



R O S T E R
NEW MOTOR VEHICLE BOARD

2415 1st Avenue, MS L242
Sacramento, California 95818

<u>NAME</u>	<u>APPOINTING AUTHORITY</u>	<u>STATUS</u>
Anne Smith Boland Term exp. 1-15-27	Governor's Office	Dealer Member
Ashley Dena Term exp. 1-15-26	Governor's Office	Dealer Member
Kathryn Ellen Doi Term exp. 1-15-25	Governor's Office	Public Member
Ryan Fitzpatrick Term exp. 1-15-23	Governor's Office	Dealer Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-26	Senate Rules Committee	Public Member
Bismarck Obando Term exp. 1-15-26	Governor's Office	Public Member
Karthick Ramakrishnan Term exp. 1-15-27	Speaker of the Assembly	Public Member
Brady Schmidt Term exp. 1-15-25	Governor's Office	Dealer Member
Jacob Stevens Term exp. 1-15-27	Governor's Office	Public Member

2415 1st Avenue, MS L242
Sacramento, California 95818
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
NOTICE OF GENERAL BOARD MEETING

**Friday, December 8, 2023, at 9:30 a.m.
Via Zoom and Teleconference**

Through December 31, 2023, 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 nmvp@nmvp.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 Alex Martinez at alejandro.martinez2@dmv.ca.gov or (916) 445-1888.

Join Zoom Meeting

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Passcode: 702511

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- +1 253 215 8782 US (Tacoma)
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Find your local number: <https://us02web.zoom.us/u/kbEGHBhKoU>

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

A G E N D A

GENERAL MEETING

Friday, December 8, 2023, at 9:30 a.m.

Via Zoom and Teleconference

[Zoom link](#)

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, they 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. **Introduction and welcome of newly appointed Public Board Member Karthick Ramakrishnan.**
4. **Approval of the Minutes from the April 28, 2023, and September 21, 2023, General Meetings, and May 23, 2023, Meeting of the Ad Hoc Committee on Equity, Justice and Inclusion.**
5. **Discussion and consideration of activities and events commemorating the New Motor Vehicle Board's 50th anniversary (July 1, 2024).**

6. **Report on the National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Conference by Tim Corcoran, Executive Director and Bismarck Obando, Public Member - Board Development Committee.**
7. **Update on Board Development Activities - Board Development Committee.**
8. **Report on the Board's financial condition for the 4th quarter of Fiscal Year 2022-2023 and related fiscal matters - Fiscal Committee.**
9. **Discussion and consideration of the 2024 New Motor Vehicle Board Industry Roundtable focusing on industry services - Government and Industry Affairs Committee.**
10. **Update on the Core Four - Safety initiative (OKR) related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator "stop drive" safety recall - Government and Industry Affairs Committee.**
11. **Discussion concerning enacted and pending legislation - Legislative Committee.**
 - a. Enacted Legislation of Special Interest:
 - (1) Assembly Bill 473 (Assembly Member Aguiar-Curry; Ch. 332, Stats. 2023) - Motor vehicle manufacturers, distributors, and dealers.
 - b. Enacted Legislation of General Interest:
 - (1) Senate Bill 544 (Senator Laird; Ch. 216, Stats. 2023) - Bagley-Keene Open Meeting Act: teleconference.
 - c. Pending Federal Legislation of General Interest:
 - (1) United States House of Representative Bill 1435 (Representative John Joyce) - Preserving Choice in Vehicle Purchases Act.
 - (2) United States Senate Bill 2090 (Senator Markwayne Mullin) - Preserving Choice in Vehicle Purchases Act of 2023.
12. **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.

13. **Discussion and consideration of the Department of Motor Vehicles' request for an extension of time until January 31, 2024 to investigate and issue a report, by the Public Members of the Board.**

COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO v. SUBARU OF AMERICA, INC.
Petition No. P-463-22

Consideration of the Department of Motor Vehicles' request for an extension of time, by the Public Members of the Board.

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

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

SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA v. MITSUBISHI MOTORS NORTH AMERICA, INC.
Protest Nos. PR-2819-23

16. **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.

SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA v. MITSUBISHI MOTORS NORTH AMERICA, INC.
Protest Nos. PR-2819-23

Consideration of the Administration Law Judge's Proposed Order Granting Respondent's Motion to Dismiss or, in the Alternative, for Summary Adjudication, by the Public Members of the Board.

17. **Open Session.**

18. **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 Alex Martinez at (916) 445-1888 or Alejandro.martinez2@dmv.ca.gov.



Memorandum

Date : SEPTEMBER 7, 2023

To : ALL BOARD MEMBERS

From : TIMOTHY M. CORCORAN

Subject : UPCOMING EVENTS

The following highlights the upcoming Board events:

- September 21, 2023, General Meeting (Sacramento)
- September 27-30, 2023, National Association of Motor Vehicle Boards and Commissions (NAMVBC) 2023 Fall Conference (Madison, Wisconsin)
- November 16, 2023, AutoMobility LA (formerly Los Angeles Auto Show Press and Trade Days; Los Angeles)
- December 8, 2023, General Meeting (location to be determined)
- February 1-4, 2024, NADA Show 2024 (Las Vegas)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to contact me at (916) 244-6774.

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on April 28, 2023, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 11:36 a.m. The meeting was delayed due flight delays.

2. **ROLL CALL**

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

Board Members Not Present: Bismarck Obando
Brady Schmidt

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

Mr. Corcoran indicated that a quorum was established for case management and general business.

4. **APPROVAL OF THE MINUTES FROM THE JANUARY 25, 2023, GENERAL MEETING**

Member Doi requested clarification on the third paragraph of Agenda Item 23 in the January 25, 2023, General Meeting minutes. It appears the word “date” was missing so it was added as indicated below:

Member Doi inquired whether any merits hearing are scheduled for 2023.
Ms. Parker indicated that a hearing that has been assigned to Judge Smith is going forward on February 6 (the hearing was subsequently taken off

calendar) and a subsequent tentative hearing has also been assigned to a Board ALJ. Board staff will determine if that case will proceed to a merits hearing on March 6 (this hearing date was subsequently amended).

Member Doi moved to adopt the January 25, 2023 General meeting minutes as amended. Member Stevens seconded the motion. The motion carried unanimously.

5. **PRESENTATION OF RESOLUTION TO NANXI LIU, FORMER PUBLIC MEMBER**

At the March 30, 2022, General meeting, the members unanimously moved to present Nanxi Liu, former Public Member, with a Resolution in appreciation of her dedication and service to the Board and the State of California. Ms. Liu thanked President Kassakhian, the members, and staff. Ms. Liu remarked how impressed she was by the Board's leadership and gave a "shout out" to Tim and his team as she thought they were incredible, knowledgeable, and every decision was a demonstration of dedication and commitment to providing great service. Ms. Liu concluded by saying she had an amazing time serving on the Board.

Member Doi stated it was a pleasure to serve with Ms. Liu, that Ms. Liu is a very inspirational young woman in business, and the Board learned a lot from her.

President Kassakhian noted that he benefitted greatly from Ms. Liu's service on the Board and thanked her.

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO RAMON ALVAREZ C., FORMER DEALER MEMBER**

Member Stevens moved to present a Resolution to Ramon Alvarez C., former Dealer Member, in recognition of his contribution to the New Motor Vehicle Board. Member Smith Boland seconded the motion. The motion carried unanimously.

7. **DISCUSSION CONCERNING THE STATE OF THE AUTOMOTIVE INDUSTRY BY MANUFACTURER AND DEALER REPRESENTATIVES - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian welcomed Curt Augustine, Senior Director of State Affairs of the Alliance for Automotive Innovation (the "Alliance"), and Brian Maas, President, California New Car Dealers Association ("CNCDA").

Mr. Augustine noted that the Alliance represents all of the auto manufacturers who have franchised dealers in the U.S. Auto manufacturers without franchised dealers are not a part of the Alliance. Approximately 98% of the vehicles sold in the U.S. are made by its members and technology partners. The global automotive industry is undergoing a massive transformation. Over the past three years, there have been unimaginable circumstances such as the global pandemic that closed every production facility in North America, global shortage of semiconductors that have severely limited vehicle production, and other shortages of auto parts. But at the same time, consumer demand has been remarkably high despite the inflationary pressures which have created a mismanagement between demand and supply. And this has strained vehicle inventories, reduced affordability, and has possibly changed the way consumers look at the auto industry.

Mr. Augustine remarked that in the face of these tremendous opportunities and challenges, automakers are investing \$1.2 trillion on EV (electric vehicle) and ZEV (zero emissions vehicle) technology alone between now and 2030.

Next, Mr. Augustine reviewed the new California Advanced Clean Cars II regulations that were approved by the Air Resources Board in 2022. The Alliance did not oppose these regulations. In 2026, 35% of vehicles manufactured need to be zero emission vehicles. In 2028, this increases to 51% followed by 76% in 2032, and 100% in 2035. Additionally, the minimum range on all zero emission vehicles is 140 miles or greater per regulation. For plug-in hybrids, which have a battery and a small gasoline engine, the minimum electric range is 50 miles starting in 2026. Plug-in hybrids can only account for 20 percent of whatever the standard is in a given year. In addition to California, five other states have adopted these new standards and more states are expected to.

Recent federal rules pertaining to tailpipe emissions and mileage based standards will start in model year 2027 through 2032. For the first time ever, the federal standards are stronger than California's standards and not aligned with California. Depending on which year it is, the federal standard can be from 5-15% greater than the California standard.

The significant challenges manufacturers face with these regulations was discussed by Mr. Augustine. The average zero emission vehicle costs over \$60,000. There are affordability issues. The California regulations have extra requirements on battery life, which will add several thousand dollars to the cost of a vehicle for the manufacturers to cover those warranty costs. There is still a large demand and not enough supply of critical minerals like lithium and cobalt, which put a strain on battery development. New factories are going to have to be built in the U.S. for both automobiles and batteries.

An additional challenge discussed by Mr. Augustine is charging or refueling infrastructure. Consumers aren't going to buy ZEVs if they do not know where to get fuel. Because of these challenges and increased costs, the Alliance believes consumer incentives through rebates similar to California and a few other states are necessary on a national level. The Air Resources Board estimates California needs 1.2 million chargers by the end of 2023. There are 103,000 charges for 3 million ZEVs in the U.S. so that is a ratio of 20:1 as opposed to 7:1. In California, the ratio is 37:1.

Ensuring new homes and buildings can accommodate charging stations or have the wiring to do so is an additional challenge discussed by Mr. Augustine. The cost is also a factor. A new federal rebate, which started in 2023, was also discussed. Mr. Augustine was available to answer Board Member questions.

Mr. Maas indicated that EVs are likely the biggest change in personal transportation since the change from horses to automobiles. Not every Californian will have a place to charge their vehicle. Manufacturers can make hundreds of beautiful, fabulous EVs, but consumers aren't going to choose to buy those if they don't have a place to charge them. From the dealer standpoint, Mr. Maas stated "we're all in on EVs." To echo what Mr. Augustine said, 98% of the vehicles on the road were manufactured by the Alliance's members and sold by CNCDA's members. So, collectively we need to make sure that those vehicles are meeting the personal transportation needs of Californians.

The question posed by Mr. Maas is whether the necessary resources are set aside by the government to achieve the goals in the timeframe that has been established in the

Advanced Clean Cars II regulations or the new federal EPA (Environmental Protection Agency) proposed mandates? Mr. Maas discussed in detail the rebate structure for EVs and remarked that it is going to be extremely confusing to consumers who are trying to adopt a new technology that they don't understand and yet they won't know what the price of the vehicle is going to be because they don't know if they're going to qualify for the rebate. Consumer do not know whether the rebate is going to be applicable at the time of purchase or whether they're going to have to apply to the IRS to get a check in the future.

Next, Mr. Maas discussed the sales market. Typically pre-COVID, dealers would sell an average of about 2 million new cars in California a year. California is the largest market in the country. To put this in perspective, one out of every eight new cars in the U.S. is sold in California. In 2022, pure EVs were 17% of the California market and plug-in hybrids were 3%.

Like the Alliance, the CNCDA did not oppose the Advanced Clean Cars II regulations. In fact, it joined with the Alliance to argue there should be a plug-in hybrid rule similar to California's rule in the federal mandate. According to Mr. Maas, the federal government has decided that this plugin hybrid technology is not appropriate. Instead of transitioning to ZEVs, consumers may keep their internal combustion engine vehicle longer, which means greenhouse gas emission reduction goals won't be accomplished.

Mr. Maas stated that aggressive mandates are counterproductive because they are "manufacturer for sale mandates" not "customer purchase mandates." To illustrate this, the manufacturers can make the ZEVs, but if consumers aren't ready to adopt them, there could be challenges.

Next, Mr. Maas discussed the challenge of who is responsible to create the charging infrastructure? Should it be the dealers? Should it be the traditional gas stations? Should it be large, big box retailers? Who's going to monitor and pay for that network?

In conclusion, Mr. Maas said that when you purchase an internal combustion engine vehicle, you generally know where your gas station is and the price is publicly posted. When a consumer pulls up to an EV charger, the price of electricity is unknown and so is how that translates to the equivalent cost per gallon of gasoline. The charging network in California is short of where it needs to be, and the reliability of that network is poor. Another consideration is the amount of time to charge a vehicle, which can be 20-30 minutes at the fastest charger to go from 0% to 80% yet it takes less than five minutes to get gas. It is important for a motorist in an EV to consider how to refuel their vehicle. The CNCDA is trying to encourage policymakers to talk about these issues, to think about them, and come up with solutions. If these questions go unanswered, it's going to be a difficult transition to 100% ZEVs by 2035. Mr. Maas was available to answer Board Member questions.

President Kassakhian thanked Mr. Augustine and Mr. Maas for their presentations.

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

This item was postponed until after Agenda Item 16.

9. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

This item was pulled from the agenda due to time constraints.

10. **BOARD MEMBER EDUCATION CONCERNING THE ADMINISTRATIVE PROCEDURE ACT AND BAGLEY-KEENE OPEN MEETING ACT - BOARD DEVELOPMENT COMMITTEE**

This item was pulled from the agenda due to time constraints.

11. **BOARD MEMBER EDUCATION CONCERNING THE POLITICAL REFORM ACT AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

This item was pulled from the agenda due to time constraints.

12. **ANNUAL REVIEW OF NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

This item was pulled from the agenda due to time constraints.

13. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 2nd QUARTER OF FISCAL YEAR 2022-2023 - FISCAL COMMITTEE**

This item was pulled from the agenda due to time constraints.

14. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

a. Pending Legislation of Special Interest:

- (1) Assembly Bill 473 (Assembly Member Aguiar-Curry) - Motor vehicle manufacturers, distributors, and dealers.

b. Pending Legislation of General Interest:

- (1) Senate Bill 544 (Senator Laird) - Bagley-Keene Open Meeting Act: teleconference.
- (2) Assembly Bill 1617 (Assembly Member Wallis) – Vehicles: recreational off-highway vehicles.

c. Pending Federal Legislation of General Interest: None

This item was pulled from the agenda due to time constraints.

15. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO FACSIMILE AND RESIDENCE ADDRESSES IN SECTION 595 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (FORMAT OF FIRST PAGE; FORMAT AND FILING OF PAPERS) AND MAKE GENDER NEUTRAL - POLICY AND PROCEDURE COMMITTEE**

This item was postponed until after Agenda Item 18 and discussed with Agenda Item 16.

16. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS - POLICY AND PROCEDURE COMMITTEE**

- A. Challenge (13 CCR § 551.1)
- B. Testimony by Deposition (13 CCR § 551.6)
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)
- D. Request for Informal Mediation (13 CCR § 551.14)
- E. Informal Mediation Process (13 CCR § 551.16)
- F. Sanctions (13 CCR § 551.21)
- G. Interpreters and Accommodation (13 CCR § 551.23)
- H. Transmittal of Fees by Mail (13 CCR § 553.72)
- I. Contents (13 CCR § 555)
- J. Procedure at Hearings (13 CCR § 580)
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

This item was postponed until after Agenda Item 18 and discussed with Agenda Item 15.

17. **DISCUSSION AND CONSIDERATION OF TEMPORARY AUTHORIZATION OF DISCRETION TO THE EXECUTIVE DIRECTOR TO ASSIGN ADDITIONAL MERITS HEARINGS TO THE OFFICE OF ADMINISTRATIVE HEARINGS OUTSIDE THE CURRENT “MERITS HEARING JUDGE ASSIGNMENT LOG” - POLICY AND PROCEDURE COMMITTEE**

This item was postponed until after Agenda Item 21.

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

This item was postponed until after Agenda Item 17.

19. **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.

This item was postponed until after Agenda Item 22.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

Discussion and consideration of personnel matters, by all members of the Board.

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

c. **ORAL INTERVIEW OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES VIA ZOOM - ADMINISTRATION COMMITTEE**

Oral interview of the Administrative Law Judge candidates via Zoom, by all members of the Board.

d. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEE - ADMINISTRATION COMMITTEE**

Consideration of the Administrative Law Judge nominee, by all members of the Board.

Agenda Item 20(b) was pulled from the agenda. The remaining items were postponed until after Agenda Item 25.

21. **OPEN SESSION**

The members remained in Open Session.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

- (1) Protest No. PR-2418-15 *Adrenaline Powersports v. Polaris Industries, Inc.*
- (2) Protest No. PR-2534-17 (consolidated) *Porter Auto Group, L.P. v. FCA US LLC*
- (3) Protest No. PR-2605-19 *R&H Automotive Group, Inc. v. American Honda Motor Co., Inc., Acura Automotive Division*
- (4) Protest No. PR-2180-09 *Jackson Ford-Mercury, Inc., dba The New Jackson Ford-Mercury v. Ford Motor Company*

This item was postponed until after Agenda Item 8.

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

The Dealer Members in attendance did not participate in, comment or advise other members upon or decide Agenda Items 23-24.

President Kassakhian read the following statement “comments made by the parties or their counsel that are made regarding any proposed decision, ruling or order must be limited to matters contained within the administrative record of the proceeding. No other information or argument will be considered by the Board. These are adjudicative matters that will be deliberated on in closed Executive Session. Therefore, pursuant to subdivision (e) of Government Code section 11125.7, members of the public may not comment on this matter.”

MICHAEL CADILLAC, INC., dba MICHAEL CHEVROLET CADILLAC v.
GENERAL MOTORS LLC
Protest Nos. PR-2813-22 and PR-2814-22

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Ashley R. Fickel, Esq. of Dykema Gossett LLP represented Respondent.

24. **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

MICHAEL CADILLAC, INC., dba MICHAEL CHEVROLET CADILLAC v.
GENERAL MOTORS LLC
Protest Nos. PR-2813-22 and PR-2814-22

Consideration of the Administration Law Judge’s Proposed Order Granting Respondent’s motion to dismiss.

The Public Members of the Board deliberated in closed Executive Session. Member Stevens moved to adopt the Administrative Law Judge’s Proposed Order Granting Respondent’s Motion to Dismiss. Member Doi seconded the motion. The motion carried unanimously.

25. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Agenda Item 24.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

Discussion and consideration of personnel matters, by all members of the Board.

The Public and Dealer Members convened in closed Executive Session to discuss personnel matters. Member Stevens moved to grant the Executive Director discretion to remove an Administrative Law Judge from an assignment log based on performance. Any proposed changes would be discussed in advance with the Policy and Procedure Committee and, if appropriate, would be reported to the Board in the Executive Director's Report or in closed Executive Session as a personnel matter. Member Doi seconded the motion. The motion passed unanimously.

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

As noted above, this item was pulled from the agenda.

c. **ORAL INTERVIEW OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES VIA ZOOM - ADMINISTRATION COMMITTEE**

Oral interview of the Administrative Law Judge candidates via Zoom, by all members of the Board.

The Public and Dealer Members convened in closed Executive Session to conduct oral interviews of Administrative Law Judge candidates.

d. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEE - ADMINISTRATION COMMITTEE**

Consideration of the Administrative Law Judge nominee, by all members of the Board.

The Public and Dealer members of the Board considered a first and second Administrative Law Judge nominee. Member Stevens moved to offer a position to the first candidate nominated conditionally upon the completion of a reference check. Member Smith Boland seconded the motion. The motion carried unanimously.

21. **OPEN SESSION**

The Board Members returned to Open Session.

17. **DISCUSSION AND CONSIDERATION OF TEMPORARY AUTHORIZATION OF DISCRETION TO THE EXECUTIVE DIRECTOR TO ASSIGN ADDITIONAL MERITS HEARINGS TO THE OFFICE OF ADMINISTRATIVE HEARINGS OUTSIDE THE CURRENT "MERITS HEARING JUDGE ASSIGNMENT LOG" - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding a temporary authorization of discretion to the Executive Director to assign additional merits hearings to the Office of Administrative Hearings ("OAH") outside the current "Merits Hearing Judge Assignment Log."

As indicated in the memo, given the limited number of matters that proceed to a merits hearing each year, it may not be possible to timely evaluate the effectiveness of OAH. Therefore, the staff recommends the Executive Director be given temporary discretion (not to exceed 3 years) to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission. The use of OAH in general and any additional assignments would be reported to the Board in the Executive Director's Report.

Mr. Corcoran added that he needs this flexibility to deviate from the rotational log to send additional cases to OAH as necessary to test them out over the next few years.

Member Doi moved to adopt the staff recommendation. Member Stevens seconded the motion. The motion carried unanimously.

18. **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 memo 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.

Ms. Parker indicated that the delegations were updated to add the authorization approved by the Board in Agenda Item 17 above and to reflect the statutory change repealing the Board's appeal jurisdiction in Vehicle Code section 3008.

Member Stevens moved to adopt the staff recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

15. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO FACSIMILE AND RESIDENCE ADDRESSES IN SECTION 595 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (FORMAT OF FIRST PAGE; FORMAT AND FILING OF PAPERS) AND MAKE GENDER NEUTRAL - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed regulatory amendments to eliminate references to facsimile and residence addresses in Section 595 of Title 13 of the California Code of Regulations.

Member Stevens moved to adopt the proposed regulatory amendments. Member Fitzpatrick seconded the motion. The motion carried unanimously. Prior to reading the formal statement on the action taken by the Board, the members discussed and considered Agenda Item 16.

16. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS - POLICY AND PROCEDURE COMMITTEE**

- A. Challenge (13 CCR § 551.1)
- B. Testimony by Deposition (13 CCR § 551.6)
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)
- D. Request for Informal Mediation (13 CCR § 551.14)
- E. Informal Mediation Process (13 CCR § 551.16)
- F. Sanctions (13 CCR § 551.21)
- G. Interpreters and Accommodation (13 CCR § 551.23)
- H. Transmittal of Fees by Mail (13 CCR § 553.72)
- I. Contents (13 CCR § 555)
- J. Procedure at Hearings (13 CCR § 580)
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

The members were provided with a memo from Tim Corcoran and Robin Parker regarding a number of proposed regulatory amendments to eliminate references to residence addresses, update the Board's address, and make language gender neutral.

In response to Member Doi's question, Ms. Parker indicated that the staff is planning to submit the proposed regulations to the Office of Administrative Law as non-substantive changes but in the event OAL disapproves, these will proceed through formal rulemaking as substantive changes.

Member Fitzpatrick moved to adopt the proposed new regulation. Member Doi seconded the motion. The motion carried unanimously.

President Kassakhian read the following statement into the record for the proposed regulatory changes in Agenda Items 15 and 16:

Given the Board's decision to go forward with the proposed regulation[s], 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[s], 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[s]. 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.

8. **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 memo and revised *Guide to the New Motor Vehicle Board* from Tim Corcoran and Robin Parker.

As indicated in the memo, the “New as of 2023” section was updated to reflect regulations that were effective October 1, 2022, and legislative changes that deleted obsolete provisions relating to appeals and made technical changes.

In addition, the following amendments were made:

- With the relocation to the Department of Motor Vehicles, the Board does not have a landline or fax machine. In the event a party would like to file a protest via facsimile, the Board would accommodate this request. Footnote 5 on page 8 was added to request a franchisee seeking to file a protest via facsimile contact the Board’s legal staff in advance at (916) 445-1888 or nmvb@nmvb.ca.gov.
- The addition of online credit card payments was added on page 9.
- Footnote 6 was added on page 9 to reflect that at the January 25, 2023, General Meeting, the Board approved adding the Office of Administrative Hearings to the “Merit Hearings Judge Assignment Log.”
- New footnote 6 is referenced in footnote 25 on page 63.
- References to Vehicle Code section “3050(b)(2)” were changed to “3050(b)(2)(A)” on pages 67, 70, and 71 and in the sample petition form in the Appendix.
- Gender specific language was replaced with gender neutral language in the sample forms in the Appendix.

Member Stevens moved to adopt the revised *Guide to the New Motor Vehicle Board*. Member Fitzpatrick seconded the motion. The motion carried unanimously.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

- (1) Protest No. PR-2418-15 *Adrenaline Powersports v. Polaris Industries, Inc.*
- (2) Protest No. PR-2534-17 (consolidated) *Porter Auto Group, L.P. v. FCA US LLC*
- (3) Protest No. PR-2605-19 *R&H Automotive Group, Inc. v. American Honda Motor Co., Inc., Acura Automotive Division*
- (4) Protest No. PR-2180-09 *Jackson Ford-Mercury, Inc., dba The New Jackson Ford-Mercury v. Ford Motor Company*

The Public Members were provided with a memo from Tim Corcoran and Robin Parker regarding whether to designate four Board Decisions as precedent decisions pursuant to Government Code section 11425.60.

Mr. Corcoran indicated that there was insufficient time to fully consider this matter but he wanted to get the Public Members' perspective in general and provide an opportunity for questions.

Member Doi indicated that this matter will require a longer discussion. She summarized the process as agencies like the Board can designate some of its decisions as binding precedent under the Administrative Procedure Act. However, this is unusual because the Board does not have to go through a formal notice and comment period like with rulemaking. And these determinations are not subject to judicial review. So, if somebody doesn't like what the Board does, it cannot be appealed to the court. Only decisions that are of significant legal or policy determination of general application and only decisions where the issue is likely to recur are to be designated as precedent. Member Doi commented that she thinks precedent decision can be helpful but it should not be done hastily. Member Doi thought it would be helpful to have the significant legal or policy determinations of general application spelled out more clearly and open the discussion for public comment.

In light of Member Doi's comments, President Kassakhian indicated that this discussion would be held at a future meeting.

19. **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 report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. First, Mr. Corcoran and Dawn Kindel participated in the California State Transportation Agency's ("CalSTA") summit early this year. This provided the Board with an opportunity to identify ways that we can become more strategically aligned with CalSTA's goals and their Core-Fore objectives of climate, safety, economic prosperity, and equity. Second, the Ad Hoc Committee on Equity, Justice and Inclusion's first meeting of the year is May 23rd. This will be the first opportunity to align the Board's goals

and objectives strategically with those of the Core-Four under CalSTA. Third, Danielle Phomsopha (former Senior Staff Counsel) was attending the DMV Leadership Development Academy, which is an intense program. It's the executive level program that Mr. Corcoran attended when he was a chief at DMV. UC Davis puts on this program.

Miss Kindel updated the members on recent staff changes in the Consumer Mediation Program. Fortunately, two new analysts were hired and are being trained.

Member Doi inquired about the Board's new facility. Miss Kindel reported that it is unlikely the staff will be able to move into the new facility until 2024.

Ms. Parker reported that two new termination protests were filed against Lotus in response to 15-day notices of termination. Updates on the judicial matters were also provided (*Barber Honda* and *Subaru*). In the petition filed by *Courtesy Subaru of Chico v. Subaru*, after the formal request for investigation was provided to DMV, Subaru filed a motion for reconsideration that was rejected as it did not comply with the Board's regulations.

Ms. Phomsopha indicated that the *Putnam Ford* protest was assigned to OAH for hearing. Additional updates were provided for *Audi Fresno*.

26. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

27. **ADJOURNMENT**

Member Stevens moved to adjourn the meeting. Member Fitzpatrick seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:43 p.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ardashes ("Ardy") Kassakhian
President
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on September 21, 2023, at the Department of Motor Vehicles in Room 5F.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 10:01 a.m.

2. ROLL CALL

Board Members Present: Anne Smith Boland (left at 2:02 p.m.)
Ashely Dena
Kathryn Ellen Doi
Ardashes “Ardy” Kassakhian
Jacob Stevens

Board Members Not Present: Ryan Fitzpatrick
Karthick Ramakrishnan
Bismarck Obando
Brady Schmidt

Board Staff Present: Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Robin P. Parker, Chief Counsel
Suzanne Luke, Administrative Services Analyst
Rabia Sadiq, Mediation Services Analyst

Mr. Corcoran indicated a quorum was established for case management and general business.

3. PLEDGE OF ALLEGIANCE

Agenda item 3 was skipped due to inadvertence.

4. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER BOARD MEMBER ASHLEY DENA**

President Kassakhian welcomed newly appointed Dealer Member Ashley Dena. Ms. Dena commented that she is excited to be on the Board.

5. **ANNOUNCEMENT OF NEWLY APPOINTED PUBLIC BOARD MEMBER KARTHICK RAMAKRISHNAN**

President Kassakhian formally welcomed newly appointment Public Member Karthick Ramakrishnan, who was unable to attend the meeting.

Additionally, President Kassakhian congratulated Members Smith Boland and Stevens for their recent reappointments to the Board. Both were pleased to be reappointed and are happy to serve.

6. **PRESENTATION OF RESOLUTION TO INDER DOSANJH, FORMER DEALER BOARD MEMBER**

At the March 30, 2022, General meeting, the members unanimously moved to present Inder Dosanjh, former Dealer Member, with a Resolution in appreciation for his dedication and service to the Board and the State of California. President Kassakhian thanked Mr. Dosanjh for his service and commented that Mr. Dosanjh was instrumental in a number of programs with the Board and worked closely with the staff.

Mr. Dosanjh indicated that it was his pleasure to serve on the Board and to be a part of the committees he served on.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, BY PRESIDENT KASSAKHIAN**

After a brief discussion off the record, President Kassakhian made the following modifications to the existing committee assignments:

- Member Dena was appointed as a member of the Fiscal Committee after Member Smith Boland stepped down and Member Obando was moved to Chair.
- Member Dena was appointed to the Ad Hoc Committee on Equity, Justice and Inclusion.

8. **DISCUSSION AND CONSIDERATION OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION'S NEW POLICIES AND OTHER CORE FOUR-RELATED RECOMMENDATIONS - AD HOC COMMITTEE**

- a) Board policy that recruitment and hiring practices be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.
- b) Board policy requiring the Ad Hoc Committee on Equity, Justice, and Inclusion review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.

The members were provided a memo from Tim Corcoran regarding the Ad Hoc Committee on Equity, Justice and Inclusion's new policies and other Core Four-related recommendations. As indicated in the memo, the California State Transportation Agency ("CalSTA") convened a workshop and summit in January to gather the executive leadership of the CalSTA departments, boards and commissions to collaboratively develop ideas to take back to their respective bodies in furtherance of one or more of the following priorities:

- 1) Safety
- 2) Equity
- 3) Climate Action
- 4) Economic Prosperity

At the May 23, 2023 meeting of the Ad Hoc Committee, the members heard and discussed proposals, and prepared the recommendation noted above for Board consideration.

Mr. Corcoran provided a detailed overview on the Core-Four related recommendations. Additionally, Mr. Corcoran indicated that the first policy in Agenda Item 8 a) pertaining to bilingual employees treats bilingual fluency as a desired skill. It recognizes that an employee that can speak a language other than English brings value to the Board, not only in better representing the consumers it serves, but also by enriching the cultural environment. Forty-four percent of Californians speak a language other than English at home so it seemed like a good starting point to set the goal for bilingual employees.

Next, Mr. Corcoran provided an overview of the second policy in Agenda Item 8 b) requiring the Ad Hoc Committee review all new and revised policies prior to Board action in order to further institutionalize equity within the Board's programs. This policy would allow the Ad Hoc Committee to identify opportunities or challenges that the proposed policy or amendment might create for historically underrepresented groups and make those comments to the Board when those policies are considered.

As Committee Chair, Member Smith Boland thanked Mr. Corcoran and the Committee Members for their hard work.

Member Stevens moved to adopt the recommended policies in Agenda Item 8 a) and 8 b). Member Smith Boland seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF TASKING THE GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE TO DEVELOP A CORE FOUR - SAFETY INITIATIVE (OKR) RELATED TO IMPROVING THE REPAIR RATE OF CALIFORNIA-REGISTERED VEHICLES SUBJECT TO THE TAKATA AIR BAG INFLATOR “STOP DRIVE” SAFETY RECALL**

Mr. Corcoran is recommending that the Government and Industry Affairs Committee develop a Core Four – Safety initiative related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator “stop drive” safety recall. Mr. Corcoran remarked that this matter is closely related to CalSTA Secretary Omishakin’s Core-Four priorities discussed in the prior Agenda Item and fits within “safety.”

An overview of this recall was provided by Mr. Corcoran: (1) the Takata recall affected 67 million vehicles in the U.S.; (2) it was a stop drive, stop sell recall; (3) California has roughly 750,000 unrepaired vehicles subject to the recall; and (4) the groups most affected and at risk are lower income, non-English speaking and minority groups. He noted that the National Safety Council is a coalition of automakers that are committed to resolving the Takata airbag recall along with dealers and other government entities.

Clay Leek, Deputy Chief of the Bureau of Automotive Repair (“the Bureau”) was invited to discuss this topic. Deputy Chief Leek provided an overview of the Bureau, which protects Californians through effective oversight of the automotive repair industry, and the administration of a vehicle emissions reduction and safety program. The Bureau provides a wide range of services, licenses and regulates approximately 35,000 California automotive repair dealers, licenses brake and lamp stations, mediates automotive repair complaints, investigates, and takes disciplinary action. The Bureau is also responsible for the California Smog Check Program, which gives it a unique touchpoint with consumers as every couple years their vehicle is inspected by one of the Bureau’s licensees.

Deputy Director Leek indicated that consumer protection is a big piece of what the Bureau does. In 2020, the Bureau partnered with CARFAX and the Alliance for Automotive Innovation to incorporate vehicle safety recall information into the Smog Check Program. CARFAX made safety recall data available to jurisdictions like the California Smog Check Program. In either English or Spanish (at the consumer’s choice), the vehicle inspection report provided to consumers after a smog check identified open safety recalls. Additionally, the Bureau initiated an outreach campaign with the National Highway Traffic Safety Administration and Elevate, a public affairs firm, to reach nearly 1.3 million vehicle owners, which was extremely effective. There was a 64% increase in the months following that outreach campaign. Deputy Director Leek offered the Bureau’s assistance to increase compliance rates with the recall.

Member Doi asked what Mr. Corcoran envisions the Board (perhaps in conjunction with the Bureau) can do to raise awareness. Mr. Corcoran is looking for Board support on this project so he can fully review and identify strategies in addition to outreach.

Member Doi inquired if this is an appropriate topic for the Ad Hoc Committee to work on in conjunction with the Government and Industry Affairs Committee. And would this potentially be a topic for public discussion at some point in the development to cultivate ideas. Mr. Corcoran remarked that since Member Smith Boland is the chair of both committees, there will be representation from each committee. Keeping this matter with the Government and Industry Affairs Committee allows flexibility to convene as many preliminary calls as often as necessary before public meetings are held. Mr. Corcoran agreed that meetings of the entire Board with the public would be beneficial in finding these solutions.

President Kassakhian inquired of Deputy Director Leek whether there is the ability for the Board to use State resources in reaching out to various media outlets and ethnic media outlets. In response, Deputy Director Leek indicated the Bureau has data that would help target vehicles subject to the recall.

Mr. Corcoran formally thanked the Department of Motor Vehicles as one of the Board's early partners in helping Mr. Corcoran connect with the National Safety Council and Check to Protect program. He also thanked the Office of Traffic Safety, who has been instrumental in making those connections as well. And of course the California New Car Dealers Association.

On behalf of the California New Car Dealers Association, its Chief Legal Officer, Anthony Bento echoed everything that has been said. His takeaway from the Bureau's presentation is the communication issue. Motorists subject to the recall may not have a relationship with a franchised new car dealer in their community. They acquire their vehicle on Craigslist or from a used car dealer or some private party sale. So we are dealing with a customer that might not have familiarity with the recall process or know a safety repair is free of charge. There is a higher degree of skepticism among those customers with respect to parts availability. Thankfully, the parts availability issue has improved greatly since the Takata recall began.

Prior to the meeting, Mr. Bento researched the National Highway Traffic Safety Administration and learned another 53 million vehicles are going to be recalled in an airbag recall unrelated to Takata so there could be parts availability problems in the future. Mr. Bento indicated that he looks forward to working with the Board and the Bureau on communication and developing a better strategy because the unrepaired vehicles deserve more attention; he applauded the Board for focusing on this issue.

Member Doi moved to adopt the staff recommendation and hold future discussions seeking public input. Member Smith Boland seconded the motion. The motion carried unanimously.

10. **DISCUSSION AND CONSIDERATION OF REVISED BOARD POLICY CONCERNING THE ALLOCATION OF COURT REPORTER FEES EXCLUSIVELY TO THE PARTIES CONSISTENT WITH SECTION 551.7 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - ADMINISTRATION COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker proposing revisions to the Board's existing policy by allocating court reporter fees exclusively to the parties consistent with Section 551.7 of Title 13 of the California Code of Regulations.

Ms. Parker reported that with the Office of Administrative Hearings ("OAH") presiding over its first hearing, the staff are learning that when a matter is transferred to OAH, the Board's role in the process is limited. The Board has no interaction with counsel for the parties. In light of this, allowing the parties more flexibility to select a court reporter of their choice seems prudent. The parties would have to provide the Board a copy of the transcript just like they normally would after the first day of the hearing. And they would provide OAH a copy, if applicable. For consistency, the same policy would apply to dispositive motions such as a motion to dismiss. Anytime the staff or an Administrative Law Judge request a court reporter or for Board meetings, the existing policy would apply and the Board would pay all costs and secure the court reporter.

Member Doi asked if OAH's practice is consistent with the staff proposal so OAH requires the parties to get their own court reporter. Ms. Parker indicated that with an OAH hearing, the Board either pays OAH to secure a court reporter or the Board can provide the court reporter. When the Board requests an OAH hearing, the staff indicate that the Board will provide the reporter. Then in the Order of Time and Place of Hearing, the parties' obligations as to the court reporter are detailed. Information is provided in advance and there are no surprises as to how costs are allocated. The Board has regulatory authority in this regard.

In response to a follow-up question from Member Doi, Ms. Parker explained that under the current policy, the Board secures the court reporter through its contract and incurs the cost. All costs related to the first day of hearing are paid by the Board except for the parties' transcripts. Each hearing day thereafter, the court reporter receives fees directly from the parties. Member Doi summarized the difference from the current practice as the parties select the court reporter of their choice and then the parties pay all costs instead of the Board paying for the first day of the hearing and providing the court reporter. This is correct. Ms. Parker added that the parties could use the Board's court reporter service if they wanted.

As indicated in the memo, the proposed revised policy is:

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of

Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the New Motor Vehicle Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel are responsible for purchasing their own transcript(s), if desired.

The staff recommended that the Board revise its existing policy so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts on the first hearing day for all merits hearings and dispositive motions. This would allow the parties to timely secure the court reporter of their choice and ensure any special requests are met.

Member Stevens moved to adopt the staff recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

As a follow-up question, Member Doi asked if the revised policy required proceeding through the rulemaking process with the Office of Administrative Law. Ms. Parker indicated that the Board has regulatory authority in place to allocate the costs entirely to one of the parties or to apportion the costs among the various parties. (Cal. Code Regs., tit. 13, § 551.7) The Board has discretion or can assume all of the costs. The revised policy just allocates the costs exclusively to the parties. Member Doi requested that since there will not be a public process, before making the change, if the staff get any comments or concerns expressed by the parties about the change to notify the Board. Ms. Parker indicated she would.

11. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

The members were provided a memo from Tim Corcoran concerning Board development activities. Mr. Corcoran suggested educational presentations by our colleagues at the Department of Motor Vehicles for future Board Development in a "Meet the DMV Series."

Member Doi encouraged new members to suggest topics that would be helpful to understanding the Board and encouraged the Dealer Members to suggest topics they think would be helpful to the Public Members to better understand the industry.

President Kassakhian added that he thinks it is great to be at the Department of Motor Vehicles' headquarters. It is an opportunity to learn more about their operations and for the Department to learn more about the Board.

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

12. **UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

Mr. Corcoran and Ms. Parker provided the members with an update regarding the Board's compliance with the 1996 performance audit. As indicated in the memo, the chart below provides a brief summary of the updates to the corrective action plan taken by the Board:

Finding No.	Description	Update
9	Issue memo for reorganization.	The Office of Administrative Law was added to the Board's "Merit Hearings Judge Assignment Log," so it is next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH outside the normal rotation, the Executive Director will seek Executive Committee permission.
15	Board delegations are not formalized.	Reflects updates to the Board adopted delegations.
24	The computer system needs additional physical security devices.	Locks are provided for all laptops. The Board's server is managed/housed by DMV IT and is subject to their mitigation protocols. Smoke detectors are managed by DMV Facilities and are subject to Fire Marshall rules.
30(31)	Board staff do not have access to written guidance on appropriate behavior.	All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document.

Member Doi questioned Finding 30(31) as it seemed passive to have staff look for written guidance. Miss Kindel indicated that in addition to the DMV Driver, all staff are annually provided the expectations document. It is signed by staff and outlines the policies for proper behavior. Staff do not have to search for this written guidance.

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

13. **REPORT ON NON-SUBSTANTIVE CHANGES SUGGESTED BY THE OFFICE OF ADMINISTRATIVE LAW TO THE FOLLOWING REGULATIONS - EXECUTIVE COMMITTEE**

- a. Request for Informal Mediation (13 CCR § 551.14)
- b. Contents (13 CCR § 555)
- c. Procedure at Hearings (13 CCR § 580)
- d. Format of First Page; Format and Filing of Papers (13 CCR § 595)

The members were provided with a memo from Tim Corcoran and Robin Parker concerning non-substantive changes to the proposed regulatory text of Sections 551.14, 555, 580, and 595 of Title 13 of the California Code of Regulations, as summarized below:

- 1. Request for Informal Mediation (13 CCR § 551.14): In subparagraph (c)(2), “residence addresses and business” could not be deleted as OAL deemed these substantive changes.
- 2. Contents (13 CCR § 555): In subparagraph (a), the replacement of “he or she appears” with “appearing” was approved by the Board but inadvertently not underlined when submitted to OAL so the underline was added. OAL suggested replacing “his or her” with “petitioner’s” in subparagraph (a). In subparagraph (b) “residence addresses and business” could not be deleted as OAL deemed these substantive changes.
- 3. Procedure at Hearings (13 CCR § 580): In subparagraph (c), OAL suggested replacing “him or her” and “him” with “the witness” and “his or her” with “their” so this section is gender neutral.
- 4. Format of First Page; Format and Filing of Papers (13 CCR § 595): In subparagraphs (a)(1), (d), and (e), references to “facsimile” could not be deleted as OAL deemed this a substantive change. In subparagraph (a)(1), references to office and residence address could not be deleted as OAL deemed these substantive changes.

Ms. Parker commented that the proposed changes determined to be substantive will be added to future rulemaking. The Executive Committee approved the changes suggested by the Office of Administrative Law, which enabled the Board to move forward with the rulemaking packet. These regulations were operative upon publication because they are non-substantive.

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

14. **REPORT ON THE BOARD’S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

- a. Report on the Board’s Financial Condition for the 3rd Quarter of Fiscal Year 2022-2023.

- b. Status report concerning the Board's collection of the Annual Board 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.

The members were provided with a memo from Tim Corcoran, Dawn Kindel and Suzanne Luke. Ms. Luke indicated that the third quarter of Fiscal Year 2022-2023 began with a budget appropriation of \$2.03 million, ending with \$2.5 million reserve balance. Sixty percent (60%) of the appropriated budget for the third quarter was expended. There is no need for fee structure adjustments.

Ms. Luke indicated that the annual collection of fees from manufacturers and distributors began in July. Staff have collected \$641,857.00 of the \$767,248.00 from manufacturers and distributors under the Board's jurisdiction.

Mr. Corcoran thanked the Department of Motor Vehicles for providing hoteling space for the Board at their headquarters. This resulted in the Board saving more money than it normally would. Additionally, as staff continue to examine OAH for handling merits hearings, this time period is being used to study what the actual costs are for making that transition.

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

15. **DISCUSSION REGARDING THE 2024 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE FOCUSING ON "INDUSTRY SERVICES" SUCH AS AN OVERVIEW OF BOARD PROGRAMS AND THE DEPARTMENT OF MOTOR VEHICLES' INVESTIGATIONS DIVISION, OCCUPATIONAL LICENSING INSPECTIONS PROGRAM, AND THE NEWLY FORMED INDUSTRY SERVICES BRANCH - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran discussed focusing on "Industry Services" for the 2024 Industry Roundtable to include an overview of Board programs and the Department of Motor Vehicles' Investigations Division, Occupational Licensing Inspections Program, and the newly formed Industry Services Branch. Instead of focusing on specific topics like equity and electric vehicles, equity in the industry in terms of manufacturer support for minority dealer ownership, or the State's transition to entirely electric vehicles, the staff is proposing a return to the traditional purpose of the Roundtable. The Roundtable would be an opportunity to update the industry and public on changes at the Board and also at the Department of Motor Vehicles.

Trina Washington, Deputy Director of Operations for the Department of Motor Vehicles ("Department"), described the Department's recent reorganization and modernization. She noted that in everything it does, the Department is always focused on how it can make it easier for its customers, team members, and all Californians. The Department is also focused on modernization by getting away from the legacy database built in the 1960s towards a more modernized cloud-based solution.

In July 2022, under Director Gordon, the Department underwent a major reorganization so basically all of the policy functions moved to a specific division called policy and all of the operations functions came to operations. The Operations Division has six branches as follows:

- The Driver's License Branch handles all of the backend processing for driver's license ID cards that are processed throughout the state as well as salesperson cards.
- The Registration Services Branch and the Registration Resolution Branch handle all the miscellaneous registration transactions that either a field office can't handle or they come through the Department's remittance processing.
- The Document Services Branch handles all the incoming and outgoing mail for the Department and all of the digital imaging, so all the titles and documents that are presented to the Department are imaged and kept in electronic files.
- The Internal Staff Services Branch helps with administrative functions.
- The Industry Services Branch is led by Branch Chief Ailene Short and has a total of five units under her.
 - The Information Release Unit processes any government or law enforcement request for information.
 - The Business Partner Operations Unit focuses on reviewing all of the work that the business partners process. The BPA bridge allows business partners to electronically submit all their paperwork and it's imaged and then technicians review the imaged document rather than waiting for boxes of paper to arrive. This is a modernization effort.
 - The International Registration Plan for heavy commercial vehicles operating in more than one state. The Department collects the fees and portions them out to the states in which they operate.
 - The Motor Carrier Program was one of the Department's first units that allowed customers to renew their motor carrier permits online.
 - The Occupational Licensing Unit handles dealers, salespeople, and wholesalers. The Department is working on the first phase of the digital experience platform modernization program, which is the most important technology project that the department has and is getting off the legacy system and creating an online solution. In October 2022, DXP for Occupational Licensing was rolled out and allows online renewal.

Deputy Director Washington indicated that she is happy to partner with the Board and to continue educating and informing people of the really great things the Department is doing to make it better for all Californians.

President Kassakhian and Mr. Corcoran thanked Deputy Director Washington. Mr. Corcoran mentioned that the Roundtable is also an opportunity to hear from the industry itself through the Alliance for Automotive Innovation and the California New Car Dealers Association.

Member Doi asked the number of employees in the Operations Branch and how many are still working remotely. Deputy Director Washington indicated there are 1,400

employees and the number of employees that telework is small now given the paper shift back and forth.

As a dealer, Member Smith Boland thanked Deputy Director Washington for the Department's efforts because dealers also want to serve their customers and make it a great experience. All of the modernization efforts are better for everyone.

In response to Member Smith Boland's question concerning whether the Roundtable will be in person, Mr. Corcoran indicated that the Board would decide as there are advantages and disadvantages to in-person and virtual.

President Kassakhian indicated that as a resident of California, he appreciates the pilot program for the mobile driver's licenses the Department is initiating. For those who may have heard or not heard, at least 1.5 million Californians can sign up to have their driver's licenses on their telephones or on their Apple wallets through the Department and that's exciting.

Mr. Bento offered his thanks as well. He noted a couple of problems with Occupational Licensing's online system in terms of dealer acquisitions as the process was new and industry education was needed. Mr. Bento admires the tremendous work Deputy Director Washington has done to facilitate that transition because it's not easy. But he is confident that the industry, and California as a whole is going to be in a much better place.

President Kassakhian indicated that his preference is for the Board to strive for in-person activities and programs but also sees the value of hybrid programming.

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

16. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

a. Pending Legislation of Special Interest:

- (1) Assembly Bill 473 (Assembly Member Aguiar-Curry) - Motor vehicle manufacturers, distributors, and dealers.

b. Pending Legislation of General Interest:

- (1) Senate Bill 143 (Assembly Committee on Budget and Fiscal Review) - State Government (teleconference meetings under the Bagley-Keene Open Meeting Act)
- (2) Senate Bill 544 (Senator Laird) - Bagley-Keene Open Meeting Act: teleconference.

c. Pending Federal Legislation of General Interest: None

The members were provided with a memo from Tim Corcoran and Robin Parker concerning pending legislation that was supplemented with a handout at the meeting. Ms. Parker reported that there have been a number of changes to the legislation the staff is monitoring. She summarized the bills as follows:

- Assembly Bill 473, which adds three new protests to existing Vehicle Code section 3065.3. and makes a number of other changes to the 11700 series has been enrolled and presented to the Governor. (This bill was subsequently approved by the Governor.)
- Senate Bill 143 was already chaptered and is effective. This bill loosens the requirements under the Bagley-Keene Open Meeting Act by making it easier for the Board and other entities to hold teleconference meetings. This authorization expires on December 31, 2023.
- Senate bill 544 was enrolled and presented to the Governor on September 15th. (This bill was subsequently approved by the Governor.) This bill, unlike Senate Bill 143, requires at least one member of the Board to be physically present at each teleconference location and the teleconference location is open to the public. By contrast, a remote location as defined would not be open to the public and would not be noticed on the agenda. A majority of the members of the Board would have to all be physically present at a teleconference location. If any member attends by teleconference from a remote location, that is not a public location and there is anybody 18 years or older present in the room with them, they have to disclose the general nature of that person's relationship. Members need to visibly appear on camera for all open portions. The staff will continue to analyze this bill and provide an update at the next General Meeting.
- U.S. House of Representatives Bill 1435 modifies the waiver process under the Clean Air Act. It passed the house very quickly and was referred to the Senate environment and Public Works Committee.
- U.S. State Senate bill 2090 is very similar. The substance is the same as the House of Representatives bill with minor word choices and grammatical differences.

Member Doi inquired about the House of Representatives Bill 1435 and whether it is a reaction to Governor Newsom's initiative on zero emission vehicles in 2035.

Ms. Parker remarked that a summary of the bill references revoking any Clean Air Act waivers that California received between January 1, 2022 and the date that the bill becomes effective if the state standard directly or indirectly limits the sale or use of vehicles with internal combustion engines.

Mr. Corcoran commented that the bill would be broader because other states follow California's lead in this regard and have long utilized the EPA exemption process.

Mr. Bento added that he was in Washington the week prior to the meeting and that most observers did not think it is very likely that a democratic controlled senate will advance

this legislation, nor would a democratic president sign a bill like this into law. The goal of this bill would be to essentially void California's 2035 ZEV [zero emission vehicle] mandate and that is not likely to happen.

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

17. **DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES AND OFFICE OF ADMINISTRATIVE HEARINGS BY ASSIGNING CASES ACCORDING TO THE LAST DIGIT IN THE PROTEST NO. WHEN THE PROTEST IS FILED - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed revisions to the assignment of cases to Board Administrative Law Judges (ALJs) and OAH assigning cases according to the last digit in the Protest No. when the protest is filed.

As indicated in the memo, the process of assigning ALJs to Board cases has been modified over time to conform with the law and to fit the current needs of the Board. In 1998, the Board approved a numerical designation system for assigning ALJs. Under that system, an ALJ was assigned from a list based upon the last digit of the case no. Beginning in 2002, this system proved problematic as it resulted in an unequal distribution of cases especially when an assigned ALJ was unavailable for a significant period of time.

Beginning in 2002, there were a number of modifications to the numerical system that was eventually replaced in 2005 with the current system that assigns the merits hearing ALJ on a rotational basis at the Hearing Readiness Conference. This system has worked well over the years with several temporary and permanent modifications to meet the existing case management needs.

At the January 25, 2023, General Meeting, the Board added OAH to the "Merit Hearings Judge Assignment Log," so OAH would be next in line to preside over a protest hearing between a franchisee and franchisor.

This action was taken in response to a regulation CalPERS is proposing that would, for purposes of the Government Code, define "limited duration" employment "as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period." (Cal. Code Regs., tit. 2, § 574.1)

Adding OAH to the assignment log would allow the Board to evaluate if this is an effective long-term alternative if the Board is unable to retain its retired annuitant merits Administrative Law Judges. It would also highlight any statutory or regulatory changes that may be necessary if, in the future, the Board's merits hearings are referred to OAH.

All law and motion hearings and settlement conferences will continue to be heard by the Board ALJs up to the Hearing Readiness Conference. If counsel for the parties, at the

Hearing Readiness Conference, indicate they are prepared to go to hearing then the Board submits to OAH a Request for Hearing and takes no further action in the protest unless Protestant files a Request for Dismissal. The Hearing Readiness Conference is typically held 45 days prior to commencement of the merits hearing.

Given the limited number of matters that proceed to a merits hearing each year, at the April 28, 2023, General Meeting, the Board granted temporary discretion (not to exceed 3 years) to the Executive Director to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee approval.

The first protest assigned to OAH was scheduled for hearing on September 18, 2023. As the staff worked through this process and learned how hearing dates were assigned, it became apparent that notifying the parties at the Hearing Readiness Conference that their hearing is being transferred to OAH was not fair. Counsel have proceeded for many months accomplishing various pre-hearing tasks with an anticipation that the date selected for the hearing would remain unchanged. We learned that once the Board requests OAH preside over a matter, it could take several months for a hearing date due to the length (5-10 days) and complexity.

Given the broad discretion granted to the Executive Director, it was necessary to seek permission from the Executive Committee to institute an immediate change in how merits hearings were assigned. On July 31, 2023, Mr. Corcoran notified the Executive Committee that the ALJ needs to be assigned when the protest is filed similar to the numerical designation adopted in 1998. This eliminates any surprise as ALJ assignments are made when the protest is filed and the parties are notified at the initial telephonic Pre-Hearing Conference. Any delays can be accounted for in hearing dates if the matter is assigned to OAH. Additionally, more opportunities to assign hearings to OAH was factored in as reflected below:

- 1, 6 OAH
- 2, 7 Pipkin [Next Board ALJ in order]
- 3, 8 OAH
- 4, 9 Nelsen [Following Board ALJ in order]
- 5, 0 Woodward-Hagle [Following Board ALJ in order]

For new protests starting with Protest No. PR-2832-23, the ALJ was assigned based on the last digit of the case no. Protest No. PR-2832-23 was assigned to ALJ Pipkin. In consolidated matters such as Protest Nos. PR-2833-23 through PR-2836-23, OAH was assigned. The first protest in numerical order is always the lead case in consolidated matters and would be used for ALJ assignments. In the event a Board ALJ is not available, OAH would be the default.

For existing protests, ALJs will continue to be assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis.

In addition to the information provided in the memo, Ms. Parker added that a number of discussions and training sessions have been held with OAH ALJs. As we learn and move

forward with assigning matters, it is likely that this policy will evolve.

Member Smith Boland moved to adopt the staff recommendation that all new protests starting with Protest No. PR-2832-23 are assigned a merits ALJ from a list based on the last digit of the Protest No. when the protest is filed and for existing protests ALJs will continue to be assigned at the Hearing Readiness Conference on a rotational basis using the Merit Hearings Judge Assignment Log. Member Stevens seconded the motion. The motion carried unanimously.

18. **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 commented that the Executive Director's Report serves as a means for the Board and public to keep an active eye on various projects, both recurring and special projects that the Board, its committees, and staff are working on.

In addition to implementing the recently adopted policies pertaining to bilingual employees and Ad Hoc Committee review of all new and revised policies, Mr. Corcoran will host calls with the Government and Industry Affairs Committee, key stakeholders, and potential contributors to develop the 2024 Industry Roundtable. Similar calls will be held regarding strategies, opportunities, and specific goals regarding the repair rate of California registered vehicles still affected by the Takata airbag recall. Calls will also be held with the Board Development Committee to discuss potential Board education including "Meet the DMV Series." Lastly, at a future meeting, the Board's first-ever Strategic Plan will be discussed with the Board and most likely the Executive Committee to develop a strategic plan with equity embedded. This is an opportunity to find further synergies with CalSTA's Core-Four objectives within the Board's Strategic Plan.

Ms. Parker reported that she has been training ALJ Tammy Bayne. ALJ Bayne is also mentoring with ALJ Skrocki to receive additional training. A 3-hour training session with OAH was held in August. Training will begin shortly for Jason Rose, newly hired Attorney III.

Ms. Parker reported that after the partially published opinion from the Third Appellate District Court of Appeal was issued, Barber Honda filed a petition for review with the California Supreme Court on September 6, 2023. On behalf of the Board, John McGlothlin, Deputy Attorney General, filed a letter with the Court indicating that the Board was not going to respond unless the Court so requests. American Honda filed its answer. The Court has until October 31, 2023 to decide whether or not it's going to grant that petition for review. It could, however, grant itself an additional 30 days if it so chose. (After the meeting, the Court granted itself the additional 30 days.)

Regarding the Petition filed by Courtesy Subaru against Subaru of America, the

Department of Motor Vehicles requested an extension of time until January 31, 2024, to issue its findings. Ms. Parker handed out the request but no Board action was taken as this matter was not on the agenda. Ms. Parker mentioned that counsel for both parties were provided with a copy of the request for extension. This matter will be considered at a future meeting.

Lastly, Ms. Parker discussed the number of merits hearings this year in contrast to 2022, in which there were no hearings. An 8-day hearing is before OAH, on October 9, 2023, ALJ Woodward Hagle will preside over a 5-day hearing, ALJ Pipkin is tentatively presiding over a 3-day hearing mid-November, and ALJ Nelsen is tentatively presiding over a 5-day hearing in December. Hearings are tentatively set from February through May 2024.

Miss Kindel discussed the Board's move into its permanent facility at the Department's headquarters in Sacramento. Construction will begin soon with demolition. The facility will hopefully be completed by the summer of 2024.

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

19. **SELECTION OF BOARD MEETING DATES FOR 2024**

The Board members selected the following Board meeting dates for 2023 and 2024:

- December 8, 2023, General Meeting via Zoom and teleconference.
- February 22, 2024, General Meeting (location to be determined)
- June 12, 13, or 19, 2024, General Meeting (location to be determined) (After the meeting, the members selected June 13, 2024.)

The members took a lunch break and then convened in Closed Executive Session.

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

Discussion and consideration of personnel matters, by all members of the Board.

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 20(a).

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 20(b).

21. **OPEN SESSION**

The Board Members returned to Open Session. President Kassakhian announced there was no Board action taken in regard to Agenda Item 20.

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

No additional public comment was presented.

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

President Kassakhian reminded the Dealer Members in attendance, that they may not participate in, hear, comment or advise other members upon or decide Agenda Items 23-24.

President Kassakhian read the following statement “comments made by the parties or their counsel that are made regarding any proposed decision, ruling or order must be limited to matters contained within the administrative record of the proceeding. No other information or argument will be considered by the Board. These are adjudicative matters that will be deliberated on in closed Executive Session. Therefore, pursuant to subdivision (e) of Government Code section 11125.7, members of the public may not comment on this matter.”

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. (“TSV”)
Protest Nos. PR-2815-23

Oral comments were presented before the Public Members of the Board. Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Patrick D. Quinn, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent.

24. **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

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")
Protest Nos. PR-2815-23

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

The Public Members of the Board deliberated in closed Executive Session. Member Doi moved to adopt the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest. Member Stevens seconded the motion. The motion carried unanimously.

25. OPEN SESSION

The Public Members returned to Open Session. President Kassakhian announced the decision in Agenda Item 24.

Prior to adjourning the meeting, Member Doi commented on Dawn Kindel's decades of service to the Board as Dawn's retirement nears. As Member Doi reflected on her 10 years of service, she remarked that for 34 years, Dawn has been a constant with her gracious, calm and understated presence guiding the members along the way.

Dawn started at the Board as a student assistant in 1989 and now 34 years later she'll be retiring at the end of the year. Because Dawn has such a modest demeanor, Ms. Doi commented that many members may have no appreciation for how much she does for the Board except her colleagues on the Board. But there's no question that the Board would not be the robust and vibrant organization that it's been over the last three decades without Dawn's steady hand, continuity, and dedication.

In fact, without Dawn and Robin, Member Doi stated the Board literally would not have functioned during the difficult period when Bill Brennan's health was failing, and when he ultimately passed away while still serving as executive director. And Member Doi thinks that very challenging transition period six years ago was when for the first time that many of the members really understood and fully appreciated Dawn's loyalty, dedication, and importance to the Board. Additionally, Dawn has been instrumental in ensuring a smooth transition from the Board's prior location to the Department.

In addition to serving with great distinction on the staff of this Board, Member Doi noted that Dawn raised the profile of the Board on the national stage when she rose to the position of treasurer with the National Association of Motor Vehicle Boards and Commissions, and in that role brought the annual meeting to Sacramento in September 2019, which was an outstanding success, and a lot of work on the part of Dawn and her colleagues.

Today marks Dawn's final Board meeting so on behalf of the current members of the Board and the Board members who've served over the last 34 years, Member Doi wanted to thank Dawn for everything she's done for the Board, the transportation agency, and

the State of California. Dedicated public servants like Dawn are really the backbone and unsung heroes of our state government. Member Doi commented that the Board will miss Dawn and hopes to see her at future meetings.

Member Stevens commented that he appreciated Dawn's steady hand from day one and her kindness on a personal level.

President Kassakhian added that public service is a calling; we do it because we love helping people and making sure our state is better off. Dawn has led the way at the Board and provided guidance.

Dawn thanked everyone for the kind words and prepared a few remarks to share. She started in her twenties; working for the Board has been her life and Dawn will miss everyone. State service was her calling as Dawn loves helping people. Several memorable moments were discussed including the toll Bill Brennan's passing had on everyone, the hiring of Mr. Corcoran as the Executive Director, and transitioning the office in March 2020 to a virtual office so services continued to be provided to the public, employees were paid, and everyone was safe. Retirement is something Dawn is looking forward to as she plans to travel, go camping, and spend time with family and friends. She plans to stay in touch by monitoring the Board's website and may even attend a meeting.

Mr. Corcoran added that Dawn was the first person to congratulate and welcome him to the Board so graciously and that stands today as one of the most touching moments of his entire career. She has been so welcoming, supportive and helpful. Mr. Corcoran thanked Dawn and added that he will miss her and that she cannot be replaced.

In conclusion, President Kassakhian wished Dawn the best of luck and added that California is better off because of her.

26. **ADJOURNMENT**

Member Stevens moved to adjourn the meeting. Member Doi seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:06 p.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ardashes ("Ardy") Kassakhian
President
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on May 23, 2023, via Zoom and teleconference. Anne Smith Boland, Chair and Dealer Member called the meeting to order at 3:33 p.m.

Ms. Smith Boland welcomed everyone to the meeting.

Mr. Corcoran set forth the parameters of the meeting.

2. **ROLL CALL**

Ad Hoc Committee on Equity, Justice and Inclusion Members Present:

Anne Smith Boland, Chair
Jake Stevens, Member
Kathryn Ellen Doi, Member
Bismarck Obando, Member

New Motor Vehicle Board ("Board") Staff Present:

Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Danielle R. Phomsopha, Senior Staff Counsel
Suzanne Luke, Administrative Services Analyst
Navpreet (Penny) Bhatti, Mediation Analyst
Rabia Sadiq, Mediation Analyst
Alejandro Martinez, Legal Analyst

3. **DISCUSSION OF THE CALIFORNIA STATE TRANSPORTATION AGENCY
CORE FOUR AND OPPORTUNITIES FOR BOARD ALIGNMENT**

Mr. Corcoran discussed the California State Transportation Agency ("CalSTA") and its

Core Four Priorities and opportunities for Board alignment.

The following transportation-related entities are under CalSTA:

Board of Pilot Commissioners, California Highway Patrol, California Transportation Commission, Department of Transportation, Department of Motor Vehicles, High-Speed Rail Authority, Office of Traffic Safety, and New Motor Vehicle Board.

The CalSTA Core Four is the vision of CalSTA Secretary Toks Omishakin and consists of Safety, Equity, Climate Action, and Economic Prosperity.

- Safety is important because of the number of vehicles and vehicle related deaths in California. Nearly 10% of all 2021 traffic deaths in the U.S. occurred on California roadways.
- Equity is a priority in the transportation industry and it is important to actively consider equity in policy decisions and as part of the future of the industry. Historically, transportation decisions prioritized movement of vehicles over the movement of people. We also built a transportation system that in some cases had detrimental impacts in underserved communities.
- Climate Action has a specific and direct correlation to transportation.
- Economic Prosperity is a priority as the sale of motor vehicles is a large part of the California and national economy.

Mr. Corcoran noted there are many objectives under each of these categories, but there is a clear connection between each area and transportation and many opportunities for this Board to contribute to the success of CalSTA's vision.

4. **DISCUSSION AND CONSIDERATION OF NEW POLICIES AND OTHER CORE FOUR-RELATED RECOMMENDATIONS TO THE BOARD:**

- a) Adopt new Board policy requiring the Ad Hoc Committee on Equity, Justice, and Inclusion review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.
- b) Adopt new Board policy that recruitment and hiring practices shall be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees.

Mr. Corcoran recommended adopting a new Board policy requiring the Ad Hoc Committee review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.

Member Doi inquired as to what type of new or existing policies would fall under this concept. Mr. Corcoran outlined why revised policies were included and why it is important to consider equity when evaluating existing and new policies. The framework, scope and implementation of this policy were also reviewed and discussed.

Mr. Corcoran also recommended adopting a new Board policy that recruitment and hiring practices be designed and implemented with the goal of filling at least forty-four percent of Board public contact positions with bilingual employees.

There was a discussion about the value this policy adds to the Board and to the public. Census data shows forty-four percent of Californians speak a language other than English in the home. Current policies do not reflect this data and the Board's goal is to represent the State. This policy recognizes bilingual fluency as a desirable asset that compensates employees for this skill set.

Member Doi inquired if the concept was discussed with CalSTA and human resources. Mr. Corcoran advised that CalSTA is aware of this initiative and supportive of this policy. In addition, the Board has been working with human resources. There might be some challenges concerning how the human resource forms were prepared based on a statute requiring a language survey. Mr. Corcoran advised the survey was designed to determine a deficiency, not a limit on the number of bilingual employees that may be hired.

Member Obando sought clarification as to Board public contact positions and how many positions fall within this category. Member Doi inquired whether a bilingual employee should be specified as one that is certified by the state. Mr. Corcoran addressed the number of public contact positions, whether there are specific languages identified or counted, and the number of languages subject to the fluency examination or certification. There was further discussion about the number of positions, examinations and certification, and improvement of customer service by hiring candidates that are bilingual.

Member Obando and Chair Smith Boland sought clarification as to the number of current public contact employees that are bilingual. Mr. Corcoran advised that three of the current public contact employees are actively going through the process or have completed the process to become certified.

Member Doi supported adopting both proposals but addressed the logistics of bringing the policies before the Board and whether the Ad Hoc Committee should seek public comment. Mr. Corcoran recommended these policies be agendaized for the next Board meeting.

Member Stevens recommended consideration of Land Acknowledgment and pronoun usage. There was discussion about potential language for Land Acknowledgement for future adoption by the Board. Member Stevens identified potential resources for appropriate language for Land Acknowledgement. Member Obando also suggested using the California Natural Resources Agency. The Ad Hoc Committee agreed to review these resources to determine appropriate Land Acknowledgement for the Board's future consideration.

Member Obando suggested an outreach program to inform the public of the available languages offered. Member Doi also suggested placing the languages offered on the

Board's website and inquired what languages are offered. Miss Kindel advised that the Board is currently working to certify staff in Spanish and Punjabi.

Member Obando moved to adopt the CalSTA Core Four policies. Member Doi offered an amendment that the bilingual status be certified by the State. The amendment was accepted by Member Obando. Member Doi seconded the motion. The motion carried unanimously.

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

No additional public comment was presented.

6. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 4:18 p.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Anne Smith Boland, Chair
Ad Hoc Committee on Equity, Justice and Inclusion
New Motor Vehicle Board



Option 1



Option 2



Option 3



Option 4



Memorandum

Date : NOVEMBER 27, 2023

To : BOARD DEVELOPMENT COMMITTEE
KATHRYN E. DOI, CHAIR
BRADY SCHMIDT, MEMBER

From : TIMOTHY M. CORCORAN

Subject : UPDATE ON BOARD ACTIVITIES

In an effort to have on-going discussions regarding Board Member education and activities of interest, the Board Development Committee has suggested agendizing this topic at each Board Meeting.

In addition, educational presentations will be agendized for each Board Meeting. Board Members can advise staff of any topics on which they wish to receive more information or training, which will be added to the following list:

- Presentation on implementation of alternative fuel vehicles in mass transit
- Topics on Board procedure, including:
 - Writs of Administrative Mandate
 - Stipulated Decisions and Orders
 - Dealer Member Participation
 - Foundational Board published cases and their common application
 - Petitions
 - Case management procedures:
 - Paths a protest can take (law and motion, settlement, merits hearing)
 - Types of protests and the various burdens of proof
 - Role of the statutorily required notices and time to file a protest
 - Protests that do not require a notice

Update on Board Development Activities
Page 2
November 27, 2023

The information in this memorandum is provided for informational purposes only at the December 8, 2023, General Meeting. No Board action is required.

cc: Ardy Kassakhian, President



Memorandum

Date : November 20, 2023

**To : FISCAL COMMITTEE
BISMARCK OBANDO, CHAIR
ASHLEY DENA, MEMBER**

**From : SUZANNE LUKE
TIMOTHY CORCORAN**

Subject : REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 4TH QUARTER OF FISCAL YEAR 2022-2023

The following is a financial summary of the Board's expenditures and revenue through the 4th quarter of Fiscal Year (FY) 2022-2023.

Expenditures Fiscal Year 2022-23

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$2,028,000	\$398,894	\$422,273	\$393,981	463,716	\$349,136	17%

Revenue Fiscal Year 2022-23

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
\$2,920,000	\$1,659,011	\$4,579,011	\$1,639,042

Current Reserve Balance – \$2,900,147 balance after 4th Quarter Expenditures.

The Board expended 83% of its appropriated budget as of the 4th quarter.

For further information, I've attached revenue and expenditure details as well as the Board's fund condition breakdown.

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 closely monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.

- New Motor Vehicle Board (NMVB) Annual Fee – The NMVB annual collection of fees from manufacturers and distributors began in July. Staff have collected \$766,348.00 of the \$766,948.00 from manufacturers and distributors under NMVB jurisdiction.

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 (916) 244-6778 or Timothy Corcoran at (916) 445-1888.

Attachments as stated

cc: Ardy Kassakhian, President

Fourth Quarter Revenue and Expenditure Summary

Fiscal Year 2022-2023

Covers July 1, 2022 to June 30, 2023

REVENUES

New Dealer Licensing Fee:	\$761,905
Manufacturer and Distributor Fee	\$881,619
NMVB Filing Fee	\$11,600
Miscellaneous Services	\$2,381
Arbitration Program	\$1,506
Year-to-date total:	\$1,659,011

EXPENDITURES

Payroll

Full-Time staff salaries:	Budgeted Amount \$1,079,954	Expended \$895,446	Remaining Balance \$184,508
Part-Time staff salaries:	Budgeted Amount \$82,914	Expended \$55,800	Remaining Balance \$27,114
Benefits:	Budgeted Amount \$570,941	Expended \$451,281	Remaining Balance \$119,660

Operating Expense and Equipment

General Expense (includes equipment, office supplies, dues, legal library, etc.)
Budgeted Amount \$24,003 Expended \$26,319 Remaining Balance \$-2,316

Rent: Budgeted Amount \$165,000 Expended \$105,424 Remaining Balance \$59,576

Facilities Planning: Budgeted Amount \$10,000 Expended \$4,119 Remaining Balance \$5,881

Professional Services (Attorney General): Budgeted Amount \$12,000 Expended \$85,037
Remaining Balance \$-73,037

Professional Services (Court Reporters): Budgeted Amount \$18,000 Expended \$34,022
Remaining Balance \$-16,002

TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount \$263,191; Expenditure Year to Date \$260,997 - 99%; Balance Remaining \$2,194 - 1%

GRAND TOTAL – Fiscal Year 2022-2023

Budgeted Amount \$2,028,000; Expenditure Year to Date \$1,678,864 - 83%; Balance Remaining \$349,136 - 17%

**Memorandum**

Date : NOVEMBER 15, 2023

**To : LEGISLATIVE COMMITTEE
ARDY KASSAKHIAN, CHAIR
JAKE STEVENS, MEMBER**

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

Subject : DISCUSSION CONCERNING ENACTED AND PENDING LEGISLATION

- a. **Enacted Legislation of Special Interest:** Assembly Bill 473 (Assembly Member Aguiar-Curry; Ch. 332, Stats. 2023).

Assembly Bill 473 was sponsored by the California New Car Dealers Association and chaptered on October 7, 2023. It is effective January 1, 2024. The following provides the Legislative Counsel's Digest, a detailed chart summarizing the Vehicle Code sections¹ impacted, and an overview of the changes and the programmatic impact.

Legislative Counsel's Digest: Motor Vehicle manufacturers, distributors, and dealers.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee in regard to a dispute with the vehicle manufacturer.

Existing law prohibits a franchisor from engaging in specified proscribed business practices. A violation of the Vehicle Code is punishable as an infraction.

This bill would prohibit additional acts, including allocating vehicles and parts inconsistent with specified standards.

Existing law prohibits a licensed manufacturer, manufacturer branch, distributor, distributor branch, or affiliate from engaging in specified proscribed business practices, including establishing or maintaining a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance, unless specified requirements are satisfied. A violation of the Vehicle Code is punishable as an infraction. This bill would prohibit additional acts, including exercising a right of first refusal in bad faith and implementing or modifying a vehicle reservation system for the sale or lease of motor vehicles that does not comply with specified requirements.

¹ All statutory references are to the Vehicle Code, unless otherwise indicated.

This bill would additionally provide that a licensed manufacturer, manufacturer branch, distributor, distributor branch, or affiliate is not unlawfully competing with a franchise by providing an update or repair of motor vehicle software over-the-air at no cost or by creating a new line of motor vehicles and using new or existing franchisees to sell and service those vehicles. The bill would also declare the severability of its provisions.

Because a violation of these new provisions would be punishable as a crime, the bill would impose a state-mandated local program.

The bill includes legislative findings and declarations and would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Legislative Findings:

The Legislature finds and declares all of the following:

(a) The distribution, sale, and service of new motor vehicles in California vitally affects the general economy of this state and the public welfare.

(b) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, ensures the consuming public of a well-organized distribution system for the availability and sale of new motor vehicles throughout the state, provides a network of quality warranty, recall, and repair facilities to maintain those vehicles, and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.

(c) The New Motor Vehicle Board provides an effective means to resolve disputes between manufacturers and dealers because it provides staff and judges with subject matter expertise and a successful alternative dispute resolution program, which reduces a significant burden on the superior courts. Additional authority is needed at the New Motor Vehicle Board to enforce violations of certain sections of the Vehicle Code related to franchise relations.

(d) It is the intent of this act to ensure that new motor vehicle dealers are treated fairly by their franchisors, that dealers are reasonably compensated for performing warranty repairs on behalf of their franchisors, that manufacturers are discouraged from adopting and enforcing policies contrary to California law and regulation, that dealers are adequately protected from excessive facility and equipment upgrade requirements, and that dealers can seek to address illegal manufacturer acts by filing protests at the New Motor Vehicle Board.

Overview of Changes that Impact the Board:

This bill adds three new protests in Section 3065.3 pertaining to: (1) the allocation of vehicles and parts; (2) facility or equipment policies pertaining to dualing, exclusive facilities, material alterations, or direct current fast charging stations; and (3) franchisor competition in violation of the Vehicle Code.

Programmatic Impact of Assembly Bill 473:

The programmatic impact is as follows:

Education/Outreach - Disseminate a public mailing in January 2024.

Publications - Update the *Guide to the New Motor Vehicle Board* in February 2024, and update the website by the second quarter of 2024.

Case Management - Determine if regulations need to be promulgated by December 2023; and update internal legal procedures, create protest letters and sample protests by the first quarter of 2024.

- b. **Enacted Legislation of General Interest:** Senate Bill 544 (Senator Laird; Ch. 216, Stats. 2023) - Bagley-Keene Open Meeting Act: teleconference.

Legislative Counsel's Digest: Bagley-Keene Open Meeting Act: teleconferencing.

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 body. The act authorizes meetings through teleconference subject to specified requirements, including, among others, that the state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, that each teleconference location be accessible to the public, that the agenda provide an opportunity for members of the public to address the state body directly at each teleconference location, and that at least one member of the state body be physically present at the location specified in the notice of the meeting.

This bill would enact an additional, alternative set of provisions under which a state body may hold a meeting by teleconference. The bill would require at least one member of the state body to be physically present at each teleconference location, defined for these purposes as a physical location that is accessible to the public and from which members of the public may participate in the meeting. The bill would, under specified circumstances, authorize a member of the state body to participate from a remote location, which would not be required to be accessible to the public and which the bill would prohibit the notice and agenda from disclosing. Specifically, the bill would authorize a member's remote participation if the other members who are physically present at the same teleconference location constitute a majority of the state body. The bill would also authorize a member's remote participation if the member has a need related to a disability and notifies the state body, as specified. Under the bill, that member would be counted toward the majority of members required to be

physically present at the same teleconference location. The bill would require a member who participates from a remote location to disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member's relationship with those individuals.

This bill would require the members of the state body to visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform unless the appearance would be technologically impracticable, as specified. The bill would require a member who does not appear on camera due to challenges with internet connectivity to announce the reason for their nonappearance when they turn off their camera.

This bill would also require the state body to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address the body, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for each teleconference location. The bill would require the telephonic or online means provided to the public to access the meeting to be equivalent to the telephonic or online means provided to a member of the state body participating remotely. The bill would require any notice required by the act to specify the applicable teleconference telephone number, internet website or other online platform, and physical address of each teleconference location, as well as any other information indicating how the public can access the meeting remotely and in person. If the state body allows members of the public to observe and address the meeting telephonically or otherwise electronically, the bill would require the state body to implement and advertise, as prescribed, a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, as specified. The bill would impose requirements consistent with the above-described existing law provisions, including a requirement that the agenda provide an opportunity for members of the public to address the state body directly, as specified. The bill would entitle members of the public to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments before the meeting or in writing.

This bill would provide that it does not affect prescribed existing notice and agenda requirements and would require the state body to post an agenda on its internet website and, on the day of the meeting, at each teleconference location designated in the notice of the meeting.

This bill would require the state body, upon discovering that a means of remote participation required by the bill has failed during the meeting and cannot be restored, to end or adjourn the meeting in accordance with prescribed adjournment and notice provisions, including information about reconvening.

Existing law authorizes a multimember state advisory body to hold an open meeting by teleconference pursuant to an alternative set of provisions that are in addition to the above-described provisions generally applicable to state bodies. Under those alternative provisions, a quorum of the members of the state advisory body must be in attendance at the primary physical meeting location, as specified, and all decisions taken during the meeting must be by rollcall vote.

This bill would remove the rollcall vote requirement and the requirement for a quorum in attendance at the primary physical meeting location. The bill, instead, would require at least one staff member of the state body to be present at the primary physical meeting location. The bill would require the members of the state body to visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform unless the appearance would be technologically impracticable, as specified. The bill would require a member who does not appear on camera due to challenges with internet connectivity to announce the reason for their nonappearance when they turn off their camera.

This bill would repeal the above-described provisions on January 1, 2026.

Existing law prohibits requiring a person, as a condition of attendance at a meeting of a state body, to register their name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to their attendance. Existing law requires an attendance list, register, questionnaire, or other similar document posted at or near the entrance to the room where the meeting is to be held, or circulated to persons present during the meeting, to state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

This bill would exempt from those provisions an internet website or other online platform that may require the submission of information to log into a teleconferenced meeting. The bill would permit a person to submit a pseudonym or other anonymous information when using the internet website or other online platform to attend the meeting.

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.

Legislative Findings:

This bill would make legislative findings to that effect.

The Legislature finds and declares that Sections 1, 2, 3, and 4 of this act, which add and repeal Section 11123.2 of, amend, repeal, and add Section 11123.5 of, and amend Section 11124 of, the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their

families while preserving the public's right to access information concerning the conduct of the people's business.

(b) During the COVID-19 public health emergency, audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and those public meetings have been productive, increased public participation by all members of the public regardless of their location and ability to travel to physical meeting locations, increased the pool of people who are able to serve on these bodies, protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(c) Conducting audio and video teleconference meetings enhances public participation and the public's right of access to meetings of the public bodies by improving access for individuals who often face barriers to physical attendance.

c. Pending Federal Legislation of General Interest:

- (1) **United States House of Representative Bill 1435** - Representative John Joyce (Introduced March 8, 2023; Reported in House September 1, 2023)
Status: On September 14, 2023, passed the House of Representatives. On September 18, 2023, referred to the Senate Environment and Public Works Committee
Support: Unknown
Opposition: Unknown
Short Title: "Preserving Choice in Vehicle Purchases Act"
Official Title: To amend the Clean Air Act to prevent the elimination of the sale of internal combustion engines.

This bill modifies the waiver process under the Clean Air Act related to state emission control standards for new motor vehicles (or new motor vehicle engines).

Under current law, states are preempted from adopting or enforcing emission control standards for new motor vehicles (or new motor vehicle engines) unless the Environmental Protection Agency (EPA) provides a waiver authorizing a state to adopt such standards if certain requirements are met.

The bill provides that state standards that directly or indirectly limit the sale or use of new motor vehicles with internal combustion engines are not eligible for waivers. The bill also prohibits the EPA from determining that any state standards amended after the bill's enactment are within the scope of an existing waiver.

Additionally, the bill requires the EPA to revoke waivers granted between January 1, 2022, and the date of enactment of this bill if the standards directly or indirectly limit the sale or use of new motor vehicles with internal combustion engines.

Committee on Energy and Commerce Report:

Section 2 (State Standards) of the bill contains three parts:

First, the section amends Clean Air Act (“CAA”) section 209(b), the conditions under which Environmental Protection Agency (“EPA”) can grant a waiver to a State for motor vehicle emission standards, by adding a requirement that the EPA cannot grant a waiver if the State directive “directly or indirectly” limits the sale or use of new motor vehicles with internal combustion engines.

Second, the section prevents the EPA from considering State standards amended after the date of enactment of this bill as having qualified under an existing waiver.

Third, section 2(b) revokes any CAA section 209(b) waivers that California received between January 1, 2022, and the date that H.R. 1435 becomes law if the State standard “directly or indirectly” limited the sale or use of new motor vehicles with internal combustion engines. As drafted, the Committee understands that Section 2(b) could apply to California’s Advanced Clean Cars II, Advanced Clean Cars I, Advanced Clean Trucks, Heavy-Duty Vehicle Engines Emission Warranty and Maintenance, Nonroad Engine Pollution Control Standards regulations, and the Advanced Clean Fleets regulation.

(2) **United States Senate Bill 2090** - Senator Markwayne Mullin (Introduced June 21, 2023)

Status: Senate Environment and Public Works

Support: Unknown

Opposition: Unknown

Short Title: “Preserving Choice in Vehicle Purchases Act of 2023”

Official Title: A bill to amend the Clean Air Act to prevent the elimination of the sale of motor vehicles with internal combustion engines.

The substance of this bill is nearly identical to H.R. 1435 with minor grammatical and style differences.

This matter is for information only at the December 8, 2023, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.



***EXECUTIVE
DIRECTOR'S
REPORT***

December 8, 2023

A.

ADMINISTRATIVE MATTERS

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Update Concerning Moving the Board's Offices to DMV Headquarters</u> Tim Corcoran	Update regarding moving of the Board's Offices upon the expiration of the current lease to DMV Headquarters.	Ongoing	In progress.
2. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2024	In progress. The revised Guide will be considered at the February 22, 2024, General Meeting.
<u>Revise Transcript Policy to Allocate Court Reporter Fees Exclusively to the Parties</u> Robin Parker	Revise the transcript policy so the parties are equally responsible for scheduling the court reporter and paying for all court reporter-related fees and costs for all merits hearings and dispositive motions.	September 2023	<u>Completed</u> The revised policy was adopted at the September 21, 2023, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Schedule Board Member Education Presentations</u> Tim Corcoran	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	Ongoing	In progress. Board education presentations will be made at every Board meeting.
2. <u>Solon C. Soteras Employee Recognition Award Recipient</u> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	June 2024	In progress. The nominee will be considered at the June 13, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
EXECUTIVE COMMITTEE			
1. <u>Annual review of Mission and Vision Statements</u> Tim Corcoran	Board will annually review its mission and vision statements.	June 2024	In progress. The Board's mission and visions statements will be reviewed at the June 13, 2024, General Meeting.
2. <u>Consider Amendments to Board delegations</u> Tim Corcoran, Robin Parker	Review and consider amendments to the Board adopted delegations in compliant with the 1996 Performance Audit	June 2024	In progress. Amendments to the Board adopted delegations will be considered at the June 13, 2024, General Meeting.
<u>Update concerning Board's Compliance with 1996 Performance Audit</u> Tim Corcoran, Robin Parker	Update regarding the Board's compliance with the 1996 Performance Audit and the resultant Corrective Action Plan	September 2023	<u>Completed</u> An update was provided at the September 21, 2023, General Meeting.
FISCAL COMMITTEE			
1. <u>Quarterly Financial Reports</u> Tim Corcoran, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
2. <u>Report Concerning Out-of-State Travel Plans</u> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the out-of-state travel plans for the upcoming fiscal year.	February 2024	In progress. Out-of-state travel plans for fiscal year 2024-2025 will be considered at the February 22, 2024, General Meeting.
3. <u>Status report concerning the Board's collection of the Annual Board Fee</u> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the Board's collection of the Annual Fee.	June 2024	In progress. A status report will be provided at the June 13, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
4. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	June 2024	In progress. A status report will be provided at the June 13, 2024, General Meeting.
5. <u>Proposed Board Budget for the Next Fiscal Year</u> Tim Corcoran, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2024-2025.	June 2024	In progress. The 2024-2025 Budget will be presented for consideration at the June 13, 2024, General Meeting.
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2023-2024.	September 2023	<u>Completed</u> The 2023-2024 Budget was presented at the September 21, 2023, General Meeting.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
1. <u>Develop a Core Four - Safety initiative related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator "stop drive" safety recall</u> Tim Corcoran	In conjunction with various stakeholders, review and identify strategies including consumer outreach to improve the rate of repair for California-registered vehicles subject to the Takata air bag inflator safety recall. Host future meeting to engage all Board members and the public.	Ongoing	In progress.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Host Board Industry Roundtable</u> Tim Corcoran, Robin Parker, Jason Rose	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. This year's focus will be on the Board's programs and the Department of Motor Vehicles' Investigations Division, Occupational Licensing Inspections Program, and the new formed Industry Services Branch.	TBD	In progress. The Industry Roundtable date and location is pending further discussion.
3. <u>Host Board Administrative Law Judge Roundtable</u> Robin Parker, Jason Rose	Host a Board Administrative Law Judge ("ALJ") Roundtable for purposes of education and training. Provide an opportunity for 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 may be scheduled 2024.
LEGISLATIVE COMMITTEE			
1. <u>Review of Pending and Enacted Legislation</u> Tim Corcoran, Robin Parker	The staff will provide an overview of enacted legislation of special and general interest, and pending federal legislation.	December 2023	In progress. A report will be provided at the December 8, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Review of Pending Legislation</u> Tim Corcoran, Robin Parker	The staff will provide an overview of pending legislation of special interest and general interest.	September 2023	<u>Completed</u> A report on pending legislation was presented at the September 21, 2023, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
<u>1. Report on the Assignment of Cases to Board Administrative Law Judges</u> Robin Parker	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	February 2024	In progress. A report on the assignment of cases to Board ALJs will be presented at the February 22, 2024, General Meeting.
<u>2. Annual Rulemaking Calendar</u> Jason Rose	Consideration of the annual rulemaking calendar.	February 2024	In progress. If applicable, the annual rulemaking calendar will be considered at the February 22, 2024, General Meeting.
<u>3. Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2024	In progress. The revised Guide will be presented at the February 22, 2024, General Meeting.
<u>4. Update the Export or Sale-For-Resale Prohibition Policy Guide</u> Robin Parker	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 2024	In progress. The revised Guide will be presented at the February 22, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>For New Protests, Assign Merits Hearings to Board ALJs and the Office of Administrative Hearings (OAH) Based on the Last Digit in the Protest No.</u> Robin Parker	For all new protests, assign merits hearing ALJs when the protest is filed based on the last digit in the protest no. (a numerical designation versus a rotational designation).	September 2023	<u>Completed</u> The revised policy was adopted at the September 21, 2023, General Meeting.
AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION			
<u>1. Develop Strategies for Board Consideration</u> Tim Corcoran	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. The Committee considered new policies at its May 23, 2023, that were adopted by the Board at the September 21, 2023, General Meeting.

B. CASE MANAGEMENT

CASE VOLUME

SEPTEMBER 6, 2023, THROUGH NOVEMBER 20, 2023

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	0	2	7
3060	Modification	0	0	14
3062	Establishment	0	0	1
3062	Relocation	3	3	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	1	7
3065.1	Incentive Program Reimbursement	0	0	1
3065.3	Performance Standard	0	0	0
3065.4	Retail Labor Rate or Retail Parts Rate	0	1	3
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	4	0	4
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	0	1
TOTAL CASES:		7	7	42

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	RFPD	Requests for Production of Documents
PSDO	Proposed Stipulated Decision and Order	ROB	Rulings on Objections
CROB	Continued Rulings on Objections	RROB	Resumed Rulings on Objections
SC	Status Conference	CSC	Continued Status Conference
* Consolidated, non-lead case			

PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
1.	PR-2501-17 1-19-17	Parties working on Proposed Stipulated Decision and Order	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification
2.	PR-2506-17* 1-23-17	Parties working on Proposed Stipulated Decision and Order	Rusnak/ Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	Protestant: Christian Scali Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification
3.	PR-2754-21 12-7-21	MH: 12-1, 4-5, 14-15, 23 (5 days)	Auto Gallery, Inc., dba Auto Gallery Mitsubishi - Corona v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, William F. Benson, Brandon L. Bigelow	Warranty
4.	PR-2755-21* 12-7-21	MH: 12-1, 4-5, 14-15, 23 (5 days)	Soraya, Inc., dba Auto Galley Mitsubishi - Murrieta v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, Brandon L. Bigelow	Warranty

December 2023 Executive Director's Report

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
5.	PR-2759-21 12-30-21	Post-Hearing Briefing Respondent's Opening: 12-7-23 Protestant's Response: 2-15-24 Respondent's Reply: 3-14-24 OAH's Proposed Decision: 4-15-24 Decision to parties: 4-25-24 Board action: 5-15-24	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Steven M. Kelso, Gwen J. Young, H. Camille Papini-Chapla	Retail Labor Rate
6.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 12-11-23	Motorrad LLC, a California limited liability company dba BMW Motorcycles of San Francisco v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
7.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Moto Miyako Inc., a California Corporation dba BMW Motorcycles of Burbank v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
8.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	O & O Motorrad, Incorporated, a California Corporation dba San Diego BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
9.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Central Coast Powersports LLC, a California limited liability company dba BMW Motorcycles of Ventura County v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
10.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	San Jose Motosport, Inc., a California Corporation dba San Jose BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
11.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Ride on Powersports, Inc., a California Corporation dba BMW Motorcycles of Riverside v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
12.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Motorrad LLC, a California limited liability company dba BMW Motorcycles of Concord v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
13.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
14.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 12-11-23	Winner Motorcycles, Limited Liability Company dba BMW Motorcycles of Santa Rosa v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

December 2023 Executive Director's Report

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
15.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 12-11-23	SEAVCO, a California corporation dba Irv Seaver Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
16.	PR-2803-22 9-15-22	Resumption of Merits Hearing pending	KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Jonathan R. Stulberg, John J. Sullivan	Retail Labor Rate
17.	PR-2807-22 11-14-22	HRC: 1-19-24 MH: 3-4-24 (5 days)	Universal Auto Group d/b/a Subaru of Glendale a California Corporation v. Subaru of America, Inc., New Jersey corporation; Los Angeles Motor Cars II, Inc., Intervenor	Protestant: Halbert B. Rasmussen Respondent: Lisa M. Gibson, Amy M. Toboco, Steven McFarland, Patrick Quinn Intervenor: Gavin M. Hughes, Robert A. Mayville, Jr.	Establishment

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
18.	PR-2808-22 11-14-22	HRC: 12-20-23 MH: 2-12-24 to 2-16-24; 2-26-24 to 3-1-24 (7 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian Respondent: Lisa M. Gibson, Amy M. Toboco, Steven McFarland, Patrick Quinn	Termination
19.	PR-2809-22 11-28-22	PSDO pending	Carmaddie LLC v. General Motors LLC	Protestant: Steve Barnhill Respondent: Ashley Fickel	Termination
20.	PR-2812-22 11-30-22	Parties working on settlement IFU: 12-15-23	San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Shaun Kim, Sarah Rathke, Nathan Leber	Franchisor Incentive
21.	PR-2819-23 4-20-23	Proposed Order Granting Respondent's MTD pending Board consideration 12-8-23	Soraya, Inc., dba Auto Galley Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, Brandon L. Bigelow	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
22.	PR-2821-23 5-11-23	RROB: 12-4-23 HRC: 2-2-24 MH: 3-18-24 (5 days)	Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Ashley Fickel	Modification
23.	PR-2822-23 5-12-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)
24.	PR-2823-23* 5-19-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
25.	PR-2824-23* 5-19-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
26.	PR-2826-23 5-25-23	HRC: 2-28-24 MH: 4-15-24 (10 days)	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Steve Kelso, Camille Papini-Chapla, Elayna Fiene, April Connally	Warranty
27.	PR-2827-23 6-1-23	Parties working on settlement	72 Hour LLC. dba Chevrolet of Watsonville, a California limited liability company v. General Motors LLC, a Delaware Limited Liability Company	Protestant: Halbert B. Rasmussen Respondent: Ashley Fickel	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
28.	PR-2829-23 6-16-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
29.	PR-2831-23 6-30-23	Continued MTD hearing: 12-14-23	Oakland Auto Ventures, Inc. d/b/a Volkswagen of Oakland v. Volkswagen of America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Patrick Quinn	Retail Parts Rate
30.	PR-2833-23 7-19-23	Settlement Agreement is pending	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Chrysler]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
31.	PR-2834-23* 7-19-23	Settlement Agreement is pending	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Dodge]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
32.	PR-2835-23* 7-19-23	Settlement Agreement is pending	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Jeep]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
33.	PR-2836-23* 7-19-23	Settlement Agreement is pending	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [RAM]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
34.	PR-2837-23 7-21-23	Parties working on settlement	BMNVT Motors LLC dba Serramonte Ford, a Delaware limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor P. Danhi, Franjo M. Dolenac Respondent: Steve Kelso, Camille Papini-Chapla, Elayna Fiene, April Connally	Relocation
35.	PR-2840-23 9-18-23	Parties working on settlement SC: 11-20-23	Western Auto Experts, Inc., dba Barber RV v. Forest River, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
36.	PR-2841-23 9-18-23	Parties working on settlement SC: 11-20-23	Western Auto Experts, Inc., dba Barber RV v. Thor Motor Coach, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
37.	PR-2842-23 9-18-23	Parties working on settlement SC: 11-20-23	Western Auto Experts, Inc., dba Barber RV v. Winnebago Industries, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
38.	PR-2843-23 9-18-23	Parties working on settlement SC: 11-20-23	Western Auto Experts, Inc., dba Barber RV v. Winnebago of Indiana, LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
39.	PR-2844-23 11-6-23	PHC: 11-27-23	Knight Sunrise Fontana LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor Danhi, Franjo Dolenac Respondent:	Relocation

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
40.	PR-2845-23 11-7-23	PHC: 11-27-23	Chino Ford, LLC, dba Chino Hills Ford, a limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Alton Burkhalter, Ros Lockwood Respondent:	Relocation
41.	PR-2846-23 11-8-23	PHC: 11-27-23	Ford of Upland, LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Jason D. Annigian, James T. Ryan Respondent:	Relocation

PETITIONS

CASE NUMBER/ DATE FILED	STATUS	PETITION NAME	COUNSEL
P-463-22 6-20-22	<p>Petitioner's relief granted pursuant to Section 3050(b)(1)</p> <p>Referred to DMV Investigations</p> <p>Request for extension to conduct investigation and submit report pending consideration at the December 8, 2023, General Meeting</p>	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	<p>Petitioner: Gavin M. Hughes, Robert A. Mayville, Jr.</p> <p>Respondent: Lisa M. Gibson, Amy M. Toboco</p>

C. 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 section 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure section 1084).

1. 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 address it, 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.

By notice dated January 27, 2022, the Court determined that this case is not suitable for mediation. The Court issued an order dated January 27, 2022, in this regard and all proceedings in the appeal are to recommence as if the notice of appeal had been filed on January 27, 2022.

The record was filed with the Court of Appeal on June 28, 2022. On August 12, 2022, Barber Honda associated with Douglas J. Collodel, Esq. of Clyde & Co US LLP.

December 2023 Executive Director's Report

Barber Honda requested a 30-day extension to file its brief, which was granted on September 6, 2022. Barber Honda's opening brief was filed October 7, 2022, American Honda, Galpinsfield, and the Board's briefs were due on November 7, 2022, but continued to December 7, 2022, at the Board's request. The Board's brief was filed within the grace period on December 16, 2022. Barber Honda's combined reply brief was due on December 27, 2022, but continued to February 6, 2023.

By letter dated April 11, 2023, the Court of Appeal indicated that it is prepared to render a decision without hearing oral argument but parties could request oral argument by April 21, 2023. Barber Honda requested oral argument on April 19, 2023, which was presented on June 27, 2023.

On July 24, 2023, the Court of Appeal affirmed the judgment in favor of the Board in its entirety. The Opinion was certified for partial publication. In the published portion of the opinion, the court held that:

- The Board properly determined that the burden of proof did not switch to the manufacturer to prove reasonableness of performance standards.
- The court reasoned that the competing statutes (3066 and 11713.13(g)) were irreconcilable, and that to adopt Barber's construction would entail a rewriting of the statute for establishment protests. The court found that this would be improper because it would be contrary to the legislative intent to place the burden solely on the dealer in an establishment protest.

In the unpublished portion, the court rejected Barber's claims that the peremptory challenge process was improper and that the Board should have taken official notice of the pandemic.

Barber Honda filed a Petition for Rehearing on August 8, 2023 that was denied the following day. *On September 1, 2023, Barber Honda filed a Petition for Review with the California Supreme Court. On September 6, 2023, the Board filed a letter to respectfully inform the Court that the Board does not intend to file an answer to the Petition for Review, unless one is requested by the Court. American Honda filed an answer to the Petition for Review. Barber Honda filed its reply on September 29, 2023. The Court had until October 31, 2023 to decide the Petition for Review but granted itself a 30 day extension until November 30, 2023. On October 25, 2023, the California New Car Dealers Association filed an amicus letter in support of Barber Honda's Petition for Review. On November 15, 2023, the Court denied Barber Honda's Petition for Review. The Remittitur was issued on November 16, 2023. The Court awarded costs to Respondents. Historically, the Board does not seek costs.*

This matter is closed and will not be reported on future Executive Director Reports.

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

SEPTEMBER 6, 2023, THROUGH NOVEMBER 20, 2023

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

SECTIONS 3060/3070

Manufacturer	Number of Notices
BMW/Mini	14
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	
Hyundai/Genesis	
Kia	
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	1
Volkswagen/Audi	
Miscellaneous Car	
Miscellaneous Motorcycles	21
Miscellaneous Recreational Vehicle	
Total	36

SECTIONS 3062/3072

Manufacturer	Number of Notices
BMW	
Ford	4
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	
Hyundai/Genesis	
Kia	
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	1
Total	5



STATE OF CALIFORNIA

MEMO

To: STEVEN GORDON
Director
Department of Motor Vehicles

Date: February 13, 2023

From: TIMOTHY M. CORCORAN
Executive Director
New Motor Vehicle Board
(916) 445-1888

Subject: FORMAL REQUEST

At the January 25, 2023, General Meeting, the Public Members of the New Motor Vehicle Board ("Board") unanimously decided to refer Petition No. P-463-22 *Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.* to the Department of Motor Vehicles ("Department") to conduct an investigation pursuant to subdivision (b)(1) of Vehicle Code section 3050¹ concerning whether Subaru of America, Inc. violated Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l). Petitioner is a licensed vehicle dealer and franchised Subaru dealer. Respondent is a licensed distributor and the franchisor of Courtesy.

The Board respectfully requests this matter be investigated. A written report on the results of the Department's investigation should be provided to the Board within 180 days of the Board's January 26, 2023 "Order Granting Petitioner's Request for Relief Pursuant to Vehicle Code Section 3050(b)(1)" or within a reasonable time as requested by the

¹ Section 3050 provides in pertinent part as follows:

The board shall do all of the following:

...

(b) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. . . . After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

...

Department. (See Attached Order)²

A certified electronic copy of the administrative record is available. Once this matter has been assigned, the Board's legal staff will make arrangements to provide the record. Of note, there are confidential documents that have been sealed by the Board. The January 25, 2023, Board Meeting transcript has been requested and will be forwarded upon receipt.

If you have any questions or require additional information, please do not hesitate to call me at (916) 244-6774 or Robin Parker, Chief Counsel at (916) 244-6776.

Attachment: as stated

cc: Public Member Doi
Public Member Kassakhian
Public Member Obando
Public Member Stevens

John T. McGlothlin, Deputy Attorney General

Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
Attorneys for Petitioner

Lisa M. Gibson, Esq.
Amy M. Toboco, Esq.
Nelson Mullins Riley & Scarborough LLP
Attorneys for Respondent

² On February 3, 2023, Subaru filed a motion for reconsideration of the Board's Order. By notice dated February 10, 2023, this motion was rejected for filing. The documents pertaining to this are included in the administrative record.

NEW MOTOR VEHICLE BOARD
P.O. Box 188680
Sacramento, California 95818-8680
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of

COURTESY AUTOMOTIVE GROUP, Inc., dba
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**ORDER GRANTING PETITIONER'S
REQUEST FOR RELIEF PURSUANT
TO VEHICLE CODE SECTION
3050(b)(1)**

To: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Attorneys for Petitioner
LAW OFFICES OF GAVIN M. HUGHES
3436 American River Drive, Suite 10
Sacramento, California 95864

Lisa M. Gibson, Esq.
Amy Toboco, Esq.
Attorneys for Respondent
NELSON MULLINS RILEY & SCARBOROUGH
19191 South Vermont Avenue, Suite 900
Torrance, California 90502

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At its regularly scheduled meeting of January 25, 2023, the Public Members of the New Motor Vehicle Board met and considered the above-entitled petition. After consideration, the Public Members of the Board unanimously granted the relief requested in the petition as follows: The Board will direct the Department of Motor Vehicles to conduct an investigation pursuant to subdivision (b)(1) of Vehicle Code section 3050 concerning whether Subaru of America, Inc. violated Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l). The Board requests that the Department of Motor Vehicles provide the Board with a written report on the results of its investigation within 180 days of the date of this order or a reasonable time as requested by the Department.

SO ORDERED.

DATED: January 26, 2023

NEW MOTOR VEHICLE BOARD

By Bismarck Obando
BISMARCK OBANDO
President