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Sacramento, California 95818-8680
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Board staff contact: Danielle Phomsopha
[New Motor Vehicle Board website](#)
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dmvpublicaffairs@dmv.ca.gov

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

**Wednesday, January 25, 2023, 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@nmvb.ca.gov or during the meeting. Items of business scheduled for the meeting are listed on the attached agenda. Recesses may be taken at the discretion of the Chairperson and items may be taken out of order.

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

Join Zoom Meeting
[Zoom link](#)

Meeting ID: 814 2763 4958
Passcode: 975114
One tap mobile
+16694449171,,81427634958#,,, *975114# US
+16699009128,,81427634958#,,, *975114# US (San Jose)

Dial by your location
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 814 2763 4958
Passcode: 975114
Find your local number: <https://us02web.zoom.us/j/81427634958>

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

A G E N D A

GENERAL MEETING

Wednesday, January 25, 2023, 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)

1. **9:30 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Introduction and welcome of newly appointed Dealer Board Member Brady Schmidt.**
4. **Approval of the Minutes from the September 28-29, 2022, Special Meeting/Industry Roundtable and November 7, 2022, General Meeting.**
5. **2023 Election of Board President and Vice President - Executive Committee.**
6. **Annual review and appointment of Committee members to the Administration Committee, Board Development Committee, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, and Policy and Procedure Committee, and Ad Hoc Committee (if applicable), by the incoming Board President.**
7. **Appointment of Board Member designee in compliance with the Board's 1997 "Revised Board Policy Regarding Representation in Court Actions" by the incoming Board President.**

8. **Discussion and consideration of the revised New Motor Vehicle Board logo - Administration Committee.**
9. **Discussion and consideration of amended Board adopted policy concerning the Board's Document Request Policy, Waiver Request Policy, and Facsimile Request Policy to reflect the reorganization of the California Public Records Act - Administration Committee.**
10. **Closed Executive Session.**

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.
11. **Open Session.**
12. **Consideration of nominee for the Solon C. Soteras Employee Recognition Award recipient as recommended by the Board Development Committee.**
13. **Discussion concerning Board Development activities - Board Development Committee.**
14. **Discussion and consideration of amended Board adopted policy concerning the Board's Legislative Policy to reflect the reorganization of the California Public Records Act - Executive Committee.**
15. **Discussion and consideration of amended Board adopted policy concerning confidential Proposed Stipulated Decisions and Orders pursuant to Vehicle Code section 3050.7 to reflect the reorganization of the California Public Records Act - Executive Committee.**
16. **Report on the Board's financial condition for the 1st quarter of Fiscal Year 2022-2023 - Fiscal Committee.**
17. **Consideration of out-of-state travel plans for fiscal year 2023-2024 - Fiscal Committee.**
18. **Annual report concerning Board adopted policies - Policy and Procedure Committee.**
19. **Consideration of 2023 Rulemaking Calendar - Policy and Procedure Committee.**
20. **Annual report on the assignment of cases to Board Administrative Law Judges - Policy and Procedure Committee.**

21. **Consideration of the *Export or Sale-for-Resale Prohibition Policy Protest Guide* (Vehicle Code section 3085, et seq.) - Policy and Procedure Committee.**
22. **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 - Policy and Procedure Committee.**
23. **Discussion and consideration of proposed revisions to the assignment of cases to Board Administrative Law Judges by adding the Office of Administrative Hearings to the Merits Judge Assignment Log in light of CalPERS proposed regulation 574.1 (Cal. Code Regs., tit. 2, § 574.1) - Policy and Procedure Committee.**
24. **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.

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. **Consideration of Respondent's Motion to consider the supplemental Declaration of Raymond Smit and sign specifications requested by Petitioner in Support of Opposition to Petition and Declaration of Lisa M. Gibson in support thereof.**

Consideration of Respondent's Motion to consider the Supplemental Declaration of Raymond Smit and sign specifications requested by Petitioner in Support of Opposition to Petition and Declaration of Lisa M. Gibson in support thereof.

- b. **Consideration of Protestant's Motion to consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition.**

Consideration of Protestant's Motion to consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition.

- 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.**

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R O S T E R
NEW MOTOR VEHICLE BOARD

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

<u>NAME</u>	<u>APPOINTING AUTHORITY</u>	<u>STATUS</u>
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. 1-15-26	Governor's Office	Public Member
Brady Schmidt Term exp. 1-15-26	Governor's Office	Dealer Member
Jacob Stevens Term exp. 1-15-23	Governor's Office	Public Member
Vacant Term exp. 1-15-25	Governor's Office	Dealer Member
Vacant Term exp. 1-15-23	Speaker of the Assembly	Public Member



MEMO

To: ALL BOARD MEMBERS

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

Subject: UPCOMING EVENTS

Date: January 25, 2023

The following highlights the upcoming Board events:

- January 25, 2023, General Meeting (via Zoom and teleconference)
- April 28, 2023, General Meeting (Glendale)
- June 4-8, 2023, Recreation Vehicle Industry Association (RVIA) Show 2023 (Washington D.C.)
- September 21, 2023, General Meeting (Sacramento)
- September 26-29, 2023, National Association of Motor Vehicle Boards and Commissions (NAMVBC) 2023 Fall Conference (Madison, Wisconsin)
- December 8, 2023, General Meeting (Riverside)

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 held workshops on Equity, Justice and Inclusion in the Motor Vehicle Industry for its annual Industry Roundtable event. These workshops were treated as a Special Meeting on September 28-29, 2022, via Zoom and teleconference.

SEPTEMBER 28, 2022

2. ROLL CALL

Bismarck Obando, Board President, called the meeting to order at 10:03 a.m. Mr. Obando welcomed everyone and reminded them that meeting materials are available on the Board's website or can be obtained in hard copy by contacting Board staff. Mr. Obando set forth the Zoom parameters. Mr. Obando reminded attendees that all public comments are welcome but addressed the following matters in an effort to engage in an open dialogue:

- (1) With the exception of the keynote speaker, the opportunity for questions and public comment will be held until the end of the meeting. Written questions can be provided via the Q&A box throughout the meeting. When time for public comment, attendees can "raise their hand" to make a verbal comment as well.
- (2) The audience and participants were asked not to comment on or ask questions about any pending case management matters currently before the Board.

Executive Director, Timothy Corcoran, took roll call:

Board Members Present:
Ramon Alvarez, C.
Anne Smith Boland
Kathryn Ellen Doi
Ryan Fitzpatrick
Ardashes "Ardy" Kassakhian
Bismarck Obando

Board Members Absent:
Jacob Stevens

3. **INTRODUCTION OF BOARD MEMBERS, STAFF AND ATTENDEES BY BISMARCK OBANDO, PRESIDENT, CALIFORNIA NEW MOTOR VEHICLE BOARD**

Mr. Obando welcomed attendees and discussed the importance of dedicating this year's Roundtable to the worthy goal of promoting equity and diversity in the motor vehicle industry. Attendees were encouraged to use the Q&A feature, the post-meeting survey or e-mail to staff after the event with any comments on these topics.

4. **KEYNOTE ADDRESS, TOKS OMISHAKIN, SECRETARY, CALIFORNIA STATE TRANSPORTATION AGENCY**

Mr. Obando welcomed California State Transportation Secretary, Toks Omishakin. Secretary Omishakin provided a keynote address. Following the keynote address, Secretary Omishakin addressed attendee and Board Member questions.

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)

Mr. Alvarez introduced Candice Crane and Damon Lester to discuss the state of the industry with respect to diversity in the automotive franchise network. Mr. Alvarez reminded attendees that questions will be addressed at the end of all the presentations. A pre-recorded presentation by Ms. Crane and Mr. Lester was played for the attendees.

Topics discussed by Ms. Crane and Mr. Lester included:

- Data on the current state of diversity within the automotive franchise network.
- Transitioning from a non-traditional background into the automotive franchise network and the benefits of hiring those with non-traditional backgrounds.
- Being intentional about communication and holding people accountable for their actions regardless of their race, gender, ethnic background, etc. to ultimately maintain profitability.

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

Mr. Alvarez thanked Ms. Crane and Mr. Lester for their presentation. Mr. Alvarez then introduced the speakers for the automaker discussion of equity and diversity in the new motor vehicle industry. The presentations began with a pre-recorded presentation by Christopher Price and Laura O'Rourke from Toyota Motor Sales. Topics addressed by Mr. Price and Ms. O'Rourke included:

- Diverse dealer network growth
 - Challenges
 - Toyota/Lexus partnership with NAMAD
 - Tools promoting diverse ownership
 - NADA avenues for advancement

Mr. Alvarez introduced Robert Kaffl to speak on behalf of Ford Motor Company. Mr. Kaffl addressed:

- Diversity goals and emphasis by Ford CEO to double down efforts in creating more diverse dealer network
- DEI pilot program across nation to encourage diversity in hiring within current dealership network
- Ford Guest Experience Program provides dealers with background on importance of diversity in dealer network

Mr. Alvarez introduced Carlos Latour to speak on behalf of General Motors. Mr. Latour addressed:

- Data on General Motors' diversity in its dealer network
- General Motors' diversity growth plans
- General Motors' EV transition and "Everybody In" campaign

Mr. Alvarez introduced David Englen to speak on behalf of Nissan North America. Mr.

Englen addressed:

- Focus on success of current minority dealer network
- Additional support for minority dealers beyond field level
- Looking for successful non-traditional background candidates
- Current data on minority dealers

Mr. Alvarez introduced Eric Wong to speak on behalf of Stellantis. Mr. Wong addressed:

- The importance of network diversity
- Partnership with NAMAD
- Goals in addressing climate change via vehicles as well as Stellantis becoming carbon neutral

Mr. Alvarez thanked Mr. Wong for his presentation.

7. **QUESTIONS AND ANSWERS OF ALL PRESENTERS MODERATED BY JACOB STEVENS, CHAIR, AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, NEW MOTOR VEHICLE BOARD**

Mr. Alvarez indicated Jacob Stevens was unavailable so Anne Smith Boland, committee chair, moderated questions from attendees in Mr. Stevens absence. Mr. Obando also moderated questions in Ms. Smith Boland's temporary absence due to connectivity issues.

8. **ADJOURNMENT**

With no further business to discuss, Ms. Smith Boland adjourned the meeting at approximately 12:30 p.m.

SEPTEMBER 29, 2022

2. ROLL CALL

Ardy Kassakhian, Board Vice President, called the meeting to order at 10:01 a.m. Mr. Kassakhian welcomed everyone and reminded them that meeting materials are available on the Board's website or can be obtained in hard copy by contacting Board staff. Mr. Kassakhian set forth the Zoom parameters. Mr. Kassakhian reminded attendees that all public comments are welcome but addressed the following matters in an effort to engage in an open dialogue:

- (1) With the exception of the keynote speaker, the opportunity for questions and public comment will be held until the end of the meeting. Written questions can be provided via the Q&A box throughout the meeting. When time for public comment, attendees can "raise their hand" to make a verbal comment as well.
- (2) The audience and participants were asked not to comment on or ask questions about any pending case management matters currently before the Board.

Executive Director, Timothy Corcoran, took roll call:

Board Members Present:

Anne Smith Boland
Kathryn Ellen Doi
Ryan Fitzpatrick
Ardashes "Ardy" Kassakhian

Board Members Absent:

Ramon Alvarez, C.
Bismarck Obando
Jacob Stevens

3. INTRODUCTION OF BOARD MEMBERS, STAFF AND ATTENDEES BY ARDASHES "ARDY" KASSAKHIAN, VICE PRESIDENT, CALIFORNIA NEW MOTOR VEHICLE BOARD

Mr. Kassakhian welcomed attendees and discussed the importance of dedicating this year's Roundtable to the worthy goal of promoting equity and diversity in the motor vehicle industry. Attendees were encouraged to use the Q&A feature, the post-meeting survey or e-mail to staff after the event with any comments on these topics.

4. KEYNOTE ADDRESS, AVITAL BARNEA, DEPUTY SECRETARY FOR TRANSPORTATION PLANNING, CALIFORNIA STATE TRANSPORTATION AGENCY

Mr. Kassakhian welcomed California State Transportation Deputy Secretary for Transportation Planning, Avital Barnea. Deputy Secretary Barnea provided a keynote address.

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

Mr. Fitzpatrick reminded attendees that questions will be addressed at the end of all the presentations. Mr. Fitzpatrick introduced the topic of equity and electric vehicles. He advised that the representative from Access Clean California was unavailable today and that Mr. Craig Segall will be speaking on behalf of the California Air Resources Board.

Mr. Segall made a presentation on the following:

- CARB recently adopted new regulations to move toward 100% zero emissions vehicle sales by 2035 (Advanced Clean Cars II).
 - Both environmentalists and automakers are sharing the vision in implementing these regulations.
 - Ties flexibilities for automakers to use of environmental justice credits.
 - Deploying incentives for vehicles to priority populations.
 - Charging infrastructure: incentives for priority populations to have access to charging as well.

Mr. Fitzpatrick introduced Anthony Bento from the California New Car Dealers Association. Mr. Bento discussed the following:

- Dealer investments in electrification
- Dealers' work to connect California's diverse population to electric vehicles
- Electric vehicle affordability, incentives and programs
- Infrastructure challenges

Following Mr. Bento's presentation, Mr. Fitzpatrick introduced Kevin Hamilton from the EV Equity Program and Central California Asthma Collaborative. Mr. Hamilton discussed the following:

- Why air pollution matters and what consumers can do about it.
- Different types of electric vehicles and charging options
- Overview of the EV Equity Program and different EV incentive programs

After Mr. Hamilton's presentation, Mr. Fitzpatrick introduced Damon Lester from the National Association of Minority Automobile Dealers. Mr. Lester discussed the following:

- The need for access to charging stations for condensed populations
- Charging deserts will be a challenge for disadvantaged communities
- Vehicles must also be affordable to allow for equitable access

Mr. Fitzpatrick thanked Mr. Lester for his presentation and introduced Board Member Kathryn Doi to moderate questions.

6. **QUESTIONS AND ANSWERS OF ALL PRESENTERS MODERATED BY KATHRYN DOI, MEMBER, CALIFORNIA NEW MOTOR VEHICLE BOARD**

Ms. Doi thanked all the speakers and invited Mr. Fitzpatrick to speak regarding the Roundtable presentations. Mr. Fitzpatrick provided brief comments regarding his history and experience in the automotive industry. Ms. Doi moderated questions from attendees.

7. **CLOSING REMARKS BY ANNE SMITH BOLAND, CHAIR, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, NEW MOTOR VEHICLE BOARD**

Ms. Doi invited Board Member Anne Smith Boland to provide closing remarks. Ms. Smith Boland gave closing remarks and thanked panelists, keynote speakers and staff.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:04 p.m.

Submitted by

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 New Motor Vehicle Board ("Board") held a General meeting on November 7, 2022, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 9:32 a.m.

President 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. President Obando also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present:	Ramon Alvarez C. Anne Smith Boland Kathryn Ellen Doi Ardashes "Ardy" Kassakhian Bismarck Obando Jacob Stevens
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Board Members Not Present:	Ryan Fitzpatrick
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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 Lee Moore, Mediation Analyst Alex Martinez, Legal Analyst
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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**

Member Doi moved to adopt 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. Member Alvarez seconded the motion. The motion carried unanimously.

4. **STATUS REPORT ON THE BOARD'S INTENDED MOVE TO DMV'S HEADQUARTERS IN SACRAMENTO**

Ms. Kindel and Mr. Corcoran provided an update concerning the Board's intended move to DMV headquarters. Ms. Kindel reported that the move-in date at DMV has been delayed from next summer to late 2023. Staff will have hoteling spaces available at DMV's campus on the second floor while the new suite is constructed. Staff will leave its current space on February 10, 2023.

Mr. Corcoran also indicated that moving from the current space earlier than anticipated will realize significant cost savings.

Member Doi inquired about the financial impact of the early move, when the new space will be available and whether staff will be located near each other in the DMV hoteling spaces. Ms. Kindel confirmed there will be savings of several months of rent. Staff will be located near each other with access to a printer in the hoteling space. Daily files will also be accessible on the first floor. The new suite will likely be available for move-in in November or December 2023.

Mr. Corcoran advised that it is not likely the Board will need to pay rent to DMV for the hoteling spaces during the temporary period.

Member Alvarez inquired about the availability of conference rooms at DMV. Mr. Corcoran stated that DMV has many large and small conference rooms, as well as the large Assembly Room available to reserve.

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

5. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION SERVICES PROGRAM**

As indicated in the memo provided, Ms. Moore reported the following statistics:

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.

Manufacturer Cases

- Of the 193 cases received in Mediation, 80 were manufacturer related.
- 69% of manufacturer cases were mediated successfully.

Ms. Moore noted this information is now reported on the quarterly administrative report.

Member Doi inquired about the current mediators. Ms. Moore indicated herself and Holly Victor are the current mediators. Member Doi expressed her appreciation for the mediators' hard work.

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

6. DISCUSSION AND CONSIDERATION OF THE REVISED NEW MOTOR VEHICLE BOARD LOGO

The members were provided a memo regarding the consideration of a revised New Motor Vehicle Board logo. The Board's current logo was adopted in 2007. A DMV graphic artist provided the Board with several options for an updated logo, as displayed in the memo. The Board could also choose to retire a logo altogether. Should the Board choose to keep a logo, it would need to be made ADA compliant.

After a lengthy discussion, Member Kassakhian moved to edit Option 1 to remove the reflective properties and add "California" to the top and have staff bring back the edited logo for final adoption. Mr. Corcoran requested that the motion be edited to allow CalSTA to consent to the new logo. Mr. Kassakhian amended his motion accordingly. Member Stevens seconded the motion. The motion carried unanimously.

7. ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM

Mr. Corcoran and Ms. Phomsopha provided an update concerning Board Development opportunities for the upcoming year. Ms. Phomsopha indicated that staff are always interested in getting Board Member input on activities for Board development. Given that Board Members and staff will be meeting in-person in the coming months, out-of-state

travel limitations will likely be lifted at the end of the COVID emergency period on February 28, 2023.

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

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

Mr. Corcoran and Ms. Parker provided the members with an update regarding the Board's compliance with the 1996 performance audit. As indicated in the memo, the chart below provides a brief summary of the updates 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.

Ms. Parker indicated she reviews the Board's compliance with the audit every year, however this memo was made an exception report in 2011 so this is a collection of updates over several years.

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

9. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke. As indicated in the memo, the fourth quarter of Fiscal Year 2021-2022 began with a budget appropriation of \$1.87 million, ending with \$2.25 million reserve balance. Ninety-six percent (96%) of the appropriate budget for the fourth quarter was expended. Staff does not see a need for fee structure adjustments.

Ms. Luke indicated that the fee collection for the arbitration certification program was complete and \$1.6 million was collected on behalf of the Department of Consumer Affairs.

Member Doi inquired about the part-time staff salaries in the employee expenditures. Mr. Corcoran indicated that this allotment is for the ALJ salaries and is difficult to predict given the inability to predict the number of merits hearings per year. The Board does not expect a large number of merits hearings this year.

Ms. Parker shared that there is at least one merits hearing scheduled for February 2023. Staff are unaware of any other anticipated hearings going forward at this time but that is difficult to predict due to the tentative nature of the schedules.

Ms. Doi clarified that the information provided in the memo is retrospective for the fourth quarter of 2021-2022. Ms. Luke confirmed that these numbers are for the end of last fiscal year. Numbers for the coming fiscal year will be presented at a subsequent Board meeting. These numbers would have been presented at the June 2022 General Meeting that was cancelled. Staff do not yet have data for the first quarter of Fiscal Year 2022-2023 as it is provided by DMV in arrears.

Mr. Corcoran indicated that more up-to-date information is also provided in the quarterly administrative report so that Board Members have access to this information on a more timely basis.

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

10. **REPORT ON ADDING A VIRTUAL PAYMENT METHOD FOR STAKEHOLDERS' FILING FEES, DOCUMENT REQUEST FEES AND ANNUAL BOARD FEES**

The members were provided with a memorandum from Dawn Kindel and Holly Victor regarding a virtual payment method for stakeholders' fees. Lee Moore reported that the Board collects annual fees as well as case filing fees and document request fees. Historically, these fees have been collected via check or credit card payment over the phone. Many stakeholders requested the ability to pay fees online, so the Board implemented virtual payments in late summer 2022. For the annual fee collection, Ms. Moore reported that by October 10, 2022, 63 of 168 manufacturers paid their fees. Of those 63 manufacturers, 46% paid electronically. As of the end of October 2022, 150 manufacturers paid their fees and 45% paid electronically.

Next year staff anticipates rolling out ACH, to allow stakeholders to pay via check online.

Member Stevens inquired how the service fee was determined. Ms. Moore indicated that the fee was set by ACI Worldwide Inc., the entity providing this service to the Board, and there was not room for negotiation.

Member Alvarez indicated the service fee can be negotiated and encouraged staff to do so. Mr. Corcoran clarified that the contract was already negotiated by the Department of General Services and any agencies who choose to use it, can sign on. Ms. Kindel confirmed this and also explained that the contract is renewed and renegotiated after 2-3 years.

Member Smith Boland thanked Ms. Moore for her work and also indicated support for implementing the ACH process in the future.

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

11. **REPORT OF THE NEW MOTOR VEHICLE BOARD'S RECENT INDUSTRY ROUNDTABLE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha regarding the Board's recent Industry Roundtable held via Zoom on September 28-29. Ms. Phomsopha indicated Day 1 had 31 attendees and Day 2 had 22 attendees. Positive feedback was received on the surveys and over 90% found this year's topic timely and of value to their businesses.

Given that the Board is likely moving toward in-person events, staff recommend hosting the Roundtable event in Spring, as done in previous years, in order to avoid end-of-the-year conflicting events that may have led to the lower attendance this year. Staff also look forward to hosting the event in a hybrid format to allow for in-person attendance as well as live-streaming for those who cannot attend in-person.

In regard to the upcoming year, Board staff recommend hosting the next annual Roundtable event in 2024 given the Board's move and lack of permanent location at DMV headquarters in the beginning of 2023.

Member Smith Boland commended staff on the excellent work in preparing the event. Member Alvarez also commended staff and discussed having another virtual event next year and then moving back to an in-person event in 2024. Mr. Corcoran indicated that the preference would be to host the next Roundtable event in-person in 2024 given that staff are moving to a temporary space and then to a permanent space at an unknown time in 2023 and skipping hosting a Roundtable in 2023 would give staff a reprieve during this time. Member Alvarez agreed and also suggested this would allow the Electric Vehicle industry to evolve as well.

Mr. Corcoran also reminded the Board that there appears to be some “Zoom fatigue” evidenced partially by the attendance numbers. Although the surveys indicated 72% preferred a virtual event, only those attending virtually responded to the survey.

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

12. **DISCUSSION CONCERNING ENACTED LEGISLATION**

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

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha reported that AB 2956 was the Transportation Omnibus bill which included clean-up language for the Board's statutes, including deleting obsolete references to the Board's prior Appeals jurisdiction.

AB 1604 does not require any specific action on behalf of the Board but includes important reporting requirements for some agencies and Board staff wanted to highlight this bill for the members.

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

13. **CONSIDERATION OF THE 2022 EDITION OF THE NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK**

The members were provided with a memorandum and 2022 edition of the *New Motor Vehicle Board Administrative Law Judges' Benchbook*. Ms. Parker reported that there were a number of substantive and non-substantive changes.

Staff are recommending that future updates to the Benchbook be provided on the Executive Director's Report, since it is an internal training manual.

Member Stevens moved to adopt the 2022 edition of the *New Motor Vehicle Board Administrative Law Judges' Benchbook* as amended. Member Doi seconded the motion. The motion carried unanimously.

Member Doi clarified that the memo included the request to provide future updates on the Executive Director's Report and wanted to clarify if the previous motion included that request.

Member Doi moved to provide future updates to the Benchbook on the Executive Director's Report. Member Stevens seconded the motion. The motion carried unanimously.

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.

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. Mr. Corcoran stated that current travel restrictions related to the pandemic may be lifted early next year and may result in our ability to travel out-of-state. Other restrictions on travel to certain states may remain. Therefore, the National Association of Motor Vehicle Boards and Commissions event may be added back on the Board's schedule.

Ms. Parker reported that there are 64 open protests. In regard to notices, the Board has received 17 notices of termination this year so far. The highest number of notices of termination received was 164 in 2010. This year the Board has received 720 modification notices and staff have more to process. The Board has received 10 notices of establishment and three notices of relocation, which is consistent with the previous three years' of notices.

In regard to the petition for writ of mandate in *Subaru of America v. New Motor Vehicle Board*, several matters were taken under submission by the Judge at a hearing held the prior week, including Courtesy's Demurrer and Subaru's Motion to Compel. In regard to the *Barber Honda* appeal, the Board received a 30-day continuance to file its brief.

Ms. Phomsopha provided an update in *Western Truck Parts v. New Motor Vehicle Board*: the court's tentative ruling denied the petition for writ of mandate. After oral argument, the court took the matter under submission and the Board is awaiting a final ruling. After the November 7, 2022, General Meeting, the court denied the writ.

The Board's non-substantive, updated conflict-of-interest code was approved by the Fair Political Practices Commission and was effective September 8, 2022. In addition, the rulemaking removing "registered mail" language was approved and effective October 1, 2022.

President Obando inquired as to the details of the changes to the Board's conflict-of-interest code. Ms. Phomsopha clarified that the Board reorganized the code for clarity and updated Ms. Kindel's position.

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

15. **SELECTION OF BOARD MEETING DATES FOR 2023**

The Board members selected the following Board meeting dates for 2023:

- January 25, 2023, via Zoom beginning at 9:30 a.m.
- April 28, 2023, in Glendale beginning at 10:00 a.m.
- September 21, 2023, in Sacramento beginning at 10:00 a.m.
- December 8, 2023, in Riverside beginning at 10:00 a.m.
- The Industry Roundtable will be scheduled in 2024.

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

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 16(a).

- 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

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 16(b). An attorney-client work product privilege memorandum from Robin Parker, Chief Counsel, was provided to the members to justify the closed Executive

Session. The members participated in a discussion of this matter with John T. McGlothlin, Deputy Attorney General. No action was taken.

17. **OPEN SESSION**

The Board Members returned to Open Session. President Obando announced there was no Board action taken in regard to Agenda Item 16.

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

The members were provided a memorandum from Tim Corcoran and Robin Parker regarding formalizing the Board's process of allowing non-California attorney representatives appear before the Board. Ms. Parker indicated that since 1977, the Board has allowed out-of-state in-house attorneys to appear before it, and out-of-state attorneys from private law firms have been allowed since the mid-to-late 1980s. As the Board did not have a regulation in regard to out-of-state attorneys, the Board patterned its process after the California Rules of Court. Historically, the Board allowed out-of-state attorneys with the association of local, California counsel. This practice was vetted by the State Bar as recently as July 2022. The consistent response from the State Bar is they do not have jurisdiction over the Board as they are only interested in the courts. The proposed regulation would formalize this process as follows:

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.

Member Doi noted that the language of proposed regulation is broad enough to allow a party to be represented by anyone, including non-attorney representatives from California and out-of-state.

Member Stevens moved to adopt the proposed new regulation. Member Kassakhian seconded the motion. The motion carried unanimously.

President Obando read the following statement into the record:

Given the Board's decision to go forward with the proposed regulation, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing

List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulation, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulation. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

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

No additional public comment was presented. A lunch break was taken and subsequently a quorum of the Public Members was confirmed. Dealer Member Anne Smith Boland was also present to observe.

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.

The Public Members convened in Closed Executive Session to discuss Agenda Item No. 20. An attorney-client work product privilege memorandum from Robin Parker, Chief Counsel, was provided to the members to justify the closed Executive Session. The members participated in a discussion of this matter with John T. McGlothlin, Deputy Attorney General. No action was taken.

21. **OPEN SESSION**

The Board Members returned to Open Session. President Obando announced there was no action taken in regard to Agenda Item 20.

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

This item was pulled from the agenda at the request of parties as they work to settle this matter.

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.

This item was pulled from the agenda at the request of parties as they work to settle this matter.

24. **OPEN SESSION**

Board Members remained in 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.

President Obando reminded the Dealer Members in attendance, that only the Public Members will consider this matter because the petition involves a dispute between a franchisee and a franchisor. Further, even though these matters pertain to the Board adopted Stipulated Decision and ALJ Matteucci's Confidential Decision, both filed under Board seal, all discussions and deliberations will be held in open session, as there is no authority authorizing a closed session discussion. Lastly, given the overlapping facts in the petition, motion to seal, and request for official notice, President Obando asked counsel to address all three matters in their opening presentations. But first, he requested counsel address Petitioner's Motion to consider the Declaration of Kimberly Wright and Respondent's Opposition.

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Lisa M. Gibson, Esq. and Amy Toboco, Esq. of Nelson Mullins

Riley & Scarborough LLP represented Respondent.

Member Kassakhian was not present for the oral comments so he did not participate in this matter.

Member Doi moved to admit the Declaration of Kimberly Wright. Member Stevens seconded the motion. The motion carried unanimously.

Member Stevens moved to file the unredacted petition under seal. Member Doi seconded the motion. The motion carried unanimously.

Member Doi moved to officially notice the documents offered by Respondent for official notice. Member Stevens seconded the motion. The motion carried unanimously.

In regard to the merits of the petition, the Public Members suggested the parties attempt to settle the matter privately. After a brief recess, both parties agreed to attempt to settle the issues alleged in the Petition. After the meeting, the Board continued this matter to the January 25, 2023, General Meeting or next regularly scheduled meeting pursuant to stipulation of counsel for the parties.

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

No additional public comment was presented.

27. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:33 p.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Bismarck Obando
President
New Motor Vehicle Board

STATE OF CALIFORNIA



MEMO

To: NEW MOTOR VEHICLE BOARD

Date: January 12, 2023

**From: BISMARCK OBANDO
PRESIDENT**

Subject: COMMITTEE ASSIGNMENTS

At the January 25, 2023, General Meeting, we are going to review committee assignments. The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Ardy Kassakhian, Chair
Ryan Fitzpatrick, Member

BOARD DEVELOPMENT COMMITTEE

Kathryn Ellen Doi, Chair
Vacant, Member

EXECUTIVE COMMITTEE

Bismarck Obando, President
Ardy Kassakhian, Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair
Ardy Kassakhian, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Anne Smith Boland, Chair
Kathryn Ellen Doi, Member
Ryan Fitzpatrick, Member

LEGISLATIVE COMMITTEE

Bismarck Obando, Chair
Ardy Kassakhian, Member

POLICY AND PROCEDURE COMMITTEE

Jake Stevens, Chair

Vacant, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Jake Stevens, Chair

Anne Smith Boland, Member

Kathryn Ellen Doi, Member

Bismarck Obando, Member

The description of the standing committees are as follows:

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

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



STATE OF CALIFORNIA

MEMO

To: BISMARCK OBANDO

Date: January 5, 2023

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

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

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

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

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

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

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

The designation of a Board Member by the Board President consistent with this Policy is being agendized for the January 25, 2023, General Meeting.

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

Attachments



MEMO

To : ALL BOARD MEMBERS

Date: January 29, 1997

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

Subject: **REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS**

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

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

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



MEMO

To : ALL BOARD MEMBERS

Date: October 17, 1996

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

Subject: BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

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

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

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

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

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

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

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

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

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

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

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



STATE OF CALIFORNIA

MEMO

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

Date: January 1, 2023

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

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

At the November 2022 General Meeting, members of the Board were presented with several options for a new logo. The members asked for some slight changes to the color and text and wanted another opportunity to make a final selection.

Below are two variations of the logo selected in November with the requested change in color gradient and text.





Once the members make a selection, all Board publications will be updated to incorporate the updated logo.

This matter is scheduled for consideration at the January 25, 2023, 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: ADMINISTRATION COMMITTEE
ARDY KASSAKHIAN, CHAIR
RYAN FITZPATRICK, MEMBER

Date: January 5, 2023

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: DISCUSSION AND CONSIDERATION OF AMENDED BOARD
ADOPTED POLICY CONCERNING THE BOARD'S DOCUMENT
REQUEST POLICY, WAIVER REQUEST POLICY, AND FACSIMILE
REQUEST POLICY TO REFLECT THE REORGANIZATION OF THE
CALIFORNIA PUBLIC RECORDS ACT

At the December 13, 2006, General Meeting, the members unanimously adopted the Board's current Document Request Policy, Waiver Request Policy, and Facsimile Request Policy (see attached).

Effective January 1, 2022, the California Public Records Act ("CPRA"), formerly in Government Code section 6250, et seq. was reorganized and recodified in Government Code section 7920.000, et seq. These changes were operative on January 1, 2023.

As a result of this, the statutory references in the attached policy in the heading entitled "Legal Authority" on page 3 needs to be updated as follows:

LEGAL AUTHORITY

Section 552 of Title 13 of the California Code of Regulations provides, in part, for the Board's authority to "sell copies of all or any part of the records of the board at a charge sufficient to pay at least the cost of the copies." However, the Public Records Act (Act) limits the charge to a "payment of fees covering direct costs of duplication, or a statutory fee if applicable" (Government Code section 7922.530). The Board does not have a statutory fee which prevails over the Act.

Government Code section 7922.635 requires the Department of Motor Vehicles ("DMV") to adopt regulations stating the procedure to be followed when making its records available and to establish written guidelines for accessibility of records. However, the New Motor Vehicle Board is not specifically enumerated in this statute. Although the Board is a program within the DMV (Vehicle Code section 3000) the Board's enabling statutes are contained in a separate Chapter of the Vehicle Code and the Board promulgates its own regulations. Unlike the Board, the DMV has statutory authority that allows the director to determine the charge for the records which are not limited by the Act. Vehicle Code section 1811 provides that "the department may sell copies of all or any part of its records at a charge sufficient to pay at least the entire actual cost to the department of the copies, the charge for the records and the conditions under which they may be sold to be determined by the director."

This matter is for consideration at the January 25, 2023, 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

cc: Bismarck Obando

STATE OF CALIFORNIA

MEMO



**To : ADMINISTRATION COMMITTEE
ROBERT BRANZUELA, CHAIR
DAVID C. LIZÁRRAGA, MEMBER**

Date: December 12, 2006

**From : WILLIAM G. BRENNAN
ROBIN PARKER**

**Subject: REVISED DOCUMENT REQUEST POLICY, WAIVER REQUEST
POLICY, AND FACSIMILE REQUEST POLICY (Revised)**

It has been over five years since the Board reviewed its document and waiver request policies, and over nine years since it reviewed the facsimile request policy. The staff has provided a detailed memorandum concerning these policies and suggested recommendations to further enhance the quality and level of customer service provided to the Board's constituency.

HISTORICAL BACKGROUND

Prior to October 1996, the Board charged a fee of \$1.00 per page for all document requests with no additional charges for labor or postage. In 1996, the Judicial Policy and Procedures Committee (Alan Skobin and Dan Livingston) evaluated the Board's document request policy in conjunction with the Department of Motor Vehicles' ("DMV") policy. At its October 22, 1996, General meeting, the members unanimously approved the fee schedule, as used by DMV, encompassed in Evidence Code section 1563 ("Recovery of Reasonable Costs") subject to periodic amendments. At the time, Evidence Code section 1563 provided for a fee of \$.10 per page copied and \$16.00 per hour for the labor involved in copying the documents, computed on the basis of \$4.00 per quarter hour or fraction thereof.¹ This is the fee schedule that the Board adopted and the staff have implemented.

Based on the recommendation in the 1996 Financial Statement Audit, the Board implemented the use of a "document request log" identifying the case number, date request was received, date documents were provided, number of pages sold, cost per page, amount collected, and date deposited. The log is updated throughout the processing of a document request. The following additional internal steps are performed: (1) Staff Counsel review the document request to ascertain the documents sought; (2) the documents are located, copied, and counted; (3) a letter detailing the documents copied and the cost, including the number of pages and labor, is sent to the

¹ Effective January 1, 2000, the reimbursement provided in the Evidence Code was increased to \$24.00 per hour for the labor involved.

requestor; and, (4) once payment is received and logged, the documents are sent via regular U.S. mail.

In August 1997, the Board adopted the following facsimile request policy:

(916) Area Code	\$1.00 first page	\$1.00 each additional page
Outside of (916)	\$3.00 first page	\$2.00 each additional page

Due to the number of fax requests, a cost policy was established to offset the actual costs involved. Given the difficulty in calculating the cost of sending each individual request, a standardized policy was adopted based on the number of pages sent and whether the recipient was within or outside the (916) area code. An additional consideration was the limited number of clerical staff who could fax the documents. Furthermore, there was only one fax machine in the entire office and if it was tied up faxing document requests it would be unavailable to receive pleadings. By charging a fee, some requesters might be discouraged from receiving documents via fax.

In 1998, the Board attempted to promulgate rulemaking that required requests for the sale of records and requests for information be submitted in writing and specify the precise nature of what is sought and identify who is making the request. Furthermore, the proposed rulemaking provided that information requests are charged at least the cost of the labor involved. The Office of Administrative Law ("OAL") rejected the proposed rulemaking because the Board lacked statutory authority to charge fees for information requests.

In September 2001, the Board reviewed its document request policy. It was determined that the Board would continue to charge fees for document requests that are consistent with Evidence Code section 1563, and that all fees for document requests that total \$6.00 or less (less than 10 pages and less than 15 minutes of labor) be waived by the Board, subject to review and approval by the Executive Director.

HISTORICAL OVERVIEW

The following provides an overview of the number of documents received each calendar year for 2003 through 2006 YTD:

YEAR	NO. OF REQUESTS	NO. WAIVED	REVENUE COLLECTED²
2003	87 (included transcript sales)	29	\$ 8,121.84
2004	62 (including transcript sales)	17	\$13,489.06
2005	45	20	\$ 648.00
2006 (YTD 10-20-06)	43	7	\$ 1,796.10

² If the document request fee was not paid, it was not counted in this column. From 2003 to October 20, 2006, there is less than \$200.00 that was not logged as collected. The Board legal staff follow-up with requestors to insure payment has been paid. Typically, documents are not sent without receipt of advance payment. However, there are instances in which the documents are needed more expeditiously, and the staff will send the documents without having received payment. Non-payment of document requests has not been a problem.

The number of requests has declined since the Board allows litigants to purchase transcripts directly from the court reporter service. Also, the amount of revenue collected is significantly less if requests for copies of the administrative record are not received. These types of requests are received when a party files a petition for writ of administrative mandate in superior court.

LEGAL AUTHORITY

Section 552 of Title 13 of the California Code of Regulations provides, in part, for the Board's authority to "sell copies of all or any part of the records of the board at a charge sufficient to pay at least the costs of the copies." However, the Public Records Act (Act) limits the charge to a "payment of fees covering direct costs of duplication, or a statutory fee if applicable" (Government Code section 6253(b)). The Board does not have a statutory fee which prevails over the Act.

Government Code section 6253.4 requires the Department of Motor Vehicles ("DMV") to adopt regulations stating the procedure to be followed when making its records available and to establish written guidelines for accessibility of records. However, the New Motor Vehicle Board is not specifically enumerated in this statute. Although the Board is a program within the DMV (Vehicle Code section 3000) the Board's enabling statutes are contained in a separate Chapter of the Vehicle Code and the Board promulgates its own regulations. Unlike the Board, the DMV has statutory authority that allows the director to determine the charge for the records which are not limited by the Act. Vehicle Code section 1811 provides that "the department may sell copies of all or any part of its records at a charge sufficient to pay at least the entire actual cost to the department of the copies, the charge for the records and the conditions under which they may be sold to be determined by the director."

ANALYSIS AND RECOMMENDATION

Document Request Policy

The DMV legal staff was consulted to ensure the Board's policy is consistent with DMV's. Vehicle Code section 1811 allows the DMV to charge \$.20 to \$.30 per page. It uses \$.10 per page as a guide but does not rely on Evidence Code section 1563.

With regards to document requests, the staff recommends that the Board continue to charge fees that are consistent with Evidence Code section 1563 (\$.10 per page and \$24.00 per hour of labor, computed on the basis of \$6.00 per quarter hour or fraction thereof).

Waiver Request Policy

It does not appear that the DMV has a waiver request policy. Given the size of the organization, it can take hours to find a single document.

With regards to the waiver request policy, the staff recommends that all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15

minutes of actual labor) be waived by the Board, subject to review and approval by the Executive Director. The increase in the number of pages from 10 to 40 would reduce the substantial internal processing time involved for smaller document requests and increase customer convenience and document timeliness. This would reduce the staff time in logging and processing the fees and eliminate the need for a billing statement. A letter detailing the documents provided would still be generated and provided along with the documents. This would also have the added benefit of creating goodwill amongst the Board's constituency and improve the level of service provided by the Board. The financial impact of this fee reduction would be negligible.³ In terms of staff time and the time required to deliver the documents, the savings would be significant.

Facsimile Request Policy

The DMV does not generally fax documents. On rare occasions documents might be faxed. The DMV has not done an audit to determine the "actual costs" to fax documents.

In 2003 and 2004, there were four facsimile requests each year, and in 2005, there was one such request. Given the limited number of such requests, the small amount of revenue generated, and the Board's surplus, the staff recommends eliminating a formal facsimile request policy. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney service.

If you have any questions or comments, please do not hesitate to contact Bill at (916) 324-6197, or Robin at (916) 323-1536. This matter is being agendaized for consideration at the December 13, 2006, General Meeting.

cc: David W. Wilson

³ If the number of pages was increased to 40, the loss of revenue collected would be as follows: 2003, \$56.90; 2004, \$79.20; 2005, \$33.00, and 2006 YTD, \$76.90.



STATE OF CALIFORNIA

MEMO

TO: ALL BOARD MEMBERS

Date: January 12, 2023

From: TIMOTHY M. CORCORAN

**Subject: DISCUSSION AND CONSIDERATION OF THE SOLON C. SOTERAS
EMPLOYEE RECOGNITION AWARD**

The Board Development Committee is recommending to the Board at its January 25, 2023 meeting that this year's Solon C. Soteras Employee Recognition Award be awarded to Senior Staff Counsel, Danielle Phomsopha, in recognition of her leadership in developing and coordinating the "virtual" 2021 and 2022 *New Motor Vehicle Board Industry Roundtable* events.

The Board's approval of Danielle for the Employee Recognition Award would result in her nomination by the Board for a monetary award of up to \$250 (subject to the approval of the Department of Motor Vehicles), as well as a certificate of recognition and appreciation from the New Motor Vehicle Board.

As background, this program was implemented in 2000 as a means to recognize staff members who have demonstrated marked growth in their position, provided exceptional service to the state, or otherwise accomplished a noteworthy achievement in the workplace during the past year. The award was named for Sol Soteras, former Public Member of the Board.

If you have any questions or comments, please call me at (916) 445-1888.

STATE OF CALIFORNIA



MEMO

**To: BOARD DEVELOPMENT COMMITTEE
KATHRYN ELLEN DOI, CHAIR
VACANT, MEMBER**

Date: January 4, 2023

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

Subject: DISCUSSION CONCERNING BOARD DEVELOPMENT ACTIVITIES

As the Board resumes in-person meetings and activities, staff are providing Board Members with additional suggestions for education and Board development. Previous Board Member development activities have included Board Meetings and tours held at automobile dealerships and factories. Staff are suggesting a dealership and/or factory tour be scheduled for 2024, given that the locations for the 2023 Board Meetings have already been chosen.

In addition to potential guest speakers throughout the year, Board staff are also suggesting short educational presentations at each Board Meeting on common topics of interest regarding the Board's procedures, including:

- Writs of Administrative Mandate
- Stipulated Decisions and Orders
- Dealer Member Participation
- Foundational Board published cases and their common application
- Petitions
- The application of the Administrative Procedure Act and Bagley-Keene Open Meeting Act
- Case management procedure:
 - Paths a protest can take (law and motion, settlement, merits hearing)
 - Types of protests and the various burdens of proof
 - Role of the statutorily required notices and the time to file a protest
 - Protests that do not require a notice

Board staff will implement educational topics at the next General Meeting. Board Members can advise staff of any additional topics on which they wish to receive more information or training.

The information in this memorandum is provided for informational purposes only at the January 25, 2023, General Meeting. No Board action is required.

cc: Bismarck Obando, President



STATE OF CALIFORNIA

MEMO

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

Date: January 5, 2023

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

**Subject: DISCUSSION AND CONSIDERATION OF AMENDED BOARD
ADOPTED POLICY CONCERNING THE BOARD'S LEGISLATIVE
POLICY TO REFLECT THE REORGANIZATION OF THE CALIFORNIA
PUBLIC RECORDS ACT**

At the June 7, 2019, General Meeting, the members unanimously adopted the Board's Legislative Policy (see attached).

Effective January 1, 2022, the California Public Records Act ("CPRA"), formerly in Government Code section 6250, et seq. was reorganized and recodified in Government Code section 7920.000, et seq. These changes were operative on January 1, 2023.

As a result of this, the statutory references in the attached policy in the heading entitled "Public Records Act Requests" on pages 2-3 need to be updated as follows:

- Public Records Act Requests
 - A Legislative Committee analysis will not be subject to disclosure under the Public Records Act. Government Code section 7928.000¹ exempts such communications to the Governor. These analyses will

¹ Government Code section 7928.000(a) provides that the CPRA does not require disclosure of "correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary." Subdivision (b) provides that: "Public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this division."

be submitted to CalSTA and ultimately the Governor so the exemption applies. The Deliberative Process Privilege² and Attorney-Client Privilege/Attorney Work Product Privilege³ are also applicable.

This matter is for consideration at the January 25, 2023, 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

² The Deliberative Process Privilege, formerly in Government Code section 6255, is now in Government Code sections 7922.000 and 7922.540. Government Code section 7922.000 provides: "An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Government code section 7922.540 provides:

(a) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

(b) The notification of denial shall set forth the names and titles or positions of each person responsible for the denial.

(c) An agency shall justify withholding any record by complying with Section 7922.000.

³ Government Code section 7927.705 provides that the CPRA "does not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."



MEMO

**To : EXECUTIVE COMMITTEE
KATHRYN E. DOI, CHAIR
BISMARCK OBANDO, MEMBER**

Date: May 13, 2019

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

**Subject: DISCUSSION AND CONSIDERATION OF REVISING THE BOARD'S
LEGISLATIVE POLICY - EXECUTIVE COMMITTEE**

At the August 20, 1996, General Meeting, the members adopted the following Legislative Policy:

The Board will participate in industry discussion of legislation if requested, but it will not take a formal position on any particular bill. This will ensure that the Board explains its operations and helps the parties better understand what the fiscal and operational ramifications, if any, will be.

The Executive Committee and staff are proposing the following revised Legislative Policy:

- Legislative Committee Policy and Composition:
 - Comprised of the Executive Committee unless otherwise designated by the Board President.¹
 - The Legislative Committee will provide California State Transportation Agency (CalSTA) with its own analysis, drafted by staff counsel and approved by the committee on any Legislation of Special Interest.² If there is insufficient time for Legislative Committee approval, the Executive Director is delegated the power to approve the analysis. The committee will be provided a copy of the analysis and fully briefed.
 - The Legislative Committee will continue to provide the Department of Motor Vehicles (Department) with bill analyses at the Department's request, drafted by staff counsel and approved by the committee on any Legislation of Special Interest. If there is insufficient time for Legislative Committee approval, the Executive Director is delegated the power to

¹ The Board President appoints the members serving on committees annually when officers are elected or in the event of a vacancy or inability of a member to serve, which would include, but not be limited to, a conflict of interest.

² "Legislation of Special Interest" directly affects the Board's laws or functions.

approve the analysis. The committee will be provided a copy of the analysis and fully briefed.

- In the bill analyses provided to CalSTA, the Legislative Committee will not take a formal position on any bill, with the exception of Legislation of Special Interest that proposes to drastically increase or reduce the Board's statutory authority and/or workload or intends to eliminate the Board.
- Absent CalSTA approval, the Legislative Committee would not publicly take a position on any bill.
- The Legislative Committee delegates to the Executive Director the ability to discuss pending Legislation of Special Interest with stakeholders or sponsors regarding technical input without prior committee approval.
- Board Legislative Policy
 - The Legislative Policy adopted by the Board on August 20, 1996, provides that "[t]he Board will participate in industry discussion of legislation if requested." The portion of the policy "but will not take a formal position on any particular bill" will be amended consistent with the Legislative Committee Policy outlined above.
 - The full Board will continue to be apprised of legislation of both special and general interest³ at noticed Board Meetings.
 - Absent CalSTA approval, the Board would not publicly take a position on any bill.
 - The Board staff will continue to provide technical and procedural advice to stakeholders on pending legislation.
- Public Records Act Requests
 - A Legislative Committee analysis will not be subject to disclosure under the Public Records Act. Government Code section 6254(l)⁴ exempts such communications to the Governor. These analyses will be submitted to CalSTA and ultimately the Governor so the exemption applies. The

³ "Legislation of General Interest" is a bill that impacts the Vehicle Code, the Board, and/or the automotive industry in general but does not directly impact the Board or its enabling statute.

⁴ Subdivision (l) of Government Code section 6254 provides that the Public Records Act does not require disclosure of: "Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter."

Deliberative Process Privilege⁵ and Attorney-Client Privilege/Attorney Work Product Privilege⁶ are also applicable.

If the Board adopts the revised Legislative Policy, then as a separate agenda item, the Board President will formally create the Legislative Committee.⁷

This matter is being agendized for discussion and consideration at the June 7, 2019, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

⁵ Government Code section 6255 provides:

(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

⁶ Subdivision (k) of Government Code section 6254 provides that the Public Records Act does not require disclosure of: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

⁷ Article 4 of the Board adopted Parliamentary Procedures delegates to the Board President the ability to "form committees and appoint Members thereto for the purpose of performing any duty which is not otherwise prohibited by law." The formation of committees and appointment of members occurs at a meeting and is entered in the minutes.



STATE OF CALIFORNIA

MEMO

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

Date: January 5, 2023

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

**Subject: DISCUSSION AND CONSIDERATION OF AMENDED BOARD
ADOPTED POLICY CONCERNING CONFIDENTIAL PROPOSED
STIPULATED DECISIONS AND ORDERS PURSUANT TO VEHICLE
CODE SECTION 3050.7 TO REFLECT THE REORGANIZATION OF THE
CALIFORNIA PUBLIC RECORDS ACT**

At the June 7, 2019, General Meeting, the members unanimously adopted the current policy concerning confidential Proposed Stipulated Decisions and Orders ("PSDO"). (Attachment 1) A PSDO is essentially a settlement agreement negotiated by counsel for the parties that is sought to be adopted by the Board as an order of the Board. Counsel often request that the PSDO be filed under Board seal and maintained confidentially so it would not be available to the public upon request. Confidentiality protects the protesting dealer and helps it maintain the value of its dealership.

The authority allowing these documents to be maintained confidentially is the California Public Records Act ("CPRA"), formerly in Government Code section 6250, et seq. Effective January 1, 2022, the CPRA was reorganized and recodified in Government Code section 7920.000, et seq. These changes were operative on January 1, 2023.

As a result of this, the statutory references in the attached policy in the heading entitled "Authority for Maintaining Confidentiality under the Public Records Act" on pages 3-4 need to be updated as follows:

- The reference to Government Code section 6276.28 is now section 7930.165, which provides that records or portions of records pertaining to "[l]itigation,

confidentiality of settlement information, Section 68513”¹ of the Government Code may be exempt from disclosure.

- The reference to Government Code section 6254.5 is now section 7921.505 as follows:

(a) As used in this section, “agency” includes a member, agent, officer, or employee of the agency acting within the scope of that membership, agency, office, or employment.

(b) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in:

(1) The provisions listed in Section 7920.505.²

(2) Sections 7924.510 and 7924.700.³

(3) Other similar provisions of law.

(c) This section, however, does not apply to any of the following disclosures:

...

(5) A disclosure made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

...

The internal procedure that the staff uses for filing and processing stipulated decisions, was just updated to reflect these statutory changes. (Attachment 2)

This matter is for consideration at the January 25, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachments

¹ Government Code section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).

² Government Code section 7920.505 includes provisions in former Section 6254 as that section read when it was repealed and pertains to records not subject to disclosure.

³ These provisions are not applicable as they pertain to pollution and building standards and safety requirements, respectively.



MEMO

**To : EXECUTIVE COMMITTEE
KATHRYN E. DOI, CHAIR
BISMARCK OBANDO, MEMBER**

Date: May 21, 2019

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

**Subject: DISCUSSION AND CONSIDERATION OF BOARD ADOPTED POLICY
CONCERNING CONFIDENTIAL PROPOSED STIPULATED DECISIONS
AND ORDERS PURSUANT TO VEHICLE CODE SECTION 3050.7**

Stipulated Decisions in General

A Proposed Stipulated Decision and Order (PSDO) is essentially a settlement agreement negotiated by counsel for the parties that is sought to be adopted by the Board as an order of the Board. Vehicle Code section¹ 3050.7 authorizes the Board to adopt stipulated decisions and to issue orders the terms of which permit the termination of a franchise upon the occurrence or non-occurrence of stated events.² This procedure may be useful when the facts and applicable laws are not in substantial dispute. The option to enter into a stipulated decision may arise during the Mandatory Settlement Conference, after discovery has been completed, or during the hearing. The stipulation may include all or part of the contested issues, and must be submitted to the Board for adoption as an order of the Board.

An important consideration with stipulated decisions and orders is ensuring that they produce a final resolution of the matter. Toward this end, it is common for the stipulated decision to specify that good cause exists for the proposed action and that the decision contains a mechanism for enforcement in the event of a subsequent default or breach by one of the parties. A stipulated decision, if adopted as an order of the Board, is enforceable in court the same as any contractual agreement, but it is also an official action of the Board, and separately enforceable by Board action. Accordingly, it is common for the Board to expressly retain jurisdiction over the matter and to limit further litigation to issues concerning only compliance with the order.

The Board may adopt a PSDO without a hearing pursuant to Vehicle Code sections 3066 and 3080 to resolve one or more issues raised by a protestant or petitioner before the

¹ All statutory references are to the Vehicle Code, unless noted otherwise.

² A "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7." (13 CCR § 550(z))

Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

Procedure

Upon receipt of a PSDO, the legal staff reviews the document and transmits it only to the public members of the Board, unless parties have stipulated to dealer member participation. Upon receipt of the PSDO by the Board Members, they have 10 days to inform the Executive Director if they have any objection. If there are no objections, the PSDO is deemed adopted by the Board. If there is an objection, the matter is agendaized for consideration at the next regularly scheduled Board meeting.

Historical and Statistical Background

Since 1987, there have been 185 PSDOs filed with the Board settling 172 protests and 47 petitions. Since 1995, there have been 92 stipulated decisions filed resolving 6 petitions and 108 protests. The protests are broken downs as follows:

Protest	No.
3060 termination	86
3060 modification	2
3062 establishment	12
3062 relocation	2
3065 warranty	3
3065.1 franchisor incentive program	3

This is a very effective tool for resolving complicated disputes that eliminates the uncertainty, costs, and risks involved in going to a Board hearing. PSDOs also reduce the number of hearings, quickly resolve disputes, and preserve relationships between the parties.

Background and Benefits of Confidential Stipulated Decisions

Beginning in 1996, counsel began requesting that stipulated decisions be maintained confidentially.³ At first, the requests were sporadic. However, since 2003, 37 out of 48 PSDOs were filed under Board seal, per parties' request. These 48 PSDOs resolved 59 protests; 52 were for franchise termination. During the same time period, there were about 37 merits hearings resolving 67 protests. The costs to the litigants and the Board are significantly lower if a case is resolved without going to a merits hearing. Additionally, early

³ Counsel file a public document entitled "Proposed Stipulated decision and Order" with the Board that clearly identifies that the parties are seeking to resolve their dispute, identifies the parties and the general nature of the dispute, and specifies that a CONFIDENTIAL, FILED UNDER BOARD SEAL exhibit 1 or attachment 1 contains the terms of the Proposed stipulated Decision and Order; often called a "Settlement Agreement."

dispute resolution improves relations between dealers and manufacturers, and reduces the need for costly, protracted litigation.

The high percentage of PSDOs submitted with a request for confidentiality indicates that the parties may not be inclined to enter into a stipulated settlement absent this protection. Confidentiality protects the protesting dealer and helps it maintain the value of its dealership. Sometimes failure of the dealer to comply with the terms results in automatic termination or establishes a time period for a buy-sell. If the terms of the PSDO were available to the public, the value of a protesting dealer's business could be diminished. Confidentiality can also protect the manufacturer or distributor if, for example, a dealer is given an additional allocation of vehicles, funds to assist with building a new facility or renovating an existing facility, or additional advertising dollars, and other dealers within the market area are not given the same benefits.

In California, PSDOs are so effective that at the National Association of Motor Vehicle Boards and Commissions (NAMVBC) Annual Conference in 2017, they were discussed so that other states could consider this process as a way to resolve more cases. At the joint request of dealer and manufacturer counsel that regularly appear before the Board, this topic is on the draft agenda for the 2019 NAMVBC conference in Sacramento. These attorneys are so passionate about this process and its effectiveness that they want to educate other states on its usefulness and encourage them to adopt a similar mechanism.

Authority for Maintaining Confidentiality under the Public Records Act

All documents filed with the Board are available to the public unless they are exempt from disclosure by express provisions of law.

The Board maintains settlement conference statements as confidential documents that are not subject to disclosure under the Public Records Act. The authority used is Government Code section 6276.28. It provides, in part that records of information not required to be disclosed pursuant to subdivision (k) of Section 6254⁴ may include, but shall not be limited to, "Litigation, confidentiality of settlement information, Section 68513."

Government Code section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).

Government Code section 6254.5 provides that:

Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law. For purposes of

⁴ "(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

...

(e) Made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

...

The Board has not had to defend a challenge to the withholding of any documents pursuant to these provisions. These provisions have been relied upon by the parties for more than a decade.

Should the Board Adopt a Policy, Procedure or Regulation Regarding the Filing of Documents Under Board Seal

The Public Members recently reviewed a confidential PSDO. Kathryn Doi raised the issue of whether there were Board policies, procedures, or regulations regarding the filing of documents under seal with the Board. There is an internal procedure that the staff uses for filing and processing stipulated decisions, that was just updated to reflect statutory changes. (Attachment 1)

Analysis

In addition to the rationale provided above, there is judicial economy in resolving disputes before the Board without resort to civil litigation. The Board has the specialized expertise to assist counsel in resolving and enforcing stipulated settlements. There is no harm to the public in confidentially maintaining the terms of the parties settlement agreement. Quick resolution of disputes is in the public interest. It is likely that the conditions outlined in a PSDO are also in the public interest because protesting dealers that are poor performers could be required to improve performance, dealers with inadequate facilities could be required to build or renovate facilities to improve the services offered, and if a franchise is terminated then the franchisor would be able to establish a dealer that could better serve the market and meet the needs of the public.

If the parties have jointly agreed that the terms are confidential and should be maintained under Board seal to effect the agreed upon terms and conditions, then that should be the criteria used. Otherwise, the Board could violate the Government Code by having an underground regulation.⁵

⁵ Government Code section 11340.5(a) prohibits a state agency from issuing, utilizing, enforcing or attempting to enforce any "guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin,

Recommendation

It is recommended that the Board approve this memo as the Board's adopted policy concerning proposed stipulated decisions and orders that are requested to be maintained confidentially and filed under Board seal.

This matter is being agendized for discussion and consideration at the June 7, 2019, General Meeting.

If you have any questions or require additional information, please contact me at (916) 324-6197 or Robin at (916) 323-1536.

manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." This is called an underground regulation. The proposed policy does not mandate that any particular PSDO be confidential or not. As indicated under the Public Records Act, it simply accepts the characterization by the parties, absent an objection to its substance by a Board Member. Arguably, then, the policy only echoes established statutes and regulations, and merely adds the process to handle the PSDO once they come in as either confidential or non-confidential. Therefore, while the policy does not immunize the Board from any challenge or adverse decision on this point, it is written in a way that better prevents such an outcome. There is always the risk that a court may find the policy to be an underground regulation, given the case-specific analysis that the courts have developed.

2019 PROCEDURE FOR PROCESSING A PROPOSED STIPULATED DECISION AND ORDER

Proposed Stipulated Decisions in General

A PSDO is essentially a settlement agreement negotiated by counsel for the parties that is sought to be adopted by the Board as an order of the Board. Section 3050.7 authorizes the Board to adopt stipulated decisions and to issue orders the terms of which permit the termination of a franchise upon the occurrence or non-occurrence of stated events.¹ This procedure may be useful when the facts and applicable laws are not in substantial dispute. The option to enter into a stipulated decision may arise during the Mandatory Settlement Conference, after discovery has been completed, or during the hearing. The stipulation may include all or part of the contested issues, and must be submitted to the Board for adoption as an order of the Board.

Perhaps, the most important concern with stipulated decisions and orders is to ensure that they produce a final resolution of the matter. Toward this end, it is common for the stipulated decision to specify that good cause exists for the proposed action and that the decision contains a mechanism for enforcement in the event of a subsequent default or breach by one of the parties. A stipulated decision, if adopted as an order of the Board, is enforceable in court the same as any contractual agreement, but it is also an official action of the Board, and separately enforceable by Board action. Accordingly, it is common for the Board to expressly retain jurisdiction over the matter and to limit further litigation to issues concerning only compliance with the order.

The Board may adopt PSDO without a hearing pursuant to Vehicle Code sections 3066 and 3080 to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

Stipulated Decisions in Protests and Petitions

For protests or petitions, the parties can enter into a written settlement agreement that the parties agree to submit to the Board for it to become adopted by the Board as a “Stipulated Decision and Order of the Board.” If adopted by the Board, the “Stipulated Decision and Order” will have the same effect as if the decision and order flowed from a hearing.

Upon receipt of a PSDO from the parties, the legal staff reviews the document and prepares a summary that is transmitted to the Public Members of the Board unless the parties stipulate to Dealer Board Member Participation.

¹ The Board promulgated a new regulation effective January 1, 2016, that formalized the procedure if a Board Member objects to a PSDO (13 CCR § 551.22). Section 550 was also amended to define “proposed stipulated decision and order” and “stipulated decision and order of the board.” (13 CCR § 550(u) and (z))

The PSDO is deemed to be adopted by the Board unless a member notifies the Executive Director of an objection within 10 days of the Board Member's receipt of the PSDO.

For example, if the Board adopts a PSDO to resolve a protest filed under Vehicle Code section 3060 (termination), and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required (Veh. Code § 3050.7 (b)).

- If the Stipulated Decision and Order provides for an unconditional termination of the franchise, the franchise may be terminated without any further proceedings by the Board.
- If the Stipulated Decision and Order provides for the termination of the franchise, conditioned upon the failure of any party to comply with any specified conditions, the franchise may be terminated upon a determination, according to the terms of the Stipulated Decision and Order that the stipulated conditions have occurred.
- If the Stipulated Decision and Order provides for the termination of the franchise conditioned upon the occurrence of any specified conditions, the franchise may be terminated upon a determination, according to the terms of the Stipulated Decision and Order, that the stipulated conditions have occurred.

In the event of an objection by a Board Member to the PSDO, the matter is put on the agenda for consideration at the next regularly scheduled Board meeting. This poses a problem with confidential documents, the consideration of the Stipulated Decision would occur in open session.

The Board has historically not adopted Stipulated Decisions that identify a particular ALJ to hear the matter in the event of a dispute, establishes unreasonable timeframes that are imposed on the Board, or allows one party the sole discretion to determine if there is a breach without any opportunity for the Protestant to file a notice of dispute to this determination with the Board.

Confidential Stipulated Decision

If the parties wish to file a PSDO under Board seal and maintain it as a confidential document, the following steps need to be taken:

- A public document entitled "Proposed Stipulated decision and Order" needs to be filed with the Board that clearly identifies that the parties are seeking to resolve their dispute, identifies the parties and the general nature of the dispute, and specifies that a CONFIDENTIAL, FILED UNDER BOARD SEAL exhibit 1 or attachment 1 contains the terms of the Proposed stipulated Decision and Order.
- The authority for maintaining the confidentiality of the document is Government Code sections 6254.5(e) and 6276.28.

In enacting the Public Records Act (Gov. Code § 6250 et seq.), it is the intent of the Legislature that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

All documents filed with the Board are available to the public unless they are exempt from disclosure by express provisions of law.

The Board maintains settlement conference statements as confidential documents that are not subject to disclosure under the Public Records Act. The authority used is Government Code section 6276.28. It provides, in part, that records of information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, "Litigation, confidentiality of settlement information, Section 68513."

Government Code section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).

The Board has not had to defend a challenge to the withholding of any documents pursuant to these provisions.

Non-Confidential PSDO

When a PSDO is received that is **not confidential and filed under Board seal**:

- 1) Generate a memo to the Public Members for signature by the Executive Director. (See sample).²
- 2) Senior Staff Counsel or Staff Counsel will draft an analysis, which is reviewed by the Executive Director.
- 3) E-mail the memo with a copy of the Stipulated Decision and analysis to Public Members.
- 4) Docket the original memo, analysis and Stipulated Decision in the case file.
- 5) Place a copy of the Stipulated Decision in the Stipulated Decision Binder and update log.
- 6) Calendar deadline for Board Member objections on the Master Calendar for 10 days from the date in which the materials are e-mailed to the members. This date

² If the case is a matter in which the Dealer Members may participate then the materials are sent to both Public and Dealer Members. Dealer Members participate in consumer versus licensee petitions. Subject to stipulation of the parties, they may participate in Article 4 (car, motorcycle, heavy-duty truck, and ATV) protests. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

- will indicate the last day a member can object to the PSDO. Also, calendar the next business day for issuance of the Order Adopting the PSDO.
- 7) If no Board Member objects to the PSDO, draft an order adopting it (see sample); e-mail and send via Certified Mail, Return Receipt Requested the signed order to the parties. Use the exact caption on the Stipulated Decision in the order.
 - 8) Enter the following information into the Stipulated Decision log: Case Name/Number, Date Received, Date Sent to Board members, date adopted/date objected to. (See sample).

Confidential PSDO

When a PSDO is received and the attachment or exhibit **is** requested to be confidential and filed under Board seal:

- 1) Generate a memo to the Public Members for signature by the Executive Director. (See sample) The memo should only be sent to the Public Members³ and contain the following language:

Only the Public members may participate in the decision of these matters. Because of the confidential nature of this matter, I would ask that you not discuss it with anyone else. ***After your review, please delete the Proposed Stipulated Decision and Order.***
- 2) Senior Staff Counsel or Staff Counsel will draft an analysis. The analysis should contain a confidential watermark and be password protected.
- 3) Obtain e-mail permission from counsel for the parties to provide the PSDO to the Public Members via e-mail in lieu of regular mail.
- 4) E-mail the memo with a copy of the Stipulated Decision and analysis to the Public Members, if counsel so stipulate, otherwise send via regular mail.
- 5) Docket the original memo and the original Stipulated Decision **without the confidential, sealed exhibit 1 or attachment 1**, in the case file.
- 6) Place the original confidential analysis, a copy of the public portion of the Stipulated Decision, and the original confidential, sealed exhibit 1 or attachment 1 in a tamper evident envelope. Label the envelope and place it in the evidence room in the file drawer reserved for sealed documents. Clearly note on the docket the documents that are confidential and filed under Board seal, and where the documents are stored.

³ If the case is a matter in which the Dealer Members may participate then the materials are sent to both Public and Dealer Members, and the first sentence in paragraph 1 would not be included (Only the Public members may participate in the decision of this matter). Dealer Members participate in consumer versus licensee petitions. Subject to stipulation of the parties, they may participate in Article 4 (car, motorcycle, heavy-duty truck, and ATV) protests. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

- 7) Place a copy of the public portion of the Stipulated Decision in the Stipulated Decision Binder and update log. Note that exhibit 1 or attachment 1 is confidential and filed under Board seal.
- 8) Calendar deadline for Board Member objections on the Master Calendar for 10 days from the date in which the materials are e-mailed to the members; otherwise calendar 13 days from the date of mailing. (The extra 3 days allow for mailing time). This date will indicate the last day a member can object to the PSDO. Also, calendar the next business day for issuance of the Order Adopting the PSDO.
- 9) If no Board Members object to the PSDO, draft an order adopting it (see sample); e-mail and send via Certified Mail, Return Receipt Requested the signed order to the parties. Use the exact caption on the Stipulated Decision in the order.
- 10) Enter the following information into the Stipulated Decision log: Case Name/Number, Date Received, Date Sent to Board members, date adopted/date objected to. (See sample).

Objection to PSDO

If a Board member objects to a Proposed Stipulated Decision and Order, a Notice of Objection to Proposed Stipulated Decision and Order should go out to counsel for the parties via Certified Mail, Return Receipt Requested (see sample Notice) and all Public Board members should receive a copy of the Notice.⁴ No further action would be taken until the next regularly scheduled Board meeting. The matter objected to should be placed on the next agenda and counsel for the parties would receive a copy of the agenda with a cover letter.

If the parties elect to withdraw the PSDO, then the case would proceed accordingly. Any number of scenarios could occur with a withdrawal. The case could proceed through discovery to hearing, the parties could settle according to the terms of the PSDO without Board involvement or adoption, or the parties could submit a revised PSDO. The above list is not exhaustive.

⁴ See footnotes 2 and 3.

Checklist for Processing PSDO (not confidential)

No.	Task	Staff	Completed ✓
1	Process the PSDO.	Legal clerical	
2	Draft a memo to the Public Members.	Staff attorneys	
3	Draft analysis (approved by Executive Director)	Staff attorneys	
4	E-mail memo, PSDO, and analysis to the Public Members.	Staff attorneys	
5	Docket the original memo, analysis and Stipulated Decision in the case file.	Legal clerical	
6	Place a copy of the Stipulated Decision in the Stipulated Decision Binder and update log.	Staff attorneys	
7	Calendar deadline for Board Member objections and date to send Order Adopting PSDO.	Staff attorneys	
8	Draft Order Adopting PDSO using the exact caption on the PDSO.	Staff attorneys	
9	If no Board Members object to the PSDO, e-mail and send via Certified Mail, Return Receipt Requested the Order Adopting PDSO.	Legal clerical	
10	Update the Stipulated Decision Log.	Staff attorneys	
11	Update the EDR.	Staff attorneys	

Checklist for Processing Confidential PSDO

No.	Task	Staff	Completed ✓
1	Process the PSDO.	Staff attorneys	
2	Draft a memo to the Public Members with admonition regarding confidentiality.	Staff attorneys	
3	Draft analysis (approved by Executive Director) with confidential watermark and password protected.	Staff attorneys	
4	Obtain e-mail permission from counsel.	Staff attorneys	
5	E-mail memo, PSDO, and analysis to the Public Member; otherwise send via regular mail.	Staff attorneys	
6	Docket the original memo and the original Stipulated Decision without the confidential, sealed exhibit/attachment , in the case file.	Staff attorneys	
7	Place the original confidential analysis, a copy of the public portion of the Stipulated Decision, and the original confidential, sealed exhibit/attachment in a tamper evident envelope. Label the envelope and place it in the evidence room.	Staff attorneys	
8	Docket the documents are confidential and filed under Board seal, and where the documents are stored.	Staff attorneys	
9	Place a copy of the public portion of the Stipulated Decision in the Stipulated Decision Binder and update log noting exhibit/attachment is confidential and filed under Board seal.	Staff attorneys	
10	Calendar deadline for Board Member objections and date to send Order Adopting PSDO.	Staff attorneys	
11	Draft Order Adopting PDSO using the exact caption on the PDSO.	Staff attorneys	
12	If no Board Members object to the PSDO, e-mail and send via Certified Mail, Return Receipt Requested the Order Adopting PDSO.	Legal clerical	
13	Update the Stipulated Decision Log.	Staff attorneys	
14	Update the EDR.	Staff attorneys	

2019 PROPOSED STIPULATED DECISION AND ORDER AUTHORITY

Vehicle Code section 3050.7

(a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066 or 3080, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to a protest or petition submit a proposed stipulated decision and order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

(c) This section shall become operative on January 1, 2019.

(Repealed (in Sec. 6.1) and added by Stats. 2015, Ch. 526, Sec. 7.1. (AB 1178) Effective January 1, 2016. Section operative January 1, 2019, by its own provisions.)

13 CCR § 550. Definitions

...

(u) "Proposed stipulated decision and order" is a paper submitted by the parties pursuant to Vehicle Code section 3050.7 seeking to resolve one or more issues in a protest or petition pending before the board.

...

(z) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

13 CCR § 551.22. Adoption and Objection to Proposed Stipulated Decision and Order

(a) Upon the filing of a proposed stipulated decision and order with the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director to each member of the board.

(b) The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(c) If any member of the board gives notice of objection within 10 days of receipt of a copy of the proposed stipulated decision and order, the proposed stipulated decision and order shall be considered by the board at its next meeting to determine whether to adopt or reject it.

(d) Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition or protest that there has been an objection and that the matter will be considered by the board at its next meeting. The parties shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the proposed stipulated decision and order will be considered.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.7, Vehicle Code.

Government Code section 6254.5

Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

...

(e) Made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

...

(Amended by Stats. 2016, Ch. 86, Sec. 151. (SB 1171) Effective January 1, 2017.)

Government Code section 6275

It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to

subdivision (k) of Section 6254 shall be listed and described in this article pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature. The statutes and constitutional provisions listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes and constitutional provisions listed and described may not be inclusive of all exemptions. The listing of a statute or constitutional provision in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute or constitutional provision to determine the extent to which it, in light of the circumstances surrounding the request, exempts public records from disclosure.

(Amended by Stats. 2012, Ch. 697, Sec. 2. (AB 2221) Effective January 1, 2013.)

Government Code section 6276

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

(Added by Stats. 1998, Ch. 620, Sec. 11. Effective January 1, 1999.)

Government Code section 6276.28

...

Litigation, confidentiality of settlement information, Section 68513.

...

(Amended by Stats. 2009, Ch. 584, Sec. 14. (SB 359) Effective January 1, 2010.)

[Section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).]

Government Code section 68513

The Judicial Council shall provide for the uniform entry, storage, and retrieval of court data relating to civil cases in superior court other than limited civil cases by means provided for in this section, in addition to any other data relating to court administration, including all of the following:

...

(d) The character and amount of any settlement made as to each party litigant, but preserving the confidentiality of such information if the settlement is not otherwise public.

...

The Judicial Council shall report to the Legislature on or before January 1, 1998, and annually thereafter on the uniform entry, storage, and retrieval of court data as provided for in this section. The Legislature shall evaluate and adjust the level of funds available to pay the costs of automating trial court recordkeeping systems, pursuant to Section 68090.8, for noncompliance with the requirements of this section.

(Amended by Stats. 1998, Ch. 931, Sec. 240. Effective September 28, 1998.)



MEMO

STIPULATED DECISION AND ORDER COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

TO : BOARD MEMBERS

Date: April 26, 2016

FROM: ROBIN P. PARKER

CASE: HAYWARD NISSAN CORPORATION dba HAYWARD NISSAN v. NISSAN
OF NORTH AMERICA, INC.
Protest Nos. PR-2374-13 and PR-2381-13

TYPE: VEHICLE CODE SECTION 3060 (termination)

PROCEDURE SUMMARY:

- PROTEST FILED: September 26, 2013 (PR-2374-13), November 25, 2013 (PR-2381-13)
- MOTIONS FILED: Respondent's Motion to Continue (denied)
- COUNSEL FOR PROTESTANT: Michael J. Flanagan, Esq.
Torin M. Heenan, Esq.
Law Offices of Michael J. Flanagan
- **COUNSEL FOR RESPONDENT:** Maurice Sanchez, Esq.
Lisa M. Gibson, Esq.
Baker & Hostetler LLP

EFFECT OF PROPOSED STIPULATED DECISION:

Exhibit 1 to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest ("Stipulated Decision") is filed under Board seal. The Stipulated Decision and Exhibit 1 resolve the above-referenced protests without the need for further litigation.

SUMMARY OF STIPULATED DECISION:

The pertinent terms of the Agreement are as follows:

- .

RELATED MATTERS:

- None.

2023 PROCEDURE FOR PROCESSING A PROPOSED STIPULATED DECISION AND ORDER

Proposed Stipulated Decisions in General

A PSDO is essentially a settlement agreement negotiated by counsel for the parties that is sought to be adopted by the Board as an order of the Board. Section 3050.7 authorizes the Board to adopt stipulated decisions and to issue orders the terms of which permit the termination of a franchise upon the occurrence or non-occurrence of stated events.¹ This procedure may be useful when the facts and applicable laws are not in substantial dispute. The option to enter into a stipulated decision may arise during the Mandatory Settlement Conference, after discovery has been completed, or during the hearing. The stipulation may include all or part of the contested issues, and must be submitted to the Board for adoption as an order of the Board.

Perhaps, the most important concern with stipulated decisions and orders is to ensure that they produce a final resolution of the matter. Toward this end, it is common for the stipulated decision to specify that good cause exists for the proposed action and that the decision contains a mechanism for enforcement in the event of a subsequent default or breach by one of the parties. A stipulated decision, if adopted as an order of the Board, is enforceable in court the same as any contractual agreement, but it is also an official action of the Board, and separately enforceable by Board action. Accordingly, it is common for the Board to expressly retain jurisdiction over the matter and to limit further litigation to issues concerning only compliance with the order.

The Board may adopt PSDO without a hearing pursuant to Vehicle Code sections 3066 and 3080 to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

Stipulated Decisions in Protests and Petitions

For protests or petitions, the parties can enter into a written settlement agreement that the parties agree to submit to the Board for it to become adopted by the Board as a “Stipulated Decision and Order of the Board.” If adopted by the Board, the “Stipulated Decision and Order” will have the same effect as if the decision and order flowed from a hearing.

Upon receipt of a PSDO from the parties, the legal staff reviews the document and prepares a summary that is transmitted to the Public Members of the Board unless the parties stipulate to Dealer Board Member Participation.

¹ The Board promulgated a regulation effective January 1, 2016, that formalized the procedure if a Board Member objects to a PSDO (13 CCR § 551.22). Section 550 was also amended to define “proposed stipulated decision and order” and “stipulated decision and order of the board.” (13 CCR § 550(s) and (x))

The PSDO is deemed to be adopted by the Board unless a member notifies the Executive Director of an objection within 10 days of the Board Member's receipt of the PSDO.

For example, if the Board adopts a PSDO to resolve a protest filed under Vehicle Code section 3060 (termination), and the parties stipulate that good cause exists for the termination [at the time the PSDO is executed] of the franchise of protestant and the order provides for the conditional or unconditional termination of the franchise of protestant, a hearing requiring a determination of good cause will not be required (Veh. Code § 3050.7 (b)).

- If the Stipulated Decision and Order provides for an unconditional termination of the franchise, the franchise may be terminated without any further proceedings by the Board.
- If the Stipulated Decision and Order provides for the termination of the franchise, conditioned upon the failure of a party to comply with any specified conditions, the franchise may be terminated upon a determination, according to the terms of the Stipulated Decision and Order that the stipulated conditions have not been met.
- If the Stipulated Decision and Order provides for the termination of the franchise conditioned upon the occurrence of any specified conditions, the franchise may be terminated upon a determination, according to the terms of the Stipulated Decision and Order, that the stipulated conditions have occurred.

In the event of an objection by a Board Member to the PSDO, the matter is put on the agenda for consideration at the next regularly scheduled Board meeting. This poses a problem with confidential documents as the consideration of the Stipulated Decision would occur in open session.

The Board has historically not adopted Stipulated Decisions that identify a particular ALJ to hear the matter in the event of a dispute, establishes unreasonable timeframes that are imposed on the Board, or allows one party the sole discretion to determine if there is a breach without any opportunity for the Protestant to file a notice of dispute to this determination with the Board.

Confidential Stipulated Decision

If the parties wish to file a PSDO under Board seal and maintain it as a confidential document, the following steps need to be taken:

- A public document entitled "Proposed Stipulated decision and Order" needs to be filed with the Board that clearly identifies that the parties are seeking to resolve their dispute, identifies the parties and the general nature of the dispute, and specifies that a CONFIDENTIAL, FILED UNDER BOARD SEAL exhibit 1 or attachment 1 contains the terms of the Proposed stipulated Decision and Order.

- The authority for maintaining the confidentiality of the document is Government Code sections 7921.505 and 7930.165.

In enacting the Public Records Act (Gov. Code § 7920.000 et seq.), the Legislature is “mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code § 7921.000)

All documents filed with the Board are available to the public unless they are exempt from disclosure by express provisions of law.

The Board maintains settlement conference statements as confidential documents that are not subject to disclosure under the Public Records Act. The authority used is Government Code section 7930.165, which provides that records or portions of records pertaining to “[l]itigation, confidentiality of settlement information, Section 68513” of the Government Code may be exempt from disclosure.

Government Code section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).

The Board has not had to defend a challenge to the withholding of any documents pursuant to these provisions.

Non-Confidential PSDO

When a PSDO is received that is **not confidential and filed under Board seal**:

- 1) Generate a memo to the Public Members for signature by the Executive Director. (See sample).²
- 2) Chief Counsel or Senior Staff Counsel will draft an analysis, which is reviewed by the Executive Director.
- 3) Email the memo with a copy of the Stipulated Decision and analysis to Public Members.
- 4) Docket the original memo, analysis, and Stipulated Decision in the case file.

² If the case is a matter in which the Dealer Members may participate then the materials are sent to both Public and Dealer Members. Dealer Members participate in consumer versus licensee petitions. Subject to stipulation of the parties, they may participate in Article 4 (car, motorcycle, heavy-duty truck, and ATV) protests. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

- 5) Place a copy of the Stipulated Decision in the Stipulated Decision Binder and update log.
- 6) Calendar deadline for Board Member objections on the Master Calendar for 10 days from the date in which the materials are emailed to the members. This date will indicate the last day a member can object to the PSDO. Also, calendar the next business day for issuance of the Order Adopting the PSDO.
- 7) If no Board Member objects to the PSDO, draft an order adopting it (see sample); email and send via Certified Mail, Return Receipt Requested the signed order to the parties. Use the exact caption on the Stipulated Decision in the order.
- 8) Enter the following information into the Stipulated Decision log: Case Name/Number, Date Received, Date Sent to Board members, date adopted/date objected to. (See sample).

Confidential PSDO

When a PSDO is received and the attachment or exhibit **is** requested to be confidential and filed under Board seal:

- 1) Generate a memo to the Public Members for signature by the Executive Director. (See sample) The memo should only be sent to the Public Members³ and contain the following language:

Only the Public members may participate in the decision of these matters. Because of the confidential nature of this matter, I would ask that you not discuss it with anyone else. ***After your review, please delete the Proposed Stipulated Decision and Order.***
- 2) Chief Counsel or Senior Staff Counsel will draft an analysis. The analysis should contain a confidential watermark and be password protected.
- 3) Obtain email permission from counsel for the parties to provide the PSDO to the Public Members via email in lieu of regular mail.
- 4) Email the memo with a copy of the Stipulated Decision and analysis to the Public Members, if counsel so stipulate, otherwise send via regular mail.

³ If the case is a matter in which the Dealer Members may participate then the materials are sent to both Public and Dealer Members, and the first sentence in paragraph 1 would not be included (Only the Public members may participate in the decision of this matter). Dealer Members participate in consumer versus licensee petitions. Subject to stipulation of the parties, they may participate in Article 4 (car, motorcycle, heavy-duty truck, and ATV) protests. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

- 5) Docket the original memo and the original Stipulated Decision **without the confidential, sealed exhibit 1 or attachment 1**, in the case file.
- 6) Place the original confidential analysis, a copy of the public portion of the Stipulated Decision, and the original confidential, sealed exhibit 1 or attachment 1 in a tamper evident envelope. Label the envelope and place it in the evidence room in the file drawer reserved for sealed documents. Clearly note on the docket the documents that are confidential and filed under Board seal, and where the documents are stored.
- 7) Place a copy of the public portion of the Stipulated Decision in the Stipulated Decision Binder and update log. Note that exhibit 1 or attachment 1 is confidential and filed under Board seal.
- 8) Calendar deadline for Board Member objections on the Master Calendar for 10 days from the date in which the materials are emailed to the members; otherwise calendar 13 days from the date of mailing. (The extra 3 days allow for mailing time). This date will indicate the last day a member can object to the PSDO. Also, calendar the next business day for issuance of the Order Adopting the PSDO.
- 9) If no Board Members object to the PSDO, draft an order adopting it (see sample); email and send via Certified Mail, Return Receipt Requested the signed order to the parties. Use the exact caption on the Stipulated Decision in the order.
- 10) Enter the following information into the Stipulated Decision log: Case Name/Number, Date Received, Date Sent to Board members, date adopted/date objected to. (See sample).

Objection to PSDO

If a Board member objects to a Proposed Stipulated Decision and Order, a Notice of Objection to Proposed Stipulated Decision and Order should go out to counsel for the parties via Certified Mail, Return Receipt Requested (see sample Notice) and all Public Board members should receive a copy of the Notice.⁴ No further action would be taken until the next regularly scheduled Board meeting. The matter objected to should be placed on the next agenda and counsel for the parties would receive a copy of the agenda with a cover letter.

If the parties elect to withdraw the PSDO, then the case would proceed accordingly. Any number of scenarios could occur with a withdrawal. The case could proceed through discovery to hearing, the parties could settle according to the terms of the PSDO without Board involvement or adoption, or the parties could submit a revised PSDO. The above list is not exhaustive.

⁴ See footnotes 2 and 3.

Checklist for Processing PSDO (not confidential)

No.	Task	Staff	Completed ✓
1	Process the PSDO.	Legal clerical	
2	Draft a memo to the Public Members.	Staff attorneys	
3	Draft analysis (approved by Executive Director)	Staff attorneys	
4	Email memo, PSDO, and analysis to the Public Members.	Staff attorneys	
5	Docket the original memo, analysis, and Stipulated Decision in the case file.	Legal clerical	
6	Place a copy of the Stipulated Decision in the Stipulated Decision Binder and update log.	Staff attorneys	
7	Calendar deadline for Board Member objections and date to send Order Adopting PSDO.	Staff attorneys	
8	Draft Order Adopting PDSO using the exact caption on the PDSO.	Staff attorneys	
9	If no Board Members object to the PSDO, email and send via Certified Mail, Return Receipt Requested the Order Adopting PDSO.	Legal clerical	
10	Update the Stipulated Decision Log.	Staff attorneys	
11	Update the EDR.	Staff attorneys	

Checklist for Processing Confidential PSDO

No.	Task	Staff	Completed ✓
1	Process the PSDO.	Staff attorneys	
2	Draft a memo to the Public Members with admonition regarding confidentiality.	Staff attorneys	
3	Draft analysis (approved by Executive Director) with confidential watermark and password protected.	Staff attorneys	
4	Obtain email permission from counsel.	Staff attorneys	
5	Email memo, PSDO, and analysis to the Public Member; otherwise send via regular mail.	Staff attorneys	
6	Docket the original memo and the original Stipulated Decision without the confidential, sealed exhibit/attachment, in the case file. Note the Board members that were sent the email.	Staff attorneys	
7	Place the original confidential analysis, a copy of the public portion of the Stipulated Decision, and the original confidential, sealed exhibit/attachment in a tamper evident envelope. Label the envelope and place it in the evidence room.	Staff attorneys	
8	Docket the documents are confidential and filed under Board seal, and where the documents are stored.	Staff attorneys	
9	Place a copy of the public portion of the Stipulated Decision in the Stipulated Decision Binder and update log noting exhibit/attachment is confidential and filed under Board seal.	Staff attorneys	
10	Calendar deadline for Board Member objections and date to send Order Adopting PSDO.	Staff attorneys	
11	Draft Order Adopting PDSO using the exact caption on the PDSO.	Staff attorneys	
12	If no Board Members object to the PSDO, email and send via Certified Mail, Return Receipt Requested the Order Adopting PDSO.	Legal clerical	
13	Update the Stipulated Decision Log.	Staff attorneys	
14	Update the EDR.	Staff attorneys	

2023 PROPOSED STIPULATED DECISION AND ORDER AUTHORITY

Vehicle Code section 3050.7

(a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, 3080, or 3085.2, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to a protest or petition submit a proposed stipulated decision and order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

(Amended by Stats. 2019, Ch. 796, Sec. 8. (AB 179) Effective January 1, 2020. Repealed as of January 1, 2030, by its own provisions. See later operative version added by Sec. 9 of Stats. 2019, Ch. 796.)

13 CCR § 550. Definitions

...

(s) "Proposed stipulated decision and order" is a paper submitted by the parties pursuant to Vehicle Code section 3050.7 seeking to resolve one or more issues in a protest or petition pending before the board.

...

(x) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, 3076 and 3085, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

13 CCR § 551.22. Adoption and Objection to Proposed Stipulated Decision and Order

(a) Upon the filing of a proposed stipulated decision and order with the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director to each member of the board.

(b) The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(c) If any member of the board gives notice of objection within 10 days of receipt of a copy of the proposed stipulated decision and order, the proposed stipulated decision and order shall be considered by the board at its next meeting to determine whether to adopt or reject it.

(d) Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition or protest that there has been an objection and that the matter will be considered by the board at its next meeting. The parties shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the proposed stipulated decision and order will be considered.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.7, Vehicle Code.

Government Code section 7927.705

Government Code section 7927.705 provides that: "Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

Government Code section 7921.505

Government Code section 7921.505 provides, in part, that:

. . .

(b) Notwithstanding any other law, if a state or local agency⁵ discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in:

- (1) The provisions listed in Section 7920.505.
- (2) Sections 7924.510 and 7924.700.
- (3) Other similar provisions of law.

(c) This section, however, does not apply to any of the following disclosures:

⁵ "As used in this section, 'agency' includes a member, agent, officer, or employee of the agency acting within the scope of that membership, agency, office, or employment. (Gov. Code § 7921.505(a))

...

(5) A disclosure made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

...

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

Government Code section 7930.000

(a) It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to Section 7927.705 shall be listed and described in Chapter 2 (commencing with Section 7930.100) pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature.

(b) The statutes and constitutional provisions listed in Chapter 2 (commencing with Section 7930.100) may operate to exempt certain records, or portions thereof, from disclosure. The statutes and constitutional provisions listed and described may not be inclusive of all exemptions. The listing of a statute or constitutional provision in Chapter 2 (commencing with Section 7930.100) does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute or constitutional provision to determine the extent to which it, in light of the circumstances surrounding the request, exempts public records from disclosure.

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

Government Code section 7930.005

Records or information not required to be disclosed pursuant to Section 7927.705 may include, but shall not be limited to, records or information identified in statutes listed in Chapter 2 (commencing with Section 7930.100).

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

Government Code section 7930.165

The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

...

Litigation, confidentiality of settlement information, Section 68513.

...

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

[Section 68513 is referenced to define the nature and scope of settlement information, in particular the requirement that the settlement be kept confidential if not otherwise made public (the situation for Board settlements).]

Government Code section 68513

The Judicial Council shall provide for the uniform entry, storage, and retrieval of court data relating to civil cases in superior court other than limited civil cases by means provided for in this section, in addition to any other data relating to court administration, including all of the following:

...

(d) The character and amount of any settlement made as to each party litigant, but preserving the confidentiality of such information if the settlement is not otherwise public.

...

The Judicial Council shall report to the Legislature on or before January 1, 1998, and annually thereafter on the uniform entry, storage, and retrieval of court data as provided for in this section. The Legislature shall evaluate and adjust the level of funds available to pay the costs of automating trial court recordkeeping systems, pursuant to Section 68090.8, for noncompliance with the requirements of this section.

(Amended by Stats. 1998, Ch. 931, Sec. 240. Effective September 28, 1998.)

STATE OF CALIFORNIA



MEMO

STIPULATED DECISION AND ORDER COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

TO : BOARD MEMBERS

Date: April 26, 2016

FROM: ROBIN P. PARKER

CASE: HAYWARD NISSAN CORPORATION dba HAYWARD NISSAN v. NISSAN
OF NORTH AMERICA, INC.
Protest Nos. PR-2374-13 and PR-2381-13

TYPE: VEHICLE CODE SECTION 3060 (termination)

PROCEDURE SUMMARY:

- PROTEST FILED: September 26, 2013 (PR-2374-13), November 25, 2013 (PR-2381-13)
- MOTIONS FILED: Respondent's Motion to Continue (denied)
- COUNSEL FOR PROTESTANT: Michael J. Flanagan, Esq.
Torin M. Heenan, Esq.
Law Offices of Michael J. Flanagan
- **COUNSEL FOR RESPONDENT:** Maurice Sanchez, Esq.
Lisa M. Gibson, Esq.
Baker & Hostetler LLP

EFFECT OF PROPOSED STIPULATED DECISION:

Exhibit 1 to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest ("Stipulated Decision") is filed under Board seal. The Stipulated Decision and Exhibit 1 resolve the above-referenced protests without the need for further litigation.

SUMMARY OF STIPULATED DECISION:

The pertinent terms of the Agreement are as follows:

- .

RELATED MATTERS:

- None.



STATE OF CALIFORNIA

MEMO

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

Date: January 5, 2023

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

**Subject: REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 1ST
QUARTER OF FISCAL YEAR 2022-2023**

The following is a financial summary of the Board's expenditures and revenue through the 1st quarter of Fiscal Year (FY) 2022-2023. This information was also provided in the December Quarterly Administrative report.

Expenditures Fiscal Year 2022-23

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$1,980,000	\$398,894	TBD	TBD	TBD	\$1,581,106	80%

Revenue Fiscal Year 2022-23

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
*\$2,258,303	\$699,583	\$2,957,886	\$1,639,042

*Pending prior year adjustments

Current Reserve Balance - \$2,558,992 balance after 1st Quarter Expenditures.
The Board expended 20% of its appropriated budget as of the 1st quarter.

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

- New Motor Vehicle Board (NMVB) Annual Fee - This collection is now complete. Staff have collected \$881,919.00 from manufacturers and distributors under NMVB jurisdiction.

Board staff make every effort to provide the most current budget information to the members and public. In order to provide more timely information, staff plan to expand on the Budget section in the Administrative Matters Report which is posted on the Board's public website on a quarterly basis. All Board members are notified when a new Administrative Matters Report is posted. Staff looks forward to receiving the Board's feedback regarding this process, and further direction regarding future fiscal reports.

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

First Quarter Revenue and Expenditure Summary

Fiscal Year 2022-2023

Covers July 1, 2022 to September 30, 2022

REVENUES

New Dealer Licensing Fee:	\$247,678
Manufacturer and Distributor Fee	\$444,580
NMVB Filing Fee	\$3,800
Miscellaneous Services	\$2,019
Arbitration Program	\$1,506
Year-to-date total:	\$699,583

EXPENDITURES

Payroll

Full-Time staff salaries: Budgeted Amount \$1,050,954 Expended \$220,165 Remaining Balance \$830,789
Part-Time staff salaries: Budgeted Amount \$80,914 Expended \$3,787 Remaining Balance \$77,127
Benefits: Budgeted Amount \$553,941 Expended \$118,258 Remaining Balance \$435,683

Operating Expense and Equipment

General Expense (includes equipment, office supplies, dues, legal library, etc.)
Budgeted Amount \$24,003 Expended \$2,517 Remaining Balance \$21,486

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

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

Professional Services (Attorney General): Budgeted Amount \$12,000 Expended \$3,135 Remaining Balance \$8,865

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

TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount \$263,191; Expenditure Year to Date \$46,202 – 18%; Balance Remaining \$216,989 – 82%

GRAND TOTAL – Fiscal Year 2022-2023

Budgeted Amount \$1,980,000; Expenditure Year to Date \$398,894 - 20%; Balance Remaining \$1,581,106 - 80%



STATE OF CALIFORNIA

MEMO

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

Date: January 5, 2023

From: SUZANNE LUKE

**Subject: CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR
FISCAL YEAR 2023/2024**

BACKGROUND

It is the policy of the Board to review and approve the budgetary allotment and participation in out-of-state travel plans. State policy mandates out-of-state travel be mission critical or beneficial to the state.

CONSIDERATIONS

Board staff are proposing attendance for the following events in FY 23/24.

- Recreation Vehicle Industry Association (RVIA) Show 2023
Washington, DC. June 4-8, 2023
Staff proposes sending the Executive Director to represent the Board along with any Board member who may want to attend for educational purposes. Travel costs will be dependent on the number of travelers.
- National Association of Motor Vehicle Boards and Commissions (NAMVBC)
2023 Fall Conference
Madison, WI. September 26-29, 2023
Staff proposes sending the Executive Director to represent the Board along with any Board member who may want to attend for educational purposes. Travel costs will be dependent on the number of travelers.

If the Board approves these trips, a formal request will be submitted to the Department of Motor Vehicles, the California State Transportation Agency, the Department of Finance and the Governor's office for final approval.

RECOMMENDATION

It is recommended the Board approve this travel request and select all attendees. Once travel requests are formally submitted, they cannot be changed.

If you have any questions, please contact me at (916) 244-6778.

cc: Bismarck Obando, President



STATE OF CALIFORNIA

MEMO

To: POLICY AND PROCEDURE COMMITTEE **Date:** January 5, 2023
JAKE STEVENS, CHAIR
VACANT, MEMBER

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES

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

The attached summary provides the Board with an opportunity to review the policies. The changes from 2022 are highlighted in underline and strikeout font, and pertain to:

- The adjusted annual gift limit was increased from \$520 to \$590 from January 1, 2023, through December 31, 2024.
- For "Acceptance of Credit Card Payments," it was noted that in 2022 the Board began allowing online credit card payments.
- The *Guide to the New Motor Vehicle Board, Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- The *New Motor Vehicle Board Administrative Law Judges' Benchbook* was updated. Future updates will be noted on the Executive Director's Report as this in an internal training manual.

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

Attachment

cc: Bismarck Obando

NEW MOTOR VEHICLE BOARD ADOPTED POLICIES

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

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

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

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

	At the December 2, 2019, General Meeting,	December 2, 2019;
CATEGORY	POLICY	DATE
Board Meeting Procedures -continued-	<p>changes were approved to automatically fill vacant committee Chair positions with the Member. At the November 4, 2020, General Meeting, the reference to “appeals” in Article 5 (debate and voting) was deleted due to the repeal of appeals effective January 1, 2020.</p> <p>The presiding Administrative Law Judge (“ALJ”) shall prepare a decision cover sheet/analysis which is provided to members with their meeting materials when a proposed decision or ruling is agendized. The decision cover sheet/analysis should be limited to two pages and not contain a recommendation.</p>	<p>November 4, 2020</p> <p>December 8, 1998; May 25, 2000</p>
Dealer Member Participation in Recreational Vehicle (“RV”) Protests and Petitions	Dealer Board members may not participate in petitions involving RV licensees. Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the Dealer Member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.	December 11, 2003; January 31, 2007; March 28, 2007; November 15, 2007
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act	<p>In compliance with section 11125.7, each agenda item other than an item that requires Board consideration of a proposed decision, ruling, or order, the President or presiding officer shall invite public comment after the item has been presented by staff. The President or presiding officer of the meeting may limit the number and/or the duration of the public comment or comments depending on the time constraints and size of the agenda. The following language is to be inserted into the President’s or presiding officer’s introductory statement prior to Board consideration of a proposed decision, ruling or order, as follows:</p> <p>“Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the</p>	September 10, 2009; February 4, 2010

	proceedings. No other information or argument will be considered by the Board.	
CATEGORY	POLICY	DATE
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act -continued-	Members of the public may not comment on such matters.”	
BOARD MEMBERS		
Board Development	In order to ensure familiarity with Board operations and the new motor vehicle industry in general, the Board will provide new member orientation and ongoing educational seminars to new and existing members.	July 18, 2000
Gifts and Honoraria	<p>The Board shall comply with the statutory requirements of the Political Reform Act. In general, the Act provides for a limitation on gifts received by state board members as follows:</p> <ul style="list-style-type: none"> ▪ Gifts provided for or arranged by a lobbyist or lobbying firm if the lobbyist or firm are registered to lobby the member or the employee’s agency are prohibited if the aggregate value exceeds \$10 per calendar month from a single lobbyist or lobbying firm. ▪ State board members and designated staff may not accept gifts aggregating more than \$420³ from any other single source if that gift would have to be reported on the recipient’s Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of “single source” is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission July 3, 2013, and the 	April 27, 2001; March 23, 2010

³ The gift amount is \$~~590.00~~ ~~520.00~~ (2 CCR §§ 18700 and 18940.2). For purposes of Government Code section 89503, the adjusted annual gift limitation of \$~~590.00~~ ~~520.00~~ is in effect January 1, 20~~23~~ ~~24~~, through December 31, 20~~24~~ ~~22~~.

	<p>Secretary of State on July 24, 2013. The amendments were operative August 23, 2013.</p> <ul style="list-style-type: none"> ▪ With regards to honoraria, the Act 	
CATEGORY	POLICY	DATE
Gifts and Honoraria -continued-	provides that members of state boards may not receive honoraria from any source that would be required to be reported on the Form 700 for that official.	
COURT PROCEEDINGS		
Court Participation on Issues of Interest to the Board	<p>The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important State interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court and keep it on the proof of service list. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. However, in mandamus actions in which an important State issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the State interest. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his or her designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff and the matter would be</p>	<p>October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5</p>

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

	<p>Rather, activities will be based on referrals from other agencies and sources.</p> <p>Vehicle Code section 3078 requires that the staff recommend to a member of the public that he or she consult with the Department of Consumer Affairs when seeking a refund involving the sale or lease of, or a replacement of, a recreational</p>	April 22, 2004
CATEGORY	POLICY	DATE
Consumer Mediation Program -continued-	<p>vehicle. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The checklist will enable staff to guide the consumer through key Lemon Law criteria and enable the consumer to choose the proper course of action to pursue.</p> <p>An inter-agency memo will be sent to agencies the Board refers to and those that refer to the Board to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program.</p>	May 26, 2011
HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES ⁴		
Appointment of Hearing Officers	<p>Under section 590 of Title 13 of the California Code of Regulations, Robin Parker, Chief Counsel, was appointed by the Board as a hearing officer for the purposes of conducting pre-hearing conferences, rulings on discovery objections, and mandatory settlement conferences. Anthony Skrocki was designated the Law and Motion Administrative Law Judge responsible for hearing all pre-hearing and discovery motions. In the event of Judge Skrocki's unavailability, an "Alternate Law and Motion ALJ Assignment Log" was established. Robin Parker was added to the "Alternate Law and Motion ALJ Assignment Log" and authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate.</p> <p>In January 2005, the Board appointed three Administrative Law Judges: Richard J. Lopez;⁵</p>	<p>August 21, 1997; September 30, 2004; June 26, 2008; November 20, 2008</p> <p>January 26, 2005; September 21,</p>

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

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

	Jerold A. Prod; ⁶ and Norman Gregory (Greg) Taylor. ⁷ Marybelle Archibald ⁸ was also appointed, as was Diana Woodward Hagle. Linda Waits was	2005; April 5, 2006; December 13, 2007;
CATEGORY	POLICY	DATE
Appointment of Hearing Officers -continued-	also appointed as an ALJ (she resigned in October 2010). In September 2011, the Board appointed three Administrative Law Judges: Lonnie M. Carlson (he resigned in October 2014), Kymberly M. Pipkin and Victor D. Ryerson (resigned effective August 1, 2017). In January 2017, the Board appointed Evelyn L. M. Matteucci and Dwight V. Nelsen as administrative law judges. These judges have been added to the assignment logs. In December 2019, four Board Members appointed Steven Smith as an administrative law judge subject to checking his references and being ratified by the full Board at its March 5, 2020, General Meeting.	September 27, 2011; January 18, 2017; December 2, 2019; March 5, 2020
Case Assignments	<p>The Board ALJs (excluding Robin Parker and Anthony Skrocki) will preside over merits hearings. To preserve the random selection of ALJs as well as the even distribution of cases, ALJs will be assigned on a rotational basis at the Hearing Readiness Conference utilizing an assignment log similar to the Merits Judge Substitution Log adopted by the Board at its January 8, 2003, meeting. If the judge selected to preside over the next hearing is not available, the Board will attempt to schedule the merits hearing with the next Board ALJ on the log. If for any reason no judge is available, the hearing will be scheduled with an OAH Judge. The new ALJs will be assigned utilizing this process.</p> <p>On an interim basis, ALJs will be assigned based upon a Merits and MSC Judge Assignment Log. All of the ALJs (Archibald, Lopez, and Prod until they resigned) were assigned to the respective logs. The effectiveness of this interim system was reported at the March 8, 2006, General meeting. Diana Woodward Hagle was added to the</p>	<p>September 30, 2004; April 21, 2005</p> <p>November 16, 2005; April 5, 2006; September 28, 2006</p>

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

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

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

	<p>assignment logs, as was Judge Taylor until his contract expired. Judge Wong requested that she be added to the MSC Log.</p> <p>The assignment logs were updated as follows:</p> <ul style="list-style-type: none"> ▪ If an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ is inserted first in the rotation so that he or 	February 4, 2014
CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>she would be the next ALJ to receive the first opportunity to preside over a merits hearing.</p> <ul style="list-style-type: none"> ▪ If an ALJ must decline presiding over a merits hearing because he or she was the Mandatory Settlement Conference ALJ, then the ALJ is inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing. <p>Merilyn Wong, on an interim basis, was designated the Mandatory Settlement Conference ALJ starting in June 2016. In November 2017, she was designated the permanent Mandatory Settlement Conference ALJ due to her success in settling protests. An Alternative MSC Judge Assignment Log was established in the event ALJ Wong is unavailable. Additionally, at ALJ Wong's request, she was taken off the Alternative Merits Judge Assignment Log and the Alternative Law & Motion Judge Assignment Log so her focus would be exclusively on settlement.</p>	June 28, 2016, January 18, 2017, July 19, 2017, November 7, 2017
Cited Proposed Decisions/ Rulings/Orders	Historically, the Board staff has prepared two versions of proposed decisions, rulings, and orders. One version contained citations to the record and the other version did not. The Board staff will prepare only one version of proposed decisions, rulings, and orders that contains citations to the record. Additionally, the following sentence will be included in all Board issued proposed decisions, rulings, and orders: "The	January 26, 2006

	references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding, and are not intended to be all-inclusive.”	
Hearing Officer Selection	<p>The following process shall be used in the examination and selection of Board Hearing Officers.</p> <p>(1) The civil service testing panel for the hearing officer classification shall consist of, at a minimum, one member of the Board, one Board employee approved by the Board, the Department’s</p>	December 8, 1998; November 28, 2000
CATEGORY	POLICY	DATE
Hearing Officer Selection -continued-	<p>designated representative from its Human Resources Branch (who serves as panel chairman), and a public member assigned from a list certified by the State Personnel Board.</p> <p>(2) Once the civil service list for the classification has been certified by the Department, the actual hiring interview will be conducted by the Administration Committee of the Board. (The Board may also wish to appoint an alternate Board member to this committee in the event that one of the committee members is unavailable for the hiring interview). This committee may request that a member of the Board’s executive staff participate in this process as well.</p> <p>(3) Once the hiring committee selects one or more qualified and desirable applicants from the list, these individual(s) will be requested, if practical, to attend the next scheduled General Meeting of the Board, at which time they will be asked to make a brief presentation to the Board concerning their qualifications and experience. Members of the Board will be given an opportunity to ask questions of these applicants. The Board members will then vote on whether to actually hire these individuals as hearing officers. If one or more of the applicants are hired, the Board will then modify the numerical designation on the hearing officer list to assign a number or numbers to the new hearing officers.</p>	
Reclassification of Hearing Officer to Administrative Law Judge	The Hearing Officer series specification which includes Hearing Officer I, Hearing Officer II, and Chief Hearing Officer was changed to an Administrative Law Judge class with two salary	November 7, 2003

	<p>ranges, Range A and Range B. This change was necessitated by the passage of Assembly Bill 1718 (Chaptered September 22, 2003) that transferred the authorization granted to a hearing officer to an Administrative Law Judge and deleted references to hearing officer in the Vehicle Code. Also, the responsibilities and duties assigned to incumbents of the Hearing Officer class were no longer an accurate representation. Implementation of this change will require approval of the State Personnel Board and the Department of Personnel Administration, which was completed September 2012.</p>	
CATEGORY	POLICY	DATE
Separation of Powers	The Board rules prevent the Administrative Law Judge at a settlement conference from presiding at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties (13 CCR § 551.11).	September 9, 1998
Source of Board Hearing Officers	The Board will utilize Board Hearing Officers (Administrative Law Judges) as opposed to judges from the Office of Administrative Hearings (“OAH”) because it is more efficient, cost effective, and affords the parties an effective means to resolve disputes. Using Board Hearing Officers that have a full understanding of the franchise relationship, the automotive industry, terminology, practices, and the law, is of obvious benefit to the Board and litigants. Other factors include: (1) costs for hearing officers, court reporters, and transcripts; (2) turnaround time for hearing dates and proposed decisions or rulings; and (3) unlike the Board, OAH is not involved in discovery unless the parties file a motion requesting its involvement.	August 20, 1996; December 8, 1998; May 25, 2000 – Business, Transportation & Housing Agency, Audit Recommendation 1
CASE PROCESSING		
Administrative Procedure Act	<p>To ensure compliance with the Administrative Procedure Act, the Board has adopted the following discretionary procedures:</p> <ul style="list-style-type: none"> Alternative Dispute Resolution (Government Code section 11420.10, et seq.), which allows the Board, with the consent of all the parties, to refer a dispute to mediation by a neutral mediator, binding arbitration by a 	August 21, 1997

	<p>neutral arbitrator, or nonbinding arbitration by a neutral arbitrator.</p> <ul style="list-style-type: none"> ▪ Informal Hearings (Government Code section 11445.10, et seq.), which allows the Board to permit informal hearings in certain limited instances. The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer. ▪ Declaratory Decisions (Government Code section 11465.10, et seq.), which provides for issuance of a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the Board. 	
CATEGORY	POLICY	DATE
Case Management Procedures	In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate ALJ for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment. In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance which would violate the above referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time will also be referred to the assigned "merits" ALJ for review.	April 27, 2001
Case Assignment Reports	In order to ensure that the mechanism for assigning cases to Board ALJs is working fairly and efficiently, the Board will receive periodic	September 12, 2000; November 28, 2000

	updates on the status of assigning cases to Board ALJs.	
Review of Case Status	The legal staff will review the status of all cases that are at least one-year old no less frequently than once each quarter. The parties will be contacted informally, or a telephonic Status Conference will be noticed to ascertain what action, if any, the Board can take to resolve the dispute.	July 12, 1996
ADMINISTRATION		
Acceptance of Credit Card Payments	The Board will allow the acceptance of credit card payments for all Board fees and costs subject to Master Service Agreements (13 CCR § 553.40). <u>In 2022, the Board began allowing online credit card payments.</u>	April 26, 2002; February 2005
Administrative Law Judge Guide	The Board will establish and maintain a <i>New Motor Vehicle Board Administrative Law Judges' Benchbook</i> .	April 26, 2002; March 11, 2003; March 9, 2004;
CATEGORY	POLICY	DATE
Administrative Law Judge Guide -continued-	<u>To timely revise the <i>Benchbook</i>, which is an internal training manual, future updates be reported on the Executive Director's Report.</u>	March 8, 2005; March 8, 2006; March 28, 2007; May 2, 2008; April 23, 2009; June 15, 2010; December 13, 2011; March 20, 2012; March 13, 2013; July 15, 2014; March 25, 2015; February 10, 2016; July 19, 2017; March 13, 2018; <u>November 7, 2022</u>
Annual Board Fee in Light of Two-Year License Renewal	The Annual Board fee of \$225.00 for dealers and \$0.338 per vehicle sold in California, with a minimum of \$225.00, for manufacturers and distributors will remain unchanged in light of the Department of Motor Vehicles two-year Occupational License renewal. ⁹	September 21, 2005
Annual Board Fee Waiver Criteria	The Board will exempt from collection of its annual fee all manufacturers or distributors of motor vehicles (including motorcycles, recreational	September 6, 2001; see also amendment to 13

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

	vehicles, and all-terrain vehicles) within the purview of its jurisdiction who do not have independent dealers in California or do not sell vehicles in California (13 CCR § 553(b)). Although a manufacturer or distributor may be exempt from collection of the annual Board fee, the Board will continue to exercise jurisdiction over these licensees. An annual questionnaire (Data Summary Form) will be sent to all exempted licensees concerning whether they have dealers or sold vehicles in California during the prior calendar year.	CCR § 553(b) operative September 2003
Arbitration Certification Program Fee Collection	The Board will exercise its discretion to collect or not collect fees when the amount to be collected is nominal, and provide the Department of Consumer Affairs, Arbitration Certification Program with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion.	January 31, 2007
CATEGORY	POLICY	DATE
Audit Compliance Officer	The Board has designated the General Counsel ¹⁰ to service as its Audit Compliance Officer to ensure that all facets of the 1996 Business, Transportation & Housing Agency Performance Audit are complied with. This includes the Corrective Action Plan Committee's proposal which was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting. This report was made an exception report.	November 20, 2008; May 26, 2011
Budget Process	The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendaized each June. This enables the Board to take a more active role in the budget process.	September 7, 2007
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency	The Audit recommended that "Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals". In	March 18, 1997 - Business, Transportation & Housing Agency Audit Finding 15

¹⁰ See footnote 1.

	<p>November 1996, the Budget and Finance Committee (Joe Drew and Lucille Mazeika) prepared an analysis of the duties of the Board members and staff that was adopted by the Board at its March 18, 1997, General Meeting. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals.</p> <p>At its November 20, 2008, General Meeting, the members adopted revised delegations with updated statutory language and formal Board delegations of duties that occurred at noticed meetings.</p> <p>At its September 10, 2009, General Meeting, the members adopted the revised delegations that included minor grammatical changes. Additionally, the "Administrative Duties" delegation pertaining to</p>	<p>November 20, 2008</p> <p>September 10, 2009</p>
CATEGORY	POLICY	DATE
<p>Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-</p>	<p>"Procurement" was revised to delegate to the Executive Director "the authority to procure any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's approved budget. If, due to extenuating circumstance, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting."</p> <p>This matter was made an exception report.</p> <p>Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014), made a number of non-substantive and substantive changes that resulted in updated delegations being adopted at the July 15, 2014, General Meeting.</p> <p>Effective January 1, 2016, a number of changes were made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale</p>	<p>May 26, 2011</p> <p>July 15, 2014</p> <p>February 10, 2016</p>

	<p>prohibition policy protest on behalf of two or more impacted dealers (Assembly Bills 759 and 1178). The revised delegations reflecting these changes were adopted at the February 10, 2016, General Meeting.</p> <p>Effective January 1, 2017, Vehicle Code section 3065 was amended (Assembly Bill 287) to specify that warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall repair.</p> <p>Article 6 of the Vehicle Code was repealed effective January 1, 2019. The Board revised its Legislative Policy, which contained three delegations to the Executive Director.</p> <p>Effective January 1, 2020, Assembly Bill 179 re-lettered Vehicle Code section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the methodology for calculating a franchisee's "retail</p>	<p>January 18, 2017</p> <p>June 7, 2019</p> <p>February 16, 2021</p>
CATEGORY	POLICY	DATE
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-	labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests and made many conforming changes. Updates were made to reflect Dawn Kindel's promotion to Staff Services Manager II and Robin Parker's promotion to Chief Counsel.	
Delegation of Authority Concerning Promulgating Regulations	The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.	April 26, 2002
Document Requests	The Board will charge fees for document requests that are consistent with Evidence Code section 1563, and all fees for document requests that total \$10.00 or less (less than 40 pages and less than	October 22, 1996; September 6, 2001; December 13, 2006

	15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director.	
Document Retention Policy	<p>The Board adopted Document Retention Policy:</p> <ul style="list-style-type: none"> ▪ The Board's judicial and administrative case files will be retained in their entirety, including exhibits and transcripts, at the Board's offices for a period of ten years after the case is no longer active. ▪ After the expiration of the ten-year period, all Final Decisions along with all briefs submitted at the close of the administrative record will be separately retained as permanent public records and stored at the Board's offices. The remainder of each file, i.e., exhibits and transcripts, will then be confidentially destroyed. ▪ Records of consumer complaints that are received by the Mediation Services Program will be retained for three years after the case is closed followed by confidential destruction. Administrative records including, but not limited 	October 29, 2002
CATEGORY	POLICY	DATE
Document Retention Policy -continued-	<p>to, budget reports, travel expense claims, purchase agreements, and property survey reports will be retained, in the Board's offices for eight years from the end of the fiscal year in which the document was prepared, followed by confidential destruction.</p> <ul style="list-style-type: none"> ▪ Employee personnel files, which include documents relating to health benefits, payroll deductions, performance appraisals, and the like, will be retained for eight years beyond separation followed by confidential destruction. 	
Electronic Public Mailing List	The Board will maintain a permanent Electronic Public Mailing List.	September 6, 2001
Employee Recognition	The Board will utilize an Employee Recognition Award Program to recognize staff members for their outstanding accomplishments. On at least an annual basis, employee nominations based on merit are submitted to the Board Development Committee and a recipient is selected in coordination with the Executive Director. The Employee Recognition Award program was renamed the "Solon C. Soteris Employee	July 18, 2000; September 30, 2004; March 8, 2006

	Recognition Award".	
Facsimile Document Requests	There will be no charge for document requests sent via facsimile. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney support service.	December 13, 2006
Financial Reports	In order to keep the Board apprised of its financial condition, the Board will receive quarterly financial updates at regularly scheduled Board meetings.	May 25, 2000; July 18, 2000
Information Security	The Executive Director is the Liaison Information Security Officer and responsible for ensuring compliance with information security procedures. This ensures that the Board complies with the Government Code that requires each agency have an officer who is responsible for ensuring that the organization's systems and procedures are in compliance.	August 20, 1996; December 12, 2000
Informational Materials	The Board will establish and maintain a <i>Guide to the New Motor Vehicle Board</i> and any necessary related materials. (February 12, 1997 - Business, Transportation & Housing Agency Audit Recommendation 13)	February 26, 1999; September 6, 2001; December 5, 2002; December 11, 2003; December 16, 2004; January 26, 2006; January 31, 2007; February 11, 2008; April 23,
CATEGORY	POLICY	DATE
Informational Materials -continued-	<p></p> <p>The Board will establish and maintain an <i>Informational Guide for Manufacturers and Distributors</i> that assists factory personnel in complying with California's franchise laws including the statutorily required notices.</p>	<p>2009; February 4, 2010; September 27, 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; February 16, 2021; March 30, 2022</p> <p>September 6, 2001; January 8, 2003; March 9, 2004; January 26, 2005 and 2006; January 31, 2007; February 11, 2008; April 23,</p>

		2009; February 4, 2010 and 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; February 16, 2021; March 30, 2022 March 5, 2020; February 16, 2021; March 30, 2022
	The Board will establish and maintain an <i>Export or Sale-for-Resale Prohibition Policy Protest Guide</i> that assists associations, as defined, in filing a Vehicle Code section 3085 protest.	
Internal Board Audits	In order to ensure that the Board is scheduled for audits at predetermined fixed intervals, the Board will be considered one of the divisions of DMV for purposes of scheduled compliance audits.	February 12, 1997
Legislative Committee	A Legislative Committee was created. The composition is the Executive Committee unless otherwise designated by the Board President. The Legislative Committee will provide California State Transportation Agency (CalSTA) with its own analysis, drafted by staff counsel and	June 7, 2019
CATEGORY	POLICY	DATE
Legislative Committee -continued-	<p>approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The Committee will be provided a copy of the analysis and fully briefed.</p> <p>The Committee will continue to provide the Department with bill analyses at the Department's request, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The committee will be provided a copy of the analysis and fully briefed.</p> <p>In the bill analyses provided to CalSTA, the Committee will not take a formal position on any</p>	

	<p>bill, with the exception of Legislation of Special Interest that proposes to drastically increase or reduce the Board's statutory authority and/or workload or intends to eliminate the Board. Absent CalSTA approval, the Committee will not publicly take a position on any bill.</p> <p>The Committee delegates to the Executive Director the ability to discuss pending Legislation of Special Interest with stakeholders or sponsors regarding technical input without prior Committee approval.</p> <p>A Legislative Committee analysis will not be subject to disclosure under the Public Records Act.</p>	
Legislative Policy	The Board staff will provide technical and procedural advice to stakeholders on pending legislation. The Board will participate in industry discussions of legislation, if requested. This will ensure that the Board explains its operations and helps the parties better understand what the fiscal and operational ramifications, if any, will be. The full Board will be apprised of legislation of both special and general interest (as defined) at noticed Board Meetings. Absent CalSTA approval, the Board would not publicly take a position on any bill.	August 20, 1996 June 7, 2019
CATEGORY	POLICY	DATE
Licensees for Purposes of Collecting Annual Board Fees	In an effort to ensure those entities that can benefit from the Board's assertion of jurisdiction are properly assessed fees, those licensees that manufacture or distribute products that are legally outside of the Board's jurisdiction because they do not produce motor vehicles regularly used on highways, would be eliminated from the Board's jurisdiction for purposes of collecting the annual Board fee (13 CCR § 553).	April 27, 2001
Mission and Vision Statements	<p>The Board's mission is: To enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.</p> <p>The Board's vision is: To demonstrate professionalism, integrity, and accountability in</p>	<p>March 6, 2001; April 24, 2003; April 22, 2004; March 8, 2005; March 8, 2006; March 28, 2007; June 26, 2008; April 24, 2009;</p>

	securing fair resolutions to motor vehicle industry disputes.	June 5, 2009; March 23, 2010; March 29, 2011; March 20, 2012; May 22, 2012; March 13, 2013; April 9, 2014; March 25, 2015; March 16, 2016; March 15, 2017; March 13, 2018; June 7, 2019; December 2, 2019; December 7, 2021
Out-Of-State Travel	The Board will approve the budgetary allotment for and participation in any out-of-state travel. It will review all out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations.	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 19
Performance Rating Criteria	Formalize performance appraisal criteria for the Executive Director position.	September 16, 2020, General Meeting
CATEGORY	POLICY	DATE
Proposed Stipulated Decisions and Orders (Confidential, Filed under Board Seal)	If the parties have jointly agreed that the terms of a Proposed Stipulated Decision and Order are confidential and should be maintained under Board seal to affect the agreed upon terms and conditions, then that is the criteria used by the Board.	June 7, 2019
Statutorily Mandated Schedules or Formulas	In light of the amendments to Vehicle Code section 3065 (Assembly Bill 179, ch. 796, effective January 1, 2020), the Board revised its existing policy to provide for the return of an Annual Notice to educate manufacturers and distributors concerning their filing requirements pursuant to Vehicle Code sections 3064/3074 and 3065/3075.	December 13, 2007; December 2, 2019
Transcript Policy	The Board will allow the parties to purchase transcripts directly from the court reporter. The	March 12, 2002, April 26, 2002,

	<p>Board will continue to purchase transcripts from the court reporting service. For all merits hearings and dispositive motions, reporting costs including transcript fees, appearance and transcript delivery fees, per diem costs, Realtime set-up fees, expedite rates, and cancellation fees will be allocated as follows:</p> <ol style="list-style-type: none"> 1. For the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. 2. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fees, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired. 3. In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for 	<p>March 20, 2012, June 26, 2013, March 13, 2018</p>
CATEGORY	POLICY	DATE
Transcript Policy -continued-	<p>arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.</p>	
Website	<p>On the Board's website, consumers can access the Board's Consumer Mediation Pamphlet in Spanish.</p>	<p>September 21, 2005</p>

<p>William G. Brennan Hearing Room</p>	<p>In remembrance of the Board’s previous Executive Director, William (Bill) G. Brennan, who passed away November 2, 2017, the Board renamed Hearing Room #1 The “William G. Brennan Hearing Room” as a symbolic gesture to solidify his legacy.</p>	<p>March 13, 2018</p>
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STATE OF CALIFORNIA

MEMO

TO: POLICY AND PROCEDURE COMMITTEE **Date:** January 4, 2023
JAKE STEVENS, CHAIR
VACANT, MEMBER

From: TIMOTHY M. CORCORAN
DANIELLE R. PHOMSOPHA

Subject: CONSIDERATION OF 2023 RULEMAKING CALENDAR

Government Code section 11017.6 requires that every state agency prepare a rulemaking calendar that identifies proposed regulations implementing statutes enacted during the year 2022 and the years prior to 2022. The rulemaking calendar (Attachment 1) is submitted for approval to the Board members, California State Transportation Agency, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law. The text of proposed regulations to be promulgated in 2023 is reflected in Attachment 2.

This matter is being agendized for consideration at the January 25, 2023, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Danielle at (916) 244-6777.

Attachments

cc: Bismarck Obando, President

**New Motor Vehicle Board
2023 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR
TO THE YEAR 2022**

Subject: Representation in Protests or Petitions

California Code of Regulations Title and Sections Affected: 551.26

Statute(s) Being Implemented: Vehicle Code section 3050

Responsible Agency Unit: New Motor Vehicle Board

Contact Person and Phone Number: Danielle R. Phomsopha (916) 244-6777

Projected Notice Publication Date: March 2023

Projected Public Hearing Date: To be determined

Projected Adoption by Your Agency Date: July 2023

Projected To OAL for Review Date: September 2023

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

PROPOSED TEXT OF REGULATION

§ 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.



STATE OF CALIFORNIA

MEMO

TO: POLICY AND PROCEDURE COMMITTEE **Date:** January 4, 2023
JAKE STEVENS, CHAIR
VACANT, MEMBER

From: TIMOTHY M. CORCORAN
DANIELLE R. PHOMSOPHA

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

The Board currently has seven Administrative Law Judges (Judge) appointed to preside over matters. The table below represents the assignments of each Judge, as designated by the Board, and the matters that were heard by each Judge in 2022.¹

JUDGE	CURRENT ASSIGNMENT	# CASES PRESIDED OVER IN 2022
Matteucci	<ul style="list-style-type: none">▪ Presides over Merits Hearings in rotation.▪ Presides over Law and Motion Hearings in rotation.▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).	<ul style="list-style-type: none">▪ <u>0</u> Merits Hearing▪ <u>0</u> Law and Motion Hearings▪ <u>0</u> Discovery Hearings
Nelsen	<ul style="list-style-type: none">▪ Presides over Merits Hearings in rotation.▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).	<ul style="list-style-type: none">▪ <u>0</u> Merits Hearings▪ <u>0</u> Law and Motion Hearings▪ <u>0</u> Discovery Hearings

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

JUDGE	CURRENT ASSIGNMENT	# CASES PRESIDED OVER IN 2022
Parker	<ul style="list-style-type: none"> Presides over Law and Motion Hearings (as needed on a back-up basis). Presides over Discovery Hearings (as needed on a back-up basis). Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> <u>0</u> Law and Motion Hearings <u>0</u> Discovery Hearings <u>0</u> Mandatory Settlement Conferences
Pipkin	<ul style="list-style-type: none"> Presides over Merits Hearings in rotation. Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). Presides over Discovery Hearings in rotation (as needed on a back-up basis). Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> <u>0</u> Merits Hearings <u>0</u> Law and Motion Hearings <u>0</u> Discovery Hearings <u>0</u> Mandatory Settlement Conferences
Skrocki	<ul style="list-style-type: none"> Presides over all Law and Motion. Presides over all Discovery Hearings. Presides over Procedural Matters as needed. 	<ul style="list-style-type: none"> <u>5</u> Law and Motion Hearings <u>6</u> Discovery Hearings
Smith	<ul style="list-style-type: none"> Presides over Merits Hearings in rotation. Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). Presides over Discovery Hearings in rotation (as needed on a back-up basis). Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> <u>0</u> Merits Hearing <u>0</u> Law and Motion Hearing <u>0</u> Discovery Hearings <u>0</u> Mandatory Settlement Conferences
Wong ²	<ul style="list-style-type: none"> Presides over Mandatory Settlement Conferences. 	<ul style="list-style-type: none"> <u>5</u> Mandatory Settlement Conferences
Woodward-Hagle	<ul style="list-style-type: none"> Presides over Merits Hearings in rotation. Presides over Law and Motion Hearings in rotation (as needed on a back-up basis). Presides over Discovery Hearings in rotation (as needed on a back-up basis). Presides over Mandatory Settlement Conferences (as needed on a back-up basis). 	<ul style="list-style-type: none"> <u>0</u> Merits Hearing <u>0</u> Law and Motion Hearing <u>0</u> Discovery Hearings <u>0</u> Mandatory Settlement Conferences

² At the June 28, 2016, General Meeting, Marilyn Wong was temporarily designated the Mandatory Settlement Conference ALJ. At the November 7, 2017, General Meeting, Judge Wong was designated as the permanent Mandatory Settlement Conference ALJ.

Hearing Type	2022 Total
Law and Motion	5
Discovery	6
Mandatory Settlement Conference	5
Merit Hearings	0
Merit Hearing Days	N/A

This matter is for information only at the January 25, 2023, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774 or Danielle at (916) 244-6777.

cc: Bismarck Obando, President



STATE OF CALIFORNIA

MEMO

To: POLICY AND PROCEDURE COMMITTEE **Date:** January 5, 2023
JAKE STEVENS, CHAIR
VACANT, MEMBER

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

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

The *Export or Sale-for-Resale Prohibition Policy Protest Guide* is reviewed annually to ensure it complies with recent statutory and regulatory amendments. There were no substantive changes to the Guide this year.

This matter is being agendized for discussion and consideration at the January 25, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Enclosure

cc: Bismarck Obando



State of California
NEW MOTOR VEHICLE BOARD

***Export or Sale-For-Resale Prohibition
Policy Protest Guide***

Vehicle Code section 3085, et seq.



January 2023

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

P.O. Box 188680
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State of California
GAVIN NEWSOM, GOVERNOR

California State Transportation Agency
TOKS OMISHAKIN, SECRETARY

BOARD MEMBERS

Public Members
KATHRYN ELLEN DOI
ARDASHES (ARDY) KASSAKHIAN
BISMARCK OBANDO
JACOB STEVENS

Dealer Members
ANNE SMITH BOLAND
RYAN FITZPATRICK
BRADY SCHMIDT

EXECUTIVE STAFF

TIMOTHY M. CORCORAN
Executive Director

LEGAL STAFF

ROBIN P. PARKER
Chief Counsel
DANIELLE R. PHOMSOPHA
Senior Staff Counsel

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PREAMBLE

The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation.

All correspondence and protests should be sent to:

New Motor Vehicle Board
ATTN: Legal Department
P.O Box 188680
Sacramento, California 95818-8680

Correspondence can also be sent via email at nmvb@nmvb.ca.gov. The telephone number of the Board is (916) 445-1888 and the website address is www.nmvb.ca.gov. Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. References to regulations are to Title 13 of the California Code of Regulations. The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website (www.oal.ca.gov). Once you reach the OAL site, select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code § 11400 through 11529) are applicable and available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

The Board also publishes a *Guide to the New Motor Vehicle Board* which details Article 4 (cars, motorcycles, and ATVs) and Article 5 (recreational vehicles) protests and petitions. An *Informational Guide for Manufacturers and Distributors* is also published to assist manufacturers and distributors in clarifying California's vehicle franchise laws. Both guides are available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at www.nmvb.ca.gov.

INTRODUCTION

Assembly Bill 179, (Stats. 2019, Ch. 796) effective January 1, 2020, was sponsored by the California New Car Dealers Association with essentially the same language that sunset on January 1, 2019. (Assembly Bill 1178 (Stats. 2015, Ch. 526)) This bill returns the Board's authority to hear export or sale-for-resale prohibition policy protests in Article 6 of the Vehicle Code and now sunsets on January 1, 2030.

An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch (herein "manufacturer" or "distributor") at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. (Veh. Code § 3085) The purpose of this publication is to familiarize the reader with this protest.

POWERS AND DUTIES IN GENERAL

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

Enforcement of Board Orders

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts. (Veh. Code § 3050.2(a)) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or suspend the proceedings pending compliance.

Mandatory Settlement Conferences

In a protest filed with the Board, the Board, its Executive Director, or an Administrative Law Judge ("ALJ") may order a mandatory settlement conference. (Veh. Code § 3050.4) For any proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties. (13 CCR § 551.11) The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party. (Veh. Code § 3050.4)

EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST

Statutory Authority

Vehicle Code section 3050(d) provides for the Board to hear and decide a protest presented by an association challenging a policy of a manufacturer or distributor pursuant to Section 3085.

Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a protest involving an export or sale-for-resale prohibition policy protest.

A protest is deemed filed upon its receipt by the Board via regular mail, email or facsimile, or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be emailed to the Board at nmvb@nmvb.ca.gov or mailed by certified or registered mail to P.O. Box 188680, Sacramento, CA 95818-8680.

Manufacturer's or Distributor's Notice of Appearance

The respondent shall file a written notice of appearance within 15 days of receipt of the protest. (13 CCR § 585.1) Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

Filing Fee

A filing fee of \$200, which should be in the form of a check, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. In the event of a financial hardship, either the protestant or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the \$200 filing fee. Samples are available on the Board's website. (13 CCR § 553.40)

Interested Individuals

Pursuant to Vehicle Code section 3085.2, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

Motion for Intervention

Any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative may file a motion to intervene in a pending proceeding subject to the conditions set forth in 13 CCR § 551.13.

Challenge to Presiding Officer

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request. (13 CCR § 551.1) Further, 13 CCR § 551.12(b) entitles a party, excluding an intervenor, in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier. (13 CCR § 551.12(b)(1)) Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

Amicus Curiae Briefs

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

Required Elements of Protest

The required content of a protest under Vehicle Code section 3085 is as follows:

Content Requirements	Authority
Must be in writing and conform to the provisions of Article 6 commencing with 13 CCR § 593.1.	13 CCR § 583
The association shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
The association shall serve a copy of the protest on the manufacturer or distributor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 551.24

Determination of Protest

If there is a hearing, the association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer or distributor violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association.

HEARING PROCEDURES

Pre-Hearing Procedure

Upon receiving a protest, the Board shall institute hearing proceedings similar to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

Discovery

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). Section 551.6 of the Board's regulations implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

Subpoenas

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2. Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the subpoena on the witness or deponent, a copy of the subpoena and executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

Summary of Board Action

Hearings on protests filed pursuant to Vehicle Code section 3085, may be considered by the entire Board or may, at its discretion be conducted by one of the Board's ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section 3085.2. The Board, on receiving a protest, does the following:

Step	Action
1	By order fix a time within sixty (60) days of receipt of the protest.
2	Send a copy of the order to the manufacturer or distributor, the protesting association, and all individuals and groups that have requested notification by the Board of protests and decisions by the Board.
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. (See also 13 CCR § 590)

NOTE: Vehicle Code section 3050(d) prohibits a dealer member of the Board from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed "pursuant to Article 6 (commencing with Section 3085), unless all participants to the protest stipulate otherwise." Vehicle Code section 3085.2(c) states: "[a] member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article [Article 6, i.e., protests filed by an association] unless all parties to the protest stipulate otherwise." These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions.

Stipulated Decisions

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code section 3085.2 to resolve one or more issues raised by a protest filed with the Board. (Veh. Code § 3050.7)

Hearings Open to the Public; Protective Orders

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

Failure to Appear at a Hearing

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

Decision of the Board

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. The Board shall act within 30 days after the hearing, within 30 days after the Board receives a proposed decision when the case is heard before an ALJ, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties. (Veh. Code § 3085.4)

Court Reporting and Transcripts of Board Proceedings

The Board arranges for a court reporter for all hearings on the merits of a protest and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions (those that result in a final determination of the protest before the Board), reporting costs will be allocated as follows:

Circumstances	Reporting Costs including Appearance and Transcript Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs	Transcript Fees
Hearings on the merits and dispositive motions - First Day	Board (excluding Realtime set-up fees)	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions - After First Day	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding the Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

JUDICIAL REVIEW

Appeal to Superior Court

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code section 3085.6.

APPENDIX

Sample Protest

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings with the New Motor Vehicle Board, see 13 CCR § 593.2, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

1 _____ [name of attorney and state bar number, or name of party representing itself]

2 _____ [address]

3 _____ [telephone number, fax number and email address, if available]

4 _____ Attorney for [Protestant] or In pro per [if party representing itself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Protest of)	
)	
12	NAME OF ASSOCIATION,)	Protest No. PR-
)	
13	Protestant,)	PROTEST
)	
14	v.)	[Vehicle Code section 3085]
)	
15	NAME OF MANUFACTURER OR)	
	DISTRIBUTOR,)	
16)	[Dates of the hearing and any
	Respondent.)	future pre-hearing or
17)	settlement conferences]

Introduction:

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [Name of Association], files this protest under the provisions of
 21 California Vehicle Code section 3085, with reference to the following facts:

Body:

Using numbered paragraphs, state the allegations in a clear and chronological order.

22 1. Protestant is an association as defined in Vehicle Code section 3085(b) challenging
 the legality of an export or sale-for-resale prohibition policy of [manufacturer or distributor] on
 behalf of [identify two or more dealers subject to the challenged policy]. These dealers are
 subject to the policy being challenged pursuant to subdivision (y) of Vehicle Code section
 11713.3. Protestant's mailing address is [address] and telephone number is [telephone number].

2. Respondent is a licensed [manufacturer or distributor] authorized to do business and
 doing business in the State of California. Respondent's mailing address is [address] and
 telephone number is [telephone number].

3. Protestant is represented in this matter by [attorney/law firm], whose address and
 telephone number are [address and telephone number].

4. [Outline the particulars of the dispute].

5. Protestant and its attorneys desire to appear before the Board. The estimated length of
 hearing on this matter will take [number of days] to complete.

6. A Pre-Hearing Conference is requested.

7. WHEREFORE, Protestant prays for: (A declaration that an export or sale-for-resale
 prohibition policy of [manufacturer or distributor] violates the prohibitions of subdivision (y) of
 Vehicle Code section 11713.3.)

Dated:

Signed:



STATE OF CALIFORNIA

MEMO

To: POLICY AND PROCEDURE COMMITTEE **Date:** January 5, 2023
JAKE STEVENS, CHAIR
VACANT, MEMBER

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: 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 *Informational Guide for Manufacturers and Distributors* was most recently approved at the March 30, 2022, General Meeting. The proposed revisions in the attached version are highlighted yellow and summarized as follows:

- On page 11, the reference to contacting the local DMV Occupational Licensing Inspections office was removed at the request of Ailene Short, Branch Chief, Occupational Licensing.
- On page 13, the citation to the California Public Records Act was changed from Government Code section 6250 to 7920.000. These changes were operative on January 1, 2023.

There were no other substantive changes.

This topic is being agendized for discussion and consideration at the January 25, 2023, 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

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

P.O. Box 188680
Sacramento, California 95818-8680
Phone: (916) 445-1888
Email: nmvb@nmvb.ca.gov
Website: www.nmvb.ca.gov



State of California
GAVIN NEWSOM, Governor

California State Transportation Agency
TOKS OMISHAKIN, SECRETARY

BOARD MEMBERS

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KATHRYN ELLEN DOI
ARDASHES (ARDY) KASSAKHIAN
BISMARCK OBANDO
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Dealer Members
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RYAN FITZPATRICK
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Executive Director

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DANIELLE R. PHOMSOPHA
Senior Staff Counsel

January 2023

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INTRODUCTION

This Informational Guide has been prepared to assist manufacturers¹ and distributors in clarifying California's vehicle franchise laws and to familiarize the vehicle industry with the statutorily required notices, schedules, and formulas mandated by the Vehicle Code and Civil Code. The Guide consists of frequently asked questions and answers, and sample notices. It is designed for those factory personnel within a Market Representation Department, Dealer Development Department, or Legal Department.

The laws summarized below pertain to a manufacturer's or distributor's obligation to provide notices, schedules, and formulas mandated by the Vehicle Code and Civil Code, to the New Motor Vehicle Board (Board) and/or impacted dealers. For example, the proper procedure for noticing a termination of a franchise, modification of a franchise agreement, or clearing the market for an off-site sale are covered.

Questions concerning the procedural requirements of filing a notice, schedule, or formula, may be directed to the Board legal staff at (916) 445-1888 or nmvb@nmvb.ca.gov. The Board's website (www.nmvb.ca.gov) contains detailed information on the Board and contains links to California statutes and the California Code of Regulations.

LEGAL DISCLAIMER

The purpose of this Informational Guide is to familiarize the automotive industry with the statutorily required notices, schedules, and formulas mandated by the California Vehicle Code and Civil Code. The information contained herein is intended to be informative and not advisory, is limited in scope, and not intended as legal advice or as a substitute for careful reading of the specific statutes and regulations that may apply to a specific situation.

QUESTIONS AND ANSWERS

What Is the New Motor Vehicle Board?

The Board is located within the California Department of Motor Vehicles (DMV) with oversight provided by California State Transportation Agency formerly Business, Transportation & Housing Agency. The Board is a quasi-judicial administrative agency with independent authority to resolve disputes between franchised dealers and manufacturers of new vehicles (includes motorcycles, recreational vehicles, and all-terrain vehicles).²²

Created in 1967, the Board, originally named the New Car Dealer's Policy and Appeals Board, was limited to hearing appeals³ from final decisions of the Director of DMV that adversely affected the occupational license of vehicle dealers or manufacturers. Legislation enacted in 1973 gave the Board its present name and implemented the statutory framework that created a forum to resolve disputes in an efficient, fair, and cost-effective manner.

¹ Throughout this Guide, the terms dealer and franchisee are used interchangeably, as are the terms manufacturer/distributor and franchisor.

² Effective January 1, 2004, the recreational vehicle industry, excluding park trailers and truck campers, was added to the list of licensees within the Board's jurisdiction. (See Veh. Code § 3070, et seq.) Since 1994, the Board has had jurisdiction over all-terrain vehicle dealers and manufacturers. Effective January 1, 2005, the all-terrain vehicle industry is licensed by the DMV. The reference contained herein to "vehicle dealer" or "franchisee" includes new motor vehicles, motorcycles, recreational vehicles, and all-terrain vehicles.

³ Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, ch. 796)

In keeping with its mission, most cases brought to the Board are resolved early in the process. Early dispute resolution improves relations between dealers and manufacturers, and reduces the need for costly, protracted litigation in areas where the Board has developed special expertise. A small number of cases proceed to a formal hearing on the merits of the dispute.

The Board also has a Consumer Mediation Services Program that attempts, through informal mediation, to resolve disputes between consumers and new motor vehicle dealers, and/or manufacturers.

What Are the Statutorily Required Notices, Schedules, or Formulas?

The Vehicle Code and Civil Code mandate that franchisors file notices, schedules, and formulas with the Board and/or impacted dealers in the following instances:

TYPE			
Franchise Termination or Refusal to Continue (Non-Renewal)	Veh. Code § 3060(a) Veh. Code § 3070(a)	Yes	Yes
Franchise Modification or replacement*	Veh. Code § 3060(b) Veh. Code § 3070(b)	Yes	Yes
Establishment**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Relocation**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Off-Site Sale**	Veh. Code § 3062(c) Veh. Code § 3072(b)(3)	Yes	Yes
Delivery and Preparation Schedule	Veh. Code § 3064 Veh. Code § 3074	Yes	No
Warranty Reimbursement Schedule or Formula	Veh. Code § 3065 Veh. Code § 3075	Yes	No
Factory Ownership**	Veh. Code § 11713.3(o)	Yes	No
Dealer Development	Veh. Code § 11713.3(o)	Yes	No
Motor Vehicle Warranty Adjustment Programs	Civil Code § 1795.92	Yes	Yes

* The Board and dealer are noticed only if the modification or replacement would “substantially affect the franchisee’s sales or service obligations or investment.”⁴

** Notification is required only if there are dealers of the same line-make within the relevant market area. Vehicle Code section 507 defines relevant market area as “any area within a radius of 10 miles from the site of a potential new dealership.” This has been construed as air miles (“as the crow flies”).

Notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and Section 593.1 of Title 13 of the

⁴ Despite the franchisor’s decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language.)

California Code of Regulations. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

If a Manufacturer or Distributor Wants to Terminate or Refuse to Continue an Existing Franchise (Non-Renewal), What Must Be Done?

Vehicle Code sections 3060(a) and 3070(a) provide that no franchisor shall terminate or refuse to continue any existing franchise (non-renewal) unless: (1) the franchisee and the Board have received written notice; (2) if a protest is filed, the Board finds that there is good cause for termination or refusal to continue following a hearing; and (3) the franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has lapsed.

The statute provides for either a 60-day or 15-day notice of termination. The **60-day notice of termination** shall set forth the specific grounds for termination or refusal to continue. The **15-day notice of termination** requires the specific grounds with respect to any of the following:

1. Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.
2. Misrepresentation by the franchisee in applying for the franchise.
3. Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.
4. Any unfair business practice after written warning thereof.
5. Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the DMV.

The statutes are unambiguous concerning the format and content for the notices. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

(To be inserted when a **60-day notice of termination** or refusal to continue 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.

What Steps Are Necessary to Issue a Notice of Termination or Refusal to Continue (Non-Renewal)?

Steps Necessary to Issue a Notice of Termination or Refusal to Continue	
Determine if a 15-day or 60-day notice of termination is appropriate. A 60-day notice is appropriate for refusal to continue an existing franchise.	
Draft the appropriate notice being mindful of the statutory language outlined above.	
Specify the grounds for termination or refusal to continue in the notice.	
Send the notice to the dealer whose franchise is being terminated or not continued. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ⁵	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

After Proper Notice of Termination or Refusal to Continue (Non-Renewal) to the Dealer and Board, Under What Circumstances Can the Dealership Be Terminated?

The dealership can be terminated if:

1. The franchisor has received the written consent of the franchisee; or,
2. The appropriate period for filing a protest has lapsed (10 or 30 days from the dealer's receipt of the notice depending on whether a 15-day or 60-day notice of termination); or,
3. If a protest is filed, the Board finds that there is good cause for termination or refusal to continue following an evidentiary hearing.

If a Manufacturer or Distributor Wants to Modify a Franchise, What Must Be Done?

Vehicle Code sections 3060(b) and 3070(b) provide that 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.

The notice requirements are like those for terminations. The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

⁵ The Board's preference is to receive notices by email (nmvb@nmvb.ca.gov). Alternatively, notices can be sent regular, certified or registered mail to P.O. Box 188680, Sacramento, CA 95818-8680.

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.

What Steps Are Necessary to Issue a Notice of Modification?

Steps Necessary to Issue a Notice of Modification	
Determine if the modification “substantially affects the dealer’s sales or service obligations or investment.” (See footnote 4.)	
Draft the appropriate notice of modification being mindful of the statutory language outlined above.	
Send the notice to the dealer whose franchise is being modified. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ⁶	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

If a New Franchise Is to Be Established or an Existing Franchise Relocated, What Must Be Done?

Vehicle Code sections 3062(a) and 3072(a) provide that if a franchisor seeks to enter into a franchise establishing an additional **motor vehicle dealership**, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make⁷ is represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the Board and each franchisee in that line-make in the relevant market area of the franchisor’s intention. If a protest is not filed or has already been resolved, this process is referred to as “clearing the market.”

⁶ See Footnote 5.

⁷ For motor vehicles other than RVs, “like-make” is not defined in the code. What is or is not a same “line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the DMV as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, the DMV considers a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado, Impala, and Tahoe “lines” or models. For the RV industry which lacks uniformity, the “recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.3.” It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure their makes are registered with DMV.

If a franchisor of new cars, trucks, or motorcycles seeks to enter into a franchise that authorizes a **satellite warranty facility** to be established at, or relocated to, a proposed location which is within two miles of any dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the Board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. (Veh. Code 3062(a)(2)) The recreational vehicle statutes do not contain a similar provision concerning satellite warranty facilities.

The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.⁸

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

What Are the Exceptions to Vehicle Code Sections 3062 and 3072 Notice Requirements?

The requirements above, do not apply in the following situations:

1. The relocation of an existing dealer to any location that is **both** within the same city as, and within one (1) mile from, the existing dealership location.
2. The establishment at a location that is **both** within the same city as, and within one-quarter (1/4) mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.
3. Any temporary display of vehicles at a fair, exposition, or similar exhibit that does not exceed 30 days. No actual sales may occur at the temporary location.
4. The reopening of a dealership that has not been in operation for less than one year.

An additional exception pertains to recreational vehicle dealers only: An annual show sponsored by a national trade association of recreation vehicle manufacturers that complies with Vehicle Code section 11713.15(d).⁹ For example, the California RV Show sponsored by the Recreation Vehicle Industry Association would be exempt from the Vehicle Code section 3072 notice requirements.

⁸ The last sentence in the "Notice to Dealer" language in Section 3072(a) contains commas as follows: "If, within this time, you file with the board..."

⁹ Effective September 19, 2018, subdivision (d) of Vehicle Code section 11713.15 was amended to exempt a recreational vehicle dealer being issued a temporary branch license from the notice requirements if the show is located in a county with a population of 9,000,000 or more persons, or at a location within 30 miles from the prior approved location of the show, and at least 10 manufacturers are participating in the show. (Assembly Bill 2330, Stats. 2018, ch. 537)

What Steps Are Necessary to Issue a Notice of Establishment or Relocation?

Steps Necessary to Issue a Notice of Establishment or Relocation	
Determine if an exception to Vehicle Code section 3062 or 3072 notice requirements applies.	
Draft the appropriate notice of establishment or relocation being mindful of the statutory language outlined above.	
Identify the proposed location for the establishment or relocation.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ¹⁰	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

After Proper Notice of Establishment or Relocation to the Dealer(s) and Board, Under What Circumstances Can the Franchisor Establish the Proposed Dealership or Relocate the Existing Dealership?

The proposed dealership can be established, or an existing dealership relocated if:

1. The appropriate period for filing a protest has lapsed (20 days from the dealer's receipt of the notice or 30 days if an extension of time was granted by the Board); or,
2. If a protest was filed, after an evidentiary hearing before the Board, the protesting dealer is unable to prove good cause not to allow the establishment or relocation.

¹⁰ See Footnote 5.

What Is a Notice of Off-Site Sale?

Vehicle Code sections 3062(c) and 3072(b)(3) require that if an “off-site sale” is intended, the franchisor must give notice to all dealers of the same line-make within the relevant market area (10 miles) of the proposed site and the Board. The impacted dealer(s) would have a right to protest the off-site sale.

The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.¹¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

If there are no dealers of the same line-make within 10 miles of the proposed off-site sale location, notice to the Board is not required.

What Is a Certificate of Proposed Franchise (OL 124)?

The Certificate of Proposed Franchise (OL 124) notifies DMV that a dealer is authorized to sell a line-make at a particular address. The OL 124 (see sample on pages 9-10) requires that a manufacturer or distributor certify that notice to the Board is not required under Vehicle Code section 3062 or 3072 (for example, “no other franchised dealers of the same line-make within the relevant market area”) or that there are franchised dealers of the same line-make within the relevant market area and notice has been given, but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest.) Even though the California RV Show or other annual trade show sponsored by a national trade association of recreation vehicle manufacturers is exempt from the Vehicle Code section 3072 notice requirements (see page 6), an OL-124 form must be issued by the manufacturer to each dealer participating in the show.

¹¹ The last sentence in the “Notice to Dealer” language in Section 3072(a) contains commas as follows: “If, within this time, you file with the board...”



LICENSING OPERATIONS DIVISION
CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY	
OCCUPATIONAL LICENSING NUMBER	

Instructions:

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will **NOT** be accepted if modified or altered and must contain an original signature.

The location is a ☐ Permanent Location
☐ Temporary Branch Location (must be 30 days or less)

Date(s) of Event: From: _____ To: _____

I/We

MANUFACTURER/DISTRIBUTOR NAME

LICENSE NUMBER

hereby certify that:

- ☐ Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers of the same line-make located within the relevant market area.
- ☐ Written notification has been provided to the Board and each franchisee of this line-make of the franchisor's intent to enter into a franchise establishing an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest). (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S)

DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE)

DEALER LICENSE NUMBER (IF APPLICABLE)

ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE)

CITY

STATE

ZIP CODE

AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE)

DATE

X

PRINT OR TYPE NAME

OWNER OR REPRESENTATIVE LICENSE NUMBER

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, state in part:

Establishing or Relocating Dealerships

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make is represented, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed dealership or relocation of the existing dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

...

(b) Subdivision (a) does not apply to either of the following:

- (1) The relocation of an existing dealership to a location that is both within the same city as, and within one mile from, the existing dealership location.
 - (2) The establishment at a location that is both within the same city as, and within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.
- (c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. ...
- (d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership. ...

*Section 3072, pertaining to recreational vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational vehicle manufacturers and distributors are encouraged to review the entire *California Vehicle Code* Section.



OL-124, CERTIFICATE OF PROPOSED FRANCHISE

Applicable to **New Motor Vehicles, Motorcycles, All-Terrain Vehicle and Recreational Vehicles** as defined by Health and Safety Code Section 18010 (a)

TYPE TRANSACTION	OL-124 NOT REQUIRED	OL-124 REQUIRED PURSUANT TO CVC 11704	BOARD/MARKET AREA FRANCHISE NOTICE NOT REQUIRED	BOARD/MARKET AREA FRANCHISE NOTICE REQUIRED
1. New license (Buy/Sell) of a currently occupied location (Main or branch location application)		X	X	
2. New location - Not currently occupied, except as exempt pursuant to CVC 3062(b), 3072(b). See #9, #10, and #11		X		X
3. Change of Business Name		X	X	
4. Adding a Make Distinctive Business Name		X - For new Make	X	
4a. Adding a Non-Make Distinctive Business				
5. Change of Corporate Name/LLC or LLP Name		X	X	
6. Change of Corporate Officers/LLC or LLP Manager	X			
7. Change of Address (Postal Service change - no physical movement of location)		X - Formerly known as prior address	X	
8. Change of Address (New location is beyond 1 mile of current licensed location)		X		X
9. Change of Address (New location is within 1 mile of current licensed location and within the same city)		X	X	
9a. Change of Address (New location is within 1 mile of current licensed location and within a different city)		X		X
10. Establishing location within the same city, within 1/4 mile of a location that has been out of operation for less than 90 days		X	X	
11. Reopening a location that has not been in operation for less than one year		X - Or copy of prior OL-124	X	
11a. Reopening a location that has not been in operation for one year or more		X		X
12. Temporary Branch locations - Display only with no sales activity that does not exceed 30 days	X - No application required		X	
12a. Temporary Branch locations - Display only with no sales activity but display exceeds 30 days	X - No application required			X
13. Temporary Branch locations with sales activity on site and other same line-make dealers within RMA		X		X
13a. Temporary Branch locations with sales activity on site and no other same line-make dealers within RMA		X	X	
14. Addition of a line-make to an existing established location and other same line-make dealers within RMA		X		X
14a. Addition of a line-make to an existing established location and there are no other same line-make dealers within RMA		X	X	
15. Renewal of License (Application must be submitted no later than 30 days after license expiration date)	X			
16. Establishing or Relocating Satellite Warranty facility more than 2 miles from a same line-make dealer	X - No application required		X	
16a. Establishing or Relocating Satellite Warranty facility within 2 miles of a same line-make dealer	X - No application required			X

Additional Information:

- The OL-124 must reflect the business name and address as it appears on the corresponding application for an Occupational License.
- The dealer is responsible for submitting the OL-124 with an appropriate application to an Occupational Licensing Inspection's Office.
- The OL-124 must be signed by an owner of the Manufacturer/Distributor on file with Occupational Licensing or a licensed Representative.
- Relevant Market Area pursuant to California Vehicle Code Section 507, is any area within a radius of 10 miles from the site of a potential new dealership.
- The powers and duties of the New Motor Vehicle Board are defined in Division 2, Chapter 6, of the California Vehicle Code.

APPLICANT SHOULD RETAIN THIS PAGE FOR THEIR INFORMATION.
DO NOT SUBMIT WITH APPLICATION.

When Is an OL 124 Not Required?

An OL 124 is not required for a temporary display of vehicles at a fair, exposition or similar exhibit, if no actual sales are made at those events and the display does not exceed 30 days.

Who Is Authorized to Sign an OL 124?

A licensed representative or an owner, as reflected in DMV records, of the manufacturer/distributor must sign the OL 124. Vehicle Code section 512 defines a representative as “any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer’s or distributor’s vehicles to their franchisees or for regularly supervising or contacting franchisees or prospective franchisees” in California for any purpose. Vehicle Code section 11900, et seq. pertains to the licensing of representatives.

For additional information concerning the DMV Occupational Licensing requirements, please contact **your local DMV Occupational Licensing Inspections office or** Occupational Licensing at (916) 229-3346.

What Steps Are Necessary to Issue a Notice of Off-Site Sale?

Steps Necessary to Issue a Notice of Off-Site Sale	
Determine if an exception to the Vehicle Code section 3062 or 3072 notice requirements applies (e.g., temporary off-site display or Annual National RV Trade Show).	
Identify the proposed location for the off-site sale.	
Draft the appropriate notice of off-site sale being mindful of the statutory language outlined above.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ¹²	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

¹² See Footnote 5.

After Proper Notice of Off-Site Sale to the Dealer(s) and Board, Under What Circumstances Is the Market “Clear” for Purposes of Proceeding with the Off-Site Sale?

The proposed off-site sale can go forward and an OL 124 filed with DMV if the appropriate period for filing a protest has lapsed (20 days from the dealer’s receipt of the notice or 30 days if an extension of time was granted by the Board). The filing of a protest of a proposed off-site sale results in the sale not going forward.

Is a Franchisor Required to File a Copy of the OL 124 with the Board as Well as DMV?

A franchisor is not required to file a copy of the OL 124 with the Board. However, if it is filed, as a courtesy, it will be reviewed for completeness. Please ensure that the appropriate box on the OL 124 form is checked, i.e., notice to the Board is not required or there are franchised dealers of the same line-make within the relevant market area that were noticed but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest).

What Steps Can Be Taken If There Is Not Enough Time to “Clear the Market?”

The statutorily required notice should be sent to the impacted dealers with sufficient time to “clear the market.” Generally, this is not a problem when a franchisor clears the market for an establishment or relocation of a dealership. However, for an off-site sale, the impacted dealers have 20 days to file a protest and may request a 10-day extension upon a showing of good cause. In the event a dealer requests permission to participate in an off-site sale and there is not sufficient time to clear the market, all impacted dealers, i.e., those of the same line-make within the relevant market area, may file a protest with the Board and simultaneously file a request for dismissal of the protest. Unless a request for a fee waiver is received and approved, a \$200.00 filing fee is required. Detailed information concerning a fee waiver can be obtained from the Board legal staff at (916) 445-1888.

What Types of Information Does the Board Not Require?

There are a number of manufacturers and distributors that submit OL 124 forms and correspondence to the Board that are not necessary. The Board does not need to be informed if a dealer does any of the following:

1. Changes name of dealership, dba, or corporation;
2. Changes the ownership structure;
3. Voluntarily terminates;
4. Transfers its ownership interest to another entity;
5. Relocates to another location if no other dealers of the same line-make are within the relevant market area;
6. Is established as a new franchisee if no other dealers of the same line-make are within the relevant market area;
7. Participates in an off-site sale of used vehicles;
8. Participates in an off-site display of vehicles for less than 30 days;
9. Participates in an off-site sale of new vehicles and no other dealers of the same line-make are within the relevant market area.

However, the DMV Inspectors will require this information. If you are not sure, contact your local Inspector for guidance.

What Is the Impact of a Faulty or Defective Notice?

Providing a timely and accurate notice gives a manufacturer or distributor the ability to quickly finalize its intended action, i.e., termination, modification, establishment, and so on. In the event a notice does not comply with the statute, the Board legal staff may contact the franchisor and offer suggestions to correct the notice. However, the faulty notice may delay the proposed action.

The purpose of a notice is to start the statutory time period in which an aggrieved dealer has to protest its franchisor's intended action. When the notice is not in compliance, the time to file the protest does not commence.¹³ The First Appellate District Court (*British Motor Car Distributors, Ltd., d/b/a Maserati Import Company v. New Motor Vehicle Board; British Motors of Monterey, Inc., Real Party in Interest* (1987) 194 Cal.App.3d 81, 91-94) held that the limitations period of Vehicle Code section 3060 is expressly dependent upon the franchisor first complying with the notice provisions and any other interpretation would reward franchisors who send out defective notices. Even if a manufacturer or distributor never provides proper notice to the Board or franchisee, the lack of notice does not prevent the Board from exercising its powers to resolve disputes between franchisees and franchisors.

What Is a Delivery and Preparation Obligations Compensation Schedule?

Manufacturers and distributors typically reimburse their dealers for preparing the new vehicles for delivery to purchasers. Vehicle Code sections 3064 and 3074 provide that every franchisor **shall** file with the Board a copy of their delivery and preparation obligations, as well as a schedule of compensation to be paid franchisees for the work and services they are required to perform in connection with the delivery and preparation obligations.

The statute does not specify when or how often the compensation schedule should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor are required to file a current copy of their delivery and preparation obligations (PDI) and PDI schedule of compensation with the Board once every three years or whenever there are changes to the information. Please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act. (Gov. Code § 7920.000 6250, et seq.)

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

What Is a Warranty Reimbursement Schedule or Formula?

Manufacturers and distributors typically reimburse dealers for warranty repairs at a pre-established rate. Vehicle Code section 3065 provides that every franchisor **shall** file a copy of its warranty reimbursement schedule with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics, repair, service, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair. Vehicle Code section 3075 provides that every recreational vehicle franchisor **shall** file a copy of its warranty reimbursement schedule or formula with the Board, which must be reasonable with respect to the time and

¹³ If a dealer waits an unreasonable period to file a protest when it was put on notice, even though the notice did not comply, an Administrative Law Judge may take equitable defenses into consideration when faced with a motion to reject a protest for timeliness. This would be a factual determination made by an Administrative Law Judge and would be outside the purview of information provided by the Board legal staff.

compensation allowed to the dealer for the performance of warranty and all other conditions of the obligation.

The statute does not specify when or how often the warranty reimbursement schedule or formula should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor are required to file a current copy of their warranty reimbursement schedule or formula with the Board once every three years or whenever there are changes to the information. As indicated above, please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act.

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

What Notices Are Required with Respect to Factory Ownership or Operation of a Dealership Within 10-Miles of an Independent, Franchised Dealer of the Same Line-Make?

Vehicle Code section 11713.3(o) clarifies the limited circumstances in which a manufacturer or distributor may operate or control a dealership within 10 miles of an independent, franchised dealer of the same line-make. Specifically, a manufacturer or distributor is not deemed to be competing with an independent, franchised dealer when: (1) owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months [Part A or Veh. Code § 11713.3(o)(2)(A)]; and, (2) owning an interest in a dealer as part of a bona fide dealer development program that satisfies certain requirements [Part B or Veh. Code § 11713.3(o)(2)(B)]. There are several instances in which a manufacturer or distributor may be required to file a statutory notice with the Board.

Under Part A every manufacturer, branch, and distributor that temporarily owns or operates a dealership is required to give written notice to the Board, **within 10 days**, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

If a Manufacturer or Distributor Seeks to Own or Operate a Dealership in Preparation for Sale to a Successor Independent Franchisee and Needs to Extend The Statutory One-Year Period, What Steps Are Necessary to Request an Extension of Time (Veh. Code § 11713.3(o)(2)(A))?

Vehicle Code section 11713.3(o)(2)(A) provides that after a showing of good cause by a manufacturer or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the Board may extend (beyond one year) the time period. The Board regulation (Section 565 of Title 13 of the California Code of Regulations, hereinafter 13 CCR § 565) establishes the timeframe and procedure for filing a request for an extension of the one-year time period in Part A.

The manufacturer or distributor is required to give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area, i.e., an impacted dealer.

The written notice is required to meet a prescribed format that is like other statutorily required notices in the Vehicle Code. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text. (13 CCR § 565(c))

NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.

Upon receipt of a request for extension of time, the Board will notify each franchisee of the same line-make within the relevant market area, that a timely request has been received, that the franchisee has the opportunity to send a letter to the Board opposing the request and have that opposition considered by the Board at its next scheduled meeting, and that the status quo will be maintained until the Board acts upon the request for extension. (13 CCR § 565(d))

What Steps Are Necessary to File a Request for an Extension of Time?

Steps Necessary to File a Request for Extension of Time	
Sixty days prior to the expiration of the one-year period, the manufacturer or distributor shall give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area. (13 CCR § 565(b) and (l))	
A list of all franchisees operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(1))	
A statement of facts detailing the specific need for the extension of time shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(2))	
The requested expiration date of the extension shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(3))	
A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(4))	
A statement to the effect that the information required in 13 CCR § 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565 (g)(5))	
A statement that the requesting party does or does not agree that the dealer members of the Board may participate in the consideration of the request shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(6))	

Requests that are not timely received will not be considered by the Board and will be deemed denied.

What is the Procedure after the Board Receives a Timely Request for Extension of Time?

Upon the timely filing of a request for extension, a copy of the request is forwarded to the members of the Board. Unless the manufacturer or distributor consents to dealer member participation (13 CCR § 565(g)(6)), the matter is considered by the public members only.¹⁴

In determining whether good cause has been shown for granting the request for an extension of time, the Board shall take into consideration the existing circumstances, the written request, written responses in opposition to the request, and comments of interested parties. (13 CCR § 565(e)(1)-(3))

The members of the Board have 30 days from receipt of the request for extension to review it. Any time during the 30-day period, a Board member objection to the request can be lodged with the Executive Director. Within 20 days of receiving the notice, any franchisee required to be given notice may file an opposition to the request for an extension of time. (13 CCR § 565(m)) If there have been no timely objections to the request for extension by the members of the Board and no timely oppositions by impacted dealers have been received, then the Executive Director shall grant the extension. (13 CCR § 565(h)) The granting of the extension occurs without the requirement of a noticed Board meeting.

What is the Procedure if the Board Objects or an Impacted Dealer Opposes the Request for Extension?

In the event of a timely notice of objection to the request for extension by a member of the Board and/or a timely opposition by an impacted dealer has been received, the matter shall be considered by the Board at its next scheduled meeting. (13 CCR § 565(i)) The Executive Director notifies the manufacturer or distributor that the matter will be considered by the Board at its next scheduled meeting and that the status quo will be maintained until the Board acts upon the request. The manufacturer and impacted dealer(s), if any, shall be given at least 10 days notice of the time, date, and location of the Board meeting at which the request will be considered. (13 CCR § 565(j)) The Board meets approximately every 6-to-8 weeks. However, if necessary, a Special Board meeting could be scheduled. Depending on the location of the parties, the meeting could be held in Sacramento, San Francisco, or Los Angeles.

What Notices Are Required with Respect to Factory Ownership of a Dealership as Part of a Dealer Development Program?

Under Part B of Vehicle Code section 11713.3(o) (see discussion on page 14), every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined is required to give written notice to the Board, **annually**, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

The statute does not specify when the annual notice should be sent to the Board. Every January, the Board staff remind the industry of this obligation.

¹⁴ The Board consists of nine members. Four members are licensed new motor vehicle dealers and five members are from the general public. In most instances, dealer members are precluded from participating in matters involving disputes between a dealer and manufacturer or distributor. In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless a dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

What Is a Motor Vehicle Warranty Adjustment Program?

Manufacturers and distributors occasionally establish a motor vehicle warranty adjustment program (“hidden warranties.”) Civil Code section 1795.92 provides that “[a] manufacturer **shall**, within 90 days of the adoption of an adjustment program,¹⁵ subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program.” (Emphasis added.) Copies of all notices mailed shall be sent to the Board. (Civil Code § 1795.92(b)) The Board’s preference is to receive these notices by email at nmvb@nmvb.ca.gov.

What Is the Consequence of Failing to File or to Timely File a Statutorily Required Notice, Schedule, or Formula?

Vehicle Code section 3050(b)(3) gives the Board power to “[o]rder the department [DMV] to exercise any and all authority or power that the department [DMV] may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.” (See 13 CCR § 593.3) Depending on the facts and circumstances in a particular case, the Board may exercise this power for inadequate filing of statutorily required notices.

¹⁵ Civil Code section 1795.90 defines “adjustment program” as “any program or policy that expands or extends the consumer’s warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign. ‘Adjustment program’ does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.”

Sample 15-Day Termination Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 15-Day Notice of Termination (Veh. Code §§ 3060(a) or 3070(a))

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.

Dear _____:

Identify the specific reasons for seeking termination of the franchise set forth in California Vehicle Code section 3060(a)(1)(B) or 3070(a)(1)(B).

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample 60-Day Termination or Refusal to Continue Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 60-Day Notice of Termination or Refusal to Continue
(Veh. Code §§ 3060(a) or 3070(a))

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.

Dear _____:

Identify the reasons for terminating or refusing to continue the franchise.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Modification Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 60-Day Notice of Modification (Veh. Code §§ 3060(b) or 3070(b))

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.

Dear _____:

Detail information pertaining to the proposed modification or replacement of the franchise agreement.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Establishment or Relocation Notice

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Establishment or Relocation (Veh. Code §§ 3062(a)(1) or 3072(a)(1))¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Designate the location of the site for the proposed establishment of a new dealership, or relocation of an existing dealership, where there is already an existing dealership of the same line-make within the “relevant market area” (that area within a radius of 10 miles of the proposed location.)

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

¹ The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

Sample Establishment or Relocation of a Satellite Warranty Facility Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: Notice of Establishment or Relocation of a Satellite Warranty Facility (Veh. Code § 3062(a)(2))

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Designate the location of the site for the proposed establishment of a new satellite warranty facility or relocation of an existing satellite warranty facility that is within two miles of any dealership of the same line-make.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Off-Site Sale Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: Notice of Off-Site Sale (Veh. Code §§ 3062(c) or 3072(b)(3))¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Detail information pertaining to the proposed off-site sale where there is an existing dealership of the same line-make within a radius of 10 miles of the location proposed for the off-site sale.²

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

¹ The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

² For recreational vehicles, the California RV Show sponsored by the Recreation Vehicle Industry Association is exempt from the 3072 notice requirements.

Sample Notice of Request for Extension of Time

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Request for Extension of Time (Veh. Code § 11713.3(o) and 13 CCR § 565)

NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.

Dear _____:

Detail information pertaining to the request for extension of time for good cause shown, including, but not limited to, the following:

A list of all franchisees operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(1)).

A statement of facts detailing the specific need for the extension of time (13 CCR § 565(g)(2)).

The requested expiration date of the extension (13 CCR § 565(g)(3)).

A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee (13 CCR § 565(g)(4)).

A statement to the effect that the information required in Title 13 of the California Code of Regulations section 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(5)).

A statement that the requesting party does or does not agree that the dealer members of the Board may participate in the consideration of the request (13 CCR § 565(g)(6)).

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.



STATE OF CALIFORNIA

MEMO

To: POLICY AND PROCEDURE COMMITTEE
JAKE STEVENS, CHAIR
VACANT, MEMBER

Date: January 5, 2023

From: TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject: DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES BY ADDING THE OFFICE OF ADMINISTRATIVE HEARINGS TO THE MERITS JUDGE ASSIGNMENT LOG IN LIGHT OF CALPERS PROPOSED REGULATION 574.1 (Cal. Code Regs., tit. 2, § 574.1)

System of Assigning Administrative Law Judges

The system of assigning Administrative Law Judges (“ALJs”) based upon a Merits and Mandatory Settlement Conference (“MSC”) Judge Assignment Log has been in place since 2005. It has worked well over the years with several temporary and permanent modifications to meet case management needs. The following chart summarizes the ALJs and what type of matters they could preside over.

ALJ ¹	Merits	MSC	Law & Motion
Diana Woodward Hagle	Yes	Yes	No
Evelyn Matteucci	Yes	Yes	No
Dwight Nelsen	Yes	Yes	No
Kymberly Pipkin	Yes	Yes	No
Tony Skrocki	No	No	Yes
Steve Smith	Yes	Yes	No
Merilyn Wong	No	Yes	No

¹ All merits ALJs are on the Alternative Law and Motion Hearing Judge Assignment Log in the event ALJ Skrocki is unavailable and on the Alternative MSC Judge Assignment Log if ALJ Wong is unavailable.

Historical Overview of the Board's ALJs and OAH

When the Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board its function was hearing appeals² from final decisions of the Director of the Department of Motor Vehicles adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative. In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, ch. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry.

Beginning in 1974, the Office of Administrative Hearings ("OAH") presided over the Board's petition and protest hearings. Starting in 1976, the Board retained its own ALJs although it could still use OAH.³ Over the years, some ALJ positions were full-time while others were part-time called "permanent intermittent"⁴ or "retired annuitant."⁵

Since at least 1996, the Board adopted policy has been to utilize Board ALJs instead of OAH because it was determined to be "more efficient, cost effective, and affords the parties an effective means to resolve disputes." Additionally, the Board ALJs understand the franchise relationship, the automotive industry, terminology, practices, and the law, which benefits the Board and litigants. Other factors included: (1) costs for ALJs, court reporters, and transcripts; (2) turnaround time for hearing dates and proposed decisions; and (3) the Board ALJs active involvement in discovery.

CalPERS Regulation

CalPERS is proposing a new regulation that would, for purposes of the Government Code, define "limited duration" employment "as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period." (Cal. Code Regs., tit. 2, § 574.1) A maximum extension of an additional 24 months is being proposed. Although this regulation is still proceeding through the rulemaking process, it is only a matter of time before the Board is no longer allowed to rely exclusively on its own retired annuitant ALJs. (See Attachment 1)

² Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, ch. 796)

³ Section 550(a) of the Board's Regulations define an ALJ to "mean an administrative law judge of the board or Office of Administrative Hearings." (Cal. Code Regs., tit. 13, § 550) A protest may be heard by the Board, an ALJ of the Board or OAH, or any person specifically designated by the Board. (Cal. Code Regs., tit. 13, § 590) These regulations have been in effect since at least 1976.

⁴ Government Code section 18552 provides an "intermittent" position allows the employee "to work periodically or for a fluctuating portion of the full-time work schedule."

⁵ The State Personnel Board's regulations define a "retired annuitant" as a "former employee of the State who is receiving a retirement allowance from the Public Employees' Retirement System (PERS) and is reinstated temporarily in a civil service classification . . ." (Cal. Code Regs., tit. 2, § 5.2)

Staff Recommendation

The staff recommends adding OAH to the “Merit Hearings Judge Assignment Log” so OAH is next in line to preside over a protest hearing between a franchisee and franchisor.⁶ (See Attachment 2) This will allow the staff to learn whether OAH will be an effective alternative if the Board is unable to retain its retired annuitant merits ALJs. Additionally, it will highlight any statutory or regulatory changes that may be necessary if, in the future, the Board’s merits hearings are heard by OAH.⁷

If the Board approves the staff recommendation, subsequent updates will be provided in the Executive Director’s Report.

This matter is being agendized for consideration at the January 25, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachments: as stated

cc: Bismarck Obando

⁶ Article 6 protests filed by an association would be excluded as only one such protest has been filed.

⁷ The addition of OAH to the Board’s assignment log does not impair the ability of each party, excluding an intervenor, to file one peremptory challenge of the administrative law judge assigned to preside over the hearing. (Cal. Code Regs., tit. 13, § 551.12; see Attachment 3)

Title 2. Administration

Proposed Adoption of Section 574.1 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§574.1 Definition of Limited Duration Employment

(a) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, “limited duration” is defined as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period.

(1) The first day the retired person serves any hours in the appointment or the effective date of this subdivision, whichever is later, shall be the appointment start date and initiates time counted towards the twenty-four consecutive month limit. Employment by a retired person prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

(2) A CalPERS-covered public employer must notify CalPERS of an appointment end date not to exceed twenty-four consecutive months from the appointment start date and any changes to the appointment end date, including but not limited to the end date of an extension as prescribed in paragraph (3) of this subdivision and end date of an extension authorized under an exemption as prescribed in paragraph (6) of this subdivision.

(3) A CalPERS-covered public employer may extend the appointment no more than twice, up to twelve consecutive months per extension, beyond the limit of twenty-four consecutive months under paragraph (a) of this subdivision, if the applicable conditions below are met:

(A) The CalPERS-covered public employer’s governing body certifies by resolution at a public meeting each of the following:

- (i) The position title,
- (ii) The description of the duties to be performed during the extension,
- (iii) The reason the appointment needs to be extended,
- (iv) The reason the duties under subparagraph (ii) above cannot be performed by non-retired employees,
- (v) That a plan is in place to transition the duties under subparagraph (ii) above to non-retired employees or another retired person,
- (vi) The anticipated end date for the extension, and
- (vii) Its approval of the extension.

(B) (i) Except as otherwise provided in this paragraph, for an appointment with the state, the Department of Human Resources certifies by memorandum each of the items in subparagraph (A) above.

(ii) For an appointment with the California State University, the Trustees of the California State University certifies by resolution at a public meeting each of the items in subparagraph (A) above.

(iii) For an appointment with the legislature, the Senate Committee on Rules or the Assembly Rules Committee certifies by resolution at a public meeting each of the items in subparagraph (A) above.

(4) The first extension period under paragraph (3) of this subdivision starts the day after the end of the twenty-four consecutive month period under paragraph (a) of this subdivision and the second extension period under paragraph (3) of this subdivision starts the day after the end of the first extension period, thirty-six consecutive months from the appointment start date, regardless of whether or when the CalPERS-covered public employer extended the appointment and regardless of how many months or hours in those months the retired person served during either extension period. The retired person may not continue serving in the appointment beyond the end of the twenty-four consecutive month or thirty-six consecutive month periods described above until the CalPERS-covered public employer satisfies the applicable conditions as prescribed in paragraph (3) of this subdivision per extension.

(5) The CalPERS-covered public employer shall retain the records reflecting the certifications required in paragraph (3) of this subdivision for the position. The CalPERS-covered public employer shall provide this information to CalPERS during the exemption request process described in paragraph (6) of this subdivision and upon request during any future investigations or audits.

(6) If a CalPERS-covered public employer determines the appointment is needed beyond forty-eight consecutive months from the appointment start date, as calculated under paragraph (4) of this subdivision, the CalPERS-covered public employer may request one of two exemptions per appointment to the limit of two extensions prescribed in paragraph (3) of this subdivision by filing a written request with the board as prescribed below. The written request for an exemption must be received by CalPERS for review within twelve consecutive months following the end of the second extension period under paragraph (3). The board shall grant or deny the exemption request within 60 days of receiving the request, which must include records reflecting all of the certifications required in subparagraphs (B) and (C) below, as applicable. The retired person may not continue serving in the appointment beyond the end of the forty-eight consecutive month period or any subsequent twelve consecutive month period authorized under a previous board-approved exemption until the board approves an exemption for the appointment as prescribed below.

(A) A request for an exemption shall be either:

(i) For an exemption authorizing a continuous extension if the appointment does not exceed 120 hours per fiscal year, or

(ii) For an exemption authorizing an extension of twelve consecutive months, regardless of how many months or hours in those months the retired person served during that extension period. The date on which the exemption request is granted by the board or the first day following the end of the prior extension limit of twelve consecutive months for which the exemption request is granted by the

board, whichever is later, initiates time counted towards the subsequent extension limit of twelve consecutive months for the exemption. A CalPERS-covered public employer may request this exemption more than once, in accordance with the requirements of subparagraphs (B) and (C) below, as applicable. Any written exemption request for a subsequent extension of twelve consecutive months pursuant to this subparagraph must be received by CalPERS for review within twelve consecutive months following the end of the most recent extension limit of twelve consecutive months.

(B) The board will grant one of the exemptions described in subparagraph (A) above per appointment if the applicable conditions in this subparagraph and subparagraph (C) below are met. The CalPERS-covered public employer's governing body must certify by resolution at a public meeting each of the items in subparagraphs (i) through (viii) below, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

- (i) The position title,
- (ii) The description of the duties to be performed,
- (iii) The reason the appointment needs to be extended,
- (iv) The reason the duties under subparagraph (ii) above cannot be performed by either non-retired persons or another retired person,
- (v) Either the reason a plan to transition one or more of the duties under subparagraph (ii) above to non-retired employees or another retired person was not successful or the reason that such a plan cannot be implemented,
- (vi) Either that the CalPERS-covered public employer completed a recruitment within the twelve consecutive months prior to the date of the exemption request for the duties under subparagraph (ii) above and was unable to fill the position with that recruitment or the reason that such a recruitment cannot be completed,
- (vii) The anticipated end date for an exemption, and
- (viii) Its approval of the exemption.

(C) (i) Except as otherwise provided in this paragraph, for an appointment with the state, the Department of Human Resources must certify by memorandum each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable.

- (ii) For an appointment with the California State University, the Trustees of the California State University must certify by resolution at a public meeting each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

(iii) For an appointment with the legislature, the Senate Committee on Rules or the Assembly Rules Committee must certify by resolution at a public meeting each of the items in subparagraph (B) above, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar.

(7) A report of the exemptions granted pursuant to paragraph (6) of this subdivision will be provided to the board annually and publicly available.

(8) For purposes of this subdivision, an appointment is defined as either a post-retirement position under which no duties overlap with the duties of another post-retirement position subject to this regulation with the same CalPERS-covered public employer that the retired person performed after retirement, or a post-retirement position for a different CalPERS-covered public employer from any previous CalPERS-covered public employer the retired person performed duties for after retirement while in a position subject to this regulation.

(9) Retired persons and CalPERS-covered public employers in violation of this subdivision will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.

(b) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, if the terms of a collective bargaining agreement explicitly provide the duration of permissible employment for the retired person, then subdivision (a) shall not apply to the CalPERS-covered public employer and retired person subject to that collective bargaining agreement but shall instead be subject to "limited duration" defined in this subdivision. "Limited duration" is defined as the duration provided in the applicable collective bargaining agreement, not to exceed sixty consecutive months, for the post-retirement appointment of a retired person in the employ of a CalPERS-covered public employer. The appointment duration is consecutive regardless of how many months or hours in those months the retired person served in the appointment during that appointment duration.

(1) The first day the retired person serves any hours in the appointment shall be the appointment start date and initiates time counted towards the duration limit defined in the applicable collective bargaining agreement or sixty consecutive months, whichever is less.

(2) A CalPERS-covered public employer must notify CalPERS of an appointment end date not to exceed the duration defined in the applicable collective bargaining agreement or sixty consecutive months from the appointment start date, whichever is less, and provide CalPERS a copy of the applicable collective bargaining agreement specifying the duration of that post-retirement appointment.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, for post-retirement appointments in effect prior to the effective date of this subdivision, the appointment start and end dates shall be the start and end dates established in accordance with the collective bargaining agreement prior to the effective date of this subdivision.

(4) A retired person serving in a post-retirement appointment in accordance with this subdivision cannot serve in another post-retirement appointment with the same CalPERS-covered public employer subject to this regulation.

(5) Retired persons and CalPERS-covered public employers in violation of this subdivision will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.

(c) For purposes of clarifying paragraph (3) of subdivision (a) of section 571, "limited duration" is defined as a limit of twenty-four consecutive months for an employee to serve in an upgraded position/classification, regardless of how many months or hours in those months the employee served in the upgraded position/classification during that twenty-four consecutive month period.

(1) The first day the individual serves any hours in the upgraded position/classification or the effective date of this subdivision, whichever is later, initiates time counted towards the twenty-four consecutive month limit. Employment in an appointment to an upgraded position/classification prior to the effective date of this subdivision will not count towards the limit of twenty-four consecutive months.

(2) An individual may serve in the same upgraded position/classification more than once within the twenty-four consecutive month period but may not exceed a time period of twenty-four consecutive months. A new twenty-four consecutive month period is not initiated unless the conditions set forth in paragraph (3) of this subdivision are met.

(3) An individual may serve in the same upgraded position/classification more than once and initiate a new twenty-four consecutive month period if the appointment to the upgraded position/classification is:

(A) The individual's first appointment subsequent to a permanent appointment held by a different individual for the same upgraded position/classification, or

(B) The individual's first appointment subsequent to a different individual that retained the permanent appointment for the same upgraded position/classification returning to the permanent appointment from an approved leave.

Authority Cited: Sections 7522.02(j) and 20121, Government Code.

Reference: Sections 7522.56, 20636, 20636.1, 21202, 21220, 21224, and 21229 Government Code; section 571 of Title 2, California Code of Regulations.

2023 MERIT HEARINGS

JUDGE ASSIGNMENT LOG

Judge: **Office of Administrative Hearings**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

Judge: **Diana Woodward Hagle**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

Judge: **Kymerly Pipkin**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

2023 MERIT HEARINGS

JUDGE ASSIGNMENT LOG

Judge: **Evelyn Matteucci**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

Judge: **Stephen Smith**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

Judge: **Dwight Nelsen**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name: _____

Case No.: _____

Judge Response to Offer: _

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

2023 MERIT HEARINGS JUDGE ASSIGNMENT LOG

Judge: **Office of Administrative Hearings**

First Date of Hearing: _____

Start Time on First Date: _____

Estimated Days of Hearing: _____

Venue: _____

Case Name:

Case No.: _____

Judge Response to Offer: _____

Staff: _____

Date: _____

Outcome of Case: _____

Notes:

13 CCR § 551.12. Notice of Assignment of Administrative Law Judges;
Peremptory Challenges.

(a) The name of the administrative law judge assigned to a protest or petition proceeding will be noted on the order of time and place of hearing. An amended order or notice will be issued if a different administrative law judge is subsequently assigned to the proceeding.

(b) Each party, excluding an intervenor, is entitled to one peremptory challenge of the administrative law judge assigned to preside over the hearing on the merits of a petition as required by Vehicle Code section 3050(b) or the administrative law judge assigned to preside over the hearing on the merits of a protest as required by subdivisions (c) and (d) of Vehicle Code section 3050, based solely upon satisfying all of the following requirements:

(1) The peremptory challenge must be filed with the board no later than either 20 days from the date of the order of time and place of hearing identifying the merits administrative law judge or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier.

(2) The peremptory challenge may be made by the party, the party's attorney, or authorized representative appearing in the proceeding, and shall be by written declaration substantially in the following form: "I am a party to [case name and number] and am exercising my right to a peremptory challenge regarding ALJ [name], pursuant to Section 551.12 and Government Code section 11425.40(d)"; and

(3) The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the merits hearing, whichever is earlier.

(d) No peremptory challenge shall be considered or granted if it is not made within the time limits set forth above.

(e) A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes.

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the merits hearing shall not be granted by reason of a peremptory challenge. Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a), 3080(a), or 3085.2(a).

(g) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

NOTE: Authority cited: Sections 3050, 3066, 3080 and 3085.2, Vehicle Code. Reference: Section 3050, Vehicle Code; and Section 11425.40, Government Code.



***EXECUTIVE
DIRECTOR'S
REPORT***

January 25, 2023

A.

**ADMINISTRATIVE
MATTERS**

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Revise the Board's Logo</u> 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.	January 2023	In progress. This will be considered at the January 25, 2023, General Meeting.
2. <u>Amend Board Document Request Policy, Waiver Request Policy, and Facsimile Request Policy</u> Robin Parker	Amend the Board adopted Document Request Policy, Waiver Request Policy, and Facsimile Request Policy to reflect changes to the California Public Records Act that were operative on January 1, 2023.	January 2023	In progress. This will be considered at the January 25, 2023, General Meeting.
3. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	April 28, 2023	In progress. The revised Guide will be considered at the April 28, 2023, General Meeting.
4. <u>Update concerning moving the Board's Offices to DMV Headquarters</u> 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.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Solon C. Soteras Employee Recognition Award Recipient</u> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	January 2023	In progress. The nominee will be considered at the January 25, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Schedule Board Member Education Presentations</u> Danielle Phomsopha	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	January 2023	In progress. This will be discussed at the January 25, 2023, General Meeting.
EXECUTIVE COMMITTEE			
1. <u>Amend Board Legislative Policy</u> Robin Parker	Amend the Board adopted Legislative Policy to reflect changes to the California Public Records Act that were operative on January 1, 2023.	January 2023	In progress. This will be considered at the January 25, 2023, General Meeting.
2. <u>Amend Board Policy Concerning Confidential Proposed Stipulated Decisions and Orders</u> Robin Parker	Amend the Board adopted policy concerning confidential proposed Stipulated Decisions and Orders to reflect changes to the California Public Records Act that were operative on January 1, 2023.	January 2023	In progress. This will be considered at the January 25, 2023, General Meeting.
FISCAL COMMITTEE			
1. <u>Quarterly Financial Reports</u> Dawn Kindel, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
2. <u>Report Concerning Out-of-State Travel Plans</u> Dawn Kindel, Suzanne Luke	The staff will provide a report concerning the out-of-state travel plans for the upcoming fiscal year.	Ongoing	In progress. Plans for fiscal year 2023-2024 will be discussed at the January 25, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss the Board's proposed Budget for fiscal year 2022-2023.	November 2022	<u>Completed.</u> The 2022-2023 Budget was discussed at the November 7, 2022, General Meeting.
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> 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	<u>Completed.</u> A status report was provided at the November 7, 2022, General Meeting.
<u>Report on adding a virtual payment method for stakeholders' filing fees, document request fees and annual Board fees</u> 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	<u>Completed.</u> A status report was provided at the November 7, 2022, General Meeting.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
1. <u>Host Board Administrative Law Judge Roundtable</u> 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.
LEGISLATIVE COMMITTEE			
1. <u>Review of Pending Legislation</u> Danielle Phomsopha	The staff will provide an overview of pending legislation of special interest and general interest.	April 2023	In progress. A report will be provided at the April 28, 2023, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Promulgate new regulation Section 551.26 of Title 13 of the California Code of Regulations</u> Danielle Phomsopha	In compliance with the Administrative Procedure Act, add Section 551.26 to the Board’s regulations regarding representation in protests or petitions.	November 2023	In progress. The Board approved the text at the November 7, 2022, General Meeting. The staff will proceed with rulemaking.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Danielle Phomsopha	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	January 2023	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 25, 2023, General Meeting.
3. <u>Annual Rulemaking Calendar</u> Danielle Phomsopha	Consideration of the annual rulemaking calendar.	January 2023	In progress. The annual rulemaking calendar will be considered at the January 25, 2023, General Meeting.
4. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	January 2023	In progress. The revised Guide will be presented at the January 25, 2023, General Meeting.
5. <u>Draft the Export or Sale-For-Resale Prohibition Policy Guide</u> 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.	January 2023	In progress. The revised Guide will be presented at the January 25, 2023, General Meeting.

<p>6. <u>Revise the Merits Judge Assignment Log</u> Tim Corcoran, Robin Parker</p>	<p>Revise the assignment of cases to Board Administrative Law Judges to include the Office of Administrative Hearings.</p>	<p>January 2023</p>	<p>In progress. This will be considered at the January 25, 2023, General Meeting.</p>
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Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker	Update the <i>New Motor Vehicle Board Administrative Law Judge's Benchbook</i> .	November 2022	<u>Completed.</u> The revised ALJ Benchbook was considered at the November 7, 2022, General Meeting. Future updates will be reported verbally in the Executive Director's Report.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION			
<u>1. Develop Strategies for Board Consideration</u> 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 encompassed discussions on Equity and EVs.
<u>Participant Surveys for Industry Roundtable</u> 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	<u>Completed.</u> A memorandum summarizing the feedback was presented at the November 7, 2022, General Meeting.

B. CASE MANAGEMENT

CASE VOLUME

OCTOBER 14, 2022, THROUGH JANUARY 9, 2023

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	4	2	12
3060	Modification		5	12
3062	Establishment	1	8	3
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	9
3065.1	Incentive Program Reimbursement	3	0	8
3065.3	Performance Standard	0	1	0
3065.4	Retail Labor Rate or Retail Parts Rate	0	4	7
3070	Termination	0	1	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	0	1
TOTAL CASES:		8	21	52

PENDING CASES

BY CASE NUMBER

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

January 2023 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	Parties working to settle this matter without Board consideration of the ALJ's recommended order	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-2719-21 1-20-21	Protests should be dismissed soon due to 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	Termination
5.	PR-2720-21* 1-20-21	Protests should be dismissed soon due to 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

January 2023 Executive Director's Report

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
6.	PR-2721-21* 1-20-21	Protests should be dismissed soon due to 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	Termination
7.	PR-2722-21* 1-20-21	Protests should be dismissed soon due to 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
8.	PR-2723-21* 1-20-21	Protests should be dismissed soon due to 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	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
9.	PR-2724-21* 1-20-21	Protests should be dismissed soon due to 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
10.	PR-2725-21* 1-20-21	Protests should be dismissed soon due to 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	Termination
11.	PR-2726-21* 1-20-21	Protests should be dismissed soon due to 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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
12.	PR-2727-21* 1-21-21	Protests should be dismissed soon due to 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
13.	PR-2728-21* 1-21-21	Protests should be dismissed soon due to 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
14.	PR-2729-21* 1-21-21	Protests should be dismissed soon due to 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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
15.	PR-2730-21* 1-21-21	Protests should be dismissed soon due to 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
16.	PR-2731-21* 1-22-21	Protests should be dismissed soon due to settlement	YNOT6 III, LLC, a California limited liability company, fdbs 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
17.	PR-2732-21 2-11-21	RSC: 3-29-23	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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
18.	PR-2733-21* 2-11-21	RSC: 3-29-23	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
19.	PR-2750-21 10-26-21	PHC with ALJ: 1-13-23 MH: 2-6-23 (4 days)	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
20.	PR-2751-21* 10-26-21	PHC with ALJ: 1-13-23 MH: 2-6-23 (4 days)	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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
21.	PR-2752-21* 10-26-21	PHC with ALJ: 1-13-23 MH: 2-6-23 (4 days)	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
22.	PR-2753-21* 10-26-21	PHC with ALJ: 1-13-23 MH: 2-6-23 (4 days)	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
23.	PR-2754-21 12-7-21	HRC: 1-20-23 PHC with ALJ: 1-20-23 MH: 3-6-23 (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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
24.	PR-2755-21* 12-7-21	HRC: 1-20-23 PHC with ALJ: 1-20-23 MH: 3-6-23 (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
25.	PR-2759-21 12-30-21	Motion to Extend PHO: Granted in Part, Denied in Part 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
26.	PR-2765-22 2-15-22	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, Michael Garcia Respondent: Michael L. Turrill, Jonathan R. Stulberg, John J. Sullivan	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
27.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 1-31-23	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
28.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
29.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
30.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
31.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
32.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
33.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
34.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
35.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 1-31-23	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
36.	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
37.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 1-31-23	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
38.	PR-2795-22 7-1-22	ROB: 1-18-23 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
39.	PR-2796-22 7-1-22	ROB: 1-18-23 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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
40.	PR-2802-22 9-1-22	MSC: 1-11-23	Puente Hills Hyundai, LLC, dba Puente Hills Hyundai v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.	Warranty
41.	PR-2803-22 9-15-22	ROB: 1-17-23 HRC: 7-28-23 MH: 9-11-23 (7 days)	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
42.	PR-2805-22 9-29-22	ROB: 1-27-23 HRC: 6-12-23 MH: 7-31-23 (7 days)	Putnam Automotive, Inc., dba Volvo of Burlingame v. Volvo Car USA, LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Colm Moran, Robert Feyder	Retail Labor Rate
43.	PR-2806-22 10-12-22	ROB: 2-22-23 HRC: 7-13-23 MH: 8-14-23 (8 days)	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 Respondent: Steven Kelso, Camille Papini-Chapla, Elayna Fiene	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
44.	PR-2807-22 11-14-22	Joint Motion for Protective Order: Denied Motion to Intervene: Denied MTD: 1-11-23 Opposition: 2-3-23 Reply: 2-17-23 Hearing: 3-2-23	Universal Auto Group d/b/a Subaru of Glendale a California Corporation v. Subaru of America, Inc., New Jersey corporation	Protestant: Halbert B. Rasmussen Respondent: Lisa M. Gibson, Amy M. Toboco	Establishment
45.	PR-2808-22 11-14-22	ROB: 4-13-23 HRC: 9-22-23 MH: 11-6-23 (7 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian Respondent: Lisa M. Gibson, Amy M. Toboco	Termination
46.	PR-2809-22 11-28-22	MH: 10-23-23 (10 days) Parties working on remaining dates.	Carmaddie LLC v. General Motors LLC	Protestant: Steve Barnhill Respondent: Ashley Fickel	Termination
47.	PR-2810-22 11-28-22	Protest being dismissed due to settlement IFU: 1-13-23	Carmaddie LLC v. General Motors LLC	Protestant: Steve Barnhill Respondent: Ashley Fickel	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
48.	PR-2811-22* 11-29-22	ROB: 2-22-23 HRC: 7-13-23 MH: 8-14-23 (8 days)	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 Respondent: Steven Kelso, Camille Papini-Chapla, Elayna Fiene	Termination
49.	PR-2812-22 11-30-22	MTD: 1-17-23 Opposition: 1-31-23 Reply: 2-13-23 Hearing: 2-21-23	San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Shaun Kim, Sarah Rathke, Nathan Leber	Franchisor Incentive
50.	PR-2813-22 12-9-22	MTD: 1-18-23 Opposition: 1-27-23 Reply: 2-3-23 Hearing: 2-15-23	Michael Cadillac, Inc., dba Michael Chevrolet Cadillac v. General Motors LLC [Cadillac]	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Ashely Fickel	Franchisor Incentive
51.	PR-2814-22*	MTD: 1-18-23 Opposition: 1-27-23 Reply: 2-3-23 Hearing: 2-15-23	Michael Cadillac, Inc., dba Michael Chevrolet Cadillac v. General Motors LLC [Chevrolet]	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Ashley Fickel	Franchisor Incentive

PETITIONS

CASE NUMBER/ DATE FILED	STATUS	PETITION NAME	COUNSEL
1. P-463-22 6-20-22	Board consideration 1-25-23 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.

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 were due on November 7, 2022, but continued to December 7, 2022, at the Board's request. The Board's brief was filed within the grace period on December 16, 2022. Barber Honda's combined reply brief was due on December 27, 2022, but continued to February 6, 2023.*

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.

The court issued its tentative ruling denying the Petition for Writ of Mandate. After oral arguments on October 14, the court took the matter under submission. On November 16, 2022, the court adopted its tentative ruling as its final ruling and denied the Petition for Writ of Administrative Mandate.

The Order Denying Petitioner's Writ of Mandate was served on December 14, 2022. The deadline to file a Notice of Appeal is approximately February 10, 2023.

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' Motion to Seal portions of its Petition and Exhibits 1 and 2 thereto was schedule 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. 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.

The hearing set for October 18 was continued to November 1 by the Court as both SOA and Courtesy need to make corrections in order to properly submit their filings under seal. By way of Tentative Rulings, the Court reminded the parties that they must concurrently file a motion to seal relevant portions of each subsequent filing referring to the materials sealed by the July 12, 2022, order. The Court did not intend to grant blanket authorization to submit filings under seal going forward. The Court noted that discovery motions are exempt from the sealing rules and a motion to seal is not required. SOA filed a Motion to Seal its unredacted opposition to demurrer to the writ petition that was also heard on November 1.

On October 31, 2022, the Court issued the following tentative rulings:

- *"The Demurrer filed by Courtesy Automotive Group, Inc. on 08/29/2022 is Sustained with Leave to Amend."*
- *Petitioner's Motion to Compel Production of Staff Summary Withheld by Respondent New Motor Vehicle Board from Administrative Record or, In the Alternative, for Privilege Determination is denied. The Staff Summary at issue is protected from disclosure by the attorney-client privilege and by the deliberative process exception; it may also be protected by the work product doctrine.*

- *“The Motion to Seal Notice of Motion and Motion of Petitioner Subaru of America, Inc. to Seal Unredacted Opposition to Demurrer to Writ Petition; Declaration of Lisa M. Gibson in Support thereof filed by Subaru of America, Inc. on 10/19/2022 is Granted.”*
- *The Motion to Seal Notice of Motion and Motion to Seal [Un-Redacted] Memorandum of Points and Authorities in Support of Real Party in Interests Demurrer to Petition and [Un-Redacted] Reply in Support of Demurrer Filed by Courtesy Automotive Group, Inc. on 10/20/2022 is Granted.*

Oral arguments were submitted by the parties on November 1, 2022, and the matters were taken under submission.

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

OCTOBER 14, 2022, THROUGH JANUARY 9, 2023

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	
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	2
Honda/Acura	
Hyundai/Genesis	
Kia	
Nissan/Infiniti	1
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	1
Toyota/Lexus	96
Volkswagen/Audi	
Miscellaneous Car	
Miscellaneous Motorcycles	3
Miscellaneous Recreational Vehicle	
Total	103

SECTION 3062/3072

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