



***EXECUTIVE
DIRECTOR'S
REPORT***

December 11, 2014

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<p>1. <u>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> Nicole Angulo; Administration Committee</p>	<p>Annually letters are 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.</p>	<p>January 2015</p>	<p>In progress. A status report concerning manufacturer and distributor compliance will be presented at the January 2015, General Meeting.</p>
<p>2. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee</p>	<p>Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.</p>	<p>January 2015</p>	<p>In progress. The revised Guide will be presented at the January 2015, General Meeting.</p>
BOARD DEVELOPMENT COMMITTEE			
<p>1. <u>Schedule Board Member Education Presentations</u> Robin Parker; Board Development Committee</p>	<p>Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.</p>	<p>December 2014</p>	<p>In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the December 11, 2014, General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Solon C. Soteris Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	July 2014	<u>Completed</u> At the July 15, 2014, General meeting, the members of the Board selected Eugene Ohta as the recipient of the Solon C. Soteris Employee Recognition Award.
FISCAL COMMITTEE			
<u>1. Quarterly Fiscal Reports</u> Dawn Kindel, Suzanne Luke; 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 2013-2014 were presented at the November 13, 2013, and April 9 and July 15, 2014, General Meetings. The 4 th quarter report is scheduled for the December 11, 2014, General Meeting.
<u>2. Report Concerning Out- of-State Travel Plans</u> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2015-2016.	December 2014	In progress. A report will be presented for consideration at the December 11, 2014, 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, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	July 2014	<u>Completed</u> At the July 15, 2014, General Meeting, the members were provided with an update concerning the collection of fees for the ACP.
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed Budget for fiscal year 2014-2015.	July 2014	<u>Completed</u> The 2014-2015 Budget of \$1.7 million was adopted by the Board at the July 15, 2014, General Meeting.
<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.	July 2014	<u>Completed</u> At the July 15, 2014, 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			
1. <u>Host Industry Roundtable</u> Bill Brennan, Dawn Kindel, Danielle Vare; 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 2015	In progress. The Roundtable is scheduled for March 26, 2015, in Sacramento.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Participant Surveys for Industry Roundtable</u> Dawn Kindel; Government and Industry Affairs Committee	Based upon the feedback provided at the Industry Roundtable in the surveys, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	July 2014	<u>Completed</u> A memorandum concerning the Roundtable was presented for information at the July 15, 2014, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Robin Parker, Danielle Vare; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	December 2014	In progress. A report on the assignment of cases to Board ALJs will be presented at the December 11, 2014, General Meeting.
2. <u>Revise Proposed Regulation Pertaining to Sanctions – Bad Faith Actions</u> Robin Parker; Policy and Procedure Committee	At the February 4, 2014, General Meeting, the members adopted proposed regulatory amendments to Section 551.21, which clarify that sanctions could also be ordered by the Board in addition to the ALJ. Before proceeding with the approved regulatory amendments, the staff asked ALJ Skrocki to review the text of the regulation and make suggestions to address the ambiguities encountered in the <i>McConnell</i> motion.	December 2014	In progress. Proposed text will be considered at the December 11, 2014, General Meeting.
3. <u>Annual Rulemaking Calendar</u> Robin Parker; Policy & Procedure Committee	Consideration of the annual rulemaking calendar.	December 2014	In progress. The 2015 Rulemaking Calendar will be considered at the December 11, 2014, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p>4. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>Informational Guide for Manufacturers and Distributors</i>.</p>	<p>January 2015</p>	<p>In progress. The updated Guide will be considered at the January 2015, General Meeting.</p>
<p>5. <u>Promulgate Proposed Regulations that Pertain to Case Management</u> Robin Parker; Policy and Procedure Committee</p>	<p>In compliance with the Administrative Procedure Act, amend sections 550, 551.2, and 551.21, and add section 551.22 of Title 13 of the California Code of Regulations.</p>	<p>July 2015</p>	<p>In Progress. The proposed text was approved at the February 4, 2014, meeting. Revisions to section 551.21 scheduled for the July 15, 2014, General Meeting, were postponed until the December 11, 2014, meeting.</p>
<p>6. <u>Promulgate Proposed Regulations that Pertain to Administrative Law Judges; Peremptory Challenges</u> Robin Parker; Policy and Procedure Committee</p>	<p>In compliance with the Administrative Procedure Act, amend section 551.12 of Title 13 of the California Code of Regulations.</p>	<p>July 2015</p>	<p>In Progress. The proposed text was approved at the February 4, 2014, General Meeting. The staff is trying to get feedback from DMV and OAH prior to proceeding with this rulemaking.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Benchbook</i> .	July 2014	<u>Completed</u> At the July 15, 2014, General Meeting, the members adopted the revised Benchbook.
<u>Promulgate Proposed Regulations to Increase the Annual Board Fee</u> Robin Parker; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, the Board initially sought to amend Section 553 to increase the Annual Board Fee per manufacturer or distributor to \$.60 per vehicle with a minimum of \$300 if 1-250 vehicles were distributed and \$450 if 251-806 vehicles were distributed and the dealer fee to \$400. Conforming changes to Section 553.20 would also be made. However, after receiving feedback from the Department of Finance on several occasions, the Board ultimately sought a \$0.50 per vehicle fee for manufacturers or distributors, with a \$350 minimum fee, and a fee of \$350 for dealers per each year of licensure.	October 2014	<u>Incomplete</u> The notice was published on October 25, 2013. After receiving approvals from the DMV Budget Office and CalSTA, the Department of Finance would not approve the proposed rulemaking so it expired having not been submitted to OAL within one year of the date of the notice.
EXECUTIVE COMMITTEE			

B.
CASE
MANAGEMENT

CASE VOLUME

JULY 2, 2014, THROUGH NOVEMBER 21, 2014

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	7	3	18
3060	Modification	1	0	1
3062	Establishment	2	4	0
3062	Relocation	0	1	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	0
3065.1	Incentive Program Reimbursement	8	0	8
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		18	8	27

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd Mtg	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	MSC	Mandatory Settlement Conference
MTCP	Motion to Compel	MTCN	Motion to Continue
MTD	Motion to Dismiss	PD	Proposed Decision
PHC	Pre-Hearing Conference	POS	Proof of Service
RPHC	Resumption of Pre-Hearing Conference	RFD	Request for Dismissal
PSDO	Proposed Stipulated Decision and Order	RROB	Resumption of Ruling on Objections
RMH	Resumed Merits Hearing	ROB	Ruling on Objections
RSC	Resumed Status Conference	SC	Status Conference
* Consolidated, non-lead case			

Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2306-11 6-7-11	RSC 11-25-14 Parties working on Settlement	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan, Gavin Hughes R: Colm Moran, David Skaar	Termination
2. PR-2348-12 10-12-12	RPHC 12-2-14	West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors LLC	P: Mike Flanagan, Gavin Hughes R: Greg Oxford	Termination
3. PR-2359-13 1-22-13	IFU 11-26-14 Re: Waiting for dismissal	Napa Chrysler, Inc. dba Napa Kia v. Kia Motors America, Inc.	P: Larry Miles, Brady McLeod R: Colm Moran	Termination
4. PR-2374-13 9-26-13	HRC: 4-24-15 MH: 5-25-15 (5 days)	Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.	P: Mike Flanagan, Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination
5. PR-2381-13* 11-25-13	HRC: 4-24-15 MH: 5-25-15 (5 days)	Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.	P: Mike Flanagan, Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
6. PR-2386-14 4-2-14	MTD pending HRC: 1-19-15 MH: 2-9-15 (10 days)	Santa Monica Auto Group dba Santa Monica Infiniti v. Infiniti Division, Nissan North America, Inc.	P: Michael Flanagan, Gavin Hughes R: Marjorie Lewis	Termination
7. PR-2389-14 4-14-14	HRC: 1-16-15 MH: 2-17-15 (7 days)	McPeek's Dodge of Anaheim v. Chrysler Group, LLC (Dodge)	P: Alton Burkhalter, Ros M. Lockwood R: Ryan Mauck, Randall L. Oyler, Rachael Trummel	Termination
8. PR-2390-14* 4-14-14	HRC: 1-16-15 MH: 2-17-15 (7 days)	McPeek's Dodge of Anaheim v. Chrysler Group, LLC (Ram)	P: Alton Burkhalter, Ros M. Lockwood R: Ryan Mauck, Randall L. Oyler, Rachael Trummel	Termination
9. PR-2391-14 4-17-14	IFU 12-2-14 Parties working on Settlement	Freeman Motors, dba Freeman Toyota v. Toyota Motor Sales, U.S.A., Inc. (Lexus)	P: Michael Sieving R: Steven McKelvey, Steven McFarland	Termination
10. PR-2392-14* 4-17-14	IFU 12-2-14 Parties working on Settlement	Freeman Motors, dba Freeman Toyota v. Toyota Motor Sales, U.S.A., Inc. (Toyota)	P: Michael Sieving R: Steven McKelvey, Steven McFarland	Termination
11. PR-2394-14 4-22-14	Motion Hearing Re: MTD 11-21-14	San Jose Yamaha Powersports v. Yamaha Motor Corporation, U.S.A.	P: John Masi R: Colm Moran	Termination
12. PR-2395-14 7-15-14	Discovery Motion Hearings: 12-9-14 HRC: 2-9-15 MH: 3-9-15 (10 days)	West Coast Acquisitions, LLC dba Bentley San Diego v. Bentley Motor, Inc.	P: Michael Flanagan, Gavin Hughes R: Ryan Mauck, Roger Stetson	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
13. PR-2396-14 7-15-14	Discovery Motion Hearings: 12-9-14 HRC: 2-9-15 MH: 3-9-15 (10 days)	West Coast Acquisitions, LLC dba Bugatti San Diego v. Bugatti Automobiles USA, Inc.	P: Michael Flanagan, Gavin Hughes R: Ryan Mauck, Roger Stetson	Termination
14. PR-2397-14 7-15-14	Discovery Motion Hearings: 12-9-14 HRC: 2-9-15 MH: 3-9-15 (10 days)	West Coast Acquisitions, LLC dba Symbolic Motor Car Company dba Lamborghini San Diego v. Automobili Lamborghini America, LLC	P: Michael Flanagan, Gavin Hughes R: Ryan Mauck, Roger Stetson	Termination
15. PR-2398-14 8-4-14	HRC: 2-13-15 MH: 3-16-15 (5 days)	TEC of California, Inc. dba Oakland GMC v. General Motors, LLC	P: Aaron Jacoby, Victor Danhi R: Greg Oxford, Brian Cullin	Termination
16. PR-2399-14 8-7-14	MSC: 1-15-15 HRC: 4-17-15 MH: 5-18-15 (5 days)	Surf City Auto Group, Inc. d/b/a Huntington Beach Chrysler Dodge Jeep Ram v. Chrysler Group, LLC (Ram)	P: Alton Burkhalter Ros Lockwood R: Mark T. Clouatre, John P. Strelman, Robert E. Davies	Incentive Program Reimbursement
17. PR-2400-14 8-11-14	MSC: 1-15-15 HRC: 4-17-15 MH: 5-18-15 (5 days)	Surf City Auto Group, Inc. d/b/a Huntington Beach Chrysler Dodge Jeep Ram v. Chrysler Group, LLC (Chrysler)	P: Alton Burkhalter, Ros Lockwood R: Mark T. Clouatre, John P. Strelman, Robert E. Davies	Incentive Program Reimbursement
18. PR-2401-14 8-11-14	MSC: 1-15-15 HRC: 4-17-15 MH: 5-18-15 (5 days)	Surf City Auto Group, Inc. d/b/a Huntington Beach Chrysler Dodge Jeep Ram v. Chrysler Group, LLC (Jeep)	P: Alton Burkhalter Ros Lockwood R: Mark T. Clouatre, John P. Strelman, Robert E. Davies	Incentive Program Reimbursement

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
19. PR-2402-14 8-11-14	MSC: 1-15-15 HRC: 4-17-15 MH: 5-18-15 (5 days)	Surf City Auto Group, Inc. d/b/a Huntington Beach Chrysler Dodge Jeep Ram v. Chrysler Group, LLC (Dodge)	P: Alton Burkhalter Ros Lockwood R: Mark T. Clouatre, John P. Strelman, Robert E. Davies	Incentive Program Reimbursement
20. PR-2403-14 8-11-14	ROB: 1-6-15 MSC: 1-28-15 HRC: 2-19-15 MH: 3-9-15 (5 days)	Downtown Auto Center dba Downtown Subaru v. Subaru of America, Inc.	P: Michael Sieving R: Mo Sanchez, Lisa Gibson	Termination
21. PR-2405-14 8-15-14	Motion for Reconsideration pending PHC: 12-4-14	Fun Bike Center v. Bombardier Recreational Products, Inc. ; BRP US Inc.	P: Michael Sieving R: R. Bryan Martin	Modification
22. PR-2406-14* 8-18-14	MTD pending HRC: 1-19-15 MH: 2-9-15 (10 days)	Santa Monica Auto Group dba Santa Monica Infiniti v. Infiniti Division, Nissan North America, Inc.	P: Michael Flanagan, Gavin Hughes R: Marjorie Lewis	Termination
23. PR-2407-14 10-22-14	IFU on dates: 12-3-14 MH: 4-27-15 (5 days)	H.W. Hunter, Inc., dba Hunter Dodge Chrysler Jeep v. Chrysler Group, LLC (Chrysler)	P: Michael Flanagan, Gavin Hughes R: Mark Clouatre, Gwen Young, Robert Davies	Incentive Program Reimbursement
24. PR-2408-14* 10-22-14	IFU on dates: 12-3-14 MH: 4-27-15 (5 days)	H.W. Hunter, Inc., dba Hunter Dodge Chrysler Jeep v. Chrysler Group, LLC (Jeep)	P: Michael Flanagan, Gavin Hughes R: Mark Clouatre, Gwen Young, Robert Davies	Incentive Program Reimbursement

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
25. PR-2409-14* 10-22-14	IFU on dates: 12-3-14 MH: 4-27-15 (5 days)	H.W. Hunter, Inc., dba Hunter Dodge Chrysler Jeep v. Chrysler Group, LLC (Dodge)	P: Michael Flanagan, Gavin Hughes R: Mark Clouatre, Gwen Young, Robert Davies	Incentive Program Reimbursement
26. PR-2410-14* 11-4-14	IFU on dates: 12-3-14 MH: 4-27-15 (5 days)	H.W. Hunter, Inc., dba Hunter Dodge Chrysler Jeep v. Chrysler Group, LLC (Ram)	P: Michael Flanagan, Gavin Hughes R: Mark Clouatre, Gwen Young, Robert Davies	Incentive Program Reimbursement
27. PR-2412-14	PHC 12-5-14	DCH Korean Imports LLC, dba DCH Kia of Temecula v. Kia Motors America, Inc.	P: Halbert Rasmussen	Termination

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. NISSAN NORTH AMERICA, INC. v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; SANTA CRUZ NISSAN, INC. dba SANTA CRUZ NISSAN, Real Party In Interest
California Superior Court, Sacramento County Case No. 34-2014-80001963
New Motor Vehicle Board No. CRT-269-14
Protest No. PR-2358-13

At the July 15, 2014, General Meeting, the Public Members conditionally sustained the protest and remanded the matter to the ALJ to recommend conditions for the Board to impose consistent with Vehicle Code section 3067 and establish a time frame for Santa Cruz Nissan to comply with these conditions. The parties were encouraged to engage in settlement discussions and participated in a mandatory settlement conference with ALJ Merilyn Wong; however, the matter did not settle.

After the August 26 hearing on remand, ALJ Woodward Hagle issued a "Proposed Decision Following Board's Order Sustaining the Protest and Remanding the Matter". The decision recommended conditions and incorporated the Proposed Decision dated July 3, 2014. At the September 17, 2014, Special Meeting, the Public Members of the Board adopted the ALJs Proposed Decision and recommended conditions with one minor amendment due to a typographical error.

On October 31, 2014, Nissan North America, Inc. ("Nissan") filed a petition for writ of administrative mandate. Nissan contends that the Board's actions in adopting the Proposed Decision after Remand exceeded its jurisdictional authority and constitute: (1) an abuse of discretion because the Board's Decision is not supported by the evidence; (2) the Decision is not supported by the findings; (3) the Decision erroneously found that Nissan had not met its burden; (4) the Board unlawfully adopted an unwritten policy or "per se rule" that it will not overrule a termination protest for poor sales performance alone; and (5) the Board did not proceed in the manner required by law under Vehicle Code section 3067. Nissan requests the Board set aside and vacate its Decision dated September 17, 2014, and adopt and issue a new decision overruling the protest.

Glenn Stevens, Board President, determined that there is a State interest at issue in the writ so the Board will participate via the Attorney General's Office. This matter is agendaized for discussion by the Public Members at the December 11, 2014, General Meeting. Matt Kubicek, Deputy Attorney General, has been assigned to represent the Board.

2. CAPACITY OF TEXAS, INC. v. NEW MOTOR VEHICLE BOARD, a California State Administrative Agency; GUARANTEED FORKLIFT, INC. DBA GFL, INC., Real Party In Interest

California Superior Court, Sacramento County Case No. 34-2014-80001848
New Motor Vehicle Board No. CRT-268-14
Protest No. PR-2361-13

At the Board's regularly scheduled meeting on April 9, 2014, the Public members by a two-to-one vote with one dissent sustained the protest filed by Guarantee Forklift, Inc. dba GFL, Inc. ("GFL").

On May 28, 2014, Capacity of Texas, Inc. ("Capacity") filed a petition for writ of administrative mandamus. Capacity contends that the August 13, 2013, Order issued by ALJ Skrocki denying Capacity's motion to dismiss constitutes an error of law. It further contends that the Board "...in sanctioning the Order Denying Capacity's Motion to Dismiss...and in adopting the Proposed Decision of ALJ Pipkin by majority vote, has proceeded in excess of its jurisdiction and has committed several substantial errors of law." Lastly, Capacity maintains that the Board "...in adopting the Proposed Decision, committed a prejudicial abuse of discretion in that the Board's Decision is not supported by the findings, and the findings are not supported by substantial evidence."

Glenn Stevens, Board President, has been determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

GFL filed its answer around June 30, 2014. *The hearing scheduled for March 27 was continued to May 1, 2015, for the convenience of the court.*

3. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001301
New Motor Vehicle Board Case No. CRT-264-12
Protest No. PR-2201-10

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahon's RV (Mega) [Protest No. PR-2201-10 (Colton/Irvine)]. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest. The Board found that Roadtrek Motorhomes, Inc. (Roadtrek) was statutorily barred from modifying the franchise of Mega RV for its Irvine location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused

its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2201-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange. All further reporting of this case will be made under CRT-258-12, below.

4. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.
California Superior Court, Sacramento County Case No. 34-2012-80001300
New Motor Vehicle Board Case No. CRT-263-12
Protest No. PR-2199-10

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members, decided to sustain the protest filed by Protestant. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Colton location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2199-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (e) grant Roadtrek such

other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

5. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP. d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-00130525
New Motor Vehicle Board Case No. CRT-261-12
Protest No. PR-2233-10

Protestant Mega filed protest number PR-2233-10, with the Board on May 11, 2010. The protest alleged that Roadtrek failed to give Mega and the Board timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in Colton, California in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances. On July 30, 2012, following a hearing on the merits of the protest, Judge Hagle issued a "Proposed Decision" sustaining Mega's protest. Judge Hagle found that Roadtrek failed to give Mega timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County, seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2233-10 is not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest No. PR-2233-10, (d) award Roadtrek its costs,

and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

6. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001280;
New Motor Vehicle Board Case No. CRT-260-12
Protest Nos. PR-2205-10, PR-2211-10 and PR-2212-10

Protestant Mega filed Protest No. PR-2205-10 with the Board on February 9, 2010 and Protest Nos. PR-2211-10 and PR-2212-10 on February 18, 2010. The protests alleged that Roadtrek failed to fulfill an agreement with Mega to pay Mega's claims under the terms of Roadtrek's franchisor incentive program. On July 26, 2012, following a hearing on the merits of the protest, Judge Hagle issued a "Proposed Decision" sustaining Mega's protests. Judge Hagle found that Roadtrek had failed to fulfill obligations to Mega relative to "franchisor incentive program" claims and that Roadtrek had not timely and appropriately paid approved claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

On October 1, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest Nos. PR-2205-10, PR-2222-10 [sic], and PR-2212-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

7. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001281
New Motor Vehicle Board Case No. CRT-259-12
Protest Nos. PR-2206-10, PR-2208-10 and PR-2209-10

Protestant Mega filed Protest No. PR-2206-10 with the Board on February 9, 2010 and filed Protest Nos. PR-2208-10 and PR-2209-10 with the Board on February 18, 2010. The protests alleged that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing. On July 25, 2012, Judge Hagle issued a "Proposed Decision" sustaining Mega's protests. Judge Hagle concluded that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing, that Roadtrek had failed to provide appropriate notice of its purported approval or disapproval of warranty claims, and that Roadtrek had failed to timely and appropriately pay approved warranty claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

8. MEGA RV CORP, a California corporation doing business as MCMAHON'S RV, Petitioner v. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA, Respondent, ROADTREK MOTORHOMES, INC., Real Party in Interest.
California Court of Appeal, Fourth District, Division 3, Case No. G049534 and G049781
California Superior Court, Orange County Case No. 30-2012-00602460-CU-WM-CJC
New Motor Vehicle Board Case No. CRT-258-12
Protest Nos. PR-2244-10 and PR-2245-10

Protestant Mega filed Protest Nos. PR-2244-10 and PR-2245-10 with the Board on July 13, 2010. The protests alleged that Roadtrek violated Vehicle Code section 3070 and should not be permitted to terminate Mega's franchises at its California dealership locations in Scotts Valley (PR-2245-10) and in Colton and Irvine (PR-2244-10).

On July 24, 2012, Administrative Law Judge Anthony M. Skrocki issued a proposed order granting Roadtrek's motion to dismiss Protest No. PR-2245-10. Judge Skrocki concluded that, in light of the circumstances, including the fact that Mega's dealership location in Scott's Valley had not been in operation for over one year and was unlikely to reopen, any decision by the Board on the merits of the protest would not be meaningful and would not effectuate relevant legislative intent.

On July 30, 2012, Judge Hagle issued a "Proposed Decision" overruling Protest No. PR-2245-10. Judge Hagle concluded that the protest was not viable relative to the Irvine location, inasmuch as Mega had closed that dealership location, relocated the dealership to Westminster, California, and there was no franchise for Mega to sell Roadtrek vans from the Westminster dealership. Judge Hagle also concluded that Roadtrek had established good cause to terminate the Roadtrek franchise of Mega at Colton, California.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision and Judge Skrocki's Proposed Order as the Board's final decisions.

On October 2, 2012, Mega filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Orange County (the Court). The petition seeks a

judgment (i.e., writ of mandate), that would, (1) direct and compel the Board to set aside its decisions in Protest Nos. PR-2244-10 and PR-2245-10 dated August 23, 2012, (2) require the Board to sustain those protests and preclude the proposed termination of Mega's Roadtrek franchises with addresses in Colton and Irvine, California, (3) grant Mega an immediate stay of enforcement of the Board's decisions relative to Protest Nos. 2244-10 and 2245-10, (4) order the Board to take no further action relative to the protests pending resolution of the writ petition, (5) award petitioner its costs, and (6) order such other relief as the court may consider just and proper.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the California Superior Court for the County of Sacramento ordered, (a) consolidation, for all purposes, of that court's cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, (b) case number 34-2012-80001280 designated as the lead case, and (c) transfer of the consolidated cases to the Superior Court of California for the County of Orange for consolidation with the instant case - No. 30-2012-00602460-CU-WM-CJC.

In November 2012, Mega requested that the Court issue a Temporary Restraining Order (TRO) staying the operative effect of the Board's Decision. Roadtrek opposed the request and the Court denied the request, without prejudice in the event Mega wished to present the issue in a noticed motion. Mega filed such a motion. On December 14, 2012, the Court heard the motion and took the matter under submission.

On December 19, 2012, Roadtrek's writ petitions were transferred to the Orange County Superior Court. However, the Orange County Superior Court assigned these matters with a different case number, 30-2013-00624042-CU-PT-CJC, and assigned the case to Department C18. On January 17, 2013, Roadtrek filed a Notice of Related Case to inform the Court that a related case is already assigned to Department C20.

On January 16, 2013, Judge David Chaffee, presiding in Department C20 of the Superior Court for the County of Orange, issued a written order denying Mega's motion to temporarily stay enforcement of the Board's "order/decision" with regard to Protest Nos. PR-2244-10 and PR-2245-10 pending the Court's resolution of Mega's Petition for Writ of Administrative Mandamus relative to the same matters. The disputed legal issue pertaining to the motion for temporary stay was whether Code of Civil Procedure (CCP) section 1094.5, subds. (g) or (h) applied. The Court stated that section 1094.5, subd. (g), "allows a stay to be granted as long as the stay is not against the public interest." However, section 1094.5, subd. (h), "requires that, before a stay can be granted, the moving party must show not only that the stay is not against the public interest, but also that the state agency is unlikely to prevail ultimately on the merits."

Although the Court found that Mega, "made a convincing statutory construction argument, contending that the NMVB decisions at issue satisfy the criteria of CCP

[section] 1094.5 (h)(1) because they fall under the definition of an 'administrative order or decision of ... [a] state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act ...' and that the decisions at issue satisfy the criteria set forth in CCP [section] 1094.5 (h)(2) because 'the agency ... adopted the proposed decision of the administrative law judge in its entirety,'" the Court ultimately ruled that a stay is inappropriate, based on the facts unique to this dispute.

The Court ruled against a stay, finding that a stay of the Board's decision "would be against the public interest." The Court noted, "the public's interest is best served by preservation of the status quo. The status quo is that Mega has not been operating as a Roadtrek dealership since the end of 2009, while Mike Thompson RV ("MTRV") in Colton has been doing so continuously since March 2010." The Court found that the stay would be against the public interest because "it increases Mega RV's ability to revive and leverage rights that, for all intents and purposes, became dormant approximately 3 years ago."

The Court noted Mega's concern that Roadtrek will attempt to enfranchise a new Roadtrek dealership before Mega's writ petition is decided. However, the Court also noted that "in light of the fact that Mega RV has not been operating as a Roadtrek dealer for the last 3 years, this does not seem to be a valid reason for implementing a stay."

The Court also found that Mega did not satisfy the requirement under CCP section 1094.5, subd. (h) that the state agency is unlikely to prevail ultimately on the merits. Mega argued that the Board, "purportedly proceeded in excess of jurisdiction." However, the Court found that Mega failed to "lay any foundation explaining the applicable standards and legal implications of these purported errors."

On March 1, 2013, Judge DiCesare (Department C-18) held a Case Management Conference (CMC) in case number 30-2013-00624042 (the Roadtrek petitions). Judge DiCesare continued the CMC to April 19. Judge DiCesare said that he would review the related case notice and talk to Judge Chaffee (Department C-20) about the issues relative to the consolidation of this case (number 30-2012-00602460) with the case concerning the Roadtrek petitions (number 30-2013-00624042) Judge DiCesare suggested that the CMC scheduled for April 19 would be taken off-calendar if the Roadtrek petitions case was transferred to Judge Chaffee.

At a Case Management Conference in the instant case on March 6, 2013, before Judge Chaffee in Department C-20, Judge Chaffee confirmed that case number 30-2013-00624042-CU-PT-CJC (the Roadtrek petitions) had been transferred to his Department (C-20) and had been consolidated with the instant case (number 30-2012-00602460). To clarify matters, Judge Chaffee stated that the two cases are deemed related so they will retain their original court case numbers (30-2012-00602460-CU-WM-CJC and 30-2013-00624042-CU-PT-CJC), thus any pleadings filed with the court should reference both case numbers, and as a result all dates scheduled in Department C-18 have been taken off-calendar.

Judge Chaffee gave parties until March 25, 2013, to file a stipulated briefing schedule, and set the hearing for: Tuesday, October 15, 2013, at 9:00 a.m. The parties agreed to the following briefing schedule: Roadtrek's opening brief shall be filed and served by June 17, 2013; Mega's opposition brief shall be filed and served by August 16, 2013. Roadtrek's reply brief shall be filed and served by September 16, 2013.

On March 6, 2013, the Board received notice of Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in protest numbers PR-2199-10 and PR-2201-10. Following the hearing of the motion on April 12, 2013, and on April 24, 2013, the Court issued its final ruling on the motion, granting Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in Protest Nos. PR-2199-10 and PR-2201-10, including the Board's referral for an investigation to the Department of Motor Vehicles.

This matter has been fully brief and oral arguments were presented on October 15, 2013. The Judge issued detailed tentative rulings at the beginning of the oral arguments. The tentative rulings are to DENY each of the petitions, with some slight caveats.

On December 18, 2013, Judge Chaffee issued a Minute Order denying all of the writs. On January 7, 2014, the court entered its judgment on the petitions for writ of mandate.

On January 15, 2014, Roadtrek filed a Notice of Appeal. On January 16, 2014, Roadtrek also filed a motion to stay enforcement of the modification decisions. Any opposition to the motion was due no later than January 27. On January 31, 2014, the Appellate Court granted Roadtrek's request for an immediate stay of the Board's modification decisions with respect to Protest Nos. PR-2199-10 and PR-2201-10.

On March 14, 2014, Mega RV Corp. filed a Notice of Appeal. On April 11, 2014, counsel stipulated to consolidate both appeals for purposes of briefing, oral argument, and decision. *On May 14, 2014, the court granted Roadtrek's motion to consolidate. The following briefing schedule was established:*

- *June 18, 2014, Roadtrek's opening brief and appendix (filed)*
- *August 4, 2014, Mega RV's combined cross-appellant's opening brief and respondent's brief (matter stayed prior to filing)*
- *September 18, 2014, the NMVB's respondent's brief as to both appeals.*
- *September 25, 2014, Roadtrek's combined appellant's reply brief and cross-respondent's brief if the Board does not file a brief [due 52 days from the filing of Mega RV's combined brief on August 4 or the Board's brief, whichever is later].*
 - *November 10, 2014, Roadtrek's combined appellant's reply brief and cross-respondent's brief if the Board files a brief*
- *November 13, 2014, Mega RV's combined cross-appellant's reply brief if the Board does not file a brief.*

- *December 29, 2014, Mega RV's combined cross-appellant's reply brief if the Board files a brief.*

The Board does not anticipate filing any briefs in response thereto but will monitor the filings along with Deputy Attorney General KC Jones.

On June 16, 2014, Mega RV Corp filed for Chapter 11 Bankruptcy, United States Bankruptcy Court, Central District. On July 28, 2014, the court stayed the appeals. An update was submitted to the court on October 27, 2014, indicating the matter is proceeding through bankruptcy.

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

JULY 2, 2014 THROUGH NOVEMBER 21, 2014

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	16	CHRYSLER	
FERRARI		FERRARI	
FORD		FORD	
GM	1	GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	1
HYUNDAI		HYUNDAI	
INFINITI	1	INFINITI	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA	1	KIA	1
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	
PORSCHE	25	PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU	1	SUBARU	
SUZUKI	47	SUZUKI	1
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA	1	YAMAHA	
MISCELLANEOUS	3	MISCELLANEOUS	
TOTAL	96	TOTAL	3