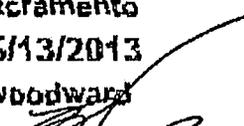


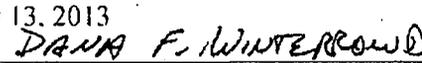
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dana F. Winterrowd Attorney at Law 1812 Shelfield Dr. Carmichael, CA 95608 TELEPHONE NO.: 916-768-4773 FAX NO.: ATTORNEY FOR (Name) Terry Doe	FOR COURT USE ONLY  <b>FILED</b> <b>Superior Court Of California,</b> <b>Sacramento</b> <b>05/13/2013</b> awoodward By  , Deputy <b>Case Number:</b> CASE NUMBER <b>34-2013-80001488</b>  JUDGE:  DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth St. MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME:	
CASE NAME: Terry Doe v. Department of Motor Vehicles, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

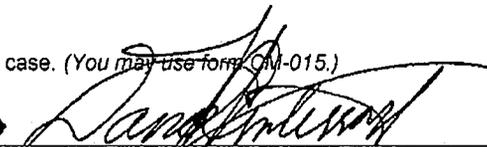
*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <b>Non-PIP/DWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 1
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 13, 2013  
  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Department of Motor Vehicles, New Motor Vehicle Board, Does 1 to 50, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

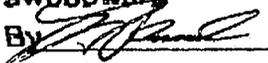
Terry Doc

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
**Superior Court Of California,**  
**Sacramento**

**05/13/2013**

**awoodward**

By , Deputy  
Case Number:

**34-2013-80001488**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

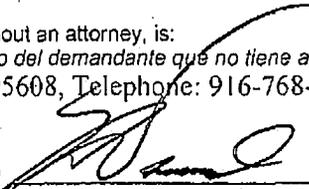
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): California Superior Court  
Sacramento County, 720 Ninth Street, Sacramento, CA 95814

CASE NUMBER:  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Dana F. Winterrowd, Esq., 1812 Shelfield Dr., Carmichael, CA 95608, Telephone: 916-768-4773

DATE: **MAY 13 2013**  
(Fecha)

Clerk, by , Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



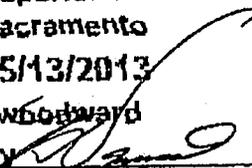
**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

1 Dana F. Winterrowd  
2 Attorney at Law, CSB#99586  
3 1812 Shelfield Dr.  
4 Carmichael, CA 95608  
5 916-768-4773

6 Attorney for Petitioner

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**05/13/2013**  
awboward  
By  Deputy  
Case Number:  
**34-2013-80001488**

8 California Superior Court  
9 Sacramento County

10  
11 Terry Doe,

12 Petitioner,

13 vs.

14 Department of Motor Vehicles, New Motor  
15 Vehicle Board, and Does 1 to 50, inclusive,

16 Respondents.

) Case No.

) Petition for Writ of Mandate  
*AND COMPLAINT*

17 1. This petition concerns a state agency's extralegal imposition of a purportedly official  
18 record of discipline against a state government employee, despite that agency's failure to abide  
19 and comply with many provisions of law enacted to assure that an official record of discipline is  
20 established only pursuant to law, in a fair and impartial manner.

21 2. Terry Doe is a fictitious name for Petitioner that is used to avoid disclosure of the  
22 name associated with the above-described illegitimate record of discipline, because this petition  
23 seeks a remedy that would prevent improper retention and disclosure of that illegitimate record.  
24 Petitioner is a permanent, full-time, non-probationary employee of the New Motor Vehicle Board  
25 ("NMVB"), which is a program within the Department of Motor Vehicles ("DMV"). (See Govt.  
26 Code, § 3000, et seq.)

27 \_\_\_\_\_  
28 Petition for Writ of Mandate

1 3. A Memorandum of Understanding (MOU) between the State and Unit 2 employees  
2 defines the terms of Unit 2 employment (hereinafter simply the "MOU"). The MOU has been  
3 ratified by the Unit 2 membership, adopted by the Legislature and signed by the Governor.

4 Section 6.3 of the MOU provides, in relevant part:

5 The following shall apply to employees/classifications assigned to Work Week Groups E  
6 and SE....

7 D. Employees shall not: ...

8 5. Have absences of less than one (1) day recorded for attendance record  
9 keeping or compensation purposes.

10 Petitioner is a member of State of California Bargaining Unit 2 and withing the terms of the  
11 Unit 2 MOU petitioner is a "Work Week Group 'SE'" employee.

12 4. On February 8, 2013, petitioner heard a person yelling what sounded like petitioner's  
13 first name. The yelling sounded to petitioner like the voice of William G. Brennan ("Brennan"),  
14 the Executive Director of NMVB. Before petitioner could respond, Brennan appeared at  
15 petitioner's office door and said, "Come into my office." After petitioner was seated in  
16 Brennan's office, in the presence of Dawn Kindle ("Kindle"), the Staff Services Manager I of  
17 NMVB, Brennan initiated an interrogation of petitioner about events alleged to have occurred the  
18 day before the interrogation. After the interrogation, Brennan verbally informed petitioner that a  
19 complaint had been made against petitioner about those alleged events, that Kindle and others  
20 had witnessed some or all of the events, that Kindle, on behalf of NMVB had investigated the  
21 complaint, and that Brennan would sustain the complaint. Kindle then informed petitioner that  
22 Brennan would issue a "counseling memo" which would recite pertinent alleged events and the  
23 conclusions of Brennan, which would be placed in the petitioner's Official Personnel File (OPF),  
24 and which would remain in the petitioner's OPF for three years. On February 13, 2013, petitioner  
25 received a memorandum bearing that date (hereinafter referred to as "Letter of Reprimand" or  
26 simply "LR") The LR is not attached as an exhibit to this petition because petitioner contends

1 that it is not an official record of discipline and therefore should not be published. At the  
2 appropriate time and under the appropriate circumstances, petitioner will submit the LR to the  
3 Court.

4 5. In pertinent part, the LR states that, (a) a complaint was asserted against petitioner, (b)  
5 NMVB conducted an investigation of the complaint, (c) NMVB concluded that petitioner, (d)  
6 acted discourteously during the hours of petitioner's employment with NMVB, and (e) was  
7 absent from the offices of NMVB during hours of work dictated and imposed by NMVB (though  
8 no alleged absence was alleged to have lasted eight hours or more), (f) the LR will be placed in  
9 petitioner's OPR, and (g) the LR will remain in petitioner's OPF for three years.

10 6. The LR recites that it will be maintained in petitioner's OPF which is maintained by  
11 DMV in DMV's administrative offices which are distant and apart from the offices of NMVB.

12 7. Respondents had a duty to follow the Government Code sections and other applicable  
13 law that regulate the imposition of discipline against state employees. As regards issuance and  
14 maintenance of the LR respondents failed to follow the Government Code sections and other  
15 applicable laws that regulate the imposition of discipline against state employees

16 8. At no time prior to the interrogation described above, was petitioner provided with  
17 notice that a complaint had been made against petitioner, that an investigation had been initiated  
18 relative to any complaint made against petitioner, or of any right to request and receive  
19 representation by Bargaining Unit 2 representatives relative to the complaint purportedly asserted  
20 against petitioner and its sequelae.

21 9. At no time prior to the issuance of the LR, was petitioner provided a written  
22 specification of allegations made against petitioner, or a written statement advising petitioner of  
23 the right to answer the LR orally or in writing, or a written specification of the particular facts  
24 that were alleged to support NMVB's issuance of the LR, or any notice of any right to request  
25 and receive a hearing before a neutral arbiter concerning the allegations, or any opportunity to  
26 cross-examine witnesses or present evidence relative to the allegations.



1 15. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law  
2 other than the relief sought in this petition in that the action taken against petitioner by  
3 respondents in issuing the LR and maintaining it in petitioner's OPF are without legal support.  
4 Thus, there is no specific, legally recognized means for challenging such action. And, absent the  
5 relief sought herein, respondents' conduct threatens to, and petitioner reasonably expects it to,  
6 expose petitioner to unjustified, unwanted, and annoying scrutiny, criticism, and damage.

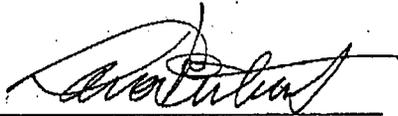
7 16. The foregoing discloses NMVB's disregard for, and constitutes NMVB's violation of  
8 petitioner's rights afforded by section 6.3 of the MOU.

9 WHEREFORE, petitioner prays,

10 1. For a hearing of this matter and that the Court issue an order commanding NMVB and  
11 DMV to remove the LR from petitioner's OPF and to not further place the LR, or any semblance  
12 of it, in petitioner's OPF, unless and until NMVB and DMV successfully comply with applicable  
13 law, for costs.

14 2. For costs and for such other relief as the Court deems just and proper.

15  
16 Dated: May 13, 2013

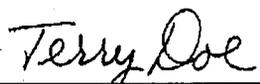
  
\_\_\_\_\_  
Dana F. Winterrowd  
Attorney for Petitioner

17  
18  
19 **Verification**

20 I, Terry Doe, am the petitioner in this proceeding. I have read the foregoing petition and  
21 know the contents. The facts stated therein are true and are within my personal knowledge.

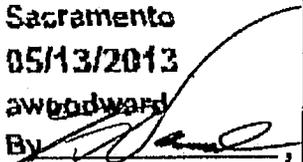
22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct of my personal knowledge.

24  
25 Dated: May 13, 2013

  
\_\_\_\_\_  
Terry Doe

1 Dana F. Winterrowd  
2 Attorney at Law, CSB#99586  
3 1812 Shelfield Dr.  
4 Carmichael, CA 95608  
5 916-768-4773

6 Attorney for Petitioner

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**05/13/2013**  
awoodward  
By , Deputy  
Case Number:  
**34-2013-80001488**

7  
8 California Superior Court  
9 Sacramento County

10  
11 Terry Doe,

12 Petitioner,

13 vs.

14 Department of Motor Vehicles, New Motor  
15 Vehicle Board, and Does 1 to 50, inclusive,

16 Respondents.

) Case No.

) Memorandum of Points and Authorities  
) in Support of Petition for Writ of  
) Mandate

17 Petitioner submits the following points and authorities in support of petitioner's petition  
18 for writ of mandate in this action.

19 **Law Defining Relationship Between Petitioner and Respondents**

20 State agencies may lawfully exercise only those powers allocated to them by law.

21 (*Aylward v. State Board, etc.* (1948) 31 Cal.2d 833, 839.)

22 In California, the terms and conditions of public employment are determined by law, not  
23 by contract. (*Miller v. State of California* (1977) 18 Cal.3d 808, 818-814.)

24 A Memorandum of Understanding (MOU) between the State and Unit 2 employees  
25 defines the terms of Unit 2 employment (hereinafter simply the "MOU"). The MOU effective  
26 April 1, 2011 to July 1, 2013, was agreed to by State representatives and representative of

27  
28 Memorandum of Points and Authorities in Support of Petition for Writ of Mandate

1 Bargaining Unit 2 on March 7, 2011. The former Department of Personnel Administration, now  
2 CalHR, submitted the MOU to the Legislative Analyst and the Members of the Legislature on  
3 March 8, 2011. The provisions of the MOU, prepared pursuant to section 3517.5 of the  
4 Government Code, were incorporated in Senate Bill 151 (SB 151) for approval for the purposes  
5 of subdivision (b) of section 3517.6 of the Government Code. Bargaining Unit 2 membership  
6 ratified the agreement on April 1, 2011. The Legislature passed SB 151 and the bill was enrolled  
7 on May 16, 2011. The Governor signed SB 151 on May 16, 2011. (Stats. 2011, ch. 25.)

### 8 **Required Discipline Procedures and Related Rights**

9 The procedure by which a permanent employee may be dismissed or otherwise  
10 disciplined is described in sections 19570 through 19589 of the Government Code. All following  
11 citations to statutes are to sections of the Government Code, unless otherwise stated.

12 The "appointing power," (in this instance NMVB) or its authorized representative, may  
13 take "adverse action" against an employee for one or more of the causes for discipline specified  
14 in section 19572.

15 Section 19570 provides in pertinent part, "... 'adverse action' means dismissal,  
16 demotion, suspension, or *other disciplinary action.*" (Emphasis added).

17 "The law provides that *all* disciplinary actions of state employees, including those  
18 involving peace officers, are to be filed with the [State Personnel ] Board." (Emphasis in  
19 original.) (Appeal of JH (2003) 03-05, State Personnel Board Case No. 01-4078, Board Decision  
20 [Precedential] No. 03-05, p.17, [http://spb.ca.gov/content/precedential/03-05%20H\\_J.pdf](http://spb.ca.gov/content/precedential/03-05%20H_J.pdf).)

21 "Adverse action" means an action taken by an appointing power to discipline an  
22 employee and includes formal reprimand, transfers for disciplinary reasons, suspension,  
23 reduction-in-salary, demotion and dismissal. (2 Cal. Code Regs. § 51.2, subd. (b).)

24 It is incumbent upon agencies, if they intend to take adverse action, to document any  
25 specific instances of misconduct, note those specific instances in the Notice of Adverse Action,  
26 and present supporting evidence of those instances at the hearing. (Appeal of Steven Richins,

1 (1994) State Personnel Board Case No. 32334, Board Decision No. 94-09;  
2 <http://spb.ca.gov/content/precedential/richins.pdf>.) An agency cannot make a case against an  
3 employee without setting forth in the Notice of Adverse Action specific instances or details  
4 which form the basis for the adverse action and proving the underlying facts by competent  
5 evidence. (Ibid.)

6 Adverse action is valid only if a written notice is served on the employee prior to the  
7 effective date of the action, as defined by rule of the State Personnel Board. The notice must be  
8 served upon the employee either personally or by mail and shall include: (a) a statement of the  
9 nature of the adverse action; (b) the effective date of the action; (c) a statement of the reasons  
10 therefor in ordinary language; (d) a statement advising the employee of the right to answer the  
11 notice orally or in writing; and (e) a statement advising the employee of the time within which an  
12 appeal must be filed. The notice must be filed with the board not later than 15 calendar days after  
13 the effective date of the adverse action. (§ 19574.)

14 If an employee is not told what acts were being punished, the employee is hampered in  
15 the employee's ability to prepare a defense. (Appeal of Leah Korman, State Personnel Board  
16 Case Nos. 29827 and 30245, Board Decision [Precedential] 91-04, p.6,  
17 <http://spb.ca.gov/content/precedential/korman.pdf> ). Without clear charges, the trier of fact is  
18 unable to determine what evidence is relevant to the reasons for the adverse action. (Ibid.) The  
19 right to be notified of the charges is a critical element in due process of law. (Ibid.)

20 As a principal basis for the Letter of Reprimand (LR) challenged in the petition herein,  
21 the LR contends that petitioner acted "discourteously." Also, the LR contends that petitioner was  
22 absent from work during hours of work dictated by NMVB, referring to such absences as  
23 "tardiness." Such a contention, could be interpreted as an allegation of "insubordination."  
24 Discourteous conduct is a ground for adverse action. (Govt. Code, § 19572, subd. (m).)  
25 Insubordination is also a ground for adverse. (Govt. Code, § 19572, subd. (e).)

26 Thus, in issuing and retaining the LR in petitioner's OPF, respondents failed to comply

---

27 Memorandum of Points and Authorities in Support of Petition for Writ of Mandate

1 with law applicable to employee discipline.

2 A state must afford due process when it attaches a "stigma" to an employment decision  
3 concerning that individual. (*Board of Regents v Roth* (1972) 408 US 564, 573.) Respondents'  
4 issuance and retention of the LR in petitioner's OPF constitutes attaching a "stigma" to an  
5 employment decision concerning petitioner in that it brand's petitioner with statements that  
6 petitioner acted discourteously toward another state employee.

7 Also, when a statutorily prescribed procedure exceeds minimum due process standards,  
8 the statute must be followed. (*People v Johnson* (1941) 42 Cal.App.2d Supp. 827, 833.) Thus,  
9 even if petitioner enjoyed no due process rights relative to issuance and retention of the LR,  
10 NMVB was constrained to follow the procedures prescribed by the Government Code relative to  
11 state employee discipline when NMVB sought to issue and retain the LR.

## 12 **Role of Applicable Law**

13 As stated in the Appeal of JH, "Removal of a disciplinary action from an employee's OPF  
14 provides a distinct benefit to the employee in the event he or she should transfer to another state  
15 agency, as it is the OPF that is provided to the future state employer upon an employee's  
16 transfer." (Appeal of JH (2003) 03-05, State Personnel Board Case No. 01-4078, Board Decision  
17 [Precedential] No. 03-05, *supra*, p.17, see also Govt. Code, § 19574.) In addition, under the  
18 opinion filed in *Marken v. Santa Monica-Malibu Unified School District, et al.* (2012) 202 Cal.  
19 App. 4th 1250 (*Marken*), if a complaint has been upheld by an agency involved or discipline  
20 imposed, even if only a private reproval, it must be disclosed in response to a California Public  
21 Records Act request. (*Marken*, 202 Cal. App. 4th at pp. 1271-1276.) Moreover, although  
22 disclosure is mandated if there has been a true finding by the agency, even without such a  
23 finding, if the information in the agency's files is reliable and, based on that information, the  
24 court can determine the complaint is well founded and substantial, it must be disclosed. (*Ibid.*)

25 Many considerations compel the requirement that public agencies abide legal  
26 requirements, including legal procedures. For example,

1 "Permitting a public agency to circumvent the established special statutory procedure by  
2 filing an ordinary declaratory relief action against a person who has not yet initiated  
3 litigation would eliminate statutory protections and incentives for members of the public  
4 in seeking disclosure of public records, require them to defend civil actions they  
5 otherwise might not have commenced, and discourage them from requesting records  
6 pursuant to the [California Public Records] Act, thus frustrating the Legislature's purpose  
7 of furthering the fundamental right of every person in this state to have prompt access to  
8 information in the possession of public agencies." (*Filarsky v. Superior Court* (2002) 28  
9 Cal.4th 419, 423.)

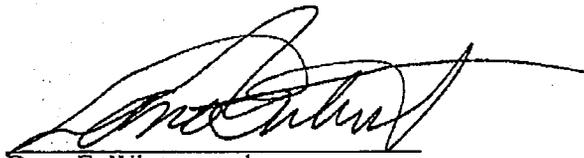
6 Similarly, in the instant case, permitting respondents to circumvent the established,  
7 specific statutory procedure for imposing discipline on state employees, by issuing the LR and  
8 maintaining the LR in petitioner's OPF outside the provisions of law, would eliminate statutory  
9 protections for state government employees and require them to file actions such as the instant  
10 action they otherwise would not need to commence, and would discourage agencies from abiding  
11 the disciplinary procedures established by law, thus frustrating the Legislature's purpose of  
12 furthering the right of every state government employee to have the protections afforded by law.

13 **Conclusion**

14 Unfortunately, respondents have a documented practice of ignoring the rights of parties  
15 before them. (See *Volkswagen Group of America v New Motor Vehicle Board, et al.*, California  
16 Superior Court, Sacramento County case number 34-2012-80001045, Ruling on Submitted  
17 Matter: Petition for Writ of Administrative Mandamus.)

18 Respondents followed that practice in their disciplinary dealings with petitioner. If the  
19 respondents seek to establish an official record of discipline against petitioner, respondents  
20 should be required to follow the law rather than resorting to the illegitimate practices disclosed in  
21 the petition filed in this action.

22  
23 Dated: May 13, 2013

  
24 Dana F. Winterrowd  
25 Attorney for Petitioner

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Department of Motor Vehicles, New Motor Vehicle Board, Does 1 to 50, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Terry Doc

FILED  
ENDORSED  
13 JUN -4 AM 8:34  
LEGAL PROCESS #3

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): California Superior Court  
Sacramento County, 720 Ninth Street, Sacramento, CA 95814

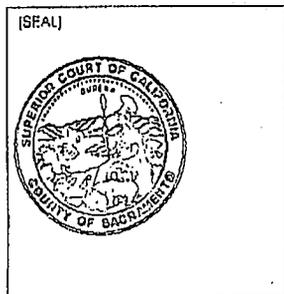
CASE NUMBER:  
(Número del Caso): 34-2013-80001488

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Dana F. Winterrowd, Esq., 1812 Sheffield Dr., Carmichael, CA 95608, Telephone: 916-768-4773

DATE: JUN - 4 2013  
(Fecha)

Clerk, by A. Macias Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 Dana F. Winterrowd  
2 Attorney at Law, CSB#99586  
3 1812 Shelfield Dr.  
4 Carmichael, CA 95608  
5 916-768-4773  
6  
7 Attorney for Petitioner  
8

FILED  
ENDORSE  
13 JUN -4 AM 8:32  
LEGAL PROCESS #3

9 California Superior Court  
10 Sacramento County

11 Terry Doe,	)	Case No. 34-2013-80001488
12                   Petitioner,	)	
13 vs.	)	First Amended
14 Department of Motor Vehicles, New Motor	)	Petition for Writ of Mandate
15 Vehicle Board, and Does 1 to 50, inclusive,	)	And Complaint
16                   Respondents.	)	

17           1. This petition concerns a state agency's extralegal imposition of a purportedly official  
18 record of discipline against a state government employee, despite that agency's failure to abide  
19 and comply with many provisions of law enacted to assure that an official record of discipline is  
20 established only pursuant to law, in a fair and impartial manner.

21           2. Terry Doe is a fictitious name for Petitioner that is used to avoid disclosure of the  
22 name associated with the above-described illegitimate record of discipline, because this petition  
23 seeks a remedy that would prevent improper retention and disclosure of that illegitimate record.  
24 Petitioner is a permanent, full-time, non-probationary employee of the New Motor Vehicle Board  
25 ("NMVB"), which is a program within the Department of Motor Vehicles ("DMV"). (See Govt.  
26 Code, § 3000, et seq.)

27 \_\_\_\_\_  
28                   First Amended Petition for Writ of Mandate and Complaint



1 that it is not an official record of discipline and therefore should not be published. At the  
2 appropriate time and under the appropriate circumstances, petitioner will submit the LR to the  
3 Court.

4 5. In pertinent part, the LR states,

5 (a) that a complaint (express as a "report" about petitioner's "conduct") was asserted  
6 against petitioner,

7 (b) the results of an investigation conducted by NMVB of the complaint,

8 (c) that NMVB concluded that petitioner,

9 (i) acted discourteously during the hours of petitioner's employment with NMVB  
10 (stating that "further violations" of "DMV's Core Values" could lead to action  
11 against petitioner based on the incident alleged in the LR and any future incident),  
12 and

13 (ii) was absent from the offices of NMVB during hours of work dictated and  
14 imposed by NMVB (though no alleged absence was alleged to have lasted eight  
15 hours or more), and

16 (d) the LR will be placed in petitioner's OPR (expressed as "cc: Employee file.").

17 6. Petitioner understands that petitioner's OPF is maintained by DMV in DMV's  
18 administrative offices which are distant and apart from the offices of NMVB.

19 7. Respondents had a duty to follow the Government Code sections and other applicable  
20 law that regulate the imposition of discipline against state employees. As regards issuance and  
21 maintenance of the LR respondents failed to follow the Government Code sections and other  
22 applicable laws that regulate the imposition of discipline against state employees

23 8. At no time prior to the interrogation of petitioner described above, was petitioner  
24 provided with notice that a complaint had been made against petitioner, that an investigation had  
25 been initiated relative to any complaint made against petitioner, or of any right to request and  
26 receive representation by Bargaining Unit 2 representatives relative to the complaint purportedly

1 asserted against petitioner and its sequelae.

2 9. At no time prior to the issuance of the LR, was petitioner provided a written  
3 specification of allegations made against petitioner, or a written statement advising petitioner of  
4 the right to answer the LR orally or in writing, or a written specification of the particular facts  
5 that were alleged to support NMVB's issuance of the LR, or any notice of any right to request  
6 and receive a hearing before a neutral arbiter concerning the allegations, or any opportunity to  
7 cross-examine witnesses or present evidence relative to the allegations.

8 10. At no time did NMVB provide petitioner with a written statement advising petitioner  
9 of the time within which an appeal of the LR must be filed.

10 11. At no time has petitioner received any notice that the LR was filed with the State  
11 Personnel Board.

12 12. The filing and retention of the LR in petitioner's OPF constitutes the functional  
13 equivalent of an official record of an adverse action, within the meaning of the Government  
14 Code, but in disregard of the rights afforded petitioner by law. Retention of the LR in petitioner's  
15 OPF constitutes NMVB's attempt to establish in petitioner's OPF an official record of discipline  
16 while NMVB avoids having to comply with, and face the scrutiny provided through, applicable  
17 law. In short, through the method of issuing the LR without meaningful review and placing the  
18 LR in petitioner's OPF, NMVB was able to smear petitioner's reputation without NMVB having  
19 to follow the law and without NMVB having to make an honest, forthright effort to present  
20 sufficient facts to support an adverse action - facts that NMVB knew did not exist. Instead,  
21 NMVB pursued a "kangaroo court" procedure where NMVB allowed a witness to conduct the  
22 semblance of an investigation and enabled NMVB's own Executive Officer to be the arbiter of  
23 all alleged facts and outcome in a matter that involved the NMVB itself and its employees.

24 13. At a meeting among Brennan, Kindle and petitioner on or about February 18, 2013,  
25 petitioner protested the issuance of the LR and protested respondents' stated intention of  
26 maintaining the LR in petitioner's OPF for three years. Respondents ignored petitioner's protest.

1 14. As such, the issuance of the LR as well as the filing and retention of the LR in  
2 petitioner's OPF, or in the records of the DMV or NMVB, constitute illegitimate, lawless acts.  
3 Were the Court to sanction the actions of NMVB and DMV complained about herein, the Court  
4 would sanction a method of lawless discipline that disregards petitioner's rights, in that the Court  
5 would enable the establishment of a lawless method of purportedly "official" discipline of a  
6 California State employee that would render essentially nugatory the existing system of lawful  
7 discipline that has been carefully crafted by the legislative and executive branches of California  
8 government.

9 15. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law  
10 other than the relief sought in this petition in that the actions taken against petitioner by  
11 respondents in issuing the LR and maintaining it in petitioner's OPF are without legal support.  
12 Thus, there is no specific, legally recognized means for challenging such action. And, absent the  
13 relief sought herein, respondents' conduct threatens to, and petitioner reasonably expects it to,  
14 expose petitioner to unjustified, unwanted, and annoying scrutiny, criticism, and damage.

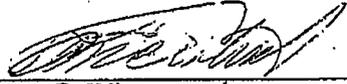
15 16. The foregoing also discloses NMVB's disregard for, and constitutes NMVB's  
16 violation of petitioner's rights afforded by section 6.3 of the MOU:

17 WHEREFORE, petitioner prays,

18 1. For a hearing of this matter and that the Court issue an order commanding NMVB and  
19 DMV to remove the LR from petitioner's OPF and to not further place the LR, or any semblance  
20 of it, in petitioner's OPF or in any records of NMVB or DMV, unless and until NMVB and  
21 DMV successfully comply with applicable law.

22 2. For costs and for such other relief as the Court deems just and proper.

23  
24 Dated: June 3, 2013

  
25 Dana F. Winterrowd  
26 Attorney for Petitioner

27 \_\_\_\_\_  
28 First Amended Petition for Writ of Mandate and Complaint

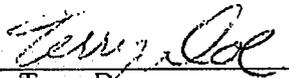
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**Verification**

I, Terry Doe, am the petitioner in this proceeding. I have read the foregoing petition and know the contents. The facts stated therein are true and are within my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my personal knowledge.

Dated: June 3, 2013

  
\_\_\_\_\_  
Terry Doe