



***EXECUTIVE
DIRECTOR'S
REPORT***

February 10, 2016

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<u>1. Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074 and 3065/3075 (Filing of Statutorily Required Schedules and Formulas)</u> Danielle Vare; Administration Committee	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.	February 2016	In progress. A status report concerning manufacturer and distributor compliance will be presented at the February 10, 2016, General Meeting.
<u>2. Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2016	In progress. The revised Guide will be presented at the February 10, 2016, General Meeting.
<u>3. Translation of the Consumer Mediation Services Portion of the Board’s Website into other Languages</u> Dawn Kindel; Administration Committee	Consider the feasibility and necessity of translating the portion of the Board’s website pertaining to the Consumer Mediation Services Program into other languages besides English and Spanish.	February 2016	In Progress. An update concerning the feasibility and necessity will be provided at the February 10, 2016, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
BOARD DEVELOPMENT COMMITTEE			
1. <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.	June 2016	In progress. The Committee will select a nominee for the Board to consider at the June 2016, General Meeting.
<u>Schedule Board Member Education Presentations</u> Danielle Vare; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	November 2015	<u>Completed</u> A schedule of topics and speakers for Board member education was presented at the November 12, 2015, General Meeting.
<u>Host Board Administrative Law Judge Roundtable</u> Robin Parker, Danielle Vare, Board Development Committee	Host a Board Administrative Law Judge (“ALJ”) Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	January 2016	<u>Completed</u> The ALJ Roundtable was held on January 12, 2016.
FISCAL COMMITTEE			
1. <u>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 , 3 rd , and 4 th quarter reports for fiscal year 2015-2016 are scheduled for February 10, 2016, March 16, 2016, June 2016, and December 2016.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>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 2016-2017.	February 2016	In progress. A report will be presented for consideration at the February 10, 2016, General Meeting.
3. <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.	June 2016	In progress. A status report will be provided at the June 2016, General Meeting.
4. <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 2016-2017.	June 2016	In progress. The 2016-2017 Budget will be presented at the June 2016, General Meeting.
5. <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.	June 2016	In progress. A memorandum will be presented at the June 2016, General Meeting.
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 2016	In progress. The Roundtable is scheduled for March 17, 2016, in Sacramento.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <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.	June 2016	In progress. The surveys will be handed out at the Roundtable. A memorandum summarizing the feedback will be presented at the June 2016, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2016	In progress. The updated Guide will be considered at the February 10, 2016, General Meeting.
2. <u>Draft Export or Sale-For-Resale Prohibition Policy Guide</u> Robin Parker; Policy and Procedure Committee	Draft an <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	February 2016	In progress. The Guide will be considered at the February 10, 2016, General Meeting.
3. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Danielle Vare; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	February 2016	In progress. A report on the assignment of cases to Board ALJs will be presented at the February 10, 2016, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
4. <u>Annual Rulemaking Calendar</u> Danielle Vare; Policy & Procedure Committee	Consideration of the annual rulemaking calendar.	February 2016	In progress. The 2016 Rulemaking Calendar will be considered at the February 10, 2016, General Meeting.
5. <u>Promulgate Non-Substantive Regulations that Implement Assembly Bills 759 and 1178</u> Danielle Vare; Policy & Procedure Committee	In compliance with the Administrative Procedure Act, incorporate the new provisions in Articles 5 (RV protests) and 6 (Association protests) in the text and/or authority and reference in Sections 551.8, 551.12, 553.40, 590, 591 and 592. These changes are non-substantive.	February 2016	In progress. The Board approved the text at the November 12, 2015, General Meeting. The Rulemaking package was sent to CalSTA for approval on January 19, 2016.
6. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Administrative Law Judge's Benchbook</i> .	February 2016	In progress. The revised ALJ Benchbook will be considered at the February 10, 2016, General Meeting.
7. <u>Promulgate Proposed Regulations that Implement Assembly Bill 1178</u> Danielle Vare; Policy & Procedure Committee	In compliance with the Administrative Procedure Act, amend the definitions of protest and protestant (13 CCR § 550) to reflect export or sale-for-resale prohibition policy protests filed by an association, as defined, in Article 6.	June 2016	In progress. The Board approved the text at the November 12, 2015, General Meeting. The Rulemaking package was sent to CalSTA for approval on January 21, 2016.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Promulgate Proposed Regulations that Pertain to Sanctions</u> Robin Parker, Danielle Vare; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend section 551.21 of Title 13 of the California Code of Regulations. The proposed text was approved at the February 4, 2014, meeting. Revisions to section 551.21 were adopted at the December 11, 2014, meeting. Subsequent amendments were made to the text on June 17, 2015, and August 27, 2015.	November 2015	<u>Completed</u> OAL approved the rulemaking packet, which was filed with the Secretary of State on November 9, 2015. The regulation is effective January 1, 2016.
<u>Draft Proposed Regulations to Implement Assembly Bills 759 and 1178</u> Robin Parker, Danielle Vare; Policy and Procedure Committee	Assembly Bills 759 and 1178 take effect January 1, 2016. Therefore, the Board’s regulations need to be updated to reflect the new recreational vehicle provisions in Article 5 of the Vehicle Code and the new export or sale-for-resale protest provisions in Article 6. The changes are limited to amending the definitions of protest and protestant, and adding a number of references to the new provisions in existing regulations. The majority of these changes are non-substantive.	November 2015	<u>Completed</u> At the November 12, 2015, General Meeting, the members adopted the proposed regulatory amendments.
EXECUTIVE COMMITTEE			
<u>1. Review and Consideration of Board Adopted Delegations</u> Robin Parker; Executive Committee	At the March 18, 1997, General Meeting, the Board adopted the former Budget and Finance Committee’s analysis of the duties of the Board Members and staff in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. These delegations are reviewed annually by the staff, and amendments are considered as needed by the Board.	February 2016	In progress. This matter is being agendaized for consideration at the February 10, 2016, General Meeting.

B.
CASE
MANAGEMENT

CASE VOLUME

OCTOBER 29, 2015, THROUGH JANUARY 26, 2016

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	3	11
3060	Modification	8	0	8
3062	Establishment	12*	0	12
3062	Relocation	3	0	3
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	3	0	4
3065.1	Incentive Program Reimbursement	0	0	4
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:		29	3	42

*Cerritos Dodge filed a combined establishment/relocation protest for Chrysler and Jeep since the manufacturer's notices was combined; these are only being counted as an establishment.

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-2372-13 7-16-13	Amended PSDO pending	Vallejo CJD, LLC dba Momentum Kia v. Kia Motors America, Inc.	P: Chris Scali, Gus Paras R: Colm Moran	Termination
2. PR-2374-13 9-26-13	HRC: 2-5-16 MH: 3-7-16 (10 days)	Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.	P: Mike Flanagan, Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination
3. PR-2381-13* 11-25-13	HRC: 2-5-16 MH: 3-7-16 (10 days)	Hayward Nissan Corporation dba Hayward Nissan v. Nissan of North America, Inc.	P: Mike Flanagan, Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination
4. PR-2389-14 4-14-14	Settlement pending SC: 2-4-16	McPeek's Dodge of Anaheim v. Chrysler Group, LLC (Dodge)	P: Alton Burkhalter, Ros M. Lockwood R: Ryan Mauck, Randall L. Oyler, Rachael Trummel, Brandon Prosansky	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
5. PR-2390-14* 4-14-14	Settlement pending SC: 2-4-16	McPeek's Dodge of Anaheim v. Chrysler Group, LLC (Ram)	P: Alton Burkhalter, Ros M. Lockwood R: Ryan Mauck, Randall L. Oyler, Rachael Trummel, Brandon Prosansky	Termination
6. PR-2403-14 8-8-14	CSC: 1-29-16 Parties working on settlement	Downtown Auto Center dba Downtown Subaru v. Subaru of America, Inc.	P: Michael Sieving R: Mo Sanchez, Lisa Gibson. Kevin Colton	Termination
7. PR-2419-15 2-10-15	RSC: 1-29-16	Ball Automotive Group dba Ball Kia v. Kia Motors America, Inc.	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Colm Moran	Termination
8. PR-2422-15 3-3-15	Telephonic MSC: 2-2-16	Walter Timmons Enterprises, Inc. dba Timmons Subaru v. Subaru of America, Inc.	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mo Sanchez, Lisa Gibson	Termination
9. PR-2428-15 7-31-15	MTD granted 2-10-16 Bd. Mtg.	Putnam Motors, Inc., Putnam Lexus v. Toyota Motor Sales, U.S.A., Inc.	P: Michael Sieving R: Steven McKelvey, Steven McFarland, Patricia Britton	Warranty
10. PR-2429-15 9-9-15	MSC: 2-24-16 HRC: 4-15-16 MH: 5-16-16 (7 days)	Hooman Automotive Group, dba Hooman Chrysler Jeep Dodge Ram v. Fiat Chrysler Automobiles (Chrysler)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Franchisor Incentive

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
11. PR-2430-15* 9-9-15	MSC: 2-24-16 HRC: 4-15-16 MH: 5-16-16 (7 days)	Hooman Automotive Group, dba Hooman Chrysler Jeep Dodge Ram v. Fiat Chrysler Automobiles (Jeep)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Franchisor Incentive
12. PR-2431-15* 9-9-15	MSC: 2-24-16 HRC: 4-15-16 MH: 5-16-16 (7 days)	Hooman Automotive Group, dba Hooman Chrysler Jeep Dodge Ram v. Fiat Chrysler Automobiles (Dodge)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Franchisor Incentive
13. PR-2432-15* 9-9-15	MSC: 2-24-16 HRC: 4-15-16 MH: 5-16-16 (7 days)	Hooman Automotive Group, dba Hooman Chrysler Jeep Dodge Ram v. Fiat Chrysler Automobiles (Ram)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Franchisor Incentive
14. PR-2434-15 11-9-15	HRC: 4-28-16 MH: 5-31-16 (9 days)	Rusnak/Westlake dba Rusnak/Westlake Audi v. Audi of America, Inc.	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Ryan Mauck, R. Scott Brink, Afua Adjei	Relocation
15. PR-2435-15 11-24-15	ROB: 2-17-16 HRC: 7-8-16 MH: 8-8-16 (15 days)	Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc. (RAM)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
16. PR-2436-15* 11-24-15	ROB: 2-17-16 HRC: 7-8-16 MH: 8-8-16 (15 days)	Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc. (Dodge)	P: Michael Flanagan, Gavin Hughes, Torin Heenan R: Mark Clouarte, John Streelman, Bob Davies	Termination
17. PR-2437-15 12-7-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (Chrysler)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
18. PR-2438-15* 12-7-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (Dodge)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
19. PR-2439-15* 12-7-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (Jeep)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
20. PR-2440-15* 12-7-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (RAM)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
21. PR-2441-15 12-7-15	CPHC: 2-4-16	McPeek's Dodge of Anaheim v. FCA, US, LLC, formerly known as Chrysler Group, LLC (Dodge)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
22. PR-2442-15* 12-9-15	CPHC: 2-4-16	McPeek's Dodge of Anaheim v. FCA, US, LLC, formerly known as Chrysler Group, LLC (RAM)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
23. PR-2443-15* 12-9-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (Jeep)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Relocation
24. PR-2444-15* 12-9-15	RPHC: 2-5-16	Champion Dodge, LLC d/b/a Champion Chrysler Jeep Dodge v. FCA US LLC (Chrysler)	P: Michael Sieving, Tina Hopper R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Relocation
25. PR-2445-15 12-10-15	Settlement pending	Cerritos Dodge, Inc. dba Cerritos Dodge Chrysler Jeep RAM, a California Corporation v. FCA, US, LLC, formerly known as Chrysler Group, LLC (Chrysler)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment or Relocation
26. PR-2446-15* 12-10-15	Settlement pending	Cerritos Dodge, Inc. dba Cerritos Dodge Chrysler Jeep RAM, a California Corporation v. FCA, US, LLC, formerly known as Chrysler Group, LLC (Dodge)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
27. PR-2447-15* 12-10-15	Settlement pending	Cerritos Dodge, Inc. dba Cerritos Dodge Chrysler Jeep RAM, a California Corporation v. FCA, US, LLC, formerly known as Chrysler Group, LLC (Jeep)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment or Relocation
28. PR-2448-15* 12-10-15	Settlement pending	Cerritos Dodge, Inc. dba Cerritos Dodge Chrysler Jeep RAM, a California Corporation v. FCA, US, LLC, formerly known as Chrysler Group, LLC (RAM)	P: Alton Burkhalter, Ros Lockwood R: Randall Oyler, Brandon Prosansky, Michael Pitt, Ryan Mauck	Establishment
29. PR-2449-15 12-11-15	RPHC: 2-4-16	Surf City Auto Group, Inc., dba Huntington Beach Chrysler Dodge Jeep RAM v. FCA US, LLC (Chrysler)	P: Alton Burkhalter, Ros Lockwood R: Randall L. Oyler, Brandon Prosansky, James Lee, Danielle Claxton	Modification
30. PR-2450-15* 12-11-15	RPHC: 2-4-16	Surf City Auto Group, Inc., dba Huntington Beach Chrysler Dodge Jeep RAM v. FCA US, LLC (Dodge)	P: Alton Burkhalter, Ros Lockwood R: Randall L. Oyler, Brandon Prosansky, James Lee, Danielle Claxton	Modification
31. PR-2451-15* 12-11-15	RPHC: 2-4-16	Surf City Auto Group, Inc., dba Huntington Beach Chrysler Dodge Jeep RAM v. FCA US, LLC (Jeep)	P: Alton Burkhalter, Ros Lockwood R: Randall L. Oyler, Brandon Prosansky, James Lee, Danielle Claxton	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
32. PR-2452-15* 12-11-15	RPHC: 2-4-16	Surf City Auto Group, Inc., dba Huntington Beach Chrysler Dodge Jeep RAM v. FCA US, LLC (RAM)	P: Alton Burkhalter, Ros Lockwood R: Randall L. Oyler, Brandon Prosansky, James Lee, Danielle Claxton	Modification
33. PR-2453-15 12-15-15	RPHC: 2-9-16	Dick Browning Mazda, Inc., dba Browning Mazda v. Mazda Motor of America, Inc., dba Mazda North American Operations, a California Corporation	P: Alton Burkhalter, Ros Lockwood R: Mo Sanchez	Establishment
34. PR-2454-15 12-17-15	RPHC: 2-3-16	Aiken Cars, Inc. Riverside Mitsubishi v. Mitsubishi Motors North America, Inc.	P: Victor Danhi R: Mo Sanchez	Termination
35. PR-2455-15 12-22-15	ROB: 3-11-16 HRC: 6-27-16 MH: 7-25-16 (5 days)	Putnam Motors, Inc., Putnam Lexus v. Toyota Motor Sales, U.S.A., Inc.	P: Michael Sieving R: Steven McKelvey, Steven McFarland, Patricia Britton	Warranty
36. PR-2456-15 12-23-15	CPHC: 2-4-16	Dennis Silletto and Associates, Inc. dba Glendora Chrysler Jeep Dodge v. FCA US LLC (Chrysler)	P: Bert Rasmussen R: James Lee, Danielle Claxton, Randall Oyler, Brandon Prosansky, Michael Pitt	Modification
37. PR-2457-15* 12-23-15	CPHC: 2-4-16	Dennis Silletto and Associates, Inc. dba Glendora Chrysler Jeep Dodge v. FCA US LLC (Dodge and Dodge Ram)	P: Bert Rasmussen R: James Lee, Danielle Claxton, Randall Oyler, Brandon Prosansky, Michael Pitt	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
38. PR-2458-15* 12-23-15	CPHC: 2-4-16	Dennis Silletto and Associates, Inc. dba Glendora Chrysler Jeep Dodge v. FCA US LLC (Jeep)	P: Bert Rasmussen R: James Lee, Danielle Claxton, Randall Oyler, Brandon Prosansky, Michael Pitt	Modification
39. PR-2459-15* 12-24-15	CPHC: 2-4-16	Dennis Silletto and Associates, Inc. dba Glendora Chrysler Jeep Dodge v. FCA US LLC (Jeep)	P: Bert Rasmussen R: James Lee, Danielle Claxton, Randall Oyler, Brandon Prosansky, Michael Pitt	Modification
40. PR-2460-16 1-13-16	PHC: 1-28-16	Mission Yamaha, Inc., d/b/a Mission Motorsports v. Suzuki Motor of America, Inc.	P: Michael Sieving, Tina Hopper	Establishment
41. PR-2461-16 1-15-16	PHC: 2-1-16	Putnam Subaru v. Subaru of America, Inc.	P: Michael Sieving, Tina Hopper	Warranty
42. PR-2462-16 1-15-16	PHC: 2-1-16	J&M Motors, Inc. d/b/a Putnam Toyota v. Toyota Motor Sales, U.S.A., Inc.	P: Michael Sieving, Tina Hopper	Warranty

PENDING CASES

BY CASE NUMBER

Petitions

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

Appeals

CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
		-----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. ADRENALINE POWERSPORTS, a California Partnership v. NEW MOTOR VEHICLE BOARD, a California State Agency; POLARIS SALES, INC, Real Party In Interest
California Superior Court, Sacramento County Case No. 34-2015-80002155
New Motor Vehicle Board No. CRT-271-15
Protest No. PR-2418-15

At the June 17, 2015, General Meeting, the Public Members granted Respondent's Motion to Dismiss. On August 3, 2015, Adrenaline filed a Petition for Writ of Administrative Mandamus. Adrenaline contends in its Writ that by adopting the Proposed Order, the Board has committed a prejudicial abuse of discretion in that the Board has not proceeded in the manner required by law, the Decision is not supported by the findings, and the findings are not supported by the evidence. Adrenaline seeks a peremptory writ directing the Board to set aside and vacate its Decision of June 17, 2015, and to adopt a new decision denying Polaris' motion to dismiss.

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.

Respondent filed its Answer on October 26, 2015.

2. TOYOTA MOTOR SALES, U.S.A., INC., a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; PUTNAM MOTORS, INC. dba PUTNAM LEXUS, a California corporation, Real Party in Interest
California Superior Court, Sacramento County Case No. 34-2015-80002081
New Motor Vehicle Board No. CRT-270-15

By letter dated March 20, 2015, Toyota Motor Sales, U.S.A., Inc. ("Toyota") requested that the Board grant it permission to conduct a warranty audit from September 2010 to the present "based on a pattern of false claims for warranty and recall service submitted by Putnam Motors, Inc. dba Putnam Lexus ('Putnam Lexus') with the intent to defraud Lexus and Lexus customers." The period requested is beyond the 9 months provided for in Vehicle Code section 3065 and required a Board order. After a lengthy discussion, at the March 25, 2015, General meeting, the Public Members denied Toyota's request.

On April 24, 2015, Toyota filed a Petition for Writ of Administrative Mandate in the Sacramento County Superior Court. Toyota contends that the Board's denial

of its “request for an extended audit constitutes an abuse of discretion because the Board’s Order ... [was] not supported by the evidence and because the Board has unlawfully adopted unwritten standards that manufacturers allegedly must follow before obtaining [such] an order...” which, is a violation of the Administrative Procedure Act. Putnam Lexus filed its answer on June 8, 2015.

Glenn Stevens, Board President, has 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.

The hearing on the writ is April 29, 2016. Toyota’s opening brief is due by March 15, 2016, Putnam Lexus’ opposition brief is due by April 4, 2016, and Toyota’s reply brief is due by April 14, 2016.

3. 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
California Court of Appeal, Third District Court, Case No. C080679
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 Marilyn 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.

By letter dated December 16, 2014, Matt Kubicek notified Judge Chang that she has a friendship with one of the Public Board members. This was also disclosed to the parties. On December 31, 2014, Judge Chang recused herself and the matter was assigned to Judge Kenny. On January 7, 2015, Nissan filed a peremptory challenge under Code of Civil Procedure section 170.6. On January 9, 2015, this matter was assigned to Judge Krueger.

A briefing schedule has been stipulated by the parties as follows: Nissan's opening brief is due July 21, 2015; Santa Cruz Nissan's and the Board's briefs are due on August 10, 2015; and Nissan's reply brief is due August 19, 2015. The hearing is tentatively set for September 4, 2015.

On January 30, 2015, Nissan filed with the Board a Notice of Non-Compliance with Board Decision Conditions seeking termination of Santa Cruz Nissan's franchise. It took several weeks to set a briefing schedule because the majority owner of the dealership, Earnest "Lee" Courtright, had surgery and was recovering. A Mandatory Settlement Conference with ALJ Wong was scheduled to resume March 11, 2015, but was taken off calendar due to Mr. Courtright's health.

During a March 12, 2015 conference call, ALJ Hagle established a briefing schedule on Nissan's Notice of Non-Compliance and set a hearing for May 21. This was subsequently vacated. On March 17, 2015, Protestant filed an "Amended Motion Requesting that the Board Refrain from Further Rulings on the Board's Decision Pending Final Disposition of Respondent's Writ of Administrative Mandate". After briefing and oral arguments, ALJ Skrocki granted Protestant's motion and deferred further consideration of Nissan's Notice of Non-Compliance pending final disposition of this writ.

Oral arguments were heard on September 4. Nissan challenged the Board's Decision on four separate grounds: (1) The Decision was based on an unlawful underground regulation; (2) Nissan was denied a fair trial because the ALJ improperly excluded certain evidence; (3) The findings are not supported by the evidence; and (4) The Board lacks authority to impose the sales performance condition. The Court concluded that the Board has not adopted an underground regulation. Nissan failed to convince the Court that the Board has a generally applicable policy or rule that dealers may not be terminated based solely on poor performance. Furthermore, Nissan failed to convince the Court that any evidentiary rulings were improper or prejudicial, failed to prove that the findings are not supported by the evidence, and failed to show the Board lacked authority to impose the sales performance condition.

Nissan filed a Notice of Appeal on November 20, 2015. Once the record is filed with the court of appeal, Nissan's opening brief will be due 40 days thereafter. The Board's brief will be due 30 days thereafter.

4. 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
California Court of Appeal, Third District Court, Case No. C080679
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. This matter was fully briefed. On April 30, 2015, the Court issued a tentative ruling and found that the Board did not abuse its discretion in denying Capacity's Motion to Dismiss. It found ALJ Skrocki's Order Denying Respondent's Motion to Dismiss well reasoned and well supported. The Court adopted the findings and conclusions in that Order as its own.

The Court could not issue a tentative ruling on GFL's alleged breach of the franchise because: (1) Capacity did not provide the Court with a complete copy of the administrative record; and (2) Capacity's argument is based on California law but the Board's Decision found, and Capacity does not dispute, that the franchise agreement is governed by Texas Law. The Court was unable to ascertain whether GFL's conduct breached an implied covenant of good faith and fair dealing. Furthermore, argument was requested on whether the unlawful disclosure of trade secrets to a competitor constitutes "good cause" for termination.

Oral arguments were presented on May 1, 2015. The Judge ordered additional briefing by Friday, May 15, on the following issues: (1) Should breach of the franchise be reviewed under California law or Texas law? and, (2) If Texas law applies, is there an implied covenant of good faith and fair dealing under Texas law. The Judge has 90 days thereafter to issue his order.

After oral arguments and supplemental briefs were submitted, the Court issued a ruling indicating that the Board did not abuse its discretion in denying Capacity's motion to dismiss. The Court determined that ALJ Skrocki's Order denying Capacity's Motion to Dismiss was well-reasoned and well-supported; the Court adopted these findings and conclusions as its own. However, the Court found that the Board did abuse its discretion in concluding that Capacity lacked good cause to terminate GFL's franchise. The Petition for Writ of Administrative Mandamus was granted and the court issued a Peremptory Writ of Mandate compelling the Board to set aside its decision and issue a new decision overruling the protest and allowing termination of the franchise. This matter was agendaized for Public Member consideration at the August 27, 2015, Special Meeting. However, because the Court did not issue its Judgment until September 1, 2015, this matter was not considered at our last meeting. The Board received this on September 16. Therefore, this matter is being agendaized for discussion and consideration at the November 12, 2015, General Meeting. The Board needs to make and file a return to this writ setting forth what it has done to comply with the Peremptory Writ of Mandate by December 15, 2015.

GFL filed a Notice of Appeal on November 10, 2015, and an Amended Notice of Appeal on November 20, 2015. At the November 12, 2015, General Meeting, the Public Members decided to file an appeal, which was filed on November 13, 2015. Jonathan Michaels of MLG Automotive Law substituted in as counsel for GFL. Once the record is filed with the court of appeal, the Board's opening brief will be due 40 days thereafter. The Capacity of Texas' brief will be due 30 days thereafter.

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. 34-2012-80001301
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 McMahan'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 (f) 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.

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. 34-2012-80001300
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 (f) 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.

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. 34-2012-00130525
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.

8. 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.

9. 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.

10. 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 both appeals. An update was submitted to the court on October 27, 2014, indicating the matter is proceeding through bankruptcy. At the Court's request, a Joint Report Re Status of Bankruptcy was filed around January 6, 2015, indicating that Mega RV Corp. remains in Chapter 11 bankruptcy. The largest creditor, GE Commercial Distribution Finance, has agreed to settlement terms that might accelerate the bankruptcy process. However, the case is still pending the Bankruptcy Court's approval and no final orders have been entered.

On April 10, 2015, the Court ordered the parties to inform it by April 20 of the status of the bankruptcy case. On April 14, 2015, the Board received Mega RV's notice of termination of the Bankruptcy stay. The Bankruptcy Court entered an Order Granting Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 on April 8. On May 5, 2015, the Fourth Appellate District Court issued an order that the appeals proceed given the United States Bankruptcy Court granted relief from the automatic stay. Mega RV's combined brief and opening brief were due within 5 days of the date of this order, or May 11, 2015. The parties stipulated to allow these filings on or before June 10, 2015. On or about June 30, 2015, Mega RV's combined Respondent's brief and cross-appellant's opening brief was filed. As indicated above, the Board did not file its brief on August 14, 2015. Appellant's reply brief was filed October 9, 2015. Mega RV's reply brief was filed around November 6, 2015. *Oral arguments were requested by Roadtrek and Mega RV.*

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

OCTOBER 29, 2015, THROUGH JANUARY 26, 2016

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	
FCA (Chrysler, Jeep, Dodge, RAM)	158	FCA (Chrysler, Jeep, Dodge, RAM)	20
FERRARI		FERRARI	
FORD		FORD	
GM		GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA	2	HONDA	
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	
JAGUAR		JAGUAR	
KAWASAKI	88	KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	1
MERCEDES		MERCEDES	
MITSUBISHI	1	MITSUBISHI	
NISSAN		NISSAN	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU		SUBARU	
SUZUKI		SUZUKI	2
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	4	MISCELLANEOUS	
TOTAL	253	TOTAL	23