



***EXECUTIVE
DIRECTOR'S
REPORT***

August 23, 2012

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<u>1. Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074, and 3065/3075 (the Filing of Statutorily Required Schedules and Formulas)</u> Kathy Tomono; Administration Committee	In December 2011 and March 2012, letters were sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations ("PDI"), PDI schedule of compensation, and warranty reimbursement schedule or formula.	December 2012	In progress. A status report concerning manufacturer and distributor compliance will be presented at the December 12, 2012, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
<u>1. Schedule Board Member Education Presentations</u> Robin Parker; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	August 2012	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the August 23, 2012, General Meeting.
<u>Solon C. Soteras Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	May 2012	<u>Completed</u> At the May 22, 2012, General meeting, the members of the Board selected Kathy Tomono as the recipient of the Solon C. Soteras Employee Recognition Award.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Host Board Administrative Law Judge Roundtable</u> Bill Brennan, Robin Parker; Board Development Committee	Host a Board Administrative Law Judge (“ALJ”) Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	May 2012	<u>Completed</u> The ALJ Roundtable was held on May 24, 2012; it was well-received and informative.
FISCAL COMMITTEE			
<u>1. Quarterly Fiscal Reports</u> Dawn Kindel; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 st , 2 nd , and 3 rd quarter reports for fiscal year 2011-2012 were presented at the December 13, 2011, and May 22, 2012, General Meetings, respectively. The 4 th quarter report and 1 st quarter report for fiscal year 2012-2013 are tentatively scheduled for December 12, 2012.
<u>2. Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board’s proposed budget for fiscal year 2012-2013.	August 2012	In progress. The 2012-2013 Budget will be presented at the August 23, 2012, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Linda Lighter; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program (“ACP”).	May 2012	<u>Completed</u> At the May 22, 2012, General Meeting, the members were provided with a memorandum concerning the collection of fees for the ACP.
<u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u> Bill Brennan; Fiscal Committee	In response to Board Member Brooks’ request, a memorandum outlining how the Board fees are calculated every year to ensure the fees are not a tax and are cost-justified, will be presented for Board consideration.	May 2012	<u>Completed</u> At the May 22, 2012, General Meeting, Bill Brennan determined that the Board funds are properly classified as fees, and the method for determining fee schedules is fair and reasonable.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
<u>1. Host Industry Roundtable</u> Bill Brennan, Dawn Kindel, Kathy Tomono; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/ distributors, dealers, in-house and outside counsel, associations and other government entities.	March 2013	In progress. The Roundtable is scheduled for March 14, 2013, in Sacramento.
<u>2. Host Attorney Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Host an Attorney Roundtable in Sacramento that highlights topics of interest to the litigants that regularly appear before the Board.	September 2013	In progress.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Participant Questionnaires for Industry Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Based upon the feedback provided at the Industry Roundtable in the questionnaires, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	May 2012	<u>Completed</u> Surveys were handed out at the Roundtable and sent in a subsequent e-mail. A memorandum summarizing the feedback was presented for information at the May 22, 2012, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. Annual Rulemaking Calendar Robin Parker; Policy & Procedure Committee	Consideration of the annual rulemaking calendar if the Board decides to go forward with any new proposed regulatory changes.	December 2012	In progress. The 2013 Rulemaking Calendar will be considered at the December 12, 2012, General Meeting.
2. Draft New Regulations to Clarify and Improve the Board's Case Management Processes Robin Parker; Policy and Procedure Committee	In an effort to continue to improve and clarify the Board's case management processes, the Board staff has proposed amending four existing regulations and adding one new regulation. The topics encompass definitions, subpoenas, peremptory challenges, sanctions, and adoption and objection to proposed stipulated decisions and orders. If the Board approves the draft regulations, the legal staff will proceed with rulemaking.	December 2012	In progress.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
EXECUTIVE COMMITTEE			
1. <u>Sunset Review</u> Bill Brennan, Robin Parker, Dana Winterrowd, Dawn Kindel; Executive Committee	In conjunction with the staff, complete the questionnaire requested by the Sunset Review Committee. Staff attended the Sunset Review Committee hearing on March 14, 2012, and worked with the Sunset Review Committee staff to address questions.	September 2012	In progress. A hearing before the Joint Sunset Review Committee scheduled for May 1 was postponed to June 7 then June 20, and ultimately cancelled. No hearing is currently on calendar.
<u>Revised Vision Statement</u> Bill Brennan; Executive Committee	At the June 5, 2009, General meeting, the Board approved its present mission and vision statements. At the March 20, 2012, General Meeting, Board Member Ryan Brooks requested that the staff revise the Vision Statement to reflect the cost savings to tax payers.	May 2012	<u>Completed</u> At the May 22, 2012, General Meeting, the members adopted a revised Vision Statement.

B.
CASE
MANAGEMENT

CASE VOLUME

MAY 9, 2012, THROUGH AUGUST 8, 2012

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	4	10
3060	Modification	1	5	1
3062	Establishment	2	3	1
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	3
3065.1	Incentive Program Reimbursement	0	0	3
3070	Termination	0	1	2
3070	Modification	0	0	2
3072	Establishment	0	0	1
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		6	13	23

PENDING CASES

BY CASE NUMBER

Protests

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	*PR-2199-10 1-29-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1313 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Modification
2.	*PR-2201-10 1-29-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Modification
3.	*PR-2205-10 2-9-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
4.	*PR-2206-10 2-9-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement
5.	*PR-2208-10 2-18-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement
6.	*PR-2209-10 2-18-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement
7.	*PR-2211-10 2-18-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
8.	*PR-2212-10 2-18-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahon's RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
9.	PR-2227-10 4-7-10	Parties finalizing settlement; Informal follow-up: 8-30-12	Michael Cadillac, Inc. dba Michael Porsche v. Porsche Cars of North America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran	Termination
10.	*PR-2233-10 5-11-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1313 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Establishment
11.	*PR-2244-10 7-13-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton and 6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Termination
12.	*PR-2245-10 7-13-10	Board considering proposed decision: 8-23-12	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive, Scotts Valley)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Termination
13.	PR-2305-11 6-7-11	Parties finalizing settlement; Informal Follow-up: 9-4-12	Ankar Cycles, Inc., dba Oakland Harley-Davidson v. Harley-Davidson Motor Company	P: Mike Flanagan Gavin Hughes R: Bob Ebe Brett Waxdeck	Termination
14.	PR-2306-11 6-7-11	Parties finalizing settlement; Informal Follow-up: 8-9-12	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
15.	PR-2310-11 7-20-11	Board considering proposed decision: 8-23-12	Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company, a Corporation	P: Bert Rasmussen Franjo Dolenac R: Bob Ebe Brett Waxdeck	Termination
16.	PR-2316-11 11-4-11	Hearing Readiness Conference: 10-2-12 Merits Hearing: 10-29-12 (3 days)	Myrick's Motorcycle, Inc. dba San Luis Motorsports v. Yamaha Motor Corporation, USA	P: Andrew Hays R: Armen Hairapetian	Termination
17.	PR-2328-12 2-23-12	Ruling on Objections Conference: 9-26-12 Hearing Readiness Conference: 11-13-12 Merits Hearing: 12-10-12	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving Tina Hopper R: Mo Sanchez Kevin Colton	Termination
18.	PR-2331-12 4-13-12	Hearing Readiness Conference: 10-1-12 Merits Hearing: 10-29-12 (5 days)	Glendale Nissan/Infiniti, Inc. dba Glendale Infiniti v. Nissan North America	P: Ken Murphy Aaron Jacoby R: Mo Sanchez Kevin Colton	Establishment

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
19.	*PR-2333-12 2-23-12	Ruling on Objections Conference: 9-26-12 Hearing Readiness Conference: 11-13-12 Merits Hearing: 12-10-12	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Mike Sieving Tina Hopper R: Mo Sanchez Kevin Colton	Termination
20.	PR-2336-12 6-19-12	Parties Discussing Settlement; Informal Follow-up: 8-29-12	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc. (W. Stockton Blvd.)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Modification
21.	*PR-2337-12 6-19-12	Parties Discussing Settlement; Informal Follow-up: 8-29-12	Wesley B. Lasher Investment Corporation, dba Lasher Volkswagen v. Volkswagen Group of America, Inc. (S St.)	P: Mike Flanagan Gavin Hughes R: Mo Sanchez Kevin Colton	Termination
22.	PR-2338-12 6-22-12	Parties finalizing settlement; Resumed Pre-Hearing Conference: 9-5-12	Monterey Motorcycles, Inc. dba Monterey County Harley-Davidson v. Harley-Davidson Motor Company, a corporation	P: Bert Rasmussen R: Megan O'Sullivan	Termination

CASES REGARDING BREACH OF PROPOSED STIPULATED DECISION AND ORDER

1.	PR-2213-10 Breach Case 4-2-12 PSDO dispute	Board considering proposed decision: 8-23-12	West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors, LLC	P: Mike Flanagan R: Greg Oxford	Termination
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PENDING CASES

BY CASE NUMBER

Petitions

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

Appeals

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

C. JUDICIAL REVIEW

Judicial Review

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

1. *SANTA MONICA AUTO GROUP, dba SANTA MONICA INFINITI, a California Corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, a California State Administrative Agency, Respondent, INFINITI DIVISION, NISSAN NORTH AMERICA, INC. (previously erroneously named as Infiniti West, a Division of Nissan North America, Inc.), Real Party in Interest. California Superior Court, Los Angeles County Case No. BS138615; New Motor Vehicle Board Case No. CRT-257-12, Protest No. PR-2330-12.*

Background: Protestant Santa Monica Auto Group, dba Santa Monica Infiniti (SMI) filed a protest with the Board on March 29, 2012, alleging that INFINITI DIVISION, NISSAN NORTH AMERICA, INC. (Infiniti) should not be permitted to complete its plans to establish a dealer in Beverly Hills.

On April 30, 2012, Infiniti filed a motion seeking dismissal of SMI's protest based on Infiniti's contention that SMI had previously waived its right to protest Infiniti's intended action.

Administrative Law Judge Lonnie M. Carlson heard Infiniti's motion, and on July 6, 2012, Judge Carlson issued his written ruling on the motion, entitled "Proposed Order Granting Respondent's Motion to Dismiss Protest." By order dated July 16, 2012, the Board adopted Judge Carlson's proposed order as the Board's final decision in the matter.

Current (Writ) Action: On July 26, 2012, SMI filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), that would, (a) direct the Board to vacate the Board's decision of July 16, 2012, (b) direct the Board to issue an order denying Infiniti's motion of April 30, 2012, and (c) award such other relief in SMI's favor as the Court deems appropriate. SMI also filed a written petition ("SMI's stay petition") asking the Court for an order staying the operation of the Board's Decision of July 16, 2012, and on August 7, 2012, Infiniti served papers opposing SMI's stay petition. On August 7, 2012, the Court held a hearing on SMI's stay petition, and the Court's ruling on the stay petition is pending.

2. HARLEY-DAVIDSON MOTOR COMPANY, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, LAIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW'S HARLEY-DAVIDSON, Real Party in Interest. California Superior Court, Los Angeles County Case No. BS136877; New Motor Vehicle Board Case No. CRT-256-12, Protest No. PR-2299-11.

Background: On May 12, 2011, Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson (Laidlaw's) filed a protest of a notice, dated April 14, 2011, of the intention of Harley-Davidson Motor Company (HDMC) to terminate Laidlaw's Harley-Davidson Motorcycle Dealer Contract (franchise) with HDMC. On May 9, 2012, following a hearing on the merits of the protest before Administrative Law Judge Marilyn Wong, ALJ Wong issued a "Proposed Decision," sustaining Laidlaw's protest. ALJ Wong found that HDMC had not met its burden of proof under Vehicle Code section 3066(b) to establish that there was good cause to terminate Laidlaw's franchise.

At the Board's regularly scheduled meeting on May 22, 2012, the Board's public members, meeting in executive session, adopted Judge Wong's Proposed Decision as the Board's final decision in the matter, with the addition of conditions requiring HDMC to comply with specified accounting activities and requiring Laidlaw's to comply with specific training, reporting, compliance and reimbursement activities. On May 24, 2012, the Board issued the written Decision in the matter.

Current (Writ) Action: On July 9, 2012, the Board received copies of the Verified Petition for Writ of Mandate and accompanying papers advanced by HDMC for filing in the California Superior Court for Los Angeles County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision sustaining Laidlaw's protest and allow the proposed termination to proceed, and (2) for such other relief as the Court deems just and proper.

It has been determined that there is no substantial state interest at issue in the writ action. The parties have been informed of that determination, and they have, in turn, informed the Court of the determination. Thus, the Board will not participate in the action.

3. VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, an administrative agency of the State of California, Respondent, SHAYCO, INC., dba ONTARIO VOLKSWAGEN, Real Party in Interest. California Superior Court, Sacramento County Case No. 34-2012-80001045; New Motor Vehicle Board Case No. CRT-255-12, Protest No. PR-2265-10.

Background: At the Board's regularly scheduled meeting on September 27, 2011, the Board's public members, meeting in executive session, decided to sustain the protest filed by Protestant Shayco, Inc., dba Ontario Volkswagen (Ontario VW) on August 13, 2010. At the Board's regularly scheduled meeting on December 13, 2011, the Board adopted its written Order Confirming Decision to Sustain Protest,

confirming the decision of September 27, 2011. The Board found that Ontario VW had met its burden of proof under Vehicle Code section 3066(b) that there is good cause not to establish a Volkswagen dealership in Montclair and ruled that respondent would not be permitted to proceed with the establishment of the new franchise at the proposed location in Montclair.

Current (Writ) Action: On January 24, 2012, Volkswagen Group of America, Inc. (VWoA) filed a Verified Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision, (2) directing the Board to issue a decision overruling Ontario VW's Protest, thus allowing the establishment of a new Volkswagen dealership in Montclair, (3) awarding VWoA costs of suit and attorney fees, and (4) awarding VWoA such other relief as the Court deems just and proper.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

On February 23, 2012, Ontario VW filed its Answer to VWoA's writ petition. On March 2, 2012, Ontario VW filed its Amended Answer to VWoA's writ petition.

4. LEEHAN, INC. HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2011-80000987; New Motor Vehicle Board Case No. CRT-254-11, Protest No. PR-2307-11.

Background: This case relates closely to NNVB Case No. CRT-253-11, discussed below as item number 5.

Protestant Leehan, Inc. Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on June 21, 2011, alleging that Real Party in Interest Nissan North America, Inc. (Nissan) untimely and improperly charged back incentive monies in the amount of \$64,350.00. On July 15, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after Nissan's December 9, 2009, written report of disapproved incentive claims.

Nissan's motion was heard by Administrative Law Judge Jerold A. Prod, and on September 12, 2011, Judge Prod issued his ruling on the motion, entitled "Amended Proposed Order Granting Respondent's Motion to Dismiss Second Protest." By order dated September 27, 2011, the Board adopted Judge Prod's ruling as the Board's final decision in the matter.

Current (Writ) Action: On October 27, 2011, Hanlees filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), that would, (a)

direct the Board to both vacate the Board's decision of September 27, 2011, and deny Nissan's motion of July 15, 2011, and (b) award Hanlees its costs in the writ proceeding. On January 10, 2012, Hanlees filed its opening brief in support of its petition. On January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents generated by the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-253-11, discussed below. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a 'cover-letter' from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.

The time for appealing the Superior Court's judgment has passed, and the judgment has therefore become final. Thus, future Executive Director Reports will not report on this matter.

5. LEEHAN, INC. dba HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2011-80000897;
New Motor Vehicle Board Case No. CRT-253-11, Protest No. PR-2291-11.

Background: Protestant Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on February 25, 2011, alleging that Real Party in Interest Nissan North America, Inc. (Nissan) improperly charged back and refused to pay incentive monies to Hanlees in the amount of approximately \$60,000.00. On April 1, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after receiving notice of Nissan's disapproval of Hanlees' incentive claims. Nissan's motion was heard by Administrative Law Judge Diana Woodward Hagle, and on May 4, 2011, Judge Woodward Hagle issued a Proposed Order granting Nissan's motion. At its regularly scheduled meeting on May 26, 2011, the Board modified the Proposed Order (without changing the result) and adopted the modified Proposed Order as the Board's final Decision in the matter.

Current (Writ) Action: On June 24, 2011, Hanlees (acting in its corporate name, Leehan, Inc.) filed a Petition for Writ of Administrative Mandamus, in the California

Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate) that would (a) set aside and vacate the Board's decision and order of May 26, 2011, and (b) deny Nissan's motion of April 1, 2011 (discussed above). On January 10, 2012, Hanlees filed its opening brief in support of its petition. On January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents created during the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-254-11, discussed above. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a 'cover-letter' from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.

The time for appealing the Superior Court's judgment has passed, and the judgment has therefore become final. Thus, future Executive Director Reports will not report on this matter.

6. POWERHOUSE MOTORSPORTS GROUP, INC. and TIMOTHY L. PILG v. YAMAHA MOTOR CORP, INC.; POWERHOUSE MOTORSPORTS, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent, YAMAHA MOTOR CORP INC., Real Party in Interest.

California Court of Appeal, Second District, Ventura Division Case No. B236705;
San Luis Obispo Superior Court Case No. CV09-8090;
New Motor Vehicle Board Case No. CRT-249-09, Protest No. PR-2122-08.

Background: On June 5, 2009, the Board upheld a May 22, 2009, proposed Order granting Yamaha's Motion to Dismiss Powerhouse's Protest against termination of its franchise. The Order found that Powerhouse had failed to timely file its Protest and Powerhouse failed to establish that Yamaha was estopped from terminating the dealership.

The original complaint, filed in Superior Court on March 6, 2009, alleges Yamaha unreasonably withheld its consent for Powerhouse to transfer its dealership in violation of Vehicle Code section 11713.3, intentionally interfered with Powerhouse's contractual relations, intentionally interfered with Powerhouse's business advantage, and breached its contract with Powerhouse. Identical causes of action were alleged in behalf of dealer principal Timothy L. Pilg. In its First Amended Complaint, filed July 7, 2009, Powerhouse added a Petition for a Writ of

Judicial Review

Administrative Mandamus challenging the Board's June 5, 2009, Final Decision Dismissing Protest No. PR-2122-08. The Petition seeks reversal of the Board's Final Decision, based on allegations that the Board prejudicially abused its discretion and exceeded its jurisdiction.

On July 23, 2009, Board President Flesh determined the Board would not participate in the action by means of the Attorney General's Office. The matters before the court, including a Motion to Strike, a Motion to Bifurcate, and a Demurrer to the First Amended Complaint, were heard November 17, 2009, resulting in a Final Ruling denying the Demurrer and the Motion to Strike, but granting the Motion to Bifurcate. The court further ruled that the Writ Petition would be tried by the court separately prior to the other causes of action, and the court stayed all discovery until the conclusion of the Writ action. Following the hearing of the writ action, the Court ruled on July 2, 2010, that Yamaha prevailed on the Writ action. Based on that ruling, the court entered judgment in the writ action, on August 9, 2010, in favor of Yamaha.

A Hearing on a Motion for Summary Judgment was held on January 4, 2011. The court initially took the matter under submission, and on January 31, 2011, the court entered a ruling denying Yamaha's motion for summary judgment and in the alternative summary adjudication. The ruling is adverse to the Board's jurisdiction and the Judge indicated that the Board does not have jurisdiction over protests and "...invocation of the Board's limited authority [is] optional..."

A jury trial, on the remaining causes of action and scheduled for February 7, 2011, was continued to February 14, 2011, and continued again to May 31, 2011.

On February 7, 2011, Yamaha filed a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief [stay of trial proceedings]," in the Second District of the California Court of Appeal, case number B230699. The Board in consultation with Jeffrey Schwarzschild, Deputy Attorney General and Augustin Jimenez, General Counsel, Business, Transportation & Housing Agency ("Agency") filed a declaration containing statistical information on the types of actions filed with the Board, i.e., protests, petitions, and appeals. On February 10, 2011, the court denied the writ because, "...petitioner neglected to cite or argue the application of Vehicle Code section 3050, subdivision (e), and South Bay Creditors Trust v. General Motors Acceptance Corp. (1999) 69 Cal.App.4th 1068, 1079-1080."

On February 14, 2011, Yamaha re-filed the petition in the Second District, case number B230830. This petition included the Board's declaration and the citations and arguments previously noted by the court. On February 17, 2011, the court denied the writ and request for stay.

On February 28, 2011, Yamaha filed a Petition for Review in the California Supreme Court, case number S190950, seeking review of the denial, by the Second District Court of Appeal, of Yamaha's writ petition and request for stay. The Board received the necessary approvals from Glenn Stevens, the Public Members of the Board, Agency, and the Governor's Office to file an amicus curiae

letter in support of Yamaha's petition for review on the jurisdictional issue of whether final Board decisions are binding with regard to other legal proceedings when the underlying writ concerning the final Board decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action. The amicus curiae letter was filed on March 9, 2011. On April 13, 2011, the California Supreme Court denied Yamaha's Petition for Review and Application for Stay.

In a letter dated May 5, Yamaha asked the superior court to review the Board's amicus curiae letter. Counsel for Yamaha indicated that it would subpoena Robin Parker to testify concerning the content of the amicus curiae letter around May 31 or June 1. Agency was apprised of this.

A multi-day jury trial began on May 31, 2011. After being subpoenaed by Yamaha, Robin Parker testified on June 13. The jury awarded Powerhouse and Mr. Pilg \$1,136,000 in compensatory damages and \$200,000 in punitive damages. During the course of the trial, the bankruptcy trustee (Namba) was substituted for Mr. Pilg.

A briefing schedule was set on Yamaha's motion for a judgment notwithstanding the verdict and motion for new trial. An in-person hearing was held on August 2, 2011. Both motions were denied. Counsel for Yamaha indicated that a notice of appeal would be filed.

Plaintiffs filed a "Motion for Prejudgment Interest under Civil Code section 3287(a), or in the Alternative, Civil Code section 3287(b)." A hearing was held on August 9, 2011. The tentative order concluded that attorneys' fees are allowed under Vehicle Code section 11726(a) but not under the contract. Plaintiffs requested \$703,000 adjusted upward by a 1.7 multiplier. The court indicated this amount will be reduced by the fees incurred in connection with the protest and petition for writ of administrative mandate.

Yamaha filed a "Motion to Tax Costs Requested by Plaintiff's". This matter was resolved by counsel based on the court's ruling on the attorney's fees.

Powerhouse sought to enforce the \$2,175,000 judgment against Yamaha prior to the deadline for Yamaha to file an appeal, i.e., October 17, 2011. On September 7, 2011, Yamaha filed an Ex Parte Application for an Order Staying Enforcement of Judgment. A hearing was held on September 8, 2011. The motion was granted and enforcement of the judgment was stayed until October 17. On October 6, 2011, the law firm of Gibson, Dunn & Crutcher LLP was associated in as counsel for Yamaha.

Current Appeal: On October 6, 2011, Yamaha filed a Notice of Appeal. On November 7, 2011, plaintiffs filed a Notice of Cross-Appeal, in which plaintiffs appeal from, among other matters, "The judgment entered on August 9, 2011, to the extent that it incorporates the trial court's ruling of July 2, 2010, denying Powerhouse's eighth cause of action under Code of Civil Procedure Section 1094.5 for Petition for Administrative Writ of Mandate."

The Second District of the California Court of Appeal has established case number B236705 for the appeal and cross-appeal. On February 24, 2012, the record of important documents accumulated during the administrative and trial proceedings, was filed in the Court of Appeal.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

The Court of Appeal ordered the following briefing schedule: (1) by April 4, Yamaha may file its opening brief; (2) within the following 30 days, Powerhouse may file a brief in opposition to Yamaha's opening brief, and may file an opening brief on cross-appeal; (3) within the following 30 days Yamaha may file a brief in reply to Powerhouse's brief opposing Yamaha's appeal, and may file a brief in opposition to Powerhouse's opening brief on cross-appeal; (4) within the following 20 days Powerhouse may file a brief in reply to Yamaha's brief in opposition to Powerhouse's opening brief on cross-appeal. On April 20, 2012, the Court of Appeal noted that on April 10, 2012, appellant had provided that court with a notice (also served and filed in superior court) specifying a portion of the record that the clerk or reporter had omitted and requested that the clerk or reporter prepare, certify, and send that supplemental record to the Court of Appeal. The Court of Appeal expects that it will receive the supplemental record by May 10, 2012. These events have delayed the due date for the filing of Appellant's opening brief, until 30 days after the filing of the supplemental record.

On May 17, 2012, Yamaha filed appellant's opening brief. On August 1, 2012, Powerhouse filed respondents' brief.

In a letter to the Board dated May 8, 2012, counsel for Yamaha requested that the Board consider filing, in connection with the pending appellate case, a "friend of the court" (*amicus curiae*) brief. Counsel described the essential objectives of the brief, as follows: ". . . to educate the Court of Appeal regarding the jurisdiction of the Board, explain the expertise of the Board in adjudicating protests, and underscore the mission of the Board to serve all constituents in the new motor vehicle industry: dealers, manufacturers and the general consuming public." *At its regularly scheduled meeting on May 22, 2012, the Board decided to decline Yamaha's request.*

Counsel for Yamaha has requested that the Board reconsider the Board's decision to decline Yamaha's request that the Board consider filing an amicus curiae brief in the pending appellate case. Yamaha's request is scheduled for consideration by the Board at its regularly scheduled meeting on August 23, 2012.

D.
NOTICES FILED

PURSUANT TO
VEHICLE CODE SECTIONS
3060/3070 AND 3062/3072

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

MAY 9, 2012, THROUGH AUGUST 6, 2012

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

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW	
CHRYSLER	24	CHRYSLER	4
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD		FORD	
GOSHEN		GOSHEN	
GM	7	GM	
HARLEY-DAVIDSON	1	HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI		HYUNDAI	1
INFINITI		INFINITI	
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	2
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	7
VOLKSWAGEN		VOLKSWAGEN	2
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	2	MISCELLANEOUS	
TOTAL	34	TOTAL	16