trips are determined to be cost beneficial. This recommendation is made only as a matter of appropriate policy regarding separation of duties and management authorization. Our testing of accounting controls did not note any monetary violations of state procedures for filing claims for travel expenses by employees or officers of the Board for either in-state or out-of state trips.

**NMVB Response**

The Board concurs. Travel procedures for the Board and its staff were discussed at the July 12, 1996, meeting. At that time, the Board adopted a policy to ensure that the members of the Board are fully apprised of and actually approve the budgetary allotment for and participation in any out-of-state travel. This policy requires review of the 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.

**NOTE:** The Executive Committee will authorize who actually attends the out-of-state trips for each fiscal year. This topic is agendized annually for Board member consideration.

**DMV's Response**

Out-of-state trips for the Board's employees will be appropriately in the Department's out-of-state blanket after they are approved by the Board.

**Current Status**

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

**Corrective Action Plan Report**

None required.

**DMV's Response to CAP****Date Completed**

July 1996

**CAP Committee Proposal**

**Audit Finding: 20**

Public funds cannot be used for legal work to represent for-profit corporations where the state is not a party to the action.

**Audit Recommendation**

When the Board develops its internal procedures for legal strategies which include participation in judicial procedures, it should obtain guidance on possible constitutional issues with respect to positions it wishes to advocate.

**NMVB Response**

To be developed.

**NOTE:** The Board instituted a policy that requires the Board President and Agency approval, as necessary. See Audit Finding 4 for a discussion of the Board policy implemented concerning filing amicus curiae briefs.

**DMV's Response**

None.

**Current Status**

**Corrective Action Plan Report**

The Board instituted a policy that results in Board President and BT&H Agency approval, as necessary.

**DMV's Response to CAP**

**Date Completed**

July 1996

**CAP Committee Proposal**

#### **Audit Finding: 21**

Exempt position time reporting is not in compliance with state requirements.

#### **Audit Recommendation**

The Board and the Department should meet to determine that all necessary personnel duties regarding the Department's employees stationed at the Board and the Board's exempt position have been assigned to responsible staff.

#### **NMVB Response**

The Board concurs. Board staff, in conjunction with staff of the Department's Human Resources unit, have implemented a procedure to comply with the finding. Beginning with the July 1996, pay period, the exempt position began submitting the executed monthly attendance reports to the Department. However, the Board interprets the recommendation regarding personnel duties to be much broader than accounting or attendance issues, and will meet with the Department to discuss broader personnel duties.

**NOTE:** At the May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation concerning restructuring the Board's senior management. To help facilitate these changes, Steven Gourley, then DMV Director, committed to working closely with the Executive Committee to appoint the Committee's selections for the Executive Director and General Counsel positions. In turn, the Board decided that the Director could use its statutory exempt entitlement on a loaned basis during the Director's tenure. At the December 11, 2003, Special meeting, then DMV Director Chon Gutierrez informed the Board that it no longer needed the Board's exempt entitlement. By motion and unanimous vote, the Board's exempt entitlement is being used for the Executive Director position effective January 1, 2004. All Board staff, including the Executive Director, report their time to the DMV in compliance with state requirements.

#### **DMV's Response**

The Department's Human Resources staff will meet with Board staff to ensure that duty statements are current and that Board staff and Department employees have a time reporting procedure.

#### **Current Status**

The Board will submit a CAP regarding this finding.

#### **Corrective Action Plan Report**

Since the audit, attendance sheets have been submitted for the exempt position.

#### **DMV's Response to CAP**

#### **Date Completed**

May 2000

#### **CAP Committee Proposal**

#### **Audit Finding: 22**

The Board does not have an Information Security Officer (ISO).

#### **Audit Recommendation**

The Board should appoint a liaison ISO to work with the Department's ISO to ensure that the Board's operations maintain at least the same level of security as the rest of the Department.

#### **NMVB Response**

The Board concurs. At the August 20, 1996, meeting, the Board designated Assistant Executive Secretary Michael M. Sieving to serve as liaison Information Security Officer to work with the Department's ISO to ensure compliance with information security procedures.

**NOTE:** When Tom Novi was appointed to the position of Assistant Executive Secretary and ultimately the Executive Director, Mr. Novi assumed these duties. When Mr. Novi retired in October 2005, and Mr. Brennan was appointed to the Executive Director position, he assumed these duties *until his passing in November 2017. Timothy M. Corcoran was appointed the Executive Director on January 24, 2018; he took his oath of office on February 5, 2018, and assumed these duties.*

#### **DMV's Response**

The Director is requesting that our Information Security Officer meet with the Board Liaison to ensure that there is a comparable and adequate security level.

#### **Current Status**

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

#### **Corrective Action Plan Report**

None required.

#### **DMV's Response to CAP**

#### **Date Completed**

July 1996; December 2000

#### **CAP Committee Proposal**

**Audit Finding: 23**

Inventory tags have not been attached to state equipment.

**Audit Recommendation**

The Board should immediately affix the inventory tags which have been provided by the Department to the appropriate equipment.

**NMVB Response**

The Board concurs. Board staff has affixed the decals as prescribed and has noted the property tag number on the equipment inventory.

**NOTE:** New equipment receives the appropriate inventory decals as prescribed.

**DMV's Response**

The department has already provided the inventory tags to the Board. We support your recommendation that the Board immediately affix the tags.

**Current Status**

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

**Corrective Action Plan Report**

None required.

**DMV's Response to CAP**

**Date Completed**

July 1996

**CAP Committee Proposal**

**Audit Finding: 24**

The computer system needs additional physical security devices.

**Audit Recommendation**

The Board should acquire some type of smoke detector and a plastic emergency tarp to cover the network server computer equipment in the event of water damage.

**NMVB Response**

The Board concurs. The Board is in the process of procuring a smoke detector, as well as plastic tarps which will be available to cover the main server and other computer equipment in the unlikely event of water damage.

**NOTE:** The smoke detectors and tarps are still operational. *Locks have been installed for all laptops, which recently replaced the desktop computers. The server is no longer housed at the Board's offices.*

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

A smoke detector will be installed in February 1997. Tarps are operational.

**DMV's Response to CAP**

Physical security devices are usually called for to protect the utility of desktop computing assets. The CAP does not include provisions for lock down devices to prevent the removal of hardware.

**Date Completed**

February 1997

**CAP Committee Proposal**



**Audit Finding: 24(25)**

Virus protection procedures need improvement.

**Audit Recommendation**

Responsible data processing staff should become familiar with installed protections and obtain training on activation of protective software.

**NMVB Response**

The Board concurs. The Board believes that the current virus protection system is inadequate, and is in the process of procuring additional virus protection software. Additionally, appropriate staff training will be implemented.

**NOTE:** Anti virus software has been installed on the LAN server and on all PCs and laptops. The software is updated regularly by DMV's Information Systems Division (DMV/ISD).

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

In January 1997, Anti virus software was ordered, and subsequently installed in September 1997.

**DMV's Response to CAP**

The Anti Virus program will be an automated program which will protect the system from viruses from local input devices and on-line services. The staff will be trained once the system is received and installed.

**Date Completed**

September 1997

**CAP Committee Proposal**

**Audit Finding: 25(26)**

Password protection is inadequate or not operational.

**Audit Recommendation**

The Board should ensure that its data processing system receives a periodic independent review to detect situations where internal controls have been inadvertently removed.

**NMVB Response**

The Board concurs. The Board has instituted a policy of changing passwords at scheduled intervals. Unused workstations have been locked off so that unauthorized users are unable to access the network, and the Board is exploring the option of procuring additional software to increase password protection.

**NOTE:** The Board's LAN servers and PCs are monitored and maintained by DMV/ISD. Passwords are required to be changed every 45 days.

**DMV's Response**

None

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

In September 1996, password protection was installed.

**DMV's Response to CAP**

The CAP does not identify the password mechanism used, it does not address the basic issue of security awareness so that employees understand the importance of effective password management, nor does it state that all critical systems and files are password protected.

**Date Completed**

September 1996

**CAP Committee Proposal**

**Audit Finding: 26(27)**

Data processing system documentation could be strengthened.

**Audit Recommendation**

Data processing staff should update diagrams and documentation sufficiently to allow unfamiliar users to learn the system.

**NMVB Response**

The Board concurs. The Board's staff is in the process of preparing procedural manuals for all data processing programs currently in operation.

**NOTE:** Configurations of the LAN server are documented in numerous procedural manuals which are maintained by DMV/ISD. Software installation and data back up are strictly controlled.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

New software installations are recorded on a software installation log. Procedures for re-installing and restoring software and backup data are currently being re-established to meet Departmental standards.

**DMV's Response to CAP**

**Date Completed**

August 1997

**CAP Committee Proposal**

**Audit Finding: 27(28)**

Higher level security access control is inadequate.

**Audit Recommendation**

The Executive Secretary should assure that duty statements covering access at the highest level of security are limited to those who cannot originate or approve transactions and who are directly responsible for the tasks associated with system security.

**NMVB Response**

The Board concurs. The Board is taking steps to modify the procedure to comply with the audit recommendation.

**NOTE:** Security access to the Board's LAN server is controlled by DMV/ISD. No Board employees have access to the server. A limited number of Board employees have administrative access to the Board's PCs and laptops.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

At the time of the Audit, six Board employees had Supervisory status. Supervisory equivalence on the LAN allows total access to the entire system. Since the Audit, Supervisory status has been delegated to two individuals on the Board's staff. This has eliminated the problems identified by the Audit.

**DMV's Response to CAP**

The Board should have a detailed, properly adopted Conflict of Interest Code, designating the positions and disclosure category for each, just as the DMV does.

**Date Completed**

July 1996

**CAP Committee Proposal**

#### **Audit Finding: 28(29)**

Designation of economic conflict-of-interest filing officials is incomplete.

#### **Audit Recommendation**

The full Board or its Ethics or Personnel Committee should review its economic conflict-of-interest regulations to determine whether changes are needed to conform inconsistencies in its regulations in order to comply with applicable statutes. Since the administrative law judges of the Board are employees of the Department, the Board should work with the Department to ensure that regulations are in conformance.

#### **NMVB Response**

The Board concurs with the recommendation regarding this Audit Finding, but needs additional information to reach a conclusion regarding the finding itself. Both the Board President and a staff counsel have been in contact with the FPPC to determine the best method to implement the recommendation. A representative of the FPPC advised the Board that it generally receives filings only from Board members and the senior member of the executive staff, not positions such as administrative law judges or the Assistant Executive Secretary. This is due to storage limitations at the FPPC. The Board will continue to explore this topic.

**NOTE:** Due to the restructuring of the Board's senior management, the Conflict of Interest Code was revised in accordance with the procedure established by the FPPC and the Office of Administrative Law. At the November 20, 2001, General meeting, the members approved the revised text of proposed revisions to the Conflict of Interest Code which incorporated suggestions from the Fair Political Practices Commission. Rulemaking implementing these changes was effective on February 17, 2002. The Conflict of Interest Code was *most* recently updated and effective *on June 20, 2019. At the February 16, 2021, General Meeting, the members approved proposed amendments to the Conflict of Interest Code that were approved by the FPPC in June 2022. The effective date is September 8, 2022.*

#### **DMV's Response**

The Director concurs with this recommendation. The DMV's Legal Staff is available for consultation to the Executive Secretary, should he require additional information.

#### **Current Status**

The Board will submit a CAP regarding this funding.

#### **Corrective Action Plan Report**

In August 1996, Wayne Imberi of the Fair Political Practices Commission stated that the FPPC does not want the statements of the Assistant Executive Secretary or hearing officers. These statements should be retained by the agency. The Assistant Executive Secretary and hearing officers file conflict of interest statements with the Board which are retained internally.

#### **DMV's Response to CAP**

#### **Date Completed**

August 1996

#### **CAP Committee Proposal**

**Audit Finding: 29(30)**

The Board should promptly cause the investigation of suspected irregular activities.

**Audit Recommendation**

The Board should promptly investigate or cause the investigation of suspected irregular activities and should file the required incident reports.

**NMVB Response**

The Board concurs. The Board staff has contacted the Department's Information Protection Program and has met with officials of the Department's Internal Affairs investigations unit. Additional meetings are scheduled to discuss implementation of procedures for reporting future incidents. It should be noted that the Department has been extremely cooperative in this regard, and has responded to the Board's concerns with valuable suggestions and information.

**NOTE:** The Board staff complies with all DMV policies concerning reporting and investigation of suspected irregular activities.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

In December 1996, the Board staff implemented the DMV policy concerning reporting of suspected irregular activities.

**DMV's Response to CAP**

**Date Completed**

December 1996

**CAP Committee Proposal**

**Audit Finding: 30(31)**

Board staff do not have access to written guidance on appropriate behavior.

**Audit Recommendation**

The Department of Motor Vehicles should ensure that the Board's employees are added to the appropriate distribution lists for its department wide announcements. The Board should make an effort to seek guidance when it encounters situations for which it is likely that published rules exist.

**NMVB Response**

The Board concurs. The Board's staff has sent a memorandum to the Department specifically requesting that the Board be put on the mailing list for all documents which are disseminated to the Department's programs and divisions.

**NOTE:** Board staff are provided with all materials disseminated by the DMV with regard to inappropriate behavior.

**DMV's Response**

The Director has requested that the Board be added to the appropriate distribution lists and encourages management at the Board to ensure employees have received adequate training which is available to them from the Department.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

The Board is now on the DMV mailing list for all divisions. Copies of all memos are given to all Board employees.

**DMV's Response to CAP**

**Date Completed**

July 1996

**CAP Committee Proposal**

**Audit Finding: 31(32)**

The Board has not purged computer records.

**Audit Recommendation**

Staff should review the requirements for retention and destruction of electronic records to ensure that the program is in compliance.

**NMVB Response**

The Board concurs. The Board will seek assistance and guidance from the Department in the development and implementation of a policy for retention/purging of computer records.

**NOTE:** The Board staff retains mediation records on the LAN for three-years. After three years, data is removed from the LAN and stored on CD ROM. With regards to the Legal Division, computer records are archived to CD ROM on an as needed basis.

**DMV's Response**

None.

**Current Status**

The Board will submit a CAP regarding this finding.

**Corrective Action Plan Report**

Since September 1996, the Board has implemented a two-year retention policy for computer records for the Mediation Services Program. Any data older than two years is purged at the end of each fiscal year. The Board backs-up the entire system every day and these tapes are kept in the safe.

**DMV's Response to CAP**

**Date Completed**

September 1996

**CAP Committee Proposal**





**STATE OF CALIFORNIA**

**MEMO**

**To: FISCAL COMMITTEE  
ANNE SMITH BOLAND, CHAIR  
ARDASHES KASSAKHIAN, MEMBER**

**Date: October 12, 2022**

**From: SUZANNE LUKE  
DAWN KINDEL  
TIMOTHY CORCORAN**

**Subject: REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 4<sup>TH</sup>  
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 4<sup>th</sup> 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	466,400	456,510	448,016	\$77,293	4%

**Revenue Fiscal Year 2021-22**

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
\$2,418,000	\$1,639,042	\$4,057,042	\$1,763,721

Current Reserve Balance - \$2,258,303 balance after 4<sup>th</sup> Quarter Expenditures.  
The Board expended 96% of its appropriated budget for the fiscal year.

For further information, I've attached revenue and expenditure details as well as the Board's fund condition breakdown.

Given the current reserve balance, staff does not see a need for an adjustment to the Board's fee structure at this time. 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 – This collection is now complete. Staff have collected \$1,614,413.00 on behalf of the Department of Consumer Affairs.

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) 244-6778 or Dawn Kindel at (916) 244-6775.

Attachments as stated

cc: Bismarck Obando, President

## **Fourth Quarter Revenue and Expenditure Summary**

Fiscal Year 2021-2022

Covers July 1, 2021 to June 30, 2022

### **REVENUES**

New Dealer Licensing Fee:	\$812,554
Manufacturer and Distributor Fee	\$809,082
NMVB Filing Fee	\$16,400
Miscellaneous Services	\$57
Arbitration Program	\$949
Year-to-date total:	\$1,639,042

### **EXPENDITURES**

#### **Payroll**

Full-Time staff salaries:	Budgeted Amount \$971,063	Expended \$914,714	Remaining Balance \$56,349
Part-Time staff salaries:	Budgeted Amount \$81,000	Expended \$168,486	Remaining Balance \$-87,486
Benefits:	Budgeted Amount \$544,941	Expended \$463,015	Remaining Balance \$81,926

#### **Operating Expense and Equipment**

*General Expense* (includes equipment, office supplies, dues, legal library, etc.)  
Budgeted Amount \$24,000 Expended \$28,607 Remaining Balance \$-4,607

*Rent:* Budgeted Amount \$165,000 Expended \$158,136 Remaining Balance \$6,864

*Facilities Planning:* Budgeted Amount \$10,000 Expended \$3,036 Remaining Balance \$6,964

*Professional Services (Attorney General):* Budgeted Amount \$12,000 Expended \$10,327  
Remaining Balance \$1,673

*Professional Services (Court Reporters):* Budgeted Amount \$18,000 Expended \$25,508  
Remaining Balance \$-7,508

#### **TOTAL OPERATING EXPENSE AND EQUIPMENT**

Budgeted Amount \$263,188; Expenditure Year to Date \$231,204 – 88%; Balance  
Remaining \$31,984 – 12%

#### **GRAND TOTAL – Fiscal Year 2021-2022**

Budgeted Amount \$1,876,032; Expenditure Year to Date \$1,798,739 - 96%; Balance Remaining  
\$77,293 - 4%



## **STATE OF CALIFORNIA**

# **MEMO**

**To: FISCAL COMMITTEE  
ANNE SMITH BOLAND, CHAIR  
ARDASHES KASSAKHIAN, MEMBER**

**Date: October 10, 2022**

**From: DAWN KINDEL  
HOLLY VICTOR  
LEE MOORE**

**Subject: REPORT ON ADDING A VIRTUAL PAYMENT METHOD FOR  
STAKEHOLDERS' FILING FEES, DOCUMENTS REQUEST FEES AND  
ANNUAL BOARD FEES**

### **BACKGROUND**

The New Motor Vehicle Board (Board) collects annual fees from manufacturers and distributors as well as case filing fees and document request fees. These fees have been historically collected via hard copy checks or by credit card over the phone via the Board's in-office credit card processing terminal. As a result of the Board's office closure brought on by the pandemic, as well as office closures across the nation, many of the Board's stakeholders have switched to virtual banking and have informed Board staff they wish to pay all Board fees in a virtual environment.

Board staff, in conjunction with Department of Motor Vehicles' accounting and contracting staff were able to identify a company to provide this service with a minimal one-time startup fee of \$5000 charged to the Board. ACI Worldwide Inc. (ACI) and the Board entered into an agreement on May 31, 2022, and all Board stakeholders now have the option of paying fees virtually.

ACI offers a quick and easy payment link that allows our stakeholders to pay our fees securely over the web with any major credit or debit card. Board staff provide the stakeholders with a link via email so they can easily make a payment any time of the

day. ACI offers peace of mind when making payments over the web by delivering strong security and fraud management technology and securing card information using encryption technology.

A service fee of 2.3% is charged for every transaction made, which is passed on to our stakeholders when they are making a payment. Our stakeholders are made aware of this fee when the payment link is sent. Prior to rolling out this payment method, staff did a test pilot using manufactures who pay annual fees and were able to fine-tune the payment link to ensure it is user-friendly, as seen below.

## Make A Payment

..... Select Service > **Enter Amount** > Accept Terms > Provide Details > Confirm Details > Digital Receipt



### California, State of - New Motor Vehicle Board

#### Annual Fee; Filing Fees; Document Fees

Enter your Payment Amount, including any penalties or interest, select Payment Option, then click "Continue" to proceed with the payment process.

- Your convenience fee will be calculated and presented on the next page, if applicable.
- Do not use your browser's "Back" button. Instead, navigate using the buttons below.

\* Company Name:

\* Fee Selection:

Description:

\* Payment Amount \$  .

#### Payment Options:

☐ Debit Card



☐ Debit Card



☐ Credit Card



Since implementing electronic payments, several manufacturers have commented how easy it is to make payments with the Board. In addition, it has also allowed staff to cut down on the time it takes to process paper checks and take them to the bank. Should our stakeholders still wish to pay via a check or the physical credit card terminal, those options are still offered.

## **BOARD FEE VIRTUAL PAYMENT STATISTICS**

The Board is currently collecting Board fees from 168 manufacturers.  
Out of those 168 manufacturers, 63 have paid their Board fees so far.  
Out of the 63 manufacturers who paid their Board fees, 46% paid electronically, and 54% paid by check.

## **CONCLUSION**

This memo is being provided for informational purposes only. No Board action is required. If you have any comments or questions, please contact Holly Victor at (916) 244-6782

cc: Bismarck Obando, President

**STATE OF CALIFORNIA**



**MEMO**

**Date: October 4, 2022**

**To: GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE  
ANNE SMITH BOLAND, CHAIR  
RAMON ALVAREZ C., MEMBER  
KATHRYN ELLEN DOI, MEMBER  
RYAN FITZPATRICK, MEMBER**

**AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION  
JAKE STEVENS, CHAIR  
RAMON ALVAREZ C., MEMBER  
ANNE SMITH BOLAND, MEMBER  
KATHRYN ELLEN DOI, MEMBER  
BISMARCK OBANDO, MEMBER**

**From: TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA**

**Subject: REPORT ON THE NEW MOTOR VEHICLE BOARD'S RECENT  
INDUSTRY ROUNDTABLE**

On September 28-29, 2022, the New Motor Vehicle Board ("Board") held its 15<sup>th</sup> Industry Roundtable. 31 people attended Day One and 22 people attended Day Two, in addition to several Board members, staff and speakers. A survey was created in order to identify who attended and solicit feedback on the topics presented. The attendees represented attorneys, governments regulators, dealership personnel, manufacturer personnel and the general public, with most attendees being government regulators, attorneys and manufacturer personnel.

The Board received survey responses from 29 attendees. Positive feedback was received on the surveys and over 90% found this year's topic timely and of value to their businesses. All who responded indicated they would be interested in attending future Board Roundtables.

In regard to the virtual format, survey responses indicated that 72% preferred a virtual event while 28% preferred an in-person event.

General feedback and comments included positive responses to the panelists' presentations. Attendees found the panelists were enthusiastic and knowledgeable about the topics and their presentations set the stage for a great Q&A session. The discussion of efforts to promote EVs in lower-income and rural communities, as well as expanding infrastructure in older, multi-

dwelling units was also of particular interest. Survey responders are also interested in more foundational information, both scientific and practical, regarding EV basics, including batteries, chargers, hybrids vs. electrics and more.

This matter is being agendaized for informational purposes only. No Board action is required. If you have any questions or require additional information, please do not hesitate to call me at (916) 244-6774 or Danielle at (916) 244-6777.



STATE OF CALIFORNIA



MEMO

**To:** LEGISLATIVE COMMITTEE  
BISMARCK OBANDO, CHAIR  
ARDY KASSAKHIAN, MEMBER

**Date:** October 3, 2022

**From:** TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA

**Subject:** DISCUSSION CONCERNING ENACTED LEGISLATION

The following provides a summary of pending State legislation that is of interest to the New Motor Vehicle Board ("Board"). The criteria for reporting on "legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general and does not directly impact the Board or its enabling statute. For purposes of this report "legislation of special interest" is that which directly affects the Board's laws or functions.

Bill summaries include a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available, as well as the final status of the bill.<sup>1</sup>

a. Enacted Legislation of Special Interest:

- (1) **Assembly Bill 2956 – Assembly Members Friedman, Fong, Berman, Cunningham, Daly, Gipson, Kalra, Nazarian, O'Donnell, and Ward)**  
(Introduced February 28, 2022)  
**Status:** Chaptered September 13, 2022 (Chapter 295, Statutes of 2022)  
**Support:** None on file  
**Opposition:** None on file  
**Legislative Counsel's Digest:** Transportation

This bill is the Assembly Transportation Committee Omnibus bill. Among other amendments, this bill deletes obsolete provisions relating to the Board's jurisdiction and other technical changes to the Board's statutes.

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<sup>1</sup> All statutory references are to the Vehicle Code, unless otherwise indicated.

b. Enacted Legislation of General Interest:

- (1) **Assembly Bill 1604 – Assembly Member Holden** (Introduced January 4, 2022)  
**Status:** Chaptered September 13, 2022 (Chapter 313, Statutes of 2022)  
**Support:** Unknown  
**Opposition:** Unknown  
**Legislative Counsel’s Digest:** Civil Service: the Upward Mobility Act of 2022.

The California Constitution establishes the State Personnel Board (board) and requires the board to, among other things, enforce the civil service statutes, prescribe probationary periods and classifications, adopt rules authorized by statute, and review disciplinary actions. The Constitution also requires the executive officer of the board to administer the civil service statutes under the rules of the board. Under existing law, the board is authorized to conduct audits and investigations of the personnel practices of the Department of Human Resources and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. Existing law exempts regulations of the board from the Administrative Procedure Act, except as specified. Existing law establishes the Department of Human Resources and provides that, subject to the requirements of the California Constitution, it succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the board as its designee with respect to the board’s administrative and ministerial functions.

This bill, among other things, would require the board to post notices of proposed changes to regulations for public comment. The bill would require the Department of Human Resources and the board to enter into a memorandum of understanding to determine areas of compliance for nonmerit-related audits and to train board staff on the areas of compliance.

Existing law requires that lists of eligible applicants for civil service positions be established as a result of free competitive examinations. Existing law, with regard to the requirements governing examinations for establishing employment lists, authorizes the Department of Human Resources to designate an appointing power to design, announce, or administer examinations and requires the board to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position.

This bill would require instead that the Department of Human Resources establish best practices for each aspect of the design, announcement, and administration of the examinations for the purpose of increasing diversity of applicant pools on employment lists and develop standards for statements of qualifications used as the examination method in determining the fitness and qualifications of applicants for each class of position, when applicable. The bill would also require the announcement for an examination to include the core competencies, as defined,

and the type of exam method, including the standard statement of qualifications, if applicable.

Existing law requires all appointing authorities of state government to establish an effective program of upward mobility for employees in low-paying occupational groups. Existing law requires each upward mobility program to include annual goals for upward mobility and a timetable for when progress will occur, and requires the department to approve the goals and timetables. Existing law authorizes an appointing authority that determines that it will be unable to achieve the goals to ask the department for a reduction in the goals, as specified.

This bill would, no later than July 1 of each year, require each department to provide a report to the Department of Human Resources that demonstrates the department's progress made toward meeting its upward mobility goals. The bill would repeal the authorization for an appointing authority to ask the Department of Human Resources for a reduction in their annual upward mobility goals, and would instead require the appointing authority to include in the progress report an explanation for the failure to achieve the goals and what requirements are necessary to facilitate achieving the goals, as specified. The bill would, on or before July 1, 2024, require the Department of Human Resources to post each department's upward mobility goals on its internet website. The bill would, on or before January 1 of the following year after each department provides these reports, require the Department of Human Resources to provide a copy of the upward mobility goals and these progress reports to the Legislature.

This matter is for information only at the November 7, 2022, General Meeting. If you have any questions or require additional information, please contact me at (916) 244-6774 or Danielle at (916) 244-6777.



## STATE OF CALIFORNIA

### MEMO

**To:** POLICY AND PROCEDURE COMMITTEE      **Date:** September 30, 2022  
JAKE STEVENS, CHAIR  
RAMON ALVAREZ C., MEMBER

**From:** TIMOTHY M. CORCORAN  
ROBIN P. PARKER

**Subject:** CONSIDERATION OF THE 2022 EDITION OF THE *NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK*

The enclosed *New Motor Vehicle Board Administrative Law Judges' Benchbook* ("Benchbook") was most recently approved at the March 13, 2018, General Meeting. It is being revised to reflect legislative and regulatory changes since that time and enhancements in case management. The table of contents and all page references were updated along with the section entitled "New as of 2022."

There were a number of substantive changes highlighted in underline and strikeout font. Changes that are not reflected include: (1) Re-lettering subdivisions (b) for petitions and (c) for protests in Vehicle Code section 3050 to reflect legislative amendments effective January 1, 2020; (2) Deleting parallel citations in published court opinions; and (3) Reordering Article 4 protests in front of Article 5 protest in footnote 24 on pages 37-38.

A clean version of the Benchbook without the highlighted font is attached making it easier to read.

To timely revise the Benchbook, which is an internal training manual, the staff recommend that future updates be reported on the Executive Director's Report.

This topic is being agendized for discussion and consideration at the November 7, 2022, General Meeting. If you have any questions or require additional information, please do not hesitate to contact us at (916) 445-1888.

Attachment

cc: Bismarck Obando



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***November 7, 2022***

**A.**

**ADMINISTRATIVE  
MATTERS**

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
1. <b><u>Revise the Board's Logo</u></b> Dawn Kindel, Lee Moore, Holly Victor	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.	November 2022	In progress. This will be discussed at the November 7, 2022, General Meeting.
2. <b><u>Update concerning moving the Board's Offices to DMV Headquarters</u></b> Tim Corcoran, Dawn Kindel	Update regarding moving of the Board's Offices upon the expiration of the current lease to DMV Headquarters.	Ongoing	In progress. An update will be given at the November 7, 2022, General Meeting.
<b><u>Update Guide to the New Motor Vehicle Board</u></b> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	March 2022	<b><u>Completed.</u></b> The members approved the 2022 Guide at the March 30, 2022, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
1. <b><u>Solon C. Soteris Employee Recognition Award Recipient</u></b> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	January 2023	In progress. The nominee will be considered at the January 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>EXECUTIVE COMMITTEE</b>			
<b>1. <u>Update concerning Board's Compliance with 1996 Performance Audit</u></b> Tim Corcoran, Robin Parker	Update regarding the Board's compliance with the 1996 Performance Audit and the resultant Corrective Action Plan	November 2022	In progress. An update will be given at the November 7, 2022, General Meeting.
<b>FISCAL COMMITTEE</b>			
<b>1. <u>Quarterly Financial Reports</u></b> Dawn Kindel, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<b>2. <u>Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel	The staff will provide a report concerning the out-of-state travel plans for the upcoming fiscal year.	Ongoing	Out-of-state travel plans are not permitted under current restrictions. Plans for fiscal year 2023-2024 will be discussed at a future meeting.
<b>3. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2022-2023.	November 2022	In progress. The 2022-2023 Budget will be presented for consideration at the November 7, 2022, General Meeting.
<b>4. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> Dawn Kindel, Suzanne Luke	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	November 2022	In progress. A status report will be provided at the November 7, 2022, General Meeting.

**November 2022 Executive Director's Report**



Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>5. <u>Report on adding a virtual payment method for stakeholders' filing fees, document request fees and annual Board fees</u></b> Dawn Kindel, Lee Moore, Holly Victor	The staff will provide a report concerning the Board's ability to add a virtual payment method for the Board's various fee collections.	November 2022	In progress. A status report will be provided at the November 7, 2022, General Meeting.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>1. <u>Host Board Administrative Law Judge Roundtable</u></b> Robin Parker, Danielle Phomsopha	Host a Board Administrative Law Judge ("ALJ") Roundtable for purposes of education and training. Provide an opportunity for 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 2023.
<b>2. <u>Participant Surveys for Industry Roundtable</u></b> Tim Corcoran, Danielle Phomsopha	Based upon the feedback provided at the Industry Roundtable in the surveys, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	November 2022	In progress. A memorandum summarizing the feedback will be presented at the November 7, 2022, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>Host Industry Roundtable</b> Tim Corcoran, Danielle Phomsopha	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. This year's focus will be on Equity and EVs and will be jointly hosted with the Ad Hoc Committee on Equity, Justice and Inclusion.	September 28-29, 2022	<u>Completed.</u> The Industry Roundtable was held on September 28-29, 2022.
<b>LEGISLATIVE COMMITTEE</b>			
<b>1. <u>Review of Enacted Legislation</u></b> Tim Corcoran, Danielle Phomsopha	The staff will provide an overview of enacted legislation of special and general interest.	November 2022	In progress. A report will be provided at the November 7, 2022, General Meeting.
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b>1. <u>Update New Motor vehicle Board Administrative Law Judges Benchbook</u></b> Tim Corcoran, Robin Parker	Update the <i>New Motor Vehicle Board Administrative Law Judge's Benchbook</i>	November 2022	In progress. The revised ALJ Benchbook will be considered at the November 7, 2022, General Meeting.
<b>2. <u>Draft Proposed Regulation that Allows Representation by Attorneys Licensed Outside of California</u></b> Robin Parker	In compliance with the Administrative Procedure Act, add Section 551.26 to the Board's regulations to formalize the process that allows parties in a protest or petition to be represented by attorneys licensed outside California.	November 2022	In progress. The proposed regulation will be considered at the November 7, 2022, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Promulgate Amendment to the Board's Conflict of Interest Code</u></b> 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. Staff identified language that needs to be updated to reflect Dawn Kindel's promotion to Staff Services Manager II.	Fall 2022	<u>Completed.</u> The Board approved the text at the February 16, 2021, General Meeting. The Fair Political Practices Commission has approved the code and the Office of Administrative Law filed the amendments with the Secretary of State on August 9, 2022. The new code was effective September 8, 2022.
<b><u>Promulgate Regulatory Amendments to Sections 550.20 and 564 of Title 13 of the California Code of Regulations</u></b> Danielle Phomsopha	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.	Fall 2022	<u>Completed.</u> The Office of Administrative Law approved the rulemaking submission on July 28, 2022. The regulations were effective October 1, 2022.
<b><u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	March 2022	<u>Completed.</u> The revised Guide was approved by the members at the March 30, 2022, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Draft the Export or Sale-For-Resale Prohibition Policy Guide</u></b> Robin Parker	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	<b><u>Completed.</u></b> The revised Guide was approved by the members at the March 30, 2022, General Meeting.
<b>AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION</b>			
<b><u>1. Develop Strategies for Board Consideration</u></b> Tim Corcoran, Danielle Phomsopha	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.	Ongoing	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. The 2022 Industry Roundtable will encompass discussions on Equity and EVs.
<b><u>2. Participant Surveys for Industry Roundtable</u></b> Danielle Phomsopha	Based upon the feedback provided at the Industry Roundtable in the surveys, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	November 2022	In progress. A memorandum summarizing the feedback will be presented at the November 7, 2022, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Host Industry Roundtable</u></b> Tim Corcoran, Dawn Kindel, Danielle Phomsopha	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. This year's focus will be on Equity and EVs and will be jointly hosted with the Government and Industry Affairs Committee.	September 28-29, 2022	<b><u>Completed.</u></b> The Industry Roundtable was held on September 28-29, 2022. A report on the event will be provided at the November 7, 2022, General Meeting.

# **B. CASE MANAGEMENT**

# CASE VOLUME

MARCH 12, 2022, THROUGH OCTOBER 13, 2022

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	11	13	10
3060	Modification	15	0	17
3062	Establishment	2	4	10
3062	Relocation	1	2	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	1	3	9
3065.1	Incentive Program Reimbursement	0	0	5
3065.3	Performance Standard	1	2	1
3065.4	Retail Labor Rate or Retail Parts Rate	6	8	11
3070	Termination	1	1	1
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	1	1	1
TOTAL CASES:		39	33	65

# PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
<b>ALJ</b>	Administrative Law Judge	<b>Bd. Mtg.</b>	Board Meeting
<b>HRC</b>	Hearing Readiness Conference	<b>IFU</b>	Informal Follow-Up
<b>MH</b>	Merits Hearing	<b>CMH</b>	Continued Merits Hearing
<b>RMH</b>	Resumed Merits Heading	<b>MSC</b>	Mandatory Settlement Conference
<b>CMSC</b>	Continued Mandatory Settlement Conference	<b>RMSC</b>	Resumed Mandatory Settlement Conference
<b>MTCP</b>	Motion to Compel Production	<b>MTC</b>	Motion to Continue
<b>MTD</b>	Motion to Dismiss	<b>PHC</b>	Pre-Hearing Conference
<b>CPHC</b>	Continued Pre-Hearing Conference	<b>RPHC</b>	Resumed Pre-Hearing Conference
<b>PD</b>	Proposed Decision	<b>RFPD</b>	Requests for Production of Documents
<b>PSDO</b>	Proposed Stipulated Decision and Order	<b>ROB</b>	Rulings on Objections
<b>CROB</b>	Continued Rulings on Objections	<b>RROB</b>	Resumed Rulings on Objections
<b>SC</b>	Status Conference	<b>CSC</b>	Continued Status Conference
* Consolidated, non-lead case			

## PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	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.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification

November 2022 Executive Director's Report



	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
2.	PR-2506-17* 1-23-17	Parties working on settlement agreement	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	Protestant: Christian Scali  Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification
3.	PR-2673-20 6-4-20	Board consideration 11-7-22 General Meeting	Bonander Auto, Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC	Protestant: Andrew Stearns  Respondent: Megan O. Curran, Dyana K. Mardon, Roberta F. Howell	Termination
4.	PR-2704-20 10-26-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
5.	PR-2705-20* 10-26-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment
6.	PR-2706-20* 10-26-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment
7.	PR-2707-20* 10-26-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
8.	PR-2708-20* 10-28-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Chrysler)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment
9.	PR-2709-20* 10-28-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Dodge)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment
10.	PR-2710-20* 10-28-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Jeep)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
11.	PR-2711-20* 10-28-20	HRC: 2-2-23 MH: 3-6-23 (10 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (RAM)	Protestant: Gavin Hughes, Robert Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Lauren Deeb	Establishment
12.	PR-2717-20 11-19-20	RSC: 10-26-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (15-day notice)	Protestant: Timothy D. Robinett  Respondent: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
13.	PR-2718-20* 12-9-20	RSC: 10-26-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (60-day notice)	Protestant: Timothy D. Robinett  Respondent: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
14.	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	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Termination
15.	PR-2720-21* 1-20-21	Parties finalizing settlement	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Warranty
16.	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	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
17.	PR-2722-21* 1-20-21	Parties finalizing settlement	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Warranty
18.	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	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Termination
19.	PR-2724-21* 1-20-21	Parties finalizing settlement	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Warranty

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
20.	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	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Termination
21.	PR-2726-21* 1-20-21	Parties finalizing settlement	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Warranty
22.	PR-2727-21* 1-21-21	Parties finalizing settlement	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Franchisor Incentive

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
23.	PR-2728-21* 1-21-21	Parties finalizing settlement	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Franchisor Incentive
24.	PR-2729-21* 1-21-21	Parties finalizing settlement	YNOT6 II, LLC, a California limited liability company dba Russell Westbrook Hyundai of Garden Grove v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Franchisor Incentive
25.	PR-2730-21* 1-21-21	Parties finalizing settlement	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Franchisor Incentive



	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
26.	PR-2731-21* 1-22-21	Parties finalizing settlement	YNOT6 III, LLC, a California limited liability company, fdba Genesis of Huntington Beach v. Genesis Motor America, LLC, a California limited liability company	Protestant: Alton G. Burkhalter, Ros M. Lockwood  Respondent: John P. Streelman, Jacob F. Fischer, Lauren Deeb	Warranty
27.	PR-2732-21 2-11-21	RSC: 10-26-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	Protestant: Timothy D. Robinett  Respondent: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Warranty
28.	PR-2733-21* 2-11-21	RSC: 10-26-22	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	Protestant: Timothy D. Robinett  Respondent: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Franchisor Incentive

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
29.	PR-2750-21 10-26-21	Parties are working on amended dates for discovery and merits hearing	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Buick)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
30.	PR-2751-21* 10-26-21	Parties are working on amended dates for discovery and merits hearing	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Cadillac)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
31.	PR-2752-21* 10-26-21	Parties are working on amended dates for discovery and merits hearing	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Chevrolet)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
32.	PR-2753-21* 10-26-21	Parties are working on amended dates for discovery and merits hearing	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (GMC)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
33.	PR-2754-21 12-7-21	ROB: 10-27-22 HRC: 12-9-22 MH: 1-30-23 (5 days)	Auto Gallery, Inc., dba Auto Gallery Mitsubishi - Corona v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Dean A. Martoccia, William F. Benson, Brandon L. Bigelow	Warranty
34.	PR-2755-21* 12-7-21	ROB: 10-27-22 HRC: 12-9-22 MH: 1-30-23 (5 days)	Soraya, Inc., dba Auto Galley Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Dean A. Martoccia, Brandon L. Bigelow	Warranty

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
35.	PR-2759-21 12-30-21	ROB: 10-12-22 HRC: 3-8-23 MH: 4-25-23 (6 days)	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Steven M. Kelso, Gwen J. Young, H. Camille Papini-Chapla	Retail Labor Rate
36.	PR-2765-22 2-15-22	ROB: 10-31-22 HRC: 4-21-23 MH: 6-5-23 (4 days)	Rally Auto Group, Inc. v. Kia America, Inc.	Protestant: Victor P. Danhi, Franjo M. Dolenac, George Koumbis  Respondent: Michael L. Turrill, Jonathan R. Stulberg, John J. Sullivan	Termination
37.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 12-1-22	Motorrad LLC, a California limited liability company dba BMW Motorcycles of San Francisco v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
38.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Moto Miyako Inc., a California Corporation dba BMW Motorcycles of Burbank v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
39.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	O & O Motorrad, Incorporated, a California Corporation dba San Diego BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
40.	PR-2772-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Anlind of Temecula, Inc., a California Corporation dba BMW Motorcycles of Temecula v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
41.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Central Coast Powersports LLC, a California limited liability company dba BMW Motorcycles of Ventura County v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
42.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	San Jose Motosport, Inc., a California Corporation dba San Jose BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
43.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Ride on Powersports, Inc., a California Corporation dba BMW Motorcycles of Riverside v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
44.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Motorrad LLC, a California limited liability company dba BMW Motorcycles of Concord v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
45.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
46.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 12-1-22	Winner Motorcycles, Limited Liability Company dba BMW Motorcycles of Santa Rosa v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
47.	PR-2788-22 5-5-22	MTD denied  HRC: 6-9-23 MH: 7-17-23 (7 days)	CJ's Road to Lemans Corp dba Audi Fresno, a California v. Volkswagen Group of America, Inc., a New Jersey corporation, dba Audi of America, Inc.	Protestant: Johnathan Michaels, Matthew Van Fleet  Respondent: Owen H. Smith, Connor A. Gants, Nicholas W. Laird, David B. Lurie	Termination
48.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 12-1-22	SEAVCO, a California corporation dba Irv Seaver Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
49.	PR-2791-22 6-24-22	ROB: 11-8-22 HRC: 4-7-23 MH: 5-23-23 (3 days)	Wheeler Auto Group Inc. v. General Motors LLC (Chevrolet)	Protestant: David Cole Wheeler and Michael Charles Wheeler, In pro per  Respondent: Dean Martoccia, Katherine Moskop, James McGrath	Retail Labor Rate



	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
50.	PR-2792-22 6-24-22	ROB: 11-8-22 HRC: 4-7-23 MH: 5-23-23 (3 days)	Wheeler Auto Group Inc. v. General Motors LLC (Cadillac)	Protestant: David Cole Wheeler and Michael Charles Wheeler, In Pro Per  Respondent: Dean Martoccia, Katherine Moskop, James McGrath	Retail Labor Rate
51.	PR-2793-22 6-24-22	ROB: 11-8-22 HRC: 4-7-23 MH: 5-23-23 (3 days)	Wheeler Auto Group Inc. v. General Motors LLC (Chevrolet)	Protestant: David Cole Wheeler and Michael Charles Wheeler, In pro per  Respondent: Dean Martoccia, Katherine Moskop, James McGrath	Retail Parts Rate

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
52.	PR-2794-22 6-24-22	ROB: 11-8-22 HRC: 4-7-23 MH: 5-23-23 (3 days)	Wheeler Auto Group Inc. v. General Motors LLC (Cadillac)	Protestant: David Cole Wheeler and Michael Charles Wheeler, In Pro Per  Respondent: Dean Martoccia, Katherine Moskop, James McGrath	Retail Parts Rate
53.	PR-2795-22 7-1-22	ROB: 12-19-22 HRC: 5-5-23 MH: 6-19-23 (4 days)	Hardin Irvine Automotive, Inc., dba Kia of Irvine v. Kia America, Inc.	Protestant: Victor P. Danhi, Franjo M. Dolenac  Respondent: Colm Moran	Establishment
54.	PR-2796-22 7-1-22	ROB: 12-19-22 HRC: 5-5-23 MH: 6-19-23 (4 days)	Garden Grove Automotive, Inc. dba Garden Grove Kia v. Kia America, Inc.	Protestant: Victor P. Danhi, Franjo M. Dolenac  Respondent: Colm Moran	Establishment
55.	PR-2797-22 7-20-22	MTD Opposition: 10-28-22 Reply: 11-11-22 Hearing: 11-30-22	JKC Cathedral City, Inc., dba Palm Springs Kia v. Kia America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Jonathan R. Stulberg, John J. Sullivan	Performance Standard

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
56.	PR-2798-22 7-28-22	Parties working on settlement	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Lauren A. Deeb	Modification
57.	PR-2799-22 7-28-22	Parties working on settlement	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Lauren A. Deeb	Modification
58.	PR-2800-22 7-28-22	Parties working on settlement	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Lauren A. Deeb	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
59.	PR-2801-22 7-28-22	Parties working on settlement	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark T. Clouatre, John P. Streelman, Lauren A. Deeb	Modification
60.	PR-2802-22 9-1-22	Parties working on proposed dates	Puente Hills Hyundai, LLC, dba Puente Hills Hyundai v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.	Warranty
61.	PR-2803-22 9-15-22	Parties working on proposed dates	KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Jonathan R. Stulberg, John J. Sullivan	Retail Labor Rate
62.	PR-2804-22 9-20-22	Parties are working on an MSC date	Banning RV Discount Centers, Inc. v. KZRV, L.P. A/K/A KZ Recreational Vehicles	Protestant: Christopher Ramey Respondent: Vincent J. Axelson	RV Termination
63.	PR-2805-22 9-29-22	PHC: 10-17-22	Putnam Automotive, Inc., dba Volvo of Burlingame v. Volvo Car USA, LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.	Retail Labor Rate

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
64.	PR-2806-22 10-12-22	PHC: 10-27-22	LJT Holdings LLC dba Infiniti of Mission Viejo, a Limited Liability Company v. Infiniti Division of Nissan North America, Inc., a Delaware corporation	Protestant: Halbert B. Rasmussen	Termination

## PETITIONS

	CASE NUMBER/ DATE FILED	STATUS	PETITION NAME	COUNSEL
1.	P-463-22 6-20-22	Board consideration 11-7-22 General Meeting	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	Petitioner: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Lisa M. Gibson, Amy M. Toboco

# **C. 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 section 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure section 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.

By notice dated January 27, 2022, the Court determined that this case is not suitable for mediation. The Court issued an order dated January 27, 2022, in this regard and all proceedings in the appeal are to recommence as if the notice of appeal had been filed on January 27, 2022.

*The record was filed with the Court of Appeal on June 28, 2022. On August 12, 2022, Barber Honda associated with Douglas J. Collodel, Esq. of Clyde & Co US LLP.*

#### **November 2022 Executive Director's Report**

*Barber Honda requested a 30-day extension to file its brief, which was granted on September 6, 2022. Barber Honda's opening brief was filed October 7, 2022, American Honda, Galpinsfield, and the Board's briefs are due around November 7, 2022, and Barber Honda's reply brief is due around November 28, 2022.*

2. WESTERN TRUCK PARTS & EQUIPMENT COMPANY LLC DBA WESTERN TRUCK CENTER, a California limited liability company v. NEW MOTOR VEHICLE BOARD; VOLVO TRUCKS NORTH AMERICA, a division of VOLVO GROUP NORTH AMERICA, LLC, a Delaware limited liability company  
Sacramento County Superior Court No. 34-2022-80003827  
New Motor Vehicle Board No. CRT-281-22  
Protest No. PR-2740-21

At the January 12, 2022, General Meeting, the Public Members of the Board adopted ALJ Anthony M. Skrocki's Proposed Order Granting Respondent's Motion to Dismiss as the Board's final Decision. The Decision dismissed the protest because it was not timely filed and therefore, the Board had no jurisdiction over the matter.

On February 28, 2022, Western Truck filed a "Petition for Writ of Administrative Mandate." The writ was served on February 28, 2022. A copy of the record has been requested.

Petitioner contends that the Board's Decision is not supported by substantial evidence in light of the whole administrative record.

Petitioner disputes several of the Board's findings. It argues that it timely filed its protest within 30 days after the end of the appeal procedure provided by Real Party in Interest, Volvo Trucks. However, the Decision found that the Alternative Dispute Resolution ("ADR") provisions in the dealer agreement between the parties did not constitute an "appeal procedure" as contemplated by the Vehicle Code.

Specifically, Petitioner argues, the record does not support the Decision's narrow interpretation of an "appeal procedure" and claims that portions of the ADR procedure are an appeal procedure and Petitioner was required to comply with that procedure pursuant to the terms of the dealer agreement.

Further, the Decision also concluded that Petitioner did not pursue the ADR Procedure to an "end." However, Petitioner argues this is not supported by any evidence. It writes that since parties could not resolve the dispute in the initial stages of the ADR procedure, it was not required to submit the dispute for further steps through the ADR procedure.

Petitioner requests that the Superior Court issue a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and remand the matter to the Board with instructions to deny the Motion to Dismiss.

Following further staff review of the writ, Bismarck Obando, Board President, will determine whether the Board will participate via the Attorney General's Office if there is a state interest at issue in the writ.

On March 21, 2022, Bismarck Obando determined that there is not an important state interest at issue and the Board will not participate via the Attorney General's Office.

*On April 1, 2022, Real Party in Interest, Volvo Trucks, filed its Answer.*

*On August 26, 2022, Petitioner filed its Memorandum in Support of Petition for Writ of Administrative Mandate and supporting declaration.*

*On September 19, 2022, Real Party in Interest, Volvo Trucks, filed its Brief in Opposition to Petition for Writ of Administrative Mandate and supporting declaration.*

*On September 29, 2022, Petitioner filed its Reply in Support of Petition for Writ of Administrative Mandate.*

*The Petition for Writ of Mandate is set to be heard on October 14, 2022, at 2:30 p.m.*

3. SUBARU OF AMERICA, INC. v. NEW MOTOR VEHICLE BOARD; COURTESY AUTOMOTIVE GROUP, INC. dba COURTESY SUBARU OF CHICO  
Alameda County Superior Court No. 22CV010968  
New Motor Vehicle Board No. CRT-282-22  
Protest No. PR-2570-18

*On March 20, 2019, pursuant to Vehicle Code sections 3050.7, 3060, 3061, 3066, and 3067, the parties sought to resolve their termination protest by entering into a Confidential Agreement and Stipulated Decision and Order (Stipulated Decision).*

*The Public Members of the Board approved the terms of the Stipulated Decision by order dated April 9, 2019. The Board retained continuing jurisdiction over this matter solely to determine if there has been a failure by Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico (Courtesy) to materially comply with any of the conditions of the Stipulated Decision after a timely request.*

*In 2020, a dispute arose between Courtesy and Subaru of America, Inc. (SOA) concerning Courtesy's compliance with the terms of the Stipulated Decision.*

*ALJ Evelyn Matteucci was assigned to this matter. After extensive briefing, multiple witness' testimony was taken on September 14-16, 2021, and October 18-19, 26, and 28, 2021.*

*On March 24, 2022, ALJ Matteucci issued a "Confidential Decision Resolving Stipulated Decision and Order Dispute." The Parties expressly waived any claim that*

*the Board itself should consider the ALJ's Decision. This Decision is not subject to a document request or Public Records Act Request.*

*On May 9, 2022, SOA filed a confidential "[un-redacted] Petition for Writ of Administrative Mandate" (Petition) and redacted version. A copy of the administrative record has been requested.*

*In general, SOA contends the ALJ's determination is not supported by the evidence or the ALJ's findings. SOA maintains it was denied a fair hearing. SOA seeks, in part, the following relief: (1) An order reversing ALJ Matteucci's determination; (2) For an order finding that SOA is the prevailing party in this matter; and (3) For such other and further relief as the Court deems just and proper.*

*On May 31, 2022, Bismarck Obando, Board President, determined that there is an interest in participating in the writ via the Attorney General's Office. This matter will be agendized for the November 7, 2022, General Meeting for a closed Executive Discussion with the Public Members.*

*The Hearing on SOA's Motion to Seal portions of its Petition and Exhibits 1 and 2 thereto was scheduled for June 21, 2022, but continued to July 5, 2022, because SOA did not lodge the unredacted records with the Court in compliance with the Rules of Court 2.550 and 2.551. SOA is to lodge the records no later than June 24, 2022. The hearing was continued until July 7, 2022, and then again until July 12, 2022. The Court granted the motion and ordered that SOA's Petition and Exhibits 1 and 2 be sealed consistent with the redacted versions filed with the Court.*

*A Case Management Conference was held on June 28, 2022. The Board had until August 15, 2022, to prepare the administrative record; it was completed on July 14, 2022.*

*On August 11, 2022, SOA filed a motion to seal the entire administrative record. The September 2, 2022, Tentative Ruling granted the "unopposed motion to seal and intends to file the proposed order provided by" SOA. "The Court does not make any findings with regard to whether documents in the Administrative Record might be subject to disclosure under the California Public Records Act ("CPRA"), and this Order is not intended to alter any party or entity's duties or rights under the CPRA. The Motion to Seal Notice of Motion and Motion To Seal Administrative Record; Declaration of Lisa M. Gibson in Support Thereof filed by Subaru Of America, Inc. on 08/11/2022 is Granted."*

*The administrative record was filed by SOA with the Court on August 12, 2022, so the Board's Answer was filed on September 12, 2022.*

*Courtesy filed a Demurrer on August 29, 2022, which will be heard on October 18, 2022, at 10:00 a.m. The Board will not participate in the demurrer.*

*A subsequent Case Management Conference was held on August 30, 2022. Due to the Demurrer filed by Courtesy, the Court continued the Case Management Conference to October 18 (the date for the hearing on the Demurrer). SOA raised its arguments about the Board's withholding of the staff summary of the Stipulated Decision provided to the Public Members on the basis of privilege. After some discussion, it was agreed that the Board will provide a privilege log by September 7, 2022, that provides the basic information about the document in question and if SOA wishes to contest privilege, then SOA can file a motion, which would be heard the same day as the Demurrer (October 18). SOA's motion to compel was filed on September 22, 2022. On October 11, 2022, SOA filed a request for judicial notice in support of its reply to the motion to compel that will also be heard on October 18, 2022.*

# NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

MARCH 12, 2022, THROUGH OCTOBER 13, 2022

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

## SECTION 3060/3070

Manufacturer	Number of Notices
BMW/Mini	65
Ford	0
GM (Buick, Cadillac, Chevrolet, GMC)	0
Honda/Acura	0
Hyundai/Genesis	4
Kia	0
Nissan/Infiniti	2
Stellantis (Chrysler, Jeep, Dodge, RAM,)	476
Stellantis (Alfa Romeo, FIAT)	34
Stellantis (Maserati)	15
Subaru	0
Toyota/Lexus	66
Volkswagen/Audi	1
Miscellaneous Car	31
Miscellaneous Motorcycles	21
Miscellaneous Recreational Vehicle	1
<b>Total</b>	<b>716</b>

## SECTION 3062/3072

Manufacturer	Number of Notices
BMW	0
Ford	0
GM (Buick, Cadillac, Chevrolet, GMC)	1
Honda/Acura	0
Hyundai/Genesis	2
Kia	2
Nissan/Infiniti	0
Stellantis (Chrysler, Jeep, Dodge, RAM,)	0
Stellantis (Alfa Romeo, FIAT)	0
Stellantis (Maserati)	0
Subaru	1
Toyota	0
Volkswagen/Audi	1
Miscellaneous Car	0
Miscellaneous Motorcycles	1
Miscellaneous Recreational Vehicle	0
<b>Total</b>	<b>8</b>



**STATE OF CALIFORNIA**

## **MEMO**

**To: ALL BOARD MEMBERS**

**Date:** October 24, 2022

**From: TIMOTHY M. CORCORAN  
NEW MOTOR VEHICLE BOARD  
(916) 244-6774**

**Subject: BOARD MEETING DATES**

The following identifies planned Board meeting dates:

- November 7, 2022, General Meeting (via Zoom and teleconference)
- January 2023, General Meeting (via Zoom and teleconference)
- Spring 2023, General Meeting (via Zoom and teleconference)
- Fall 2023, General Meeting (date and location to be determined)
- Industry Roundtable (date and location to be confirmed)
- Winter 2023, General Meeting (date and location to be determined)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 244-6774.





STATE OF CALIFORNIA

## MEMO

**To:** POLICY AND PROCEDURE COMMITTEE      **Date:** September 30, 2022  
JAKE STEVENS, CHAIR  
RAMON ALVAREZ C., MEMBER

**From:** TIMOTHY M. CORCORAN  
ROBIN P. PARKER

**Subject:** DISCUSSION AND CONSIDERATION OF PROPOSED REGULATION  
REGARDING REPRESENTATION IN PROTESTS OR PETITIONS (13  
CCR § 551.26)

Although the Board's regulations contain many references to "agents" and "representatives" that infer representation by a non-attorney or non-California-attorney, there is not a regulation pertaining to representation in protests or petitions. Non-California-attorney representatives have appeared before the Board for decades. Manufacturers and distributors have been represented by in-house counsel that were licensed as attorneys in other states since 1977.<sup>1</sup> Out-of-state attorneys from private law firms have appeared in protests and petitions dating back to the mid-to-late 1980s.

In the absence of a regulation, the Board has relied on the *pro hac vice* provisions in the California Rules of Court since about 1997. Rule 9.40 provides that after moving for leave to practice before a court, the attorney desiring to practice *pro hac vice* must apply to the State Bar and submit a \$50.00 application fee.<sup>2</sup> The Board's practice has been to require out-of-state attorneys to submit an application to appear *pro hac vice* identifying the associated California counsel. This practice was vetted with the California State Bar as early as 1997 and as recently as July 6, 2022. The consistent response from the State Bar is that it does not have jurisdiction over the Board, and they are only interested in *pro hac vice* applications for cases filed in Superior Court (and up).

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<sup>1</sup> The historical data in this memo is derived from Board adopted decisions dating back to 1974.

<sup>2</sup> The California State Bar's website explains that: "An attorney who doesn't live, work, or conduct regular business in California can petition the court to represent their client under a title called "Pro Hac Vice" meaning "for this occasion." (<https://www.calbar.ca.gov/Admissions/Special-Admissions/Pro-Hac-Vice>)

To formalize this process, the Board is proposing the following regulation:

13 CCR § 551.26. Representation in Protests or Petitions.

Any party shall have the right to appear at any hearing by representing itself, by counsel, or by other representative.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Section 3050, Vehicle Code.

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq.<sup>3</sup> Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

This matter is being agendaized for discussion and consideration at the November 7, 2022, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

cc: Bismarck Obando, President

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<sup>3</sup> If this proposed regulation is approved by the Office of Administrative Law, the current *pro hac vice* application process would be discontinued and the *Guide to the New Motor Vehicle Board* and website would be updated.



## DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: May 11, 2022

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: BONANDER AUTO, TRUCK & TRAILER, INC., a California Corporation v.  
DAIMLER TRUCK NORTH AMERICA, LLC  
Protest No. PR-2673-20

TYPE: Vehicle Code section 3060 Termination

### PROCEDURAL SUMMARY:

- FILED ON CALENDAR: June 4, 2020
- MOTIONS FILED: Respondent's "Motion to Dismiss Protest"
- INITIAL BOARD CONSIDERATION: February 16, 2021
- ORDER OF REMAND: February 22, 2021
- REMAND HEARINGS: September 22, 2021; January 6, 2022
- COUNSEL FOR PROTESTANTS: Andrew V. Stearns, Esq.  
Robert B. Robards, Esq.  
Gaurav D. Sharma, Esq.  
Robards & Stearns, PC
- COUNSEL FOR RESPONDENT: Dyana K. Mardon, Esq.  
Roberta F. Howell, Esq.  
Foley & Lardner LLP

### EFFECT OF PROPOSED ORDER:

The "(Proposed) Findings, Conclusions, and Recommendations Following Order of Remand" recommend the Board take no action regarding Respondent's Motion to Dismiss. As the two January 2017 Agreements advocated by Respondent as being controlling have been found to be unlawful and void, Respondent should not be granted any relief as to its Motion to Dismiss. The parties should be left where they stand. As this results in the prior franchises continuing to exist, Protestant would remain a franchisee as to both its Turlock and Merced locations.

## **SUMMARY OF (PROPOSED) FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS:**

- Protestant, Bonander Auto, Truck and Trailer (Bonander), is a Western Star Trucks (Western Star) franchisee located in Turlock. Merced Truck & Trailer (MT&T), a wholly owned subsidiary of Bonander, is an authorized satellite/branch location of Bonander for Western Star service and parts sales only and is located 25 miles away in Merced.
- Beginning with the initial franchise between Western Star and Bonander in 1994, Bonander was a dealer franchisee at the Turlock location and was also a service and parts sales franchisee at the Merced location. The Merced franchises were created by addenda to Bonander's Turlock franchises followed by separate franchises between Western Star and Bonander for the Merced location.
- On January 18, 2017, Western Star and Bonander executed a franchise for the Turlock location but the franchise addendum did not include Merced as a Branch location. On January 25, 2017, Western Star and MT&T (not Bonander) executed a Parts and Service-Only Agreement for the Merced location. So long as Bonander was a party by way of an addendum to its Turlock franchise or in a separate agreement for the Merced location, the agreement for the Merced location was a "franchise" of Bonander, as defined in Vehicle Code section 331(a).<sup>1</sup> However, the January 25, 2017 Parts and Service-Only Agreement for the Merced location was not a franchise of Bonander as Bonander was not a party to it. Nor was the January 25, 2017 Parts and Service-Only Agreement a franchise of MT&T as MT&T is not authorized to sell Western Star vehicles. Thus, Section 331(b) excluded the January 25, 2017 MT&T Merced agreement from the definition of a "franchise."
- The combined effect of the January 18, 2017 franchise of Bonander for only the Turlock operations and the January 25, 2017 Service-Only Agreement for the Merced operations (signed only by MT&T and Western Star) resulted in the termination of Bonander's status as a Western Star franchisee for the Merced location.
- By letter dated May 11, 2020, Respondent, Daimler Truck North America, (DTNA) (that had become the parent corporation of Western Star but was not a party to any of the agreements pertaining to Bonander or MT&T) gave notice to MT&T that the January 25, 2017 Western Star/MT&T Service-Only Agreement for Merced would be terminated as of June 30, 2020. This May 11, 2020 notice gave no reasons for the termination, did not otherwise comply with Section 3060 and was not provided to Bonander or the Board. However, if the January 25, 2017 MT&T agreement is effective and is the only agreement pertaining to the Merced location as alleged by DTNA, Section 3060 would not be applicable as the agreement is not a franchise.
- There were never any notices provided by Western Star or DTNA to Bonander or the Board at any time during the Western Star/Bonander relationship that complied with Section 3060 relating to either Bonander's Turlock franchise or Bonander's Merced franchise.

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<sup>1</sup> All statutory references are to the California Vehicle Code.

- A termination protest was filed by MT&T in response to the May 11, 2020 notice of termination from DTNA. This protest was dismissed by the Board as the January 25, 2017 agreement sought to be terminated by DTNA was between only MT&T and Western Star and was not a franchise as MT&T was not authorized to sell Western Star Vehicles.
- As to this protest filed by Bonander, the ALJ initially recommended it also be dismissed as the January 25, 2017 Merced agreement DTNA sought to terminate was not a franchise and even if it were Bonander was not a party to it and had no standing to protest its termination as Bonander's claim was based upon its status as owner and sole shareholder of MT&T.
- The Board, after considering the ALJ's prior proposed order regarding Bonander's protest and noticing the addendum to a prior agreement under which Bonander was a franchisee for the Merced branch location, remanded the matter to the ALJ to determine if the prior agreements between Western Star and Bonander, establishing MT&T in Merced as a branch location of Bonander, gave standing to Bonander to protest the termination of its Merced operations.
- In compliance with the Remand Order, the ALJ requested additional briefing and documents pertaining to the agreements between Bonander and Western Star and between MT&T and Western Star. Upon their submissions, the ALJ conducted a hearing regarding the documents.
- During this hearing the ALJ stated that, based upon what was submitted and argued, there was a possibility that the agreements DTNA alleged to be controlling, the January 18, 2017 franchise of Bonander and the January 25, 2017 Service-Only Agreement of MT&T, were void due to illegality and as a matter of public policy should not be enforced.
- The ALJ explained the issues that needed to be addressed and requested additional briefing. A subsequent hearing was held and the matter was submitted to the ALJ.
- The ALJ found that the January 18, 2017 agreement between Western Star and Bonander for the Turlock location and the January 25, 2017 Service and Parts Only Agreement between Western Star and MT&T were "unlawful"<sup>2</sup> as Western Star had not complied with the provisions of Section 3060 at any time during its relationship with Bonander as a Western Star franchisee for the Turlock and the Merced locations.

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<sup>2</sup> Section 11713.3 states:

**It is unlawful** and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...

(l) **To modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060)** or Article 5 (commencing with Section 3070) of Chapter 6 of Division 2. (Emphasis added.)

- The ALJ concluded that the two agreements, claimed by DTNA to be the controlling documents, were void and as a matter of public policy DTNA is precluded from enforcing them.
- The ALJ also concluded that because the prior agreements between Western Star and Bonander were not lawfully terminated, modified or replaced, Bonander remains a franchisee for both the Turlock location and the Merced location. This result is in conformance with the usual rule regarding illegal contracts, that the parties are left as they stood prior to the illegal agreement.
- All of DTNA's claims relating to why its Motion to Dismiss should be granted are based upon its assertions that the January 18, 2017 and January 25, 2017 agreements are controlling. However, both agreements have been found to be void and none of their terms are enforceable or relevant.

### DTNA'S MOTION TO DISMISS

- The ALJ has recommended that the Board take no action<sup>3</sup> as to DTNA's Motion to Dismiss as DTNA is seeking to enforce a void agreement.

### BONANDER'S PROTEST

- In addition, there is no need for Board action on Bonander's protest because the January 25, 2017 agreement DTNA is seeking to enforce is void and deemed not to exist. Thus, there is no need for Bonander to protest the intended termination of the void agreement. The ALJ has recommended that Bonander's protest be deemed moot and dismissed without prejudice.
- Bonander, as a present franchisee for both the Turlock location and the Merced location, has standing to protest any future intended action of the franchisor that comes within the statutes the Board is charged with administering.

### RELATED MATTERS:

- Related Case Law:
  - (1) *Fellom v. Adams* (1969) 274 Cal.App.2d 855
  - (2) *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141
  - (3) *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531
  - (4) *Wells v. Comstock* (1956) 46 Cal.2d 528
  - (5) *New Motor Vehicle Bd. v. Orrin W. Fox Co.* (1978) 439 U.S. 96
- Applicable Statutes: Civil Code section 1667; Code of Civil Procedure sections 338 and

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<sup>3</sup> Denying the Motion to Dismiss would imply that Bonander could proceed with its protest challenging the right of Western Star/DTNA to terminate the January 25, 2017 Agreement. However, as this agreement is void, there is no need for a protest.

1856; Evidence Code 452; Government Code section 11515; Vehicle Code sections 331, 331.1, 331.2, 3060, 11713.3(l), 40000.1.

- Related Board Case: PR-2671-20 *Merced Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC, and Does 1-50, inclusive.*

NEW MOTOR VEHICLE BOARD  
P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888

**CERTIFIED MAIL**

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

BONANDER AUTO, TRUCK & TRAILER, INC.,  
a California Corporation,

Protestant,

v.

DAIMLER TRUCK NORTH AMERICA, LLC,

Respondent.

**Protest No. PR-2673-20**

**(PROPOSED) FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS  
FOLLOWING ORDER OF REMAND**

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1 Roberta F. Howell, Esq.  
2 Attorney for Respondent  
3 FOLEY & LARDNER LLP  
150 East Gilman Street, Suite 5000  
4 Madison, Wisconsin 53703-1482

5 **FACTUAL AND PROCEDURAL BACKGROUND**<sup>1</sup>

6 1. On June 4, 2020, Bonander Auto, Truck & Trailer, Inc. a California corporation  
7 (“Bonander” or “Protestant”) filed a termination protest (“Bonander protest”) pursuant to Vehicle Code  
8 section 3060<sup>2</sup> against Daimler Truck North America, LLC (“DTNA” or “Respondent”).<sup>3</sup> An amended  
9 protest was filed on July 2, 2020.<sup>4</sup>

10 2. Pursuant to a Dealer Agreement between Western Star Trucks, Inc. (“Western Star”) and  
11 Bonander, Bonander is authorized to sell and service Western Star vehicles at Bonander’s Turlock,  
12 California location. However, this protest is challenging the decision of DTNA to terminate a Western  
13 Star Service-Only Agreement between Western Star and Merced Truck & Trailer, Inc. (“MT&T”), a  
14 wholly owned subsidiary of Bonander. The MT&T Service-Only Agreement authorizes MT&T to  
15 perform warranty and other service work on Western Star vehicles and includes the sale of Western Star  
16 parts but does not include the sale of Western Star vehicles. The MT&T facility is located in Merced,  
17 California, approximately 25 miles from the Turlock location of Bonander.<sup>5</sup> (Motion to Dismiss, p. 6,  
18 lines 2-11, 23-27; Derbyshire Declaration dated July 23, 2020, ¶¶ 4-6, Ex. A, p. 2; Declaration of Don  
19 Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 11)

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21 <sup>1</sup> References herein to exhibits or other parts of the administrative record are examples of evidence relied upon to  
22 reach a finding and are not intended to be all-inclusive. Findings are organized under topical headings for  
23 readability only and are not to be considered relative to only the particular topic under which they appear. Citations  
24 to the record are for convenience of the Board. The absence of a citation generally signifies that the underlying  
facts are foundational or uncontested, that the finding is an ultimate fact finding of the Board based upon other

25 <sup>2</sup> All statutory citations are to the California Vehicle Code unless otherwise indicated.

26 <sup>3</sup> Throughout the pleadings sometimes “Daimler Truck North America” is referred to as “Daimler Trucks [with an  
‘s’] North America.”

27 <sup>4</sup> Unless otherwise indicated, Bonander’s original protest and its amended protest will be referred to in the singular  
as “the Bonander protest.”

28 <sup>5</sup> The most recent version of the Bonander-Western Star franchise for the Turlock location is dated January 18,  
2017. The most recent MT&T-Western Star agreement, and the agreement DTNA seeks to terminate, is the  
January 25, 2017 Agreement for the Merced location discussed *infra*.

1           3.       MT&T filed a separate termination protest (PR-2671-20 *Merced Truck & Trailer, Inc., a*  
2 *California Corporation v. Daimler Truck North America, LLC*).<sup>6</sup> The Bonander protest and the MT&T  
3 protest challenged the decision of DTNA to terminate the January 25, 2017 Service-Only Agreement  
4 (“2017 Service-Only Agreement”) between Western Star and MT&T for the Merced operations.

5           4.       The Bonander protest alleges that DTNA sent MT&T a “Notice of Termination” dated  
6 May 11, 2020, stating “[t]his letter shall serve as Daimler Trucks North America LLC’s (DTNA) notice  
7 of the termination of your [MT&T] dealership’s Western Star Trucks Dealer Service Agreement  
8 (Agreement) effective June 30, 2020.”<sup>7</sup> (Protest, Ex. J) The statutory “Notice to Dealer” language and  
9 reasoning for termination were not included.<sup>8</sup> Bonander filed this protest challenging the termination of  
10 MT&T’s Service-Only Agreement “because of its [Bonander’s] legal ownership of MT&T’s stock. If  
11 MT&T’s Dealer Service franchise is shuttered by Respondent, Protestant [Bonander’s] corporate entity  
12 . . . [is] the ultimate part[y] irreparably damaged by the closure of MT&T . . .” (Amended Protest, ¶ 28)

13           5.       DTNA filed a Motion to Dismiss Bonander’s protest. A telephonic hearing was held on  
14 Thursday, September 10, 2020, before Anthony M. Skrocki, Administrative Law Judge (“ALJ”) for the  
15 New Motor Vehicle Board (“Board”).<sup>9</sup> Donald E. Bonander, in Pro Per and Ryan Katzenbach, in Pro Per  
16 represented Protestant. Matthew Bonander and Bob Houck were also present for Protestant. Roberta  
17 Howell, Esq., Megan Curran, Esq. and Dyana Mardon, Esq. of Foley & Lardner LLP represented

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19       <sup>6</sup> The MT&T protest was dismissed by the Board at its February 16, 2021, Special Board Meeting when the Board  
20 adopted the Administrative Law Judge’s “Proposed Order Granting Respondent Daimler Truck North America,  
21 LLC’s Motion to Dismiss Protest” as its Decision. The MT&T protest was dismissed with prejudice because, as  
22 explained below, the January 25, 2017 Service Agreement for the Merced location, signed only by MT&T, was  
23 excluded by Section 331(b) from the statutory definition of a “franchise.”

24       <sup>7</sup> This date of June 30, 2020 must refer to the date the termination was intended to take effect rather than the date of  
25 the MT&T 2017 Service-Only Agreement sought to be terminated. Although there have been several agreements  
26 relating to the Merced location (going back to April 25, 1994), the Service-Only Agreement DTNA seeks to  
27 terminate is dated January 25, 2017.

28       <sup>8</sup> DTNA alleges that the controlling document is the 2017 Service-Only Agreement signed by MT&T (not  
Bonander) and that because this Agreement does not meet the statutory definition of a “franchise,” formal statutory  
notice of its termination was not required by Section 3060. See discussion *infra* regarding whether Section 3060  
requires notice to Bonander and the Board because of the prior agreements by the terms of which Bonander was a  
franchisee as to the Merced location of MT&T.

<sup>9</sup> After oral arguments on September 10, 2020, ALJ Skrocki stated that the matter was taken under submission and  
that his ruling was deferred pending Respondent’s determination on whether it would participate in a settlement  
conference. By letter dated September 30, 2020, counsel for DTNA “respectfully decline[d] the proposal to mediate  
before a decision on the pending motions to dismiss these matters based on the lack of jurisdiction.”

Respondent.

6. On December 18, 2020, ALJ Skrocki submitted a Proposed Order Granting Respondent's Motion to Dismiss Protest. ALJ Skrocki concluded that Vehicle Code section 3060 was not applicable to Bonander's protest challenging the intended termination of the 2017 Service-Only Agreement for the Merced location for the following reasons: (1) The 2017 Service-Only Agreement (signed only by MT&T) sought to be terminated by DTNA is not a franchise as defined in the Vehicle Code; (2) Because the 2017 Service-Only Agreement is not a franchise; neither Bonander nor MT&T can be franchisees under that Agreement; (3) Because the 2017 Service-Only Agreement is not a franchise, neither Western Star nor DTNA can be Bonander's or MT&T's franchisor under that Agreement; and (4) Bonander lacks standing to pursue this protest as the parent corporation or owner of the shares of stock of MT&T or on behalf of MT&T.<sup>10</sup> The Proposed Order recommended that Bonander's protest be dismissed with prejudice.

7. At its February 16, 2021, Special Meeting, the Public Members of the Board met and, after considering the record and the Proposed Order, remanded this matter to ALJ Skrocki.

8. In its February 22, 2021 "Order Remanding the Proposed Order Dated December 18, 2020" ("Remand Order"), the Board set forth the following additional considerations to be addressed:

1. Whether Paragraph 5 of Addendum 1 to the 1997 Dealer Agreement between Western Star Truck Sales, Inc. and Bonander Pontiac, Inc. gives Protestant Bonander Auto, Truck & Trailer, Inc. standing to protest the termination of Merced Truck & Trailer, Inc.'s Service Agreement with Western Star Truck Sales, Inc.<sup>11</sup> [Footnote 1 in the Remand Order.]

2. In light of the number of dealer agreements contained in the record and the limited ability of the Public Members to conduct a comprehensive review of these agreements during the time allotted for its closed Executive Session, the ALJ is granted

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<sup>10</sup> Because the Remand Order relates to the prior agreements, these conclusions as to the 2017 Service-Only Agreement remain and are not affected by the findings and recommendation herein.

<sup>11</sup> Paragraph 5 provides: "This addendum acknowledges and agree (*sic*) that Bonander Pontiac, Inc. is authorized to operate an authorized Parts and Service Branch under the name Merced Truck & Trailer located at 625 Martin Luther King Way, Merced, CA 95340." (Protestant's opposition to Respondent's motion to dismiss, Exhibit I)

1 the discretion to consider any relevant agreements, in addition to the 1997 Dealer  
2 Agreement, in making his determination as to whether Protestant has standing to protest  
3 the termination of Merced Truck & Trailer, Inc.'s Service Agreement with Western Star  
4 Truck Sales, Inc.

5 3. The ALJ shall also have the discretion to order additional briefing, allow  
6 the submission of additional evidence, and/or conduct additional oral arguments prior to  
7 rendering his decision.

8 9. ALJ Skrocki ordered additional briefing as to whether Bonander has standing to protest the  
9 termination of MT&T's 2017 Service-Only Agreement.

10 10. After extensive briefing, a telephonic hearing was held on September 22, 2021. As a result  
11 of that hearing, supplemental briefs were filed and after a subsequent telephonic hearing held on January  
12 6, 2022, the matter was submitted.

13 **SUMMARY OF THE BRIEFS FILED PRIOR TO THE SEPTEMBER 22, 2021**  
14 **INITIAL HEARING AFTER REMAND<sup>12</sup>**

15 **DTNA's Opening Brief on Remand**

16 11. DTNA's Opening Brief on Remand asserted that Bonander does not have standing to  
17 protest the termination of the 2017 Service-Only Agreement between Western Star and MT&T for the  
18 following reasons:

19 (1) Bonander's shareholder status does not confer standing on Bonander to protest on behalf of  
20 MT&T the termination of the 2017 Service-Only Agreement. (DTNA's Opening Brief on Remand, p. 2,  
21 lines 6-12)

22 (2) The prior agreements between Bonander Pontiac and Western Star do not confer standing  
23 on Bonander to protest on behalf of MT&T the termination of the 2017 Service-Only Agreement, and in  
24 any event those agreements have long been superseded. (DTNA's Opening Brief on Remand, p. 2, lines  
25 13-14)

26 (3) Even if the prior agreements were effective, they cannot be used to support the assertion  
27

28 <sup>12</sup> Respondent's briefs are summarized first because, in a motion to dismiss, it is the moving party that bears the  
burden of proof.

that Bonander and MT&T are one and the same, as MT&T is “a legally distinct entity, and parol evidence cannot be used to disregard that distinction.” (DTNA’s Opening Brief on Remand, p. 2, lines 14-18)

(4) DTNA also asserted that to the extent Bonander was protesting termination of its own right to operate the service location in Merced pursuant to Paragraph 5 of Addendum 1 to the 1997 Dealer Agreement between Western Star and Bonander Pontiac, that right ended at the latest when Bonander voluntarily executed the January 25, 2017 Service-Only Agreement for Merced<sup>13</sup> and the January 18, 2017 Dealer Agreement between Western Star and Bonander making MT&T the only entity authorized to operate the service facility in Merced. (DTNA’s Opening Brief on Remand, p. 2, lines 11-25)

(5) DTNA contends the January 18, 2017 Turlock Dealer Agreement, the January 25, 2017 Merced Service-Only agreement, and all other agreements prior thereto, contain integration clauses that cancel and make irrelevant all the prior agreements due to the application of the California parol evidence rule.<sup>14</sup> (DTNA’s Opening Brief on Remand, p. 8, lines 21-28; p. 9, lines 1-13)

(6) DTNA argues that Bonander consented to a voluntary termination of its prior agreement when it executed the January 18, 2017 Dealer Agreement and the January 25, 2017 Service-Only Agreement<sup>15</sup> and if it had not consented voluntarily, Bonander should have filed a protest “before executing the Merced agreement” “or within 30 days of notice of the” January 25, 2017 Merced Service-Only Agreement. (DTNA’s Opening Brief on Remand, p. 9, lines 19-25)

(7) In addition, DTNA alleges that any claim of Bonander to raise an issue with its voluntary termination of the “Bonander Agreement or the Merced Agreement has expired” as the 3-year statute of limitations provided by California Code of Civil Procedure section 338(a) expired in January 2020 and the protest was not filed until June 2020.<sup>16</sup> (DTNA’s Opening Brief on Remand, p. 9, lines 26 through p. 10 line 5)

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<sup>13</sup> As discussed below, the January 25, 2017 Service-Only Agreement for Merced was executed only by MT&T and not by Bonander.

<sup>14</sup> Subdivision (a) of Section 1856 of the California Code of Civil Procedure provides as follows: “Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement.”

<sup>15</sup> See Footnote 13.

<sup>16</sup> The statute of limitations for commencing “[a]n action upon a liability created by statute, other than a penalty or forfeiture,” is three years. (Code Civ. Procedure § 338(a))

**Bonander's Opening Brief on Remand**

12. Bonander's Opening Brief on Remand asserts the following:

- (1) The agreements and course of conduct between Bonander and Western Star recognized that Bonander's franchise included the satellite facility in Merced; therefore, Bonander has standing to protest the termination of MT&T as a "Service Dealer." (Bonander's Opening Brief on Remand, p. 9, lines 5-9)
- (2) "DTNA modified the Bonander franchise agreement by removing Merced." (Bonander's Opening Brief on Remand, p. 11, line 2) Bonander alleges this modification occurred when DTNA sent the January 18, 2017 Dealer Agreement without the addendum for the Merced location and when DTNA sent the separate service-only agreement for MT&T on January 25, 2017. Bonander alleges that there was no prior discussion regarding the above and that DTNA fraudulently concealed the modification to the franchise agreement through the 2017 Service-Only Agreement. (Bonander's Opening Brief on Remand, p. 11, lines 2-14)
- (3) "Bonander was not provided the mandatory notice required to modify a franchise agreement." Bonander was never provided notice that DTNA changed Merced's status and modified the franchise agreement by deleting Merced from the franchise in violation of Section 3060(b). (Bonander's Opening Brief on Remand, p. 12, lines 8-24)
- (4) "Good cause does not exist for a modification of the franchise agreement by the franchisor." (Bonander's Opening Brief on Remand, p. 12, lines 25-26)

**DTNA's Reply Brief on Remand**

13. DTNA in its Reply Brief on Remand asserts the following:

- (1) All of the prior agreements have been superseded by the 2017 Agreements and under the parol evidence rule any reference to the prior agreements is improper. (DTNA's Reply Brief on Remand, p. 2, lines 6-11) And, as the 2017 Service-Only Agreement is not a franchise, the Board has no jurisdiction over this proceeding. (DTNA's Reply Brief on Remand, p. 2, lines 16-19; p. 4, lines 10-22)
- (2) Bonander is not a party to the 2017 Service-Only Agreement and as a shareholder of MT&T it has no standing to protest the termination of that agreement. (DTNA's Reply Brief on Remand, p. 4, line 25 through p. 5, line 15)

(3) Bonander is not a franchisee at the Merced location because it voluntarily relinquished any right to operate a service location in Merced to MT&T. (DTNA’s Reply Brief on Remand, p. 6, lines 1-2) DTNA claims that Bonander voluntarily executed the January 18, 2017 Dealer Agreement and that this Agreement does not authorize Bonander to operate the service location in Merced. And, six days later MT&T voluntarily executed the 2017 Service-Only Agreement for the Merced location. (DTNA’s Reply Brief on Remand, p. 6, lines 10-18) As both agreements contain an integration clause, the prior agreements were cancelled and were of no force and effect. (DTNA’s Reply Brief on Remand, p. 6, line 19 through p. 7, line 11)

**Bonander’s Reply Brief on Remand**

14. Bonander’s Reply Brief on Remand asserts the following:

(1) Bonander has standing to pursue the protest as the franchisee for the Turlock location with the Merced location a branch or satellite location. Bonander asserts that the central issue is the modification of its franchise by terminating the satellite status of MT&T from Bonander’s franchise. (Bonander’s Reply Brief on Remand, p. 2, lines 1-14)

(2) DTNA is without standing to terminate MT&T. (Bonander’s Reply Brief on Remand, p. 2, line 15) Bonander asserts that DTNA is relying upon language in the MT&T agreement that allows the “Company” to terminate the MT&T agreement upon 30 days written notice but that the agreement defines the “Company” as “WESTERN STAR TRUCKS SALES, INC., a Washington Corporation.” (Bonander’s Reply Brief on Remand, p. 2, line 23 through p. 3, line 1) However, the notice of termination was issued by DTNA that is not a party to the agreement nor is there an indication that DTNA is giving the notice as an agent of Western Star. (Bonander’s Reply Brief on Remand, p. 3, lines 1-3) If Bonander lacks standing as the parent corporation of MT&T, then DTNA lacks standing as the parent corporation of Western Star to terminate the MT&T agreement. (Bonander’s Reply Brief on Remand, p. 3, lines 5-7)

(3) “DTNA fraudulently concealed it was modifying the franchise agreement.” (Bonander’s Reply Brief on Remand, p. 3, line 23)

(4) Bonander claims that the evidence relating to the prior agreements is not barred by the parol evidence rule as the evidence shows there was a modification of the franchise obtained without compliance with the procedural requirements and procured by fraudulent concealment. (Bonander’s

1 Reply Brief on Remand, p. 5, lines 16-25; page 6, lines 10-14) Bonander cites Code of Civil Procedure  
2 section 1856(g) which permits parol evidence to be used to establish fraud or illegality.<sup>17</sup> (Bonander’s  
3 Reply Brief on Remand, p. 6, lines 15-22)

4 (5) Bonander alleges that removal of the satellite facility from the Bonander franchise was a  
5 major modification that occurred without the required notices to Bonander and the Board. (Bonander’s  
6 Reply Brief on Remand, p. 7, lines 13-15; p. 8, lines 2-9)

7 (6) The protest is not barred by the statute of limitations as the 3 years does not begin to run  
8 until the date of discovery of the injury. In this case, “Bonander was not aware of the fraud until it  
9 received the termination notice on May 11, 2020.” The protest was filed on June 4, 2020, “less than 30  
10 days after [Bonander] was provided notice of the fraud.” (Bonander’s Reply Brief on Remand, p. 8, lines  
11 10-16)

12 **SUMMARY OF THE SUPPLEMENTAL BRIEFS CONCERNING THE ISSUE**  
13 **OF ILLEGALITY FILED PRIOR TO THE JANUARY 6, 2022**  
14 **HEARING AFTER REMAND**<sup>18</sup>

15 15. After considering the documents and briefs initially submitted by the parties, the ALJ at  
16 the September 22, 2021 hearing after remand, asked counsel to submit supplemental briefs addressing  
17 whether the January 18, 2017 Dealer Agreement between Western Star and Bonander and the January 25,  
18 2017 Service-Only Agreement between Western Star and MT&T were valid or whether they were void  
19 for illegality and thus of no legal effect. As discussed below, if these two 2017 agreements are void, the  
20 issues raised by DTNA in its Motion to Dismiss are moot and need not be decided.

21 **DTNA’s Supplemental Briefs on Remand**

22 16. In its supplemental briefs on remand, DTNA contends as follows:<sup>19</sup>

23 (1) DTNA asserts that Bonander has no standing to protest as the parol evidence rule bars  
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25 <sup>17</sup> Subdivision (g) of Section 1856 of the California Code of Civil procedure provides as follows: “This section does  
26 not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as  
27 defined in Section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement, or to  
28 establish illegality or fraud.”

<sup>18</sup> The parties submitted simultaneous supplemental opening and reply briefs on remand on November 17, 2021 and  
December 17, 2021, respectively.

<sup>19</sup> Any arguments repeated in the earlier briefs are not summarized as the purpose of the supplemental briefing was  
to address the issue of illegality.



consideration of the 1997 agreement or any other agreements prior to the 2017 Agreements. (DTNA’s Supplemental Opening Brief on Remand, p. 2, lines 12-15; DTNA’s Supplemental Response Brief on Remand, p. 2, lines 11-16)

(2) DTNA asserts that the 2017 Agreements are valid and enforceable because:

(a) “Section 3060 does not require notice for agreements voluntarily executed.” (DTNA’s Supplemental Response Brief on Remand, p. 4, line 11)

(b) DTNA claims that under Section 3060(a)(3) written notices to the franchisee and the Board of the termination of a franchise are “not required when the franchisor has received the written consent of the franchisee or the appropriate time for filing a protest has elapsed.” (DTNA’s Supplemental Response Brief on Remand, p. 4, lines 19-22)

(c) DTNA asserts the parol evidence rule applies and that the integration clauses in the 2017 Agreements means that the 2017 Agreements cancel or terminate the prior agreements rather than modify them. (DTNA’s Supplemental Response Brief on Remand, p. 5, lines 10-15)

(d) DTNA claims that notice to the franchisee and the Board should not be required if the franchisee consents to a modification or replacement of the franchise and that Bonander consented by entering into the 2017 Agreements. (DTNA’s Supplemental Response Brief on Remand, p. 5, lines 16-25)

(e) If there was a modification of Bonander’s franchise, it occurred in 2000 when Bonander signed an agreement that did not contain an authorization to operate the service location in Merced thus the 2017 Agreement did not modify Bonander’s franchise and no notices were required by Section 3060. (DTNA’s Supplemental Response Brief on Remand, p. 5, line 26 through p. 6, line 4)

(f) The termination and transfer provisions of Section 3060(a)(1) should apply to these facts rather than the replacement or modification provisions. Whether deleting the Merced location from its franchise is considered a termination or modification, Bonander voluntarily consented to that action in executing the 2017 Agreement making that consent enforceable. (DTNA’s Supplemental Response Brief on Remand, p. 6, lines 9-26)

(g) The Board cannot consider prior agreements because the language in the 2017 Agreements “clearly and unambiguously supersedes prior agreements, and grants Bonander no rights with respect to the Merced location.” (DTNA’s Supplemental Response Brief on Remand, p. 7, lines 1-3) MT&T, not

1 Bonander, was authorized to operate the service location in Merced and “that any prior understandings  
2 were cancelled and of no force and effect.” (DTNA’s Supplemental Response Brief on Remand, p. 7,  
3 lines 4-7) Consequently, “under the parole evidence rule, the prior course of dealing between the parties is  
4 irrelevant to any issue before this Board, and any evidence in that regard is barred.” (DTNA’s  
5 Supplemental Response Brief on Remand, p. 7, lines 8-9)

6 (h) DTNA contends that “Bonander waived any notice rights in 2000, and there was no  
7 relevant ‘modification’ after that.” (DTNA’s Supplemental Response Brief on Remand, p. 8, lines 8-9)  
8 DTNA asserts that Bonander’s voluntary execution of the 2000 agreement (that did not contain the right  
9 to operate the MT&T location in Merced) was a valid waiver of the right to notices regarding the Merced  
10 location and that no notices were subsequently required as to the Merced location. (DTNA’s  
11 Supplemental Response Brief on Remand, p. 8, lines 10-26)

12 (i) DTNA argues that the dealer agreements “Bonander voluntarily entered into after 1997 are  
13 not illegal.” (DTNA’s Supplemental Response Brief on Remand, p. 11. Lines 13-14) The 1997  
14 agreements are not illegal because notice was not required. These Agreements terminated Bonander’s  
15 rights and established new rights for Bonander and MT&T. Bonander consented to the termination and  
16 transfer of the MT&T location. (DTNA’s Supplemental Response Brief on Remand, p. 11, lines 15-26)

17 (j) DTNA contends that “Bonander’s fraud claim has no basis in the record.” DTNA asserts  
18 that Bonander’s fraudulent inducement and illegality claims do not fall within the Board’s jurisdiction but  
19 even if they did Bonander has failed to produce any evidence supporting the elements of fraud. (DTNA’s  
20 Supplemental Opening Brief on Remand, p. 7, line 22 through p. 8, line 4; DTNA’s Supplemental  
21 Response Brief on Remand, p. 12, lines 7-25)

22 (k) According to DTNA, “[t]he Board does not have jurisdiction over this protest to permit  
23 rescission or revisit matters already decided by the Board” in the MT&T protest. (DTNA’s Supplemental  
24 Response Brief on Remand, p. 13, lines 18-19)

25 (l) DTNA asserts that the remedy of rescission sought by Bonander based upon fraud or  
26 illegality is not a claim over which the Board can exercise jurisdiction because it does not involve  
27 termination, modification or replacement of a franchise. (DTNA’s Supplemental Response Brief on  
28 Remand, p. 15, lines 2-4)

(m) DTNA argues that the dismissal of the MT&T protest answers the questions remanded by the Board for consideration. (DTNA’s Supplemental Response Brief on Remand, p. 15, lines 18-19) Because the 2017 Service-Only Agreement “does not qualify as a franchise, it does not matter who attempts to protest the termination of that agreement.” (DTNA’s Supplemental Opening Brief on Remand, p. 13, lines 19-24; DTNA’s Supplemental Response Brief on Remand, p. 15, lines 21-22)

(n) Lastly, DTNA contends Bonander does not have standing to protest the termination of the 2017 Service-Only Agreement between MT&T and Western Star. (DTNA’s Supplemental Response Brief on Remand, p. 16, lines 4-5) Bonander’s only tie is that it is the parent corporation and sole shareholder of MT&T which is not sufficient to have standing to protest the termination of the 2017 Service-Only Agreement. (DTNA’s Supplemental Opening Brief on Remand, p. 14, lines 1-27; DTNA’s Supplemental Response Brief on Remand, p. 16, line 5 through p. 17, line 6)

#### **Bonander’s Supplemental Briefs on Remand**

17. In its supplemental briefs on remand, Bonander contends as follows:

(1) Bonander’s alleged voluntary consent does not vitiate the requirements of Section 3060. (Bonander’s Supplemental Brief on Remand, p. 8, lines 6-11; Bonander’s Response to Supplemental Brief on Remand, p. 2, line 7) Removing MT&T from the Bonander Pontiac franchise after 1997 was either a modification or the creation of a replacement franchise that required written notice to Bonander and the Board. Failure to provide such notice voids the agreements as they violate the law. Execution of the 2017 Agreements is not consent of Bonander as the notice must precede the consent by at least 60 days and there was no notice to Bonander or the Board. (Bonander’s Response to Supplemental Brief on Remand, p. 2, lines 8-28)

(2) DTNA’s assertion that the 1997 Agreement is illegal “is based on the mistaken conclusion that the [MT&T service] branch was not included in the prior franchise agreements.” However, the 1994, 1995 and 1996 agreements all expressly provided for MT&T “to be an authorized parts and service location.” (Bonander’s Response to Supplemental Brief on Remand, p. 2, lines 7-19; p. 4, lines 21-26)

(3) Bonander maintains it has provided sufficient evidence to support its allegation of fraud to support its arguments that it has standing to protest. (Bonander’s Response to Supplemental Brief on Remand, p. 5, lines 4-5) Among other allegations is Bonander’s claim that “[t]he failure to provide the

1 statutory written notice of the modification or replacement to the Board and Bonander was the fraud.” The  
2 1994, 1995, 1996, and 1997 franchises “expressly include” MT&T as a satellite parts and service facility  
3 (branch location). In subsequent agreements, MT&T was omitted. Notwithstanding this, DTNA continued  
4 to treat MT&T as a branch location. (Bonander’s Response to Supplemental Brief on Remand, p. 5, lines  
5 12-17)

6 (4) According to Bonander, its claims are not barred by the statute of limitations. (Bonander’s  
7 Response to Supplemental Brief on Remand, p. 7, line 15) Among other things, it is asserted that the time  
8 period to file this protest did not commence until the date of discovery of the fraud, which was the date of  
9 the May 11, 2020 notice of termination, meaning the protest was timely filed on June 4, 2020.  
10 (Bonander’s Response to Supplemental Brief on Remand, p. 8, lines 2-4)

11 (5) Bonander argues that the Board has jurisdiction to determine if the post-1997 agreements  
12 are illegal. (Bonander’s Response to Supplemental Brief on Remand, p. 8, line 22) If the position of  
13 DTNA is accepted, the Board would allow DTNA to terminate Bonander’s franchise for the Merced  
14 location in violation of public policy established by the Vehicle Code. (Bonander’s Response to  
15 Supplemental Brief on Remand, p. 9, lines 1-13)

16 (6) Lastly, Bonander contends that the Board’s decision relating to the 2017 Service-Only  
17 Agreement does not impact the Board’s jurisdiction over this protest. (Bonander’s Response to  
18 Supplemental Brief on Remand, p. 9, line 14) Bonander is not seeking to overturn the Board’s decision  
19 regarding the 2017 Service-Only Agreement between Western Star and MT&T. The issue here is  
20 “whether DTNA modified or replaced the Bonander franchise when it omitted [MT&T] as an express  
21 authorized parts and service satellite facility in the post-1997 franchise agreement[s].” (Bonander’s  
22 Response to Supplemental Brief on Remand, p. 9, lines 14-18)

### 23 **OVERVIEW OF REMAND ORDER**

24 18. As the Remand Order indicates, there have been numerous dealer agreements involving  
25 Protestant and Western Star in addition to the 1997 Dealer Agreement referred to in the Remand Order,  
26 granting Bonander Pontiac, Inc. the right to operate the Merced location as a Parts and Service Branch of  
27 Bonander Pontiac. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand,  
28 Ex. 22, Addendum 1, p. 22)

1           19.     Response to the Remand Order requires there be inquiry into whether the 1997 Dealer  
2 Agreement or any other agreements gives Protestant standing to protest the intended termination of the  
3 parts and service-only agreement for the Merced location.

4           20.     Regardless of the finding that the 2017 Service-Only Agreement is not a franchise subject  
5 to a Section 3060 protest by Bonander, the fundamental issues raised by the Remand Order include  
6 whether Bonander, pursuant to the terms of its 1997 franchise with Western Star and other agreements,  
7 was and is a Western Star franchisee as to the Merced location and, if so, whether Bonander would have  
8 standing to protest in its own behalf any conduct of Western Star (or DTNA) that comes within Section  
9 3060 affecting Bonander's rights as a franchisee for the Merced location. If Bonander remains a  
10 franchisee as to the Merced location, Bonander would have standing to bring a Section 3060 protest in its  
11 own behalf as a franchisee, rather than claiming a right to protest as the parent corporation or the legal  
12 owner of the stock of MT&T. This would depend upon whether the prior dealer agreements, that were  
13 franchises under which Bonander was a franchisee for the Merced location, continued to exist as they  
14 were not effectively (legally) terminated, replaced or modified. As discussed below, any attempts by a  
15 franchisor to terminate, replace or modify a franchise without prior compliance with the legislatively-  
16 created requirements of Section 3060 would be unlawful and thus void.<sup>20</sup>

17           21.     Consequently, any such attempts by Western Star would be of no legal effect and  
18 Bonander would remain a franchisee of Western Star for the operation of the Merced location with  
19 standing in its own right to protest any conduct of Western Star or DTNA that comes within Section 3060.

20           22.     In order to address the remand issues, it is necessary to examine and present the history  
21 that led up to the 2017 Service-Only Agreement that DTNA desires to terminate. This will involve an  
22 inquiry into whether the January 18, 2017 Dealer Agreement between Western Star and Bonander and the  
23 January 25, 2017 service-only agreement between Western Star and MT&T are effective and controlling  
24 or whether they were entered into illegally and are thus void and of no legal significance. If the January  
25 18, 2017 Western Star-Bonander and the January 25, 2017 Western Star-MT&T agreements are void due  
26 to violations of the Vehicle Code, Bonander has remained a franchisee pursuant to the terms of the prior

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27 <sup>20</sup> As it does not matter whether the statutory violations were intentional, negligent, or innocent, no findings are  
28 necessary as to these facts.

1 agreements in which Bonander was a franchisee for both the Turlock location and the “branch location” in  
2 Merced. If this is the case, then, in response to the Remand Order, Bonander has standing under the prior  
3 franchises in which Bonander Pontiac was the franchisee for the Merced location to protest any conduct  
4 of Western Star/DTNA that comes within Section 3060.

5 **PARTIES AND COUNSEL**

6 **Bonander and MT&T**

7 23. Counsel submitted the following regarding the history of Bonander and MT&T.

8 (1) Articles of Incorporation for Wenell Pontiac, Inc. (prior name of Bonander Pontiac, Inc.)  
9 filed with the Secretary of State on July 11, 1963. (Declaration of Don Bonander in Support of  
10 Bonander’s Opening Brief on Remand, Ex. 1)

11 (2) Amendment to Articles of Incorporation filed with Secretary of State on April 20, 1964,  
12 changing the name from Wenell Pontiac, Inc. to Bonander Pontiac, Inc. (Declaration of Don Bonander in  
13 Support of Bonander Auto, Truck & Trailer, Inc.’s Opening Brief, Ex. 2) This occurred after the death of  
14 the prior owner, E. W. Wenell. (Bonander’s Opening Brief on Remand, p. 2, lines 10-11)

15 (3) MT&T was incorporated on September 10, 1992, as a wholly owned subsidiary of  
16 Bonander. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Exs. 6-7)

17 (4) Bonander first became a franchisee of Western Star under a Dealer Agreement dated April  
18 25, 1994. Addendum 1 of this Dealer Agreement also authorized Bonander to operate MT&T as a parts  
19 and service branch of Bonander Pontiac, Inc. dba Bonander Truck at the Merced location.<sup>21</sup> (Declaration  
20 of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 11)

21 (5) Amendment to Articles of Incorporation filed with Secretary of State on June 10, 2015  
22 changing Protestant’s name from Bonander Pontiac, Inc. to Bonander Auto, Truck & Trailer, Inc. This  
23 occurred after General Motors ceased the manufacture of Pontiac vehicles. (Declaration of Don Bonander  
24 \_\_\_\_\_)

25 <sup>21</sup> It is important to note that MT&T was incorporated as a wholly owned subsidiary of Bonander on September 10,  
26 1992. This was prior to April 25, 1994, when Bonander was granted its initial franchise for the Turlock location  
27 along with the Addendum authorizing Bonander to also operate MT&T as a branch/satellite location in Merced.  
28 This resulted in Bonander becoming a franchisee for both locations as of April 25, 1994. There were no subsequent  
changes in the status of Bonander or MT&T that would necessitate separate franchises for either entity. Any  
attempt to terminate, refuse to renew, modify or replace either of these franchises would require compliance with  
Section 3060.

in Support of Bonander’s Opening Brief on Remand, Ex. 3)

**Western Star**

24. The following evidences the partial history of the status of Western Star:

(1) In 1994, at the time of the first franchises for the Turlock and Merced locations, Western Star was a General Partnership located in British Columbia. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 11)

(2) In August 1995, Western Star incorporated in the State of Washington. (Declaration of Don Bonander in Support of Bonander Auto, Truck & Trailer, Inc.’s Opening Brief, Ex. 50)<sup>22</sup>

(3) Some time prior to March 1, 2001, Western Star became part of Freightliner LLC. The March 1, 2001 Dealer Service Agreement is the first document submitted indicating this relationship. This document also shows Western Star as then incorporated in the State of Delaware. As stated below, this is the first agreement that is between Western Star and Bonander Pontiac, Inc. expressly for the Merced location. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 27)

(4) Effective January 7, 2008, Freightliner LLC was “renamed Daimler Trucks North America LLC.” (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 29)

(5) Western Star was and is the only franchisor named on each of the agreements referred to below.

25. The paragraphs below refer to agreements between Bonander Pontiac, Inc. and Western Star Trucks, Inc. “Bonander Auto, Truck and Trailer, Inc.” resulted from merely a name change from “Bonander Pontiac, Inc.” Protestant Bonander Auto, Truck & Trailer, Inc. is not a new entity as a result of

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<sup>22</sup> On July 30, 2021, Protestant filed a “Request for Judicial Notice” in support of its opening brief on remand. Relying on subdivision (h) of Evidence Code section 452, Protestant requested that the Board take “judicial notice” of the “Statement and Designation by Foreign Corporation, dated August 30, 1995 for Western Star Trucks Sales, Inc. filed with the California Secretary of State.” (Protestant’s Request for Judicial Notice, Ex. 50) Government Code section 11515 provides for “official notice” not “judicial notice” as follows: “In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency’s special field, and of any fact which may be judicially noticed by the courts of this State. . . .” Subdivision (h) of Evidence Code section 452 provides that judicial notice may be taken of: “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Respondent did not object to the request for judicial notice during the September 22, 2021 telephonic hearing when asked by ALJ Skrocki but did contest its relevance. Exhibit 50 meets the standard set forth in the Government Code so official notice will be taken. (September 22, 2021, telephonic hearing transcript, p. 6 line 5 through p. 7, line 4)

1 the name change but rather continues to be a party with the rights and obligations contained in any  
2 agreements made by Bonander Pontiac, Inc. that remain effective. There are no contentions to the  
3 contrary. To hold otherwise would allow an entity to avoid its contractual obligations merely by changing  
4 its corporate name.

5 26. As to the status and identify of DTNA, it is unclear as to whether there was just a “name  
6 change” from Western Star Trucks, Inc. to Freightliner LLC. There is an email dated October 5, 2007  
7 from a Freightliner representative stating that the name Freightliner LLC will be changed to Daimler  
8 Trucks North America, LLC effective January 7, 2008. Unlike the situation with Bonander in which the  
9 agreements are signed by Bonander Pontiac, Inc. (the prior name of Bonander), the agreements here are  
10 signed only by Western Star. There is nothing indicating that DTNA is the same entity as Western Star  
11 with merely a prior name change from Western Star to Freightliner and then to DTNA. However, because  
12 no notices that complied with Section 3060 were provided by Western Star, Freightliner or DTNA to  
13 Bonander or the Board, it is irrelevant whether DTNA is deemed a successor entity to Western Star as the  
14 analysis and conclusions remain the same regardless of whether Western Star or DTNA is considered the  
15 “franchisor” required to comply with Section 3060.

16 27. Bonander does business as a sales and service dealer at Bonander’s location in Turlock,  
17 California for heavy-duty Western Star trucks. In prior agreements, Bonander was also given the right to  
18 operate “as a parts, service, and warranty facility for Respondent’s heavy duty Western Star Trucks  
19 franchise . . .” in Merced under the name of Merced Truck & Trailer. (Protest, ¶ 1) Whether Bonander is a  
20 franchisee of Western Star or Respondent (DTNA) within the meaning of Sections 331 and 331.1 as to  
21 the Merced location as well as the Turlock location is discussed below. Although the notice of termination  
22 of the 2017 Service-Only Agreement was from DTNA, DTNA is not a named party in any of the  
23 agreements. All the agreements show only Western Star as the franchisor for the Turlock location as well  
24 as the Merced location.

25 28. However, as stated above, even if DTNA is considered as the successor entity of Western  
26 Star, and DTNA is thus deemed a party to the 2017 Service-Only Agreement for the Merced location, the  
27 results would be the same as discussed and concluded below.

28 29. Protestant was initially represented in pro per by Donald E. Bonander, President of



Bonander, and Ryan Katzenbach. On January 22, 2021, Andrew V. Stearns, Esq. of Robards & Stearns, PC substituted as counsel.

30. DTNA is represented by Roberta F. Howell, Esq. and Dyana K. Mardon, Esq. of Foley & Lardner, LLP.

### **STATUTORY DEFINITIONS OF FRANCHISE, FRANCHISEE AND FRANCHISOR**

31. In order to decide whether Bonander has standing to bring a protest challenging the decision of DTNA to terminate the operations of the Merced service location, it is necessary to analyze whether there was and is an existing franchisor-franchisee relationship between Western Star and Bonander as to the Merced location. If Bonander was a franchisee as to the Merced location and remains a franchisee as to the Merced location, Bonander would have standing to bring a Section 3060 protest in its own behalf as the franchisee for that location, rather than claiming a right to protest as the parent corporation or the legal owner of the stock of MT&T. Initially, this requires consideration of the following definitions as contained in the Vehicle Code.

32. Section 331(a) defines a franchise as “a written agreement between two or more persons having all of the following conditions:”

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

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

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

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

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

33. Applying just these five requirements leads to the conclusion that all of the Dealer Agreements and their addenda, as well as the Service-Only Agreements, whether signed by Bonander Pontiac or MT&T, are “franchises.” However, the statute continues in subdivision 331(b) as follows:

The term “franchise” does not include an agreement entered into by a manufacturer or distributor and a person where all the following apply:

(1) The person is authorized to perform warranty repairs and service on vehicles manufactured or distributed by the manufacturer or distributor.

(2) The person is not a new motor vehicle dealer franchisee of the manufacturer or

distributor.

(3) The person's repair and service facility is not located within the relevant market area of a new motor vehicle dealer franchisee of the manufacturer or distributor.

34. Although the Dealer Agreements and their Addenda with Bonander Pontiac all remain "franchises" for both locations, along with all the Service-Only Agreements signed by Bonander, this factor excludes from the definition of a "franchise" the 2017 Service-Only Agreement, signed only by MT&T. This is because MT&T is "not a new motor vehicle dealer franchisee of the manufacturer or distributor." This was the basis for dismissal of the protest filed by MT&T.

35. Section 331.1. defines a franchisee as "any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code . . . from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities." (Emphasis added.) Bonander Pontiac is a "franchisee" for all of the Dealer Agreements, and their addenda, for both locations as well as the Service-Only Agreements to which it is a party. MT&T is not a "franchisee" as to the 2017 Service-Only Agreement for the Merced location as this Agreement is not a "franchise." The only notice of termination was provided by DTNA and given to and received by MT&T that is not the franchisee under any of the agreements. There has never been any notice given to or received by Bonander, the only franchisee under any of the various agreements, nor to the Board.

36. Section 331.2 defines a franchisor as "any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code . . . and who grants a franchise." Western Star is a "franchisor" for all of the Dealer Agreements (and their addenda) with Bonander for both locations and for the Service-Only Agreements signed by Bonander for the Merced location, but Western Star is not a "franchisor" for the 2017 Service-Only Agreement signed by MT&T as this Agreement is not a franchise. DTNA is not a "franchisor" for any of the agreements as DTNA is not a party to any of the agreements and thus DTNA did not "grant a franchise" as required by this definition. Again, as there have been no notices that complied with Section 3060 (from Western Star or DTNA), the analysis and conclusions below are not affected by whether Western Star or DTNA or both are "franchisors" under any of the agreements.

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**THE AGREEMENTS PROVIDED BY THE PARTIES AND THE RELATIONSHIPS  
CREATED BETWEEN THE ENTITIES AT THE TIMES INDICATED**

37. The following are some of the various agreements in chronological order indicating the parties to either a Dealer Sales and Service Agreement or a Service-Only Agreement and the relationships created.

**April 25, 1994 - Class 8 Trucks - Dealer Full Service Agreement (Dealer Sales and Service Agreement) between Western Star and Bonander Pontiac**<sup>23</sup>

38. This 1994 Dealer Full Service Agreement was the initial franchise and was an agreement between Western Star Trucks, a Washington general partnership with principal offices at 2076 Enterprise Way, Kelowna, British Columbia, Canada, VIY 6H8 and Bonander Pontiac, Inc. dba Bonander Truck with Principal Location at 4520 N. Golden State Blvd., Turlock, California 95382. This Agreement includes "ADDENDUM 1 TO DEALER AGREEMENT" which, in part, states:

2) Authorized Parts & Service Branch:  
Merced Truck & Trailer  
625 Martin Luther King Way  
Merced, CA 95340

This Addendum supplements and/or amends the Dealer Agreement between Western Star Trucks and Bonander Pontiac Inc. DBA [*sic*] Bonander Truck dated 4-25, 1994.

(Declaration of Don Bonander in Support of Bonander's Opening Brief on Remand, Ex. 11)

39. This 1994 Agreement is a franchise within the definition of Section 331(a) and resulted in franchises for both the Turlock location and the branch location in Merced. As the Merced branch location is not excluded by Section 331(b), Western Star Trucks is the franchisor and Bonander Pontiac, Inc. is the franchisee, as defined in the statutes, both as to the Turlock location and the branch location in Merced. There was no separate Service-Only Agreement provided by the parties for the Merced location for this time period, but the location of MT&T is an Authorized Parts and Service Branch of Bonander Pontiac. Therefore, if this Agreement and the addendum are still effective, Bonander, as a franchisee for

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<sup>23</sup> Although the cover page of this document calls this a "Dealer Full Service Agreement," the text of this Agreement and those that follow for the Turlock location state that they include the sales of Class 8 Trucks at the Turlock location.

both locations, would have standing to protest any action of Western Star that comes within Section 3060 as to either location. This would include the intended termination of Bonander's franchise for the branch location in Merced or the modification of Bonander's Turlock franchise to delete the addendum authorizing the Merced branch location.

**July 20, 1995 - Class 8 Trucks - Dealer Full Service Agreement (Dealer Sales and Service Agreement) between Western Star and Bonander Pontiac**

40. The parties and their locations stated in this 1995 Dealer Full Service Agreement are identical to that of the 1994 Agreement including the quoted portion of Addendum 1 to this Agreement which makes MT&T an Authorized Parts & Service Branch of Bonander Pontiac. (Declaration of Don Bonander in Support of Bonander's Opening Brief on Remand, Ex. 14)

41. Likewise, there was no separate Service-Only Agreement provided by the parties for the Merced location for this time period, but MT&T remained an Authorized Parts and Service Branch of Bonander Pontiac. Under this Agreement, Bonander Pontiac continues to be a franchisee for both locations and thus would have standing to protest the termination of its franchise for the MT&T operations.

**September 22, 1996 - Class 8 Trucks - Dealer Full Service Agreement (Dealer Sales and Service Agreement) between Western Star and Bonander Pontiac**

42. This 1996 Dealer Full Service Agreement has the same parties (excluding the dba "Bonander Truck") and locations as the 1994 and 1995 Agreements including Addendum 1 showing MT&T as an Authorized Parts and Service Branch. Under this Agreement, Bonander Pontiac continues to be a franchisee for both locations and would have standing to protest the termination of its franchise for the MT&T operations. (Declaration of Don Bonander in Support of Bonander's Opening Brief on Remand, Ex. 16)

**Undated and Unsigned 1997 - Class 8 Trucks - Dealer Full Service Agreement (Dealer Sales and Service Agreement) between Western Star and Bonander Pontiac**

43. The copy of what was provided as the 1997 Dealer Full Service Agreement has the same parties and locations as the three prior agreements but it does not have specific dates inserted and is unsigned. It also has an unsigned Addendum 1 which, in part, reads as follows:

1 “5. This addendum acknowledges and agree [sic] that Bonander Pontiac, Inc. is authorized to  
2 operate an authorized Parts and Service Branch under the name Merced Truck & Trailer located at  
3 625 Martin Luther King Way, Merced, CA 95340.”

4 Neither counsel objected to its use as depictive of the 1997 agreement. Under this Agreement, Bonander  
5 Pontiac would continue to be a franchisee for both locations and would have standing to protest the  
6 termination of its franchise for the MT&T location. (Declaration of Don Bonander in Support of  
7 Bonander’s Opening Brief on Remand, Ex. 22)

8 **June 13, 2000 - Class 8 Trucks - Dealer Full Service Agreement (Dealer Sales**  
9 **and Service Agreement) between Western Star and Bonander Pontiac**<sup>24</sup>

10 44. This Dealer Full Service Agreement is dated June 13, 2000 and is signed by both Western  
11 Star and Bonander Pontiac. It has the same name and address for Bonander Pontiac, Inc., however, the  
12 address for Western Star Trucks Sales, Inc. has been changed to “#203 2627 Sandy Plains Road,”  
13 Marietta, Georgia, 30066. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on  
14 Remand, Ex. 25)

15 45. The Agreement also has an Addendum 1 with a provision that states:

16 “8. This addendum acknowledges and agree [sic] that Bonander Pontiac, Inc. is authorized to  
17 operate a Full Service Branch under the name Bonander Pontiac, Inc. dba: Bonander Truck located  
18 at in [sic] the county of Stanislaus [sic] in the state of California.”<sup>25</sup> (Emphasis added; Declaration  
19 of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 25)

20 46. Under this Agreement, and assuming that the addendum for the Branch refers to the  
21 Merced location, Bonander Pontiac continues to be a franchisee as to both the Turlock location and the  
22 Merced location and would have standing to protest the termination of its franchise for the Merced  
23 location. (See next section regarding the Dealer Parts and Service Agreement signed six days later on  
24 \_\_\_\_\_)

25 <sup>24</sup> No agreements were provided for 1998 or 1999.

26 <sup>25</sup> During the January 6, 2022 hearing on the remand issues, the ALJ commented that this Addendum did not  
27 expressly mention MT&T or its address in Merced, and stated that the ALJ assumed that the Service Branch  
28 referred to meant the MT&T location in Merced. Neither counsel responded. (January 6, 2022, telephonic hearing  
transcript, p. 3, line 18 through p. 5, line 17) Subsequent to the hearing, the ALJ discovered that the City of Merced,  
where MT&T is located, is in Merced County, not Stanislaus County as erroneously stated in the Addendum. It is  
Turlock, where Bonander is located, that is in Stanislaus County.

June 19, 2000.)

**June 19, 2000 - Dealer Parts & Service Agreement between  
Western Star and Bonander Pontiac<sup>26</sup>**

47. This is the first separate Dealer Parts & Service Agreement provided by the parties. It is between Western Star Trucks Sales, Inc., 2627 Sandy Plains Road, Suite 203, Marietta, Georgia and “Bonander Pontiac, Inc.[,] Located at: 625 Martin Luther King Way[,] Merced[,] California . . . ” The Agreement at paragraph 4(a) states that “Dealer [defined in the Agreement as Bonander Pontiac, Inc.] will locate and maintain the principal sales and service outlets covered by this Agreement at: 625 Martin Luther King Way[,] Merced, California . . . under the name of [] Merced Truck & Trailer.” (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 23)

48. Although this is a separate Service-Only Agreement for the Merced location, it too qualifies as a “franchise” pursuant to Section 331 with Bonander Pontiac and Western Star as the franchisee and franchisor respectively. Unlike the 2017 Service-Only Agreement, signed on behalf of MT&T and Western Star and at issue in the companion protest filed by MT&T (Protest No. PR-2671-20) that was determined not to be a franchise as it was excluded by Section 331(b), this June 19, 2000 Service Agreement between Bonander Pontiac and Western Star Trucks is a franchise as defined in Section 331(a) as it is not excluded by Section 331(b). (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 42; Board Decision in Protest No. PR-2671-20) Bonander Pontiac is expressly named as the franchisee with the Merced address being the “principal sales and service outlets” and with the operation “under the name of: Merced Truck & Trailer” rather than as a branch location. If this Agreement, or any prior agreement, is still in effect, Bonander Pontiac, as the franchisee for the Merced location, has standing to protest on its own behalf any conduct of Western Star (or DTNA) that comes within the provisions of Section 3060 as to this Service Agreement that is a franchise of Bonander applicable to the Merced location.

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<sup>26</sup> Also submitted was a “Dealer Full Service Agreement” with the same date of June 19, 2000. However, this is for the sale of Class 7 trucks by Bonander Pontiac at its Turlock location. The other Dealer Agreements were for Class 8 trucks. There is also an Addendum 1 but, perhaps as there is the separate Service Agreement of the same date for the Merced location, there is no reference in this Addendum to the branch location in Merced. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 24)

**March 1, 2001 - Dealer Service Agreement (Merced Location for  
Service and Parts Sales Only) between Western Star and  
Bonander Pontiac dba Merced Truck & Trailer**

49. This 2001 Agreement has the caption of only “Dealer Service Agreement,” as “Parts” has been deleted from the caption. It is stated to be between Western Star Trucks Sales, Inc., a Delaware corporation and Bonander Pontiac, Inc. doing business as Merced Truck & Trailer at 625 Martin Luther King Way, Merced, CA. Western Star is identified as being “[a] Subsidiary of Freightliner LLC.” (Emphasis added; Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 27)

50. This Service Agreement is also a franchise as defined in Section 331(a) as it is not excluded by Section 331(b). Bonander Pontiac is again named as the franchisee for the Merced location and Western Star is the franchisor. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 27) If this or any other franchise is still effective, Bonander Pontiac has standing as a franchisee to protest on its own behalf any conduct of Western Star (or DTNA) that comes within Section 3060.

51. It is noted that in none of the above agreements is DTNA stated to be a party.

**January 18, 2017 Dealer Sales and Service Agreement between Western Star  
and Bonander Auto, Truck & Trailer, Inc.  
(Turlock Location for Sales of Western Star Trucks and Service)**

52. This 2017 Dealer Sales and Service Agreement between Bonander and Western Star is a franchise. It has an addendum for area of responsibility and product, but the addendum no longer makes reference to the MT&T location in Merced as a branch location. If any of the prior addenda that included Merced as a branch location of Bonander remained effective, this could be a failure to renew the prior franchise for the Merced location or this could be a replacement franchise or a modification of the prior franchise in which Addendum 1 included the Merced branch location as a franchise. For this January 18, 2017 Dealer Agreement to be effective, notices complying with Section 3060 would be required to terminate, modify, fail to renew or replace the prior agreement that was a franchise of Bonander for the Merced location. No such notices were provided. (Declaration of Don Bonander in Support of Bonander’s Opening Brief on Remand, Ex. 41)

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**January 25, 2017 Dealer Service Agreement between Western Star and Merced  
Truck & Trailer, Inc. (Merced Location for Service and Parts Sales Only)**

53. This January 25, 2017 Service-Only Agreement is stated to be between MT&T and Western Star. (Declaration of Don Bonander in Support of Bonander's Opening Brief on Remand, Ex. 42) It is NOT a franchise as it is excluded from the statutory definition of a franchise by Section 331(b) as MT&T is not a new motor vehicle dealer of Western Star. However, as stated herein, since Western Star did not comply with the requirements of Section 3060 as to the prior franchises of Bonander, the January 25, 2017 Agreement was entered into unlawfully and is void. Bonander, therefore, remains a franchisee under the prior agreements which were not effectively terminated, modified, renewed or replaced.

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## **CHART SUMMARIZING THE AGREEMENTS**

54. The chart below summarizes the above agreements:

YEAR	AGREEMENT	DEALER	FRANCHISEE	BRANCH	FRANCHISEE <sup>27</sup>
1994	Dealer Full Service Agreement	Bonander Pontiac, Inc. dba Bonander Truck	Yes	Merced Truck & Trailer	Yes
1995	Dealer Full Service Agreement	Bonander Pontiac, Inc. dba Bonander Truck	Yes	Merced Truck & Trailer	Yes
1996	Dealer Full Service Agreement	Bonander Pontiac, Inc.	Yes	Merced Truck & Trailer	Yes
1997 <sup>28</sup>	Dealer Full Service Agreement	Bonander Pontiac, Inc.	Yes	Merced Truck & Trailer	Yes
2000	Dealer Full Service Agreement	Bonander Pontiac, Inc.	Yes	Merced Truck & Trailer	Yes
2000	Dealer Parts & Service Agreement (no vehicle sales)	Bonander Pontiac, Inc.	Yes	Merced Truck & Trailer <sup>29</sup>	Yes
2001	Dealer Service Agreement (parts and service only with no vehicle sales)	Bonander Pontiac, Inc.	Yes	Merced Truck & Trailer	Yes
2017	Dealer Sales and Service Agreement	Bonander Auto, Truck & Trailer, Inc.	Yes	None	N/A
2017	Dealer Service Agreement	Merced Truck & Trailer	No	None	N/A

## **PROPOSED FINDINGS**

### **The January 25, 2017 Service-Only Agreement that DTNA Seeks to Terminate**

55. DTNA, by letter dated May 11, 2020, addressed to MT&T, stated that DTNA intended to terminate the Service-Only Agreement of MT&T for the Merced location dated January 25, 2017. (Protest No. PR-2673-20, Ex. J; Motion to Dismiss, p. 3, lines 15-20; Derbyshire Declaration dated July 23, 2020, ¶¶ 2-3, Ex. A)

<sup>27</sup> Bonander would be the franchisee for the Merced location of MT&T.

<sup>28</sup> As noted above, this 1997 Agreement is unsigned and not dated.

<sup>29</sup> As previously indicated, Bonander Pontiac, Inc. is expressly named as the franchisee with the Merced address being the “principal sales and service outlets” and with the operation under Merced Truck & Trailer rather than as a branch location.

1           56.     As noted above, the Board has previously concluded in its Decision in Protest No. PR-  
2 2671-20 that this 2017 Service-Only Agreement (signed only by Western Star and MT&T) is not a  
3 franchise as it is excluded by the provisions of Section 331(b).<sup>30</sup> As it is not a franchise, then neither  
4 MT&T nor Bonander can be franchisees under this 2017 Agreement. (Board Decision in Protest No. PR-  
5 2671-20)

6           57.     The Board also concluded that Bonander has no standing to bring a protest in its own  
7 behalf or on behalf of MT&T under this 2017 Service-Only Agreement. (Board Decision in Protest No.  
8 PR-2671-20)

9           58.     However, in the discussion above, Western Star and Bonander Pontiac were found to be  
10 parties to the pre-2017 dealer agreements between Western Star and Bonander Pontiac that included both  
11 the Turlock location and the Merced location, including the prior Service-Only Agreement between  
12 Bonander Pontiac and Western Star for the Merced location. All of these pre-2017 agreements were  
13 found to be franchises within Section 331(a) as none of these were excluded by Section 331(b). Bonander  
14 Pontiac was found to be a franchisee as to the Merced branch location under the terms of the prior dealer  
15 agreements and their addenda, as well as a franchisee for the Merced location under the 2001 Dealer  
16 Service Agreement (but not the 2017 Service-Only Agreement signed by Western Star and MT&T). If  
17 any of these prior dealer agreements remain effective, Bonander (under its new name Bonander Auto,  
18 Truck & Trailer, Inc.), as a franchisee as to the Merced location, would have standing to bring a protest  
19 on its own behalf pursuant to Section 3060 challenging any attempted termination, refusal to renew,  
20 replacement or modification of any franchise relating to the Merced location. This would be so  
21 irrespective of whether DTNA is or is not considered a party or franchisor as to any of the agreements.

22           59.     The issues then become whether the January 18, 2017 Dealer Sales and Service Agreement  
23 between Western Star and Bonander for the Turlock location and the January 25, 2017 Service-Only  
24 Agreement between Western Star and MT&T (that DTNA seeks to terminate and which is not a  
25 “franchise”) are legally effective or void, and if void, whether the prior agreements, which are franchises  
26 under which Bonander is the franchisee for the Merced branch location, remain effective. Whether the

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27  
28 <sup>30</sup> This agreement was not a “franchise” as it was signed only by MT&T (and not Bonander) and MT&T was  
“ . . . not a new motor vehicle dealer franchisee of . . .” Western Star. (See Section 331(b)(2))

1 2017 Agreements are effective or void depends upon whether Western Star acted illegally/unlawfully by  
2 failing to comply with the provisions of Section 3060 regarding termination or modification or failure to  
3 renew or replace the prior franchises under which Bonander Pontiac was a franchisee for the Merced  
4 location. As explained herein, the failure of Western Star to comply with the provisions of Section 3060  
5 would mean that the prior agreements that were franchises were not legally terminated, modified or  
6 replaced, and any replacement agreements, including the January 18, 2017 Dealer Sales and Service  
7 Agreement of Bonander and the January 25, 2017 Service-Only Agreement with MT&T, that DTNA  
8 claims are controlling, would be void<sup>31</sup> due to illegality.

9         60. A tribunal's ability, and perhaps duty, as stated by the California courts, to decline to  
10 recognize or enforce an illegal contract is based upon the fact that enforcement of illegal agreements is  
11 contrary to public policy. (See footnote 38 *infra* for exceptions to this general rule.) Because it is based  
12 upon violation of public policy, illegality of the contract is not a "personal defense" of the other party (in  
13 this case, Bonander) that renders the agreements voidable. Accordingly, there is no need for Bonander to  
14 seek the judicial relief of "rescission" of the contracts.<sup>32</sup> Requiring that a party seek rescission would  
15 mean that the contract is merely voidable and would be in effect until the remedy of rescission is granted  
16 by a court with jurisdiction (rather than the Board). However, an illegal contract means that the contract  
17 is deemed void *ab initio* (from the beginning). Thus, there is no need for a party to seek rescission as the  
18 "void contract" is deemed never to have existed. In addition, some of the defenses that may be raised  
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20 <sup>31</sup> As discussed herein, there are significant differences between a contract being "voidable" compared to a contract  
21 being "void."

22 <sup>32</sup> DTNA is correct that the Board does not have authority to grant the relief of rescission and thus cannot order  
23 rescission of a voidable contract. However, Bonander is not seeking the remedy of rescission of the January 18,  
24 2017 or January 25, 2017 Agreement. Rather, it is DTNA that is seeking a ruling by the Board that the January  
25 2017 Agreements are the controlling documents and that, because the prior contracts were no longer valid, DTNA  
26 and Western Star became exempt from the legislatively created obligation to give the notices required by Section  
27 3060. In essence, DTNA seeks a ruling that the Board should recognize the 2017 agreements as being legally  
28 effective to discharge the prior agreements under which Bonander was a franchisee as to the Merced location.  
Therefore, the issue here is not whether Bonander has a personal defense that would render the 2017 Agreements  
voidable and subject to rescission but whether DTNA has the right to enforce these January 2017 Agreements that  
were entered into without compliance with Section 3060. Here, it is DTNA that is seeking to enforce illegal  
agreements that DTNA now asserts operated to terminate, replace or modify the prior franchises despite the  
"unlawful" failure of Western Star or DTNA to comply with the statutes. Therefore, the Board, as is the case with  
any tribunal, has the inherent power as a matter of public policy, to deny a party the right to enforce a contract that  
is "unlawful."

1 against a party seeking rescission of a “voidable” contract are not available to the other party (Western  
2 Star or DTNA here) that has engaged in unlawful conduct, i.e., against public policy, that resulted in the  
3 agreement being void due to illegality.

4 61. In addition, illegality may be raised by a tribunal *sua sponte* (on its own accord) at any  
5 time, even if not raised by either party.<sup>33</sup> As stated by the California Court of Appeal in *Fellom v.*  
6 *Adams* (1969) 274 Cal.App.2d 855, 863, “the court has both the power and duty to ascertain the true facts  
7 in order that it may not unwittingly lend its assistance to the consummation or encouragement of what  
8 public policy forbids. [Citations.] It is immaterial that the parties, whether by inadvertence or consent,  
9 even at the trial do not raise the issue. The court may do so of its own motion when the testimony  
10 produces evidence of illegality. [Citation.] It is not too late to raise the issue . . . even on appeal.”  
11 [Citation.]

12 62. The following is language from *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141,  
13 147-148:

14 Plaintiff contends, however, that because defendant admitted in its answer that equipment  
15 had been furnished under the written rental agreements, the trial court was precluded from  
16 finding that the actual agreements were subcontracts because it should have restricted its  
17 findings to the issues made by the pleadings. There is no merit in this contention. Whatever  
18 the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to  
19 enforce an illegal contract or recover compensation for an illegal act, the court has both the  
20 power and duty to ascertain the true facts in order that it may not unwittingly lend its  
21 assistance to the consummation or encouragement of what public policy forbids.  
22 [Citations.] It is immaterial that the parties, whether by inadvertence or consent, even at the  
23 trial do not raise the issue. The court may do so of its own motion when the testimony  
24 produces evidence of illegality. [Citation.] It is not too late to raise the issue on motion for  
25 new trial [citation] in a proceeding to enforce an arbitration award [citation], or even on  
26 appeal. [Citations.]

21 63. Upon finding a contract to be illegal, courts will usually leave the parties as it finds them  
22 and will not grant relief to either party. (*Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118  
23 Cal.App. 4th 531, 541 citing *Wells v. Comstock* (1956) 46 Cal.2d 528, 532 “that when the illegality of the  
24 contract renders the bargain unenforceable, ‘[t]he court will leave them [the parties] where they were  
25 when the action was begun.’”) However, in this case it is only DTNA that is seeking to enforce illegal

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26 <sup>33</sup> The ALJ, after considering the Remand Order and the submissions of the parties, raised the issue of illegality  
27 during the first hearing on the remand. After the ALJ explained the issues to be addressed, counsel were given the  
28 opportunity to submit supplemental briefs and a second hearing was conducted by the ALJ on January 6, 2022 on  
the remand issues and the issue of illegality. (September 22, 2021, telephonic hearing transcript)

1 contracts. Accordingly, if the January 18, 2017 Dealer Agreement for Turlock or the 2017 Service-Only  
2 Agreement for Merced are found to be void, neither can be enforced by DTNA (or Western Star), and  
3 neither of the January 2017 Agreements can have any effect upon the prior agreements under which  
4 Bonander was a franchisee for both locations. Western Star cannot enforce the January 2017 Agreements  
5 and must honor the prior franchises. Likewise, leaving Bonander where it was prior to the unlawful  
6 contracts is not only in accord with the usual rule of leaving the parties where they were but also furthers  
7 the intent of the legislature of protecting a franchisee by leaving the existing franchises of Bonander in  
8 place and effective unless there is compliance with the statutes. (Veh. Code § 3060)

9 64. There is no question that the Board’s statutes specifically include franchisees as the  
10 persons intended to be protected by the legislature. (See *New Motor Vehicle Bd. v. Orrin W. Fox Co.*  
11 (1978) 439 U.S. 96)

12 65. As noted by the U.S. Supreme Court, the contracts at issue here are what are referred to as  
13 “adhesion contracts” in that franchises, and their periodic modifications or replacements, generally  
14 involve a “take it or leave it” presentation by franchisors with a far superior bargaining position compared  
15 to existing franchisees that rarely have any meaningful choice but to adhere/acquiesce to the terms drafted  
16 by the franchisor. (*Id.* at 100-102)

17 66. In this case, finding the January 2017 Agreements to be illegal and therefore void, will not  
18 adversely affect Bonander or create new rights in Bonander. In fact, refusing to recognize the 2017  
19 Agreements as valid will continue to provide Bonander and the public with the protection intended by the  
20 legislature (protections that Western Star and DTNA now seek to avoid claiming that the 2017  
21 Agreements are controlling despite having engaged in serial violations of Section 3060). The usual  
22 conclusion that illegal contracts are void means here that the statutory scheme that protects Bonander  
23 from what has transpired permits the continued existence of Bonander’s franchises as those prior  
24 agreements remain effective. To find that the prior franchises had been terminated or replaced by Western  
25 Star without compliance with Section 3060 would enable a franchisor to do indirectly what the legislature  
26 has stated cannot be done directly, that is to obtain termination of a franchise despite the franchisor’s  
27 failure to provide the notices mandated by the statutes. (Veh. Code § 3060) A franchisor cannot be  
28 allowed to unlawfully ignore the legislature’s enactments, enter into new agreements, and then claim that

1 the prior agreements no longer existed because the new (but unlawfully obtained) agreements are  
2 controlling.

3         67. Finding that the prior agreements continued to exist would deter such conduct and here  
4 would mean that the applicable controlling agreements are not those of January 2017 but are those prior  
5 franchises under which Bonander Pontiac was and is the franchisee for both the Turlock and the Merced  
6 locations. Finding the January 2017 Agreements to be void would have the effect of furthering the  
7 legislature's intention to protect a franchisee from a franchisor's attempts to terminate, modify, or replace  
8 a franchise without providing the required notices to the franchisee and the Board.<sup>34</sup> In addition to the fact  
9 that Bonander is not the party that is in violation of the Vehicle Code, the general rule that a tribunal will  
10 not grant relief to either party if the contract is illegal will not negatively impact Bonander, or change the  
11 conclusions herein, as Bonander is not the party seeking to enforce the illegal agreement. To the contrary,  
12 Bonander is seeking to enforce the prior agreements under which Bonander Pontiac is a franchisee with  
13 the protections intended by the legislature.

14         68. And perhaps most important, such a holding will discourage such conduct by franchisors.  
15 Here, it is DTNA through a sequence of unlawful conduct that is claiming a right to terminate Bonander's  
16 franchise for the Merced location without complying with the legislatively-created protections established  
17 by Section 3060, et seq. As discussed below, one example of this attempt is the claim of DTNA that,  
18 despite its failure to comply with the legislative mandates of notice to Bonander and the Board, all of the  
19 prior agreements between Bonander and Western Star were terminated when Western Star and MT&T  
20 and Western Star and Bonander executed the 2017 Agreements. (DTNA's Opening Brief on Remand,  
21 p. 8, line 21 through p. 9, line 13 and lines 19-25; DTNA's Reply Brief on Remand, p. 8, lines 13-18)  
22 This claim of DTNA is partly based upon the assertion that the "integration clauses" in the 2017  
23 Agreements have the effect of discharging (terminating) the prior franchises under the parole evidence  
24 rule. (DTNA's Reply Brief on Remand, p. 6, line 19 through p. 7, line 12)

25         69. Recognizing this claim as valid would mean that all franchisors could avoid the statutes by  
26 \_\_\_\_\_

27 <sup>34</sup> See also Section 3060(b)(1) which, in part, provides: "If, however, a replacement franchise is the successor  
28 franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the  
protest by the board."

reference to the integration clause that already exists in virtually every renewal, replacement or modified franchise.<sup>35</sup> To find that an integration clause in an illegal agreement discharges the prior agreement would allow a franchisor to enforce the illegal agreement to justify its failure to comply with the statutory notice requirements. And worse, a franchisor, through the use of a law of contracts, would be able to bypass all of Section 3060 and convert an unlawful/void agreement into a valid agreement by the use of an integration clause in the void contract. As for the inability to use the parol evidence rule to prevent a showing that a contract is void due to illegality, the California courts have held as follows:

Equally without merit is plaintiff's contention that because the rental agreements stated that they contained all provisions agreed to by the parties, the parol evidence rule precluded the admission of other evidence showing the true nature of the agreement between the parties and that plaintiff had in fact acted as a contractor. The parol evidence rule does not exclude evidence showing that a contract lawful on its face is in fact part of an illegal transaction. [Citations.] The policy in favor of narrowing the issues in dispute, which normally confines the court to those made by the pleadings, and the policy of the parol evidence rule favoring the conclusiveness of integrated written agreements, both give way before the importance of discouraging illegal conduct. To this end, the trial court must be free to search out illegality lying behind the forms in which the parties have cast the transaction to conceal such illegality. (*Lewis & Queen v. N. M. Ball Sons, supra*, 48 Cal.2d at 148)

**Were the Prior Franchises Under which Bonander was the Franchisee for the Branch Location in Merced Legally Terminated, Replaced, Renewed or Modified in Accordance with Section 3060?**

70. It has been determined that under the pre-2017 agreements, Bonander was a franchisee as to the Turlock location as well as the Branch Location in Merced. Therefore, the franchisor, whether Western Star or DTNA, in order to legally terminate, refuse to continue, replace or modify a franchise, must comply with the provisions of Section 3060 that are applicable to both locations stated in these franchises. Also, as stated above, the statutory mandates of Section 3060 cannot be avoided by a franchisor by use of the parol evidence rule. To allow the integration clause to be effective pursuant to the parol evidence rule and discharge the prior franchise would allow a franchisor to obtain "termination by integration" rather than "termination in accord with legislation."

71. Section 3060 provides, in part, as follows:

(a) Notwithstanding . . . the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

<sup>35</sup> Integration clauses are found in virtually all franchises and are usually found near the end of the franchise. Significant portions of Section 3060 would be nullified if integration clauses were deemed to trump legislative intent.

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

...  
(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

[To be inserted when a 60-day notice of termination is given.]

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

[To be inserted when a 15-day notice of termination is given.]

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

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.<sup>36</sup>

(b) (1) Notwithstanding . . . the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee’s sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, satisfying the requirement of this section, or within 30 days after the end of any

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<sup>36</sup> It is noted that there is no comparable provision regarding written consent of the franchisee if the action of the franchisor involves modification or replacement of a franchise within Section 3060(b)(2). It is also noted that this provision requires that the written consent of the franchisee be “received” by the franchisor prior to the termination or refusal to renew the franchise. If consent of the franchisee is for some reason deemed applicable to Section 3060(b) as urged by DTNA, this language is interpreted to mean that the written consent must be received by the franchisor by way of a writing both separate and prior to execution of the modifying agreement or replacement agreement. Also, as stated above, the consent of the franchisee to the illegal conduct of the franchisor and the resulting illegal agreements do not preclude the finding that the illegal agreements are void.



1 appeal procedure provided by the franchisor, a franchisee may file a protest with the board  
2 and the modification or replacement does not become effective until there is a finding by  
3 the board that there is good cause for the modification or replacement. If, however, a  
4 replacement franchise is the successor franchise to an expiring or expired term franchise,  
the prior franchise shall continue in effect until resolution of the protest by the board. In the  
event of multiple protests, hearings shall be consolidated to expedite the disposition of the  
issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type  
and circumscribed by a line to segregate it from the rest of the text, the following  
statement:

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

72. As quoted above, Section 3060(a) provides in part: “(a) . . . no franchisor shall terminate or  
refuse to continue any existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for  
termination or refusal to continue.” (Emphasis added.)

73. Likewise, Section 3060(b) provides in part: “. . . no franchisor shall modify or replace a  
franchise with a succeeding franchise if the modification or replacement would substantially affect the  
franchisee’s sales or service obligations or investment, unless the franchisor has first given the board and  
each affected franchisee written notice thereof at least 60 days in advance of the modification or  
replacement.” (Emphasis added.)

74. The language above required that Western Star “first” give the Board and Bonander  
“written notice . . . at least 60 days in advance” of the January 18, 2017 and January 25, 2017  
agreements. Thus, notices to the Board and Bonander were either required to be “received” by the Board  
and Bonander “[s]ixty days before” the intended action (Section 3060(a)) or “first given” to the Board and  
Bonander “at least 60 days in advance” of the intended action (Section 3060(b)). Regardless of what was  
intended, the facts, analysis and results are the same as, in response to the ALJ’s inquiry, counsel for  
DTNA confirmed that there were no notices provided to Bonander or the Board that would satisfy the  
provisions of Section 3060 regarding any action pertaining to Bonander’s franchises for the Merced

Service-Only location or the Turlock location.<sup>37</sup> (January 6, 2022, telephonic hearing transcript, p. 6, line 19 through p. 7, line 12)

75. It has been determined that the prior agreements between Bonander and Western Star were franchises for the Merced location, and, as there were no notices at any time from either Western Star or DTNA that did comply with Section 3060 as to those prior franchises, it does not matter whether DTNA or Western Star is deemed to be the franchisor as to these prior franchises. Therefore, none of the prior franchises for either location were legally terminated or replaced or modified.

**Whether the January 18, 2017 Agreement between Western Star and Bonander and the January 25, 2017 Agreement between Western Star and MT&T are Void Due to Illegality**

76. Unlawful contracts are generally deemed void in California as a matter of public policy and cannot be enforced by either party.<sup>38</sup> (Civ. Code § 1667)

77. The California Civil Code addresses “contracts” and defines an unlawful contract as follows in Section 1667:

That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

78. DTNA here is attempting to enforce a contract that is “contrary to an express provision of law” as it is attempting to do that which is expressly made “unlawful” by at least two sections of the

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<sup>37</sup> One of the reasons DTNA asserts that Section 3060 is not applicable is that the January 2017 Agreements had the effect of discharging the prior agreements under which Bonander was a franchisee for both locations. This contention has the effect of reversing the intent of the legislature. The statutes require that there first be notice to the franchisee and the Board prior to any termination, renewal, replacement or modification of the existing franchise. Without such notice, the intended conduct is prohibited. DTNA’s assertion is that the termination, renewal, replacement or modification of a franchise takes precedence as, if they occur, then the statutorily mandated notices are no longer required. (See also footnote 32.)

<sup>38</sup> Depending on the facts, California Courts have carved out exceptions “to the statutory and judicial language that illegal contracts are void and unenforceable.” For example: (1) “illegal contract enforced if defendant would be unjustly enriched or plaintiff would be subject to harsh penalty; [citation] (2) “illegal contract can be enforced if statutory penalties interpreted to exclude as a sanction nonenforcement of contract;” [citation] (3) “illegal contract may be enforced based on such considerations as whether public cannot be protected because contract terminated, no serious moral turpitude involved, defendant more at fault, and defendant otherwise would be unjustly enriched;” (*Lewis & Queen v. N.M. Ball Sons*, supra, 48 Cal.2d at p. 151) and (4) “illegal contract enforced if policy better served by enforcement against violating defendant.” [Citations.] (See *Kashani v. Tsann Kuen China Enterprise Co.*, supra, 118 Cal. App. 4th at pp. 541-542) None of these exceptions are applicable here.

Vehicle Code. Section 11713.3 states:

**It is unlawful** and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...  
(l) To modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) or Article 5 (commencing with Section 3070) of Chapter 6 of Division 2. (Emphasis added.)

79. In addition to Section 11713.3(l), there is the following language in Section 40000.1 that makes it “unlawful” and an “infraction” “for any person to violate or fail to comply with any provisions of the code.” This section states: “Except as otherwise provided in this article, it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of this code, or any local ordinance adopted pursuant to this code.”

80. As stated above, neither Western Star nor DTNA provided any Section 3060 notices over the years regarding any modification, replacement, termination or refusal to continue any of Bonander’s franchises for either the Turlock or the Merced locations.

81. Thus, there is conduct of Western Star and DTNA that comes within Civil Code Section 1667 as “[c]ontrary to an express provision of law” as there have been what amount to serial violations over the years of Sections 3060, 11713.3(l) and 40000.1.

82. As neither Western Star nor DTNA have complied with the provisions of Section 3060, the pre-2017 agreements of Bonander for the Merced and Turlock locations were not terminated, modified or replaced and thus continue to exist. However, DTNA is now seeking to enforce the terms of the January 18, 2017 Dealer Agreement between Western Star and Bonander and the 2017 Service-Only Agreement between MT&T and Western Star. Allowing DTNA to do so would enable DTNA to do that which is expressly made “unlawful” and prohibited by the statutes quoted above, which is to unlawfully terminate all the prior agreements despite the failure to comply with Section 3060.

83. As it is undisputed that neither DTNA nor Western Star has complied with the statutory provisions of Section 3060, there is no conclusion that can be reached other than finding that DTNA is attempting to enforce the terms of the January 18, 2017 Dealer Agreement and January 25, 2017 Service-Only Agreement that are illegal contracts that are void as a matter of public policy.

84. DTNA, in its Motion to Dismiss, is asking that the Board recognize the validity of the

1 2017 Service-Only Agreement and dismiss the protest filed by Bonander. In essence, DTNA is asking the  
2 Board to disregard the prior franchises under which Bonander was and is the franchisee for the Merced  
3 location and, DTNA, through the use of the illegal contracts, summarily seeks to terminate Bonander's  
4 rights to operate the Merced location as an additional franchise of Bonander.

5 85. Granting DTNA's Motion to Dismiss would be sanctioning the unlawful conduct of  
6 Western Star in not complying with Section 3060 regarding the termination, renewal or modification of  
7 Bonander's franchises. And, most significantly, granting the motion would allow DTNA/Western Star to  
8 terminate the franchise of Bonander for the Merced operations without a hearing before the Board during  
9 which DTNA/Western Star would have the burden of proving good cause to do so as mandated by the  
10 legislature. (Veh. Code §§ 3060, 3061, 3066(a))

11 86. DTNA is correct that the January 25, 2017 Service-Only Agreement was found not to be a  
12 franchise, so the legislatively-created protections granted to Bonander as a franchisee under the prior  
13 agreements are not applicable to this Agreement. However, this is irrelevant to the current inquiry. This is  
14 because it has been concluded herein that the agreement DTNA claims is the controlling document and  
15 seeks to terminate is void and of no legal effect. Thus, neither DTNA nor Western Star have any  
16 enforceable rights under the 2017 Service-Only Agreement

17 87. As the prior franchises were not lawfully terminated, replaced, or modified in compliance  
18 with Section 3060, the January 18, 2017 Dealer Agreement between Western Star and Bonander and the  
19 January 25, 2017 Service-Only Agreement between Western Star and MT&T are illegal and void.

20 **AS THE JANUARY 25, 2017 AGREEMENT THAT DTNA SEEKS TO TERMINATE**  
21 **IS VOID WHETHER THE PROTEST SHOULD BE DISMISSED AS BEING MOOT**

22 88. It may be that the protest should be dismissed on the grounds of mootness as DTNA is  
23 claiming a right to terminate a contract that is non-existent as it is void.

24 89. As Bonander was a franchisee as to the Merced location under the prior agreements,  
25 Section 3060(a) would be applicable to any attempt to terminate the franchise of Bonander to operate the  
26 Merced branch location. Similarly, Section 3060(b) would be applicable if the termination of the Merced  
27 operations would be deemed an intent to "modify" or "replace" the franchise of Bonander, with a  
28 "succeeding franchise." In any of these cases, such conduct by the franchisor would be subject to

subdivision (a) or (b) of Section 3060.

90. It is undisputed that Western Star did not provide any notices as to the termination of any of the prior agreements nor did it give any notices of its intent to modify or replace any of the prior agreements. Consequently, there has been no compliance with any of the statutory requirements pertaining to any of the prior franchises at any time during the relationship between Bonander and Western Star. Western Star did not provide notices of the termination or modification or replacement of any of the prior franchises when it presented any of the succeeding franchises to Bonander for its signature.<sup>39</sup> This means that any prior existing franchises remained effective as neither Western Star nor DTNA had the power or the right to terminate, refuse to renew, modify or replace them without compliance with Section 3060.

91. Because the January 18, 2017 Dealer Agreement and the January 25, 2017 Service-Only Agreement are void, and because there has never been compliance with Section 3060 as to any of the prior agreements under which Bonander was found to be a franchisee as to the Merced location, Bonander remains a franchisee as to the Merced location. Despite the failure of Western Star (or DTNA) to provide the statutorily required notices, what DTNA is attempting to do will have the effect of terminating the franchise of Bonander Pontiac that authorizes Bonander to operate the Merced facility. Sanctioning this would allow the termination of Bonander's franchise for the Merced location despite lack of compliance with Section 3060.

92. Thus, there are at least two events that exist in this situation that have been declared by the legislature to be beyond the right of a franchisor. The first is the sequence of agreements that have been drafted by the franchisor and historically (but unlawfully) been presented to Bonander without compliance with Section 3060. The second is the attempt of DTNA to enforce the last of these illegal agreements by terminating the franchise of Bonander for the Merced location without complying with Section 3060. DTNA is attempting to do so by claiming the January 18, 2017 Dealer Agreement with Bonander no longer includes the addendum for the Merced franchise; that the prior Service-Only Agreement for the

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<sup>39</sup> In addition to franchisors providing notices of their intention to terminate a specific franchise pursuant to Section 3060(a), franchisors also customarily comply with the other legislative mandates of Section 3060 by providing notices to the Board and to all of their franchisees in California of the franchisor's intention to replace all its existing franchises with succeeding franchises for all of its dealers in California. (Underline added.)

Merced franchise of Bonander has been discharged/terminated by the execution of the January 18, 2017 Dealer Agreement; and that the January 25, 2017 Service-Only Agreement with MT&T permits termination at will (without good cause) and without providing the notices required by Section 3060.

93. Such practices by a franchisor are exactly what Section 3060 was intended to prevent. Subdivisions (a) and (b) of Section 3060 both start with the same language “[n]otwithstanding . . . the terms of any franchise, no franchisor shall . . .”

### **SUMMARY OF DTNA’S CONTENTIONS**

94. DTNA contends that compliance with Section 3060 was not required to terminate the 2017 Service-Only Agreement with MT&T for the following reasons:

(1) The 2017 Service-Only Agreement that DTNA seeks to terminate was not a franchise; (DTNA’s Reply Brief on Remand, p. 3, line 6; DTNA’s Supplemental Response Brief on Remand, p. 15, lines 20-26)

(2) The only service agreement in effect for the Merced branch location is the January 25, 2017 Service-Only Agreement as the integration clause in that agreement operates to discharge the prior agreements in accordance with the parol evidence rule; (DTNA’s Supplemental Opening Brief on Remand, p. 9, line 9 through p. 10, line 2)

(3) Any claim asserted by Bonander that is seeking rescission of the January 25, 2017 Service-Only Agreement is beyond the powers of the Board to resolve and any relief Bonander seeks should be left to Superior Court; (DTNA’s Supplemental Opening Brief on Remand, p. 4, lines 26-27, p. 10, lines 11-14, p. 11, lines 16-18)

(4) Any claim asserted by Bonander seeking rescission of the January 25, 2017 Service-Only Agreement is barred by the statute of limitations; (DTNA’s Supplemental Opening Brief on Remand, p. 3, lines 15-18, p. 12, line 16 through p. 13, line 8; DTNA’s Supplemental Response Brief on Remand, p. 2, lines 23-25) and,

(5) If Section 3060 would have been applicable, no notices were required as Bonander, by

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entering into the January 18, 2017 and January 25, 2017 Agreements,<sup>40</sup> consented to the termination of the prior agreements for the Merced location, i.e., it was a voluntary termination. (DTNA's Opening Brief on Remand, p. 9, line 19-22; DTNA's Reply in Support of Motion to Dismiss Protest, p. 1, lines 22-26; DTNA's Supplemental Opening Brief on Remand, p. 5, line 11-12; DTNA's Supplemental Response Brief on Remand, p. 2, lines 18-23, p. 4, lines 12-14 and line 19 through p. 5, line 6)

95. It is noted that all of the above assertions of DTNA are based upon the January 25, 2017 Service-Only Agreement being applicable to the relationship and governing the rights of the parties. Therefore, the inquiry must address whether the January 25, 2017 Service-Only Agreement is legally effective or whether it is void. Each of DTNA's assertions will be addressed although all will be irrelevant if the Bonander franchises that existed (including the Bonander Pontiac franchise for the Merced branch location) were not legally terminated, modified or replaced.

96. It is again noted that there is no dispute that neither Western Star nor DTNA provided any notices that would satisfy Section 3060 regarding termination, refusal to renew, modification or replacement of the prior franchise(s) for the Merced location or the Turlock location. Engaging in any such conduct without compliance with Section 3060 constitutes a violation of the Vehicle Code and would be "unlawful" as stated in the Vehicle Code and Civil Code. Thus, in addition to repeated violations of the Vehicle Code regarding the prior franchises, the current facts also involve possible violations of the Vehicle Code as to both of the January 2017 Agreements, as follows: (a) Western Star's entries into the January 18, 2017 Dealer Agreement and the January 25, 2017 Service-Only Agreement were unlawful/illegal as there was no compliance with Section 3060 as to the prior franchises; and (b) As there has never been compliance with Section 3060, the current attempt to terminate Bonander's franchise for the Merced location, is also in violation of the Vehicle Code. Accordingly, the attempt of DTNA to utilize the termination provisions of the January 25, 2017 Service-Only Agreement to terminate or refuse to continue Bonander's franchise for the Merced location constitutes a violation of the Vehicle Code.

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<sup>40</sup> As stated previously and as argued at times by DTNA, Bonander was not a party to the January 25, 2017 Service-Only agreement.

1                                   **ANALYSIS OF DTNA’S CONTENTIONS**

2                                   **Whether The January 25, 2017 Service-Only Agreement that DTNA Seeks to**  
3                                   **Terminate was a Franchise**

4                   97.     DTNA is correct that the January 25, 2017 Service-Only Agreement is not a franchise.  
5     However, the prior agreements were franchises in which Bonander Pontiac was the franchisee for both the  
6     Merced and Turlock locations and it is those franchises that continue to exist and that give Bonander  
7     standing to protest any conduct of Western Star or DTNA that comes within Section 3060 as to either  
8     location.

9                                   **Whether The Service-Only Agreement in Effect for the Merced Branch Location is the**  
10                                  **January 25, 2017 Service-Only Agreement as the Integration Clause Operates to Discharge the**  
11                                  **Prior Agreements in Accordance with the Parol Evidence Rule**

12               98.     As both the January 2017 Agreements are void due to illegality, none of their terms are  
13     applicable or effective. Therefore, the integration clauses in these 2017 agreements are of no legal  
14     significance. In addition, as discussed above, the parol evidence rule cannot abrogate the legislatively  
15     created protections provided by Section 3060. To accept DTNA’s contention would allow “termination by  
16     the parol evidence rule” based upon a contract drafted by the franchisor and would render Section 3060 a  
17     nullity.

18                                  **Whether Any Claim Asserted by Bonander that it is Seeking Rescission of the**  
19                                  **January 25, 2017 Service-Only Agreement is Beyond the Powers of the Board to Resolve**  
20                                  **and any Relief Bonander Seeks should be Left to Superior Court**

21               99.     DTNA is correct that any claim for rescission of the January 25, 2017 Service-Only  
22     Agreement is beyond the powers of the Board to resolve. However, as discussed above, the Board is not  
23     considering whether Bonander has a right to rescind what may be a voidable contract due to some  
24     personal defense Bonander may claim it has. DTNA is confusing a voidable contract subject to the right  
25     of a party to seek the judicial remedy of rescission compared to a void contract that is invalid as a matter  
26     of public policy. As discussed above, the Board, as does any tribunal, has the right (and as stated by the  
27     courts, the duty) to determine if the agreement sought to be enforced is unlawful and thus void. (See  
28     paragraph 62, *supra*)

              100.     Here, the Board, if it granted DTNA’s Motion to Dismiss, would be lending its assistance  
or encouragement of what public policy forbids, as the Board would be sanctioning the repeated



violations of Section 3060 over the years and allow Western Star/DTNA to terminate summarily the franchise of Bonander for the Merced location without consideration of whether there is good cause to do so and without considering factors such as the impact upon the public, and whether Bonander would suffer a disproportionate forfeiture. The Board here is doing nothing more than determining whether it has jurisdiction to hear the protest of Bonander challenging the intended termination of its claimed franchise for the Merced location. This requires deciding whether DTNA/Western Star in entering into the 2017 agreements complied with the statutory provisions the Board has been charged with administering. In essence, the only issue being decided is whether Bonander is a “franchisee” as to the Merced location.

**Whether Any Claim Asserted by Bonander Seeking Rescission of the January 25, 2017 Service-Only Agreement is Barred by the Statute of Limitations**

101. As indicated above, the Board is not considering whether Bonander has a right to rescind the January 25, 2017 Service-Only Agreement. If the agreement were merely voidable, DTNA may be correct that Bonander’s claim of a right to rescind the agreement would be subject to the statute of limitations and may be barred. However, as stated above, the Board is not considering whether the agreement is voidable and consequently subject to rescission, a remedy beyond the Board’s jurisdiction. The Board is not addressing the equitable remedy of rescission, but rather, the Board is exercising the inherent right of any tribunal to ascertain if the agreement DTNA is claiming to be controlling is valid or whether it is unlawful and thus void with the result being that Bonander remains a franchisee. If the 2017 Service-Only Agreement is unlawful and void, it was void *ab initio* and no passage of time can convert a “void” contract into a “valid” contract or a “voidable” contract. Accordingly, there is no merit to DTNA’s claim that the passage of time (the expiration of a statute of limitations) has a curative effect so as to render the unlawful January 25, 2017 Service-Only Agreement lawful. The January 25, 2017 Service-Only Agreement was unlawful when made and does not “ripen” or spring into existence as a lawful contract upon the expiration of a period of time.

**Whether Bonander, by entering into the January 18, 2017 Agreement, Consented to the Termination of the Prior Agreements for the Merced Location Thus Eliminating any need for the Notices that may have been Required by Section 3060**

102. This assertion cannot be reconciled with the purpose of Section 3060. DTNA’s contention is the very reason for the legislative enactment of Section 3060. DTNA is asking that the Board agree that

1 a franchisor is permitted to ignore all of the notice requirements of Section 3060 not just once but over a  
2 period of years, present a replacement franchise (an adhesion contract drafted by the party with not only  
3 superior but overwhelming bargaining power) to a franchisee, obtain the franchisee's signature and then  
4 claim because of a *fait accompli* that the mandated statutory notices were never required. In other words,  
5 DTNA's claim is that by getting the franchisor's signature on a new franchise without providing the  
6 required notices means that the required notices are no longer required. Thus, a franchisor that unlawfully  
7 does what the statutes prohibit can legally accomplish the very things the statutes prohibit.

8 103. DTNA's claim here is similar to its claim pertaining to the parol evidence rule, that is the  
9 notices mandated by Section 3060 are not required as entering into the subsequent agreement terminated  
10 the prior agreements. However, it is clear that the legislature intended to require specific notice be  
11 received by the franchisee and the Board as to any intended conduct coming within Section 3060 and to  
12 make unlawful any attempts to engage in such conduct without complying first with Section 3060.  
13 Concluding that a franchisor that is successful in having a franchisee execute a replacement franchise  
14 without first providing the notices required by Section 3060 would allow franchisors to avoid the statutory  
15 requirements simply by ignoring the requirements of notice and doing that which has been declared to be  
16 unlawful and what the legislature intended to prevent.

### 17 **CONCLUSIONS**

18 104. It is determined that:

19 (1) The documents DTNA claims are controlling are the January 18, 2017 Dealer Agreement  
20 between Bonander Pontiac and Western Star for the Turlock location and the January 25, 2017 Service-  
21 Only Agreement between MT&T and Western Star for the Merced location. Both of these agreements  
22 were entered into in violation of Section 3060 and thus, both are unlawful and void.

23 (2) These agreements have been found to be void as a matter of public policy and not because  
24 of any defense (such as misrepresentation or mistake or fraud) that may be asserted by Bonander or  
25 MT&T seeking to rescind a voidable contract.

26 (3) Pursuant to the terms of the prior agreements as discussed above, Bonander became a  
27 Western Star franchisee for both the Turlock location as well as the Merced location prior to the unlawful  
28 agreements of 2017.

1 (4) It does not matter whether Western Star remained the franchisor under these prior  
2 agreements or whether DTNA succeeded Western Star and became the franchisor as neither Western Star  
3 nor DTNA provided the statutorily-required notices to Bonander or the Board pursuant to Section 3060  
4 regarding any conduct that came within Section 3060 affecting either of the two franchises of Bonander.

5 (5) Since both of the January 2017 Agreements are void, the prior agreements remain effective  
6 and Bonander's status as the franchisee of Western Star for both the Turlock location and the Merced  
7 location has continued to the present.

8 (6) As Bonander is the franchisee for both the Turlock and the Merced locations, the  
9 franchisor, whether Western Star or DTNA, is required to provide prior notice to Bonander and the Board  
10 pursuant to Section 3060 if there is an intent to engage in any conduct that comes within Section 3060.

11 (7) The signing by a franchisee of a replacement franchise or other franchise prior to receipt of  
12 the statutorily-required notices is not deemed to be "consent" to a termination, modification, or  
13 replacement of an existing franchise (or any conduct that comes within Section 3060).

14 (8) The time for Bonander to file a protest challenging the termination, replacement or  
15 modification of its franchises (including conduct of the franchisor relating to the Merced location) will not  
16 begin to run until such time as Bonander and the Board have both received notice of the franchisor's  
17 intent to engage in any conduct within Section 3060.

18 (9) Bonander's protest is challenging the intent of DTNA to terminate the January 25, 2017  
19 Service-Only Agreement between MT&T and Western Star for the Merced location (an agreement found  
20 to be unlawful and void).

21 (10) DTNA's motion seeks dismissal of the protest filed by Bonander as DTNA claims that  
22 Bonander lacks standing to pursue the protest as Bonander is not a party to the January 25, 2017 Service-  
23 Only Agreement for the Merced location.

24 (11) DTNA is correct that Bonander lacks standing to pursue the protest challenging the  
25 termination of the January 25, 2017 Service-Only Agreement signed by Western Star and MT&T for the  
26 Merced location.

27 (12) Because the January 18, 2017 Dealer Agreement and the January 25, 2017 Service-Only  
28 Agreement are unlawful and void, Bonander has remained the franchisee for both the Turlock and the

Merced locations under the prior agreements, therefore Bonander has standing to protest on its own behalf (as the franchisee of the prior agreements that include the Merced service-only location) any conduct of the franchisor that comes within Section 3060.

(13) However, Bonander's protest and DTNA's Motion to Dismiss have become moot as the agreement DTNA seeks to terminate (the January 25, 2017 Service-Only Agreement between Western Star and MT&T) has been found to be unlawful and therefore void.

(14) The January 25, 2017 Service-Only Agreement is the culmination of repeated violations of the Vehicle Code by Western Star/DTNA over the course of the Bonander/Western Star relationship that was brought to a head upon DTNA's notice that it intended to terminate the 2017 Service-Only Agreement between Western Star and MT&T.

(15) The January 25, 2017 Service-Only Agreement for Merced had its genesis in an agreement that was a "franchise" between Bonander and Western Star, and remained a "franchise" in subsequent agreements, but that eventually "morphed" into a "non-franchise" (in form only) over the years during which Western Star failed to comply with the requirements of Section 3060.

(16) In essence, DTNA's Motion to Dismiss is asking the Board to recognize and enforce the unlawful and void January 25, 2017 Service-Only Agreement despite its existence being due, at least in part, to repeated violations of the Vehicle Code.

**WHETHER THE BOARD SHOULD TAKE ANY ACTION REGARDING THE  
PROTEST OF BONANDER OR THE MOTION TO DISMISS OF DTNA**

**There is no Need for this Protest to go to a Hearing  
on the Merits as the Protest is Moot**

105. Bonander's protest is moot because the January 25, 2017 Service-Only Agreement for Merced that DTNA seeks to terminate is void and there is no meaningful result that would flow from any action by the Board as to the protest. This is because:

(1) A Board order sustaining the protest on its merits would mean that DTNA could not terminate the January 25, 2017 Service-Only Agreement. Such an order sustaining the protest would be meaningless and inconsistent with the prior findings herein that the January 25, 2017 Service-Only Agreement is void and without legal effect.

(2) A Board order overruling the protest on its merits would mean that DTNA would be

permitted to terminate the January 25, 2017 Service-Only Agreement. Such an order would also be meaningless as the January 25, 2017 Service-Only Agreement has been found to be void so there is no need to decide if there is good cause for termination of an agreement that does not exist. Finding that DTNA may terminate a legally non-existent agreement is pointless.

**There is no Need to take Action on this Motion to Dismiss the Protest as  
DTNA's Motion to Dismiss the Protest is Moot**

106. In addition to the fact that the January 25, 2017 Service-Only Agreement DTNA seeks to terminate is not a franchise, DTNA's Motion to Dismiss is moot because:

(1) Denying DTNA's Motion to Dismiss would mean that Bonander's protest would proceed to a hearing during which DTNA would have the burden of proving good cause for the termination of the January 25, 2017 Service-Only Agreement, an agreement that is void as it was found to be unlawful. Thus, DTNA would be attempting to prove good cause to terminate an unlawful agreement that has no legal effect. If DTNA failed to meet this burden, Bonander would prevail at the hearing but would have only the meaningless right to maintain in effect the void January 25, 2017 Service-Only Agreement for the Merced location i.e., an agreement that does not exist. If DTNA met its burden at the hearing on the merits of the protest, DTNA would have the meaningless right to terminate a void, non-existent agreement.

(2) Granting the Motion to Dismiss would mean that DTNA would have the right to terminate the January 25, 2017 Service-Only Agreement, an agreement which is void as it was found to be unlawful.

(3) Taking no action on the Motion to Dismiss would be in accord with the usual rule that if there is an illegal contract a tribunal will leave the parties as they were prior to the unlawful contract.

(4) DTNA would remain the franchisor pursuant to the prior franchises under which Bonander was a franchisee for both locations.

(5) Bonander's status as a franchisee for both locations would not be impacted by the Board's decision to refuse to act due to mootness. Bonander's status as a franchisee for both locations will continue pursuant to the pre-2017 agreements that include the franchise for the service-only location of Bonander in Merced.

**RECOMMENDATIONS**

107. It is recommended that the Board adopt the findings and conclusions herein and that the Board take no action regarding DTNA's Motion to Dismiss. As the two January 2017 Agreements advocated by DTNA as being controlling have been found to be unlawful and void, DTNA should not be granted any relief as to its Motion to Dismiss, and the general rule regarding unlawful contracts should be applied; the parties should be left where they stand. This would leave Western Star/DTNA and Bonander as franchisor and franchisee respectively pursuant to the terms of the pre-2017 agreements for the Turlock and Merced locations.

108. As neither Western Star or DTNA has provided notices to Bonander or the Board of an intention to terminate Bonander's pre-2017 franchises for the Merced location, it is also recommended that Bonander's protest be deemed moot and dismissed without prejudice. As stated above, Bonander's protest is moot because: The protest is challenging the right of DTNA to engage in the meaningless termination of the January 25, 2017 Service-Only Agreement, an agreement that has been found to be void; and, Bonander's status as the franchisee for the Merced location (pursuant to the terms of the prior pre-2017 franchises) continues to exist notwithstanding the intent of DTNA to terminate the January 25, Service-Only Agreement.

109. Any future consideration by the Board would depend upon what action (if any) DTNA or Western Star choose to take in compliance with the provisions of the Vehicle Code regarding the two franchises that continue (under which Bonander is a franchisee), and what may be the response of Bonander to such actions.

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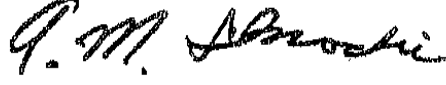
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1           110. As it has been determined that Bonander remains a franchisee as to both locations,  
2 Bonander has standing to protest any conduct of Western Star/DTNA that comes within Section 3060 as  
3 to Bonander's franchises for either the Merced or Turlock location should such action be sought by the  
4 franchisor.

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7 I hereby submit the foregoing which constitutes my  
8 "(Proposed) Findings, Conclusions and  
9 Recommendations following Order of Remand" in  
10 the above-entitled matter, as the result of a hearing  
11 before me, and I recommend this be adopted by the  
12 New Motor Vehicle Board.

13 DATED: May 5, 2022

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By   
ANTHONY M. SKROCKI  
Administrative Law Judge

Steven Gordon, Director, DMV  
Ailene Short, Branch Chief,  
Occupational Licensing, DMV