

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Board staff contact: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)  
DMV press contact: (916) 657-6438  
[dmvpublicaffairs@dmv.ca.gov](mailto:dmvpublicaffairs@dmv.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**NOTICE OF GENERAL BOARD MEETING**

**Tuesday, December 7, 2021 at 9:30 a.m.**  
**Via Zoom and Teleconference**

Through January 31, 2022, Government Code section 11133 authorizes the New Motor Vehicle Board ("Board") to hold meetings through teleconference and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the Board. The requirements that each teleconference location be accessible to the public and that members of the public be able to address the Board at each teleconference location have temporarily been suspended.

The Board Meeting will be conducted via Zoom and teleconference. Board members will participate in the meeting from individual remote locations. Members of the public can attend the meeting remotely via one of several options listed below. Written comments, if any, can be submitted at [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov) or during the meeting. Items of business scheduled for the meeting are listed on the attached agenda. Recesses may be taken at the discretion of the Chairperson and items may be taken out of order.

To request a reasonable modification or accommodation for individuals with disabilities at this or any future Board meeting or to request any modification or accommodation for individuals with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Robin Parker at [Robin.Parker@nmvb.ca.gov](mailto:Robin.Parker@nmvb.ca.gov) or (916) 445-1888.

Join Zoom Meeting

<https://us02web.zoom.us/j/87913479248?pwd=VHFiRllaaFpJYXI0eWJNTmxiY25QZz09>

Meeting ID: 879 1347 9248

Passcode: 061495

One tap mobile

+16699009128,,87913479248#,,,,\*061495# US (San Jose)

+12532158782,,87913479248#,,,,\*061495# US (Tacoma)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 879 1347 9248

Passcode: 061495

Find your local number: <https://us02web.zoom.us/j/kcAY8cqRHI>

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Board staff contact: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)  
DMV press contact: (916) 657-6438  
[dmvpublicaffairs@dmv.ca.gov](mailto:dmvpublicaffairs@dmv.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

**AGENDA**

**GENERAL MEETING**

**Tuesday, December 7, 2021 at 9:30 a.m.**

**Via Zoom and Teleconference**

<https://us02web.zoom.us/j/87913479248?pwd=VHFiRllaaFpJYXI0eWJNTmxiY25QZz09>

Please note that Board action may be taken regarding any of the issues listed below. As such, if any person has an interest in any of these issues, he or she may want to attend.

The Board provides an opportunity for members of the public to comment on each agenda item before or during the discussion or consideration of the item as circumstances permit. (Gov. Code § 11125.7) However, comments by the parties or by their counsel that are made regarding any proposed decision, order, or ruling must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. Members of the public may not comment on such matters.

1. **9:30 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Approval of the Minutes from the following meetings:**
  - a. February 16, 2021, General Meeting;
  - b. February 16, 2021, April 7, 2021, August 27, 2021, and September 15, 2021, Special Meetings;
  - c. March 17, 2021, May 20, 2021, June 23, 2021, and August 24, 2021, meetings of the Government and Industry Affairs Committee; and
  - d. July 21, 2021, meeting of the Ad Hoc Committee on Equity, Justice and Inclusion.
4. **Consideration of presentation of Resolution to Daniel P. Kuhnert, former Public Board Member.**
5. **Annual review of New Motor Vehicle Board mission and vision statements - Executive Committee.**

6. **Report on non-substantive changes to proposed regulatory amendments in Title 13 of the California Code of Regulations - Executive Committee.**
  - a. Definitions. (13 CCR § 550)
  - b. Dismissals of Petitions and Protests. (13 CCR § 551.8)
  - c. Notice of Assignment of Administrative Law Judges; Peremptory Challenges. (13 CCR § 551.12)
  - d. Filing Fees. (13 CCR § 553.40)
  - e. Form and Filing of Petition. (13 CCR § 556)
  - f. Answer-Time of Filing; Form and Content. (13 CCR § 558)
  - g. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code Sections 3064, 3065, 3065.1, 3074, 3075, and 3076. (13 CCR § 586)
  - h. Filing of Protest Pursuant to Vehicle Code Section 3065.3 (13 § 586.5)
  - i. Hearings by Board or by Administrative Law Judge. (13 CCR § 590)
7. **Annual update on training programs attended by staff - Administration Committee.**
8. **Discussion and consideration of options to move the Board's offices - Administration Committee.**
9. **Annual update on Board Consumer Mediation Services Program - Administration Committee.**
10. **Consideration of nominee for the Solon C. Soteras Employee Recognition Award recipient as recommended by the Board Development Committee.**
11. **Annual report on Board Development Program - Board Development Committee.**
12. **Report on the Board's financial condition and related fiscal matters - Fiscal Committee.**
  - a. Quarterly Fiscal Report for the 4<sup>th</sup> quarter of fiscal year 2020-2021.
  - b. Status report concerning the Board's collection of the Arbitration Certification Programs' annual fee.
  - c. Discussion and consideration of the Board's proposed budget for the next fiscal year, and whether any dealer/manufacturer fee adjustments are necessary.
13. **Report on the New Motor Vehicle Board's recent Industry Roundtable - Government and Industry Affairs Committee.**

14. **Discussion regarding the upcoming Workshops on Equity, Justice and Inclusion in the Motor Vehicle Industry - Ad Hoc Committee on Equity, Justice and Inclusion.**
15. **Consideration of proposed regulatory amendments to eliminate references to Registered Mail by repealing Section 550.20 (Use of Certified Mail in Lieu of Registered Mail) and amending Section 564 (Decision) of Title 13 of the California Code of Regulations - Policy and Procedure Committee.**
16. **Discussion concerning enacted and pending legislation - Legislative Committee.**
  - a. Enacted Legislation of Special Interest:
    - (1) Assembly Bill 361 (Assembly Member Rivas) - Open meetings: state and local agencies: teleconferences
    - (2) Assembly Bill 1291 (Assembly Member Frazier) - State bodies: open meetings
  - b. Pending Legislation of Special Interest:
    - (1) Assembly Bill 29 (Assembly Member Cooper) - State bodies: meetings
    - (2) Assembly Bill 885 (Assembly Member Quirk) - Bagley-Keene Open Meeting Act: teleconferencing
  - c. Pending Legislation of General Interest:
    - (1) Assembly Bill 1211 (Assembly Member Muratsuchi) - Electric mobility manufacturers
    - (2) Senate Bill 361 (Senator Umberg) - Electronic transactions: motor vehicle finance
  - d. Enacted Legislation of General Interest:
    - (1) Assembly Bill 473 (Assembly Member Chau) - California Public Records Act
    - (2) Senate Bill 339 (Senator Wiener) - Vehicles: road usage charge pilot program
    - (3) Senate Bill 500 (Senator Min) - Autonomous Vehicles: zero emissions
  - e. Pending Federal Legislation of General Interest:
    - (1) United States Senate Bill 2118 (Senator Wyden) - Clean Energy for America Act

17. **Executive Director's Report.**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

18. **Selection of Board meeting dates for 2022.**

19. **Public Comment. (Gov. Code § 11125.7)**

20. **Oral Presentation before the Public Members of the Board.**

PUTNAM AUTOMOTIVE, INC., dba PUTNAM SUBARU v. SUBARU OF AMERICA, INC.

Protest No. PR-2542-17

21. **Closed Executive Session deliberations.**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**Consideration of Proposed Order.**

PUTNAM AUTOMOTIVE, INC., dba PUTNAM SUBARU v. SUBARU OF AMERICA, INC.

Protest No. PR-2542-17

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public Members of the Board.

22. **Open Session.**

23. **Adjournment.**

To request special accommodations for persons with disabilities at this or any future Board meeting or to request any accommodation for persons with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Robin Parker at (916) 445-1888 or [Robin.Parker@nmvb.ca.gov](mailto:Robin.Parker@nmvb.ca.gov).

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a General meeting on February 16, 2021, via Zoom and teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 9:31 a.m.

Ms. Doi welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Ramon Alvarez C.  
Anne Smith Boland  
Inder Dosanjh  
Ardashes “Ardy” Kassakhian (left at 10:32 a.m.)  
Daniel P. Kuhnert  
Nanxi Liu  
Bismarck Obando

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
  
Anthony M. Skrocki, Administrative Law Judge  
Stephen J. Smith, Administrative Law Judge

3. **APPROVAL OF THE MINUTES FROM THE OCTOBER 27, 2020, AND JANUARY 19, 2021, MEETINGS OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, NOVEMBER 4, 2020, GENERAL MEETING, AND NOVEMBER 13, 2020, SPECIAL MEETING**

Mr. Alvarez moved to adopt the October 27, 2020, minutes from the meeting of the Ad Hoc Committee on Equity, Justice and Inclusion. Ms. Smith Boland seconded the motion. The motion carried unanimously.

Mr. Obando moved to adopt the January 19, 2021, minutes from the meeting of the Ad Hoc Committee on Equity, Justice and Inclusion. Ms. Liu seconded the motion. The motion carried unanimously.

Ms. Liu moved to adopt the November 4, 2020, General Meeting minutes. Mr. Alvarez seconded the motion. The motion carried unanimously.

Mr. Kuhnert moved to adopt the November 13, 2020, Special Meeting minutes. Ms. Liu seconded the motion. Mr. Obando abstained from voting since he was not in attendance. The motion carried unanimously.

4. **2021 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Ms. Doi read the following statement from the Board adopted Parliamentary Procedures:

The election of officers shall be a specific item of business on the agenda for the first General Meeting of each calendar year. At the time the matter is considered, any member may nominate any other member for the office of President and/or Vice-President. There are no restrictions on the number of members who may be nominated for either position during this process. At any time after at least one Board Member is nominated for each office, any member may move that the nomination of officers be closed. If the motion is seconded and carried by majority vote, the nominating process shall be deemed concluded. After the nominating process is concluded, the Members of the Board shall cast their vote for a nominated Member for each office. No Board Member may vote for more than one nominated Member for each office. The voting shall be done by oral poll. Any Board Member may abstain from voting for a nominated Member for either office.

Ms. Doi remarked that it was an honor and privilege to serve as the Board President for the past two years. She noted it had been a time of change with a number of new members and a time of challenge adapting to the new COVID restrictions. Ms. Doi indicated that all of this was seamless thanks to the steady leadership of Mr. Corcoran, Miss Kindel, Ms. Parker, Administrative Law Judge (ALJ) Skrocki, and the rest of the dedicated ALJs and staff of the New Motor Vehicle Board.

Additionally, Ms. Doi noted that historically, Board Presidents have not served longer than two years in succession, and this seems like a good benchmark to allow for others to assume the leadership role.

Ms. Doi moved to nominate Mr. Obando as President. Mr. Obando accepted this nomination. No other nominations for President were made. Mr. Kassakhian moved to close the nominations, with Mr. Alvarez seconding the motion. This motion to close the nominations carried unanimously. Mr. Kuhnert seconded the motion to nominate Mr. Obando as President. The motion to nominate Mr. Obando as President carried unanimously.

Ms. Doi noted that Mr. Obando's term as President will start at the next meeting of the Board.

Ms. Liu moved to nominate Mr. Kassakhian as Vice President. Mr. Kassakhian accepted this nomination. No other nominations for Vice President were made. Ms. Liu moved to close the nominations, with Mr. Kuhnert seconding the motion. This motion to close the nominations carried unanimously. Mr. Alvarez seconded the motion to nominate Mr. Kassakhian as Vice President. The motion to nominate Mr. Kassakhian as Vice President carried unanimously.

5. **ANNUAL REVIEW AND APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEE (IF APPLICABLE), BY THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, Mr. Obando made the following committee appointments:

**ADMINISTRATION COMMITTEE**

Ardy Kassakhian, Chair  
Daniel Kuhnert, Member

**BOARD DEVELOPMENT COMMITTEE**

Nanxi Liu, Chair  
Kathryn Ellen Doi, Member

**EXECUTIVE COMMITTEE**

Bismarck Obando, President  
Ardy Kassakhian, Vice President

**FISCAL COMMITTEE**

Anne Smith Boland, Chair  
Nanxi Liu, Member



GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Ramon Alvarez C., Chair  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member

LEGISLATIVE COMMITTEE

Bismarck Obando, Chair  
Ardy Kassakhian, Vice President

POLICY AND PROCEDURE COMMITTEE

Daniel Kuhnert, Chair  
Inder Dosanjh, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Bismarck Obando, Chair  
Ramon Alvarez C., Member  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member  
Inder Dosanjh, Member

6. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS" BY THE INCOMING BOARD PRESIDENT**

This matter was pulled from the agenda since the incoming President is a Public Member and the incoming Vice President is a Public Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

7. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO PETER WELCH, RETIRED PRESIDENT AND CEO OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION (NADA)**

Prior to considering the Resolution, Ms. Doi allowed the Board Members, staff, and public to say a few words. Ms. Parker indicated that she has known Peter practically since she started with the Board. Peter has always been a good friend to the Board and supportive with assistance on legislation and the Board's 2012 Sunset Review. Additionally, Peter has a tremendous wealth of knowledge not just of the automotive industry but also the history of the Board. Ms. Parker remarked that she is thankful for all of Peter's contributions and help he has given to the Board over the decades.

Mr. Alvarez noted that Peter is a pillar in the automotive industry, led the NADA admirably, and is not only a personal friend but a very good friend of the California New Motor Vehicle Board. Mr. Alvarez is personally grateful for Peter's leadership.

Anthony Bento of the California New Car Dealers Association thanked the Board for considering Mr. Welch for this tremendous honor and seconded the prior comments. Mr. Bento noted that Peter has been a tremendous asset to dealers but also the industry as a whole.

Mr. Kassakhian remarked that the Resolution is a well-deserved recognition for Peter who has dedicated so much of his career by enlightening, educating and informing individuals and being an advocate for his industry.

Mr. Obando moved to present Peter Welch with a Resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of California. Mr. Alvarez seconded the motion. The motion carried unanimously.

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

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

As indicated in the memo, the revised delegations pertain to Assembly Bill 179 (Stats 2019, Ch. 796; effective January 1, 2020), which re-lettered Section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests, and made many conforming changes. In the "Delegation of Administrative Duties" on page 50, references to Staff Services Manager I have been amended to reflect Dawn Kindel's promotion to Staff Services Manager II. Ms. Parker noted an additional amendment to footnote 5 on page 51 to reflect her recent promotion to Chief Counsel from Senior Staff Counsel.

Mr. Kuhnert moved to adopt the Board delegations as amended. Mr. Kassakhian seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION'S DRAFT MISSION STATEMENT - AD HOC COMMITTEE**

The members were provided with a memorandum from Bismarck Obando and Tim Corcoran concerning the Ad Hoc Committee on Equity, Justice and Inclusion's draft mission statement.

Mr. Obando commented that at the January 19, 2021, Ad Hoc Committee Meeting, there was a robust conversation that resulted in formulating the draft mission statement that could be supported by the full Board before the Ad Hoc Committee developed a work

plan.

Mr. Obando noted that Mr. Corcoran, Miss Kindel and Ms. Doi briefed California State Transportation Agency (CalSTA) concerning the Committee's draft mission statement and noted that the Committee was heading in the right direction.

Mr. Obando read the draft mission statement and sought member feedback and edits:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues relating to the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Ms. Doi commented that there are other potential issues to review by the Committee such as zero emission vehicles and access to those vehicles by underrepresented groups, so she offered an amendment to broaden the mission statement as follows:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues, ~~relating to the~~ **including but not limited to, the** following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Mr. Obando moved to adopt the draft mission statement with the amendments suggested by Ms. Doi. Ms. Liu seconded the motion. The motion carried unanimously.

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

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

As indicated in the memo, the table of contents and all page references were updated. The section entitled “New as of 2021” on page 3 was updated to reflect no new legislation, court opinions, or regulations impacting the Board’s jurisdiction. In the “Separate Protests” section on page 8, the analogy was updated to reflect “Chrysler, Dodge, Jeep, and RAM” instead of “Chrysler, Jeep and Dodge.” Parallel citations to court opinions were removed throughout to make it easier to read.

Additional amendments noted in the memo included the following:

- Due to the current situation, the Board’s preference is to receive protests by email. Alternatively, protests can be mailed to the Board’s P.O. Box. The reference to in-person filings is being deleted because the office is not routinely staffed. This amendment is reflected on page 8.
- Effective April 1, 2020, an intervenor is precluded from filing a peremptory challenge. This was reflected in the 2020 version of the *Guide* under “New as of 2020.” Now, the “Challenge to Presiding Officer” section for protests and petitions on pages 9 and 71 is being updated to reflect this.
- In a “Maintenance of the Codes” bill, subdivision (d)(4) of Section 3065.2 was amended as follows: “...If the franchisee fails to provide the supplemental repair orders, all time ~~period~~ periods under this section shall be suspended until the supplemental repair orders are provided.” This amendment was effective January 1, 2021 and is noted on page 41. (Assembly Bill 1371 (Stats. 2020, Ch. 370, Sec. 265).)

Ms. Parker noted one additional amendment that reflects Ms. Phomsopha’s recent promotion to Senior Staff Counsel and Ms. Parker’s promotion to Chief Counsel.

Mr. Alvarez moved to adopt the revised *Guide to the New Motor Vehicle Board* with the amendment to the title page. Ms. Liu seconded the motion. The motion carried unanimously.

11. **DISCUSSION AND CONSIDERATION OF THE BOARD’S POLICY CONCERNING ITS PERIODIC NEWSLETTER, THE IN-SITE - ADMINISTRATION COMMITTEE**

Mr. Corcoran discussed the history and evolution of the Board’s periodic newsletter, the In-Site. Mr. Corcoran noted that for several reasons, The In-Site has not been published

since April 2018. He reviewed the purpose of The In-Site, which was to educate interested parties, publish Board decisions, and share industry news with the Board; all of this is now accomplished through online means and is more effective and timelier. Even though The In-Site has not been published for three years, the staff received no inquiries regarding it. Mr. Corcoran asked for discussion and consideration of retiring the Board adopted policy that requires periodic publication of The In-Site.

Mr. Obando indicated that he thought it was time to retire this policy. Mr. Kuhnert, as a member of the Administration Committee, echoed this.

Prior to the vote, Mr. Kassakhian had to leave the meeting. Mr. Kuhnert moved to eliminate the Board policy requiring the periodic publication of The In-Site. Mr. Obando seconded the motion. The motion carried unanimously.

12. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition and related fiscal matters. Ms. Luke indicated that for the first quarter of 2020-2021, the Board started with an appropriation of \$1.76 million, ending with the current reserve balance of \$2.76 million. Ms. Luke reported that the Board expended 21% of its appropriated budget for the first quarter. Furthermore, there is no need for an adjustment to the fee structure at this time with the current reserve balance. With regards to the Board's annual fee collection, Ms. Luke noted that it should be completed soon with only 14 payments outstanding of the 138 manufacturers and distributors invoiced. Regarding the Board's office space, Ms. Luke indicated that there are currently no cost figures for the lease extension so this will be shared at a future meeting.

There was no Board action as this matter was for information only.

13. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2021-2022 - FISCAL COMMITTEE**

The members were provided with a memorandum from Dawn Kindel concerning the out-of-state travel plans for fiscal year 2021-2022. Miss Kindel indicated that the Board's only planned trip is the National Automobile Dealers Association Annual Show in Las Vegas in March 2022. Currently, there is no information on the National Association of Motor Vehicle Boards and Commissions' Fall Conference.

Miss Kindel indicated that if COVID-related travel restrictions were still in place, Mr. Corcoran, as the Board's Executive Director, would not be able to attend this trip. Currently, the Administration is asking staff to not travel more than 120 miles away from their homes; otherwise, a quarantine would be in place.

For planning purposes, Miss Kindel remarked that the staff needs to go forward and submit its out-of-state travel requests to DMV so the Department of Finance and the Governor's Office can review it.

In response to Ms. Doi's question, Miss Kindel indicated that Board staff and members have also been sent to the NADA Annual Show and no staff have expressed their desire to attend. The thought was the Executive Director would represent all staff and Board Members. The process is complicated with regards to having a blanket request for several people to attend this trip since the specific person attending needs to be designated and approved by the Administration.

Mr. Obando noted that in his experience, the show is a good networking opportunity to meet dealers, lobbyists, and manufacturers and understand the industry. Mr. Kuhnert commented that he has attended these shows and they are educational. He is a proponent of having a Board Member attend that never has.

In response to Mr. Obando's questions, Miss Kindel remarked that sending a staff person and a Board member would not raise any red flags since Nevada is a neighboring state and there are no budgetary constraints with sending 2-3 people.

There was a discussion concerning the Public Members that have not attended this show be given an opportunity to do so. Historically, the Dealer Members attend this event. Ms. Liu is the only Public Member that has not attended.

Ms. Smith Boland moved to approve the proposed out-of-state trip for the Executive Director and Public Member Liu to attend the event. Mr. Obando seconded the motion. The motion carried unanimously.

14. **DISCUSSION REGARDING THE 2021 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the 2021 Industry Roundtable. Ms. Phomsopha noted staff prepared an outline of interesting topics focusing on the Governor's recent Executive Order regarding Zero Emission Vehicles (ZEV). As indicated in the memo, the topic/speaker suggestions are as follows:

- Manufacturer perspective on future alternative fuel vehicles
- Trends in ZEVs from DMV's perspective
- Infrastructure plans and solutions
- Updates from franchisees who are moving forward with ZEV developments at their dealerships
- Update on the Road Charge Program and discussing the gas tax reduction
- Electrification/alternative fuel research and development
- Other CA State Agencies' clean energy/transportation programs, including

regulations and programs implementing the Governor's plans

With regards to "infrastructure plans and solutions," Mr. Kuhnert indicated that what is missing is what are the plan from an infrastructure point of view for the present-day car dealer? How is his life going to change with this, whether it's from a capital investment point of view, inventory point of view, and all of the things that go with it? Mr. Kuhnert thinks it is very important as far as 15 years from now, what a dealership looks like compared to today as far as having to deal with quite a bit of electric vehicles but also used carbon-based vehicles.

Ms. Smith Boland remarked that there are a lot of dealership requirements in the pipeline even just 1-2 years out. Mr. Dosanjh provided his experience with electric vehicles, the impacts on his dealership to charging these vehicles, and its positive effect on his service department. Mr. Alvarez agreed with Ms. Dosanjh that he too believes service business with electric vehicles will increase not decrease. Mr. Dosanjh offered to host a meeting at his Cadillac dealership in Dublin.

The Dealer Members had a number of suggestions for speakers including GM (Cadillac), BMW, Ford and Tekion.

After a robust discussion of dates, the members ultimately selected September 9, 2021. (Subsequently modified to Wednesday, September 8 and Thursday, September 9, 2021 from 10:00 a.m.-12:00 p.m.) This will be a virtual event. Ms. Liu remarked that she thinks that will potentially increase the opportunity for the Board to get more speakers and attendance.

15. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the new policies that were approved in 2020 pertain to:

- The Parliamentary Procedures were amended to delete appeals, which were repealed January 1, 2020.
- The adjusted annual gift limit was increased from \$500 to \$520 from January 1, 2021, through December 31, 2022.
- The Board ratified the hiring of ALJ Stephen Smith.
- The *Guide to the New Motor Vehicle Board, Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- Performance appraisal criteria were adopted for the Executive Director position.

Ms. Parker noted two additional changes to reflect the recent promotions in footnote 1 on page 1 and on page 6 in “Appointment of Hearing Officers.”

There was no Board action as this matter was for information only.

16. **CONSIDERATION OF THE EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE (VEHICLE CODE SECTION 3085, ET SEQ.) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported the changes from the version adopted in March 2020 reflect: (1) The Board’s Post Office Box for mailings; (2) The preference for email filings instead of in-person filings considering the current situation; and, (3) That an intervenor is precluded from filing a peremptory challenge as the result of regulatory changes effective April 1, 2020.

Ms. Parker noted an additional amendment that reflects Ms. Phomsopha’s recent promotion to Senior Staff Counsel and Ms. Parker’s promotion to Chief Counsel.

Mr. Obando moved to adopt the 2021 *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

17. **CONSIDERATION OF REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo and revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. As indicated in the memo, the changes from the prior version adopted in March 2020 are as follows:

- Due to the current situation, the Board’s preference is to receive notices by email. Alternatively, notices can be mailed to the Board’s P.O. Box. This amendment is reflected in footnotes on pages 4, 5, 7, and 11. An additional amendment pertaining to email notices is on page 17.
- References to the Pomona Show have been changed to the California RV Show on pages 6, 8 and 23.
- “What is a Warranty Reimbursement Schedule or Formula” on pages 13-14 has been revised to clarify the duties for Vehicle Code section 3065 franchisors (cars, trucks, motorcycles) and Article 5 recreational vehicle franchisors.



- A footnote on page 17 was added to note that Board meetings are being held by Zoom and teleconference.

Ms. Parker noted an additional amendment that reflects Ms. Phomsopha's recent promotion to Senior Staff Counsel and Ms. Parker's promotion to Chief Counsel.

Mr. Obando moved to adopt the 2021 *Informational Guide for Manufactures and Distributors* as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF 2021 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2021 Rulemaking Calendar from Tim Corcoran and Danielle Phomsopha. Ms. Phomsopha reported that the Rulemaking Calendar has already been approved by California State Transportation Agency. Ms. Phomsopha indicated that if the calendar is approved by the Board, it will be submitted to the Office of Administrative Law for publication in the California Regulatory Notice Register.

In response to Ms. Doi's questions, Ms. Phomsopha indicated that the rulemaking noted on the calendar pertains to substantive changes that were approved previously for the Assembly Bill 179 amendments, as well as the protest and petition changes the Board approved at a subsequent meeting regarding new Vehicle Code section 3065.3 and providing more detail to declarations or other evidence in relation to petitions.

Mr. Alvarez moved to adopt the 2021 Rulemaking Calendar. Ms. Liu seconded the motion. The motion carried unanimously.

19. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the assignment of cases to Board ALJs in 2020. As indicated in the memo, there were nine law and motion hearings, seven discovery hearings (rulings on objections) and seven mandatory settlement conferences. Ms. Phomsopha reported there was a 2-day merits hearing in 2020 (pre-pandemic) and all settlement conferences have been held via Zoom. In response to Ms. Doi's question, Ms. Phomsopha indicated that Judge Nelsen will preside over a hearing in February, Judge Hagle will potentially preside over a hearing in late March, and the stipulated decision or order dispute is assigned to Judge Matteucci.

Ms. Doi was wondering how these matters are assigned to the different ALJs because a lot of them did not have assignments and it looked like most matters were heard by Judge Skrocki. Ms. Phomsopha noted that per Board policy, Judge Skrocki hears all law and motion so that is why he gets the bulk of the work. Judge Wong handles the settlement

conferences. Ms. Parker added that when a judge gets assigned to preside over a merits hearing, no other assignments will be made until the hearing is completed and the Proposed Decision drafted. The law and motion hearings Judge Skrocki presides over a take about an hour. By way of example, Ms. Parker commented that when Judge Nelson presides over the February hearing, until the Board gets his draft proposed decision, he will not be assigned any new cases. Same goes for Judge Woodward Hagle's potential hearing in March. Mr. Corcoran added that the Board is limited in the number of hours that can be assigned to the retired annuitant or permanent intermittent judges so that is an additional consideration.

There was no Board action as this matter was for information only.

20. **CONSIDERATION OF PROPOSED REGULATION AMENDING THE BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Robin Parker, and Danielle Phomsopha concerning a proposed amendment to Section 599 of Title 13 of the California Code of Regulations pertaining to the Board's Conflict of Interest Code. Ms. Parker indicated that every other year the Board reviews its Conflict of Interest Code and noted Dawn's promotion needs to be reflected. Ms. Doi questioned the need to designate a level for the Staff Services Manager and why nonlegal positions are under the title "Legal Division." After a brief discussion, Ms. Doi suggested the following changes: move Staff Services Manager (all levels) to the Executive Division and create an Administrative Services Division heading for Staff Services Analyst, Associate Governmental Program Analyst, and Consultant/New Position.

Mr. Obando moved to adopt the proposed regulation as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

Ms. Doi read the following statement into the record:

Given the Board's decision to go forward with the proposed regulation, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulation, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulation. Furthermore, if the staff

decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

The revised text is:

Designated Positions	Disclosure Category
<u>EXECUTIVE DIVISION</u>	
Board Member	1
Executive Director	1
Staff Services Manager + <u>(all levels)</u>	1
<u>ADMINISTRATIVE SERVICES DIVISION</u> (new heading)	
Staff Services Analyst	1
Associate Governmental Program Analyst	1
Consultant/New Position	*
<u>LEGAL DIVISION</u>	
Administrative Law Judge (all levels)	1
Attorney (all levels)	1

21. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Corcoran provided the members with a written report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Corcoran provided a detailed overview of the Board's accomplishments over that past year as follows: (1) The Board staff pivoted to telework and a virtual office with the support of DMV in securing laptops, which made this possible; (2) Zoom has been used for public Board Meetings, staff meetings, and ALJ training. Zoom will also be used for merits hearings; (3) The staff is exploring options to transition to electronic case management ; (4) All legal processes were modified to assure the work continued; (5) The Legal Division staff engaged a number of participants, stakeholders, and counsel that appear before the Board along with the ALJs to prepare for Zoom hearings; (6) The workload in the Legal Division was the second highest in a 17-year

period; and (7) Board Executive staff worked with DMV through a partnership with CalSTA, a number of industry stakeholders, and associations, to formalize a written policy that made it clear that conducting a large portion of the sales transaction online is permissible.

Mr. Corcoran received an "Industry Achievement Award" in appreciation of his outstanding service and dedication to the auto industry by IADAC (Independent Automobile Dealers Association of California). The award was presented by Larry Laskowksi, who recently retired from IADAC.

With regards to employee retention and succession planning, Mr. Corcoran reported that Miss Kindel was promoted from Staff Services Manager I to Staff Services Manager II with a title change from "Chief of Staff" to "Assistant Executive Officer," which is a title that is more fitting of the role as the second in command in leading the Board staff. This title is recognized at other boards and commissions. Ms. Parker was promoted to Chief Counsel and Ms. Phomsopha was promoted to Senior Staff Counsel. Mr. Corcoran commented that these are all key moves for not only retention but future succession planning.

On a personal note, Mr. Corcoran reported that Baby Teddy, Ms. Phomsopha's son, joined the New Motor Vehicle Board family. Eugene Ohta retired. Alex Martinez was married and so was Makalla (Turner) Johnson.

Lastly, Mr. Corcoran remarked on what a pleasure it has been to work with Ms. Doi for the past two years under her leadership as Board President. Mr. Corcoran thanked Ms. Doi for her leadership, guidance, mentorship and everything else she has done personally for Mr. Corcoran and for the Board.

Ms. Doi expressed her appreciation of Mr. Corcoran's leadership, and his foresight and vision in terms of moving the Board forward.

Ms. Phomsopha reported that since the Executive Director's Report was published, two new protests were filed (warranty and franchisor incentive). As previously mentioned, Judge Nelsen will preside over the Board's first Zoom merits hearing in *Subaru of Sonora*. Lastly, two bills were introduced that pertain to the Bagley Keene Open Meeting Act so staff will work to review and analyze those bills. The full Board will be apprised at the next General Meeting and staff will work with the Legislative Committee on those analyses.

Ms. Parker provided a detailed update on three court matters in which decisions were recently issued. In *R & H Automotive*, the judge upheld the Board's decision. In *Ford Motor Company v. New Motor Vehicle Board*, the Court upheld Judge Pipkin's decision in *Vista Ford* that precluded Ford from relocating one of its dealers. In *General Motors v. New Motor Vehicle Board*, pertaining Folsom Chevrolet's termination protest, the Court found that the Board did not incorrectly apply the legal standard set forth in Vehicle Code section 11713.13(g)(1)(A) when analyzing the good cause factors, but that the Board did

not have jurisdiction to make a determination that General Motors violated that particular provision.

Ms. Doi thanked the ALJs, Ms. Parker and Michael Gowe, the Attorney General who represents the Board in these appeal hearings before the Superior Court.

22. **PUBLIC COMMENT (Gov. Code § 11125.7)**

Mr. Alvarez thanked Ms. Doi for her service as President the past two years, for her dedication to the Board and for her passionate thoroughness in everything she did for the Board. Ms. Doi did a great job leading the Board. Mr. Alvarez also welcomed the new officers, Mr. Obando and Mr. Kassakhian, who will take over as President and Vice President. Lastly, Mr. Alvarez thanked Miss Kindel, Ms. Parker and Ms. Phomsopha for the great job they did in very challenging times all led by the Board's Executive Director, Mr. Corcoran.

No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:54 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando  
President  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a Special meeting on February 16, 2021, via Zoom and teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 1:04 p.m.

Ms. Doi welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Daniel P. Kuhnert  
Nanxi Liu (left at 2:14 p.m.)  
Bismarck Obando (left at 2:45 p.m.)  
  
Anne Smith Boland (Dealer Member did not participate)

Board Members Not Present: Ardashes “Ardy” Kassakhian

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
  
Anthony M. Skrocki, Administrative Law Judge  
Stephen J. Smith, Administrative Law Judge

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

Ms. Doi reminded Ms. Smith Boland, the Dealer Member in attendance, that she may not participate in, hear, comment or advise other members upon or decide Agenda Items 3 and 4.

Ms. Doi read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.” Furthermore, she indicated that since these are adjudicative matters as described in Government Code section 11125.7(e), members of the public may not comment on such matters.

- a. MERCED TRUCK & TRAILER, INC., a California Corporation v. DAIMLER TRUCK NORTH AMERICA, LLC, and Does 1-50, inclusive  
Protest No. PR-2671-20

Oral comments were presented before the Public Members of the Board. Andrew V. Stearns, Esq. of the Robards & Stearns, PC represented Protestant. Also, present on behalf of Protestant was Don Bonander. Roberta F. Howell, Esq. and Dyana K. Mardon, Esq. of Foley & Lardner LLP represented Respondent.

- b. BONANDER AUTO, TRUCK & TRAILER, INC., a California Corporation v. DAIMLER TRUCK NORTH AMERICA, LLC  
Protest No. PR-2673-20

Oral comments were presented before the Public Members of the Board. Andrew V. Stearns, Esq. of the Robards & Stearns, PC represented Protestant. Also, present on behalf of Protestant was Don Bonander. Roberta F. Howell, Esq. and Dyana K. Mardon, Esq. of Foley & Lardner LLP represented Respondent.

4. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

- a. **CONSIDERATION OF PROPOSED ORDER**

MERCED TRUCK & TRAILER, INC., a California Corporation v. DAIMLER TRUCK NORTH AMERICA, LLC, and Does 1-50, inclusive  
Protest No. PR-2671-20

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent Daimler Truck North America, LLC's Motion to Dismiss Protest, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Prior to the vote, Ms. Liu had to leave the meeting. Mr. Obando moved to adopt the Administrative Law Judge's Proposed Order. Mr. Kuhnert seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

BONANDER AUTO, TRUCK & TRAILER, INC., a California Corporation  
v. DAIMLER TRUCK NORTH AMERICA, LLC  
Protest No. PR-2673-20

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent Daimler Truck North America, LLC's Motion to Dismiss Protest, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Ms. Doi moved to remand the matter to Administrative Law Judge Skrocki for additional consideration and decision as to whether Paragraph 5 of Addendum 1 to the Dealer Agreement dated 1997 provides Protestant Bonander with standing to protest the termination of or modification of its franchise. Mr. Kuhnert seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

Ms. Doi noted that Mr. Obando had to leave the meeting at 2:45 p.m. but was present for the entirety of the discussion and voted on the two case management matters.

The Public Members returned to Open Session. Ms. Doi announced the decisions in Agenda Item 4.

6. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT ON GENERAL MOTORS LLC'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE**

FOLSOM CHEVROLET, INC., dba FOLSOM CHEVROLET v. GENERAL MOTORS, LLC  
Protest No. PR-2483-16

Consideration of the Decision in light of the Los Angeles County Superior Court's Judgment commanding the Board to set aside that portion of its Decision, dated August 13, 2018, finding that General Motors LLC violated Vehicle Code section 11713.13(g)(1)(A) generally and in this specific case, by the Public Members of



the Board. Otherwise, the petition for writ of administrative mandate was denied and the Board's Decision affirmed.

Ms. Doi indicated that the Board lost its quorum, so the Board was not able to address this matter. A date for a Special Meeting will be set as soon as possible. Counsel declined making any public comments at this time.

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:53 p.m.

Submitted by

---

TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando  
President  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a Special meeting on April 7, 2021, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 1:35 p.m.

Mr. Obando welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff. He also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present:           Kathryn Ellen Doi  
  Ardashes “Ardy” Kassakhian  
  Nanxi Liu  
  Bismarck Obando

Board Members Not Present:   Daniel P. Kuhnert

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

  Anthony M. Skrocki, Administrative Law Judge

3. **CLOSED EXECUTIVE SESSION**

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

**DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION**

GENERAL MOTORS LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FOLSOM CHEVROLET, INC., d/b/a FOLSOM CHEVROLET, Real Party in Interest

California Superior Court, Los Angeles County Case No. BS175257  
New Motor Vehicle Board No. CRT-276-18  
Protest No. PR-2483-16

Discussion and advice from the Board's legal counsel concerning pending litigation, by the Public Members of the Board.

Mr. Obando noted on the record that Ms. Phomsopha was precluded from participating in this matter, so she did not join the closed Executive Session.

The Public Members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Robin Parker, Chief Counsel, was provided to the members to justify the closed Executive Session. The members participated in a discussion of this matter with Michael Gowe, Deputy Attorney General. No action was taken.

4. **OPEN SESSION**

Mr. Obando announced that no formal action was taken on this matter during the closed Executive Session.

The meeting was turned over to Kathryn Doi, attorney Public Member and former Board President. Ms. Doi apologized to those in attendance at the last Special Meeting that she presided over when the Board was not able to hear this matter.

Even though it did not appear any Dealer Members were at the meeting, just in case Ms. Doi wanted to remind them that they may not participate in, hear, comment, advise other members upon, or decide this matter.

5. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT ON GENERAL MOTORS LLC'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE**

FOLSOM CHEVROLET, INC., dba FOLSOM CHEVROLET v. GENERAL MOTORS, LLC  
Protest No. PR-2483-16

Consideration of the Decision in light of the Los Angeles County Superior Court's "Judgment on Petition for Writ of Administrative Mandate" commanding the Board to set aside that portion of its Decision, dated August 13, 2018, finding that General Motors LLC violated Vehicle Code section 11713.13(g)(1)(A) generally and in this

specific case, by the Public Members of the Board. Otherwise, the petition for writ of administrative mandate was denied and the Board's Decision affirmed.

Public comments were presented before the Public Members of the Board by Halbert B. Rasmussen, Esq. of Scali Rasmussen and Mark T. Clouatre, Esq. of Nelson Mullins Riley & Scarborough LLP.

In accordance with the Los Angeles County Superior Court's Judgment and Writ of Mandate, Mr. Obando moved to amend the Board's August 13, 2018, Decision as follows:

1. Paragraph 218, lines 5-6 are deleted: "The use of RSI generally by General Motors, and as applied in this case, violates Section 11713.13(g)(1)(A)."
2. Paragraph 219, lines 13-15 are deleted: "So too, in this case, RSI violates Section 11713.13(g); average performance based on statewide sales, tempered only by considering segments, i.e., general vehicle types that have particular characteristics."
3. Paragraph 223, lines 5-6 are deleted: "The use of RSI generally by General Motors, and as applied in this case, violates Section 11713.13(g)(1)(A)."

Otherwise, the Board's Decision was affirmed, which includes changes approved at the August 13, 2018, General Meeting incorporated into the Decision as follows:

1. Paragraph 150, page 48, line 7, add the word "RSI" after 84.9 so it reads "84.9 RSI."
2. Paragraph 179, page 57, line 26, add the word "million" after "\$1.643" so it reads "\$1.643 million."

Mr. Kassakhian seconded the motion. The motion carried unanimously.

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:23 p.m.

Submitted by

---

TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_

Bismarck Obando  
President  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a Special meeting on August 27, 2021, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 1:00 p.m.

Mr. Obando welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). Mr. Obando also set forth the parameters for the meeting.

Steve Gordon, Director of the Department of Motor Vehicles, was welcomed to the meeting. Director Gordon thanked the Board and indicated that he looks forward to learning more about the Board’s processes and the State.

2. **ROLL CALL**

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

Board Members Not Present: Ramon Alvarez C.  
Inder Dosanjh

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Anthony M. Skrocki, Administrative Law Judge

3. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED PUBLIC MEMBER  
JACOB STEVENS**

Mr. Obando introduced and welcomed Jacob Stevens, newly appointed Public Member. Mr. Obando noted that Mr. Stevens is Vice President of a privately held real estate firm in West Hollywood. He is currently President of the Los Angeles City East Area Planning Commission and has formerly served on the Los Angeles City Revenue Generation Commission. Mr. Stevens was elected to the Eagle Rock Neighborhood Council while a student at his LAUSD Public High School. Additionally, he is a Planned Parenthood of Pasadena and San Gabriel Valley Board member, and a member of the Board of Governors at Occidental College, where he was a Centennial Scholar. Mr. Stevens is an Eagle Scout, a two-term member of the California Democratic Party State Central Committee and was recognized as the 2019 LGBT Heritage Month - Person of the Year for Los Angeles City Council District 14.

Mr. Stevens indicated that he is grateful for the good work that the Board has been doing before his tenure, with the Mission Statement and the work by the Ad Hoc Committee on Equity, Justice and Inclusion, and appreciates this opportunity.

4. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER MEMBER  
RYAN FITZPATRICK**

Mr. Obando introduced and welcomed Ryan Fitzpatrick, newly appointed Dealer Member. Mr. Obando remarked that Mr. Fitzpatrick has been President of the Fitzpatrick Dealership Group since 2001. He was a subcontract analyst at Lockheed Martin from 2000 to 2001 and Mr. Fitzpatrick's a member of the California State University, Stanislaus Foundation Board.

Mr. Fitzpatrick expressed his thanks to the Governor and his staff for their recommendation, to Mr. Corcoran and his staff, and to Brian Maas on behalf of the California New Car Dealers Association (CNCDA) for his recommendation. Mr. Fitzpatrick indicated that he is a second-generation car dealer but likes to say he is a third-generation car dealer because his grandfather began his career as a janitor in a car dealership in Ohio and he was able to work his way from a janitor to a parts manager. This is a great industry and there is a lot of upward mobility. Mr. Fitzpatrick sees a lot of success stories in this industry and there is a lot of diversity that goes along with that. So, he wants to continue to support the industry and is glad to be a part of the Board.

5. **APPOINTMENT OF MEMBERS TO THE ADMINISTRATION COMMITTEE,  
BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT  
AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, POLICY  
AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEES, BY THE  
BOARD PRESIDENT**

Ms. Doi requested that this matter be moved to the end of the meeting after Agenda Item No. 8.

6. **DISCUSSION AND CONSIDERATION OF AMENDMENTS TO THE BOARD APPROVED MISSION STATEMENT OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION - AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

The members were provided with a memorandum from Bismarck Obando and Tim Corcoran concerning proposed amendments to the Board approved mission statement of the Ad Hoc Committee on Equity, Justice and Inclusion.

Mr. Obando noted that at the February 2021 General Meeting, the Board voted to adopt the mission statement developed by the Ad Hoc Committee to guide its work. Additionally, the staff have been in regular communication with the California State Transportation Agency (CalSTA) about the work of both the Ad Hoc Committee and the Board, and that all feedback has been positive. Over the past few months, Mr. Corcoran and Mr. Obando have been monitoring the Administration's actions relating to race and equity to ensure the Ad Hoc Committee is on the right track as it develops its workplan.

Mr. Obando remarked that at the July 2021 meeting of the Ad Hoc Committee the members met to formulate an educational work plan. The work plan will focus on creating an educational forum for our stakeholders that focuses on two key areas. The first session is going to focus on learning about the state of the car industry in relation to minority-owned dealers. The Board would hear from manufacturers about what programs they are implementing to increase minority-owned dealers. The second session would focus on the topic of EVs (electric vehicles) and the impact to minority communities. At this meeting, the members reviewed the Board adopted Ad Hoc Committee mission statement. During this meeting, Mr. Stevens proposed amendments that reflect a more inclusive statement from the Board by striking the phrase "underrepresented" and replacing it with "historically excluded."

Mr. Stevens commented that he appreciates consideration of this change. It is more representative and in line with some of the diversity and equity language that have been encountered in certain circumstances to reflect the purposefulness of the Ad Hoc Committee's mission statement. An additional change is from "females" to "women." Mr. Stevens encouraged approval of this amendment.

Ms. Doi indicated that she was in favor of this amendment and appreciated Mr. Stevens raising this issue at the Committee Meeting. Ms. Doi moved to adopt the revised Mission Statement. Ms. Liu seconded the motion. The motion carried unanimously.

The revised mission of the Ad Hoc Committee on Equity, Justice and Inclusion is:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department

within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues, including but not limited to, the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented historically excluded groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented historically excluded groups to be considered for exempt executive level positions within CalSTA and its departments.

Mr. Obando thanked Mr. Stevens for his recommendation and feedback.

7. **INFORMATIONAL UPDATE REGARDING WORKSHOPS BEING PLANNED FOR EARLY 2022 ADDRESSING EQUITY AND REPRESENTATION DISPARITIES PERSISTING IN TODAY'S MOTOR VEHICLE INDUSTRY - AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

As Mr. Obando noted above, the Ad Hoc Committee is working to develop two educational sessions in the winter of 2022.

Ms. Phomsopha indicated that the workshops would likely be held via Zoom to allow for a broad audience to attend. To avoid, Zoom fatigue, each session would be limited to two hours from 10:00 a.m. to 12:00 p.m. The Board Members and staff would be in attendance at one location since this would be a noticed Board Meeting.

Ms. Phomsopha reviewed the following draft agenda with the members and audience:

Day 1:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by Bismarck Obando, President, California New Motor Vehicle Board
- 10:10 a.m. Keynote address from representative, California State Transportation Agency
- 10:20 a.m. State of the Industry with Respect to Diversity in the Automotive Franchise Network
  - ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
  - ❖ Representative, Crane Automotive Resources
- 10:50 a.m. Automaker Discussion of Women, Minorities and other Members of Historically Excluded Groups in the Automotive Franchise Network
  - ❖ Representative, General Motors, LLC
  - ❖ Representative, Toyota Motor Sales USA Inc.
  - ❖ Representative, Stellantis



- ❖ Representative, Nissan North America, Inc.

11:40 a.m. Q & A Session  
All presenters

Day 2:

10:00 a.m. Introduction of Board Members, staff, and attendees by Bismarck Obando, President, California New Motor Vehicle Board

10:15 a.m. Welcoming remarks from Representative California State Transportation Agency

10:30 a.m. Presentations on Equity and EVs

- ❖ Representative, Greenlining Institute
- ❖ Representative, Access Clean California
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)

11:40 a.m. Q & A Session  
All presenters

Mr. Obando commented that the Board has been tasked with providing educational content in this regard but it does not have any real policy authority so the idea would be for the Board to invite CalSTA to be a part of the workshops along with the Board's stakeholder. What is learned at the workshops could be brought back with the attendees as they develop their programs and policy work in this area.

Mr. Obando welcomed feedback. Mr. Kassakhian complimented the Ad Hoc Committee members that developed this agenda. He noted that this is a very timely discussion that is important to have, and he is glad the Board is moving forward with the workshops.

8. **INFORMATIONAL UPDATE REGARDING THE NEW MOTOR VEHICLE BOARD'S UPCOMING INDUSTRY ROUNDTABLE ON SEPTEMBER 8-9, 2021 - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Ms. Phomsopha provided an update concerning the September 8-9, 2021, Industry Roundtable. She noted that on August 17<sup>th</sup>, the promotional materials and agenda were sent to the Board's public mailing list, roundtable email list, and the National Associations of Boards and Commissions contact list, which includes a total of about 490 people. On August 26<sup>th</sup>, the materials and agenda were sent to the Department of Motor Vehicle's Occupational Licensing mailing list. And, the CNCDA also sent out the invitation and materials in its monthly newsletter. So far there were 135 registrations.

On behalf of the Government and Industry Affairs Committee (Mr. Alvarez and Ms. Smith Boland), Ms. Doi thanked Mr. Corcoran, Ms. Phomsopha, and Miss Kindel for putting

together a fantastic agenda and for getting a prominent member of the industry (Rob Cohen) to serve as the moderator for the panel on Day 2. Ms. Doi also noted her appreciation of CalSTA taking an active role in the Roundtable and for Secretary Kim providing an introduction and for another high-level CalSTA employee (Lori Pepper) giving a welcome. Lastly, Mr. Doi thanked the CNCDA who has been very active in participating in all of the Committee meetings and providing excellent feedback on putting this program together.

Mr. Obando thanked Ms. Doi and the Committee Members for their time and work on the Roundtable.

Ms. Phomsopha provided the following overview of the speakers and schedule for Day 1 of the Roundtable:

- 10:00 a.m. Introduction of Board Members, staff, and roundtable attendees by Bismarck Obando, President, California New Motor Vehicle Board
- 10:10 a.m. Keynote address from David S. Kim, Secretary, California State Transportation Agency
- 10:25 a.m. Discussion of Zero Emission Vehicles: Infrastructure, Statistics, Sales Trends and Data
  - ❖ Jesse Gage, Energy Commission Specialist, Transportation Energy Forecasting Unit, California Energy Commission
  - ❖ Hannon Rasool, Deputy Director, Fuels and Transportation Division, California Energy Commission
- 11:05 a.m. Discussion of California Air Resources Board's Advanced Clean Cars Program
  - ❖ Marissa Williams, Manager, Light Duty Vehicle Regulations Section, Advanced Clean Cars Branch, California Air Resources Board
- 11:25 a.m. Discussion of Road Charge Funding and Zero Emissions Vehicles
  - ❖ Lauren Prehoda, Road Charge Program Manager, California Department of Transportation
- 11:45 a.m. Q & A Session moderated by Board President, Bismarck Obando  
All presenters

Mr. Corcoran provided the following overview of the speakers and schedule for Day 2 of the Roundtable:

- 10:00 a.m. Introduction by Bismarck Obando, President, New Motor Vehicle Board
- 10:05 a.m. Welcoming remarks from Lori Pepper, Deputy Secretary, Innovative Mobility Solutions, California State Transportation Agency

- 10:15 a.m. Introduction of panelists by panel moderator, Rob Cohen, Esq.
- 10:25 a.m. Panel Discussion: Obstacles and Opportunities for the Automotive Industry and the Future of Alternative Fuel Vehicles
- ❖ Curt Augustine, Senior Director, State Affairs, Alliance for Automotive Innovation
  - ❖ Anthony Bento, Esq., Director of Legal and Regulatory Affairs, California New Car Dealers Association (CNCDA)
  - ❖ Chris Hay, Product and Pricing Director, GMC and Buick
  - ❖ Andrew Koblenz, Esq., Executive Vice President, Legal and Regulatory Affairs and General Counsel, National Automobile Dealers Association (NADA)
  - ❖ Thomas Lawson, Regional Director, Government Affairs, Ford Motor Company
  - ❖ Damon Lester, President, National Association of Minority Automobile Dealers (NAMAD)
- 11:30 a.m. Q & A Session moderated by Rob Cohen, Esq.  
All presenters
- 11:55 a.m. Closing remarks from Board President, Bismarck Obando

Mr. Corcoran offered a special thanks to the Dealer Members for their help in reaching out to the automakers they individually work with to secure this panel. Mr. Corcoran also thanked the associations for their help in this regard. Mr. Corcoran noted that Rob Cohen, the moderator for Day 2, has been working with the panel to develop prepared questions with some questions to specific individuals and some questions for the panel at large. Questions can also be submitted in advance from attendees and also during the question and answer session.

Ms. Smith Boland seconded Ms. Doi's remarks and commented that she is very excited for the Roundtable. Mr. Fitzpatrick indicated that he is looking forward to the Roundtable as well and thought the agenda looked great.

Mr. Corcoran thanked Director Gordon and relayed a special thanks to Ailene Short with Occupational Licensing who helped get the word out about the Roundtable via their OLIN (Occupational Licensing Industry News), which resulted in an immediate increase in registrations.

Mr. Obando thanked Mr. Maas, CNCDA, for marketing the Roundtable in their communications to their members.

5. **APPOINTMENT OF MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEES, BY THE BOARD PRESIDENT**

After a brief discussion off the record, Mr. Obando made the following committee appointments:

**ADMINISTRATION COMMITTEE**

Ardy Kassakhian, Chair  
Ryan Fitzpatrick, Member

**BOARD DEVELOPMENT COMMITTEE**

Nanxi Liu, Chair  
Kathryn Ellen Doi, Member

**EXECUTIVE COMMITTEE**

Bismarck Obando, President  
Ardy Kassakhian, Vice President

**FISCAL COMMITTEE**

Anne Smith Boland, Chair  
Nanxi Liu, Member

**GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Ramon Alvarez C., Chair  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member  
Ryan Fitzpatrick, Member

**LEGISLATIVE COMMITTEE**

Bismarck Obando, Chair  
Ardy Kassakhian, Member

**POLICY AND PROCEDURE COMMITTEE**

Inder Dosanjh, Chair  
Jacob Stevens, Member

**AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

Bismarck Obando, Chair  
Ramon Alvarez C., Member  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member  
Inder Dosanjh, Member  
Jacob Stevens, Member

9. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:37 p.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando  
President  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a Special meeting on September 15, 2021, via Zoom and teleconference. On behalf of President Obando, Kathryn Doi, Public Attorney Member, called the meeting of the Board to order at 1:03 p.m.

Ms. Doi welcomed everyone to the meeting and specially welcomed Scott Wyckoff, General Counsel, California State Transportation Agency, who was observing the meeting. Ms. Doi stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov).

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Ardashes “Ardy” Kassakhian  
Nanxi Liu  
Bismarck Obando  
Jacob Stevens

Dealer Member Present: Anne Smith Boland, Member

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Lee Moore, Mediation Analyst

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

Ms. Doi reminded Ms. Smith Boland, the Dealer Member in attendance, that she may not participate in, hear, comment or advise other members upon or decide Agenda Items 3 and 4.

Ms. Doi read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.” Furthermore, she indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e) and (f), members of the public may not comment on this matter.

PRIETO AUTOMOTIVE, INC., a California Corporation, dba SUBARU OF SONORA v. SUBARU OF AMERICA, INC.  
Protest No. PR-2648-19

Oral comments were presented before the Public Members of the Board. Michael M. Sieving, Esq., Attorney at Law, represented Protestant. On behalf of Protestant, Manuel Prieto and Mona Llamas were also present. Lisa M. Gibson, Esq. and Adrienne L. Toon, Esq, of Nelson Mullins Riley & Scarborough LLP represented Respondent. Ray Smit and Scott Farabee were also present on behalf of Respondent.

4. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

**CONSIDERATION OF PROPOSED DECISION**

PRIETO AUTOMOTIVE, INC., a California Corporation, dba SUBARU OF SONORA v. SUBARU OF AMERICA, INC.  
Protest No. PR-2648-19

Consideration of the Administrative Law Judge’s Proposed Decision, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge’s Proposed Decision as amended. The last row of the chart entitled “Protestant’s Subaru and Ford Sales” in Paragraph 46, page 23, line 21 commencing with “2020 through November” is deleted. The revised chart is as follows:

Protestant's Subaru and Ford Sales

Year	Subaru Sales	Combined Subaru and Ford sales
2017	\$12,600,027	\$33,618,390
2018	\$18,261,106	\$42,273,663
2019	\$20,511,347	\$40,953,933

The sentence that follows is added before "(Exs. R-310, R-311.)" in Paragraph 46, page 23, line 22: "For 2020 through November, combined Subaru and Ford sales were \$37,591,435 and annualized combined Subaru and Ford sales were \$41,008,838." Mr. Obando seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Doi announced the decision in Agenda Item 4.

6. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:48 p.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando  
President  
New Motor Vehicle Board



P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee held a meeting on March 17, 2021, via Zoom and teleconference. Ramon Alvarez C., Chair and Dealer Member, called the meeting to order at 9:31 a.m.

Mr. Alvarez welcomed everyone to the meeting and wished everyone a Happy St. Patrick's Day. Miss Kindel set forth the parameters for the meeting.

2. **ROLL CALL**

Committee Members Present: Ramon Alvarez C., Chair  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member

Board Member Observers: Bismarck Obando, President and Public Member  
Ardy Kassakhian, Vice President and Public Member  
Inder Dosanjh, Dealer Member  
Nanxi Liu, Public Member

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

3. **CHAIR ALVAREZ'S INTRODUCTION**

Mr. Alvarez welcomed the Government and Industry Affairs Committee Members, Board Members, staff and the audience.

4. **STAFF OVERVIEW OF PROPOSED TOPICS AND SPEAKERS FOR THE SEPTEMBER 9, 2021, INDUSTRY ROUNDTABLE**

Ms. Phomsopha provided an overview of a recent webinar the California Governor's Office of Business and Economic Development (GO-Biz) held regarding the its Zero-

Emission Vehicle (ZEV) Market Development Strategy. Ms. Phomsopha noted that public policy is important but private sector will be where scale is driven. The webinar identified four pillars: (1) Vehicles (all types of options for transport, freight, construction, agriculture, as well as the supply chain to support all vehicle types); (2) Infrastructure (fueling, including electric charging stations, hydrogen fueling stations, grid integration for fueling systems and building out the supply chain); (3) End Users (including consumers, riders, transportation network companies, car dealers, local governments and communities, trucking companies, fuel providers); and (4) Workforce (includes those needed to design, manufacture, sell, construct and install, service and maintain ZEVs, ZEV infrastructure, distribution systems, dealerships, energy systems, fueling and charging stations).

With regards to keeping equity at the forefront, especially priority populations that have been impacted over time, Ms. Phomsopha noted that the Greenlining Institute made an informative presentation so that may be a potential topic and speaker.

Ms. Phomsopha noted the following potential speakers:

- Representative from the California Transportation Commission (CTC) as well as Caltrans' Road Charge Program Manager to discuss road charge funding and zero emissions vehicles.
- Representative from the Fuels and Transportation Division of the California Energy Commission to discuss Zero Emission Vehicle Infrastructure and statistics.
- Representative from the Energy Assessments Division of the California Energy Commission to discuss ZEV sales trends and data.
- Potential representative from the California Air Resources Board's Advanced Clean Cars Branch to discuss their program.
- Representative from California State Transportation Agency (CalSTA) to give brief statement re: their position.
- Representatives from the California New Car Dealers Association (CNCDA) and Alliance of Automobile Manufacturers (now Auto Alliance).
- Potential speaker from the Bureau of Automotive Repair (BAR).

Mr. Obando indicated that the social equity component of ZEVs could be handled by the Ad Hoc Committee on Equity, Justice and Inclusion at a separate event.

## 5. **DISCUSSION OF PROPOSED TOPICS AND SPEAKERS FOR THE 2021 INDUSTRY ROUNDTABLE**

There was a lengthy discussion on proposed topics that are most relevant to the Board, potential speakers, the format (virtual versus in-person), the length of the Industry Roundtable and whether it should be broken down over several days with shorter segments. Several proposals for a theme were suggested from the members such as, "California's ZEV Future: An Industry's Perspective," "California's Race to a ZEV Future," and "Charging Towards a ZEV Future." Ultimately, it was decided that Mr. Alvarez would make the final decision on the theme.

Mr. Alvarez requested that Mr. Corcoran and Ms. Phomsopha work to secure opening remarks in the form of a video from Governor Newsom and the CalSTA Secretary.

The members decided on a 2-day virtual event on Wednesday, September 8 and Thursday, September 9, 2021, from 10:00 a.m. to 12:00 p.m., with 90 minutes for presentations and 30 minutes for questions and answers.

6. **DISCUSSION OF FUTURE COMMITTEE MEETING DATES**

The members scheduled the next Government and Industry Affairs Committee meeting for Thursday, May 20, 2021, at 9:30 a.m.

7. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 10:53 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C., Chair  
Government and Industry Affairs Committee  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee held a meeting on May 20, 2021, via Zoom and teleconference. Ramon Alvarez C., Chair and Dealer Member, called the meeting to order at 9:33 a.m.

Mr. Alvarez welcomed everyone to the meeting and set forth the parameters for the meeting.

2. **ROLL CALL**

Committee Members Present: Ramon Alvarez C., Chair  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Lee Moore, Mediation Analyst  
Barbara Dorman, Legal Assistant  
Anthony M. Skrocki, Administrative Law Judge

3. **CHAIR ALVAREZ'S INTRODUCTION AND DISCUSSION OF THE INDUSTRY ROUNDTABLE'S THEME**

Mr. Alvarez welcomed the Government and Industry Affairs Committee Members, Board staff and the audience. Mr. Alvarez complimented Mr. Corcoran and Ms. Phomsopha for the incredible job they have done putting together the topics and speakers.

4. **STAFF OVERVIEW OF FINAL PROPOSED TOPICS AND SPEAKERS FOR THE SEPTEMBER 8-9, 2021, INDUSTRY ROUNDTABLE**

Mr. Corcoran indicated that at the last Committee meeting, five potential themes for this year's Roundtable were discussed:

- California’s ZEV Future: An Industry Perspective
- California’s ZEV Race to the Future
- California’s Race to a ZEV Future
- Charging Toward a ZEV Future
- Zero Emission Vehicles: California is Charging Ahead

Mr. Alvarez’s preference for the theme is “California’s ZEV Future: An Industry Perspective.” However, he wanted Committee Member input. Ms. Doi indicated that perhaps “Industry Perspective” should be broader since it encompasses State government.

As indicated in the handout provided to the members and shared during the meeting, the potential topics and timeframe are as follows:

<b>Agency/Title</b>	<b>Topic</b>	<b>Date</b>	<b>Panel/Timing</b>
CalSTA Secretary	Keynote Speaker	9-8-21	5-10 minutes
Energy Commission, Fuels and Transportation Division	Zero Emission Vehicle Infrastructure and statistics	9-8-21	2-person panel to work with the Energy Commission’s Energy Assessments Division  Total: 40 minutes together
Energy Commission, Energy Assessments Division	ZEV sales trends and data	9-8-21	2-person panel to work with the Energy Commission’s Fuels and Transportation Division  Total: 40 minutes together
CARB, Manager, Light Duty Vehicle Regulations Section, Advanced Clean Cars Branch	Advanced Clean Cars program, ZEVs	9-8-21	20-minute solo presentation
Caltrans Road Charge Program Manager	Road Charge Funding and zero emissions vehicles	9-8-21	20-minute solo presentation
ALL	Q&A	9-8-21	30 minutes
CalSTA, Deputy Secretary, Innovation Mobility Solutions	Brief Opening Remarks/CalSTA position	9-9-21	5-10 minutes
Senior Director, State Affairs, Alliance for Automotive Innovation	Manufacturers’ perspective on future alternative fuel vehicles	9-9-21	90-minute panel

<b>Agency/Title</b>	<b>Topic</b>	<b>Date</b>	<b>Panel/Timing</b>
Specific manufacturer representative(s): -Volvo, GM, Ford, BMW	Manufacturers' perspective on future alternative fuel vehicles	9-9-21	90-minute panel
CNCDA	Dealers' perspective on future alternative fuel vehicles	9-9-21	90-minute panel
ALL	Q&A	9-9-21	30 minutes

Ms. Phomsopha reviewed the potential topics and timeframe for the first day of the Roundtable. Ms. Doi commented that she did not want the theme to mislead people since Day 1 is California's perspective and not an industry perspective. Given the substance of the Roundtable and how beneficial it may be to other states, Ms. Doi suggested notifying out-of-state regulators, dealer associations, and boards.

Mr. Corcoran indicated that Day 2 is the Industry Perspective and reviewed the topics with the members. Each topic would be a panel discussion and panel questions will need to be carefully drafted.

Anthony Bento of the California New Car Dealer Association (CNCDA) asked a clarifying question concerning the timeframe. Mr. Alvarez indicated that the presentations for each day would total 90 minutes; each day is a 2-hour event.

Ms. Doi would like to see the Board participate by introducing the panel or in some other way. Additionally, the moderator is a key part so there is a robust discussion. Mr. Corcoran volunteered to moderate the Roundtable. Alternatively, a member of the industry or Board member could serve as the moderator. Ms. Doi suggested a journalist from Automotive News or another media outlet that is knowledgeable, fair, and objective. Mr. Corcoran invited the public in attendance to comment on this. Mr. Bento indicated that he might be able to reach out to CNCDA's contacts in the automotive press. Although, there might be a fee. Ms. Smith Boland thought that Day 2 could use this type of a moderator. Mr. Alvarez agreed with this suggestion.

Curt Augustine of the Alliance for Automotive Innovation indicated that he is happy to participate in the Roundtable.

Ms. Doi noted that on the panel for Day 2, there were two manufacturer representatives and questioned whether there should also be two dealer representatives. Mr. Bento indicated that he is not against a 3-person panel but would not want more than a 4-person panel. This option can be left open and in the coming months there may be a need to identify other speakers perhaps from the National Automobile Dealers Association (NADA).

With regards to the manufacturer representatives (Volvo, GM, Ford, BMW) noted above, these were all suggestions from Board members at the last General Meeting. Mr. Alvarez

indicated that he is working with Ford and would really like a representative from Volvo or Tesla. Mr. Corcoran noted that Ms. Smith Boland has been working with the staff to provide contacts for BMW. Mr. Augustine indicated that GM might be interested but indicated he would put the invitation out to all of the Alliance's members.

Ms. Smith Boland and Ms. Doi indicated that the proposed topics look excellent.

5. **DISCUSSION OF FINAL PROPOSED TOPICS AND SPEAKERS FOR THE 2021 INDUSTRY ROUNDTABLE**

This matter was discussed in Agenda Item 4.

3. **CHAIR ALVAREZ'S INTRODUCTION AND DISCUSSION OF THE INDUSTRY ROUNDTABLE'S THEME**

After reviewing the topics and speakers, the members returned to this Agenda Item. Ms. Doi requested that this discussion be postponed for a month so the members can propose additional suggestions. Ultimately, it was decided that Mr. Corcoran would reach out to the full Board to solicit suggestions, member and panel suggestions would be emailed solely to Mr. Corcoran, and the suggestions would be combined in a document that would be considered at the next Committee meeting.

Ms. Doi indicated that she would like to see a timeline for announcing the Roundtable to the public. Mr. Corcoran indicated that once the next Committee meeting is selected, the timeline can be finalized for Committee review, and the Roundtable can be advertised shortly after the meeting.

6. **DISCUSSION OF FUTURE COMMITTEE MEETING DATES**

The members scheduled the next Government and Industry Affairs Committee meeting for June 23, 2021, at 9:30 a.m.

7. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented. The members thanked the staff for putting together the Roundtable. Mr. Alvarez thanked Ms. Doi and Ms. Smith Boland for their hard work and participation.

For the next Committee meeting, Ms. Doi requested that the staff put together a document regarding how the Roundtable will be announced to the public and national organizations. Mr. Alvarez requested that a press release be prepared as well.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 10:53 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C., Chair  
Government and Industry Affairs Committee  
New Motor Vehicle Board



P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Danielle Phomsopha  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee held a meeting on June 23, 2021, via Zoom and teleconference. Ramon Alvarez C., Chair and Dealer Member, called the meeting to order at 9:31 a.m.

Mr. Alvarez welcomed everyone to the meeting, including new Board Member, Jake Stevens.

2. **ROLL CALL**

Committee Members Present: Ramon Alvarez C., Chair  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member

Board Member Observers: Jake Stevens, Public Member

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Lee Moore, Mediation Analyst  
Anthony M. Skrocki, Administrative Law Judge

3. **STAFF UPDATE OF THE PROPOSED THEME FOR THE 2021 INDUSTRY ROUNDTABLE**

Mr. Alvarez complimented Mr. Corcoran, Ms. Kindel and Ms. Phomsopha for the great job staff have been doing in preparing for this event.

As indicated in the handout provided to the members and shared during the meeting, the potential themes are as follows:

Theme	Votes
California's ZEV Future: An Industry Perspective	
California's ZEV Race to the Future	

Theme	Votes
California's Race to a ZEV Future	
Charging Toward a ZEV Future	
Zero Emission Vehicles: California is Charging Ahead	1 vote
California's ZEV Future: Infrastructure Needs, Consumer Trends, and Industry Perspectives	New suggestion
Preparing for California's ZEV Future: The State's and Stakeholders' Perspectives	New suggestion
California's ZEV Future: Establishing a Blueprint	New suggestion
Zero Emission Vehicles: Establishing a Blueprint for the Future	New suggestion
California's ZEV Future: Framework for the Path Ahead	New suggestion
Zero Emission Vehicles: California's Framework for the Future	New suggestion
ZEVs & California: Building a Foundation for the Future	New suggestion

Ms. Doi is leaning toward numbers six and seven on the list because they are the most descriptive and may help generate interest. Ms. Smith Boland also likes options six and seven. Mr. Alvarez prefers option seven because it addresses both the State and stakeholders' perspectives. Public attendee, Rob Cohen, industry attorney and former President of Auto Advisory Services, agrees with option seven. Anthony Bento from the California New Car Dealers Association also agrees with the Committee's suggestion. The Committee chose the following theme: "Preparing for California's ZEV Future: The State's and Stakeholders' Perspectives"

4. **DISCUSSION OF PROPOSED THEME OF THE 2021 INDUSTRY ROUNDTABLE**

This matter was discussed in Agenda Item 3.

5. **STAFF UPDATE ON TOPICS AND SPEAKERS FOR THE 2021 INDUSTRY ROUNDTABLE**

Mr. Corcoran introduced Rob Cohen, who has volunteered to serve as the moderator for Day 2 of the Roundtable. Mr. Cohen is excited to moderate after attending and speaking at many prior Roundtables. He believes the topics are timely and there are many questions that we will be able to address and answer at the Roundtable. He is also looking forward to the diverse panel of speakers and representatives.

Mr. Alvarez expressed his appreciation for Mr. Cohen's participation. Mr. Corcoran also expressed his appreciation to Mr. Bento for making the connection with Mr. Cohen.

Ms. Phomsopha reviewed the topics and speakers for Day 1 of the Roundtable, including Secretary Kim giving Opening Remarks as the Keynote Speaker, a 40-minute panel with representatives from the Energy Commission to speak about ZEV infrastructure,

statistics, sales trends and data, a presentation from the Air Resources Board, Advanced Clean Cars Branch and then wrap up with Caltrans discussion of the Road Charge Funding program. The day will end with Q & A.

Mr. Corcoran added that Board President, Bismarck Obando, will also take time to introduce all the Board Members as well.

Ms. Phomsopha indicated that the speakers would likely run about 1 hour and 45 minutes, allowing for 15 minutes for Q & A. The days are still scheduled for 10:00 a.m. to 12:00 p.m.

After this discussion today, Ms. Doi requested a more fleshed out agenda, so the topics are more concrete, as well as biographies and photographs of the speakers. Mr. Corcoran indicated that we have been working to gather this information but that we haven't formally shared anything yet until we are able to confirm all speakers.

Mr. Corcoran indicated that the speakers are close to being locked down for Day 2. Mr. Alvarez has secured Ford's participation on Day 2: the Director of Governmental Affairs for the Western Region of Ford Motor Company, Tom Lawson. Mr. Corcoran indicated that two other automakers are interested in speaking but not yet confirmed. We also have the following industry association representatives participating: the California New Car Dealers Association and National Association of Minority Automobile Dealers.

Ms. Doi indicated she would like to see diversity in the speakers, both gender and other factors. Mr. Alvarez indicated that has been addressed. The Ad Hoc Committee on Equity, Justice and Inclusion also intends to address the topic of minorities and EVs.

6. **DISCUSSION OF FINAL TOPICS AND SPEAKERS FOR THE 2021 INDUSTRY ROUNDTABLE**

This matter was discussed in Agenda Item 5.

7. **STAFF UPDATE ON TIMELINE AND PLAN FOR ANNOUNCING THE 2021 INDUSTRY ROUNDTABLE TO THE INDUSTRY, THE PUBLIC AND NATIONAL ORGANIZATIONS**

Ms. Phomsopha indicated that since we have chosen a theme we can send out a Save the Date to our Roundtable attendee list, as well as the attendee list for the national conference.

Ms. Doi mentioned outreach to the media to get the word out regarding our Roundtable. She also inquired about whether we have access to a marketing department and offered her law firm's services. Mr. Corcoran indicated DMV would be willing to provide the marketing support. Ms. Kindel indicated she would reach out to DMV and inquire about the turnaround time on marketing materials for our Roundtable.

Mr. Corcoran inquired with Mr. Bento about whether CNCDA would be willing to advertise the event to their members as well. Mr. Bento will look into this and reply to Mr. Corcoran. Mr. Cohen indicated that he could utilize his contacts at Arent Fox to help spread the word also. Mr. Bento mentioned that their monthly bulletins are read by 4,000-5,000 people and he could also reach out to NADA to see if they could also provide assistance in getting the word out.

Mr. Alvarez inquired about whether we have legal representation on either day. Ms. Phomsopha indicated that we do not have a specific legal representative on either day. Mr. Alvarez thought that potentially having a legal representative to answer any legal questions may be helpful. Mr. Cohen indicated this is not his area of specialty, but he could answer general questions. He offered to find a representative who has done work in this area. Mr. Alvarez will also provide Mr. Corcoran with potential questions he is concerned about so that the panelists can prepare answers to those legal questions.

Ms. Doi inquired about the limitations on having too many panelists on Day 2. Mr. Corcoran indicated that they are limiting the number of panelists so that everyone has the opportunity to speak and all topics are covered.

Ms. Doi also inquired about any limitations on the number of participants. Mr. Corcoran indicated we will use the Zoom Webinar service. Our current capacity is 100 participants and we are looking to increase that to 500 participants. Ms. Phomsopha indicated that participants will pre-register.

## 8. **DISCUSSION OF FUTURE COMMITTEE MEETING DATES**

There was discussion of the necessary timing of the next meeting date. Ms. Doi then inquired about whether the agenda would be provided with the Save the Date.

Ms. Phomsopha indicated we could get Committee Member approval of the final Agenda separately via email. Mr. Corcoran indicated that if we do not get the final speakers confirmed, we can send out the Save the Date with a high-level list of the daily topics.

Ms. Doi would like to get our event in CNCDA's August bulletin with a Save the Date potentially in the July bulletin. Mr. Bento indicated that the information could go in the July and August bulletins.

Ms. Smith Boland indicated she would nudge her industry contacts as well.

The members scheduled the next Government and Industry Affairs Committee meeting for August 24, 2021, at 1:00 p.m.

9. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented. Ms. Doi thanked the staff for putting together the Roundtable and thanked Mr. Cohen for agreeing to moderate. Mr. Alvarez thanked staff and Mr. Cohen as well.

10. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 10:13 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C., Chair  
Government and Industry Affairs Committee  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Danielle Phomsopha  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Government and Industry Affairs Committee held a meeting on August 24, 2021, via Zoom and teleconference. Kathryn Doi, Committee Member and Public Member of the Board, called the meeting to order at 1:04 p.m.

Ms. Doi welcomed everyone to the meeting and advised that Committee Chair Alvarez may join the meeting shortly. Ms. Doi introduced the newest Board Member Ryan Fitzpatrick. Mr. Fitzpatrick shared that he is looking forward to serving on the Board.

Mr. Corcoran set forth the parameters for the meeting.

2. **ROLL CALL**

Committee Members Present: Ramon Alvarez C., Chair (arrived at 1:11 p.m.)  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member

Board Member Observers: Ryan Fitzpatrick, Dealer Member  
Bismarck Obando, Public Member  
Jacob Stevens, Public Member

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel

3. **STAFF UPDATE OF THE FINAL AGENDA FOR THE 2021 INDUSTRY ROUNDTABLE**

Ms. Phomsopha provided the following overview of the speakers and schedule for each day of the Roundtable.

Day 1:

10:00 a.m. Introduction of Board Members, staff, and roundtable attendees by Bismarck Obando, President, New Motor Vehicle Board

10:10 a.m. Keynote address from David S. Kim, Secretary, California State Transportation Agency

- 10:25 a.m. Discussion of Zero Emission Vehicles: Infrastructure, Statistics, Sales Trends and Data
- ❖ Jesse Gage, Energy Commission Specialist, Transportation Energy Forecasting Unit, Energy Commission
  - ❖ Hannon Rasool, Deputy Director, Fuels and Transportation Division, Energy Commission
- 11:05 a.m. Discussion of California Air Resources Board's Advanced Clean Cars Program
- ❖ Marissa Williams, Manager, Light Duty Vehicle Regulations Section, Advanced Clean Cars Branch, California Air Resources Board
- 11:25 a.m. Discussion of Road Charge Funding and Zero Emissions Vehicles
- ❖ Lauren Prehoda, Road Charge Program Manager, Caltrans
- 11:45 a.m. Q & A Session  
All presenters

Day 2:

- 10:00 a.m. Welcoming remarks from Lori Pepper, Deputy Secretary, Innovative Mobility Solutions, California State Transportation Agency
- 10:15 a.m. Introduction of panelists by panel moderator, Rob Cohen, Esq.
- 10:25 a.m. Panel Discussion: Obstacles and Opportunities For the Automotive Industry and the Future of Alternative Fuel Vehicles
- ❖ Curt Augustine, Senior Director, State Affairs, Alliance for Automotive Innovation
  - ❖ Anthony Bento, Esq., Director of Legal and Regulatory Affairs, California New Car Dealers Association
  - ❖ Chris Hay, Product and Pricing Director, GMC and Buick
  - ❖ Andrew Koblenz, Esq., Executive Vice President, Legal and Regulatory Affairs and General Counsel, National Automobile Dealers Association
  - ❖ Thomas Lawson, Regional Director, Government Affairs, Ford Motor Company
  - ❖ Damon Lester, President, National Association of Minority Automobile Dealers (NAMAD)
- 11:30 a.m. Q & A Session  
All presenters

Mr. Obando inquired whether he would be introducing Lori Pepper on Day 2. Mr. Corcoran suggested that Mr. Obando introduce Lori Pepper before she gives her opening remarks. Ms. Doi suggested that Mr. Obando do a short introduction on Day 2 to mirror Day 1 for those attendees who are only attending Day 2.

Mr. Obando inquired who would be moderating the Q & A on Day 2. Ms. Doi confirmed Rob Cohen would moderate the Q & A on Day 2.

Ms. Doi inquired whether attendees would be able to submit questions in advance. Ms. Phomsopha and Ms. Kindel confirmed that attendees can submit questions and the panelists can see and answer the questions.

Mr. Obando suggested that he moderate the Q & A on Day 1. There was some discussion about whether questions need to be directed to a specific panelist. Mr. Obando will provide further instruction regarding Q & A in his introductory housekeeping comments.

Mr. Obando suggested keeping the Q & A function available but removing the chat function.

Mr. Alvarez inquired how much time each panelist has on Day 2 to speak. Given the time allotted and number of speakers, each panelist would have about 10 minutes each. However, Mr. Corcoran indicated the moderator of the panel is working with the panelists on potential questions and there may not be planned presentations for the Day 2 panelists but rather prepared discussions among the panelists led by the moderator.

Ms. Doi suggested that a few minutes prior to the end of Day 2, Mr. Obando return to make some closing remarks. Mr. Corcoran also suggested the same for Day 1, as well as an indication that the Q & A session on Day 1 will be moderated by Mr. Obando and introductory remarks from Mr. Obando on Day 2. The written materials will be updated to reflect these changes.

#### 4. **STAFF UPDATE ON THE ANNOUNCEMENT AND PUBLICATION OF THE 2021 INDUSTRY ROUNDTABLE**

Ms. Phomsopha indicated the agenda and promotional materials were sent out to the National Boards and Commissions (National Association of Motor Vehicle Boards and Commissions) mailing list, previous Roundtable attendee mailing list, Public Mailing List and to others who have indicated they wanted more information about this Roundtable. As of this morning, there are 83 registrations. Ms. Kindel also indicated the CNCDA (California New Car Dealers Association) sent out the link in their publication and DMV will be assisting in sending out the information to manufacturers/distributors and dealers. The Board's mailing lists include 490 people and the mailing was sent out on August 17. Mr. Corcoran explained DMV's manufacturer/distributor and dealer list is OLIN (Occupational Licensing Industry News).

Ms. Doi indicated she was interested in sending the information to the Sacramento Bee as well. Ms. Kindel explained that the Board does not currently have a media mailing list. If the Board wanted to alert press regarding this event, the Board would also need to advise the Administration prior to doing so. Mr. Alvarez agreed that he would like this information sent to the press, including Automotive News and others. Mr. Corcoran indicated staff will work on this and send the request up the proper channels.

Ms. Smith Boland might reach out to Anthony Bento at CNCDA to see if it will send



one additional, separate alert regarding the event.

5. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

6. **ADJOURNMENT**

Mr. Alvarez thanked staff again in preparing this Roundtable. With no further business to discuss, the meeting was adjourned at approximately 1:36 p.m.

Submitted by

---

TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C., Chair  
Government and Industry Affairs Committee  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
Telephone: (916) 445-1888  
Contact Person: Robin Parker  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on July 21, 2021, via Zoom and teleconference. Bismarck Obando, Chair and Public Member, called the meeting to order at 10:30 a.m.

Mr. Obando welcomed everyone and set forth the parameters for the meeting.

2. **ROLL CALL AND ESTABLISHMENT OF QUORUM**

Board Members Present: Bismarck Obando, Chair  
Ramon Alvarez C., Member  
Anne Smith Boland, Member  
Kathryn Ellen Doi, Member  
Inder Dosanjh, Member  
  
Ardy Kassakhian (Public Member)  
Jacob Stevens (Public Member)

Board Staff Present: Timothy M. Corcoran, Executive Director  
Dawn Kindel, Assistant Executive Officer  
Robin P. Parker, Chief Counsel  
Danielle R. Phomsopha, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Lee Moore, Mediation Analyst  
Anthony M. Skrocki, Administrative Law Judge

Mr. Corcoran noted that there was a quorum.

3. **CHAIR OBANDO'S INTRODUCTION**

Mr. Obando welcomed the Ad Hoc Committee Members along with recently appointed Public Member Jacob Stevens, Lee Moore (the newest member of the staff), Suzanne Luke, and Judge Skrocki.

#### 4. **DISCUSSION AND CONSIDERATION OF THE DRAFT WORKPLAN**

Mr. Obando provided an update on the work of the Ad Hoc Committee and read the current Mission Statement:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues, including but not limited to, the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Mr. Obando noted that the staff have been in regular communication with the California State Transportation Agency (CalSTA) about the work of both the Ad Hoc Committee and the Board, and that all feedback has been positive. Over the past few months, Mr. Corcoran and Mr. Obando have been monitoring the Administration's actions relating to race and equity to ensure the Ad Hoc Committee is on the right track as it develops its workplan. In formulating this workplan, Mr. Obando recommended the Ad Hoc Committee develop an educational forum for the Board's stakeholders that focuses on two key areas. The first educational session would focus on learning about the state of the car industry in relation to minority-owned dealers and what programs manufacturers are implementing to increase these dealers. The second educational session would focus on EVs (electric vehicles) and the impact to minority communities and social equities.

Mr. Corcoran acknowledged the vision of the Ad Hoc Committee, the leadership of Mr. Obando, and commended the diligence of the staff. He hopes the Board will be impressed with the work done by the staff to build a robust panel for the proposed workshops.

Ms. Phomsopha indicated the proposed workshops would be held over 2-days in late winter 2021 or early 2022 via Zoom. To avoid Zoom fatigue, each session would be limited to 2-hours. Given the results of the Workshop will likely result in a report being approved by the Board and then presented to CalSTA, these workshops would need to be at a noticed Board meeting. The Executive Order allowing exclusively virtual meetings expires September 30, 2021, so the Board and staff would gather in person at one location and broadcast via Zoom to allow the inclusion of presenters and attendees from all over the country.

Day 1 of the draft agenda was reviewed by Ms. Phomsopha:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by Bismarck Obando, President, California New Motor Vehicle Board
- 10:10 a.m. Keynote address from representative, California State Transportation Agency
- 10:20 a.m. State of the Industry, with Respect to Diversity in the Automotive Franchise Network
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
  - ❖ Representative, Crane Automotive Resources
- 10:50 a.m. Automaker Discussion of Females, Minorities and other Members of Under-Represented Groups in the Automotive Franchise Network
- ❖ Representative, General Motors, LLC
  - ❖ Representative, Toyota Motor Sales USA Inc.
  - ❖ Representative, Stellantis
  - ❖ Representative, Ford Motor Company
  - ❖ Representative, Nissan North America, Inc.
- 11:40 a.m. Q & A Session  
All presenters

With regards to the presentation at 10:50 a.m., Mr. Stevens invited some conversation around the title. The use of the word “females” is not trans-inclusive and should be more importantly described as “woman.” Additionally, Mr. Stevens indicated that there has been recent dialogue in diversity and equity circles around the use of “under-represented” and “historically under-represented.” Mr. Stevens indicated that “historically excluded” is more accurate. For consideration, he would love to hear from some LGBT chambers that have big auto malls like Glendale and get a couple different perspectives. Mr. Obando appreciated this feedback and thinks the Ad Hoc Committee should make the changes suggested by Mr. Stevens.

Mr. Corcoran stated that the Mission Statement uses “under-represented” so the Ad Hoc Committee may want to consider changing it. Mr. Obando agreed with this suggestion. If these changes are considered at a Board Meeting, then Mr. Corcoran indicated this would be the appropriate time to appoint Mr. Stevens to the Ad Hoc Committee. The Board will agendaize review of the Mission Statement and nominate Mr. Stevens to the Ad Hoc Committee at a future Board meeting.

Ms. Doi supported Mr. Stevens comments. Additionally, she thought the title of this presentation should be revised consistent with the reformatted Mission Statement. Mr.

Corcoran and Mr. Obando indicated that the title can be discussed and revised now. However, Ms. Doi thought it would be hard to do this at the meeting so she suggested that members provide feedback to the staff so this could be discussed at a later time. Ms. Doi also wanted to be responsive to Mr. Stevens' suggestion on LGBT chambers and developers. Mr. Obando thought this would fit in with the 10:20 a.m. presentation.

Mr. Obando complimented Ms. Phomsopha who has made personal contact with the manufacturer representatives noted on the 10:50 a.m. topic. Mr. Dosanjh suggested the top person for the manufacturer be invited to participate and that he would be happy to help with General Motors or Nissan. Ms. Phomsopha indicated that she would work with Mr. Dosanjh in this regard.

Ms. Doi thought it would be interesting to have CNCDA (California New Car Dealers Association) participate in the Workshop. Mr. Alvarez reiterated what Mr. Dosanjh said about ensuring the correct person from each manufacturer participates. Mr. Alvarez also suggested inviting NADA (National Automobile Dealers Association) to participate. Ms. Doi suggested asking both organizations where they thought they would fit in the Workshop. At the beginning of the 10:20 a.m. discussion, Mr. Obando suggested starting with NADA for the national perspective and then CNCDA and a chamber could speak to the local perspective. There was some discussion concerning whether the Crane Automotive Resources presentation should be limited to questions and answers. Ms. Doi noted that this presentation is about market disruption and changing cultures within an industry and sounded interesting. Ms. Smith Boland remarked that she would like to hear this discussion and thinks the Crane Automotive Resources presentation is in the correct topic. Ms. Smith Boland thought CNCDA could speak to legislative efforts.

Les Swizer, staff counsel for the CNCDA, commented that he was happy to reach out to Alisa Reinhardt, Director of Government Affairs, or Anthony Bento, Director of Legal and Regulatory Affairs, to see if there is something CNCDA could do to contribute. Mr. Swizer indicated that CNCDA is always happy to participate but he needs to discuss this with his supervisors.

Next, the members focused on Day 2 of the draft agenda:

10:00 a.m. Introduction of Board Members, staff, and attendees by Bismarck Obando, President, California New Motor Vehicle Board

10:15 a.m. Welcoming remarks from Representative California State Transportation Agency

10:30 a.m. Presentations on Equity and EVs

- ❖ Representative, Greenlining Institute
- ❖ Representative, Access Clean California
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)

11:40 a.m. Q & A Session  
All presenters

Mr. Obando indicated that Day 2 focuses on EVs and social equity. Ms. Doi requested an overview of the three organizations noted on the agenda. Ms. Phomsopha indicated that Greenlining Institute and Access Clean California would focus on the consumer aspect and ensuring equal access to EVs in different communities. The National Association of Minority Dealers would also weigh-in on this topic. Mr. Obando commented that the Greenlining Institute is a non-profit based out of the bay area and their primary mission is to advocate on sustainability issues as it relates minority communities. Additionally, they advocate regarding environmental justice, clean air, and clean water and what EVs mean for minority communities.

Ms. Doi noted the issues she sees regarding EVs as ensuring access to charging stations, the price of EVs, and how to address this. She wanted to know if these issues are what the speakers will discuss. Additionally, will the Governor's Office be talking about how the State is proposing to address these issues? Mr. Corcoran indicated that he is working with CalSTA to identify the appropriate keynote speaker to introduce Day 2 of the Workshop and the topics Ms. Doi mentioned are precisely the issues to be addressed. Terea Macomber, director of Access Clean California, provided her background and indicated that she would love to come speak on these topics. Mr. Obando thanked Ms. Macomber for joining the meeting and appreciated her feedback.

Mr. Obando asked Mr. Swizer if CNCDA has a position on the Administration's direction on EVs and wants to make sure CNCDA's voice is heard. Mr. Swizer will get back to the staff regarding this topic.

Mr. Dosanjh commented on his experience in selling EVs.

Ms. Doi inquired if Day 2 would be a moderated panel and if staff were looking for a subject matter expert in this regard. Mr. Obando indicated that he was planning to introduce the topics and did not envision a moderated panel. However, if this is the direction the Ad Hoc Committee wants to go then he can look into it. Ms. Doi indicated that she would defer to Mr. Obando and staff in this regard. Mr. Corcoran indicated that he could check with the presenters to see what they think would be the best format. Ms. Doi thanked everyone.

5. **DISCUSSION AND CONSIDERATION OF FUTURE AD HOC COMMITTEE MEETINGS TO SOLICIT INDUSTRY INPUT, TOPICS, AND SPEAKERS**

This matter was discussed in Agenda Item 4.

6. **DISCUSSION OF DATES OF FUTURE AD HOC COMMITTEE MEETINGS**

Mr. Obando is sensitive to the staffs' workload so he would like Tim to check with the members after the meeting to come up with Ad Hoc Committee meeting dates.

Mr. Obando recommended that the Workshop be held in January 2022 given the current workload. Mr. Alvarez commented that late January 2022 would be better. Mr. Corcoran will work on a schedule based on this proposed date and will continue to update CalSTA. In response to Ms. Doi's question, Mr. Corcoran indicated that the next General Meeting would be in December 2021 at the Mission Inn in Riverside.

7. **PUBLIC COMMENT (Gov. Code § 11125.7)**

Mr. Stevens thanked the Board for their willingness to engage in this process and think critically about how the Board makes its efforts most inclusive and transparent as possible for these communities that we are having this discussion about. Mr. Stevens expressed his gratitude to the Board for their willingness to "push the envelope" and be leaders.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:36 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Bismarck Obando, Chair  
Ad Hoc Committee on Equity, Justice and Inclusion  
New Motor Vehicle Board



# New Motor Vehicle Board RESOLUTION

**W**HEREAS, Mr. Daniel P. Kuhnert was appointed to the Board in February 2020, by Governor Gavin Newsom, to serve as a public member of the **NEW MOTOR VEHICLE BOARD**; and,

**W**HEREAS, Mr. Kuhnert served on several committees and has served as Chair of the Policy and Procedure Committee and member of the Administration Committee, and distinguished himself thereby; and

**W**HEREAS, Mr. Kuhnert actively engaged in the Board’s business by providing sound advice and leadership, was thoughtful, friendly and outgoing to staff and fellow members; and

**W**HEREAS, the foremost concern of Mr. Kuhnert is public service to the people of the State of California, being active in political and community affairs, with exemplary service and dedication in the best interest of his fellow citizens, which merits the highest praise and recognition, and

**W**HEREAS, Mr. Kuhnert has given with great unselfishness and dedication of his time and expertise to matters concerning the motor vehicle industry and helped direct and protect the welfare of the automotive industry in this State, which is vital to California's economy and public welfare, thereby enhancing the respect of the auto industry and public for the Board; and,

**T**HEREFORE, **BE IT RESOLVED** that each and every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to Mr. Daniel P. Kuhnert for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

*Dated this 7th day of December 2021*

\_\_\_\_\_  
BISMARCK OBANDO, PRESIDENT

\_\_\_\_\_  
ARDASHES KASSAKHIAN, VICE PRESIDENT

\_\_\_\_\_  
RAMON ALVAREZ C.

\_\_\_\_\_  
ANNE SMITH BOLAND

\_\_\_\_\_  
KATHRYN ELLEN DOI

\_\_\_\_\_  
INDER DOSANJH

\_\_\_\_\_  
RYAN FITZPATRICK

\_\_\_\_\_  
NANXI LIU

\_\_\_\_\_  
JACOB STEVENS



STATE OF CALIFORNIA



## MEMO

**To :** EXECUTIVE COMMITTEE  
BISMARCK OBANDO, CHAIR  
ARDY KASSAKHIAN, MEMBER

**Date:** November 1, 2021

**From :** TIMOTHY M. CORCORAN

**Subject:** ANNUAL REVIEW OF NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS

At the December 2, 2019, General meeting, the Board approved its present mission and vision statements. They are designed to reflect the Board's unique purpose, responsibilities, and educational activities. In order to ensure that they accurately reflect the Board's current responsibilities, they are scheduled for annual review. The statements are as follows:

**Mission**

To enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.

**Vision**

To demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes.

This matter is being agendized for the December 7, 2021, General Meeting, to allow full Board review and is for informational purposes only. No Board action is required.

If you have any questions concerning this matter, please contact me at (916) 445-1888.



## MEMO

**To :** EXECUTIVE COMMITTEE  
BISMARCK OBANDO, PRESIDENT  
ARDY KASSAKHIAN, VICE PRESIDENT

**Date:** November 1, 2021

**From :** TIMOTHY M. CORCORAN  
ROBIN P. PARKER  
DANIELLE R. PHOMSOPHA

**Subject:** REPORT ON NON-SUBSTANTIVE CHANGES TO PROPOSED REGULATORY AMENDMENTS IN TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS

At the April 26, 2002, General Meeting, the members adopted the following policy concerning promulgating regulations:

The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.

At the December 2, 2019, General Meeting, the members adopted a number of substantive and non-substantive regulatory changes that implement Assembly Bill 179 (effective January 1, 2020).<sup>1</sup> To allow additional time to review proposed changes to the “Form and Filing of Petition” (13 CCR § 556) and “Filing of Protest Pursuant to Vehicle Code Section 3065.3” (13 CCR § 586.5), these amendments were adopted by the Board at the March 5, 2020, General Meeting.

The final rulemaking packets were reviewed by the Office of Administrative Law (“OAL”) in late September 2021. During this review OAL suggested the following non-substantive changes:

---

<sup>1</sup> The pertinent regulations are: Definitions (13 CCR § 550); Dismissals of Petitions and Protests (13 CCR § 551.8); Notice of Assignment of Administrative Law Judges; Peremptory Challenges (13 CCR § 551.12); Filing Fees (13 CCR § 553.40); Answer-Time of Filing; Form and Content (13 CCR § 558); Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code Sections 3064, 3065, 3065.1, 3074, 3075, and 3076 (13 CCR § 586); and Hearings by Board or by Administrative Law Judge (13 CCR § 590)

- For all authority and reference sections, OAL suggested the Board remove references to all subsections. For example, Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; Rule 3.1362, California Rules of Court; and Section 284, Code of Civil Procedure.
- For Section 550(u), OAL suggested additional language in the definition of Protestant as follows: “For protests filed pursuant to Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.”

The Executive Committee approved these changes so the staff could proceed with the proposed rulemaking. The final text showing all of the changes in ~~strikeout~~ highlighted font is attached.

This matter is being agendized for information only at the December 7, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at Robin at (916) 323-1536 or Danielle at (916) 327-3129.

Attachment

## PROPOSED REGULATIONS

### **§ 550. Definitions.**

For the purposes of these regulations:

(a) “Administrative law judge” or “ALJ” means an administrative law judge of the board or Office of Administrative Hearings.

(b) “Affidavit” means a written, ex parte statement made or taken under oath before an officer of the court or a notary public or other person who has been duly authorized to administer oaths.

(c) “Board” means the New Motor Vehicle Board.

(d) “Day” means a calendar day, unless otherwise specified.

(e) “Declaration” means a statement that was made under penalty of perjury and that complies with Code of Civil Procedure section 2015.5.

(f) “Department” means the Department of Motor Vehicles of the State of California.

(g) “Director” means the Director of Motor Vehicles.

(h) “Distributor” means any new motor vehicle distributor or distributor branch required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(i) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(j) “Electronically stored information” means information that is stored in an electronic medium.

(k) “Executive Director” means the chief executive officer of the board.

(l) “Hearing” includes the taking of evidence or arguments, before an ALJ or before the board itself, during the adjudicative process on the merits of a petition or protest, or during the adjudication of a motion or an application for an order.

(m) “Manufacturer” means any new motor vehicle manufacturer as defined in Section 672 or manufacturer branch as defined in Section 389 required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(n) “Motion” or “motions” includes all requests and applications filed with the board seeking action or ruling by the board.

(o) “Papers” means all documents, except exhibits, offered for filing with the board in any proceeding.

(p) “Party” or “Parties” includes the petitioner, protestant, respondent, or intervenor. For purposes of a peremptory challenge, an intervenor is not a party.

(q) “Petition” means a written request filed with the board pursuant to Vehicle Code section 3050(b).

(r) “Petitioner” means any person, including a board member, who files a petition seeking consideration by the board pursuant to Vehicle Code section 3050(b) of a matter involving a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative.

(s) "Proposed stipulated decision and order" is a paper submitted by the parties pursuant to Vehicle Code section 3050.7 seeking to resolve one or more issues in a protest or petition pending before the board.

(t) "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. A protest also means an action filed with the board by an association pursuant to Vehicle Code section 3085.

(u) "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board. For protests filed pursuant to Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.

(v) "Respondent" means any licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative as defined in Vehicle Code sections 426, 672, 389, 296, 297 and 512, respectively, whose conduct, intended conduct, activities or practices are the subject of a protest or petition.

(w) "Serve" or "service" of papers means compliance with one of the methods specified in Article 1, Section 551.24 of these regulations.

(x) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable statutes and regulations.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, and 3076, and 3085, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

### **§ 551.8. Dismissals of Petitions and Protests.**

(a) The board may, at its discretion, dismiss a petition for good cause shown. Good cause may include, but shall not be limited to, failure by the petitioner to comply with any of the following sections of Article 2: 554, 555, 556.

(b) The board may, at its discretion, dismiss a protest for good cause shown. Good cause may include, but shall not be limited to, failure by the protestant to comply with any of the following sections of Article 5: 583, 585, 586, 589.

(c) The board may, at its discretion, dismiss a petition or a protest, if additional information requested by the board is not supplied within the time specified by the board.

(d) An order of dismissal of a petition or a protest shall be a final order pursuant to Vehicle Code sections 3067, ~~and 3081~~, and 3085.4 and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050, 3066 and 3080, and 3085.2, Vehicle Code; *Automotive Management Group Inc. [Santa Cruz*

*Mitsubishi v. New Motor Vehicle Board; Real Party in Interest, Mitsubishi Motor Sales of America, Inc.* (1993) 20 Cal.App.4th 1002; 24 Cal.Rptr.2d 904; *Duarte & Witting, Inc. v. New Motor Vehicle Board, Defendant and Respondent; DaimlerChrysler Motors Corp., Real Party in Interest and Respondent* (2002), 104 Cal.App.4th 626; 128 Cal.Rptr.2d 501.

**§ 551.12. Notice of Assignment of Administrative Law Judges; Peremptory Challenges.**

(a) The name of the administrative law judge assigned to a protest or petition proceeding will be noted on the order of time and place of hearing. An amended order or notice will be issued if a different administrative law judge is subsequently assigned to the proceeding.

(b) Each party, excluding an intervenor, is entitled to one peremptory challenge of the administrative law judge assigned to preside over the hearing on the merits of a petition as required by Vehicle Code section 3050~~(e)~~(b) or the administrative law judge assigned to preside over the hearing on the merits of a protest as required by subdivisions (c) and (d) of Vehicle Code section 3050, based solely upon satisfying all of the following requirements:

(1) The peremptory challenge must be filed with the board no later than either 20 days from the date of the order of time and place of hearing identifying the merits administrative law judge or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier.

(2) The peremptory challenge may be made by the party, the party's attorney, or authorized representative appearing in the proceeding, and shall be by written declaration substantially in the following form: "I am a party to [case name and number] and am exercising my right to a peremptory challenge regarding ALJ [name], pursuant to Section 551.12 and Government Code section 11425.40(d)"; and

(3) The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the merits hearing, whichever is earlier.

(d) No peremptory challenge shall be considered or granted if it is not made within the time limits set forth above.

(e) A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes.

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the merits hearing shall not be granted by reason of a peremptory challenge. Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a), ~~and 3080(a)~~, or 3085.2(a).

(g) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

Note: Authority cited: Sections 3050, 3066, ~~and 3080~~ and 3085.2, Vehicle Code.  
Reference: Section 3050(a), Vehicle Code; and Section 11425.40, Government Code.

#### **§ 553.40. Filing Fees.**

A party filing a request for informal mediation, petition, or protest pursuant to the provisions of this chapter shall simultaneously deliver to the board a filing fee of \$200, which is to be in the form of a check or money order payable directly to the board, or a credit card payment. The initial pleading filed in response to such request for informal mediation, petition, or protest shall also be accompanied by a \$200 filing fee. The board, in the discretion of the executive director, may refuse to accept for filing any pleading subject to this section that is not accompanied by the requisite fee. The executive director may, upon showing of good cause, waive any such fee.

Note: Authority cited: Section 3016, 3050(a) and 3050.5, Vehicle Code; and Section 6163, Government Code. Reference: Sections 3050, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, ~~and 3076~~, and 3085, Vehicle Code.

#### **§ 556. Form and Filing of Petition.**

The form of the petition shall conform with the provisions of Article 6 herein. The petition shall be filed with the executive director of the board. The petition shall clearly identify the facts, legal authority, and relief sought and include declarations or other evidence or documents that support the petition.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(e), Vehicle Code.

#### **§ 558. Answer-Time of Filing; Form and Content.**

(a) The respondent shall file with the executive director of the board a written answer to the petition, in the form prescribed by Article 6 herein. The answer shall be filed within 30 days of the date of service of the petition on the respondent.

(b) The answer shall be responsive to the allegations of the petition and shall set forth in clear and concise language the factual contentions of the respondent with respect to the matter referred to in the petition.

(c) By declaration, ~~t~~The respondent may submit, as exhibits to the answer, photographic, documentary or similar physical evidence relevant to the matter in support of the answer with an appropriate description thereof in the answer sufficient to identify them and to explain their relevancy.

(d) The respondent shall set forth in the answer its mailing address and telephone number and the name, mailing address and telephone number of its attorney or

authorized agent, if any. All correspondence with respondent and notices to respondent shall thereafter be addressed to said address, if it appears in person, or to the address of its attorney or agent, if it is represented by an attorney or agent. Respondent shall promptly give the executive director and petitioner written notice by mail of all subsequent changes of address or telephone number.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(e), Vehicle Code.

**§ 586. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules ~~or Formulas~~, Retail Labor Rate, Retail Parts Rate and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code Sections 3064, 3065, 3065.1, 3065.4, 3074, 3075, and 3076.**

(a) Protests filed with the board under any of these sections of the Vehicle Code shall be filed as follows:

(1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.

(2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(3) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of the franchisee's attorney or authorized agent, if any. All correspondence with the franchisee and notices to the franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agent, if it is represented by an attorney or agent.

(4) The franchisee shall indicate either that it does or does not desire to appear before the board.

(b) Schedules of compensation for preparation and delivery obligations and warranty reimbursement schedules ~~or formulas~~ shall be filed by the franchisor with the board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedules ~~or formulas~~ have previously been filed with the board.

(c) The franchisor shall file with the board any addition, deletion, change or modification to the schedules of compensation or reimbursement schedules or formulas on file with the board on or before the date such addition, deletion, change or modification becomes effective.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3064, 3065, 3065.1, 3065.4, 3074, 3075, and 3076, Vehicle Code.



**§ 586.5. Filing of Protest Pursuant to Vehicle Code Section 3065.3.**

(a) Protests filed with the board under this section of the Vehicle Code shall be filed as follows:

(1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.

(2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(3) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of the franchisee's attorney or authorized agent, if any. All correspondence with the franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agent, if it is represented by an attorney or agent.

(4) The franchisee shall indicate either that it does or does not desire to appear before the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3065.3, Vehicle Code.

**§ 590. Hearings by Board or by Administrative Law Judge.**

All hearings on protests filed pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, ~~or 3076,~~ or 3085 may be considered by the entire board or may, at its discretion, be conducted by an administrative law judge designated by the board who shall either be a member of the board, an administrative law judge on the staff of the Office of Administrative Hearings, or any person specifically designated by the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3070, 3072, 3074, 3075, 3076, and 3080, 3085 and 3085.2, Vehicle Code.

STATE OF CALIFORNIA



MEMO

To: ADMINISTRATION COMMITTEE  
 ARDY KASSAKHIAN, CHAIR  
 RYAN FITZPATRICK, MEMBER

Date: October 27, 2021

From: DAWN KINDEL  
 LEE MOORE

Subject: ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF

The Board requested an annual update on training attended by staff. The following chart represents training programs attended from January 2021 to present. All training for 2021 was taken via a virtual platform.

STAFF	TRAINING	COST
<i>T. Corcoran</i>	2021 NADA Show	\$399
	Defensive Driver Training	0
	Privacy and Security Training	0
	Capitol Collaborative on Race & Equity	\$2,843
	Ethics Training	0
<i>D. Kindel</i>	Government Leaders Forum	0
	Ethics Training	0
	Privacy and Security Training	0
	Defensive Driver Training	0
<i>R. Parker</i>	Implicit Bias Training	\$25
	Ethics Training	0
	Privacy and Security Training	0
<i>D. Phomsopha</i>	Implicit Bias Training	\$25
	Ethics Training	0
	Privacy and Security Training	0
<i>S. Luke</i>	Implicit Bias Training	\$25
	Ethics Training	0
	Defensive Driver Training	0
<i>H. Victor</i>	Ethics Training	0
	Privacy and Security Training	0
	Implicit Bias Training	\$25
<i>L. Moore</i>	Ethics Training	0
	Defensive Driver Training	0
	Creating ADA Accessible Documents	\$250
<i>M. Johnson</i>	Implicit Bias	\$25
	Privacy and Security Training	0
<i>A. Martinez</i>	Privacy and Security Training	0
	Cal Card Training	0
	Implicit Bias Training	\$25

<i>D. Hagle</i>	Ethics Training	0
<i>A Skrocki</i>	Ethics Training	0
<i>E. Matteucci</i>	Ethics Training	0
<i>K. Pipkin</i>	Ethics Training	0
<i>D. Nelsen</i>	Ethics Training	0
<b>TOTAL</b>		<b>\$3,642</b>

Timely information regarding staff training is now provided to the members on a bi-monthly basis via the Administrative Matters Update. As a result, this yearly roll-up report of training classes has become obsolete and will be discontinued.

This memo is being provided for informational purposes only. No Board action is required. If you can any questions, please contact Dawn Kindel at dawn.kindel@nmvb.ca.gov

cc: Bismarck Obando, President

STATE OF CALIFORNIA



MEMO

To: ADMINISTRATION COMMITTEE  
ARDY KASSAKHIAN, CHAIR  
RYAN FITZPATRICK, MEMBER

Date: November 2, 2021

From: TIMOTHY CORCORAN  
DAWN KINDEL  
SUZANNE LUKE

Subject: DISCUSSION AND CONSIDERATION OF OPTIONS TO MOVE THE BOARD'S OFFICES

BACKGROUND

The Board's office has been in its current location for over 40 years and our lease has expired. Prior to the expiration, the Department of Motor Vehicles' ("DMV") Facilities Operations Unit and the Department of General Services, ("DGS") who negotiate the lease on our behalf, were informed by the property owner that they are no longer interested in continuing our long-term lease.

The lessor agreed to a two-year soft term lease which expires on July 31, 2023. This resulted in Board management initiating the relocation process with DMV.

CONSIDERATIONS

The following three options are being presented for your consideration.

**Option 1** – Relocate to the DMV Headquarters' Campus.

DMV has a private space available to house the Board's offices within the DMV's main headquarters building at 2415 1<sup>st</sup> Avenue, in Sacramento. The space will require one-time tenant improvements, including construction and modular furniture, of approximately \$1,228,000 in order to make the space useable. This one-time cost would be paid for out of the Board's reserve funds which can be allocated for this purpose via a Budget Change Proposal (BCP).

This location has 24/7 security and Board staff would have on-site access to human resources and information technology assistance. Parking is available and affordable and the location is only one mile from the current location so staff commutes would not be negatively affected. DMV has numerous modern conference rooms to accommodate our

meeting and hearing needs.

Below are some preliminary costs:

<b>Estimated Expenses</b>	<b>Sq. Ft.</b>	<b>Price/Sq.Ft</b>	<b>Per Month</b>
Rent (including janitorial and utilities)	4,479	\$2.55	\$11,421
DGS Lease Fees			\$219
Telecom			\$3,039
<b>Total Ongoing Expense</b>			<b>\$14,679</b>

**Option 2** – Relocate to a DGS owned facility in the Sacramento region.

The estimate below is based on a general market search for a DGS owned facility within the Sacramento region. The square footage is based on the Board’s current footprint with the elimination of our on-site conference space. Based on the rate quoted, the Board would have to increase its fees in order to afford a higher lease payment.

<b>Estimated Expenses</b>	<b>Sq. Ft.</b>	<b>Price/Sq.Ft</b>	<b>Per Month</b>
Rent	6,941	\$6.63	\$46,019
DGS Lease Fees			\$884
Janitorial, Utilities, security, etc.			\$9,318
<b>Total Ongoing Expense</b>			<b>\$56,221</b>

**Option 3** – Remain in current location if agreed upon by the lessor. The cost below per square foot displayed below is the current cost.

<b>Current Expenses</b>	<b>Sq. Ft.</b>	<b>Price/Sq.Ft</b>	<b>Per Month</b>
Cost for Existing Office (janitorial, maintenance, utilities included)	8,613	\$1.53	\$13,178
DGS Lease Fees			\$253
<b>Total Current Expense</b>			<b>\$13,431</b>

**RECOMMENDATION**

It is the staff’s recommendation that the Administration Committee recommend relocation to the DMV Headquarters’ Campus to the full Board. Upon approval of the Board, staff will continue to work with DMV staff on the details of the relocation and report back with updates.

If you have any questions, please contact Dawn Kindel at (916) 612-5428

cc: Bismarck Obando, President

**STATE OF CALIFORNIA**



**MEMO**

**To: ADMINISTRATION COMMITTEE  
ARDY KASSAKHIAN, CHAIR  
RYAN FITZPATRICK, MEMBER**

**Date: November 2, 2021**

**From: DAWN KINDEL  
HOLLY VICTOR  
LEE MOORE**

**Subject: ANNUAL UPDATE ON BOARD CONSUMER MEDIATION SERVICES PROGRAM**

**INTRODUCTION**

The members of the Board have requested an annual update on the Consumer Mediation Program (“Program”). Below is a summary of the Program updates and case conclusions for the year 2020.

**PROGRAM OVERVIEW**

The Board’s authority to mediate consumer disputes comes from Vehicle Code 3050(c)(2) which requires the Board to undertake and mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer or manufacturer. Mediators inform consumers that, pursuant to the statute, the Board does not have the authority to order a dealer or manufacturer to provide the remedy they are requesting due to the fact that the Board has no specific enforcement powers in mediation matters.

The Program seeks to assist consumers in mediating disputes with new vehicle dealerships and manufacturers in an efficient manner. To accomplish this, the Board’s mediators provide consumers with information that allows them to understand their options, and act as a neutral party when working towards amicable resolutions.

The Board’s jurisdiction covers all new vehicle manufacturers of passenger vehicles, light duty trucks, low-speed vehicles, motorcycles (street and off-highway), all-terrain vehicles, motor-driven cycles (Vespas, etc.), motor homes, towable recreational vehicles, 5<sup>th</sup> wheels, medium trucks, heavy duty vehicles (over 10,000 lbs.), hearses, ambulances and limousines. Disputes with new vehicle dealerships are also mediated.

Typical cases received by the Program involve issues with warranty repairs and sales/lease contracts.

## MEDIATION STATISTICS

When a case has been received by the Mediation Program, the case is evaluated and determined by the mediator as to whether it is within our jurisdiction. Cases that do not fall within our jurisdiction are referred to the proper agency that can assist the consumer. If the case is within our jurisdiction, the mediator will mediate the case. Mediators will send an initial inquiry to the dealer, or manufacturer, or both and then act as intermediaries that encourage an amicable resolution for all parties involved. Some disputes are resolved for all parties, and some are not resolved and go on to either arbitration or court. Upon closing a case, mediators analyze the outcome of the case and assign a case completion number. Mediators distinguish between non-mediated cases (*for example*: no jurisdiction so the case was referred to another agency) and mediated cases. For all mediated cases, an assessment is completed by the mediator in order to determine whether the mediation process was completed or incomplete.

### Total Cases Received in the Mediation Program in 2020

- The Program received a total of 336 cases, of which 184 of those cases were completely mediated and 152 of those cases were unable to be mediated due to no jurisdiction, we received no response from the dealer/manufacturer, or the consumer abandoned the case.
- Out of those 184 cases, 73% were mediated successfully.
- 27% of mediated cases were closed because a successful resolution was not reached.

### Dealer Cases

- Of the 184 cases received in Mediation that were completely mediated, 80 were dealer related.
- 79% were mediated successfully.
- 21% of dealer cases were closed because a successful resolution was not reached.

### Manufacturer Cases

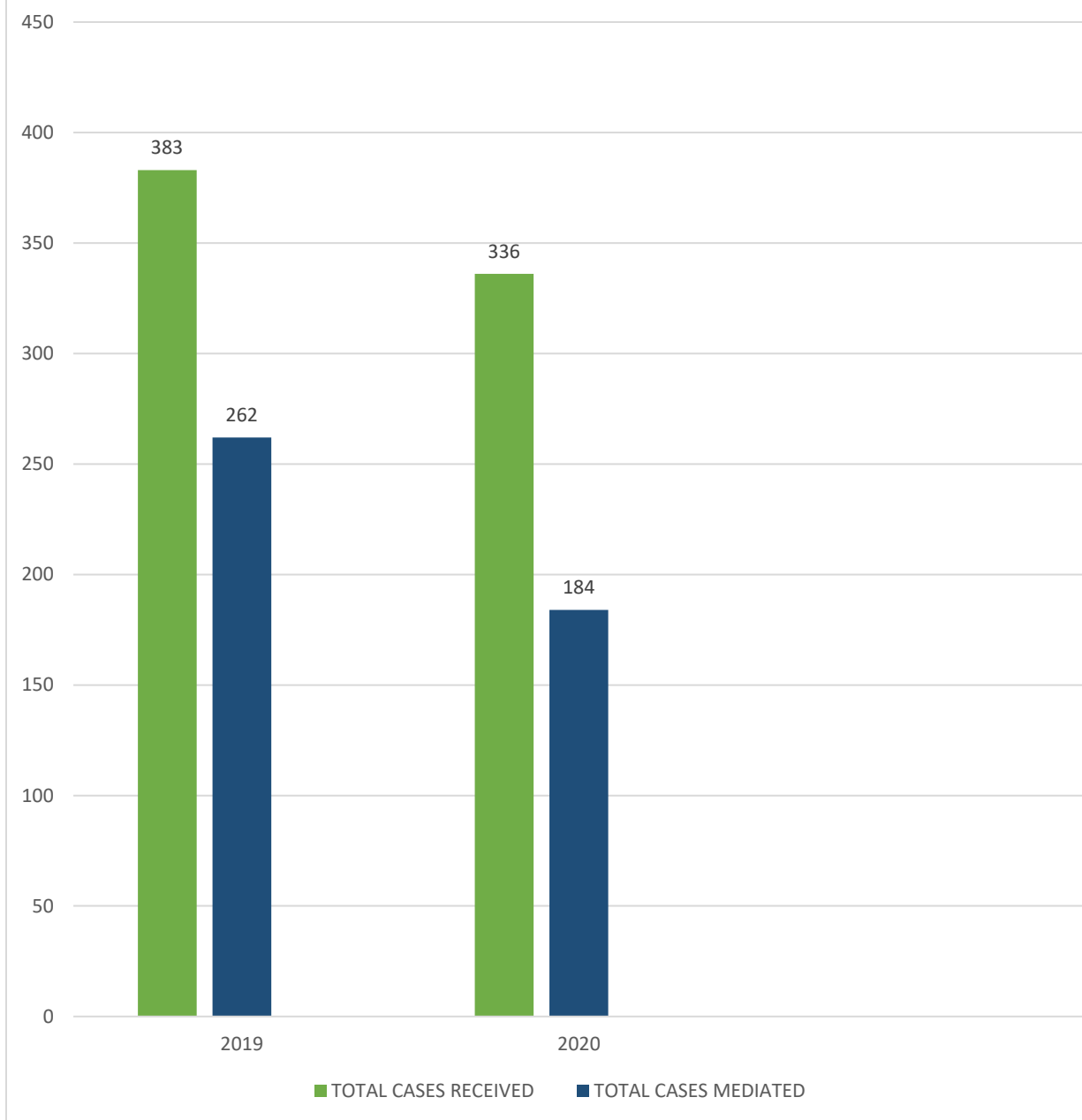
- Of the 184 cases received in Mediation that were completely mediated, 104 were manufacturer related.
- 69% of manufacturer cases were mediated successfully.
- 31% of manufacturer cases were closed because a successful resolution was not reached.

## PREVIOUS YEAR COMPARISON FOR 2019 THROUGH 2020

A two-year comparison can be seen in the chart below.

- **2019-** The program received a total of 383 cases, of which 262 were completely mediated.
- **2020-** The Program received a total of 336 cases, of which 184 were completely mediated.

## MEDIATION PROGRAM 2 YEAR COMPARISON



### **CONCLUSION**

This memo is being provided for informational purposes only. No Board action is required.

cc: Bismarck Obando, President



STATE OF CALIFORNIA



## MEMO

**To : ALL BOARD MEMBERS**

**Date: October 14, 2021**

**From : TIMOTHY CORCORAN**

**Subject: DISCUSSION AND CONSIDERATION OF THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD**

The Board Development Committee is recommending to the Board at its December 7, 2021 meeting that this year's Solon C. Soteris Employee Recognition Award be awarded to Staff Services Analyst, Holly Victor, in recognition of her service to the State of California's COVID-19 Contact Tracing Program.

The Board's approval of Holly for the Employee Recognition Award would result in her nomination by the Board for a monetary award of up to \$250 (subject to the approval of the Department of Motor Vehicles), as well as a certificate of recognition and appreciation from the New Motor Vehicle Board.

As background, this program was implemented in 2000 as a means to recognize staff members who have demonstrated marked growth in their position, provided exceptional service to the state, or otherwise accomplished a noteworthy achievement in the workplace during the past year. The award was named for Sol Soteris, former Public Member of the Board.

If you have any questions or comments, please call me at (916) 445-1888.

STATE OF CALIFORNIA

## MEMO



**To: BOARD DEVELOPMENT COMMITTEE  
NANXI LIU, CHAIR  
KATHRYN ELLEN DOI, MEMBER**

**Date:** October 27, 2021

**From: TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA**

**Subject: ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM**

### BACKGROUND

At the July 18, 2000, General meeting, the Board adopted the recommendation of the Board Development Committee with respect to the creation of a structured program of ongoing educational presentations. These presentations would be designed to provide, in an informal manner, information from a variety of sources concerning activities and trends in the new motor vehicle industry. The committee expressed a preference that educational presentations and the remaining administrative Board business be conducted on the same day whenever possible. To implement the Board's decision, a schedule of educational programs is presented to the Board each year.

For Board education and development purposes, we are always looking for suggested topics of interest to the Board Members. We have toured automobile, recreational vehicle, and motorcycle facilities, and invited representatives from their various associations to address the Board.

It is important to note that Executive Order B-06-11 established travel restrictions on all in-state and out-of-state travel unless it is "mission critical"<sup>1</sup> or there is no cost to the State. In addition, due to the ongoing COVID-19 pandemic, travel restrictions are further impaired. However, out-of-state conferences have been listed below for your information.

---

<sup>1</sup> Mission critical means directly related to enforcement responsibilities, auditing, revenue collection, a function required by statute, contract or executive directive, job-required training necessary to maintain licensure or similar standards required for holding a position. Mission critical does not mean conferences (even though those that historically have been attended), networking opportunities, professional development courses, continuing education classes and seminars, non-essential meetings, or events for the sole purpose of making a presentation unless approved by the Department Director. No travel is permitted for more than the minimum number of travelers necessary to accomplish the mission-critical objection; even where there is no cost to the State.

**PLANNED SCHEDULE OF BOARD MEETINGS AND ACCOMPANYING  
EDUCATIONAL PRESENTATIONS FOR CALENDAR YEAR 2022**

- **January 12, 2022, General Meeting (via Zoom and Teleconference)**

Speaker(s)/anticipated topics:

- Introduction and welcome of Secretary David S. Kim, California State Transportation Agency
- Introduction and welcome of Director Steven Gordon, Department of Motor Vehicles
- Introduction and welcome of Juan F. Cornejo, Esq., Director and Chief Counsel, Department of Motor Vehicles
- Discussion concerning the state of the automotive industry in terms of projections and legislation by manufacturer and dealer representatives.
- Board Member Education concerning Statement of Incompatible Activities (Gov. Code § 19990; *Fisher v. State Personnel Bd.* (2018) 25 Cal. App. 5th 1) by John T. McGlothlin, Deputy Attorney General assigned to the Board.

- **Workshop on Equity, Justice and Inclusion in the Motor Vehicle industry (location, date to be determined)**

- This two-day event will include speakers discussing the state of the industry in terms of diversity in the automotive franchise network, automaker discussion of women, minorities and other members of historically excluded groups in their franchise networks and equity and electric vehicles (EVs).

- **March 10 - 13, 2022, National Automobile Dealers Association (“NADA”) Convention & Exposition (Las Vegas)**

- These events will provide education and industry information. Members of the Board may attend on their own as representatives of their dealerships and/or the Board.

- **March 2022, General Meeting (location, date to be determined)**

Speaker(s)/anticipated topics: OPEN

- **Summer 2022, General Meeting (location, date to be determined)**

Speaker(s)/anticipated topics: OPEN

- **Fall 2022, General Meeting (Location and date to be determined)**

Speaker(s)/anticipated topics: OPEN

- **September 2022, NAMVBC Fall Workshop (location, date to be determined)**
- **Date TBD 2022, LA Auto Show (Los Angeles Convention Center)**
  - The Board Members and staff are invited by the Greater Los Angeles New Car Dealers Association to the press days (Automobility LA) of the show which showcases vehicle debuts, concept cars, design challenges, and hybrid and alternative fuel vehicles.
- **November 2020, General Meeting (Location and date to be determined)**

Speaker(s)/anticipated topics: OPEN

## **IMPLEMENTATION**

The information in this memorandum is provided for informational purposes only. No Board action is required. Board staff will schedule these presentations consistent with the Board's preference, the speakers' availability, and in light of any restrictions on travel.

cc: Bismarck Obando, President

STATE OF CALIFORNIA



MEMO

To: FISCAL COMMITTEE  
ANNE SMITH BOLAND, CHAIR  
NANXI LIU, MEMBER

Date: November 1, 2021

From: TIMOTHY CORCORAN  
DAWN KINDEL  
SUZANNE LUKE

Subject: REPORT ON THE BOARD’S FINANCIAL CONDITION AND RELATED FISCAL MATTERS

The following is a financial summary of the Board’s expenditures and revenues through the end of Fiscal Year 2020-2021.

<i>Expenditures</i>		<i>Revenue</i>	
Budget Appropriation	\$1,666,091	Beginning Reserve Balance	*adj. \$2,458,000
Expenditures	\$1,585,060	Revenues	\$1,763,721
Unexpended Appropriation	\$81,031	Total	\$4,221,721
		Current reserve balance	\$2,636,661

The Board expended 95% of its appropriated budget in fiscal year 2020-2021.

Attached for your review is a detailed summary of the Board’s fund condition as well as itemized Revenue and Expense statements.

Given the current reserve balance, staff does not see a need for an adjustment to the Board’s fee structure at this time. Staff will continue to monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.

- Arbitration Certification Program (ACP) Annual Fee – The annual collection of ACP fees is complete. Staff collected \$1,546,976 from manufacturers within the ACP’s jurisdiction and deposited the funds directly into ACP’s account.

- New Motor Vehicle Board (NMVB) Annual Fee - The NMVB annual collection of fees from manufacturers and distributors began in August. Staff have collected \$714,762.15 of the approximately \$800,000 total from manufacturers and distributors under NMVB jurisdiction.
- Current Fiscal Year Budget - Current 2021/2022 Budget allotments provided by the Department of Finance show a budget of \$1,514,844 for personnel and \$263,188 for operating expenses. The total 21/22 budget is \$1,778,032.

This memorandum is being provided for informational purposes only, and no Board action is required. If you have any questions prior to the Board Meeting, please contact me at (209) 912-8396 or Dawn Kindel at (916) 612-5428.

Attachments as stated

cc: Bismarck Obando, President

## New Motor Vehicle Board Fund Condition Statement - Fiscal Year 2020-2021

Revenue and Expenditures July 1, 2020, through June 30, 2021 - (100% of fiscal year)

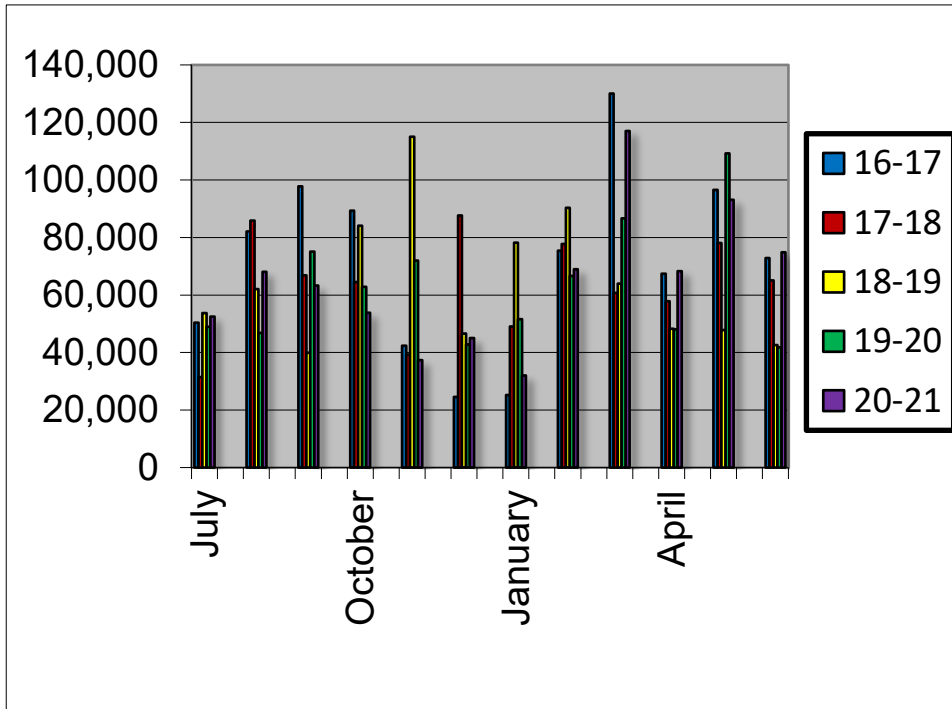
	<u>2018-2019</u>		<u>2019-2020</u>		<u>2020-2021</u>
<b>BEGINNING RESERVES</b>	<b>2,358,872</b>		<b>2,623,082</b>		<b>2,669,949</b>
Prior Year Adjustment	<u>-133,872</u>		<u>-226,082</u>		<u>-211,949</u>
Adjusted Beginning Balance	<b>2,225,000</b>		<b>2,397,000</b>		<b>2,458,000</b>
<b>REVENUES</b>					
<b>NMVB Fees and Misc. Revenue</b>					
0100 Dealer License Fee	772,540		752,377		774,294
0200 NMVB Filing Fee	17,400		11,200		15,400
0300 NMVB Annual Fee	1,032,686		1,022,039		968,262
0800 Miscellaneous Services	1,314		0		4,265
1000 Arbitration Program	2,744		1,471		1,500
<b>Total Revenues</b>	<b>1,826,684</b>		<b>1,787,087</b>		<b>1,763,721</b>
Adjusted Beginning Balance	2,225,000		2,397,000		2,458,000
<b>Totals, Resources</b>	<b>4,051,684</b>		<b>4,184,087</b>		<b>4,221,721</b>
<b>EXPENDITURES</b>					
<b>Payroll Expense (included benefits)</b>					
Budgeted	1,425,227		1,526,286		1,402,903
Expended	<b>1,126,204</b>	<b>79%</b>	<b>1,263,837</b>	<b>83%</b>	<b>1,303,175</b>
<b>Operating Expense and Equipment</b>					
Budgeted	263,188		263,188		263,188
Expended	<b>302,398</b>	<b>115%</b>	<b>250,301</b>	<b>95%</b>	<b>281,885</b>
<b>Encumbrance Balance</b>	<b>0</b> <sup>3</sup>		<b>0</b> <sup>3</sup>		<b>0</b> <sup>3</sup>
	*encumb rolled over (16,981)		*encumb rolled over (6,935)		*encumb roll over (32,243)
<b>Total - Payroll and Operating Expense</b>	<b>1,428,602</b>	<b>85%</b>	<b>1,514,138</b>	<b>85%</b>	<b>1,585,060</b>
<b>ADDITIONAL EXPENDITURES:</b>					
<b>Pro Rata charges (estimate)</b>	<b>128,000</b>		<b>114,000</b>		<b>114,000</b>
*(final adjustments pending Governor's report)					
NOTE: *includes additional adjs: SCO/Fiscal/etc.					
<b>DMV Administrative charges</b>	<b>78,000</b> <sup>4</sup>		<b>78,000</b> <sup>4</sup>		<b>78,000</b> <sup>4</sup>
*(deduction made in prior year adjustment)					
<b>Total Budgeted</b>	1,688,415		1,789,474		1,666,091
<b>Total Expended</b>	<b>1,428,602</b>	<b>85%</b>	<b>1,514,138</b>	<b>85%</b>	<b>1,585,060</b>
<b>RESERVES</b>	<b>2,623,082</b>		<b>2,669,949</b>		<b>2,636,661</b>

<sup>3</sup> Funds encumbered but not yet expended are treated as expenditures. Encumbrance balances are held in abeyance for two years after fiscal year's end, and any balance remaining after two years is released and returned to the Board's fund.

<sup>4</sup> Administrative charges are included in the total budget authorized by the department for support in areas such as personnel, budget, and business services; however, this amount is not treated as an allocation and is not captured in the attached detail.

	<b>16-17</b>	<b>17-18</b>	<b>18-19</b>	<b>19-20</b>	<b>20-21</b>
July	50,376.00	31,415.00	53,667.00	48,900.00	52,500.00
August	82,057.00	85,886.00	62,100.00	46,800.00	68,083.00
September	97,783.00	66,836.00	39,900.00	75,102.00	63,300.00
October	89,275.00	64,500.00	84,087.00	62,876.00	53,802.00
November	42,410.00	39,250.00	115,050.00	72,000.00	37,330.00
December	24,600.00	87,600.00	46,585.00	42,764.00	45,000.00
January	25,220.00	49,060.00	78,220.00	51,600.00	32,025.00
February	75,410.00	77,772.00	90,300.00	66,600.00	69,000.00
March	130,017.00	60,758.00	63,938.00	86,700.00	117,000.00
April	67,375.00	57,782.00	48,303.00	48,000.00	68,251.00
May	96,550.00	78,040.00	47,790.00	109,215.00	93,156.00
June	72,860.00	65,100.00	42,600.00	41,820.00	74,847.00
Ytd	<b>853,933.00</b>	<b>763,999.00</b>	<b>772,540.00</b>	<b>752,377.00</b>	<b>774,294.00</b>

**DEALER FEES  
FIVE YEAR COMPARISON**





**NEW MOTOR VEHICLE BOARD**  
EXPENDITURE REPORT FOR THE FOURTH QUARTER OF FISCAL YEAR 2020-2021  
(100% of fiscal year)

ACCOUNT CODE	DESCRIPTION	BUDGETED AMOUNT	EXPENDITURE YEAR TO DATE	%	BALANCE REMAINING	%
<b>1000</b>	<b>PAYROLL EXPENSE</b>					
0030	Salaries - full time staff	807,903	759,823.00		48,080	
0330	Salaries - part time staff	67,000	120,140.00		-53,140	
0830	Overtime (Holiday Pay 90880)	31,000	26,780.00		4,220	
0990	Salary Savings (minus)	0	0.00		0	
0020	TOTAL - salary expense	905,903	906,743.00		-840	
1010	TOTAL - staff benefits	497,000	396,432.00		100,568	
<b>1000</b>	<b>CATEGORY TOTAL PAYROLL EXPENSE</b>	<b>1,402,903</b>	<b>1,303,175.00</b>	<b>93%</b>	<b>99,728</b>	<b>7%</b>

**3000 OPERATING EXPENSE AND EQUIPMENT**

<b>2010</b>	<b>General Expense</b>					
2050	Dues and membership	4,000	4,965.00		-965	
2230	Library purchases	10,000	15,634.00		-5,634	
2260	Minor equipment	300	2,499.00		-2,199	
2270	Office equipment - rent/maintenance/repair	200	0.00		200	
2380	Miscellaneous general expense	200	1,269.00		-1,069	
2391	Miscellaneous office supplies	7,300	2,969.00		4,331	
2395	Meeting expense	2,000	0.00		2,000	
<b>2010</b>	<b>Total - General Expense</b>	<b>24,000</b>	<b>27,336.00</b>		<b>-3,336</b>	

ACCOUNT CODE	DESCRIPTION	BUDGETED AMOUNT	EXPENDITURE YEAR TO DATE	%	BALANCE REMAINING	%
<b>2410</b>	<b>Printing</b>					
2440	Office copier expense - rent/maintenance	1,750	476.00		1,274	
2480	Miscellaneous printing expense	1,750	0.00		1,750	
<b>2410</b>	<b>Total - Printing</b>	<b>3,500</b>	<b>476.00</b>		<b>3,024</b>	
<b>2610</b>	Postage -meter rental & service, FedEx	9,000	4,804.00		4,196	
<b>2910</b>	<b>Travel In-State</b>					
2920	Lodging, mileage, misc.	2,000	0.00		2,000	
2940	Commercial air transportation	5,250	0.00		5,250	
2950	Rental cars / other travel expense	7,750	1,414.00		6,336	
<b>2910</b>	<b>Total - Travel In-State</b>	<b>15,000</b>	<b>1,414.00</b>		<b>13,586</b>	
<b>3110</b>	<b>Travel Out-of-State</b>					
3120	Lodging, mileage, misc.	1,000	0.00		1,000	
3140	Commercial air transportation	1,000	0.00		1,000	
3150	Other travel expense/Rental cars	500	0.00		500	
<b>3110</b>	<b>Total - Travel Out-of-State</b>	<b>2,500</b>	<b>0.00</b>		<b>2,500</b>	
<b>3320</b>	Training	3,038	3,946.00		-908	
<b>3430</b>	Rent - non State owned building	165,000	158,136.00		6,864	
<b>3445</b>	Janitorial services	0	0.00		0	
<b>3450</b>	Security services	550	0.00		550	
<b>3470</b>	Facilities planning - DGS	10,000	23,019.00		-13,019	
<b>3820</b>	Professional services - internal (Attorney General)	12,000	34,535.00		-22,535	
<b>4020</b>	Professional services - external (court reporters)	18,000	28,219.00		-10,219	

ACCOUNT CODE	DESCRIPTION			%	BALANCE REMAINING	%
4324	Data processing software	0	0.00		0	
4350	Data processing minor equipment	0	0.00		0	
4380	Pro rata statewide expense (101,864 TBA)	0	0.00		0	
4520	Equipment replacement	600	0.00		600	
<b>CATEGORY TOTAL</b>						
3000	OPERATING EXPENSE AND EQUIPMENT	263,188	281,885.00	107%	-18,697	-7%
1000	PAYROLL EXPENSE	1,402,903	1,303,175.00	93%	99,728	7%
3000	OPERATING EXPENSE AND EQUIPMENT	263,188	281,885.00	107%	-18,697	-7%
<b>Total - Payroll and Operating Expense</b>		<b>1,666,091</b>	<b>1,585,060.00</b>	<b>95%</b>	<b>81,031</b>	<b>5%</b>
	<b>Pro rata statewide expense (101,864) allotment</b>	<b>1</b>	(see above)		0.00	
	Encumbrance balance (\$32,243)	<b>2</b>			0.00	
			<b>1,585,060.00</b>	<b>95%</b>		
	<b>DMV Administrative charge (78,000)</b>	<b>3</b>	78,000	78,000.00	100%	0
<b>Grand total - fiscal year 2020-2021</b>		<b>1,744,091</b>	<b>1,663,060.00</b>	<b>95%</b>	<b>81,031</b>	<b>5%</b>

<sup>1</sup> Pro rata statewide expense is budgeted and expended on a quarterly basis; however, it does not show as an expenditure on DMV's reports. The Board will deduct the Pro rata expense at the end of FY 20/21.

<sup>2</sup> Funds encumbered (for specific purchases) but not yet expended are treated as expenditures. Encumbrance balances are held in abeyance for two years after fiscal year's end, and any balance remaining after two years is released and returned to the Board's fund.

<sup>3</sup> DMV Administrative charges are included in the total budget authorized by the department for support in areas such as personnel, budget, and business services; however, this amount is not treated as an allocation and is not captured in the attached detail - deduct end of FY 20/21.

**DEPARTMENT OF MOTOR VEHICLES**  
**Revenue Summary**  
fiscal year 2020-2021  
**Fourth Quarter**

	July	August	September	October	November	December	January	February	March	April	May	June	YTD
<b>Object Code 1213</b>													
0100-New MV Dir Lic.	52,500.00	68,083.00	63,300.00	53,802.00	37,330.00	45,000.00	32,025.00	69,000.00	117,000.00	68,251.00	93,156.00	74,847.00	<b>774,294.00</b>
0200-NMVB Filing Fee	800.00	0.00	2,600.00	2,000.00	1,000.00	200.00	5,400.00	800.00	1,000.00	400.00	400.00	800.00	<b>15,400.00</b>
0300-NMVB Annual Fee	0.00	0.00	280,606.00	595,857.00	0.00	78,454.00	10,083.00	0.00	3,262.00	0.00	0.00	0.00	<b>968,262.00</b>
<b>1213 Object Total</b>	<b>53,300.00</b>	<b>68,083.00</b>	<b>346,506.00</b>	<b>651,659.00</b>	<b>38,330.00</b>	<b>123,654.00</b>	<b>47,508.00</b>	<b>69,800.00</b>	<b>121,262.00</b>	<b>68,651.00</b>	<b>93,556.00</b>	<b>75,647.00</b>	<b>1,757,956.00</b>
<b>Object Code 1425</b>													
0800-Misc. Services	720.00	247.00	240.00	77.00	2,858.00	0.00	0.00	0.00	0.00	0.00	0.00	123.00	<b>4,265.00</b>
<b>1425 Object Total</b>	<b>720.00</b>	<b>247.00</b>	<b>240.00</b>	<b>77.00</b>	<b>2,858.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>123.00</b>	<b>4,265.00</b>
<b>Object Code 1614</b>													
1000-Arbitration Program <sup>1</sup>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,500.00	<b>1,500.00</b>
<b>1614 Object Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,500.00</b>	<b>1,500.00</b>
<b>Revenue this Month</b>	<b>54,020.00</b>	<b>68,330.00</b>	<b>346,746.00</b>	<b>651,736.00</b>	<b>41,188.00</b>	<b>123,654.00</b>	<b>47,508.00</b>	<b>69,800.00</b>	<b>121,262.00</b>	<b>68,651.00</b>	<b>93,556.00</b>	<b>77,270.00</b>	<b>1,763,721.00</b>
<b>Revenue</b>													
<b>Year to date</b>	<b>54,020.00</b>	<b>122,350.00</b>	<b>469,096.00</b>	<b>1,120,832.00</b>	<b>1,162,020.00</b>	<b>1,285,674.00</b>	<b>1,333,182.00</b>	<b>1,402,982.00</b>	<b>1,524,244.00</b>	<b>1,592,895.00</b>	<b>1,686,451.00</b>	<b>1,763,721.00</b>	<b>1,763,721.00</b>

<sup>1</sup> Reimbursement of costs associated with collection of Arbitration Certification Program Fees

STATE OF CALIFORNIA

**MEMO**



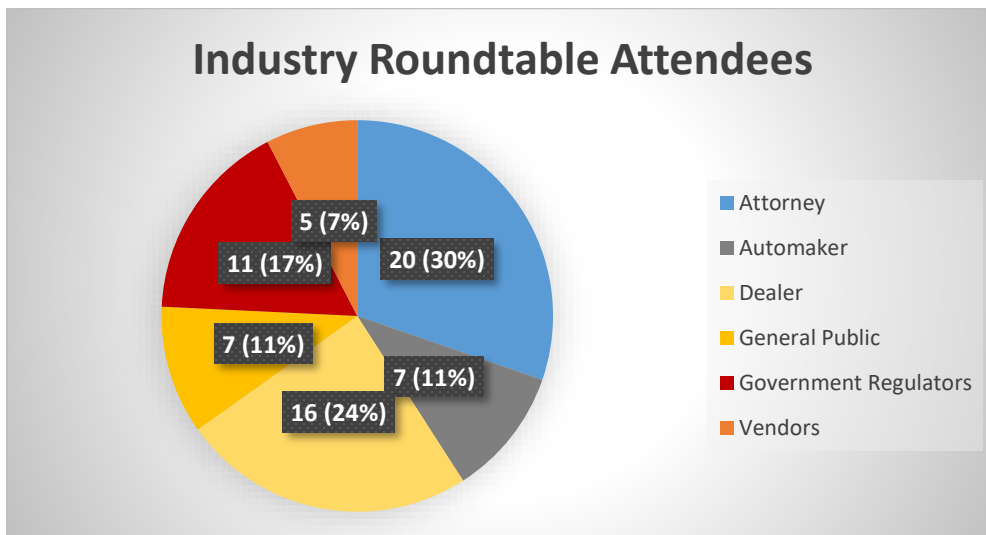
**To: GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE  
RAMON ALVAREZ, C., CHAIR  
ANNE SMITH BOLAND, MEMBER  
KATHRYN ELLEN DOI, MEMBER  
RYAN FITZPATRICK, MEMBER**

**Date:** October 28, 2021

**From: TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA**

**Subject: REPORT ON THE NEW MOTOR VEHICLE BOARD'S RECENT INDUSTRY  
ROUNDTABLE**

On September 8-9, 2021, the New Motor Vehicle Board (“Board”) held its 14<sup>th</sup> Industry Roundtable. 178 people attended Day One and 137 people attended Day Two, in addition to several Board members and staff. A survey was created in order to identify who attended and solicit feedback on the topics presented. The attendees represented attorneys, vendors, automakers, dealers, government regulators and the general public, with most attendees being attorneys, dealers and government regulators.



Attendees were able to join us from across the country from over 20 different states, including: Alaska, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington D.C., and Wyoming.

Positive feedback was received on the surveys and all found the topics for Day One timely and of interest and almost all who responded found the topics for Day Two timely and of interest.

In regard to the virtual format, survey responses indicated that 59% preferred a virtual event while 41% preferred an in-person event.

General feedback and comments included expanding the topics, especially the topic for Day Two, to allow for a deeper conversation, and having speakers take questions after their segment, rather than opening the floor for all speakers at the end. Suggestions for topics/speakers for future Roundtable events included: franchise litigation issues, smog industry emission topics, online vehicle sales and continued ZEV discussion.

This matter is being agendaized for informational purposes only. No Board action is required. If you have any questions or require additional information, please do not hesitate to call me at (916) 445-1888 or Danielle at (916) 327-3129.

cc: Bismarck Obando, Board President

STATE OF CALIFORNIA



## MEMO

**To :** POLICY AND PROCEDURE COMMITTEE      **Date:** November 1, 2021  
INDER DOSANJH, CHAIR  
JAKE STEVENS, MEMBER

**From :** TIMOTHY M. CORCORAN  
ROBIN P. PARKER

**Subject:** CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO REGISTERED MAIL BY REPEALING SECTION 550.20 (USE OF CERTIFIED MAIL IN LIEU OF REGISTERED MAIL) AND AMENDING SECTION 564 (DECISION) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS

Effective January 1, 2020, Assembly Bill 179 made a number of changes to the Vehicle Code including the repeal of appeals (Veh. Code §§ 3052-3058). The rulemaking implementing the regulatory changes has been completed with the exception of Section 550.20.

Section 550.20 permits the Board to use certified mail in lieu of registered mail. Effective January 1, 2016, all references to registered mail in Article 4 protests (Veh. Code §§ 3066-3068) were replaced with certified mail. (Assembly Bill 759, Stats. 2015, Ch. 407) With the removal of appeals, this regulation is now moot and should be repealed since there are no remaining Vehicle Code sections that require the Board to send notices or other communications by registered mail.

Section 564 of the Board's regulations pertains to decisions in petitions. If the Board does not personally serve the decision on the parties then it "shall" be sent by either certified mail or registered mail. Given all statutory references to the requirement the Board send decisions by registered mail have been removed, this section should be amended to delete this option.

The proposed amendments are as follows:

**~~§ 550.20. Use of Certified Mail in Lieu of Registered Mail.~~**

~~Any notice or other communication required by Chapter 6 of Division 2 of the Vehicle Code to be mailed by registered mail shall be deemed to be in compliance with the requirements of said Chapter if mailed by certified mail.~~

~~Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 29, 3052, 3057, 3058 and 3066-3068, Vehicle Code.~~

**§ 564. Decision.**

The decision shall be in writing. Copies of the decision shall be served on the parties personally or sent to them by certified ~~or registered~~ mail. The decision shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

This matter is being agendaized for consideration at the December 7, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachment: as stated

cc: Bismarck Obando, President



STATE OF CALIFORNIA



MEMO

To : LEGISLATIVE COMMITTEE  
BISMARCK OBANDO, CHAIR  
ARDY KASSAKHIAN, MEMBER

Date: October 28, 2021

From : TIMOTHY M. CORCORAN  
DANIELLE R. PHOMSOPHA

Subject: DISCUSSION CONCERNING ENACTED AND PENDING LEGISLATION

The following provides a summary of pending State legislation that is of interest to the New Motor Vehicle Board ("Board"). The criteria for reporting on "legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general and does not directly impact the Board or its enabling statute. For purposes of this report "legislation of special interest" is that which directly affects the Board's laws or functions.

Bill summaries include a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available, as well as the current status of the bill.<sup>1</sup> The legislature is currently on recess until January 3, 2022.

a. Enacted Legislation of Special Interest:

(1) **Assembly Bill 361 - Assembly Member Rivas** (Introduced February 1, 2021)

**Status:** Chaptered September 16, 2021 (Chapter 165, Statutes of 2021)

**Support:** Numerous community districts, local agencies, professional associations, counties and cities.

**Opposition:** ACLU California Action, ACT for Women and Girls, California Environmental Justice Alliance, Californians Aware, First Amendment Coalition, Howard Jarvis Taxpayers Association, Together We Will/Indivisible – Los Gatos

**Legislative Counsel's Digest:** Open meetings: state and local agencies: teleconferences

As relevant to the New Motor Vehicle Board: existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state

---

<sup>1</sup> All statutory references are to the Vehicle Code, unless otherwise indicated.

body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute with a delayed effective date of October 1, 2021, in regard to the provisions amending Government Code section 11133 due to Governor's Executive Order N-15-21.

- (2) **Assembly Bill 1291 - Assembly Member Frazier** (Introduced February 19, 2021)  
**Status:** Chaptered July 9, 2021 (Chapter 63, Statutes of 2021)  
**Support:** California Federation of Teachers, California Immigrant Policy Center, Disability Rights California  
**Opposition:** None received  
**Legislative Counsel's Digest:** State bodies: open meetings

The Bagley-Keene Open Meeting Act requires that meetings of a state body be open and public and that all persons be permitted to attend, with certain exceptions. Existing law provides that, subject to certain exceptions and reasonable regulations, the state body shall provide members of the public an opportunity to directly address the state body on agenda items. Existing law authorizes the state body to limit the amount of time allotted for each member of the public to speak but specifies that members of the public who use translators shall be given twice that allotted amount of time.

This bill would also require a state body, when it limits time for public comment, to provide at least twice the allotted time to a member of the public who utilizes translating technology to address the state body. The bill would additionally make technical, nonsubstantive changes.

b. Pending Legislation of Special Interest:

- (1) **Assembly Bill 29 – Assembly Member Cooper (Coauthors Assembly Member Blanca Rubio)** (Introduced December 7, 2020)  
**Status:** In Assembly Appropriations Committee. Held under submission.  
**Support:** California Association of Realtors, California Municipal Utilities Association, California Senior Legislature, California Sportsman's Lobby, Inc., California Taxpayers Association (CALTAX), Health Access California, Oakland Privacy, Outdoor Sportsmen's Coalition of California, Safari Club International-California Chapters  
**Opposition:** None on file  
**Legislative Counsel's Digest:** State bodies: meetings

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require

those writings or materials to be made available on the state body's internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. The bill would prohibit a state body from discussing those writings or materials, or from taking action on an item to which those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

(2) **Assembly Bill 885 – Assembly Member Quirk** (Introduced February 17, 2021)

**Status:** In Assembly Governmental Organization Committee

**Support:** Unknown

**Opposition:** Unknown

**Legislative Counsel's Digest:** Bagley-Keene Open Meeting Act: teleconference

The Bagley-Keene Open Meeting Act (Bagley-Keene Act), requires, with specified exceptions, that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meeting of a state body, except as provided. The Bagley-Keene Act, among other things, requires a state body that elects to conduct a meeting or proceeding by teleconference to make the portion of the meeting that is required to be open to the public audible to the public at the location specified in the notice of the meeting. The Bagley-Keene Act requires a state body that elects to conduct a meeting or proceeding by teleconference to post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and requires each teleconference location to be accessible to the public. That law authorizes any meeting of a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body to hold an open meeting by teleconference if the meeting complies with the requirements of the act, except as provided. Existing law requires that when a member of a multimember state advisory body participates remotely the body provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting. Existing law requires a multimember state advisory body to end or adjourn a meeting if it discovers that a required means of remote access has failed during the meeting, and, if the meeting is to adjourn and reconvene on the same day, that law requires the body to communicate, among other things, how a member of the public may hear audio of the meeting or observe the meeting.

This bill would require a state body that elects to conduct a meeting or proceeding by teleconference to make the portion that is required to be open to the public both audibly and visually observable. The bill would require a state body that elects to conduct a meeting or proceeding by teleconference to post an agenda at the designated primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. The bill would extend the above requirements of meetings of multimember advisory bodies that are held by teleconference to meetings of all multimember state bodies. The

bill would require a multimember state body to provide a means by which the public may both audibly and visually remotely observe a meeting if a member of that body participates remotely. The bill would further require any body that is to adjourn and reconvene a meeting on the same day to communicate how a member of the public may both audibly and visually observe the meeting. The bill would also make nonsubstantive changes to those provisions.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

c. Pending Legislation of General Interest:

(1) **Assembly Bill 1211 – Assembly Member Muratsuchi** (Introduced February 19, 2021)

**Status:** In Assembly Privacy and Consumer Protection Committee. Hearing canceled at the request of author.

**Support:** Unknown

**Opposition:** Unknown

**Legislative Counsel’s Digest:** Electric mobility manufacturers

Existing law, known as the Vehicle Leasing Act, specifies requirements for contracts for leases of motor vehicles, including the requirement that the contract contain prescribed information regarding the motor vehicle and the terms of the lease.

This bill would authorize an electric mobility manufacturer to enter into a business transaction, consumer transaction, or government transaction, as those terms are defined, with a consumer for use of an electric mobility manufacturer vehicle and any other membership benefits in exchange for a membership fee or membership initiation fee. The bill would require a membership agreement between an electric mobility manufacturer and a consumer to include specified information, including, but not limited to, a statement of the terms and conditions for the right to use the electric mobility manufacturer vehicle.

This bill would require an electric mobility manufacturer to obtain specified information from a consumer before providing the consumer with an electric mobility manufacturer vehicle, including proof that the consumer has valid insurance or elects to purchase insurance and a copy of the consumer’s valid driver’s license. The bill would require an electric mobility manufacturer to ensure an electric mobility manufacturer vehicle is registered with the relevant state and local agencies and all fees necessary to operate the vehicle are paid.

This bill would limit the maximum liability of a consumer resulting from damage to an electric mobility manufacturer vehicle in their possession, as specified. The bill would, except as specified, prohibit an electric mobility manufacturer from disclosing identifiable personal information, utilizing electronic tracking information, or disabling a vehicle by using keyless entry technology.

This bill would subject any electric mobility manufacturer that violates any of these provisions to a civil penalty of not less than \$100, and not to exceed \$2,000, in addition to actual damages plus reasonable attorney's fees and costs, as specified. Existing law establishes a New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. Existing law requires licensing by the Department of Motor Vehicles to perform these activities for specified types of vehicles. Existing law generally requires a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles of a type subject to registration, or snowmobiles, motorcycles, all-terrain vehicles, or trailers of a type subject to identification, to make an application to the department for a license containing a general distinguishing number, and prohibits a person from acting in that capacity without having first been issued that license or temporary permit by the department.

This bill would require an electric mobility manufacturer to obtain the above-described vehicle manufacturer license, which would authorize an electric mobility manufacturer to enter into business, consumer, and government transactions with consumers in this state pursuant to a membership agreement.

Existing law, the Consumer Automotive Recall Safety Act, generally prohibits an applicable dealer or rental car company, as defined, from loaning, renting, or offering for loan or rent a vehicle subject to a manufacturer's recall after receiving a notice of the recall, as specified, until the vehicle has been repaired.

This bill would make an electric mobility manufacturer subject to the Consumer Automotive Recall Safety Act and other requirements relating to recalls and consumer notifications and would require an electric mobility manufacturer to adhere to prescribed standards, including sending a written notice to each consumer in possession of an electric mobility manufacturer vehicle.

This bill would specify that these provisions apply only to electric mobility manufacturers.

- (2) **Senate Bill 361 – Senator Umberg** (Introduced February 10, 2021)  
**Status:** In Assembly Judiciary Committee. First hearing canceled at the request of author.  
**Support:** California New Car Dealers Association, California Credit Union League, Californians Against Waste, Cox Automotive, Inc., Ford Motor Company, Roadster, TrueCar, Inc., Vitu  
**Opposition:** Consumers for Auto Reliability and Safety, National

Association of Consumer Advocates

**Legislative Counsel's Digest:** Electronic transactions: motor vehicle finance

Existing law, the Uniform Electronic Transactions Act, applies to electronic records and electronic signatures of a transaction, and generally prohibits a record or signature from being denied legal effect or enforceability solely because it is in electronic form or a contract being denied legal effect or enforceability solely because an electronic record was used in its formation. Existing law exempts certain transactions from that act, including conditional sale or lease contracts for motor vehicles.

This bill would delete those exemptions, thereby making the provisions of the act applicable to conditional sale or lease contracts for motor vehicles.

d. Enacted Legislation of General Interest:

(1) **Assembly Bill 473 – Assembly Member Chau** (Introduced February 8, 2021)

**Status:** Chaptered October 7, 2021 (Chapter 614, Statutes 2021)

**Support:** None received

**Opposition:** None received

**Legislative Counsel's Digest:** California Public Records Act

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.

This bill would recodify and reorganize the provisions of the act. The bill would include provisions to govern the effect of recodification and state that the bill is intended to be entirely nonsubstantive in effect. The bill would contain related legislative findings and declarations. The bill would become operative on January 1, 2023.

This bill would incorporate additional changes proposed by AB 386, AB 562, and SB 823 to be operative only if this bill and AB 386, AB 562, and SB 823 are enacted and this bill is enacted last.

(2) **Senate Bill 339 - Senator Wiener (Coauthors Senators Newman and Wieckowski and Assembly Members Chiu and Ting)** (Introduced February 8, 2021)

**Status:** Chaptered September 24, 2021 (Chapter 308, Statutes 2021)

**Support:** American Automobile Association of Northern California, Nevada & Utah, American Society of Civil Engineers-region 9, Associated General Contractors of California, Auto Club of Southern California, Automobile Club of Southern California, Bay Area Council, Bay Area Rapid Transit, California Chamber of Commerce, California Transit Association, California Transportation Commission, City/County Association of Governments of

San Mateo County, Coalition for Clean Air, Communities for a Better Environment, East Bay for Everyone, Engineering & Utility Contractors Association dba United Contractors, Environment California, Environmental Defense Fund, Fossil Free California, Natural Resources Defense Council, Northern California Carpenters Regional Council, Orange County Transportation Authority, Peninsula Corridor Joint Powers Board, Politico Group, San Mateo County Transit District, San Mateo County Transportation Authority, Sierra Club California, Smith, Watts & Hartmann, Solano Transportation Authority, Southern California Contractors Association, Transportation California, Union of Concerned Scientists, United Contractors, Vulcan Materials Company

**Opposition:** None received

**Legislative Counsel's Digest:** Vehicles: road usage charge pilot program

Existing law requires the Chair of the California Transportation Commission to create a Road Usage Charge (RUC) Technical Advisory Committee in consultation with the Secretary of Transportation. Under existing law, the purpose of the technical advisory committee is to guide the development and evaluation of a pilot program to assess the potential for mileage-based revenue collection as an alternative to the gas tax system. Existing law requires the technical advisory committee to study RUC alternatives to the gas tax, gather public comment on issues and concerns related to the pilot program, and make recommendations to the Secretary of Transportation on the design of a pilot program, as specified. Existing law repeals these provisions on January 1, 2023.

This bill would extend the operation of these provisions until January 1, 2027. The bill would require the Transportation Agency, in consultation with the California Transportation Commission, to implement a pilot program to identify and evaluate issues related to the collection of revenue for a road charge program, as specified. The bill would require the RUC Technical Advisory Committee to make recommendations to the Transportation Agency on the design of the pilot program, including the group of vehicles to participate. The bill would require that if a group of vehicles other than state-owned vehicles is selected, that participation in the program be voluntary. The bill would require the Transportation Agency to consult with appropriate state agencies to implement the pilot program and to design a process for collecting road charge revenue from vehicles. The bill would require that participants in the program be charged a mileage-based fee, as specified, and receive a credit or a refund for fuel taxes or electric vehicle fees, as specified. The bill would require that the pilot program not affect funding levels for a program or purpose supported by state fuel tax and electric vehicle fee revenues. The bill would require the Transportation Agency to submit reports to the Legislature, as specified.

(3) **Senate Bill 500 - Senator Min** (Introduced February 17, 2021)

**Status:** Chaptered September 23, 2021 (Chapter 277, Statutes 2021)

**Support:** 360 Silicon Valley, American Lung Association in California, California Interfaith Power & Light, California State Association of Electrical Workers, Calstart Inc., Coalition of California Utility Employees, Cruise LLC, Elders Climate Action, NorCal and SoCal Chapters, Nuro, Inc., Plug in



America, Transform, Union of Concerned Scientists, Zoox, Inc.

**Opposition:** American Trucking Associations, Inc., Association for Unmanned Vehicle Systems International, California Chamber of Commerce, California Trucking Association, Internet Association, Los Angeles Business Council, Netchoice, Self-Driving Coalition for Safer Streets, Silicon Valley Leadership Group, Technet

**Legislative Counsel's Digest:** Autonomous Vehicles: zero emissions

Existing law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle being operated if the manufacturer meets prescribed requirements, including the submission of an application to the Department of Motor Vehicles (DMV) with specified certifications regarding the features of the autonomous vehicle, among other things.

Existing law provides for various programs to promote the use of zero-emission vehicles, including the Clean Vehicle Rebate Project, which was established by the State Air Resources Board as a part of the Air Quality Improvement Program, to promote the use of zero-emission vehicles by providing rebates for the purchase of new zero-emission vehicles, and the Charge Ahead California Initiative, which establishes various goals, including the goal of placing in service at least 1,000,000 zero-emission and near-zero-emission vehicles by January 1, 2023.

This bill, commencing January 1, 2030, and to the extent authorized by federal law, would prohibit the operation of certain new autonomous vehicles that are not zero-emission vehicles, as defined. The bill would also prohibit the DMV from commencing rulemaking for the adoption of regulations implementing this provision until January 1, 2027.

e. Pending Federal Legislation of General Interest:

(1) **United States Senate Bill 2118 - Senator Wyden** (Introduced June 17, 2021)

**Status:** Read the second time. Placed on Senate Legislative Calendar under General Orders

**Support:** Unknown

**Opposition:** Unknown

**Legislative Counsel's Digest:** Clean Energy for America Act

To provide tax incentives for increased investment in clean energy, and for other purposes.

This matter is for information only at the December 7, 2021, General Meeting. If you have any questions or require additional information, please contact me at (916) 445-1888 or Danielle at (916) 327-3129.



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***December 7, 2021***

**A.**  
**ADMINISTRATIVE**  
**MATTERS**

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b>1. <u>Discuss Options to Move the Board's Offices</u></b> Tim Corcoran, Dawn Kindel; Administration Committee	Consider options to move the Board's offices upon the expiration of the current lease.	December 2021	In progress. This matter will be considered at the December 7, 2021 General Meeting.
<b>2. <u>Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2022	In progress. The revised Guide will be presented at the January 12, 2022, General Meeting.
<b>3. <u>Revise the Board's Logo</u></b> Tim Corcoran, Dawn Kindel; Administration Committee	Consider whether to revise the Board's current logo that is on publications and letterhead to reflect the logo used in the Industry Roundtable marketing materials.	January 2022	In progress. This will be discussed at the January 12, 2022, General Meeting.
<b><u>Revision of the Board's Policy Concerning the In-Site, a Periodic Newsletter</u></b> Tim Corcoran; Administration Committee	Since 1999, the Board has published The In-Site newsletter in order to advise dealers, manufacturers/distributors, and other interested parties about its activities, cases, and decisions. Given the availability of this information on the Board's website, the small number of entities on the public mailing list, and the limited number of staff, it may be time to retire the In-Site to better focus on other projects.	February 2021	<b><u>Completed</u></b> This policy was eliminated at the February 16, 2021 General Meeting.
<b><u>Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2021	<b><u>Completed</u></b> The revised Guide was adopted at the February 16, 2021 General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b>1. <u>Solon C. Soteris Employee Recognition Award Recipient</u></b> Tim Corcoran; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	December 2021	In progress. The nominee will be considered at the December 7, 2021 General Meeting.
<b>2. <u>Schedule Board Member Education Presentations</u></b> Danielle Phomsopha; Policy and Procedure Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	December 2021	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the December 7, 2021 General Meeting
<b>FISCAL COMMITTEE</b>			
<b>1. <u>Quarterly Financial Reports</u></b> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<b>2. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> 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.	December 2021	In progress. A status report will be provided at the December 7, 2021 General Meeting.
<b>3. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss the Board's proposed Budget for fiscal year 2021-2022.	December 2021	In progress. The budget allotments provided by the Department of Finance will be discussed at the December 7, 2021 General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>4. <u>Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2022-2023.	January 2022	In progress. A report will be presented for consideration at the January 12, 2022, General Meeting.
<b><u>Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2020-2021.	February 2021	<b><u>Completed</u></b> A report was presented at the February 16, 2021, General Meeting.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>1. <u>Report on the Recent Industry Roundtable</u></b> Tim Corcoran, Danielle Phomsopha; Government and Industry Affairs Committee	A survey was created in order to identify who attended the September 8-9, 2021, Industry Roundtable and to solicit feedback on the topics presented.	December 2021	In progress. A report will be provided at the December 7, 2021, General Meeting.
<b>2. <u>Host Industry Roundtable</u></b> Tim Corcoran, Dawn Kindel, Danielle Phomsopha; 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.	TBD	In progress. The Industry Roundtable for 2022 will be discussed at the January 12, 2022, General Meeting.
<b>3. <u>Host Board Administrative Law Judge Roundtable</u></b> Robin Parker, Danielle Phomsopha, 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.	TBD	In progress. An ALJ Roundtable will be scheduled in 2022.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Host Industry Roundtable</u></b> Tim Corcoran, Dawn Kindel, Danielle Phomsopha; Government and Industry Affairs Committee	Host a virtual Industry Roundtable entitled Preparing for California's ZEV Future: The State's and Stakeholders' Perspective.	September 2021	<u>Completed</u> The virtual Industry Roundtable was September 8-9, 2021
<b>LEGISLATIVE COMMITTEE</b>			
<b><u>1. Review of Enacted and Pending Legislation</u></b> Tim Corcoran, Danielle Phomsopha; Legislative Committee	The staff will provide an overview of enacted and pending legislation of special interest and general interest.	December 2021	In progress. A report will be provided at the December 7, 2021, General Meeting.
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b><u>1. Draft Proposed Regulatory Amendments to Sections 550.20 and 564 of Title 13 of the California Code of Regulations</u></b> Robin Parker; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, repeal Section 550.20 of the Board's regulations. In January 2016, all references to registered mail in Article 4 protests were replaced with certified mail. With the elimination of Appeals, this regulation is now moot. Section 564 of the Board's regulations pertains to decisions in petitions. If the Board does not personally serve the decision on the parties then it "shall" be sent by either certified mail or registered mail. Given all statutory references to the requirement the Board send decisions by registered mail have been removed, this section should be amended to delete this option.	December 2021	In progress. The draft proposed regulation will be considered at the December 7, 2021, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><b>2. <u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>Informational Guide for Manufacturers and Distributors</i>.</p>	<p>January 2022</p>	<p>In progress. The revised Guide will be presented at the January 12, 2022, General Meeting.</p>
<p><b>3. <u>Draft the Export or Sale-For-Resale Prohibition Policy Guide</u></b> Robin Parker; Policy and Procedure Committee</p>	<p>Draft the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.</p>	<p>January 2022</p>	<p>In progress. The revised Guide will be presented at the January 12, 2022, General Meeting.</p>
<p><b>4. <u>Annual Rulemaking Calendar</u></b> Danielle Phomsopha; Policy and Procedure Committee</p>	<p>Consideration of the annual rulemaking calendar.</p>	<p>January 2022</p>	<p>In progress. The revised Guide will be presented at the January 12, 2022, General Meeting.</p>
<p><b>5. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Danielle Phomsopha; Policy and Procedure Committee</p>	<p>Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).</p>	<p>January 2022</p>	<p>In progress. A report on the assignment of cases to Board ALJs will be presented at the January 12, 2022, General Meeting.</p>



Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>6. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Administrative Law Judge’s Benchbook</i> .	Spring 2022	In progress. The revised ALJ Benchbook will be considered at the Spring 2022, General Meeting.
<b>7. <u>Promulgate Amendment to the Board’s Conflict of Interest Code</u></b> Danielle Phomsopha; Policy & Procedure Committee	In compliance with the Administrative Procedure Act, amend the Board’s Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations. Staff identified language that needs to be updated to reflect Dawn Kindel’s promotion to a Staff Services Manager II.	June 2022	In progress. The Board approved the text at the February 16, 2021, General Meeting. Approval is pending with the Fair Political Practices Commission.
<b><u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2021	<b><u>Completed</u></b> The revised Guide was adopted at the February 16, 2021, General Meeting.
<b><u>Update the Export or Sale-For-Resale Prohibition Policy Guide</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	February 2021	<b><u>Completed</u></b> The revised Guide was adopted at the February 16, 2021, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u><b>Report on the Assignment of Cases to Board Administrative Law Judges</b></u> Danielle Phomsopha; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	February 2021	<u>Completed</u> The members were provided with a report at the February 16, 2021, General Meeting.
<u><b>Annual Rulemaking Calendar</b></u> Danielle Phomsopha; Policy and Procedure Committee	Consideration of the annual rulemaking calendar.	February 2021	<u>Completed</u> The Rulemaking Calendar was adopted at the February 16, 2021, General Meeting.
<u><b>Draft Proposed Regulation that Amends the Board’s Conflict of Interest Code</b></u> Robin Parker, Danielle Phomsopha; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend the Board’s Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations. Staff identified language that needs to be updated to reflect Dawn Kindel’s promotion to a Staff Services Manger II.	February 2021	<u>Completed</u> The proposed regulations were adopted at the February 16, 2021, General Meeting.
<u><b>Promulgate Substantive Amendments to Regulations that Pertain to Assembly Bill 179 and Petitions</b></u> Danielle Phomsopha; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend the Board’s regulations to implement several substantive regulations as a result of the passage of Assembly Bill 179 (Ch. 796, effective January 1, 2020). Clarify that the petitioner can file declarations or other evidence or documents that support the petition and that exhibits may be submitted by declaration in Respondent’s answer to a petition.	September 2021	<u>Completed</u> The Board approved the text at the December 2, 2019, and March 5, 2020, General Meetings. The rulemaking was approved and effective January 1, 2022.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>EXECUTIVE COMMITTEE</b>			
<u>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 by the staff, and amendments are considered as needed by the Board.	February 2021	<u>Completed</u> The Board adopted revised delegations at the February 16, 2021, General Meeting.
<b>AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION</b>			
<b>1. <u>Develop Strategies for Board Consideration</u></b> Tim Corcoran, Danielle Phomsopha; Ad Hoc Committee	Develop strategies for the Board’s consideration, which advance California State Transportation Agency’s stated goal of “Enhancing the lives of all Californians – particularly people of color and disadvantaged communities...” Draft a Mission Statement for consideration by the full Board.	Ongoing	In progress. At the February 16, 2021, General Meeting, the full Board revised the Mission Statement previously adopted by the Ad Hoc Committee at its January 19, 2021, meeting. This statement was reviewed and amended at the August 27, 2021, Special Meeting. Workshops on equity, justice and inclusion in the motor vehicle industry are pending for 2022.

**B.**  
**CASE**  
**MANAGEMENT**

# CASE VOLUME

FEBRUARY 2, 2021 THROUGH NOVEMBER 16, 2021

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	7	10
3060	Modification	1	2	4
3062	Establishment	1	7	11
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	3	1	8
3065.1	Incentive Program Reimbursement	1	0	9
3065.3	Performance Standard	1	3	3
3065.4	Retail Labor Rate or Retail Parts Rate	12	0	12
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
3085	Export or Sale-for-Resale	0	0	0
3050(b)	Petition	1	0	0
TOTAL CASES:		23	20	57

# 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	CMH	Continued Merits Hearing
RMH	Resumed Merits Hearing	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	POS	Proof of Service
PSDO	Proposed Stipulated Decision and Order	ROB	Ruling on Objections
CROB	Continued Ruling on Objections	RROB	Resumed Ruling on Objections
SC	Status Conference	CSC	Continued Status Conference
RFD	Request for Dismissal		
* Consolidated, non-lead case			

## Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2501-17 1-19-17	Parties working on settlement agreement	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Randy Oyler, Bob Davies, Mary Stewart	Modification
2. PR-2506-17* 1-23-17	Parties working on settlement agreement	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	P: Christian Scali R: Randy Oyler, Bob Davies, Mary Stewart	Modification
3. PR-2542-17 11-13-17	Proposed Order Pending Board Consideration	Putnam Automotive, Inc., dba Putnam Subaru v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson	Modification Satellite Warranty Facility

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
4. PR-2570-18 8-22-18 Reopened 9-4-20	PSDO dispute submitted to ALJ for decision	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson, Crispin Collins	Termination/ PSDO Dispute
5. PR-2652-20* 1-10-20	Post-Hearing Reply Briefs due: 11-19-21 Issue briefs due: 11-23-21	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
6. PR-2653-20* 1-10-20	Post-Hearing Reply Briefs due: 11-19-21 Issue briefs due: 11-23-21	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
7. PR-2654-20* 1-10-20	Post-Hearing Reply Briefs due: 11-19-21 Issue briefs due: 11-23-21	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
8. PR-2655-20* 1-10-20	Post-Hearing Reply Briefs due: 11-19-21 Issue briefs due: 11-23-21	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
9. PR-2673-20 6-4-20	Supplemental opening brief: 11-17-21 Supplemental reply brief: 12-17-21 Hearing: 1-6-22	Bonander Auto, Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC	P: Andrew Stearns R: Megan O. Curran, Dyana K. Mardon, Roberta F. Howell	Termination
10. PR-2697-20* 9-14-20	HRC: 12-3-21 MH: 1-18-22 (14 days)	Fox Hills Auto, Inc., d/b/a Airport Marina Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick R: Steven M. Kelso, H. Camille Papini-Chapla, Christopher Mair	Establishment
11. PR-2698-20* 9-14-20	HRC: 12-3-21 MH: 1-18-22 (14 days)	Central Ford Automotive, Inc., d/b/a Central Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick, Gavin Hughes R: Steven M. Kelso, H. Camille Papini-Chapla, Christopher Mair	Establishment
12. PR-2699-20* 9-14-20	HRC: 12-3-21 MH: 1-18-22 (14 days)	Los Feliz Ford, Inc., d/b/a Star Ford Lincoln v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick, Gavin Hughes R: Steven M. Kelso, H. Camille Papini-Chapla, Christopher Mair	Establishment
13. PR-2701-20 9-14-20	HRC: 12-20-21 MH: 2-21-22 (5 days)	Central Ford Automotive, Inc., dba Central Ford v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Marcus McCutcheon, Elizabeth McNellie	Performance Standard



# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
14. PR-2702-20* 9-14-20	HRC: 12-20-21 MH: 2-21-22 (5 days)	Los Feliz Ford, Inc., dba Star Ford Lincoln v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Marcus McCutcheon, Elizabeth McNellie	Performance Standard
15. PR-2704-20 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
16. PR-2705-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
17. PR-2706-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
18. PR-2707-20* 10-26-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
19. PR-2708-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
20. PR-2709-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
21. PR-2710-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
22. PR-2711-20* 10-28-20	HRC: 5-11-22 MH: 6-27-22 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
23. PR-2717-20 11-19-20	SC: 11-23-21	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (15-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
24. PR-2718-20* 12-9-20	SC: 11-23-21	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (60-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
25. PR-2719-21 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
26. PR-2720-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
27. PR-2721-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
28. PR-2722-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
29. PR-2723-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
30. PR-2724-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
31. PR-2725-21* 1-20-21	Protest stayed pending outcome of warranty/incentive protests.	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
32. PR-2726-21* 1-20-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
33. PR-2727-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
34. PR-2728-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
35. PR-2729-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 II, LLC, a California limited liability company dba Russell Westbrook Hyundai of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
36. PR-2730-21* 1-21-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
37. PR-2731-21* 1-22-21	HRC: 2-9-22 MH: 3-7-22 (15 days)	YNOT6 III, LLC, a California limited liability company, fdba Genesis of Huntington Beach v. Genesis Motor America, LLC, a California limited liability company	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
38. PR-2732-21 2-11-21	SC: 11-23-21	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Warranty

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
39. PR-2733-21* 2-11-21	SC: 11-23-21	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Franchisor Incentive
40. PR-2735-21 4-22-21	ROB: 12-13-21 HRC: 5-4-22 MH: 6-20-22 (5 days)	Nissan Automotive of Mission Hills, Inc., dba Nissan of Mission Hills v. Nissan North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Dean A. Martoccia	Warranty
41. PR-2736-21 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
42. PR-2737-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
43. PR-2738-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
44. PR-2739-21* 4-27-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Labor Rate
45. PR-2740-21 5-19-21	Order on Motion to Dismiss Pending	Western Truck Parts & Equipment Company LLC dba Western Truck Center, a California limited liability company v. Volvo Trucks North America, a division of Volvo Group North America, LLC, a Delaware limited liability company	P: Victor P. Danhi, Franjo M. Dolenac R: Billy Donley, Marcus McCutcheon	Modification
46. PR-2742-21 6-17-21	Settlement discussions pending	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick	Termination
47. PR-2743-21 7-12-21	Settlement discussions pending	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick	Performance Standard
48. PR-2744-21 9-23-21	ROB: 12-16-21 HRC: 8-10-22 MH: 9-26-22 (15 days)	Downey Hyundai, Inc., dba Downey Hyundai v. Hyundai Motor America	P: Gavin Hughes, Robert Mayville, Jr. R: John P. Strelman, Jacob F. Fischer, Crispin Collins	Warranty



# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
49. PR-2745-21 9-24-21	ROB: 1-14-22 HRC: 7-22-22 MH: 9-19-22 (5 days)	D&G Lin, LLC v. Maserati North America, Inc.	P: Jason B. Cruz R: Randy Oyler, Travis Eliason, Alissa Brice Castaneda	Termination
50. PR-2746-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
51. PR-2747-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
52. PR-2748-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
53. PR-2749-21* 9-30-21	HRC: 2-16-22 MH: 4-4-22 (5 days)	Putnam Automotive, Inc., dba Putnam Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Christopher T. Carry, Crispin Collins	Retail Parts Rate
54. PR-2750-21 10-26-21	Parties working on schedule	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Buick)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate



# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
55. PR-2751-21* 10-26-21	Parties working on schedule	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Cadillac)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
56. PR-2752-21* 10-26-21	Parties working on schedule	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (Chevrolet)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate
57. PR-2753-21* 10-26-21	Parties working on schedule	Putnam Automotive, Inc., dba Putnam Chevrolet Cadillac v. General Motors LLC (GMC)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: James C. McGrath, Katherine R. Moskop, Dean A. Martoccia	Retail Labor Rate

## Petitions

CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
1. P-462-21 7-12-21	Answer due: 2-4-22	Creative Bus Sales, Inc., a California corporation v. Greenpower Motor Company, Inc., a Delaware corporation	P: Halbert B. Rasmussen, Jade F. Jurdi R: David L. Jordan, Myles A. Lanzon, David C. Gurnick

# **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. MAZDA MOTOR OF AMERICA, INC. DBA MAZDA NORTH AMERICAN OPERATIONS v. NEW MOTOR VEHICLE BOARD; SELMA AUTO MALL, INC. DBA SELMA MAZDA

Orange County Superior Court No. 30-2021-01197931-CU-WM-CJC  
New Motor Vehicle Board No. CRT-280-21  
Protest No. PR-2675-20

On April 23, 2021, Mazda Motor of America, Inc. dba Mazda North American Operations filed a "Petition for Writ of Administrative Mandate."

ALJ Skrocki issued an Order dated March 11, 2021 denying Mazda's "Motion to Dismiss Protest or, in the Alternative, Strike Portions Thereof." Since the order was not dispositive of the protest, it was not considered by the Public Members. Typically, after a motion to dismiss is denied, counsel for the parties stipulate to a discovery schedule and merits hearing. In this case, Mazda filed the attached writ seeking judicial review of ALJ Skrocki's order. Mazda seeks a peremptory writ of administrative mandate directing the Board to set aside and vacate ALJ Skrocki's order or in the alternative strike portions of the order and adopt a new order granting its motion to dismiss.

Mazda contends:

1. The Board's final Decision would violate the judicial powers provision of the California Constitution in Article VI, Section 1 and an eventual Petition for a Writ of Mandate would not provide an adequate check on the Board's Decision.
2. The Board lacks jurisdiction over the protest because Section 3065.3 does not apply.
3. The Board lacks jurisdiction over the protest because Section 3065.3 may not be applied retroactively.
4. The ALJ improperly ruled that the Board has jurisdiction to determine whether Mazda engaged in unlawful conduct under subdivision (g) of Section 11713.13, which would be a misdemeanor under Section 40000.11(a).
5. The ALJ abused his discretion by failing to consider the constitutional arguments raised in the motion to dismiss. Mazda relies on Article 1, Section 9 of the California Constitution<sup>1</sup> to support its argument and the U.S.

---

<sup>1</sup> Article 1, Section 9 of the California Constitution provides: "A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed."

*Constitution, which provides no state may pass any law impairing the obligation of contracts.*

*Bismarck Obando, Board President, made a determination that the Board should participate in this matter via the Attorney General's Office.*

*On or about May 21, 2021, Mazda filed a "Motion for an Order Staying New Motor Vehicle Board's Adjudication of Selma Auto Mall, Inc.'s Protest Without Jurisdiction." The hearing set for September 7, 2021 was advanced to June 29, 2021, at 2:00 p.m. The Court adopted its tentative order denying Mazda's stay motion. Counsel for Mazda filed a request for dismissal of the writ petition without prejudice on July 8, 2021. This matter is closed.*

2. BARBER GROUP, INC., dba BARBER HONDA, a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC., a California corporation, and GALPINSFIELD AUTOMOTIVE, LLC

*Court of Appeal, Third Appellate District No. C095058  
Sacramento County Superior Court No. 34-2020-80003479  
New Motor Vehicle Board No. CRT-279-20  
Protest No. PR-2539-17*

At the July 10, 2020, Special Meeting, the Public Members of the Board adopted ALJ Dwight Nelsen's Proposed Decision as the Board's final Decision. The Decision overruled the protest and permitted American Honda to proceed with the establishment of Galpinsfield Automotive, LLC at the proposed location in North Bakersfield.

On August 27, 2020, Barber Honda filed a "Verified Petition for Writ of Administrative Mandate, Traditional Mandate and Seeking Stay." The writ was served on September 14, 2020. A copy of the record has been requested.

Barber Honda contends that the Board's actions in adopting the Proposed Decision constitute an abuse of discretion because: (1) The Board's Decision is not supported by the evidence; (2) The Decision is not supported by the findings; (3) Barber Honda was not provided a fair hearing; and (4) The Board's hearing did not proceed in a manner required by law.

Barber Honda requests that the Superior Court consider additional evidence that could not have been produced during the merits hearing or that was improperly excluded at the hearing including the COVID-19 pandemic, higher unemployment in Bakersfield, sharp declines in automotive sales, and the impact to the oil and gas industry in Bakersfield.

Barber Honda seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. In the alternative, the issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the

protest. Also, alternatively, Barber Honda seeks the issuance of a writ of administrative or traditional mandate directing the Board to set aside and vacate its Decision and to “consider evidence improperly excluded from the underlying hearing and to issue findings required by Sections 3063 and 11713.13(b).” Barber Honda also seeks the issuance of a stay pending the judgment of the writ of administrative mandate directing the Board to stay the operation of the Decision until judgment by the court.

Kathryn Doi, Board President, determined that there is an interest in participating in the writ via the Attorney General’s Office to address several procedural issues.

The Board’s counsel, Michael Gowe, received the bates stamped record on November 30, 2020. Therefore, the Board’s answer was filed December 30, 2020. Barber Honda’s opening brief was filed Tuesday, April 6, 2021. American Honda’s and the Board’s opposition briefs were filed Monday, April 26, 2021. Barber Honda’s reply briefs were filed Thursday, May 6, 2021. *On May 20, 2021, the Court issued a tentative ruling denying the writ. At the May 21, 2021, hearing, the Court took the matter under submission.*

*On May 26, 2021, the Court requested additional briefing from the Board and Barber Honda on what appears to be an issue of first impression. One of Barber Honda’s arguments is that Section 11713.13 required the Board to determine whether certain performance standards established by American Honda are reasonable before it could rely on those standards in reaching its decision. According to the Court, it appears that “registration effectiveness” was critical to both American Honda and to the Board, and was used to establish, at least in part, that there was sufficient opportunity in the Bakersfield market to support a second Honda dealership. The issues to be addressed are:*

- *Whether an open point protest like the one at issue here is a “proceeding” within the meaning of section 11713.13;*
- *Whether the Board believes that section 11713.13 is applicable or relevant to this case;*
- *If the Board believes that section 11713.13 is applicable or relevant to this case, whether section 11713.13 required Honda to prove at the protest hearing that the two performance measures it established – i.e., “registration effectiveness” and, to a lesser extent, “retail sales effectiveness” – are reasonable in light of the factors identified in section 11713.13;*
- *If the Board believes that section 11713.13 is applicable to this case and that it required Honda to prove that the two performance measures are reasonable, whether the Board’s decision must specifically include an analysis of reasonableness or whether the Court may rely on other matters within the Board’s decision to conclude that the Board either did or did not determine the reasonableness of the two performance measures.*

*The Board’s supplemental brief was filed on June 18, 2021 and Barber Honda’s response was filed June 25. American Honda already addressed this issue in its opposition brief and Galpinsfield had the opportunity to do so they were not permitted to file supplemental briefs.*

On July 26, 2021, the Court issued its final order denying the petition for writ of mandate. The following provides an overview of the Court's conclusions:

- a. *The Board did not err in allowing Galpinsfield to exercise a peremptory challenge.*
- b. *The Board was not required to take official notice of the pandemic and its effects and was not required to grant Barber Honda's request for official notice.*
- c. *Vehicle Code section 3065.3 did not and could not apply to Barber Honda's protest because it did not go into effect until January 1, 2020, and Barber Honda's protest was filed in 2017.*
- d. *The reasonableness of American Honda's performance standards is not one of the circumstances or issues the Board is directed to consider when determining whether Barber Honda met its burden of proof. Similarly, the Board is not directed to consider whether Barber Honda is or is not meeting American Honda's performance standards. Instead, the critical issue in this case is whether the market can support another dealer. Section 3066 assigns Barber Honda the burden of proof to establish there is good cause not to allow American Honda to open another dealership in the area, and that burden remains with Barber Honda at all times. The Court found that "the Board was not required to explicitly determine or make findings about whether American Honda's performance standards are reasonable before relying on them - at least in part - when deciding this case."*
- e. *The findings and decision are supported by the evidence. The Court was unpersuaded by Barber Honda's arguments and spent a number of pages detailing why.*

*The Notice of Entry of Judgment was served on August 23, 2021. The time to file a Notice of Appeal was October 23, 2021.*

*On October 13, 2021, the Board received Barber Honda's Notice of Appeal. In general, Barber Honda's Opening brief is due 40 days after the record on appeal is completed and filed with the Appellate Court. The Board's brief is due 30 days after Barber Honda's brief is filed. Barber Honda's reply brief is due 20 days after the Board's brief is filed. If oral argument is requested, then the Appellate Court will schedule it and the decision would follow within 90 days thereafter. The appeal could take six months or longer.*

2. R&H AUTOMOTIVE GROUP, INC., a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC. ACURA AUTOMOTIVE DIVISION, INC., a California Corporation, Real Party in Interest  
Los Angeles County Superior Court, Central District No. 20STCP01262  
New Motor Vehicle Board No. CRT-278-20  
Protest No. PR-2605-19

At the March 5, 2020, General Meeting, the Public Members of the Board adopted ALJ Skrocki's Recommendation and Proposed Order Granting Respondent's Motion to Dismiss as the Board's final Decision.

R&H Automotive filed a "Petition for Writ of Administrative Mandate, Writ of Traditional Mandate, and Seeking Stay" on April 3, 2020.

R&H Automotive contends that the Proposed Order drafted by the ALJ and adopted by the Board includes conclusions that are unsupported by the findings. Petitioner alleges it provided evidence regarding its failure to attend the Mandatory Settlement Conference (MSC) and produce documents. Additionally, Petitioner claims the findings drafted by the ALJ and adopted by the Board are not supported by the evidence. Next, Petitioner maintains the ALJ's order finding its failure to comply with discovery and MSC obligations "as to counsel are without notice in violation of procedural due process and unsupported by the factual record."

Petitioner argues that in adopting the ALJ's Proposed Order, "the Board exceeded its jurisdictional authority and its actions constitute an abuse of discretion because (1) the Board's decision is not supported by evidence, (2) the decision is not supported by the findings, (3) petitioner was not provided a fair trial, and (4) the Board's hearing did not proceed in a manner required by law."

R&H Automotive seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and "to adopt and issue a new and different decision reinstating the Protest." Alternatively, Petitioner seeks: (1) issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and "to adopt and issue a new and different decision reinstating the Protest;" and (2) issuance of a writ of administrative or traditional mandate directing the Board to set aside and vacate its Decision and "consider evidence improperly excluded from the underlying hearing or evidence discovered after the hearing." Petitioner seeks a stay pending the judgment of the writ.

On May 28, 2020, Petitioner's "Ex Parte Application for Temporary Restraining Order to Compel the Real Party in Interest to Return the \$186,000 Improperly Taken from Petitioner Without Authorization or, in the Alternative, Order to show Cause Re: The Unauthorized Taking of Same" was denied.

Kathryn Doi, Board President, 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.

At the July 14, 2020 Trial Setting Conference, Judge Chalfant set an Order to Show Cause re Dismissal for Failure to Appear and for Failure to Order the Administrative Record for July 30, 2020 at 9:30 a.m. in Department 85. At the September 10, 2020, trial setting conference, the Court set the hearing for December 1, 2020 at 1:30 p.m. in Department 85 and set the briefing schedule with Petitioner's opening brief due on September 29, 2020. Petitioner's "Ex Parte Application to Continue Deadline on Petitioner's Opening Brief" for a 30-day continuance was granted on September 25, 2020. Petitioner's Opening Brief is due October 29, 2020, Real Party in Interest's Opposition is due December 4, 2020,

Petitioner's Reply Brief is due December 22, 2020, the Trial Notebook and Administrative Record is to be lodged with the Court on or before December 30, 2020, the Joint Appendix (hard copy) is to be lodged with the Court on or before December 30, 2020.

Oral arguments were presented on January 12, 2021. Judge Chalfant adopted his Tentative Ruling denying the petition for writ of mandate. Counsel for American Honda prepared the judgment. *On February 19, 2021, the Notice of Entry of Judgment and Judgment were signed and final. The Order to Show Cause Re: Judgment was vacated. The time to file a notice of appeal has lapsed so this matter is now closed.*

3. FORD MOTOR COMPANY, a corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; VISTA FORD OXNARD, LLC dba VISTA FORD LINCOLN OF OXNARD, a California LLC; and FORD OF VENTURA, INC. dba VENTURA FORD  
Ventura County Superior Court No. 56-2020-00542092-CU-WM-VTA  
New Motor Vehicle Board No. CRT-277-20  
Protest No. PR-2575-18

At the March 5, 2020, General Meeting, the Public Members of the Board adopted ALJ Kymberly Pipkin's Proposed Decision as the Board's final Decision. The Decision sustained the protest and did not permit Ford Motor Company ("Ford") to proceed with the relocation of Ford of Ventura, Inc. dba Ventura Ford ("Ventura Ford") at the proposed location in the Ventura Auto Center.

On April 17, 2020, Ford served a Petition for Writ of Administrative Mandate. Ford contends that: (1) The Board erred as a matter of law and engaged in a prejudicial abuse of discretion in failing to dismiss the protest based upon the waiver of protest rights contained in the "Stipulation for Settlement and Order Thereon" in Protest No. PR-1569-97 regarding the proposed relocation; (2) The Board's decision that Vista Ford Oxnard, LLC dba Vista Ford Lincoln of Oxnard ("Vista Ford") met its burden of establishing good cause under Vehicle Code 3063 was not supported by the findings of ALJ Pipkin and was based on matters not relevant under the Vehicle Code; and (3) The Board's finding that Vista Ford met its burden of establishing good cause under Vehicle Code 3063 was not supported by the evidence presented at the hearing before ALJ Pipkin and was based on matters not relevant under the Vehicle Code.

Ford seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different Decision rejecting the Recommended Decision of ALJ Pipkin dated January 17, 2020: (1) dismissing the Protest on the basis that Vista Ford's predecessor Mike Wallace Ford effectively waived Vista Ford's right to protest the proposed relocation; or (2) finding that Vista Ford failed to satisfy its burden to show good cause under Vehicle Code Section 3063.

Kathryn Doi, Board President, 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.



During the July 27, 2020, Status Hearing, the following briefing schedule was set: Ford's brief is due Thursday, September 10, 2020; Vista Ford's Opposition is due Tuesday, October 13, 2020; and Ford's Reply to the Opposition is due Friday, October 30, 2020.

The hearing on the writ was held on Monday, November 16, 2020, at 1:30 p.m. in Department 41 before Judge Rhonda McKaig. This matter was taken under submission. The hearing on Elizabeth McNellie's application pro hac vice was also heard and granted. Judge McKaig issued her ruling dated January 14, 2021, denying the writ. *The time to file a notice of appeal has lapsed so this matter is now closed.*

4. GENERAL MOTORS LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FOLSOM CHEVROLET, INC. d/b/a FOLSOM CHEVROLET, Real Party in Interest  
Los Angeles County Superior Court No. BS175257  
New Motor Vehicle Board No. CRT-276-18  
Protest No. PR-2483-16

At the August 13, 2018, General Meeting, the Public Members of the Board adopted ALJ Evelyn Matteucci's Proposed Decision as amended as the Board's final Decision. The Decision sustained the protest and did not permit GM to terminate the protesting dealer's Chevrolet franchise.

On September 27, 2018, General Motors LLC (GM) filed a Petition for Writ of Administrative Mandate. GM contends that in adopting the Proposed Decision, the Board exceeded its jurisdictional authority and committed numerous prejudicial abuses of discretion. GM seeks a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and adopt a new and different decision overruling the protest or, in the alternative, to strike down the termination provisions of Sections 3060 and 3061 of the Vehicle Code as unconstitutional on their face and/or as applied. The Board received the writ on October 3, 2018. A copy of the record has been requested and is being copied.

GM contends that: (1) The Board, by its own admission, has never allowed a sales-based termination of a dealer agreement, unless it was accompanied by other grounds for termination; (2) The findings in the Decision are not supported by substantial evidence, its conclusions are not supported by its findings, and it failed to proceed in a manner required by law; (3) The ALJ altered the language of subdivision (g) of Section 11713.3 in order to "broadly and generally find RSI [retail sales index] unreasonable—a conclusion that neither the ALJ nor the Board had jurisdiction to make;" (4) There was no meaningful opportunity to rebut the Proposed Decision; (5) The Decision "invents impossible qualifications on GM's sales performance standards, gutting the terms of valid and binding contracts GM entered into with all of its Chevrolet dealers;" (6) The Board's longstanding refusal to approve sales-based terminations constitutes an underground regulation that cannot be enforced under controlling law and that precludes any claim that the Board is an impartial tribunal in termination cases; and, (7) The language and application of the Vehicle Code's termination provisions are unconstitutional under

both the California and United States Constitution, violating basic due process and equal protection rights.

Kathryn Doi, then Vice President and Attorney Member, determined there is a State interest at issue in the writ so the Board will participate via the Attorney General's Office. The writ challenges the Board's jurisdiction and could affect future Board cases. Michael Gowe, Deputy Attorney General, has been retained to represent the Board.

GM stipulated to December 10, 2018, as the date for the Board to file its Motion to Transfer Action to the Sacramento County Superior Court, which was scheduled for hearing on Tuesday, April 2, 2019, at 9:30 a.m. in Department 82. Folsom Chevrolet filed a Notice of Joinder in the Board's Motion to Transfer. The hearing on Mark Clouatre's Pro Hac Vice Application was also heard April 2. The Motion to Transfer was denied. The Pro Hac Vice Application was granted.

The hearing on the writ scheduled for January 21, 2020, was continued at the request of Petitioner's counsel, to April 30, 2020 at 1:30 p.m. GM's opening brief is due December 20, 2019. Folsom Chevrolet's and the Board's oppositions are due February 14, 2020. GM's reply brief is due April 3, 2020. The parties stipulated to a 30-page limit for opening and responding memoranda, and 20 pages for the reply memorandum. However, the Court refused to sign the stipulation to file briefs that exceeded the page limits under California Rule of Court, rule 3.1113. Instead, the court ordered that each party move ex parte to receive permission to file a longer brief. On January 16, 2020, the Court denied GM's motion and set the following limits: 20 pages for opening briefs and responsive briefs; 15 pages for reply. GM already filed its brief, so it needed to comply with the new page limits. The parties proposed January 27, 2020, for GM's revised opening brief, Folsom Chevrolet and the Board's oppositions were filed March 9, 2020, and GM's reply brief is due April 15, 2020.

On April 14, 2020, the Court issued the following order: "Based on current conditions including, but not limited to, the spread of Covid-19, the need for social distancing, and the states of emergency having been declared by Governor Gavin Newsom and President Donald Trump, the General Orders issued by the Presiding Judge and Statewide Orders issued by the Chief Justice, the court finds good cause to continue the hearing on the petition for writ of mandate set for April 30, 2020, to July 30, 2020, at 1:30 p.m. in Department 82."

During the July 30, 2020, hearing on the writ, the Judge made no changes to her tentative ruling. Of note: (1) the Judge said it was ok for the Board to use the factors listed in Vehicle Code section 11713.13(g) in assessing good cause to terminate; (2) GM wants to eliminate paragraphs 217-223 of the Decision but the Judge said a lot in those paragraphs pertain to (1) above; (3) the Judge was not persuaded that the Board as a whole misconstrued or misapplied the Section 11713.13(g) factors; and (4) the Judge has a problem with finding a violation of Section 11713.13(g).

Phase II of the hearing (whether the Board's findings were supported by substantial evidence and any other remaining grounds for reversal) will be on October 9, 2020 at 10:00 a.m. This hearing was continued to October 23, 2020. After hearing oral arguments, the Judge took the matter under submission. On December 18, 2020, Judge Strobel issued a Minute Order indicating that the writ shall order the Board to set aside that portion of its decision finding that GM violated section 11713.13(g)(1)(A) generally, and in this specific case. Otherwise, the petition is denied.

On January 22, 2021, the Court issued its Judgment on Petition for Writ of Administrative Mandate, in accordance with the Court's final decision, as set forth in the Court's minute orders dated July 30, 2020 and December 18, 2020. A peremptory writ of administrative mandamus will issue under seal commanding the Board to set aside that portion of its decision finding that GM violated section 11713.13(g)(1)(A) generally and in this specific case. The petition for writ of administrative mandate filed by GM is otherwise denied and the Board's decision is otherwise affirmed.

*The Public Members of the Board were set to consider its Decision in light of this at the February 16, 2021, Special Meeting but lost its quorum so a Special Meeting was scheduled for April 7, 2021. In accordance with the Los Angeles County Superior Court's Judgment on General Motors LLC's Petition for Writ of Administrative Mandate, at its regularly scheduled meeting of April 7, 2021, the Public Members of the New Motor Vehicle Board set aside that portion of its Decision, dated August 13, 2018, finding that General Motors LLC violated Vehicle Code section 11713.13(g)(1)(A) generally and in this specific case. On April 13, 2021, the Board's Return to Writ was filed. The time to file a notice of appeal has lapsed so this matter is now closed.*

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

FEBRUARY 3, 2021 THROUGH NOVEMBER 16, 2021

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 (includes Mini)	
FCA (Chrysler, Jeep, Dodge, RAM)		FCA (Chrysler, Jeep, Dodge, RAM)	4
FCA (Alfa Romeo, FIAT)		FCA (Alfa Romeo, FIAT)	
FCA (Maserati)		FCA (Maserati)	
FERRARI		FERRARI	
FORD	4	FORD	1
GM (Buick, Cadillac, Chevrolet, GMC)		GM (Buick, Cadillac, Chevrolet, GMC)	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI/GENESIS		HYUNDAI	
INFINITI		INFINITI	
JAGUAR		JAGUAR/LAND ROVER	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MINI			
MITSUBISHI		MITSUBISHI	
NISSAN	1	NISSAN	1
POLARIS		POLARIS	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO TRUCKS		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	25	MISCELLANEOUS	
TOTAL	30	TOTAL	6

STATE OF CALIFORNIA



## MEMO

**To: ALL BOARD MEMBERS**

**From: TIMOTHY M. CORCORAN  
NEW MOTOR VEHICLE BOARD  
(916) 445-1888**

**Subject: BOARD MEETING DATES**

**Date: November 18, 2021**

The following identifies planned Board meeting dates:

- January 12, 2022, General Meeting (via Zoom and teleconference)
- March/April 2022, General Meeting (date and location to be determined)
- June/July 2022, General Meeting (date and location to be determined)
- September/October 2022, General Meeting (date and location to be determined)
- Industry Roundtable (date and location to be confirmed)
- November/December 2022, General Meeting (date and location to be determined)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 324-6197.



# DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: November 18, 2021

From : ADMINISTRATIVE LAW JUDGE ANTHONY M. SKROCKI

CASE: PUTNAM AUTOMOTIVE, INC., dba PUTNAM SUBARU v. SUBARU OF AMERICA, INC.  
Protest No. PR-2542-17

TYPE: Vehicle Code section 3060 Modification

### PROCEDURAL SUMMARY:

- FILED ON CALENDAR: November 13, 2017
- MOTIONS FILED: Motion to Dismiss Protest filed December 20, 2017  
Motion to Dismiss Protest filed June 7, 2021
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.  
Robert A. Mayville, Jr., Esq.  
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Lisa M. Gibson, Esq.  
Nelson Mullins Riley & Scarborough LLP

### EFFECT OF PROPOSED ORDER:

The Proposed Order grants Respondent’s “Motion to Dismiss Protest” filed June 7, 2021, as it finds that the termination of Protestant’s Satellite Service Agreement will not result in a modification of Protestant’s Burlingame Dealer Agreement. Since there is no modification of Protestant’s Burlingame Dealer Agreement, the Board has no jurisdiction to hear this protest. The Proposed Order would dismiss the protest with prejudice.

## **FACTUAL AND PROCEDURAL BACKGROUND:**

- At the time this protest was filed, Protestant and Respondent were parties to two contracts: one was a Satellite Service Agreement that authorized Protestant to operate a Satellite Service Facility in San Francisco and the other was a Subaru Dealer Agreement and Standard Provisions which granted Protestant a franchise to sell and service Subaru vehicles at a dealership in Burlingame. After Respondent advised Protestant that it was not going to renew the Satellite Service Agreement, Protestant filed this modification protest (PR-2542-17), which alleged that Respondent's decision to not renew the Satellite Service Agreement would constitute a modification of its Burlingame Dealer Agreement.
- Respondent filed a Motion to Dismiss Protest on December 20, 2017. On January 22, 2018, the ALJ deferred his ruling on the Motion to Dismiss to allow counsel to determine how they were going to proceed with the protest given the discussion with the ALJ at the telephonic hearing, including whether the Satellite Service Agreement is a "franchise" under the Vehicle Code and whether Protestant would file a termination protest of the Satellite Service Agreement. Subsequently, on January 26, 2018, Protestant filed a termination protest (PR-2553-18) which alleged that Respondent did not have good cause not to renew (terminate) the Satellite Service Agreement. Respondent then withdrew its Motion to Dismiss Protest on March 12, 2018 and sought to have the termination protest arbitrated pursuant to the terms of the Satellite Service Agreement.
- Protestant was compelled by the Superior Court to arbitrate its claims arising from the Satellite Service Agreement and the Board stayed the protest proceedings at the request of the parties. The arbitrator ultimately found that the Satellite Service Agreement was a "franchise" as defined by the Vehicle Code and that Respondent had demonstrated good cause to terminate the Satellite Service Agreement. The Superior Court confirmed the arbitrator's award, the Court of Appeal upheld the judgment of the Superior Court and the California Supreme Court denied Protestant's petition for hearing. Ultimately, the Board dismissed Protestant's termination protest (PR-2553-18) at the request of Protestant.
- On June 7, 2021, Respondent filed this motion to dismiss the remaining modification protest alleging that the Satellite Service Agreement is a separate contract from the Burlingame Dealer Agreement as already determined by the arbitrator, that the termination of the Satellite Service Agreement does not modify any terms of the Burlingame Dealer Agreement and that the doctrine of "collateral estoppel" precludes the parties from re-litigating the arbitrator's finding that there is good cause to terminate the Satellite Service Agreement.

## **SUMMARY OF PROPOSED ORDER:**

- There are two elements that must first be met before there is a statutory right to file a modification protest and have a good cause hearing before the Board. The first is that there must be a modification of the franchise and the second is that the modification must substantially affect the franchisee's sales and service obligations or investment. In this



protest, the termination of the Satellite Service Agreement would not modify any terms of the Burlingame franchise. Therefore, there is no need to proceed further.

- In addition, Protestant is precluded from re-litigating whether there is good cause for termination of the Satellite Service Agreement pursuant to the doctrine of “collateral estoppel” because:
  1. The issue of good cause for termination would be identical to that in the arbitration proceedings and judgment of the Superior Court.
  2. The issue of good cause to terminate the Satellite Service Agreement was fully litigated in the prior proceedings.
  3. The issue of good cause to terminate the Satellite Service Agreement was already decided in the former proceedings.
  4. The decision in the former proceedings was on the merits and became final when the California Supreme Court declined to hear Protestant’s petition for review.
  5. Protestant is the same party in the former proceedings as well as in this protest.
- If the Board were to issue an order sustaining this protest, it would be in direct contradiction of the findings and results of the orders of the arbitrator, Superior Court and Court of Appeal. Since there is no modification of any term of the Burlingame Dealer Agreement and the courts have already found that SOA is permitted to terminate the Satellite Service Agreement, this protest must be dismissed.

**RELATED MATTERS:**

- Related Case Law: *Subaru of America, Inc. v. Putnam Automotive, Inc.* (2021) 60 Cal.App.5<sup>th</sup> 829; *Lucido v. Superior Court* (1990) 51 Cal.3d 335; *Samara v. Matar* (2018) 5 Cal.5<sup>th</sup> 322.
- Applicable Statutes: Vehicle Code sections 331, 331.1, 331.2, 3050, 3060 and 3061; Government Code section 11425.60.

1 NEW MOTOR VEHICLE BOARD  
P.O. Box 188680  
2 Sacramento, California 95818-8680  
Telephone: (916) 445-1888

**CERTIFIED MAIL**

3  
4  
5  
6  
7  
8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

10  
11 In the Matter of the Protest of  
12 PUTNAM AUTOMOTIVE, INC., dba PUTNAM  
SUBARU,  
13  
14 Protestant,  
v.  
15 SUBARU OF AMERICA, INC.,  
16 Respondent.

**Protest No. PR-2542-17**

**PROPOSED ORDER GRANTING  
RESPONDENT'S MOTION TO  
DISMISS PROTEST**

17  
18 To: Gavin M. Hughes, Esq.  
Robert A. Mayville, Jr., Esq.  
19 Attorneys for Protestant  
LAW OFFICES OF GAVIN M. HUGHES  
20 3436 American River Drive, Suite 10  
Sacramento, California 95864

21  
22 Lisa M. Gibson, Esq.  
Crispin L. Collins, Esq.  
23 Attorneys for Respondent  
NELSON MULLINS RILEY & SCARBOROUGH  
24 19191 South Vermont Avenue, Suite 301  
Torrance, California 90502

25 ///

26 ///

27 ///

28 ///

1 This matter came on regularly for telephonic hearing on Monday, August 16, 2021, before  
2 Anthony M. Skrocki, Administrative Law Judge (“ALJ”) for the New Motor Vehicle Board (“Board”).  
3 Gavin M. Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes  
4 represented Protestant. Lisa M. Gibson, Esq. and Crispin L. Collins, Esq. of Nelson Mullins Riley &  
5 Scarborough, LLP represented Respondent.

6 **PRELIMINARY STATEMENT OF PROCEDURAL FACTS**

7 1. At the time this protest was filed on November 13, 2017, Protestant, Putnam Automotive,  
8 Inc., dba Putnam Subaru (“Putnam” or “Protestant”) and Subaru of America, Inc. (“SOA” or  
9 “Respondent”) were parties to two contracts. One contract was a “Subaru Dealer Satellite Service Facility  
10 Agreement” (“Satellite Service Agreement”) that authorized Putnam to operate a Subaru Satellite Service  
11 Facility at 640 O’Farrell Street, in Downtown San Francisco.<sup>1</sup> The other contract is a “Subaru Dealer  
12 Agreement and Standard Provisions” (“Burlingame franchise” or “Burlingame Dealer Agreement”)  
13 granting Putnam a franchise to sell and service Subaru vehicles at its dealership located at 85 California  
14 Drive, Burlingame, California (“Burlingame dealership”).<sup>2</sup>

15 2. By letter dated November 5, 2017, SOA notified Putnam that SOA was not going to renew  
16 the Satellite Service Agreement that was to expire by its terms on or about March 25, 2019. Because of  
17 this notice, Putnam filed two protests before the Board. The first was this modification protest, PR-2542-  
18 17, filed on November 13, 2017, pursuant to Vehicle Code section 3060(b)<sup>3</sup> alleging that SOA’s decision  
19 to not renew the San Francisco Satellite Service Agreement would constitute a modification of Putnam’s  
20 Burlingame Dealer Agreement.

21 3. The second protest, PR-2553-18, was filed more than two months later, on January 26,

22  
23 <sup>1</sup> In general, the Satellite Service Agreement authorized the performance of warranty service of Subaru vehicles as  
24 well as the sale of Subaru parts and accessories at the San Francisco location but prohibited the sale of Subaru  
25 vehicles at or from that location without further written consent of Subaru. (Declaration of Robert A. Mayville, Jr.  
26 in Support of Protestant's Opposition to Motion to Dismiss Protest, Ex. 2)

27 <sup>2</sup> There is no dispute that the Burlingame Dealer Agreement and Standard Provisions constitute a franchise. As  
28 discussed below, the Satellite Service Agreement was found to be a “franchise” as defined in the Vehicle Code.  
However, as SOA did not consider the Satellite Service Agreement to be a franchise, SOA did not give Notice of  
Termination pursuant to Vehicle Code section 3060(a). And, as SOA did not consider the termination of the  
Satellite Service Agreement to be a modification of Putnam’s Burlingame franchise, SOA did not give notice of the  
alleged modification pursuant to Vehicle Code section 3060(b).

<sup>3</sup> All statutory references are to the California Vehicle Code, unless otherwise indicated.

1 2018. This second protest, filed pursuant to Section 3060(a), alleged that the Satellite Service Agreement  
2 was a “franchise” and that SOA did not have good cause not to renew (terminate) the Satellite Service  
3 Agreement for the San Francisco facility. These protests are interrelated as they both are based upon  
4 SOA’s decision not to renew the Satellite Service Agreement.

5 4. As a result of subsequent proceedings discussed below, the Section 3060(a) protest (PR-  
6 2553-18) as to the termination of the Satellite Service Agreement was dismissed by the Board on June 16,  
7 2021, at the request of Putnam. Although the claimed Section 3060(b) modification protest as to the  
8 Burlingame franchise is the only protest subject to SOA’s current Motion to Dismiss Protest, it is  
9 necessary to recite the facts and outcome of the dispute as to the Section 3060(a) termination protest as to  
10 the Satellite Service Agreement in order to properly address this motion.

11 5. As discussed herein, while both protests were still pending, the San Francisco County  
12 Superior Court ordered the Satellite Service Agreement termination dispute to arbitration. The arbitrator  
13 determined that the Satellite Service Agreement was a “franchise” as defined in the Vehicle Code,<sup>4</sup> and  
14 SOA was found to have good cause pursuant to Section 3061 to terminate the Satellite Service  
15 Agreement. The Superior Court issued a judgment confirming the arbitrator’s decision and, after an  
16 appeal by Putnam, the California Court of Appeal, in a published decision, affirmed the judgment of the  
17 Superior Court. Putnam’s petition for hearing before the California Supreme Court was denied on May  
18 12, 2021. At Putnam’s request, the Board dismissed the Section 3060(a) termination protest on June 16,  
19 2021.

### 20 **FACTUAL AND PROCEDURAL BACKGROUND**

21 6. As published by the California Court of Appeal, First Appellate District (“Court of  
22 Appeal”) in *Subaru of America, Inc. v. Putnam Automotive, Inc.* (2021) 60 Cal.App.5<sup>th</sup> 829, the following  
23 is a partial recitation of the factual and procedural background that addresses the dispute between Putnam  
24 and SOA as to the termination of the Satellite Service Agreement.

---

25 <sup>4</sup> Section 3062(e)(2) defines “Satellite warranty facility” as “a facility operated by a franchisee where authorized  
26 warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or  
27 lease of new motor vehicles is not authorized to take place.” Putnam is a “franchisee” pursuant to the franchise for  
28 the Burlingame location; and, the Satellite Service Facility location in San Francisco is “a facility operated by a  
franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display  
for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.”

1           7.       In February 2008, after Putnam purchased the Satellite Service Facility in downtown San  
2 Francisco from a former Subaru dealer, SOA and Putnam entered into a temporary Subaru “Dealer  
3 Candidate Satellite Service Facility Agreement,” which permitted Putnam to provide Subaru warranty  
4 repairs at the Satellite Service Facility, pending SOA’s approval of Putnam’s application to establish an  
5 authorized Subaru dealership at a proposed location in Burlingame. Putnam operated the Satellite Service  
6 Facility under the temporary agreement until issues related to the establishment of the Burlingame  
7 dealership were resolved in March 2009.<sup>5</sup> (*Id.* at 833)

8           8.       On March 25, 2009, SOA and Putnam entered into the Burlingame Dealer Agreement for  
9 the sale and service of motor vehicles at the Burlingame dealership, as well as the operative Satellite  
10 Service Agreement for service operations only at the Satellite Service Facility in San Francisco. (*Id.*)

11           9.       The Satellite Service Agreement, which was operative for an initial term of five years,  
12 contained an arbitration provision, which stated: “The parties agree that the enforcement, interpretation or  
13 any disputes arising out of this Agreement shall be exclusively resolved through arbitration in Camden  
14 County, New Jersey, conducted under the Commercial Arbitration Rules of the American Arbitration  
15 Association and shall be governed by the laws of the State of New Jersey.” (Satellite Service Agreement §  
16 10.6.) (*Id.*)

17           10.      In a September 23, 2013 letter, SOA informed Putnam that it was exercising its right to  
18 extend the 2009 Satellite Service Agreement for another five-year period, beginning on March 25, 2014,  
19 with “[a]ll provisions of that Agreement remain[ing] in full force and effect.” (*Id.* at 834)

20           11.      Thereafter, Putnam attempted to engage with SOA regarding relocating the Satellite  
21 Service Facility, but in a November 6, 2017 letter to Putnam, SOA stated that it would not approve  
22 Putnam’s proposed relocation of the Satellite Service Facility and would not renew the Satellite Service  
23 Agreement when it expired in 2019.<sup>6</sup> (*Id.*)

---

24  
25 <sup>5</sup> The Burlingame dealership began operation after the Board issued its order on March 24, 2009, overruling the  
26 establishment protest filed by Carlsen Subaru (PR-2096-07). Putnam’s initial Burlingame franchise and its current  
27 Satellite Service Agreement were then both executed on the same date, March 25, 2009, with separate documents  
28 for each.

<sup>6</sup> Putnam’s proposed relocation was conditioned upon SOA replacing the Satellite Service Agreement with a  
Subaru Dealer Agreement and Standard Provisions so Putnam could establish a new Subaru dealership at a new  
location rather than just a Satellite Service Facility.

1           12.     As noted in paragraphs 2 and 3, Putnam filed both a termination protest challenging SOA’s  
2 decision to not renew Putnam’s Satellite Service Agreement and a modification protest asserting that its  
3 Burlingame franchise would be modified if the Satellite Service Agreement were terminated. The  
4 modification protest was filed first (on November 13, 2017) and the termination protest was filed on  
5 January 26, 2018 (more than two months later). As there were no notices from SOA that complied with  
6 the requirements of Section 3060(a) or (b), there were no issues as to whether the two protests were  
7 timely.

8           13.     On March 14, 2018, SOA filed a petition (in San Francisco Superior Court seeking an  
9 order) to compel arbitration of Putnam’s claims, pursuant to the arbitration provision in the Satellite  
10 Service Agreement. (*Id.*)

11           14.     On June 22, 2018, the trial court entered an order granting in part and denying in part the  
12 petition to compel arbitration. The court first found that the Satellite Service Agreement did not come  
13 within the Motor Vehicle Franchise Contract Arbitration Fairness Act (“Fairness Act”) (15 U.S.C. §  
14 1226), a narrow exception to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1 et seq.), and Putnam was  
15 therefore compelled to arbitrate its claims arising from that agreement.<sup>7</sup> The court, however, denied  
16 SOA’s request to compel Putnam to dismiss its Board protests because discontinuing the Satellite Service  
17 Agreement might be found to modify the Burlingame Dealer Agreement, an agreement that would come  
18 within the Fairness Act’s exception to arbitration. The court encouraged the parties to agree to stay either  
19 the arbitration or the Board proceedings, and the parties ultimately agreed to stay the Board protests  
20 pending completion of the arbitration proceedings. (*Id.*)

21           15.     On April 25, 2019, following a preliminary arbitration proceeding on Choice of Law, the  
22 arbitrator found that the Satellite Service Agreement was a franchise under Section 331, that California  
23 law applied to the dispute, and that SOA would be required to show good cause for termination of the  
24 agreement, pursuant to Sections 3060 and 3061, in a subsequent arbitration proceeding. (*Id.*)

25           16.     Putnam then unsuccessfully sought summary judgment based on SOA’s alleged failure to

---

26  
27 <sup>7</sup> Arbitration was ordered as the Satellite Service Agreement (whether a franchise or not under California law) did  
28 not include the right to sell Subaru vehicles and was thus subject to the mandatory federal arbitration statutes.  
As the Appellate Court pointed out, the Burlingame franchise is exempt from the Federal arbitration statutes  
because that franchise includes the right to sell Subaru vehicles.

1 provide notice of its reasons for terminating the Satellite Service Agreement, as required under the  
2 Vehicle Code. At the subsequent good cause hearing, the arbitrator did limit SOA’s good cause argument  
3 to the grounds for termination previously communicated to Putnam. (*Id.* at 835 and fn. 2)

4 17. On October 1, 2019, following the second arbitration proceeding on the question of good  
5 cause, the arbitrator issued his final award, in which he found that SOA had carried its burden to show  
6 good cause for terminating the Satellite Service Agreement. (*Id.* at 835)

7 18. SOA subsequently filed a petition to confirm the arbitrator’s final award, and Putnam filed  
8 an opposition and a request for the trial court to vacate the award. (*Id.*)

9 19. On November 15, 2019, the court entered an order granting SOA’s petition to confirm the  
10 arbitration award, and on December 18, the court entered a judgment confirming the award. (*Id.*)

11 20. On January 8, 2020, Putnam filed a notice of appeal from the judgment confirming the  
12 arbitration award and denying Putnam’s request to vacate the award. (*Id.*)

13 21. On February 10, 2021, (in a published opinion) the Court of Appeal upheld the judgment  
14 of the Superior Court (permitting termination of the Satellite Service Agreement) and on May 12, 2021,  
15 the California Supreme Court denied Putnam’s petition for hearing.

16 **ADDITIONAL FACTS**

17 22. The Satellite Service Agreement for the San Francisco facility prohibited the sale of  
18 Subaru vehicles or any other new or used vehicles from the Satellite facility. The continued existence of  
19 this Satellite Service Agreement was expressly conditioned upon Putnam remaining a Subaru dealer at the  
20 location in Burlingame. (Declaration of Robert A. Mayville, Jr. in Support of Protestant's Opposition to  
21 Motion to Dismiss Protest, Ex. 2) There is not a similar requirement in the Burlingame franchise that  
22 Putnam must continue with its Satellite Service Agreement in order to remain a Subaru franchisee at its  
23 Burlingame location. (Declaration of Robert A. Mayville, Jr. in Support of Protestant's Opposition to  
24 Motion to Dismiss Protest, Ex. 1)

25 23. Putnam began operation of the Subaru Satellite Service Facility in San Francisco upon the  
26 consummation of an asset purchase agreement (“APA”) dated January 9, 2008 between Putnam and what  
27 was then Ron Price Subaru (“Ron Price”). The APA included what was then Ron Price’s Service-Only  
28 facility in San Francisco but did not include the Ron Price Subaru dealership then located in South San

1 Francisco.<sup>8</sup> (Motion to Dismiss Protest, page 6, lines 11-22)

2 24. The Satellite Service Facility and the Burlingame Dealership are more than 15 miles apart.  
3 (Motion to Dismiss Protest, p. 5, lines 6-8)

4 25. There is no question that the Burlingame Dealer Agreement is a “franchise” as defined in  
5 Section 331 and, as to this agreement, SOA is a “franchisor” as defined in Section 331.2 and Putnam is a  
6 “franchisee” as defined in Section 331.1.

7 26. During the January 19, 2018 hearing on SOA’s first motion seeking to dismiss this  
8 modification protest (when the Section 3060(a) Satellite Service Agreement termination protest had not  
9 yet been filed), ALJ Skrocki raised the issue of whether the Satellite Service Agreement was a “franchise”  
10 as defined in the Vehicle Code. If the Satellite Service Agreement was a franchise, Putnam would have a  
11 right to protest its termination pursuant to Section 3060(a) and there may be no need for a Section 3060(b)  
12 modification protest.

13 27. The ALJ made no final determination as to whether the Satellite Service Agreement was a  
14 “franchise.” However, after the Satellite Service Agreement dispute was ordered to arbitration, the  
15 arbitrator, in his decision, concluded that the Satellite Service Agreement was a “franchise” as defined in  
16 the Vehicle Code and that SOA had good cause for its termination.

### 17 SATELLITE SERVICE AGREEMENT

18 28. The current Putnam Satellite Service Agreement is dated March 25, 2009, with an original  
19 stated term of five years. This term was extended on September 23, 2013, when SOA elected to exercise  
20 its option to extend the term for five years to March 2019. (Respondent’s Motion to Dismiss Protest, Exs.  
21 B-C; Declaration of Robert A. Mayville, Jr. in Support of Protestant’s Opposition to Motion to Dismiss  
22 Protest, Exs. 2, 6)

23 29. Putnam, in September 2017, requested SOA’s consent to relocate the Satellite Service  
24 Facility with the relocation expressly conditioned upon SOA agreeing to replace the Satellite Service  
25 Agreement with a standard Subaru Dealer Agreement for the new location. (*Subaru of America, Inc. v.*

26  
27 <sup>8</sup> Ron Price closed the South San Francisco Subaru dealership and sold the real estate upon which the dealership  
28 had operated to the City of South San Francisco for approximately \$6 million. The Ron Price Subaru dealership in  
South San Francisco was replaced by Serramonte Subaru in Colma and Putnam opened its dealership in  
Burlingame. (Motion to Dismiss Protest, page 6, lines 11-21)



1 *Putnam Automotive, Inc., supra*, 60 Cal.App.5<sup>th</sup> at 851) SOA rejected this request and by letter to Putnam  
2 dated November 6, 2017, SOA stated, “Our intent remains to serve-out the remainder of the service  
3 agreement between Putnam [] and SOA, and we will not renew our agreement at that time.” (Declaration  
4 of Robert A. Mayville, Jr. in Support of Protestant’s Opposition to Motion to Dismiss Protest, Ex. 7)

5 30. Although the Satellite Service Agreement was not set to expire until March 25, 2019, over  
6 500 days from SOA’s November 6, 2017 letter, Protestant, on November 13, 2017, filed this modification  
7 protest. The protest asserts that the termination of the Satellite Agreement would result in a modification  
8 of Putnam’s Burlingame franchise.

9 31. The protest alleges that Putnam operates a satellite service location in San Francisco,  
10 California in conjunction with its primary location in Burlingame, California. According to Putnam, the  
11 existence of the satellite service location is conditioned upon the continued operation of the Burlingame  
12 dealership location. (Protest, p. 2, ¶ 3) Putnam contends the “terms and conditions of the 2009 Subaru  
13 Dealer Satellite Service Facility Agreement are inextricably entwined with the terms and conditions of  
14 Protestant’s franchise and are material to Protestant’s franchise. Putnam alleges that the proposed  
15 termination of the Satellite Service Agreement is a material modification of its Burlingame franchise.”  
16 (Protest, p. 2, ¶ 4)

17 **THE DECEMBER 20, 2017 MOTION TO DISMISS MODIFICATION PROTEST**

18 32. On December 20, 2017, Respondent filed a Motion to Dismiss Protest alleging that “the  
19 Dealer Agreement for the Burlingame location and the Satellite Agreement for the San Francisco location  
20 were and remain two separate contracts, that the only ‘franchise’ in existence is the Dealer Agreement  
21 (Burlingame), that the Satellite Agreement had not become part of the Dealer Agreement, and thus the  
22 termination of the Satellite Agreement could not be a modification of the Dealer Agreement. (The  
23 Satellite Agreement stated in part that it would terminate on March 25, 2019, unless 180 days prior  
24 thereto SOA gave Putnam written notice of SOA’s decision to grant an extension or renewal of the  
25 Satellite Agreement. It also stated that in the event there was no such notice, the Satellite Agreement  
26 would expire on March 25, 2019, with no further notice or action by SOA.)” (Order Deferring Ruling on  
27 Respondent’s Motion to Dismiss Protest, p. 3, ¶ 11)

28 33. At the hearing of the Motion to Dismiss held on January 19, 2018, ALJ Skrocki “stated on

1 the record that in his opinion the Satellite Agreement was a ‘franchise’ as defined in the Vehicle Code.  
2 The issues of the legal effect and significance of the Satellite Agreement are issues of law that may be  
3 raised sua sponte as they primarily involve the jurisdiction of the Board and the parol evidence rule.”

4 (Order Deferring Ruling on Respondent’s Motion to Dismiss Protest, p. 4, ¶ 14)

5 34. “The ALJ explained his reasoning for concluding that the Satellite Agreement could ‘stand  
6 on its own legs’ as a ‘franchise’ as defined in the Vehicle Code and is thus subject to the provisions of  
7 Section 3060(a). If Putnam may bring a protest pursuant to 3060(a) challenging the termination of the  
8 Satellite Agreement, there was no need for deciding the issues raised by this (modification) Protest and  
9 Motion to Dismiss which included whether the Satellite Agreement was or had become part of the Dealer  
10 Agreement so that a protest could be brought pursuant to 3060(b).” (Order Deferring Ruling on  
11 Respondent’s Motion to Dismiss Protest, p. 4, ¶ 15)

12 35. On January 22, 2018, the ALJ deferred his ruling on the Motion to Dismiss to allow, inter  
13 alia, Respondent to file any pleadings challenging the ALJ’s preliminary determination that the Satellite  
14 Agreement is a “franchise” subject to Section 3060(a) pertaining to termination protests, to allow  
15 Protestant to decide if it will withdraw without prejudice its modification protest filed pursuant to Section  
16 3060(b), to allow Protestant to decide whether it will file a protest pursuant to Section 3060(a) asserting a  
17 lack of good cause for the termination or refusal to continue the Satellite Agreement and to allow counsel  
18 to meet and confer to consider the ALJ’s preliminary statements and attempt to resolve their differences.<sup>9</sup>  
19 (Order Deferring Ruling on Respondent’s Motion to Dismiss Protest, pp. 4-5)

20 36. On January 26, 2018, Putnam filed a Section 3060(a) protest challenging the termination of  
21 the Satellite Service Facility Agreement.

22 37. On March 12, 2018, SOA withdrew, without prejudice, its Motion to Dismiss Protest (the  
23 modification protest) and sought to have the termination protest arbitrated pursuant to the terms of the  
24 Satellite Service Agreement and the Federal Arbitration Act. (Respondent’s “Withdrawal of Motion to  
25 Dismiss Protest Without Prejudice”)

26 ///

27 \_\_\_\_\_  
28 <sup>9</sup> As noted in paragraph 3, Putnam filed a protest pursuant to Section 3060(a) asserting lack of good cause for the  
termination or refusal to continue the Satellite Service Agreement. (Protest No. PR-2553-18)



1 separate meets all the requirements for collateral estoppel:<sup>11</sup> 1) the adjudication was made final when the  
2 California Supreme Court denied Protestant’s petition for review; 2) Protestant raised the identical  
3 argument that the Satellite Service Agreement is “inextricably entwined” with the Burlingame Dealer  
4 Agreement; 3) the issue was actually litigated and the Court of Appeal found the agreements to be  
5 separate; and 4) the cases involve the same parties. (Motion to Dismiss Protest, p. 16, lines 13-21)  
6 Furthermore, collateral estoppel should also apply to the arbitration award finding “good cause” to  
7 terminate the Satellite Agreement. (Motion to Dismiss Protest, p. 16, lines 22-23)

8 **Protestant’s Assertions in its Opposition**<sup>12</sup>

9 41. On July 2, 2021, Protestant filed its opposition to the motion alleging that Respondent’s  
10 “proposed termination of the Satellite Service Franchise Agreement will modify Putnam’s Dealer  
11 Agreement because Putnam will be unable to conduct Subaru operations at the Satellite Service Franchise  
12 Facility.”<sup>13</sup> <sup>14</sup> (Opposition, p. 26, lines 1-3) “The Vehicle Code’s statutory scheme shows the Satellite  
13 Service Franchise Agreement is inextricably entwined with the Dealer Agreement for purposes of  
14 Putnam’s 3060(b) modification protest.” (Opposition, p. 26, lines 11-12) Further, “[e]ntities cannot bring  
15 protests before the Board based on the entity being in a franchise contract with a manufacturer.” The  
16 entity must also be a “franchisee” meeting the definition in Section 331.1. (Opposition, p. 28, lines 1-3)  
17 Protestant contends that the Satellite Service Agreement is entitled to franchise protections<sup>15</sup> because  
18 Protestant is Subaru’s franchisee in Burlingame and Protestant is the only franchisee who will be affected  
19 by the proposed termination of the Satellite Service Agreement, resulting in the modification of the

20  
21 <sup>11</sup> “Collateral estoppel” is also referred to as “issue preclusion” and “specifically prevents ‘relitigation’ of  
22 previously decided issues,’ rather than causes of action as a whole. [Citation] It applies only ‘(1) after final  
23 adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted  
24 against one who was a party in the first suit or one in privity with that party.’” (Motion to Dismiss Protest, p. 16,  
25 lines 4-9 citing *Samara v. Matar* (2018) 5 Cal.5<sup>th</sup> 322, 326-327)

26 <sup>12</sup> See footnote 10.

27 <sup>13</sup> There is no question that termination of the Satellite Service Agreement would mean that Putnam could not  
28 conduct Subaru operations at the Satellite Service Facility but that does not mean that any of the terms of the  
Burlingame Dealer Agreement will be modified as a result.

<sup>14</sup> Putnam’s Burlingame Dealer Agreement and Standard Provisions do not authorize Putnam to conduct service  
operations at the Satellite Service Facility. The terms of Putnam’s Burlingame Dealer Agreement limit Putnam to  
operations at the addresses shown in that agreement and do not include the San Francisco location.

<sup>15</sup> The Satellite Service Agreement was found to be entitled to and has received the “franchise protection” as SOA  
was required to prove good cause for its termination pursuant to Section 3061 as found by the arbitrator and the  
courts. Had SOA not proven good cause for the termination of the Satellite Agreement, the protest claiming a  
modification of the Burlingame franchise would be moot.

1 Burlingame Dealer Agreement. (Opposition, p. 28, lines 7-12)

2 42. Protestant argues that “[n]o court or arbitrator has considered whether there is good cause  
3 to modify Putnam’s Dealer Agreement by way of SOA terminating the Satellite Service Franchise  
4 Agreement.”<sup>16</sup> (Opposition, p. 6, lines 10-12) Here, the determinations of the Superior Court Judge,  
5 Arbitrator and Court of Appeal do not decide the issues of import to the modification protest and three of  
6 the five elements of collateral estoppel are not met [“... ‘collateral estoppel’ or ‘issue preclusion,’ which  
7 does not bar a second action but ‘precludes a party to an action from relitigating in a second proceeding  
8 matters litigated and determined in a prior proceeding.’”] (citation omitted) (Opposition, p. 18, lines 18-  
9 20; p. 19, lines 14-16)

10 43. Protestant states that to the extent SOA argues there will be no substantial effects on the  
11 Burlingame dealership based on the termination of the Satellite Service Agreement, the Board should hold  
12 a bifurcated hearing to first determine if the modification will substantially affect Protestant’s sales or  
13 service obligations or investment. (Opposition, p. 34, lines 15-17) First, the Board should hold a hearing  
14 to determine whether Protestant can show the proposed modification will substantially affect its sales or  
15 service obligations or investment.<sup>17</sup> If Protestant prevails in the first hearing, then the Board would hold a  
16 good cause hearing to determine whether Respondent has good cause to modify Protestant’s franchise.  
17 (Opposition, p. 34, lines 17-21)

18 **Respondent’s Assertions in its Reply to the Opposition**

19 44. On July 16, 2021, Respondent filed its reply brief arguing that “Protestant’s opposition  
20 cannot overcome the simple truth that the termination of the **2009** [Satellite Service Agreement] ... would  
21 not modify or replace a single provision, spelling, punctuation or word contained in the terms and  
22 conditions of Protestant’s **2020** [Burlingame Dealer Agreement]...” (Emphasis in original; Reply, p. 2,  
23 \_\_\_\_\_

24 <sup>16</sup> The issues here are not whether termination of the Satellite Agreement will substantially affect the sales or  
25 service obligations or investment as to Putnam’s Burlingame franchise or whether there is “good cause to modify”  
26 Putnam’s Burlingame franchise, but whether there is any modification at all. In this statement, Protestant appears to  
27 be focusing upon whether there is good cause to modify the franchise rather than whether a modification exists or  
28 will occur.

<sup>17</sup> Protestant is again raising the issue of whether the claimed modification would substantially affect Protestant’s  
sales or service obligations or investment. However, the first necessity is that there be “a modification.” If there is  
no modification, then there is no need for further hearing as to whether there can be a substantial effect upon  
Protestant’s sales or service obligations or to establish “good cause” for something that does not exist.

1 lines 4-10) Protestant fails to specify “anything indicating that the Burlingame Dealership will be required  
2 to perform even a solitary obligation differently under the Burlingame Dealer Agreement or that it will be  
3 forced to either increase, reduce or lose any investment made in the Burlingame Dealership itself.”

4 (Reply, p. 8, lines 13-16)

5 45. Respondent argues that the Satellite Service Agreement and the Burlingame Dealer  
6 Agreement are not one agreement merely because Protestant entered into the Satellite Service Agreement  
7 in its capacity as an authorized Subaru dealer. (Reply, p. 6, lines 17-18) “Stating that one contract exists  
8 (in part) *because* another contract exists is not the same as saying that one contract is part of another or  
9 that the termination of one contract modifies another.” (Emphasis in original; Reply, p. 6, lines 24-25)

10 46. Finally, Respondent claims that there is no relevant factual dispute. “[T]he relevant factual  
11 matters – whether the agreements are intertwined and whether there is good cause to terminate the  
12 Satellite Service Agreement – have already been decided in SOA’s favor.” (Reply, p. 7, lines 9-12)  
13 “[A]sking the Board to ‘hold a hearing’ with the hope that Protestant may be able to develop grounds for  
14 its protest later on is not a legitimate purpose for proceeding to a hearing...” (Reply, p. 8, lines 22-24)

### 15 APPLICABLE LAW

16 47. Section 331(a) defines a franchise as “a written agreement between two or more persons  
17 having all of the following conditions:”

18 (1) A commercial relationship of definite duration or continuing indefinite duration.

19 (2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail  
20 new motor vehicles ... manufactured or distributed by the franchisor or the right to perform  
authorized warranty repairs and service, or the right to perform any combination of these  
activities.

21 (3) The franchisee constitutes a component of the franchisor’s distribution system.

22 (4) The operation of the franchisee’s business is substantially associated with the  
franchisor’s trademark, trade name, advertising, or other commercial symbol designating  
the franchisor.

23 (5) The operation of a portion of the franchisee’s business is substantially reliant on the  
franchisor for a continued supply of new vehicles, parts, or accessories.

24 48. Section 331.1. defines a franchisee as “ ... any person who, pursuant to a franchise,  
25 receives new motor vehicles subject to registration under this code ... from the franchisor and who offers  
26 for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized  
27 warranty repairs and service, or the right to perform any combination of these activities.

28 49. Section 331.2 defines a franchisor as “... any person who manufactures, assembles, or

1 distributes new motor vehicles subject to registration under this code ... and who grants a franchise.”

2 50. Section 3050 provides in part as follows:

3 The board shall do all of the following:

4 ...  
5 (c) Hear and decide, within the limitations and in accordance with the procedure  
6 provided, a protest presented by a franchisee pursuant to Section 3060...

7 ...  
8 (e) Notwithstanding subdivisions (b), (c), and (d), the courts have jurisdiction over all  
9 common law and statutory claims originally cognizable in the courts. For those claims, a  
10 party may initiate an action directly in any court of competent jurisdiction.

11 51. Section 3060 provides in part as follows:

12 (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any  
13 franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of  
14 the following conditions are met: ...

15 (1) The franchisee and the board have received written notice from the franchisor as  
16 follows:

17 ...  
18 (2) Except as provided in Section 3050.7, the board finds that there is good cause for  
19 termination or refusal to continue, following a hearing called pursuant to Section 3066. ...

20 (3) The franchisor has received the written consent of the franchisee, or the appropriate  
21 period for filing a protest has elapsed.

22 ...  
23 (b)(1) Notwithstanding Section 20999.1 of the Business and Professions Code or the  
24 terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding  
25 franchise if the modification or replacement would substantially affect the franchisee’s  
26 sales or service obligations or investment, unless the franchisor has first given the board  
27 and each affected franchisee written notice thereof at least 60 days in advance of the  
28 modification or replacement.” ...

52. Collateral estoppel precludes relitigation of issues decided in prior proceedings. The  
following threshold requirements must be fulfilled to apply the doctrine of collateral estoppel:

a) “[T]he issue sought to be precluded from relitigation must be identical to that decided in a  
former proceeding;”

b) “[T]his issue must have been actually litigated in the former proceeding;”

c) The issue “must have been necessarily decided in the former proceeding;”

d) “[T]he decision in the former proceeding must be final and on the merits;”

e) “[T]he party against whom preclusion is sought must be the same as, or in privity with, the  
party to the former proceeding.” (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341)

**ANALYSIS**

53. The protest seeks a hearing before the Board for Putnam to establish that the termination of

1 the Satellite Service Agreement in San Francisco would be a modification of the Dealer Agreement for  
2 the Burlingame dealership that would substantially affect that dealership’s sales or service obligations or  
3 investment and thus would be subject to Section 3060(b), with the result being that this “modification”  
4 would not be permitted unless SOA met its burden of proving good cause for the modification.

5 54. There are two discrete elements that first must be met before there is a statutory right to  
6 file a modification protest and have a hearing before the Board on whether there is good cause for the  
7 modification. First, there must be a modification of a franchise; and second, the modification must  
8 substantially affect the franchisee’s sales or service obligations or investment. If there is no modification,  
9 then there is no need to go further. There are assertions by Putnam that the termination of the Satellite  
10 Service Agreement would substantially affect Putnam’s sales or service obligations or investment at its  
11 Burlingame location, but these assertions are irrelevant unless there is initially found to be a modification  
12 of the terms of the Burlingame franchise that will result from the termination of the Satellite Service  
13 Agreement. Said simply, Putnam is claiming that the termination of the Satellite Service Agreement  
14 constitutes a modification of Putnam’s Burlingame Dealer Agreement, but Putnam has offered no  
15 evidence as to what terms of the Burlingame Dealer Agreement will be modified by the termination of the  
16 Satellite Service Agreement.

17 55. Putnam is correct in its claim that “[n]o court or arbitrator has considered whether there is  
18 good cause to modify Putnam’s Dealer Agreement by way of SOA terminating the Satellite Service  
19 Franchise Agreement.” (Opposition, p. 6, lines 10-12) However, this is again addressing the alleged  
20 effect of the claimed modification rather than addressing whether there would be any modification of the  
21 Burlingame franchise.

22 56. As argued by SOA and stated herein, the two franchises have been found to be separate  
23 and there is no evidence that the termination of the Satellite Service Agreement will modify the  
24 Burlingame franchise. SOA is correct that Putnam has produced no evidence to show that any of the terms  
25 of Putnam’s franchise for its Burlingame location will be modified by the termination of the Satellite  
26 Service Agreement. Thus, it is determined that the termination of the Satellite Service Agreement would  
27 not operate to modify any of the terms of the Burlingame franchise.

28 57. SOA is also correct that collateral estoppel applies to prevent Putnam from re-litigating the



1 issues of whether the two contracts are “inextricably entwined” and whether there is good cause for the  
2 termination of the Satellite Service Agreement. All of the requirements for the application of collateral  
3 estoppel are satisfied. These are:

4 a) “[T]he issue sought to be precluded from relitigation must be identical to that decided in a  
5 former proceeding.” The issue of whether the two contracts are separate and the issue of whether there is  
6 good cause for termination pursuant to Sections 3060 and 3061 would be identical to those in the  
7 arbitration proceedings and judgment of the Superior Court.

8 b) “[T]he issue must have been actually litigated in the former proceeding.” The issue of  
9 whether the agreements are separate and the issue of whether there is good cause to terminate the Satellite  
10 Service Agreement were fully litigated in the prior proceedings.

11 c) “The issue ‘must have been necessarily decided in the former proceeding.’” The issue of  
12 separateness of the two agreements and the issue of good cause to terminate the Satellite Service  
13 Agreement were necessarily decided in the former proceedings as they were central to the dispute.

14 d) “[T]he decision in the former proceeding must be final and on the merits.” The decision in  
15 the former proceedings was on the merits and became final on May 12, 2021, when the California  
16 Supreme Court declined to hear the petition for review of Putnam.

17 e) “[T]he party against whom preclusion is sought must be the same as, or in privity with, the  
18 party to the former proceeding.” The party in the former proceedings (Putnam) is the same as the party in  
19 this proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341)

20 **THE STATUS OF THE SATELLITE SERVICE AGREEMENT AS A**  
21 **SEPARATE FRANCHISE AND SUBJECT TO MANDATORY ARBITRATION**

22 58. The court proceedings summarized in paragraphs 14-21 pertained to the termination  
23 protest regarding the Satellite Service Agreement. The findings that are conclusive and binding, and  
24 subject to the rule of collateral estoppel, are that the franchise for the Burlingame dealership and the  
25 franchise for the Satellite Service Facility were and are separate agreements and that SOA had good cause  
26 not to renew the franchise for the Satellite Service Facility.

27 59. As to this modification protest, it is true as Protestant contends that none of the findings or  
28 conclusions in the other proceedings include whether the termination of the Satellite Service Facility

1 would or would not constitute a modification that would substantially affect Putnam’s sales or service  
2 obligations or investment regarding the Burlingame franchise. However, it has already been conclusively  
3 determined the two agreements are separate and that SOA has good cause to not extend the term of the  
4 Satellite Service Agreement. There is no order that the Board could issue that could change these findings.

5 60. As to the Section 3060(a) termination protest of the Satellite Service Agreement: As the  
6 arbitration and judicial proceedings have resulted in a final judgment permitting SOA to terminate the  
7 Satellite Service Agreement, and because the Board has dismissed the Section 3060(a) protest of Putnam,  
8 the Board is without power to issue an order precluding termination of the Satellite Service Agreement.  
9 Such an order would be necessary to prevent the claimed modification of Putnam’s Burlingame franchise.

10 61. As to the Section 3060(b) modification protest: As the termination of the Satellite Service  
11 Agreement will not result in a modification of Putnam’s Burlingame franchise, there is no  
12 legislative/statutory stay that may be claimed to exist because of Section 3060(b) that operates to prevent  
13 SOA from allegedly modifying the Burlingame franchise by terminating the Satellite Service Agreement.  
14 The right of SOA to terminate the Satellite Service Agreement has already been decided by the Superior  
15 Court and the Court of Appeal, notwithstanding Section 3060(a). Thus, for the Board to conduct a hearing  
16 on whether the termination of the Satellite Service Agreement should not be allowed because of Section  
17 3060(b) would be an exercise in futility. As it has been conclusively and finally determined that the two  
18 franchises are separate and that there is good cause to terminate the Satellite Service Agreement, SOA  
19 should and must be permitted to do so. SOA should not again be required to prove good cause to  
20 terminate the Satellite Service Agreement based upon a claim that the termination would constitute a  
21 modification of the Burlingame franchise which has been conclusively found to be a separate agreement.  
22 It may be that the operation of the Burlingame dealership will be adversely affected economically as  
23 alleged by Protestant, but the effect upon the operation or profitability of the Putnam Burlingame  
24 dealership is not due to any modification of the terms of the Burlingame franchise. There is nothing that  
25 Putnam must do or not do at its Burlingame location to conform with the terms of the Burlingame  
26 franchise that will change based upon the termination of the Satellite Service Agreement.

27 62. As there is nothing to indicate there will be a modification of Putnam’s Burlingame Dealer  
28 Agreement if the Satellite Service Agreement is terminated, there is no legislative stay that is applicable

1 because of 3060(b) that precludes SOA from terminating the Satellite Service Agreement The Board is  
2 without jurisdiction to consider the 3060(b) modification protest.

3 63. For the Board to issue an order on this modification protest as requested by Putnam, the  
4 Board would have to order that the modification protest be sustained. To reach this result, the Board  
5 would have to find that:

6 (a) Termination of the Satellite Service Agreement was a modification of the Burlingame  
7 franchise; and,

8 (b) The modification of the Burlingame franchise would substantially affect Putnam's sales or  
9 service obligations or investment as to the Burlingame franchise; and

10 (c) SOA did not establish good cause to modify the Burlingame franchise.

11 64. However, in regard to paragraph (a), as found by the other tribunals and conclusive as to  
12 this issue, the two agreements are separate. And, as found by this Order, termination of the Satellite  
13 Service Agreement will not result in a modification of the Burlingame Dealer Agreement.

14 65. In regard to paragraph (b), as the termination of the Satellite Service Agreement does not  
15 constitute a modification of the Burlingame Dealer Agreement, it is impossible for there to be a  
16 modification that would result in substantially affecting the sales or service obligations or investment of  
17 Putnam's Burlingame franchise.

18 66. In regard to paragraph (c), even if it were found that paragraphs (a) and (b) were  
19 established, finding that SOA does not have good cause to modify Putnam's Burlingame franchise would  
20 be inconsistent with the conclusive judicial findings that SOA has the right to terminate the Satellite  
21 Service Agreement. To conclude that this protest should be sustained, and SOA precluded from  
22 modifying the Burlingame franchise, would require a finding that the Satellite Service Agreement could  
23 not be terminated. Such a conclusion would be in direct contradiction of the results of more than three  
24 years of arbitration/litigation which found that SOA has the right to terminate the Satellite Service  
25 Agreement. For the Board to order the modification protest be sustained would require the Board find  
26 that the Satellite Service Agreement could not be terminated and would mean that the Board's order  
27 would nullify the arbitrator's award, the Superior Court judgment and the Court of Appeal opinion as the  
28 Board would be prohibiting SOA from terminating the Satellite Service Agreement, the very thing that

1 the arbitrator, the Superior Court and the Court of Appeal have all conclusively found to be what SOA has  
2 the legal right to do.

3 67. As the claimed modification of the Burlingame franchise will occur only if the Satellite  
4 Service Agreement is terminated, the order sought by Putnam precluding the modification of the  
5 Burlingame franchise would have to be premised upon the Board ordering that SOA cannot terminate the  
6 Satellite Service Agreement. This would be contrary to something that has already been decided in favor  
7 of SOA after three years of litigation and constitute a waste of the significant costs incurred by the parties  
8 as well as the waste of the extensive use of judicial resources. Such a Board order would be contradictory  
9 to, and would completely upend, the prior findings and holdings of the arbitrator, the Superior Court, the  
10 Court of Appeals and the California Supreme Court.

11 **CONCLUSION**

12 68. It is determined that:

13 (a) Termination of Protestant’s Satellite Service Agreement will not result in a modification of  
14 Protestant’s Burlingame Dealer Agreement.

15 (b) As there is no modification of the Burlingame Dealer Agreement, the Board has no  
16 jurisdiction to hear this protest.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

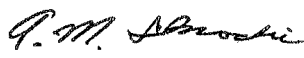
28 ///

1 **PROPOSED ORDER**

2 After consideration of the pleadings, exhibits and oral arguments of counsel, it is hereby ordered  
3 that Respondent's Motion to Dismiss Protest is granted. Protest No. PR-2542-17 *Putnam Automotive,*  
4 *Inc., dba Putnam Subaru v. Subaru of America, Inc.*, is dismissed with prejudice.

5  
6 I hereby submit the foregoing which constitutes my  
7 proposed order in the above-entitled matter, as the  
8 result of a hearing before me, and I recommend this  
9 proposed order be adopted as the decision of the New  
10 Motor Vehicle Board.

11 DATED: November 16, 2021

12 By   
13 ANTHONY M. SKROCKI  
14 Administrative Law Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 Steve Gordon, Director, DMV  
28 Ailene Short, Branch Chief,  
Occupational Licensing, DMV

STATE OF CALIFORNIA



## MEMO

**To: ALL BOARD MEMBERS**

**From: TIMOTHY M. CORCORAN  
NEW MOTOR VEHICLE BOARD  
(916) 445-1888**

**Subject: UPCOMING EVENTS**

**Date:** November 18, 2021

The following highlights the upcoming Board events:

- December 7, 2021, General Meeting (via Zoom and teleconference)
- January 12, 2022, General Meeting (via Zoom and teleconference)
- March 10-13, 2022, NADA Show 2022 (Las Vegas)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 445-1888.



**R O S T E R**  
**NEW MOTOR VEHICLE BOARD**

P.O. Box 188680  
Sacramento, California 95818-8680

<b><u>NAME</u></b>	<b><u>APPOINTING AUTHORITY</u></b>	<b><u>STATUS</u></b>
Ramon Alvarez C. Term exp. 1-15-22	Governor's Office	Dealer Member
Anne Smith Boland Term exp. 1-15-23	Governor's Office	Dealer Member
Kathryn Ellen Doi Term exp. 1-15-25	Governor's Office	Public Member
Inder Dosanjh Term exp. 1-15-21	Governor's Office	Dealer Member
Ryan Fitzpatrick Term exp. 1-15-23	Governor's Office	Dealer Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-22	Senate Rules Committee	Public Member
Nanxi Liu Term exp. 1-15-23	Speaker of the Assembly	Public Member
Bismarck Obando Term exp. 1-15-22	Governor's Office	Public Member
Jacob Stevens Term exp. 1-15-23	Governor's Office	Public Member