

2415 1st Avenue, MS L242
Sacramento, California 95818
Telephone: (916) 445-1888
Board staff contact: Alex Martinez
[New Motor Vehicle Board website](#)
DMV press contact: (916) 657-6438
dmvpublicaffairs@dmv.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on April 28, 2023, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 11:36 a.m. The meeting was delayed due flight delays.

2. **ROLL CALL**

Board Members Present: Anne Smith Boland
Kathryn Ellen Doi
Ryan Fitzpatrick
Ardashes “Ardy” Kassakhian
Jacob Stevens

Board Members Not Present: Bismarck Obando
Brady Schmidt

Board Staff Present: Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Robin P. Parker, Chief Counsel
Danielle Phomsopha, Senior Staff Counsel
Alex Martinez, Staff Services Analyst

Mr. Corcoran indicated that a quorum was established for case management and general business.

4. **APPROVAL OF THE MINUTES FROM THE JANUARY 25, 2023, GENERAL MEETING**

Member Doi requested clarification on the third paragraph of Agenda Item 23 in the January 25, 2023, General Meeting minutes. It appears the word “date” was missing so it was added as indicated below:

Member Doi inquired whether any merits hearing are scheduled for 2023.
Ms. Parker indicated that a hearing that has been assigned to Judge Smith is going forward on February 6 (the hearing was subsequently taken off

calendar) and a subsequent tentative hearing has also been assigned to a Board ALJ. Board staff will determine if that case will proceed to a merits hearing on March 6 (this hearing date was subsequently amended).

Member Doi moved to adopt the January 25, 2023 General meeting minutes as amended. Member Stevens seconded the motion. The motion carried unanimously.

5. **PRESENTATION OF RESOLUTION TO NANXI LIU, FORMER PUBLIC MEMBER**

At the March 30, 2022, General meeting, the members unanimously moved to present Nanxi Liu, former Public Member, with a Resolution in appreciation of her dedication and service to the Board and the State of California. Ms. Liu thanked President Kassakhian, the members, and staff. Ms. Liu remarked how impressed she was by the Board's leadership and gave a "shout out" to Tim and his team as she thought they were incredible, knowledgeable, and every decision was a demonstration of dedication and commitment to providing great service. Ms. Liu concluded by saying she had an amazing time serving on the Board.

Member Doi stated it was a pleasure to serve with Ms. Liu, that Ms. Liu is a very inspirational young woman in business, and the Board learned a lot from her.

President Kassakhian noted that he benefitted greatly from Ms. Liu's service on the Board and thanked her.

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO RAMON ALVAREZ C., FORMER DEALER MEMBER**

Member Stevens moved to present a Resolution to Ramon Alvarez C., former Dealer Member, in recognition of his contribution to the New Motor Vehicle Board. Member Smith Boland seconded the motion. The motion carried unanimously.

7. **DISCUSSION CONCERNING THE STATE OF THE AUTOMOTIVE INDUSTRY BY MANUFACTURER AND DEALER REPRESENTATIVES - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian welcomed Curt Augustine, Senior Director of State Affairs of the Alliance for Automotive Innovation (the "Alliance"), and Brian Maas, President, California New Car Dealers Association ("CNCDA").

Mr. Augustine noted that the Alliance represents all of the auto manufacturers who have franchised dealers in the U.S. Auto manufacturers without franchised dealers are not a part of the Alliance. Approximately 98% of the vehicles sold in the U.S. are made by its members and technology partners. The global automotive industry is undergoing a massive transformation. Over the past three years, there have been unimaginable circumstances such as the global pandemic that closed every production facility in North America, global shortage of semiconductors that have severely limited vehicle production, and other shortages of auto parts. But at the same time, consumer demand has been remarkably high despite the inflationary pressures which have created a mismanagement between demand and supply. And this has strained vehicle inventories, reduced affordability, and has possibly changed the way consumers look at the auto industry.

Mr. Augustine remarked that in the face of these tremendous opportunities and challenges, automakers are investing \$1.2 trillion on EV (electric vehicle) and ZEV (zero emissions vehicle) technology alone between now and 2030.

Next, Mr. Augustine reviewed the new California Advanced Clean Cars II regulations that were approved by the Air Resources Board in 2022. The Alliance did not oppose these regulations. In 2026, 35% of vehicles manufactured need to be zero emission vehicles. In 2028, this increases to 51% followed by 76% in 2032, and 100% in 2035. Additionally, the minimum range on all zero emission vehicles is 140 miles or greater per regulation. For plug-in hybrids, which have a battery and a small gasoline engine, the minimum electric range is 50 miles starting in 2026. Plug-in hybrids can only account for 20 percent of whatever the standard is in a given year. In addition to California, five other states have adopted these new standards and more states are expected to.

Recent federal rules pertaining to tailpipe emissions and mileage based standards will start in model year 2027 through 2032. For the first time ever, the federal standards are stronger than California's standards and not aligned with California. Depending on which year it is, the federal standard can be from 5-15% greater than the California standard.

The significant challenges manufacturers face with these regulations was discussed by Mr. Augustine. The average zero emission vehicle costs over \$60,000. There are affordability issues. The California regulations have extra requirements on battery life, which will add several thousand dollars to the cost of a vehicle for the manufacturers to cover those warranty costs. There is still a large demand and not enough supply of critical minerals like lithium and cobalt, which put a strain on battery development. New factories are going to have to be built in the U.S. for both automobiles and batteries.

An additional challenge discussed by Mr. Augustine is charging or refueling infrastructure. Consumers aren't going to buy ZEVs if they do not know where to get fuel. Because of these challenges and increased costs, the Alliance believes consumer incentives through rebates similar to California and a few other states are necessary on a national level. The Air Resources Board estimates California needs 1.2 million chargers by the end of 2023. There are 103,000 charges for 3 million ZEVs in the U.S. so that is a ratio of 20:1 as opposed to 7:1. In California, the ratio is 37:1.

Ensuring new homes and buildings can accommodate charging stations or have the wiring to do so is an additional challenge discussed by Mr. Augustine. The cost is also a factor. A new federal rebate, which started in 2023, was also discussed. Mr. Augustine was available to answer Board Member questions.

Mr. Maas indicated that EVs are likely the biggest change in personal transportation since the change from horses to automobiles. Not every Californian will have a place to charge their vehicle. Manufacturers can make hundreds of beautiful, fabulous EVs, but consumers aren't going to choose to buy those if they don't have a place to charge them. From the dealer standpoint, Mr. Maas stated "we're all in on EVs." To echo what Mr. Augustine said, 98% of the vehicles on the road were manufactured by the Alliance's members and sold by CNCDA's members. So, collectively we need to make sure that those vehicles are meeting the personal transportation needs of Californians.

The question posed by Mr. Maas is whether the necessary resources are set aside by the government to achieve the goals in the timeframe that has been established in the

Advanced Clean Cars II regulations or the new federal EPA (Environmental Protection Agency) proposed mandates? Mr. Maas discussed in detail the rebate structure for EVs and remarked that it is going to be extremely confusing to consumers who are trying to adopt a new technology that they don't understand and yet they won't know what the price of the vehicle is going to be because they don't know if they're going to qualify for the rebate. Consumer do not know whether the rebate is going to be applicable at the time of purchase or whether they're going to have to apply to the IRS to get a check in the future.

Next, Mr. Maas discussed the sales market. Typically pre-COVID, dealers would sell an average of about 2 million new cars in California a year. California is the largest market in the country. To put this in perspective, one out of every eight new cars in the U.S. is sold in California. In 2022, pure EVs were 17% of the California market and plug-in hybrids were 3%.

Like the Alliance, the CNCDA did not oppose the Advanced Clean Cars II regulations. In fact, it joined with the Alliance to argue there should be a plug-in hybrid rule similar to California's rule in the federal mandate. According to Mr. Maas, the federal government has decided that this plugin hybrid technology is not appropriate. Instead of transitioning to ZEVs, consumers may keep their internal combustion engine vehicle longer, which means greenhouse gas emission reduction goals won't be accomplished.

Mr. Maas stated that aggressive mandates are counterproductive because they are "manufacturer for sale mandates" not "customer purchase mandates." To illustrate this, the manufacturers can make the ZEVs, but if consumers aren't ready to adopt them, there could be challenges.

Next, Mr. Maas discussed the challenge of who is responsible to create the charging infrastructure? Should it be the dealers? Should it be the traditional gas stations? Should it be large, big box retailers? Who's going to monitor and pay for that network?

In conclusion, Mr. Maas said that when you purchase an internal combustion engine vehicle, you generally know where your gas station is and the price is publicly posted. When a consumer pulls up to an EV charger, the price of electricity is unknown and so is how that translates to the equivalent cost per gallon of gasoline. The charging network in California is short of where it needs to be, and the reliability of that network is poor. Another consideration is the amount of time to charge a vehicle, which can be 20-30 minutes at the fastest charger to go from 0% to 80% yet it takes less than five minutes to get gas. It is important for a motorist in an EV to consider how to refuel their vehicle. The CNCDA is trying to encourage policymakers to talk about these issues, to think about them, and come up with solutions. If these questions go unanswered, it's going to be a difficult transition to 100% ZEVs by 2035. Mr. Maas was available to answer Board Member questions.

President Kassakhian thanked Mr. Augustine and Mr. Maas for their presentations.

8. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

This item was postponed until after Agenda Item 16.

9. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

This item was pulled from the agenda due to time constraints.

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

This item was pulled from the agenda due to time constraints.

11. **BOARD MEMBER EDUCATION CONCERNING THE POLITICAL REFORM ACT AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

This item was pulled from the agenda due to time constraints.

12. **ANNUAL REVIEW OF NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

This item was pulled from the agenda due to time constraints.

13. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 2nd QUARTER OF FISCAL YEAR 2022-2023 - FISCAL COMMITTEE**

This item was pulled from the agenda due to time constraints.

14. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

a. Pending Legislation of Special Interest:

- (1) Assembly Bill 473 (Assembly Member Aguiar-Curry) - Motor vehicle manufacturers, distributors, and dealers.

b. Pending Legislation of General Interest:

- (1) Senate Bill 544 (Senator Laird) - Bagley-Keene Open Meeting Act: teleconference.
- (2) Assembly Bill 1617 (Assembly Member Wallis) – Vehicles: recreational off-highway vehicles.

c. Pending Federal Legislation of General Interest: None

This item was pulled from the agenda due to time constraints.

15. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO FACSIMILE AND RESIDENCE ADDRESSES IN SECTION 595 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (FORMAT OF FIRST PAGE; FORMAT AND FILING OF PAPERS) AND MAKE GENDER NEUTRAL - POLICY AND PROCEDURE COMMITTEE**

This item was postponed until after Agenda Item 18 and discussed with Agenda Item 16.

16. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS - POLICY AND PROCEDURE COMMITTEE**

- A. Challenge (13 CCR § 551.1)
- B. Testimony by Deposition (13 CCR § 551.6)
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)
- D. Request for Informal Mediation (13 CCR § 551.14)
- E. Informal Mediation Process (13 CCR § 551.16)
- F. Sanctions (13 CCR § 551.21)
- G. Interpreters and Accommodation (13 CCR § 551.23)
- H. Transmittal of Fees by Mail (13 CCR § 553.72)
- I. Contents (13 CCR § 555)
- J. Procedure at Hearings (13 CCR § 580)
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

This item was postponed until after Agenda Item 18 and discussed with Agenda Item 15.

17. **DISCUSSION AND CONSIDERATION OF TEMPORARY AUTHORIZATION OF DISCRETION TO THE EXECUTIVE DIRECTOR TO ASSIGN ADDITIONAL MERITS HEARINGS TO THE OFFICE OF ADMINISTRATIVE HEARINGS OUTSIDE THE CURRENT “MERITS HEARING JUDGE ASSIGNMENT LOG” - POLICY AND PROCEDURE COMMITTEE**

This item was postponed until after Agenda Item 21.

18. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

This item was postponed until after Agenda Item 17.

19. **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.

This item was postponed until after Agenda Item 22.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

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

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

c. **ORAL INTERVIEW OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES VIA ZOOM - ADMINISTRATION COMMITTEE**

Oral interview of the Administrative Law Judge candidates via Zoom, by all members of the Board.

d. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEE - ADMINISTRATION COMMITTEE**

Consideration of the Administrative Law Judge nominee, by all members of the Board.

Agenda Item 20(b) was pulled from the agenda. The remaining items were postponed until after Agenda Item 25.

21. **OPEN SESSION**

The members remained in Open Session.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

- (1) Protest No. PR-2418-15 *Adrenaline Powersports v. Polaris Industries, Inc.*
- (2) Protest No. PR-2534-17 (consolidated) *Porter Auto Group, L.P. v. FCA US LLC*
- (3) Protest No. PR-2605-19 *R&H Automotive Group, Inc. v. American Honda Motor Co., Inc., Acura Automotive Division*
- (4) Protest No. PR-2180-09 *Jackson Ford-Mercury, Inc., dba The New Jackson Ford-Mercury v. Ford Motor Company*

This item was postponed until after Agenda Item 8.

23. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

The Dealer Members in attendance did not participate in, comment or advise other members upon or decide Agenda Items 23-24.

President Kassakhian read the following statement “comments made by the parties or their counsel that are made regarding any proposed decision, ruling or order must be limited to matters contained within the administrative record of the proceeding. No other information or argument will be considered by the Board. These are adjudicative matters that will be deliberated on in closed Executive Session. Therefore, pursuant to subdivision (e) of Government Code section 11125.7, members of the public may not comment on this matter.”

MICHAEL CADILLAC, INC., dba MICHAEL CHEVROLET CADILLAC v.
GENERAL MOTORS LLC
Protest Nos. PR-2813-22 and PR-2814-22

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Ashley R. Fickel, Esq. of Dykema Gossett LLP represented Respondent.

24. **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.

CONSIDERATION OF PROPOSED ORDER

MICHAEL CADILLAC, INC., dba MICHAEL CHEVROLET CADILLAC v.
GENERAL MOTORS LLC
Protest Nos. PR-2813-22 and PR-2814-22

Consideration of the Administration Law Judge’s Proposed Order Granting Respondent’s motion to dismiss.

The Public Members of the Board deliberated in closed Executive Session. Member Stevens moved to adopt the Administrative Law Judge’s Proposed Order Granting Respondent’s Motion to Dismiss. Member Doi seconded the motion. The motion carried unanimously.

25. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Agenda Item 24.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

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

The Public and Dealer Members convened in closed Executive Session to discuss personnel matters. Member Stevens moved to grant the Executive Director discretion to remove an Administrative Law Judge from an assignment log based on performance. Any proposed changes would be discussed in advance with the Policy and Procedure Committee and, if appropriate, would be reported to the Board in the Executive Director's Report or in closed Executive Session as a personnel matter. Member Doi seconded the motion. The motion passed unanimously.

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

As noted above, this item was pulled from the agenda.

c. **ORAL INTERVIEW OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES VIA ZOOM - ADMINISTRATION COMMITTEE**

Oral interview of the Administrative Law Judge candidates via Zoom, by all members of the Board.

The Public and Dealer Members convened in closed Executive Session to conduct oral interviews of Administrative Law Judge candidates.

d. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEE - ADMINISTRATION COMMITTEE**

Consideration of the Administrative Law Judge nominee, by all members of the Board.

The Public and Dealer members of the Board considered a first and second Administrative Law Judge nominee. Member Stevens moved to offer a position to the first candidate nominated conditionally upon the completion of a reference check. Member Smith Boland seconded the motion. The motion carried unanimously.

21. **OPEN SESSION**

The Board Members returned to Open Session.

17. **DISCUSSION AND CONSIDERATION OF TEMPORARY AUTHORIZATION OF DISCRETION TO THE EXECUTIVE DIRECTOR TO ASSIGN ADDITIONAL MERITS HEARINGS TO THE OFFICE OF ADMINISTRATIVE HEARINGS OUTSIDE THE CURRENT "MERITS HEARING JUDGE ASSIGNMENT LOG" - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding a temporary authorization of discretion to the Executive Director to assign additional merits hearings to the Office of Administrative Hearings ("OAH") outside the current "Merits Hearing Judge Assignment Log."

As indicated in the memo, given the limited number of matters that proceed to a merits hearing each year, it may not be possible to timely evaluate the effectiveness of OAH. Therefore, the staff recommends the Executive Director be given temporary discretion (not to exceed 3 years) to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission. The use of OAH in general and any additional assignments would be reported to the Board in the Executive Director's Report.

Mr. Corcoran added that he needs this flexibility to deviate from the rotational log to send additional cases to OAH as necessary to test them out over the next few years.

Member Doi moved to adopt the staff recommendation. Member Stevens seconded the motion. The motion carried unanimously.

18. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency.

Ms. Parker indicated that the delegations were updated to add the authorization approved by the Board in Agenda Item 17 above and to reflect the statutory change repealing the Board's appeal jurisdiction in Vehicle Code section 3008.

Member Stevens moved to adopt the staff recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

15. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO FACSIMILE AND RESIDENCE ADDRESSES IN SECTION 595 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (FORMAT OF FIRST PAGE; FORMAT AND FILING OF PAPERS) AND MAKE GENDER NEUTRAL - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed regulatory amendments to eliminate references to facsimile and residence addresses in Section 595 of Title 13 of the California Code of Regulations.

Member Stevens moved to adopt the proposed regulatory amendments. Member Fitzpatrick seconded the motion. The motion carried unanimously. Prior to reading the formal statement on the action taken by the Board, the members discussed and considered Agenda Item 16.

16. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS - POLICY AND PROCEDURE COMMITTEE**

- A. Challenge (13 CCR § 551.1)
- B. Testimony by Deposition (13 CCR § 551.6)
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)
- D. Request for Informal Mediation (13 CCR § 551.14)
- E. Informal Mediation Process (13 CCR § 551.16)
- F. Sanctions (13 CCR § 551.21)
- G. Interpreters and Accommodation (13 CCR § 551.23)
- H. Transmittal of Fees by Mail (13 CCR § 553.72)
- I. Contents (13 CCR § 555)
- J. Procedure at Hearings (13 CCR § 580)
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

The members were provided with a memo from Tim Corcoran and Robin Parker regarding a number of proposed regulatory amendments to eliminate references to residence addresses, update the Board's address, and make language gender neutral.

In response to Member Doi's question, Ms. Parker indicated that the staff is planning to submit the proposed regulations to the Office of Administrative Law as non-substantive changes but in the event OAL disapproves, these will proceed through formal rulemaking as substantive changes.

Member Fitzpatrick moved to adopt the proposed new regulation. Member Doi seconded the motion. The motion carried unanimously.

President Kassakhian read the following statement into the record for the proposed regulatory changes in Agenda Items 15 and 16:

Given the Board's decision to go forward with the proposed regulation[s], 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[s], 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[s]. 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.

8. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

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

As indicated in the memo, the “New as of 2023” section was updated to reflect regulations that were effective October 1, 2022, and legislative changes that deleted obsolete provisions relating to appeals and made technical changes.

In addition, the following amendments were made:

- With the relocation to the Department of Motor Vehicles, the Board does not have a landline or fax machine. In the event a party would like to file a protest via facsimile, the Board would accommodate this request. Footnote 5 on page 8 was added to request a franchisee seeking to file a protest via facsimile contact the Board’s legal staff in advance at (916) 445-1888 or nmvb@nmvb.ca.gov.
- The addition of online credit card payments was added on page 9.
- Footnote 6 was added on page 9 to reflect that at the January 25, 2023, General Meeting, the Board approved adding the Office of Administrative Hearings to the “Merit Hearings Judge Assignment Log.”
- New footnote 6 is referenced in footnote 25 on page 63.
- References to Vehicle Code section “3050(b)(2)” were changed to “3050(b)(2)(A)” on pages 67, 70, and 71 and in the sample petition form in the Appendix.
- Gender specific language was replaced with gender neutral language in the sample forms in the Appendix.

Member Stevens moved to adopt the revised *Guide to the New Motor Vehicle Board*. Member Fitzpatrick seconded the motion. The motion carried unanimously.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

- (1) Protest No. PR-2418-15 *Adrenaline Powersports v. Polaris Industries, Inc.*
- (2) Protest No. PR-2534-17 (consolidated) *Porter Auto Group, L.P. v. FCA US LLC*
- (3) Protest No. PR-2605-19 *R&H Automotive Group, Inc. v. American Honda Motor Co., Inc., Acura Automotive Division*
- (4) Protest No. PR-2180-09 *Jackson Ford-Mercury, Inc., dba The New Jackson Ford-Mercury v. Ford Motor Company*

The Public Members were provided with a memo from Tim Corcoran and Robin Parker regarding whether to designate four Board Decisions as precedent decisions pursuant to Government Code section 11425.60.

Mr. Corcoran indicated that there was insufficient time to fully consider this matter but he wanted to get the Public Members' perspective in general and provide an opportunity for questions.

Member Doi indicated that this matter will require a longer discussion. She summarized the process as agencies like the Board can designate some of its decisions as binding precedent under the Administrative Procedure Act. However, this is unusual because the Board does not have to go through a formal notice and comment period like with rulemaking. And these determinations are not subject to judicial review. So, if somebody doesn't like what the Board does, it cannot be appealed to the court. Only decisions that are of significant legal or policy determination of general application and only decisions where the issue is likely to recur are to be designated as precedent. Member Doi commented that she thinks precedent decision can be helpful but it should not be done hastily. Member Doi thought it would be helpful to have the significant legal or policy determinations of general application spelled out more clearly and open the discussion for public comment.

In light of Member Doi's comments, President Kassakhian indicated that this discussion would be held at a future meeting.

19. **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. First, Mr. Corcoran and Dawn Kindel participated in the California State Transportation Agency's ("CalSTA") summit early this year. This provided the Board with an opportunity to identify ways that we can become more strategically aligned with CalSTA's goals and their Core-Fore objectives of climate, safety, economic prosperity, and equity. Second, the Ad Hoc Committee on Equity, Justice and Inclusion's first meeting of the year is May 23rd. This will be the first opportunity to align the Board's goals

and objectives strategically with those of the Core-Four under CalSTA. Third, Danielle Phomsopha (former Senior Staff Counsel) was attending the DMV Leadership Development Academy, which is an intense program. It's the executive level program that Mr. Corcoran attended when he was a chief at DMV. UC Davis puts on this program.

Miss Kindel updated the members on recent staff changes in the Consumer Mediation Program. Fortunately, two new analysts were hired and are being trained.

Member Doi inquired about the Board's new facility. Miss Kindel reported that it is unlikely the staff will be able to move into the new facility until 2024.

Ms. Parker reported that two new termination protests were filed against Lotus in response to 15-day notices of termination. Updates on the judicial matters were also provided (*Barber Honda* and *Subaru*). In the petition filed by *Courtesy Subaru of Chico v. Subaru*, after the formal request for investigation was provided to DMV, Subaru filed a motion for reconsideration that was rejected as it did not comply with the Board's regulations.

Ms. Phomsopha indicated that the *Putnam Ford* protest was assigned to OAH for hearing. Additional updates were provided for *Audi Fresno*.

26. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

27. **ADJOURNMENT**

Member Stevens moved to adjourn the meeting. Member Fitzpatrick seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:43 p.m.

Submitted by

Timothy M. Corcoran

TIMOTHY M. CORCORAN

Executive Director

APPROVED: _____

J. Stevens

Jacob Stevens

Vice President

New Motor Vehicle Board