



***R O S T E R***  
***NEW MOTOR VEHICLE BOARD***

2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818

<b><u>NAME</u></b>	<b><u>APPOINTING AUTHORITY</u></b>	<b><u>STATUS</u></b>
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
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
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 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818  
Telephone: (916) 445-1888  
Board staff contact: Alex Martinez  
[New Motor Vehicle Board website](#)  
DMV press contact: (916) 657-6438  
[dmvpublicaffairs@dmv.ca.gov](mailto:dmvpublicaffairs@dmv.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**A G E N D A**  
**GENERAL MEETING**

Department of Motor Vehicles  
2415 1<sup>st</sup> Avenue  
Assembly Room 6<sup>th</sup> Floor  
Sacramento, California 95818  
(916) 445-1888

August 9, 2024

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)

The meeting is being held at the Department of Motor Vehicles' Headquarters in Sacramento located between Broadway and 24<sup>th</sup> Street. Attendees need to check in at the security desk on the 1<sup>st</sup> floor to receive a visitor's badge. Guest parking passes are available in advance by emailing the Board at [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov) or can be requested on the day of the meeting in the lobby. Board staff will be available to answer any questions and escort attendees from the lobby to the meeting room.

1. **10:00 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Pledge of Allegiance.**
4. **Introduction and welcome of newly hired Assistant Director and Equity Officer, Kimberlee Vaye.**

5. **Approval of the Minutes from the April 25, 2024, General Meeting, and June 28, 2024, Special Meeting.**
6. **Presentation of Resolution to Ryan Fitzpatrick, former Dealer Board Member.**
7. **Presentation of Resolution to the California New Car Dealers Association to commemorate their 100<sup>th</sup> Anniversary.**
8. **Appointment of Vice Chair to the Ad Hoc Committee on Equity, Justice and Inclusion, by the Board President.**
9. **Introduction and welcome of Christina Spagnoli, Assistant Chief Deputy Director, Department of Motor Vehicles - Board Development Committee.**
10. **Consideration of presentation of Resolution to Anthony M. Skrocki, designated Law and Motion Administrative Law Judge.**
11. **Discussion and consideration of the Board's mission and vision statements - Executive Committee.**
12. **Discussion and consideration of creating an Ad Hoc Committee to Review the Board's Mission and Vision Statements, by the Board President.**
13. **Appointment of members to the Ad Hoc Committee to Review the Board's Mission and Vision Statements, by the Board President.**
14. **Consideration of nominee for the Solon C. Soteras Employee Recognition Award recipient as recommended by the Board Development Committee.**
15. **Update on Board Development Activities - Board Development Committee.**
16. **Review and consideration of Board delegations in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency - Executive Committee.**
17. **Report on the Board's financial condition and related fiscal matters - Fiscal Committee.**
  - a. **Report on the Board's Financial Condition through the 3<sup>rd</sup> quarter of Fiscal Year 2023-2024.**
  - b. **Report concerning the Board's collection of its Annual Board Fee.**
  - c. **Status report concerning the Board's collection of the Arbitration Certification Programs' annual fee.**
  - d. **Discussion and consideration of the Board's proposed budget for the current fiscal year.**

**18. Discussion concerning pending legislation - Legislative Committee.**

- a. Pending Legislation of Special Interest: None
- b. Pending Legislation of General Interest:
  - (1) Assembly Bill 1777 (Assembly Member Ting) - Autonomous vehicles.
  - (2) Assembly Bill 2286 (Assembly Members Aguiar-Curry, Friedman, and Kalra) - Vehicles: autonomous vehicles.
  - (3) Assembly Bill 2401 (Assembly Member Ting) - Clean Cars 4 All Program.
  - (4) Assembly Bill 3061 (Assembly Member Haney) - Vehicles: autonomous vehicle incident reporting.
  - (5) Senate Bill 915 (Senator Cortese) - Local government: autonomous vehicle service.
  - (6) Senate Bill 961 (Senator Wiener) - Vehicles: safety equipment.
- c. Pending Federal Legislation of General Interest: None

**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.

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

**21. Adjournment.**

<p>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 <a href="mailto:Alejandro.martinez2@dmv.ca.gov">Alejandro.martinez2@dmv.ca.gov</a>.</p>
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## Memorandum

**Date : JULY 25, 2024**

**To : PUBLIC BOARD MEMBERS**

**From : TIMOTHY M. CORCORAN**

**Subject : UPCOMING EVENTS**

The following highlights the upcoming Board and industry events:

- August 9, 2024, General Meeting (Sacramento)
- September 22-26, 2024, AAMVA (American Association of Motor Vehicle Administrators) and NAMVBC (National Association of Motor Vehicle Boards and Commissions) Conference (Atlanta, Georgia)
- November 1, 2024, General Meeting (Glendale)
- November 21, 2024, AutoMobility LA (formerly Los Angeles Auto Show Press and Trade Days; Los Angeles):
- January 23-26, 2025 NADA Show 2024 (New Orleans)
- February 2024, General Meeting (location to be determined)
- March 2025 Industry Roundtable in conjunction with CNCDA's Dealer Day (Sacramento)

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 25, 2024, at the Department of Motor Vehicles Headquarters in Sacramento in the Assembly Room.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 8:37 a.m.

**2. ROLL CALL**

Board Members Present: Anne Smith Boland [left at 1:58 p.m.]  
Ashley Dena  
Kathryn Ellen Doi  
Ardashes “Ardy” Kassakhian  
Bismarck Obando [left at 2:01 p.m.]  
Brady Schmidt

Board Members Not Present: Karthick Ramakrishnan  
Jacob Stevens

Board Staff Present: Timothy M. Corcoran, Executive Director  
Robin P. Parker, Chief Counsel  
Jason Rose, Senior Staff Counsel  
Tammy Bayne, Administrative Law Judge  
Suzanne Luke, Administrative Services Analyst  
Alex Martinez, Staff Services Analyst  
Navpreet (Penny) Bhatti, Mediator Analyst

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

**3. PLEDGE OF ALLEGIANCE**

Member Schmidt led the members and staff in the Pledge of Allegiance.

4. **UPDATE ON THE CALIFORNIA STATE TRANSPORTATION AGENCY (CALSTA) BY UNDERSECRETARY MARK TOLLEFSON - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian and Mr. Corcoran welcomed California State Transportation Agency (CalSTA) Undersecretary Mark Tollefson. Prior to his appointment, Undersecretary Tollefson worked for Governor Newsom's Office as a deputy cabinet secretary working with housing, homelessness, and transportation issues along with infrastructure coordination towards the end of his tenure. Prior to this, Undersecretary Tollefson work for the Department of Finance for 12 years in a variety of roles.

Undersecretary Tollefson explained that California is unique in that it is one of several other states that has agencies over its departments. The Secretary of CalSTA, Toks Omishakin, is part of the Governor's cabinet and CalSTA is responsible for carrying out the Governor's vision and implementing policy amongst all of its eight departments, boards, and commissions. CalSTA is guided by what are called their Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity.

CalSTA's first ever Strategic Plan was recently released. This will guide its decisions over the next three years and it aligns with its Core Four priorities. Its mission is: "We lead people-first transportation [programs and policies] to enhance safety, equity, climate action and economic prosperity for all Californians." And, the vision is: "Whoever you are, wherever you live, every person has access to a safe, sustainable and convenient transportation system throughout California." For CalSTA's plan, it not only looked at its Core Four goals but also added innovation and mobility, not just from a car perspective but a multimodal perspective to make sure people are able to get to locations quickly and safely.

In 2021, CalSTA developed what is called "CAPTI," which means Climate Action Plan for Transportation Infrastructure. This makes sure CalSTA is thinking about opportunities to reduce vehicle miles traveled and greenhouse gases while ensuring it safely gets people from Point A to Point B. There were 34 different actions created of which 25 have been completed and the remaining nine will be completed by June.

Undersecretary Tollefson explained that while CalSTA guides policy decisions, it actually implements a couple of programs. The Transit and Intercity Rail Capital Program has invested more than \$10 billion since 2015, and has allowed CalSTA to move forward with 132 different projects, all in the rail and transit space. CalSTA is also leading a Transit Transformation Task Force, which was established by Senate Bill 125 (Chapter 54, Statutes of 2023). Undersecretary Tollefson chairs this task force.

Next, the Undersecretary discussed safety as this is also a focus along with equity. He indicated that in 2022, there were about 43,000 roadway deaths in the United States with 10% or 4,400 in California, which averages 12 per day. Commenting on equity, Undersecretary Tollefson indicated that as a government we need to think about our programs and policies to really have equity embedded.

An additional CalSTA program, Reconnecting Communities: Highways to Boulevards, works with communities to address issues of air quality, the division that the highways have made by cutting off communities that makes it difficult to get to a grocery store, and how better pathways for individuals can be created.

The Undersecretary discussed the 15-member Equity Advisory Committee that helps CalSTA make recommendations and looks at policies and guidelines to make sure CalSTA is engaging with the community and keeping equity as a priority as its programs are built into the future.

In regard to equity, the Undersecretary mentioned the Investment in Infrastructure and Jobs Act and Inflation Reduction Act. CalSTA has secured significant investments in transportation infrastructure. Discretionary federal funds have been secured along with \$3 billion for the High Speed Rail.

Lastly, the Undersecretary discussed the Port and Freight Infrastructure Program, which supports ports and freight and goods movement coming out of the ports. CalSTA was able to launch \$1.2 billion. Undersecretary Tollefson noted that the ports in California handle about 40% of our imports and 30% of all the exports in the U.S.

The Undersecretary answered a number of questions posed by the members including how to change the mindset of Californians that are “car centric” to consider alternative forms of transportation, equity and electrification, the road charge pilot program and Senate Bill 1, and power generation that can fuel the energy to charge the electric vehicles (“EV”). Additional member questions were answered after Secretary Omishakin’s remarks.

President Kassakhian welcomed CalSTA Secretary Toks Omishakin who was appointed by Governor Newsom in February 2022. Secretary Omishakin has oversight over the eight departments, boards and commissions the Undersecretary mentioned, which includes more than 42,000 people with a budget exceeding \$30 billion annually.

Secretary Omishakin thanked the members for their service by helping consumers, the industry, and the people of this state. Next, he thanked Executive Director Corcoran for his work on the Board’s first ever Strategic Plan and for seeking input from CalSTA that aligns with its own strategic direction and that of the Governor’s. The Secretary asked the members to “run through the tape” by giving their all until the very end of the Governor’s term and to not stop. Secretary Omishakin noted that he was not going to stop. Before leaving for the Caltrans Workers’ Memorial, the Secretary responded to Member Schmidt’s question on whether the administration has considered creating a carbon credit market for individual vehicle sales as a way to shift from the gas tax to garner new revenue sources in the transition to EVs.

Mr. Corcoran noted what he admires most about Secretary Omishakin’s leadership is that there is no ambiguity in his expectations. Secretary Omishakin’s vision is clear and the departments, boards, and commissions under CalSTA have the Secretary’s support. Additionally, Secretary Omishakin included the Board in the CalSTA Summit, which allowed Mr. Corcoran to form relationships with “sister departments” all towards the unified goal of supporting CalSTA. Mr. Corcoran thanked Secretary Omishakin and

expressed that he enjoys working with the Secretary and his team who have been “awesome leaders.” Secretary Omishakin thanked Mr. Corcoran for his leadership and for the growth of the Board.

The members expressed their thanks and gratitude to Secretary Omishakin and Undersecretary Tollefson for the work they are doing and for the time they shared with the Board.

Undersecretary Tollefson answered a couple of additional questions broadly on autonomous vehicles.

Mr. Corcoran thanked Undersecretary Tollefson for his presentation and for his partnership on the various matters they’ve worked on together and for meeting with the Board today.

In closing, Undersecretary Tollefson remarked that from CalSTA’s perspective a number of departments and agencies like the Board are public facing so that puts even more pressure on the work we do. He encouraged the Board to keep up the good work and noted that the Board is under great leadership with Executive Director Corcoran.

5. **BOARD MEMBER EDUCATION CONCERNING STATEMENT OF INCOMPATIBLE ACTIVITIES (GOV. CODE §§ 19572, 19990; FISHERV. STATE PERSONNEL BD. (2018) 25 CAL. APP. 5<sup>th</sup> 1), EXAMPLES OF ACTIVITIES THAT ARE INCOMPATIBLE, CONFLICTS OF INTEREST (GOV. CODE § 87100, ET SEQ.), AND ETHICS AND DISCLOSURE RULES BY JOHN T. MCGLOTHLIN, DEPUTY ATTORNEY GENERAL ASSIGNED TO THE BOARD - BOARD DEVELOPMENT COMMITTEE**

John McGlothlin, the Deputy Attorney General assigned to represent the Board in litigation provided Board Member education on statement of incompatible activities in Government Code section 19990, examples of activities that are incompatible, conflicts of interest in Government Code section 87100, and ethics and disclosure rules.

Mr. McGlothlin mentioned that this is a public forum so the discussion today is not privileged. Any specific questions should be directed to the Board’s Executive Director or Chief Counsel. The members are subject to the same ethical obligations that apply to all DMV employees. Every two years members complete online training through the Fair Political Practices Commission (“FPPC”) so the training today is supplemental.

In general, the conflict-of-interest laws ensure public trust and that public trust is served when public officials and employees are not using their positions for private gain. Mr. McGlothlin commented that a lot of this is common sense with a few caveats. First, ignorance of the law not a defense. Second, good intentions are not a defense. A simple example is if a member is stopped by a CHP officer, do not tell the officer you are a public official rushing to get to a public meeting and ask if you could avoid a ticket. This could be viewed as using your public position for private gain. A more complex example is money traded for influence and decisions.

Mr. McGlothlin discussed the importance of these issues and how all three branches of

government weigh in. First, the legislature promulgated various laws that govern conflicts-of-interest that includes Government Code section 19990 in regard to the Governor's Incompatible Activities Statement. The judiciary interprets these laws and adjudicates violations. The Executive Branch, the Governor's Office, and departments such as the Department of Motor Vehicles (oftentimes referred to as "DMV") and the New Motor Vehicle Board are involved with enforcement by making sure training is provided, employees are familiar with the laws, and appointees sign the Governor's Incompatible Activities Statement. Mr. McGlothlin requested that every Governor appointee sign and return this statement today.

The Governor's Incompatible Activities Statement tracks Government Code section 19990 and identifies seven categories of conduct that would violate the law. Mr. McGlothlin identified those categories as:

1. Using prestige or influence of state office for personal gain or advantage or the gain or advantage of another. For example, an Alcoholic Beverage Control agent accepting free drinks from some licensees (*Byrne v. State Personnel Board*) or a CHP officer "fixing tickets" (*Orlandi v. State Personnel Board*).
2. Using State using state time, facilities, equipment or supplies for private gain or advantage. For example, using a copy machine to make garage sale flyers for personal use.
3. Using confidential information acquired by virtue of State involvement for private gain or advantage. For example, confidential information relating to potential settlements or State deliberations cannot be used for private gain.
4. Receiving or accepting money or other considerations such as tickets to a baseball game or a meal from anyone other than the State for performing State duties. For example, an industry group paid you an hourly rate for serving on the Board, that would be a prohibited activity.
5. Performing acts in private life or your career that may be subject to inspection, review, or enforcement by the appointee. However, an industry member of a board or commission is not prohibited from performing the normal functions of that occupation.
6. Receiving money or any other gift from anyone doing business with the New Motor Vehicle Board or is regulated by the New Motor Vehicle Board in circumstances where they are intending to influence or reward official action. This comes down to bribery.
7. Not devoting full time and attention to official duties. For Board Members, most of the time they are not involved in State business, but the expectation is when they are, they are fully involved. For example, an Administrative Law Judge ("ALJ") for the State Personnel Board who also performed work for a private law firm that had cases before the State Personnel Board. This obviously creates conflicts. (*Fisher v. State Personnel Board*)

Member Doi thanked Mr. McGlothlin for his representation of the Board in the recent writ proceedings. President Kassakhian thanked Mr. McGlothlin for his presentation. Ms. Parker indicated that this type of training will be held every two years.

6. **APPROVAL OF THE MINUTES FROM THE DECEMBER 8, 2023, GENERAL MEETING**

Member Obando moved to adopt the December 8, 2023, General meeting minutes. Member Doi seconded the motion. The motion carried unanimously.

7. **2024 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

The Board adopted Parliamentary Procedures provides:

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

Ms. Parker discussed the procedure for nominating the President or Vice President and for moving to close those nominations.

Member Doi noted that traditionally the President and Vice President serve two consecutive one-year terms. Member Kassakhian and Member Stevens were elected in 2023. She suggested that the Board renominate both of them. Member Stevens is interested in continuing in his role to serve another term.

President Kassakhian indicated that this was also his understanding and he is fine with serving an additional year as President unless anyone else wants to.

Member Obando moved to nominate Member Kassakhian as President and Vice President. No other nominations for President or Vice President were made. Member Obando moved to close the nominations for President and Vice President, with Member Smith Boland seconding the motion. The motion to close the nominations carried unanimously. Member Doi seconded the motion to nominate Member Kassakhian as President and Member Stevens as Vice President. The motion to nominate Member Kassakhian as President and Member Stevens as Vice President carried unanimously.

8. **ANNUAL REVIEW AND 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 THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, President Kassakhian indicated that the committee assignments remained the same with the following changes: (1) Member Smith Boland filled the member vacancy on the Administration Committee; (2) Member Dena filled the member vacancy on the Government and Industry Affairs Committee; and (3) Member Smith Boland will remain on the Ad Hoc Committee on Equity, Justice and Inclusion but Member Doi will serve as chair.

The Committees for 2024 are:

**ADMINISTRATION COMMITTEE**

Bismarck Obando, Chair  
Anne Smith Boland, Member

**BOARD DEVELOPMENT COMMITTEE**

Kathryn Ellen Doi, Chair  
Brady Schmidt, Member

**EXECUTIVE COMMITTEE**

Ardy Kassakhian, President  
Jake Stevens, Vice President

**FISCAL COMMITTEE**

Bismarck Obando, Chair  
Ashley Dena, Member

**GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Anne Smith Boland, Chair  
Ashley Dena, Member

**LEGISLATIVE COMMITTEE**

Ardy Kassakhian, President  
Jake Stevens, Vice President

**POLICY AND PROCEDURE COMMITTEE**

Jake Stevens, Chair  
Kathryn Ellen Doi, Member

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

Kathryn Ellen Doi, Chair  
Anne Smith Boland, Member  
Ashley Dena, Member

Bismarck Obando, Member  
Jake Stevens, Member

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

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

10. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO RYAN FITZPATRICK, FORMER DEALER BOARD MEMBER**

Member Obando moved to present a Resolution to Ryan Fitzpatrick, former Dealer Member, in recognition of his contribution to the New Motor Vehicle Board. Member Smith Boland seconded the motion. The motion carried unanimously.

11. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO THE CALIFORNIA NEW CAR DEALERS ASSOCIATION TO COMMEMORATE THEIR 100<sup>th</sup> ANNIVERSARY**

Member Doi moved to present a Resolution to the California New Car Dealers Association to commemorate their 100<sup>th</sup> Anniversary. Member Schmidt seconded the motion. The motion carried unanimously.

12. **DISCUSSION OF THE BUDGET LETTER (BL 23-27) DATED DECEMBER 12, 2023 PERTAINING TO CURRENT YEAR EXPENDITURE FREEZE, AND ITS IMPACT ON THE BOARD'S OPERATIONS**

Mr. Corcoran discussed the Budget Letter pertaining to the current year expenditure freeze and its impact on the Board's operations. The letter is operative through June 30, 2024. Mr. Corcoran indicated that even though the Board is a special fund agency, meaning that new car dealers, manufacturers, and distributors fund the Board's operations, the Board is not exempt from this Department of Finance letter. The Board is efficient and prudent in the manner each dollar is spent so its day-to-day operations are not impacted. Out-of-state travel has been impacted so the Board will not attend conferences such as the National Association of Motor Vehicle Boards and Commissions, NADA, or the Recreation Vehicle Industry Association.

Mr. Corcoran stated that staff are monitoring regular expenditures such as office supplies and where Board meetings are held to limit travel expenses and by using State facilities like DMV and Glendale City Council Chambers. Expenditures are being scrutinized and the staff are looking for opportunities to reduce costs.

Member Doi asked whether the move to the Board's new office space would be impacted. Mr. Corcoran said that essential expenditures are authorized and the Board is required

to comply with the return-to-office order. Mr. Corcoran will update the members on any changes.

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

13. **DISCUSSION AND CONSIDERATION OF ACTIVITIES AND EVENTS  
COMMEMORATING THE NEW MOTOR VEHICLE BOARD'S 50<sup>th</sup>  
ANNIVERSARY (JULY 1, 2024)**

Mr. Corcoran discussed the activities and events commemorating the Board's 50<sup>th</sup> anniversary. He mentioned the anniversary logo that will be on all letters and memos starting July 1, 2024, through June 30, 2025. Additionally, staff suggested we seek out resolutions similar to those the Board presents.

Next, Mr. Corcoran highlighted the Board History Project staff are working on to compile a comprehensive list of all members and gather photographs of former members and staff. These materials can go into the new office space so there is a complete history of all Board Members. If the Board's office space is completed, this could be unveiled as part of the 50<sup>th</sup> Anniversary.

In response to Member Doi's question, Mr. Corcoran thought there were more than 100 members over the past 50 years. [In actuality, there were 79 members.]

If the Industry Roundtable goes forward, Member Doi thought it would be great to invite all past members and retired staff to a reception. This could be privately funded given spending restrictions. Mr. Corcoran thought travel could be an issue as the Board would not cover those costs. President Kassakhian suggested getting video testimonials.

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

14. **DISCUSSION AND CONSIDERATION OF THE BOARD'S STRATEGIC PLAN  
JULY 2024 - JUNE 2030 - EXECUTIVE COMMITTEE**

- a. Discussion and consideration of written public comments received in response to the Board's Public Notice dated February 2024.
- b. Additional public comments. (Gov. Code § 11125.7)
- c. Discussion and consideration of the draft Strategic Plan, which includes the following objectives:
  - (1) Improve outcomes for all motor vehicle consumers.
  - (2) Contribute to the advancement of the California State Transportation Agency's Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity.
  - (3) Transform our organization to become more resilient and conserve limited resources.
  - (4) Reimagine the engagement experience to meet the needs of the

public, our industry, and litigant stakeholders.

- d. Discussion and consideration of authorization of discretion to the Executive Director to implement action items responsive to the objectives noted above.

This matter was postponed until after Agenda Item 31.

15. **DISCUSSION OF PLANS TO FILL THE VACANT ASSISTANT EXECUTIVE OFFICER POSITION, INCLUDING CONSIDERATION OF THE POSITION CLASSIFICATION, DUTIES, TITLE, AND RECRUITMENT STRATEGIES - ADMINISTRATION COMMITTEE**

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

20. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>st</sup> QUARTER OF FISCAL YEAR 2023-2024 AND OTHER RELATED FISCAL MATTERS - FISCAL COMMITTEE**

This matter was postponed until after Agenda Item 31.

21. **DISCUSSION OF THE 2024 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE FOCUSING ON INDUSTRY SERVICES - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

This matter was postponed until after Agenda Item 31.

22. **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**

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

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

This matter was postponed until after Agenda Item 31.

28. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO THE DEFINITION OF ADMINISTRATIVE LAW JUDGE IN SUBDIVISION (a) OF SECTION 550 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (DEFINITIONS) TO EXEMPT THE BOARD FROM SUBDIVISION (b) IN SECTIONS 3067, 3081, AND 3085.4 WHEN THE OFFICE OF ADMINISTRATIVE HEARINGS PRESIDES OVER A MERITS HEARING - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until after Agenda Item 31.

29. **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 matter was postponed until after Agenda Item 31.

30. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2024**

This matter was postponed until after Agenda Item 31.

31. **PRESENTATION OF THE DEPARTMENT OF MOTOR VEHICLE'S REPORT OF INVESTIGATION REGARDING WHETHER SUBARU OF AMERICA, INC. VIOLATED VEHICLE CODE SECTIONS 3060, 11713.3(d)(1), AND 11713.3(l)**

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

Discussion of the Department of Motor Vehicle's Report of Investigation finding that based on documentary evidence and witness interviews, violations of Sections 3060, 11713.3(d)(1), and 11713.3(l) were not established, by the Public Members of the Board.

President Kassakhian noted that only the Public Members will consider this matter because the petition involves a dispute between a franchisee and a franchisor.

This discussion was held in open session as there is no authority authorizing a closed session discussion.

President Kassakhian summarized this matter as follows:

- Courtesy is a licensed vehicle dealer and franchised Subaru dealer. Subaru is a licensed distributor and the franchisor of Courtesy.

- On June 20, 2022, Courtesy filed its petition in relation to Subaru's conduct subsequent to the issuance of ALJ Matteucci's Confidential Decision Resolving Stipulated Decision and Order Dispute in Protest PR-2570-18.
- On July 20, 2022, Respondent Subaru filed its response to the petition and declarations in support thereof.
- At the January 25, 2023, General Meeting, the Public Members granted the relief requested by Courtesy in the petition.
- The Board directed the Department of Motor Vehicles to conduct an investigation pursuant to subdivision (b)(1) of Vehicle Code section 3050 concerning whether Subaru violated Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l).
- On February 28, 2024, the Board received the Department of Motor Vehicles' [Corrected] Confidential Report of Investigation. After reviewing documentary evidence and conducting witness interviews, Investigators Carlos Cabrera and Brian Rasmussen were unable to establish violations of Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l).

Ms. Parker indicated that this matter was for information only as no Board action was being taken. Member Doi thought the Board could take action. Ms. Parker said that in keeping with how past matters were handled when referred to DMV the Board is presented with the report of investigation, which has been concluded. Member Doi would like to revisit this precedent if there is no requirement that the Board accept this report as she has concerns about the report. Member Doi wanted to know if the members have the option to take action. The agenda is for presentation only so Ms. Parker indicated that this matter would have to be agendized for action at a future meeting. Additionally, the DMV staff indicated they would not be present for the meeting so the report was just being presented to the members. Mr. Corcoran suggested the Board hear the comments from the parties and Member Doi could address her concerns.

Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Petitioner. After making brief comments, Mr. Mayville thanked the Board for its time and commitment to this matter. Petitioner does not request anything further at this time as it is operational and selling vehicles to the public at its permanent facility.

Lisa M. Gibson, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent. After making comments, Ms. Gibson concluded that at this point there is no reason to hold this investigation open.

No appearance was made on behalf of the Department of Motor Vehicles.

Member Doi appreciated the DMV's investigation as it was very thorough from a factual perspective but the conclusion was summary without analysis that the Board is accustomed to as to what were the violations and what was the evidence in support or against the violations. She wondered whether this should go back to DMV to provide an analysis. If both parties are satisfied with the conclusions of the DMV investigators then

Member Doi does not see any reason to hold it open.

Member Doi does not agree that the results are a complete vindication of Subaru and does not think it should be perceived or characterized that way. There were serious allegations raised and it is not a fair characterization to say there was no evidence to support them. But if both parties are willing to accept this and do not feel a need to move forward, then the Board's role is over. Member Obando agreed with Member Doi.

Mr. Mayville on behalf of Petitioner and Ms. Gibson on behalf of Respondent accepted the Department of Motor Vehicles' Report of Investigation.

There was no Board action as this matter was for information only. Petition No. P-463-22 is now closed.

14. **DISCUSSION AND CONSIDERATION OF THE BOARD'S STRATEGIC PLAN  
JULY 2024 - JUNE 2030 - EXECUTIVE COMMITTEE**

- a. Discussion and consideration of written public comments received in response to the Board's Public Notice dated February 2024.
- b. Additional public comments. (Gov. Code § 11125.7)
- c. Discussion and consideration of the draft Strategic Plan, which includes the following objectives:
  - (1) Improve outcomes for all motor vehicle consumers.
  - (2) Contribute to the advancement of the California State Transportation Agency's Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity.
  - (3) Transform our organization to become more resilient and conserve limited resources.
  - (4) Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.
- d. Discussion and consideration of authorization of discretion to the Executive Director to implement action items responsive to the objectives noted above.

The members were provided with a memo from Tim Corcoran regarding the Board's Strategic Plan. Mr. Corcoran stated that a lot of work has gone into the Board's Strategic Plan including as previously mentioned working with CalSTA to identify opportunities to align closely with CalSTA's Core Four priorities. And, to comply with the Governor's Executive Order that requires all departments to update their strategic plans or in the Board's case create one.

The reason for the 6-year Strategic Plan is some of the proposed objectives are transformational in Mr. Corcoran's opinion. First, shifting away from reliance on retired

annuitant ALJs. Second, a number of objectives are expensive and given current spending restrictions it will not be practical for a couple of years or more. This would impact the electronic case management system and modernization of certain processes that could require contracting with vendors. Third, many key positions may become vacant in the next six years including the Executive Director position. This allows the staff to focus on building a more robust onboarding training program and developing uniform procedures across the organization for staff.

When drafting a Strategic Plan, Mr. Corcoran relies on three pillars: secure resiliency, adaptable to change, and engagement with stakeholders. In developing the Strategic Plan, the team provided feedback on the Board's strengths, weaknesses, threats, and opportunities. Input was provided by the Executive Committee and CalSTA leadership. Public comment on the draft Strategic Plan was sought from internal mailing lists and the Industry Services Branch at DMV sent an "Occupational Licensing Industry News Alerts." Ms. Parker confirmed that no written comments were submitted in response to this mailing.

The proposed Strategic Plan includes over 20 specific initiatives organized within the four objectives that Mr. Corcoran reviewed in detail.

Next, Mr. Corcoran discussed the request that the Board grant the Executive Director discretion to take action responsive to the objectives previously discussed.

Member Schmidt moved to adopt the Strategic Plan and grant the Executive Director discretion to take action responsive to the objectives in the Strategic Plan. Member Obando seconded the motion. The motion carried unanimously.

15. **DISCUSSION OF PLANS TO FILL THE VACANT ASSISTANT EXECUTIVE OFFICER POSITION, INCLUDING CONSIDERATION OF THE POSITION CLASSIFICATION, DUTIES, TITLE, AND RECRUITMENT STRATEGIES - ADMINISTRATION COMMITTEE**

The members were provided with a memo from Tim Corcoran regarding the plans to fill the vacant Assistant Executive Officer position. He noted that the staff have been working with the Department of Motor Vehicles' Human Resources Department to fill the position and they've been extremely helpful throughout this process. This position has been vacant since October 2023.

Mr. Corcoran discussed the two slightly different paths being taken to fill this position. First, a Staff Services Manager III. Second, an Assistant Division Chief/Program Manager (ADC/PM), which is a DMV specific classification. DMV authorized the Board to use this classification. This enabled to Board to have two lists of candidates to consider. Both of these positions are civil service classifications. The filing deadline for applications is May 1<sup>st</sup>. There was a brief discussion regarding the working title of the position (Administrative & Equity Officer).

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

16. **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 section entitled “New as of 2024” was updated to reflect recent legislative changes that added three new protests in Vehicle Code section 3065.3(b)-(d), the published opinion in *Barber Group, Inc. v. New Motor Vehicle Bd.* (2023) 93 Cal.App.5th 1025, and new Regulation 551.26 pertaining to representation in protests.

In addition, the following amendments were made:

- In the preamble, footnote 1 was added to provide more detail on the Board’s regulations and specify which articles pertain to petitions and protests.
- The charts throughout were updated to reflect the three new protests added to Vehicle Code section 3065.3.
- The language pertaining to waiver of the \$200 filing fee was clarified by deleting the reference to financial hardship as the Executive Director may grant the fee waiver upon a showing of good cause. For consistency, this change was also made in the *Export or Sale-for-Resale Prohibition Policy Protest Guide*.
- Language was added pertaining to the temporary discretion granted to the Executive Director at the April 28, 2023, General Meeting to assign additional merits hearings to the Office of Administrative Hearings (OAH) outside the current assignment log.
- Changes were made throughout to reflect the three new protests in Vehicle Code section 3065.3.
- The revised procedure for assigning merits hearing ALJs adopted by the Board at its September 21, 2023, General Meeting was detailed. For new protests starting with Protest No. PR-2832-23, the Board adopted a numerical designation system. The ALJ is assigned based on the last digit of the Protest No. In the event a Board ALJ is not available, OAH would preside. 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.
- If OAH is assigned to preside over the merits hearing, the protest is transferred to OAH after the Hearing Readiness Conference and would go to hearing in about three months.
- The Board adopted Transcript Policy was amended at the September 21, 2023, General Meeting. The parties now are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing

transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions.

- Gender-specific language was replaced with gender neutral-language in the sample forms in the Appendix.

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

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

The members were provided a memo from Tim Corcoran concerning Board development activities. Mr. Corcoran noted that educational content is planned for each meeting. DMV Investigations Chief Christina Michel will introduce herself and discuss the industry from an enforcement perspective at an upcoming meeting.

Mr. Corcoran solicited input from the members. Member Schmidt requested input from the Public Members if there was education they thought would be of interest. Perhaps, dealers, manufacturers, or their counsel could provide education on disputes. Member Doi encouraged the Dealer Members to make suggestions for training they thought the Public Members could benefit from.

President Kassakhian suggested topics on cost impacts, consumer trends, what vehicles are being purchased, and clarity on what dealers and manufacturers are responsible for. A site visit was also proposed. EV emergence, transition and challenges dealers and manufacturers face was suggested by Member Schmidt. Member Smith Boland recommended the California New Car Dealers Association (“CNCDA”) and other associations provide context on challenges dealers face. Member Dena echoed Member Schmidt’s suggestions and added that how the landscape for dealers is changing not just with EVs but also with subsidiary manufacturers that are EV specific that fall outside the franchise laws would be of interest. Member Doi added that the manufacturers perspective should be included.

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

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

The members were provided with a memo from Tim Corcoran and Robin Parker along with summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act.

Ms. Parker noted that there were no substantive changes to the Administrative Procedure Act. The only changes in the summary updated the sample “Order of Time and Place of Hearing” to reflect the Board’s revised Transcript Policy. Amendments to the Board’s regulations making gender-specific language gender-neutral were reflected throughout.

As indicated in the memo, the substantive changes to the Bagley-Keene Open Meeting Act are as follows:

- Subdivision (c) was added to Government Code section 11124 effective January 1, 2024. This section precludes as a condition of attendance that a person register their name, provide other information, complete a questionnaire, or fulfill any condition precedent to their attendance. Subdivision (c) provides that this section does not apply to an internet website or other online platform that may require the submission of information to log into the teleconferenced meeting if that person is permitted to use a pseudonym or other anonymous information.
- Effective July 1, 2022 through July 1, 2023, and extended until December 31, 2023, Section 11133 authorized the Board to hold meetings through teleconference. This section was repealed effective December 31, 2023.
- Effective January 1, 2024, through January 1, 2026, Senate Bill 544 (Senator Laird; Ch. 216, Stats. 2023) added an additional authorization to hold open or closed teleconference meetings in Government Code section 11123.2. This would be a hybrid meeting with some members physically present at the meeting while other members attend and participate from a teleconference location or a remote location. Although some of the requirements are similar to those previously authorized by Executive Order and legislation, a number of additional requirements make application to the Board's meetings impracticable due to cost, restrictions on IT equipment purchases in Budget Letter 23-27, and lack of evidence that offering virtual participation would meaningfully increase attendance. (Summary, pp. 8-10)
- Effective January 1, 2024, through January 1, 2026, Senate Bill 544 amended Section 11123.5, which pertains to teleconference meetings of advisory committees. It now references new Section 11123.2. Additional changes require one staff member present at the physical meeting location. Language excluding members participating remotely from counting towards the quorum and requiring decisions be by rollcall vote were deleted. New subdivision (h) requires Board Members visibly appear on camera during the open portion of a meeting. (Gov. Code § 11123.5(h)(1)) If a member does not appear on camera due to internet connectivity, the member is required to announce the reason for their nonappearance when their camera is turned off. (Gov. Code § 11123.5(h)(3)) (Summary, pp. 10-11)

Ms. Parker informed the members the California Department of Justice updated its *Bagley-Keene Open Meeting Act Guide*, which is available online.

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

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

The members were provided with a memo from Tim Corcoran and Jason Rose along with summaries of the Political Reform Act and Public Records Act.

As indicated in the memo, the substantive changes to the Political Reform Act are as follows:

- Effective January 1, 2024, Senate Bill 681 (Senator Allen, Ch. 499, Stats. 2023) added Section 81012.5 to provide an option for the public to sign up to receive email alerts any time a bill to amend the Act is introduced, amended, or otherwise subject to an action triggering a specified notification. The email alerts must be sent in the shortest feasible time, but no later than 9 a.m. the calendar day after the legislative action that is the subject of the alert.
- Effective October 10, 2023, Senate Bill 29 (Senator Glazer; Ch. 696, Stats. 2023) added Section 83116.7 to establish a political reform education program as an alternative to an administrative proceeding for a person who commits minor violations of the Act. A person is eligible for the program if they have little or no experience with the Act and where the violation resulted in minimal or no public harm. If a person meets the requirements to participate in the political reform education program and completes the program, this will exempt the person from administrative, civil, or criminal penalties for the applicable violation of the Act.
- Effective October 10, 2023, Senate Bill 29 amended Section 91013 to prohibit a filing officer from imposing the \$10 per day liability if the person who filed the late report or statement was unable to timely file due to serious illness or hospitalization or if the person completes the political reform education program.

In addition, relevant case law has also recently held the following:

The Supreme Court of California resolved a conflict among the lower courts concerning the award of attorney's fees to a prevailing party under Section 91003(a). Under this Section, a trial court may award attorney fees to a plaintiff or defendant who prevails. In order to promote the purpose of encouraging private litigation to enforce the Act, it imposed an asymmetrical system that allows an award of attorney fees, in its discretion, to a prevailing defendant only if the plaintiff's claims were frivolous, unreasonable, or without foundation. (*Travis v. Brand* (2023) 14 Cal.5th 411.)

Also, as indicated in the memo, the substantive changes to the California Public Records Act ("CPRA") are as follows:

Effective January 1, 2024, Senate Bill 790 (Senator Padilla, Ch. 77, Stats. 2023) added Section 7928.801, which provides that any executed contract for the purchase of goods or services by a state or local agency, including price and terms

of payment, is a public record subject to disclosure. Any provision in a contract that excludes such a contract from disclosure or agreeing to consider it confidential or proprietary is void and unenforceable as a matter of law.

In addition, relevant case law has also recently held the following:

- The CPRA does not impose a duty upon public agencies to preserve potentially responsive records that otherwise would be subject to an automatic destruction policy. The CPRA is not a records retention statute. The CPRA does not have any provisions pertaining to record retention. The CPRA is also silent with respect to any obligation on the part of a public agency to keep any particular records or to preserve records after a public records request has been made. The CPRA's sole function is to provide for disclosure. (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818.)
- Courts will broadly construe the CPRA in favor of disclosure and narrowly construe the applicability of any exceptions. An Internal Affairs investigative report related to peace officer misconduct was improperly redacted. The City of Oakland had relied on Penal Code section 832.7 to justify its redactions, the Court emphasized "the [CPRA] must be broadly construed" to "further the people's right of access." (*BondGraham v. Superior Court* (2023) 95 Cal.App.5th 1006.)
- A party may not use CPRA litigation to obtain – through the Civil Discovery Act – the very records at issue in the litigation. Nor may a party use the CPRA litigation to obtain information from a public agency that it would not otherwise be entitled to under the CPRA. (*County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243.)

In response to Member Doi's question, Ms. Parker explained the Board's document retention policy.

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

20. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>st</sup> QUARTER OF FISCAL YEAR 2023-2024 AND OTHER RELATED FISCAL MATTERS - FISCAL COMMITTEE**

The members were provided with a memo from Tim Corcoran and Suzanne Luke. Ms. Luke reported that the first quarter of Fiscal Year 2023-2024 began with a budget appropriation of \$2.1 million, ending with \$3.4 million reserve balance. Seventeen percent (17%) of the appropriated budget was expended. Staff do not see a need for fee structure adjustments but will monitor and report back to the Board.

Ms. Luke indicated that the annual collection of fees from manufacturers and distributors began in July 2023 and has been completed. Staff collected \$766,948 from manufacturers and distributors under the Board's jurisdiction.

Member Doi noted that part-time staff salaries were up. Mr. Corcoran indicated that this number ebbs and flows based on the number of hours worked by the Board's ALJs and will increase when the hours for OAH are included.

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

21. **DISCUSSION OF THE 2024 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE FOCUSING ON INDUSTRY SERVICES - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran discussed the 2024 Industry Roundtable that was initially planned to focus on the DMV's Industry Services Branch (Occupational Licensing and Investigations) along with DMV's recent reorganization. However, with the recent retirement of the Branch Chief, this is not feasible. As previously mentioned, the Chief of Investigations will make a presentation at an upcoming meeting instead of the Roundtable. Based on the members' comments during the Board Development discussion, it appears that a traditional roundtable with automakers, dealers, and their counsel should be explored with the Government and Industry Affairs Committee. Member Obando suggested hosting the Roundtable the day prior to the CNCDA event in March or April 2025.

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

22. **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**

Mr. Corcoran provided an update on the 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. In lieu of hosting workshops to discuss the recall, Mr. Corcoran and Member Smith Boland looked closely at the California data and found that over 700,000 cars subject to the recall remained on California roads with half in the Sacramento metro area and two areas of the Los Angeles metro area (San Bernardino and Los Angeles).

Working closely with CalSTA, the Office of Traffic Safety, and the DMV, press conferences were scheduled on May 13<sup>th</sup> at the Roseville Automall and May 14<sup>th</sup> at the Cerritos Auto Square. Barbara Rooney, Director of the Office of Traffic Safety, and Lonny Haschel from the National Safety Council's "Check to Protect Program" will talk about how easy it is to check a vehicle for recalls. These conferences will be bilingual. The CNCDA arranged the venues and gained the commitment of the dealers to prioritize these recall repairs. If his schedule permits, Secretary Omishakin plans to attend.

On a state level, the Board is the only entity sounding the alarm in California on the severe problem with unrepaired recalled vehicles. After the press conferences, Mr. Corcoran is hoping to see a 20% reduction in outstanding vehicles needing repair. He thanked Member Smith Boland for her work on this project.

Lastly, Mr. Corcoran mentioned that DMV has agreed to send out targeted mailers to roughly 600,000 registered owners of affected vehicles. Member Obando suggested geo targeted advertising and digital ads as the zip codes for the owners are known. Mr. Corcoran commented that this is the kind of advertising the National Safety Council does, and other organizations have done previously with the [Takata] settlement funds. They have explored every mechanism out there.

Member Schmidt suggested a service that reaches out to owners with open safety recalls directly with contact information associated by VIN. They provide recall information and even book the repair appointment. Member Smith Boland remarked that the struggle is with marrying data because registration data was not matching vehicle owners. An additional issue is the language barrier as the Spanish word for recall means take back versus fix the problem. President Kassakhian requested that pictures from both press conferences be taken.

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

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

Mr. Rose indicated that there was no pending legislation of special interest (directly affects the Board's laws or functions) but staff are monitoring several bills of general interest.

Autonomous vehicle bills concerning local jurisdiction and reporting requirements for accidents are pending. A bill entitled "Clean Cars 4 All" is pending. Senate Bill 91 proposes adding passive intelligent speed limiters or governors to all vehicles to regulate speed.

Staff will continue to monitor legislation. The last day for both houses to pass bills is August 31<sup>st</sup>. The Governor then has until September 30<sup>th</sup> to sign or veto the bills.

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

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

The members were provided with a memo from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the following policies were added or amended:

- The Ad Hoc Committee on Equity, Justice, and Inclusion will review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.
- OAH was added to the "Merit Hearings Judge Assignment Log" next in line to preside over a protest hearing between a franchisee and franchisor. For a limited time, the Executive Director was granted discretion to assign additional merits

hearings to OAH outside the current assignment log with Executive Committee permission.

- The Executive Director has discretion to remove an ALJ from an assignment log based on performance provided the Policy and Procedure Committee is consulted in advance.
- For new protests starting with Protest No. PR-2832-23, the Board adopted a numerical designation system. The ALJ is assigned based on the last digit of the Protest No. 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.
- Board Delegations were updated to delete obsolete references to appeals in Section 3008 and to reflect the Executive Director's temporary discretion to assign additional merits hearings to OAH outside the current assignment log.
- The statutory references to the California Public Records Act were updated in the (1) Document Request Policy, Waiver Request Policy, and Facsimile Request Policy, (2) Legislative Policy, and (3) Policy on Confidential Proposed Stipulated Decisions and Orders.
- The *Guide to the New Motor Vehicle Board*, *Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- Board Recruitment and hiring practices should 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.
- The Transcript Policy was amended so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions.

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

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

The members were provided with a memo from Tim Corcoran and Robin Parker concerning the assignment of cases to Board ALJs in 2023. Ms. Parker reported that there were 19 law and motion hearings, seven discovery hearings (rulings on objections), and six mandatory settlement conferences. There were two merits hearings held in 2023. OAH presided over its first hearing.

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

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

The members were provided with a memo and *Export or Sale-for-Resale Prohibition Policy Protest Guide*. As indicated in the memo, the following changes were made:

- With the addition of the OAH to the Board's Merit Hearings Judge Assignment Log, a footnote was added to reflect that an Administrative Law Judge means an Administrative Law Judge of the Board or the OAH.
- The language pertaining to waiver of the \$200 filing fee was clarified by deleting the reference to financial hardship as the Executive Director may grant the fee waiver upon a showing of good cause. For consistency, this change was also made in the *Guide to the New Motor Vehicle Board*.
- As a result of the relocation to the Department of Motor Vehicles, the Board does not have a landline or fax machine. If a party would like to file a protest via facsimile, the Board would accommodate this request. A footnote was added to request an Association seeking to file a protest via facsimile contact the Board's legal staff in advance at (916) 445-1888 or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov).
- The Board adopted Transcript Policy was amended at the September 21, 2023, General Meeting. The parties now are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions.
- On page A-1 of the Appendix, the following changes were made:
  - Gender specific language was replaced with gender neutral language.
  - The reference to "fax number" was deleted because the Board does not have a landline or fax machine.
  - References to a specific type of address (office or residence) were deleted.

Member Doi moved to adopt the 2024 *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Member Smith Boland seconded the motion. The motion carried unanimously.

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

The members were provided with a memo and a revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. As indicated in the memo, the following changes were made:

- At the Department of Motor Vehicle's request, the language pertaining to information DMV Inspectors will require was removed.
- Prior to recent amendments, manufacturers and distributors were precluded from competing with their franchised dealers of the same line-make within the 10 mile relevant market area. There was no preclusion on factory-owned dealers if there were no independent dealers within 10 miles of the proposed location. Subdivision (o) of Vehicle Code section 11713.3 was amended effective January 1, 2024 to remove references to "same line-make" and "relevant market area." (Assembly Bill 473, 2023 Stats., Ch. 332) This amendment was designed to ensure the sale of vehicles through established dealer networks. Conforming changes were made.

Member Schmidt moved to adopt the 2024 *Informational Guide for Manufactures and Distributors* as amended. Member Doi seconded the motion. The motion carried unanimously.

28. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO THE DEFINITION OF ADMINISTRATIVE LAW JUDGE IN SUBDIVISION (a) OF SECTION 550 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (DEFINITIONS) TO EXEMPT THE BOARD FROM SUBDIVISION (b) IN SECTIONS 3067, 3081, AND 3085.4 WHEN THE OFFICE OF ADMINISTRATIVE HEARINGS PRESIDES OVER A MERITS HEARING - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed regulatory amendments to definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Code of Regulations.

As indicated in the memo, for decades, the legal staff have taken an active role in merits hearings by providing support throughout the hearing to the Board assigned ALJ and by reviewing drafts of their proposed decision for consistency and accuracy. With the transition to OAH, the Board's role in this process is limited and legal staff will not review the Proposed Decision until it is signed by the OAH ALJ.

By statute, the Board has 10 days after receipt of the ALJ's Proposed Decision to file it as a public record and serve each party and their counsel.<sup>1</sup> (Veh. Code §§ 3067(b), 3081(b), and 3085.4(b)) This may not be enough time for the Board's legal staff to thoroughly review, analyze, and verify the factual and legal accuracy of the Proposed Decision. Additionally, this 10 day period is included in the 30 day statutory period the

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<sup>1</sup> The Administrative Procedure Act (APA) allows 30 days after receipt by the agency of a Proposed Decision to file it as a public record and serve each party and their counsel. (Gov. Code § 11517(c)(1)) However, the specific statutes in the Vehicle Code would prevail over a conflicting or inconsistent provision in the APA so the Board only has 10 days. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

Board has to consider the Proposed Decision at a noticed meeting.<sup>2</sup> (Veh. Code §§ 3067(a), 3081(a), and 3085.4(a))

Although the Board can request the parties stipulate to extend the deadline, this is not a long-term solution. (Veh. Code §§ 3067, 3081 and 3085.4) Therefore, staff are proposing amending the definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Regulations. The proposed amendments are as follows:

§ 550. Definitions.

For the purposes of these regulations:

(a) "Administrative law judge" or "ALJ" means an administrative law judge of the board or Office of Administrative Hearings. For purposes of Vehicle Code sections 3067(b), 3081(b), and 3085.4(b), an administrative law judge means an administrative law judge of the board and not Office of Administrative Hearings.

...

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3067, 3070, 3072, 3074, 3075, 3076, 3080, 3081, and 3085, 3085.2, and 3085.4, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

This would limit the 10 day period to file and serve a Proposed Decision to hearings in which a Board ALJ presided. The APA would apply to hearings held at OAH and the Board would have 30 days to file and serve the Proposed Decision.

Amending the time period within which the Board is statutorily required to consider a Proposed Decision requires further analysis and likely legislation. In the meantime, the staff will request the parties stipulate to allow additional time for Board consideration. After a brief discussion concerning the deadlines and potential legislation, Member Doi moved to adopt the proposed regulatory amendments. Member Obando seconded the motion. The motion carried unanimously.

President Kassakhian read the following statement into the record for the proposed regulatory changes:

Given the Board's decision to go forward with the proposed regulation, I hereby delegate to the Executive Director the ministerial duty of proceeding

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<sup>2</sup> The APA allows 100 days after receipt by the agency of a Proposed Decision to act. If the agency fails to timely act the proposed decision is deemed adopted by the agency. (Gov. Code § 11517(c)(2)) In a protest pertaining to new motor vehicles or RVs, "[i]f the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved." (Veh. Code §§ 3067(a), 3081; underline added.) As noted in footnote 1, the specific provisions in the Vehicle Code prevail over the APA.

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

By the Board instructing staff to go forward with the proposed regulation, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulation. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by [the] Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

29. **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 matter was again postponed until after Agenda Item 30.

30. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2024**

The Board Members selected the following Board meeting dates for the remainder of 2024:

- June 28, 2024, Special Meeting (Glendale)
- August 9, 2024, General Meeting (Sacramento)
- November 1, 2024, General Meeting (Glendale)
- March 2025 Industry Roundtable (Sacramento)

29. **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. Mr. Corcoran indicated the facility build out was rebid and it appears there are acceptable bids for consideration and review by DMV and the Department of General Services' staff. If the bid selected meets all the criteria, construction could begin as early as this summer with an estimated move-in date of Spring 2025.

In response to Board Member questions, Mr. Corcoran discussed the Governor's return-to-office order. This results in no change for staff as a two day-a-week telework policy was adopted once the shelter in place order was lifted. To clarify, two days are in the office and three days are remote.

Ms. Parker indicated that around 2:01 p.m., Member Obando stepped away so the Board lost its quorum for general business. No Board action was taken.

Since the members received their written Executive Director's Report, Ms. Parker stated that seven notices were filed: six relocation and one termination. The Maserati protests filed in 2017 were dismissed. Additionally, ALJ training was recently provided to the Board's ALJs and former ALJ Matteucci. This training was recorded for legacy purposes. Judge Skrocki participated and added a lot of value. We will have this training for future generations. Staff are trying to record additional training for Board Members. Mr. Corcoran emphasized what a legacy project this was and commented on the number of hours that went in to creating this.

Mr. Rose reported that an additional protest was dismissed, a mandatory settlement conference was set, and 4-5 protests have requests for dismissals forthcoming.

Member Doi inquired if it was unusual for the Board to have no judicial matters. Ms. Parker expected that judicial matters would likely be filed once the Board considers a couple of proposed decisions later this year.

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

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

No additional public comment was presented.

33. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 2:09 p.m.

Submitted by

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

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

2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818  
Telephone: (916) 445-1888  
Board staff contact: Alex Martinez  
[New Motor Vehicle Board website](#)  
DMV press contact: (916) 657-6438  
[dmvpublicaffairs@dmv.ca.gov](mailto:dmvpublicaffairs@dmv.ca.gov)

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

The New Motor Vehicle Board (“Board”) held a Special meeting on June 28, 2024, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2<sup>nd</sup> Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 11:01 a.m.

**2. ROLL CALL**

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

Board Members Not Present: Karthick Ramakrishnan

Board Staff Present: Timothy M. Corcoran, Executive Director  
Robin P. Parker, Chief Counsel  
Jason Rose, Senior Staff Counsel  
Tammy Bayne, Administrative Law Judge

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

**3. PLEDGE OF ALLEGIANCE**

Member Stevens led the members and staff in the Pledge of Allegiance.

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

KPAUTO, LLC, dba PUTNAM FORD OF SAN MATEO v. FORD MOTOR COMPANY  
Protest No. PR-2759-21

Gavin M. Hughes, Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Steven M. Kelso, Esq. of Greenberg Traurig, LLP represented Respondent. Oral comments were presented before the Public Members of the Board.

5. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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

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

**CONSIDERATION OF PROPOSED DECISION**

KPAUTO, LLC, dba PUTNAM FORD OF SAN MATEO v. FORD MOTOR COMPANY  
Protest No. PR-2759-21

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

The Public Members of the Board deliberated in closed Executive Session. Member Stevens moved to adopt the Administrative Law Judge's Proposed Decision as amended as follows:

1. On page 4, in the subheading entitled "The Parties," the last two sentences are amended to replace "franchises" with "dealerships" as follows: "Mr. Putnam owns several other new motor vehicle dealerships in the San Francisco Bay Area. Together with protestant, those dealerships comprise the Putnam Automotive Group."
2. On page 36, in paragraph 41, the word "retail" is added before the word "automobile" as follows: "In his current role, he studies complex economic problems across multiple industries, including the retail automobile industry."
3. On page 45, the subheading "Materially Inaccuracy" is amended to "Materially Inaccurate."

4. On page 52, in paragraph 25, the last sentence “Thus, respondent has not shown by a preponderance of evidence that it is entitled to the requested declaratory relief and/or reimbursement.” is stricken.

Member Doi seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Agenda Item 5.

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:14 p.m.

Submitted by

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TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ardashes (“Ardy”) Kassakhian  
President  
New Motor Vehicle Board



# *New Motor Vehicle Board* **RESOLUTION**

**W** *HEREAS* Anthony M. Skrocki was appointed as an Administrative Law Judge for the **NEW MOTOR VEHICLE BOARD** when the Board first began using its own Administrative Law Judges.

**W** *HEREAS* Judge Skrocki has presided over countless merits hearings, law and motion hearings, and settlement conferences with the utmost skill, professionalism, and legal knowledge. He has a wealth of information and is a tremendous resource not only to the staff but to the motor vehicle industry and those appearing before him; and,

**W** *HEREAS* Judge Skrocki provides thorough advice and counsel, is thoughtful, friendly, and always accessible to Board staff, and the parties and counsel that appear before him; and,

**W** *HEREAS* Judge Skrocki generously devotes his time, expertise, experience, and dedication toward the successful operation of the Board in matters concerning the motor vehicle industry, and helped advance and protect the integrity of the automotive industry in this State, which is vital to California's economy and the public welfare, thereby enhancing the respect of the auto industry and public for the Board; and,

**W** *HEREAS* the foremost concern of Judge Skrocki is public service to the people of the State of California, where during his tenure at the Board, he was a law professor at McGeorge School of Law, and co-authored *Contracts in a Nutshell*, a beloved book by law students and practitioners; and,

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

*Dated this 9<sup>th</sup> day of August 2024*

\_\_\_\_\_  
ARDASHES "ARDY" KASSAKHIAN, PRESIDENT

\_\_\_\_\_  
JACOB STEVENS, VICE PRESIDENT

\_\_\_\_\_  
ANNE SMITH BOLAND, MEMBER

\_\_\_\_\_  
ASHLEY DENA

\_\_\_\_\_  
KATHRYN ELLEN DOI, MEMBER

\_\_\_\_\_  
BISMARCK OBANDO, MEMBER

\_\_\_\_\_  
KARTHICK RAMAKRISHNAN, MEMBER

\_\_\_\_\_  
BRADY SCHMIDT, MEMBER



## Memorandum

**Date** : JULY 8, 2024

**To** : EXECUTIVE COMMITTEE  
ARDASHES "ARDY" KASSAKHIAN, CHAIR  
JACOB STEVENS, MEMBER

**From** : TIMOTHY M. CORCORAN

**Subject** : DISCUSSION AND CONSIDERATION OF THE BOARD'S MISSION AND VISION STATEMENTS

At the December 2, 2019, General Meeting, the Board approved its present mission and vision statements. In order to ensure their ongoing accuracy and relevance, they are scheduled for discussion and consideration. The current statements are as follows:

**Mission**

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

**Vision**

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

This matter is being agendized for discussion and consideration at the August 9, 2024, General Meeting.

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



## Memorandum

**Date : JULY 16, 2024**

**To : ALL BOARD MEMBERS**

**From : TIMOTHY M. CORCORAN**

**Subject : CONSIDERATION OF THE NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

The Board Development Committee is recommending to the Board at its August 9, 2024 meeting that this year's Solon C. Soteras Employee Recognition Award be awarded to Administrative Law Judge, Anthony M. Skrocki and Chief Counsel, Robin Parker, in recognition of their exceptional leadership and contributions in developing legacy training materials, documents, videos, and resources for the benefit of the Board's current and future staff, attorneys, Administrative Law Judges, and stakeholders.

Judge Skrocki and Chief Counsel Parker have a wealth of information and are a tremendous resource for the staff and all persons appearing before the Board. They have generously shared their culmination of decades of experience, knowledge, expertise, and insights with all Administrative Law Judges and attorneys in the preparation of a series of training videos and materials. I am not aware of anything like this existing elsewhere in State government. This legacy project will help guide future generations and continue to uphold our reputation as the "mightiest little board" in the country.

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

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

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



## Memorandum

**Date : JULY 8, 2024**

**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 suggested agendaizing this topic at each Board Meeting to get input from the members. Additionally, education on topics of interest are scheduled for most General Meetings.

The Board education planned for the August 9, 2024 General Meeting in Sacramento:

- Introduction and welcome of Christina Spagnoli, Assistant Chief Deputy Director, Department of Motor Vehicles.

The Board education planned for the November 1, 2024 General Meeting in Glendale:

- Introduction and welcome of Christina Michel, Chief of Investigations, Department of Motor Vehicles.
- A presentation on the history of the automotive franchise system, by historian and author Darryl Holter.

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

- Presentation from dealer and manufacturer attorneys on common disputes between, and differing perspectives of, franchisees and their franchisors.
- Presentation on industry strategies to assure ZEV profitability, by dealer and manufacturer representatives.
- Presentation on implementation of alternative fuel vehicles in mass transit.

## Update on Board Development Activities

Page 2

July 8, 2024

- Presentations highlighting local efforts to make communities ZEV-ready.
- 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.

The information in this memorandum is provided for informational purposes only at the August 9, 2024, General Meeting. No Board action is required.

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

cc: Ardy Kassakhian, President



# Memorandum

**Date :** JULY 10, 2024

**To :** EXECUTIVE COMMITTEE  
ARDASHES "ARDY" KASSAKHIAN, CHAIR  
JACOB STEVENS, MEMBER

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

**Subject :** REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN  
COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY  
BUSINESS, TRANSPORTATION & HOUSING AGENCY

The 1996 Performance Audit conducted by Business, Transportation & Housing Agency<sup>1</sup> recommended that "Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals." In November 1996, the Budget and Finance Committee (Joe Drew and Lucille Mazeika) prepared an analysis of the duties of the Board members and staff that was adopted by the Board at its March 18, 1997, General Meeting. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals.

At its November 20, 2008, General Meeting, the members adopted revised delegations with updated statutory language and formal Board delegations of duties that occurred at noticed meetings. From 2008 through 2011, the Board delegations were reviewed by the Board. At the May 26, 2011, General Meeting, the members made this an exception report. The legal staff continues to review these delegations each year.

At the February 10, 2016, General Meeting, the members revised the delegations to reflect changes separating provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association, as defined, to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted dealers.

At the January 18, 2017, General Meeting, the members revised the delegations to reflect amendments to Vehicle Code section 3065<sup>2</sup> that require the warranty reimbursement

schedule or formula be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the

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<sup>1</sup> Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

<sup>2</sup> All statutory references are to the California Vehicle Code unless otherwise indicated.

obligation which now includes costs directly associated with the disposal of hazardous materials that are associated with a recall repair.

At the June 7, 2019, General meeting, the members revised the delegations to reflect the repeal of Article 6 Export or Sale-for-Resale Prohibition Policy protests and the recently revised Legislative Policy, which included three delegations to the Executive Director.

At the February 16, 2021, General Meeting, the members revised the delegations to reflect the re-lettering of Section 3050, the repeal of appeals, the methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, the addition of two new protests in Sections 3065.3 and 3065.4, the restored authority for the Board to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests, along with many conforming changes. (Assembly Bill 179, Stats. 2019, Ch. 796; effective January 1, 2020) The "Delegation of Administrative Duties" replaced references of Staff Services Manager I to Staff Services Manager II.

Effective January 1, 2023, Assembly Bill 2956 deleted obsolete references to appeals in Section 3008. (Stats. 2022, Ch. 295)

At the April 28, 2023, General Meeting, the Executive Director was given discretion to remove an Administrative Law Judge from an assignment log based on performance. At the September 21, 2023, General Meeting the Board indicated that recruitment and hiring practices should 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. Also, the Ad Hoc Committee on Equity, Justice, and Inclusion will review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs. Effective January 1, 2024, Assembly Bill 473 added three new protests to Section 3065.3. (Stats. 2023, Ch. 332) The Board adopted its first Strategic Plan (June 2024 through July 2030) at the April 25, 2024, General Meeting. The Executive Director was granted the discretion to take action responsive to the objectives. Personnel duties in the Delegation of Administrative Duties was updated to reflect the newly created Assistant Director and Equity Officer position.

The proposed changes are in underline or strikeout font highlighted yellow. These revised delegations are being considered at the August 9, 2024, 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.

Attachment

## **NEW MOTOR VEHICLE BOARD**

### **RECOGNITION OF STATUTORY DUTIES AND DELEGATION OF ADMINISTRATIVE DUTIES**

The following analysis was prepared as a result of a review of Board duties performed by the Budget and Finance Committee at its meeting held on November 22, 1996. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals. In addition, this analysis recommends which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendation also contains an indication as to transaction type and dollar limit for procurement, where applicable.

In 2008, the Board legal staff revised the delegations with updated statutory language but did not modify the existing delegations. It also added formal Board delegations of duties that occurred at noticed meetings. These revised delegations were adopted at the November 20, 2008, General Meeting. From 2008 through 2011, the Board delegations were reviewed by the Board at a noticed meeting. At the May 26, 2011, General Meeting, the members made this an exception report. The legal staff continues to review these delegations each year.

Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014) made a number of non-substantive and substantive changes that were adopted by the Board at the July 15, 2014, General meeting and are incorporated throughout. Assembly Bill 759 (chaptered October 1, 2015 and effective January 1, 2016) cleaned up a number of inconsistencies in the Vehicle Code<sup>1</sup> and separated Article 5 RV protests from Article 4 vehicle protests. Article 6 (export or sale-for-resale prohibition policy protests filed by an association) was added to the Vehicle Code by Assembly Bill 1178 (chaptered October 6, 2015 and effective January 1, 2016). These changes were adopted by the Board at the February 10, 2016, General Meeting. Assembly Bill 287 (chaptered September 27, 2016 and effective January 1, 2017) amended Section 3065; these changes were adopted at the January 18, 2017, General Meeting.

At the June 7, 2019, General meeting, the members revised the delegations to reflect the repeal of Article 6 Export or Sale-for-Resale Prohibition Policy protests and the recently revised Legislative Policy, which included three delegations to the Executive Director.

Assembly Bill 179 (Stats 2019, Ch. 796; effective January 1, 2020) re-lettered Section 3050, repealed Article 3 Appeals, added the methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Export or Sale-for-Resale Prohibition Policy protests in Article 6, and made many conforming changes updating recent staff promotions. The revised delegations were adopted at the

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

February 16, 2021, General Meeting.

Effective January 1, 2023, Assembly Bill 2956 deleted obsolete references to appeals in Section 3008. (Stats. 2022, Ch. 295)

At the April 28, 2023, General Meeting, the members delegated to the Executive Director temporary discretion (not to exceed 3 years) to assign additional merits hearings to the Office of Administrative Hearings (“OAH”) outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission. The use of OAH in general and any additional assignments will be reported to the Board in the Executive Director’s Report.

At the April 28, 2023, General Meeting, the Executive Director was given discretion to remove an Administrative Law Judge from an assignment log based on performance. At the September 21, 2023, General Meeting the Board indicated that recruitment and hiring practices should 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. Also, the Ad Hoc Committee on Equity, Justice, and Inclusion will review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs. Effective January 1, 2024, Assembly Bill 473 added three new protests to Section 3065.3. (Stats. 2023, Ch. 332) The Board adopted its first Strategic Plan (June 2024 through July 2030) at the April 25, 2024, General Meeting. The Executive Director was granted the discretion to take action responsive to the objectives. Personnel duties in the Delegation of Administrative Duties was updated to reflect the newly created Assistant Director and Equity Officer position. These revised delegations are being considered at the August 9, 2024, General Meeting.

- A. Statutory Duties. The following is a list of the statutory duties of the Board and staff, with an indication as to individual or entity to whom these duties have been delegated. Only those code sections which contain a specific duty are listed below.

#### Section 3004. Oath of Office

Members of the board shall take an oath of office as provided in the Constitution and the Government Code.

#### Duties Relating to Section 3004

1. Pursuant to Section 3004, each Board member has a duty to personally take an oath as described in this section. This is a duty of the members of the Board.

#### Section 3006. Board to Elect President

The board shall organize and elect a president from among its members for a

term of one year at the first meeting of each year. The newly elected president shall assume his or her duties at the conclusion of the meeting at which he or she was elected. Reelection to office during membership is unrestricted.

#### Duties Relating to Section 3006

1. Pursuant to Section 3006, the Board members have a duty to elect a president during the first meeting of the year. This is a duty of the members of the Board.
2. Pursuant to Section 3006, the newly elected Board president has a duty to assume the duties of the position at the conclusion of the meeting through the next election the following year. This is a duty of the President of the Board.

#### Section 3007. Frequency of Meetings

The board shall meet at least twice during each calendar year.

Special meetings may be called at any time by the president or by any five members of the board upon notice for such time and in such manner as the board may provide.

#### Duties Relating to Section 3007

1. Pursuant to Section 3007, the Board members have a duty to make themselves available at least twice a year to conduct the business of the New Motor Vehicle Board. This is a duty of the members of the Board.
2. Pursuant to Section 3007, the President or any five Board members have the right to call special meetings.

#### Section 3008. Meetings: Open and Executive

All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

#### Duties Relating to Section 3008

1. Pursuant to Section 3008(a), the Board has a duty to hold open and public meetings, with the exception of the Board's executive sessions held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This is a duty of the members of the Board.

### Section 3013. Board's Seal

The board shall adopt a seal and such other device as the members may desire thereon, by which they shall authenticate all papers and documents under their control.

Copies of all records and papers in the board's office shall be received in evidence in all cases when certified under the hand and seal of the board, equally and with like effect as the originals.

#### Duties Relating to Section 3013

1. Pursuant to Section 3013, the Board has the duty to adopt a seal and "such other devices" that the members deem necessary to authenticate all papers and documents. This is a duty of the members of the Board.

### Section 3014. Department Support

The board may appoint an executive director, who shall be exempt from civil service requirements, and who shall devote as much time as may be necessary to discharge the functions of the board as herein provided. The department shall provide the board with the necessary personnel, office space, equipment, supplies, and services that, in the opinion of the board, may be necessary to administer this chapter. However, the board may contract with the department or another state agency for office space, equipment, supplies, and services, as determined by the board to be appropriate, for the administration of this chapter.

#### Duties Relating to Section 3014

1. Pursuant to Section 3014, the Board may appoint an Executive Director who shall be exempt from civil service requirements. This is a duty of the members of the Board.
2. Pursuant to Section 3014, the Executive Director of the Board has a duty to devote as much time as may be necessary to discharge the functions of the Board. This is a duty of the Executive Director of the Board.
3. Pursuant to Section 3014, the Board has the duty to submit to the Department its opinion of what personnel, office space, equipment, supplies, and services may be necessary to administer this chapter. This is a duty which has been delegated to the staff of the Board, with oversight over these activities retained by the Board. The extent of the delegation and the degree of Board oversight are discussed under the headings of Procurement and Personnel, *infra*.
4. Pursuant to Section 3014, the Board has an optional duty to contract with the Department or another state agency for office space, equipment, supplies,

and services, as determined by the Board to be appropriate, for the administration of this chapter. This is a duty of the members of the Board.

#### Section 3015. Headquarters Office – Meeting Rooms

In addition to the office of the executive director in Sacramento, the department shall, as the need therefor occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or other locations in the state as may be required in the discretion of the board, to administer this chapter.

#### Duties Relating to Section 3015

1. Pursuant to Section 3015, the Board has a duty to provide adequate information to the Department about what requirements the Board has relating to Board meetings so that the Department can perform its above-mentioned duty. This is a duty which has been delegated to the staff of the Board.

#### Section 3016. Fees

(a) New motor vehicle dealers and other licensees under the jurisdiction of the board shall be charged fees sufficient to fully fund the activities of the board other than those conducted pursuant to Section 472.5 of the Business and Professions Code. The board may recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee which shall be paid by the Department of Consumer Affairs with funds appropriated from the Certification Account in the Consumer Affairs Fund. All fees shall be deposited, and held separate from other moneys, in the Motor Vehicle Account in the State Transportation Fund, and shall not be transferred to the State Highway Account pursuant to Section 42273.

(b) The fees shall be available, when appropriated, exclusively to fund the activities of the board. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for this purpose during the fiscal year, the surplus shall be carried over into the succeeding fiscal year.

#### Duties Relating to Section 3016

1. Pursuant to Section 3016, the Board has a duty to charge new motor vehicle dealers and other licensees, under the jurisdiction of the Board, fees sufficient to fully fund the Board's activities other than those conducted pursuant to Section 472.5 of the Business and Professions Code. Establishment of the fee by regulation is a duty of the members of the Board. Ensuring that the fees have been collected in a timely manner is a duty which has been delegated to the staff of the Board.

2. Pursuant to Section 3016, the Board has the right to recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3016, the Board has a duty to deposit all fees collected in a separate Motor Vehicle Account in the State Transportation Fund. This is a duty which has been delegated to the staff of the Board.

#### Section 3050. Powers and Duties, Generally

The board shall do all of the following:

(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.

(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. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. 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.

(2)(A) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(B) The board does not have jurisdiction over a dispute pursuant to this paragraph involving any member of the public, including a consumer or other person who is not 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, unless that person has filed the dispute with the board or consents to jurisdiction by the board.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(c) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. A

member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by an association challenging a policy of a manufacturer, manufacturer branch, distributor, or distributor branch pursuant to Section 3085. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 6 (commencing with Section 3085), unless all participants to the protest stipulate otherwise.

(e) Notwithstanding subdivisions (b), (c), and (d), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

(f) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

#### Duties Relating to Section 3050

1. Pursuant to Section 3050(a), the Board has a duty to adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing such matters as are specifically committed to its jurisdiction. This is a duty of the members of the Board.
2. Pursuant to Section 3050(b), the Board has a duty to consider any matter concerning the activities or practices of any person applying for or holding a license pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff is responsible for the administration of petitions filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty of first considering these matters, pursuant to Section 557 of the Board's regulations, as well as rendering the final decision on the merits of the dispute.
3. Pursuant to Section 3050(b), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide any matter considered pursuant to Section 3050(c) that involves a dispute between a franchisee and franchisor. This is a duty of the members of the Board.
4. Pursuant to Section 3050(b)(1), the Board has a right to direct the Department to conduct an investigation of matters that the Board deems

reasonable, and make a written report on the results to the Board. This is a duty of the members of the Board.

5. Pursuant to Section 3050(b)(2)(A), the Board has a right to undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. This is a duty of the members of the Board. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The duty to mediate these matters has been delegated to the staff of the Board. The staff also has the responsibility for the administration of petitions filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty of rendering the final decision on the merits of the disputes.
6. Pursuant to Section 3050(b)(2)(B), the Board does not have jurisdiction over a petition involving any member of the public, including a consumer or other person who is not an applicant for or a licensed new motor vehicle dealer, manufacturer, or distributor, unless that person has filed the dispute with the board or consents to jurisdiction by the board. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff has the responsibility for the administration of petitions filed under this section, including ensuring all non-licensee parties have consented to the Board's jurisdiction, the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty of rendering the final decision on the merits of the dispute.
7. Pursuant to Section 3050(b)(3), the Board has a right to order the Department to exercise any and all authority or power that the Department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5. This is a duty of the members of the Board.
8. Pursuant to Section 3050(c), the Board has a right to hear and decide a protest presented by a franchisee pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

9. Pursuant to Section 3050(c), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise. This is a duty of the members of the Board.
10. Pursuant to Section 3050(d), the Board has a right to hear and decide a protest presented by an association challenging a policy of a manufacturer or distributor pursuant to Section 3085. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.
11. Pursuant to Section 3050(d), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 6 (commencing with Section 3085), unless all parties to the protest stipulate otherwise. This is a duty of the members of the Board.
12. Pursuant to Section 3050(e) notwithstanding Section 3050 subdivisions (b), (c), and (d) above, the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. The members of the Board have a duty not to require the exhaustion of administrative remedies over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

Section 3050.1. Oaths, Depositions, Certification to Official Acts, and Issuance of Subpoenas

(a) In any proceeding, hearing, or in the discharge of duties imposed under this chapter, the board, its executive director, or an administrative law judge designated by the board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in the civil action discovery procedures in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, excepting the provisions of Chapter 13 (commencing with Section 2030.010) of that title. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition filed pursuant to subdivision (b) of Section 3050 or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its

executive director, or an administrative law judge designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions, or events that are the basis for the proceedings, as well as the production of books, records, papers, and other documents.

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

#### Duties Relating to Section 3050.1

1. Pursuant to Section 3050.1(a), the Board, the Executive Director, or the Board's administrative law judges have the right, in any proceeding, hearing, or in the discharge of any duties imposed under this chapter to (a) administer oaths, (b) take depositions, (c) certify to official acts, (d) issue subpoenas to compel attendance of witnesses, and (e) issue subpoenas duces tecum. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3050.1(b), the Board or the Executive Director have the right to authorize the parties to engage in such discovery procedures as are provided for in civil actions in Title 4 (commencing with Section 2016.010) of the Code of Civil Procedure, excepting the provisions of Chapter 13 (commencing with Section 2030.010) of that title. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3050.1(b), the Board has the duty to end discovery no later than 15 days prior to the commencement of the proceeding or hearing before the Board. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to Section 3050.1(b), the Board, the Executive Director, or the Board's administrative law judges have the right to (a) issue subpoenas to compel attendance at depositions, and (b) issue subpoenas duces tecum for production at depositions. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.2. Enforcement of Subpoenas and Discovery

(a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with discovery procedures authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the executive director of the board. The executive director may, at the direction of the board, upon a showing of failure to comply with authorized discovery without substantial justification for that failure, dismiss the protest or petition or suspend the proceedings pending

compliance. The executive director may, at the direction of the board, upon a failure to comply with authorized discovery without substantial justification for that failure, require payment of costs incurred by the board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. Nothing in this section precludes the executive director from making application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1.

#### Duties Relating to Section 3050.2

1. Pursuant to Section 3050.2(b), the Board has a right to decide whether or not to dismiss a protest or petition or suspend proceedings upon a showing of failure to comply with authorized discovery without substantial justification. This is a duty of the members of the Board.
2. Pursuant to Section 3050.2(b), the Board has a duty to direct the Executive Director of the Board to dismiss a protest or petition or suspend the proceedings upon a showing of failure to comply with authorized discovery without substantial justification. This is a duty of the members of the Board.
3. Pursuant to Section 3050.2(b), the Executive Director of the Board has a duty to dismiss a protest or petition or suspend the proceedings upon the direction of the Board. The duty to direct the Executive Director to dismiss or suspend the proceedings has been retained by the Board. The duty to follow the Board's direction in this regard has been delegated to the Executive Director.
4. Pursuant to Section 3050.2(b), the Board has a right to decide whether or not to require payment of costs incurred by the Board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery, without substantial justification for that failure. This is a duty of the members of the Board.
5. Pursuant to Section 3050.2(b), the Board has a duty to direct the Executive Director of the Board to require payment of costs incurred by the Board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery, without substantial justification for that failure. The duty to direct the Executive Director to require payment of costs incurred by the Board has been retained by the Board. The duty to follow the Board's direction in this regard has been delegated to the Executive Director.
6. Pursuant to Section 3050.2(b), the Executive Director of the Board has the right to make application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1. This is a duty which has been

statutorily delegated to the staff of the Board.

#### Section 3050.3. Witness Fees and the Mileage Allowance

A witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its executive director, shall receive for his or her attendance the same fees and the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its executive director, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

##### Duties Relating to Section 3050.3

1. Pursuant to Section 3050.3, the Board has a duty to pay the mileage and fees of a witness subpoenaed by the Board or the Executive Director of the Board, but not at the request of a party. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.4. Mandatory Settlement Conference

In any protest or petition before the board, the board, its executive director, or an administrative law judge designated by the board or its executive director, may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in one or more of the following:

(a) The board, its executive director, or an administrative law judge designated by the board or its executive director, may suspend all proceedings before the board in the matter until compliance.

(b) The board, its executive director, or an administrative law judge designated by the board or its executive director, may dismiss the proceedings or any part thereof before the board with or without prejudice.

(c) The board, its executive director, or an administrative law judge designated by the board or its executive director, may require all the board's costs to be paid by the party at fault.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, may deem that the party at fault has abandoned the matter.

##### Duties Relating to Section 3050.4

1. Pursuant to Section 3050.4, the Board, the Executive Director, or a Board Administrative Law Judge may order a mandatory settlement conference. This is a duty which has been delegated to the staff of the Board.

2. Pursuant to Section 3050.4, the Board, the Executive Director, or a Board Administrative Law Judge has the right to (a) suspend all proceedings before the Board in the matter until compliance, (b) dismiss the proceedings or any part thereof before the Board with or without prejudice, (c) require all the Board's costs to be paid by the party at fault, or (d) deem that the party at fault has abandoned the matter, if any party fails to appear, to be prepared, or to have authority to settle the pending action. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.5. Fees for Appeal, Protest or Petition

Pursuant to Section 3016, the board shall establish a fee for the initial filing by any party in regard to any protest or petition filed pursuant to this chapter.

#### Duties Relating to Section 3050.5

1. Pursuant to Section 3050.5, the Board has a duty to establish a fee for the initial filing by any party in regard to any protest or petition filed pursuant to this chapter. Establishment of the fee by regulation is a duty of the members of the Board. Ensuring that the fees have been collected in a timely manner is a duty which has been delegated to the staff of the Board.

#### Section 3050.6. Cost Assessment

The board or its executive director may, in the event of a granting of a continuance of a scheduled matter, assess costs of the board upon the party receiving the continuance.

#### Duties Relating to Section 3050.6

1. Pursuant to Section 3050.6, the Board or the Executive Director have the right to assess costs of the Board upon a party receiving a continuance of a scheduled matter if the matter is actually continued. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.7. Stipulated Decisions and Orders

(a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, 3080, or 3085.2, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to a protest or petition submit a proposed stipulated decision and order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision

and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

#### Duties Relating to Section 3050.7

1. Pursuant to Section 3050.7(a), when the parties to a protest or petition submit a proposed stipulated decision and order of the Board, the Executive Director has a duty to transmit a copy of the proposed stipulated decision and order to each Board member.
2. Pursuant to Section 3050.7(b), upon request by a party to a stipulation, if the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, or the occurrence of specified conditions, the Board has a duty to determine whether or not the terms and conditions have been met. This duty has been delegated to the staff of the Board to the extent that the provisions of the stipulated decision and order delegate the duty to make such determination to specified individuals.

#### Section 3060. Termination of Franchise

(a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(To be inserted when a 60-day notice of termination is given.)

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(To be inserted when a 15-day notice of termination is given.)

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b)(1) Notwithstanding Section 20999.1 of the Business and Professions code or the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the

franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived."

#### Duties Relating to Section 3060

1. Pursuant to Section 3060(a)(1) and (b)(1), the Board has a duty to receive written notice from the franchisor in accordance with Section 3060. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3060(a)(2), the Board has a duty to advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the Board makes its findings. This is a duty which has been delegated to the staff of the Board.

#### Section 3061. Good Cause

In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
- (b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
- (c) Permanency of the investment.
- (d) Whether it is injurious or beneficial to the public welfare for the franchise

to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of franchisee's failure to comply with the terms of the franchise.

#### Duties Relating to Section 3061

1. Pursuant to Section 3061, the Board has a duty, in determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in Section 3061 (a) through (g). The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3062. Establishing or Relocating Dealerships

(a)(1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make is then represented, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed dealership or relocation of the existing dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location that is

within two miles of a dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile from, the existing dealership location.

(2) The establishment at a location that is both within the same city as, and within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. This subdivision may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) "Motor vehicle dealership" or "dealership" means an authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) "Satellite warranty facility" means a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

#### Duties Relating to Section 3062

1. Pursuant to Section 3062(a)(1), the Board has a duty to receive written notice from the franchisor in accordance with Section 3062(a)(1). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3062(a)(1), the Board or the Executive Director has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3062(a)(1), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed dealership until the Board has held a hearing as provided in Section 3066, nor thereafter, if the Board has determined that there is good cause for not permitting the dealership. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to Section 3062(a)(2), the Board has a duty to receive written notice from the franchisor in accordance with Section 3062(a)(2). This is a duty which has been delegated to the staff of the Board.
5. Pursuant to Section 3062(a)(2), the Board or the Executive Director has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to Section 3062(a)(2), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed satellite warranty facility until the Board has held a hearing as provided in Section 3066, nor thereafter, if the Board has determined that there is good cause for not permitting the satellite warranty facility. This is a duty which has been delegated to the staff of the Board.

### Section 3063. Good Cause

In determining whether good cause has been established for not entering into a franchise or relocating an existing dealership of the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) Permanency of the investment.
- (b) Effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.
- (d) Whether the franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.
- (f) For purposes of this section, the terms “motor vehicle dealership” and “dealership” shall have the same meaning as defined in Section 3062.

### Duties Relating to Section 3063

1. Pursuant to Section 3063, the Board has the duty, in determining whether good cause has been established for not entering into a franchise or relocating an existing dealership of the same line-make, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in Section 3063 (a) through (e). The staff is responsible for the administration of the protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3064. Delivery and Preparation Obligations

(a) Every franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to

the approval of the board, if a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that the franchisee has fulfilled these obligations.

#### Duties Relating to Section 3064

1. Pursuant to Section 3064(a), the Board has a duty to receive a copy of the delivery and preparation obligations, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with such delivery and preparation obligations. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3064(a), if a franchisee files a notice of protest with the Board, the Board has a duty to determine the reasonableness of the schedule of compensation. This is a duty of the members of the Board.
3. Pursuant to Section 3064(a), in determining the reasonableness of the schedules, the Board has a duty to consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate. This is a duty of the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3065. Warranty Reimbursement

(a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board. The warranty reimbursement schedule shall be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair.

(1) The franchisor shall use time allowances for the diagnosis and performance of work and service that are reasonable and adequate for a qualified technician to perform the work or services. A franchisor shall not unreasonably deny a written request submitted by a franchisee for modification of a franchisor's uniform

time allowance for a specific warranty repair, or a request submitted by a franchisee for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the franchisor to assess the merits of the franchisee's request.

(2) A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time or compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time or compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee.

(3) Any protest challenging a reduction in time or compensation applicable to specific parts or labor operations shall be filed within six months following the franchisee's receipt of notice of the reduction, and the franchisor shall have the burden of establishing the reasonableness of the reduction and adequacy and fairness of the resulting reduction in time or compensation.

(b) In determining what constitutes a reasonable warranty reimbursement schedule under this section, a franchisor shall compensate each of its franchisees for parts and labor at rates equal to the franchisee's retail labor rate and retail parts rate, as established pursuant to Section 3065.2. Nothing in this subdivision prohibits a franchisee and a franchisor from entering into a voluntary written agreement signed by both parties that compensates for labor and parts used to satisfy the warranty obligations of the franchisor at rates other than the franchisee's retail rates, provided that the warranty reimbursement schedule adequately and fairly compensates the franchisee.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d)(1) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days after approval.

(2) A franchisor shall not disapprove a claim unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting

documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with the requirements of this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(e)(1) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved or charged back to the franchisee unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period to be commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance

relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after receipt of the written notice described in paragraph (3) or paragraph (4), whichever is later. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written disapproval notice or completion of the franchisor's appeal process, whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(f) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3065

1. Pursuant to Section 3065(a), the Board has a duty to receive a copy of a franchisor's warranty reimbursement schedule. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3065(a)(3), if a protest challenging a reduction in time or compensation applicable to specific parts or labor operations is filed with the Board, the Board has a duty to determine the reasonableness of the reduction and adequacy and fairness of the resulting reduction in time or compensation. This is a duty for the members of the Board.
3. Pursuant to Section 3065(d)(3), if a protest challenging the initial disapproval of a warranty claim is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065(d). This is a duty for the members of the Board.
4. Pursuant to Section 3065(d)(4), if a protest challenging the final denial of a warranty claim following the franchisor's appeal process is filed with the

Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065(d). This is a duty for the members of the Board.

5. Pursuant to Section 3065(e)(3), if a protest challenging the warranty claim disapproval of a previously approved claim following an audit is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065(e). This is a duty for the members of the Board.
6. Pursuant to Section 3065(e)(4), if a protest challenging the final denial of a warranty claim following an audit following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065(e). This is a duty for the members of the Board.
7. Pursuant to Section 3065(f), the Board has a duty to receive filings relating to a request for an order in accordance with Section 3065(f). This is a duty which has been delegated to the staff of the Board.
8. Pursuant to Section 3065(f), the Board has the duty to review any request for an extension of time to conduct the warranty audit. This duty is for the members of the Board.
9. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3065.1. Franchisor Incentive Program

(a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Franchisee claims for incentive program compensation shall not be disapproved unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(b) Franchisee claims for incentive program compensation shall not be disapproved unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for

material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(c) The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the written disapproval notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(d) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim, and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(e) Following the disapproval of a claim, a franchisee shall have six months from receipt of the written notice described in either subdivision (a) or (d), whichever is later, to file a protest with the board for determination of whether the franchisor complied with subdivisions (a), (b), (c), and (d). In any hearing pursuant to this subdivision or subdivision (a), (b), (c), or (d), the franchisor shall have the burden of proof.

(f) All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(g)(1) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved and charged back unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove a claim or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is

disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure any material noncompliance, with the period to be commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim, and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after the franchisee receives the written notice described in paragraph (3) or (4), whichever is later. If the franchisee cures any material noncompliance relating to a claim, the franchisor shall not chargeback the dealer for that claim. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days after the franchisee receives that written notice. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(h) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3065.1

1. Pursuant to Section 3065.1(a), if a protest challenging the initial disapproval of a franchisor incentive program claim is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065.1(a)-(d). This is a duty for the members of the Board.
2. Pursuant to Section 3065.1(d), if a protest challenging the final denial of a franchisor incentive program claim following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065.1(a)-(d). This is a duty for the members of the Board.

3. Pursuant to Section 3065.1(g)(3), if a protest challenging franchisor incentive program claim disapproval of a previously approved claim following an audit is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065.1(g). This is a duty for the members of the Board.
4. Pursuant to Section 3065.1(g)(4), if a protest challenging the final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of Section 3065.1(g). This is a duty for the members of the Board.
5. Pursuant to Section 3065.1(h), the Board has a duty to receive filings relating to a request for an order in accordance with Section 3065.1(h). This is a duty which has been delegated to the staff of the Board.
6. Pursuant to Section 3065.1(h), the Board has the duty to review any request for an extension of time to conduct the franchisor incentive program audit. This duty is for the members of the Board.
7. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

Section 3065.3. Limitation on performance standards or sales objectives of dealer sales, service, or customer service performance Limitations on certain franchisor actions inconsistent with existing standards; Competition with dealer

(a) No franchisor shall establish or maintain a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that is inconsistent with the standards set forth in subdivision (g) of Section 11713.13.

(b) No franchisor shall allocate vehicles or parts in a manner inconsistent with the standards set forth in subdivision (a) of Section 11713.3.

(c) No franchisor shall impose a facility or equipment policy inconsistent with the standards set forth in subdivision (a), (b), (c), or (k) of Section 11713.13.

(d) No franchisor shall compete with a dealer in violation of subdivision (o) of Section 11713.3.

~~(b)~~(e) A franchisee may file a protest with the board for determination of whether a franchisor has complied with this section and in that proceeding the franchisor shall have the burden of proof.

Duties Relating to Section 3065.3

1. If a protest is filed pursuant to Section 3065.3, the Board has a duty to determine whether the franchisor complied with the requirements of Section

**3065.3 11713.13(g).** This is a duty for the members of the Board.

2. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

Section 3065.4. Filing a protest with board for declaration of franchisee's retail labor rate or retail parts rate; Judicial review

(a) If a franchisor fails to comply with Section 3065.2, or if a franchisee disputes the franchisor's proposed adjusted retail labor rate or retail parts rate, the franchisee may file a protest with the board for a declaration of the franchisee's retail labor rate or retail parts rate. In any protest under this section, the franchisor shall have the burden of proof that it complied with Section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent.

(b) Upon a decision by the board pursuant to subdivision (a), the board may determine the difference between the amount the franchisee has actually received from the franchisor for fulfilled warranty obligations and the amount that the franchisee would have received if the franchisor had compensated the franchisee at the retail labor rate and retail parts rate as determined in accordance with Section 3065.2 for a period beginning 30 days after receipt of the franchisee's initial submission under subdivision (a) of Section 3065.2. The franchisee may submit a request to the franchisor to calculate the unpaid warranty reimbursement compensation and the franchisor shall provide this calculation to the franchisee within 30 days after receipt of the request. The request for the calculation will also be deemed a request for payment of the unpaid warranty reimbursement compensation.

(c) If the franchisor fails to make full payment within 30 days after the franchisee submits a request for payment, the franchisee may file an action in superior court for injunctive and other appropriate relief to enforce the determination or order of the board. The franchisee may also recover in superior court its actual reasonable expenses in bringing and maintaining an enforcement action in superior court.

(d) Either the franchisor or the franchisee may seek judicial review of the board's determination pursuant to Section 3068

Duties Relating to Section 3065.4

1. A franchisee may file a protest pursuant to Section 3065.4(a) seeking a declaration of the franchisee's retail labor rate or retail parts rate. This is a duty for the members of the Board.
2. Pursuant to Section 3065.4(b), upon a decision by the Board pursuant to subdivision (a), the Board may determine the difference between the amount the franchisee has actually received from the franchisor for fulfilled warranty

obligations and the amount that the franchisee would have received if the franchisor had compensated the franchisee at the retail labor rate and retail parts rate as determined in accordance with Section 3065.2 for a period beginning 30 days after receipt of the franchisee's initial submission under subdivision (a) of Section 3065.2. This is a duty for the members of the Board.

3. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3066. Hearings on Protests

(a) Upon receiving a protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.3, or 3065.4 the board shall fix a time within 60 days of the order, and place of hearing, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing an additional motor vehicle dealership or relocating an existing motor vehicle dealership.

(c) Except as otherwise provided in this chapter, in a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, or 3065.1, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material to a protest filed pursuant to Section 3065 or 3065.1.

(d) In a hearing on a protest filed pursuant to Section 3065.3, the franchisor shall have the burden of proof to establish that the franchisor complied with

subdivision (g) of Section 11713.13.

(e) In a hearing on a protest filed pursuant to Section 3065.4, the franchisor shall have the burden of proof to establish that the franchisor complied with Section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent.

(f) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

#### Duties Relating to Section 3066

1. Pursuant to Section 3066(a), the Board has a duty, upon receiving a protest pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, or 3065.4, to fix a time within 60 days of the order, and place of hearing, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3066(a), the Board, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3066(a), except in any case involving a franchisee who deals exclusively in motorcycles, the Board or its Executive Director, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to Section 3066(a), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
5. Pursuant to Section 3066(a), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.

6. Pursuant to Section 3066(f), unless all parties to the protest stipulate otherwise, a new motor vehicle dealer member may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to Article 4. This is a duty of the dealer members of the Board. The staff of the Board is delegated with the duty of determining whether or not the parties to an Article 4 protest want to stipulate to allow dealer Board member participation.

### Section 3067. Decision

(a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by certified mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

### Duties Relating to Section 3067

1. Pursuant to Section 3067(a), the Board has a duty to provide its decisions in writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.
2. Pursuant to Section 3067(a), the Board has a duty to provide a conclusion in its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to Section 3067(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board.
4. Pursuant to Section 3067(a), the Board has a duty to act within 30 days after

a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by Section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the members of the Board.

5. Pursuant to Section 3067(a), the Board has a duty to deliver copies of the decision to the parties personally or send it to them by certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to Section 3067(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty which has been delegated to the staff of the Board.

#### Section 3070. Termination of Franchise

(a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, may not terminate or refuse to continue a franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent may not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the recreational vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the recreational vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-

point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(i) To be inserted when a 60-day notice of termination is given.

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(ii) To be inserted when a 15-day notice of termination is given.

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3080. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3080, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b)(1) Notwithstanding Section 20999.1 of the Business and Professions code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of a notice satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived."

#### Duties Relating to Section 3070

1. Pursuant to Section 3070(a)(1) and (b)(1), the Board has a duty to receive written notice from the franchisor in accordance with Section 3070. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3070(a)(2), the Board has a duty to advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3080, and that the franchisor may not terminate or refuse to continue until the Board makes its findings. This is a duty which has been delegated to the staff of the Board.

#### Section 3071. Good Cause

In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise of a dealer of new recreational vehicles, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) The amount of business transacted by the franchisee, as compared to the business available to the franchisee.
- (b) The investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
- (c) The permanency of the investment.
- (d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.
- (e) Whether the franchisee has adequate new recreational vehicle sales and, if required by the franchise, service facilities, equipment, vehicle parts, and qualified service personnel, to reasonably provide for the needs of the consumers of the recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public.
- (f) Whether the franchisee fails to fulfill the warranty obligations agreed to be performed by the franchisee in the franchise.
- (g) The extent of franchisee's failure to comply with the terms of the franchise.

#### Duties Relating to Section 3071

1. Pursuant to Section 3071, the Board has a duty, in determining whether good

cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in Section 3071 (a) through (g). The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3072. Establishing or Relocating Recreational Vehicle Dealerships

(a)(1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional recreational vehicle dealership, or seeks to relocate an existing recreational vehicle dealership, that has a relevant market area in which the same recreational vehicle line-make is represented, the franchisor shall, in writing, first notify the board and each franchisee in that recreational vehicle line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3080, and that the franchisor shall not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in Section 3080, nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed recreational vehicle dealership or relocation of the existing recreational vehicle dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to any of the following:

(1) The relocation of an existing dealership to any location that is both within

the same city as, and within one mile of, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and within one-quarter mile of, the location of a dealership of the same recreational vehicle line-make that has been out of operation for less than 90 days.

(3) A display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This paragraph may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code, or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(4) An annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Section 11713.15.

(c) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional recreational vehicle dealership.

(d) For the purposes of this section and Section 3073, a "recreational vehicle dealership" or "dealership" is any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code. A "recreational vehicle dealership" or "dealership" does not include a dealer who deals exclusively in truck campers.

#### Duties Relating to Section 3072

1. Pursuant to Section 3072(a)(1), the Board has a duty to receive written notice from the franchisor in accordance with Section 3072(a)(1). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3072(a)(1), the Board or the Executive Director has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3072(a)(1), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3080, and that the franchisor may not establish or relocate the proposed dealership until the Board has held a hearing as provided in Section 3080, nor thereafter, if the Board has determined that there is good cause for not permitting the establishment of the proposed recreational vehicle dealership or relocation of the existing recreational vehicle dealership. This is a duty which has been delegated to the staff of the Board.

### Section 3073. Good Cause

In determining whether good cause has been established for not entering into a recreational vehicle franchise or relocating an existing dealership of the same recreational vehicle line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) The permanency of the investment.
- (b) The effect on the retail recreational vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional recreational vehicle franchise to be established or an existing dealership be relocated.
- (d) Whether the franchisees of the same recreational vehicle line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. In making this determination, the board shall consider the adequacy of recreational vehicle sales and, if required by the franchise, service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

### Duties Relating to Section 3073

1. Pursuant to Section 3073, the Board has the duty, in determining whether good cause has been established for not entering into a recreational vehicle franchise or relocating an existing dealership of the same recreational vehicle line-make, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in Section 3073 (a) through (e). The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3074. Delivery and Preparation Obligations

(a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the

board, if a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that the franchisee has fulfilled these obligations.

#### Duties Relating to Section 3074

1. Pursuant to Section 3074(a), the Board has a duty to receive a copy of the delivery and preparation obligations, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3074(a), if a franchisee files a notice of protest with the Board, the Board has a duty to determine the reasonableness of the schedule of compensation. This is a duty of the members of the Board.
3. Pursuant to Section 3074(a), in determining the above-referenced reasonableness of the schedules, the Board has a duty to consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate. This is a duty of the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3075. Warranty Reimbursement

(a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If a franchisor disallows a franchisee's claim for a defective part, alleging

that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. A claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3074 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, including, but not limited to, performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3075

1. Pursuant to Section 3075(a), the Board has a duty to receive a copy of a franchisor's warranty reimbursement schedule or formula. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3075(a), if a notice of protest is filed with the Board, the Board has a duty to determine the reasonableness of the warranty reimbursement schedule or formula. This is a duty for the members of the Board.
3. Pursuant to Section 3075(e), the Board has a duty to receive filings relating to a request for an order in accordance with Section 3075(e). This is a duty which has been delegated to the staff of the Board.
4. Pursuant to Section 3075(e), the Board has the duty to review any request for an extension of time to conduct the warranty audit. This duty is for the members of the Board.
5. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have

the duty to render the final decision on the merits of the protest.

#### Section 3076. Franchisor Incentive Program

(a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. A claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3076

1. Pursuant to Section 3076(a), the Board has a duty to receive a protest relating to a disapproval of a claim in accordance with Section 3076(a). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3076(b), the Board has a duty to receive filings relating to a request for an order in accordance with Section 3076(b). This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3076(b), the Board has the duty to review any request for an extension of time to conduct the franchisor incentive program audit. This duty is for the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3078. Consumer Complaints: Referral to Department of Consumer Affairs

(a) If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a recreational vehicle dealership, as defined in subdivision (d) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

(b) This chapter does not affect a person's rights regarding a transaction involving a recreational vehicle as defined in subdivision (a), to maintain an action under any other statute, including, but not limited to, applicable provisions of Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

### Duties Relating to Section 3078

1. Pursuant to Section 3078(a), if the Board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined, from a motor vehicle dealership as defined in Section 3072(d), the Board has a duty to recommend that the complainant consult with the Department of Consumer Affairs. This is a duty which has been delegated to the staff of the Board.

### Section 3080. Recreational Vehicle Hearings on Protests

(a) Upon receiving a protest pursuant to Section 3070, 3072, 3074, 3075, or 3076, the board shall fix a time and place of hearing within 60 days of the order, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. The board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3070 or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing an additional recreational vehicle dealership or relocating an

existing recreational vehicle dealership.

(c) Except as otherwise provided in this chapter, in a hearing on a protest alleging a violation of, or filed pursuant to, Section 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when that issue is material to a protest filed pursuant to Section 3075 or 3076.

#### Duties Relating to Section 3080

1. Pursuant to Section 3080(a), the Board has a duty, upon receiving a protest pursuant to Sections 3070, 3072, 3074, 3075, or 3076, to fix a time and place of hearing within 60 days of the order, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3080(a), the Board, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3080(a), the Board or its Executive Director, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to Section 3080(a), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
5. Pursuant to Section 3080(a), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.

#### Section 3081. Recreational Vehicle Decisions

(a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain,

conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by certified mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

#### Duties Relating to Section 3081

1. Pursuant to Section 3081(a), the Board has a duty to provide its decisions in writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.
2. Pursuant to Section 3081(a), the Board has a duty to provide a conclusion in its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to Section 3081(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board.
4. Pursuant to Section 3081(a), the Board has a duty to act within 30 days after a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by Section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the members of the Board.
5. Pursuant to Section 3081(a), the Board has a duty to deliver copies of the decision to the parties personally or send it to them by certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.

6. Pursuant to Section 3081(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty which has been delegated to the staff of the Board.

#### Section 3085. Protest of Export or Sale-for-Resale Prohibition Policy

(a) An association may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3.

(b) For the purpose of this article, an association is an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers.

(c) Relief for a protest pursuant to this section is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association.

(d) In a protest pursuant to this section, the association shall have the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3.

#### Duties Relating to Section 3085

1. Pursuant to Section 3085(a), if a protest is filed with the Board, the Board has a duty to make sure it is filed by an association as defined on behalf of two or more dealers subject to the challenged export or sale-for-resale prohibition policy. This is a duty which has been delegated to the staff of the Board. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision.
2. Pursuant to Section 3085(c), the Board has a duty to limit the relief awarded to protestant to a declaration that an export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The Board is not authorized to award monetary relief. The members of the Board have the duty to render the final decision on the merits of the protest that does not exceed these limits.

#### Section 3085.2. Hearings on Protest

(a) Upon receiving a protest pursuant to Section 3085, the board shall fix a time and place of hearing within 60 days, and shall send by certified mail a copy of

the order to the manufacturer, manufacturer branch, distributor, distributor branch, the protesting association, and all individuals and groups that have requested notification by the board of protests and decisions of the board. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3085, the association shall have the burden of proof to establish a violation of the applicable section by the subject manufacturer, manufacturer branch, distributor, or distributor branch.

(c) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

#### Duties Relating to Section 3085.2

1. Pursuant to Section 3085.2(a), the Board has a duty, upon receiving a protest pursuant to Section 3085 to fix a time and place of hearing within 60 days, and shall send by certified mail a copy of the order to the manufacturer or distributor, the protesting association, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to Section 3085.2(b), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to Section 3085.2(b), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.
4. Pursuant to Section 3085.2(d), unless all parties to the protest stipulate otherwise, a new motor vehicle dealer member may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to Article 6. This is a duty of the dealer members of the Board. The staff of the Board is delegated with the duty of determining whether or not the parties to an Article 6 protest want to stipulate to allow

dealer Board member participation.

#### Section 3085.4. Decision

(a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. The board shall act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties. Copies of the board's decision shall be delivered to the parties personally or sent to them by certified mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

#### Duties Relating to Section 3085.4

1. Pursuant to Section 3085.4(a), the Board has a duty to provide its decisions in writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.
2. Pursuant to Section 3085.4(a), the Board has a duty to provide a conclusion in its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to Section 3085.4(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board.
4. Pursuant to Section 3085.4(a), the Board has a duty to act within 30 days after a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by Section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the

members of the Board.

5. Pursuant to Section 3085.4(a), the Board has a duty to deliver copies of the decision to the parties personally or send it to them by certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to Section 3085.4(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty which has been delegated to the staff of the Board.

B. Delegation of Administrative Duties. The following is a list of the non-statutory or administrative duties of the Board and staff, with an indication as to individual or entity to whom these duties have been delegated.

1. Personnel.

- a. The members of the Board have the duty to recruit, interview, and hire for the positions of Executive Director as well as the General Counsel and Administrative Law Judges.
- b. The Executive Director has been delegated with the responsibility of recruiting, interviewing, and hiring all individuals associated with the legal operations of the Board.
- c. The Assistant Director and Equity Officer ~~Staff Services Manager II~~ has been delegated with the responsibility of recruiting, interviewing, and hiring all individuals associated with the clerical operations of the Board. Any candidate selected by the Assistant Director and Equity Officer ~~Staff Services Manager II~~ shall be approved by the Executive Director prior to processing the hiring documents.
- d. Any hiring done by the staff of the Board in accordance with the procedures as set forth above shall be reported to the Board at the next General Meeting of the Board which ensues such hiring.
- e. Recruitment and hiring practices should 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. (September 21, 2023)

2. Procurement.

Subject to the limitations set forth below, the Executive Director has been delegated with the responsibility of procuring all necessary equipment, supplies, and services which are deemed necessary to administer the responsibilities of the Board.

a. Limitations on procurement authority.

The Executive Director is delegated the authority to procure of any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's approved budget. If, due to extenuating circumstances, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting.

3. Budget Change Proposals.

All budget change proposals shall be submitted with the concurrence of the Fiscal Committee, and ultimately considered by the full Board at its next regularly scheduled meeting.

4. Formal Board Delegations at Noticed Meetings.<sup>2</sup>

a. Amicus Curiae Briefs.

The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency<sup>3</sup> ("Agency") and approval of the Governor's Office of Legal Affairs. As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request

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<sup>2</sup> The Board Meeting(s) in which the delegation occurred is noted in parenthesis after the formal delegation.

<sup>3</sup> Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.

for consent will be withdrawn.  
(July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4)

b. Assignment of Merits Hearings to Office of Administrative Hearings.

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 that is outside the normal rotation, the Executive Director will seek Executive Committee permission. The use of OAH in general and any additional assignments will be reported to the Board in the Executive Director's Report.  
(April 28, 2023)

c. Audit Compliance Officer.

The Board has designated the General Counsel<sup>4</sup> to service as its Audit Compliance Officer to ensure compliance with all facets of the 1996 Agency Performance Audit. This includes the Corrective Action Plan Committee's proposal which was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting. An annual report shall be provided to the Board each June updating the Board's compliance. This report was subsequently made an exception report.  
(July 12, 1996; December 8, 1998; May 25, 2000; November 20, 2008; and May 26, 2011)

d. Bagley-Keene Open Meeting Act Compliance Officer.

The General Counsel<sup>5</sup> is the Bagley-Keene Open Meeting Act Compliance Officer.  
(July 12, 1996; May 25, 2000)

e. Bagley-Keene Opening Meeting Act: Closed Meeting Minutes.

The Bagley-Keene Open Meeting Act requires that all state bodies designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and

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<sup>4</sup> Robin Parker, Chief Counsel, is performing all of the duties previously assigned to the Board's General Counsel including but not limited to the Audit Compliance Officer, the Bagley-Keene Compliance Officer, and maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.

<sup>5</sup> See footnote 4

enter in a minute book a record of topics discussed and decisions made at the meeting. In order to ensure compliance, the General Counsel<sup>6</sup> is responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act. (July 12, 1996; May 25, 2000)

f. Board Policy Review

The Ad Hoc Committee on Equity, Justice, and Inclusion will review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs. (September 21, 2023)

g. Decision Cover Sheet.

The presiding Administrative Law Judge shall prepare a decision cover sheet/analysis which is provided to the Board members with their meeting materials when a proposed decision or ruling (order) is agendized. The decision cover sheet should be limited to two pages and not contain a recommendation. (December 8, 1998; May 25, 2000)

h. Court Participation on Issues of Interest to the Board.

The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important State interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court and keep it on the proof of service list. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General.

However, in mandamus actions in which an important State issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the State interest. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in

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<sup>6</sup> See footnote 4

opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his or her designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board. Any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel.

(October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5)

i. Document Requests – Waiver of Fees.

The Board will charge fees for document requests that are consistent with Evidence Code section 1563, and all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director.

(October 22, 1996; September 6, 2001; December 13, 2006)

j. Legislative Policy

If there is insufficient time for Legislative Committee approval, the Board delegated to the Executive Director the power to approve legislative analyses pertaining to Legislation of Special Interest that are submitted to California State Transportation Agency and the Department of Motor Vehicles. The Legislative Committee delegates to the Executive Director the ability to discuss pending Legislation of Special Interest with stakeholders or sponsors regarding technical input without prior committee approval.

(June 7, 2019)

k. Liaison Information Security Officer.

The Executive Director is the Liaison Information Security Officer and responsible for ensuring compliance with information security procedures. This ensures that the Board complies with the Government Code that requires that each agency have an officer who is responsible for ensuring that the organization's systems and procedures are in compliance.

(August 20, 1996; December 12, 2000)

I. Promulgating Regulations.

The Board delegated to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law ("OAL") would be brought before the members at the next meeting. Non-substantive changes suggested by OAL or staff would be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.  
(April 26, 2002)

m. Public Member Designee if President is Dealer Member.

When a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if a Dealer Member is Board President, and a Public Member is Vice President, then the designation would automatically go to the Vice President.  
(October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5; June 26, 2008)

n. Removal of Administrative Law Judge from Assignment Log

The Executive Director has 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. If appropriate, updates would be reported to the Board in the Executive Director's Report or in closed Executive Session as a personnel matter.  
(April 28, 2023)

o. Strategic Plan Discretion to Implement Objectives

The Board adopted its first Strategic Plan (June 2024 through July 2030) at the April 25, 2024, General Meeting. The Executive Director has discretion to take action responsive to the following objectives: (1) Improve outcomes for all motor vehicle consumers; (2) Contribute to the advancement of the California State Transportation Agency's Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity; (3) Transform our organization to become more resilient and conserve limited resources; and (4) Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.  
(April 25, 2024)



## Memorandum

**Date** : JULY 25, 2024

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

**From** : SUZANNE LUKE  
PENNY BHATTI  
KIMBERLEE VAYE  
TIMOTHY CORCORAN

**Subject** : REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 3<sup>RD</sup> QUARTER OF FISCAL YEAR 2023-2024

The following is a financial summary of the Board's expenditures and revenue through the 3<sup>rd</sup> quarter of Fiscal Year (FY) 2023-2024.

### Expenditures Fiscal Year 2023-24

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$2,153,000	\$344,927	497,430	392,085	TBD	\$918,558	43%

### Revenue Fiscal Year 2023-24

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
\$1,818,000	\$1,452,164	\$3,270,164	\$1,659,011

Current Reserve Balance – \$2,035,722 balance after 3<sup>rd</sup> Quarter Expenditures.  
The Board expended 57% of its appropriated budget as of the 3<sup>rd</sup> quarter.

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

- New Motor Vehicle Board (NMVB) Annual Fee – The NMVB will begin invoicing at the end of July/early August. Current projections from 166 manufacturers and distributors are \$895,579.00 with 13 outstanding data summaries to be collected.

- Arbitration Certification Program (ACP) Annual Fee – This collection is now complete. Staff have collected \$1,658,482.00 on behalf of the Department of Consumer Affairs.
- Discussion and Consideration of the Board's Proposed Budget for the Next Fiscal Year – NMVB's budget appropriation for FY 24/25 is \$2,163,000. The Governor has declared all departments to reduce state operations by 7.95%

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.

Attachments as stated

cc: Ardy Kassakhian, President

### **Third Quarter Revenue and Expenditure Summary**

Fiscal Year 2023-2024

Covers July 1, 2023 to March 31, 2024

#### **REVENUES**

New Dealer Licensing Fee:	\$678,540
Manufacturer and Distributor Fee	\$766,948
NMVB Filing Fee	\$5,800
Miscellaneous Services	\$160
Arbitration Program	\$716
Year-to-date total:	\$1,452,164

#### **EXPENDITURES**

##### **Payroll**

Full-Time staff salaries:  
Budgeted Amount \$1,116,000  
Expended \$715,893  
Remaining Balance \$400,107

Part-Time staff salaries:  
Budgeted Amount \$81,000  
Expended \$109,493  
Remaining Balance \$-28,493

Benefits:  
Budgeted Amount \$676,000  
Expended \$354,349  
Remaining Balance \$321,651

##### **Operating Expense and Equipment**

*General Expense* (includes equipment, office supplies, dues, legal library, etc.):  
Budgeted Amount \$34,003  
Expended \$11,262  
Remaining Balance \$22,741

*Rent:*  
Budgeted Amount \$5,000  
Expended \$0.00  
Remaining Balance \$5,000

*Facilities Planning:*  
Budgeted Amount \$5,000  
Expended \$427  
Remaining Balance \$4,573

*Professional Services (Attorney General - OAH):*

Budgeted Amount \$120,407

Expended \$34,789

Remaining Balance \$85,618

*Professional Services (Court Reporters):*

Budgeted Amount \$23,000

Expended \$2,335

Remaining Balance \$20,665

**TOTAL OPERATING EXPENSE AND EQUIPMENT**

Budgeted Amount \$245,000

Expenditure Year to Date \$54,707 – 22%

Balance Remaining \$190,293 – 78%

**GRAND TOTAL – Fiscal Year 2023-2024**

Budgeted Amount \$2,153,000

Expenditure Year to Date \$1,234,442 - 57%

Balance Remaining \$918,558 - 43%



## Memorandum

**Date** : JULY 17, 2024

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

**From** : TIMOTHY M. CORCORAN  
JASON A. ROSE

**Subject** : DISCUSSION CONCERNING PENDING LEGISLATION

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

Bill summaries include a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available, as well as the current status of the bill.<sup>1</sup>

a. Pending Legislation of Special Interest: None.

b. Pending Legislation of General Interest:

(1) **Assembly Bill 1777 – Assembly Member Ting** (Introduced January 3, 2024)

**Status:** Active Bill. In Committee Process

**Support:** City and County of San Francisco, Consumer Attorneys of California, San Francisco Fire Department, San Francisco Municipal Transportation Agency (SFMTA), and San Francisco Taxi Workers Alliance (SFTWA).

**Opposition:** Aurora Innovation, INC., Autonomous Vehicle Industry Association, California Teamsters Public Affairs Council, California Trucking Association, Gatik, Kodiak Robotics, INC., Tesla INC., and Waabi

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

Innovation US Inc.

**Legislative Counsel's Digest:** Autonomous vehicles.

Existing law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle operated if specified requirements are satisfied. Existing law prohibits the operation of an autonomous vehicle on public roads until the manufacturer applies to the Department of Motor Vehicles, as specified, and that application is approved. Existing law requires the department to adopt regulations setting forth requirements for the submission and approval of an application, including, among other things, any testing, equipment, and performance standards the department concludes are necessary to ensure the safe operation of autonomous vehicles on public roads, as specified.

This bill would require, if an autonomous vehicle does not have a person in the driver's seat and commits a violation of the Vehicle Code or has a person in the driver's seat but commits the violation while the autonomous technology is engaged, the manufacturer to be cited for the violation. If an autonomous vehicle has a person in the driver's seat and commits a violation of the Vehicle Code while the autonomous technology is not engaged, the bill will require the driver to be cited for the violation.

The bill would require manufacturers of fully autonomous vehicles, by July 1, 2026, to comply with certain requirements, including, among other things, to maintain a dedicated emergency response telephone line that is available for emergency response officials, as defined, and to equip each autonomous vehicle with a 2-way voice communication device that enables emergency response officials that are near the vehicle to communicate effectively with a remote human operator, as specified. The bill would authorize an emergency response official to issue an emergency geofencing message, as defined, to a manufacturer and would require a manufacturer to direct its fleet to leave or avoid the area identified within 2 minutes of receiving an emergency geofencing message, as specified.

(2) **Assembly Bill 2286 – Assembly Members Aguiar-Curry, Friedman, and Kalra** (Introduced February 8, 2024)

**Status:** Active Bill – In Senate Appropriations.

**Support:** American Federation of State, County and Municipal Employees, Afl-cio, California Association of Highway Patrolmen, California Labor Federation, Afl-cio, California Professional Firefighters, California School Employees Association Cft- a Union of Educators & Classified Professionals, Aft, Afl-cio, League of California Cities, San Francisco Board of Supervisors, San Francisco Taxi Workers Alliance (SFTWA), Smart - Transportation Division (SMART-TD), and Transport

Workers Union of America, Afl-cio.

**Opposition:** Aurora Innovation, INC., Autonomous Vehicle Industry Association, Bay Area Council, California Chamber of Commerce, California Chapter of Association of Uncrewed Vehicle Systems International (AUVSI), California Delivery Association, California Hispanic Chamber of Commerce, California Manufacturers & Technology Association, Central City Association of Los Angeles, Central Valley Yemen Society, Chamber of Progress, Coalition of Small and Disabled Veteran Businesses, Consumer Technology Association, Cupertino Chamber of Commerce, Daimler Truck North America, Flasher Barricade Association, Inland Empire Economic Partnership, Kodiak Robotics, INC., Latin Business Association, Los Angeles County Business Federation (BIZFED), Mountain View Chamber of Commerce, National Federation of Independent Business – California, Navistar, INC., Si Se Puede, Silicon Valley Leadership Group, STAR Milling Co., Technet, Tesla, Uber Technologies, INC., Valley Industry & Commerce Association, Volvo Group North America, and Waabi Innovation US Inc.

**Legislative Counsel's Digest:** Vehicles: autonomous vehicles.

Existing law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle operated if specified requirements are satisfied. Existing law prohibits the operation of an autonomous vehicle on public roads until the manufacturer applies to the Department of Motor Vehicles, as specified, and that application is approved.

This bill would require a manufacturer of an autonomous vehicle to report to the department a collision on a public road that involved one of its autonomous vehicles with a gross vehicle weight of 10,001 pounds or more that is operating under a testing permit that resulted in damage of property, bodily injury, or death within 10 days of the collision.

The bill would require a manufacturer of an autonomous vehicle to annually submit to the department specified information regarding the deactivation of the autonomous mode for its autonomous vehicles with a gross vehicle weight of 10,001 pounds or more that were operating under a testing permit that authorized the vehicle to operate on public roads.

The bill would prohibit the operation of an autonomous vehicle with a gross vehicle weight of 10,001 pounds or more on public roads for testing purposes, transporting goods, or transporting passengers without a human safety operator physically present in the autonomous vehicle at the time of operation.

The bill would require the Department of Motor Vehicles, by January 1, 2030, or 5 years after commencement of testing, whichever occurs later, and upon

appropriation by the Legislature, to submit a report to the appropriate policy and fiscal committees of the Legislature evaluating the performance of autonomous vehicle technology and its impact on public safety and employment in the transportation sector for autonomous vehicles with a gross vehicle weight of 10,001 pounds or more. The bill would require the Department of the California Highway Patrol, the Labor and Workforce Development Agency, the Department of Transportation, the State Air Resources Board, and other relevant state agencies to provide additional information needed to research the report.

(3) **Assembly Bill 2401 – Assembly Member Ting** (Introduced February 12, 2024)

**Status:** Active Bill – In committee process

**Support:** 350 Bay Area Action, 350 Conejo/San Fernando Valley, 350 Humboldt, 350 Humboldt: Grass Roots Climate Action, 350 Sacramento, Active San Gabriel Valley, California Electric Transportation Coalition, California Environmental Voters, California Environmental Voters (formerly Clcv), California New Car Dealers Association, Chargepoint, INC., Citizens Climate Lobby, Climate Action California, Climate Reality Project - Silicon Valley Chapter, Climate Reality San Francisco Bay Area Chapter, Coalition for Clean Air, Coltura, Communities for A Better Environment, Democrats of Rossmoor, Ecology Action, Edison International and Affiliates, Including Southern California Edison, Environment California, Environmental Defense Fund, Friends Committee on Legislation of California, Greenlatinos, Greenlining Institute; the Lutheran Office of Public Policy – California, National Resources Defense Council, Nrdc, Pacific Gas and Electric Company and Its Affiliated Entities, Plug in America, Public Health Professionals, Recolte Energy, Santa Cruz Climate Action Network, Sierra Club California, Silicon Valley Youth Climate Action, Solano County Democratic Central Committee, Sustainable Mill Valley, Sustainable Rossmoor, The Climate Center, The Greenlining Institute, Transformative Wealth Management LLC, Transportation Agency for Monterey County (TAMC), Union of Concerned Scientists, Valley Can (clean Air Now), Valley Clean Air Now, Voices for Progress, and Vote Solar Zero-waste People Power.

**Opposition:** None.

**Legislative Counsel's Digest:** Clean Cars 4 All Program.

Existing law establishes the Clean Cars 4 All Program, which is administered by the State Air Resources Board, to focus on achieving reductions in the emissions of greenhouse gases, improvements in air quality, and benefits to low-income state residents through the replacement of high-polluter motor vehicles with cleaner and more efficient motor vehicles or a mobility option. Existing law requires the implementing regulations to ensure that the program complies with certain

requirements.

This bill would require the implementing regulations for the Clean Cars 4 All Program to additionally ensure that, among other things, incentives provided under the program are available in all areas of the state and that, in those areas where a local air district has not elected to manage the distribution of incentives, the state board manages the distribution of incentives to eligible residents of those areas and would make certain conforming changes in that regard. The bill would also require, as one of the program goals for replacement of passenger vehicles and trucks, the state board to prioritize vehicle retirement in areas of the state that meet specified criteria, including those areas with the highest percentage of people in disadvantaged and low-income communities.

Existing law requires the state board to annually post on its internet website a performance analysis of the replacement and mobility options component of the Clean Cars 4 All Program that includes an evaluation of the funding for targeted outreach in low-income or disadvantaged communities, as specified.

This bill would require that evaluation to instead address the funding for targeted outreach in low-income or disadvantaged communities with the highest number of vehicles manufactured before 2004 or that are at least 20 years old that are driven most and have the poorest fuel economy, as specified.

Existing law requires the state board to consider certain metrics in allocating funding under the program to local air districts participating in the program.

This bill would require the state board, in allocating funding to local air districts participating in the program and to the portion of the program managed by the state board, to consider additional metrics relating to retired vehicles.

The bill would also require the state board, in coordination with local air districts and specified organizations, to establish a means-based strategy to identify potential recipients of incentives under the Clean Cars 4 All Program that meet certain criteria and, as part of that strategy, require an increased incentive to be provided under the program to those individuals.

(4) **Assembly Bill 3061 – Assembly Member Haney** (Introduced February 16, 2024)

**Status:** Active Bill – In Committee Process.

**Support:** California Conference Board of The Amalgamated Transit Union, California Conference of Machinists, California Labor Federation, Afl-cio, California Low-income Consumer Coalition, California Professional Firefighters, California School Employees Association, California Teamsters Public Affairs Council, Consumer Attorneys of California, Consumer Federation of California, Consumer Watchdog, Consumers for Auto Reliability & Safety, Engineers and Scientists of

California, Ifpte Local 20, Afl-cio, Mission Street Neighbors, Public Law Center, San Francisco County Transportation Authority, San Francisco Taxi Workers Alliance (SFTWA), Smart - Transportation Division (SMART-TD), Unite-here, Afl-cio, Utility Workers Union of America, and Utility Workers Union of America, Afl-cio.

**Opposition:** Alliance for Automotive Innovation, Autonomous Vehicle Industry Association, California Manufacturers & Technology Association, Chamber of Progress, Cupertino Chamber of Commerce, Mountain View Chamber of Commerce, Technet, Tesla INC. (oppose unless amended), and Volvo Group North America.

**Legislative Counsel's Digest:** Vehicles: autonomous vehicle incident reporting.

Existing law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle operated if specified requirements are satisfied. Existing law prohibits the operation of an autonomous vehicle on public roads until the manufacturer, as defined, applies to the Department of Motor Vehicles (DMV), as specified, and that application is approved. Existing law requires the department to adopt various specified regulations relating to autonomous vehicles, including, among others, testing, equipment, and performance standards that the department concludes are necessary to ensure the safe operation of autonomous vehicle on public roads.

Commencing July 31, 2025, this bill would require a manufacturer of autonomous vehicles to report to the DMV a vehicle collision, traffic citation, or disengagement, as defined, that occurs when a manufacturer's vehicle is operating in autonomous mode in California regardless of whether the vehicle is in the testing or deployment phase. The bill would require these reports to contain specified information and to be submitted at the time the incident is identified by the manufacturer. The bill would require these reports to be submitted on timelines adopted by the DMV that do not exceed reporting deadlines required by the federal National Highway Traffic Safety Administration. The bill would additionally require a manufacturer to submit quarterly reports to the department that summarize the above-mentioned reports, vehicle miles traveled, unplanned stops, certain traffic violations, and wheelchair-accessible services, as specified.

The bill would require the DMV to publish all reports submitted pursuant to these provisions in an electronic, open, and machine-readable format on the department's internet website within 30 days of receipt, as specified. The bill would authorize the DMV to suspend or revoke the testing and deployment permit of any manufacturer while an investigation of any violations is pending.

(5) **Senate Bill 915 – Senator Cortese** (Introduced January 9, 2024)

**Status:** Active Bill – In Committee

**Support:** California Labor Federation, AFL-CIO (co-sponsor), California Professional Firefighters (co-sponsor), American Federation of State, County and Municipal Employees, AFL-CIO Board of Supervisors for the City and County of San Francisco, California Democratic Party, California School Employees Association, City of Los Angeles, City of Oakland, City of Oceanside, City of Palo Alto, Consumer Attorneys of California, County of Los Angeles Board of Supervisors, County of Santa Clara, Disability Rights California, Honorable Adam Schiff, Member of The United States Congress, League of California Cities, Los Angeles City Council District 13, Los Angeles County, Mission Street Neighbors, Orange County Employees Association, Rural County Representatives of California, San Francisco Board of Supervisors, San Francisco County Transportation Authority, San Francisco Taxi Workers Alliance, Secure Justice, and Transport Workers Union of America, AFL-CIO.

**Opposition:** Alliance for Automotive Innovation, Association for Unmanned Vehicle Systems International, Aurora Innovation, INC., Autonomous Vehicle Industry Association, Bay Area Council, California Asian Pacific Chamber of Commerce, California Chamber of Commerce, California Contract Cities Association, California Delivery Association, California Hispanic Chamber of Commerce, California Manufacturers & Technology Association, Campbell Chamber of Commerce, Central City Association of Los Angeles, Central Valley Yemen Society, Chamber of Progress, City of Norwalk, Coalition of California Chambers – Orange County, Coalition of Small and Disabled Veteran Businesses, Consumer Technology Association, Contra Costa Transportation Authority, Daimler Truck North America, Family Business Association of California, Flasher Barricade Association, Fremont Chamber of Commerce, Inland Empire Economic Partnership, Kodiak Robotics, INC., Latin Business Association, Los Angeles Area Chamber of Commerce, Los Angeles Business Council, Los Angeles County Business Federation (BIZ -FED), Motional, Mountain View Chamber of Commerce, National Federation of Independent Business – California, National Federation of the Blind of California, Navistar, INC., Nuro, Orange County Business Council, Palo Alto Chamber of Commerce, Plus AI, San Diego Regional Chamber of Commerce, San Francisco Chamber of Commerce, Salinas Council Member Steve McShane, San Diego Regional Chamber of Commerce, San Francisco Chamber of Commerce, San Juan Capistrano Chamber of Commerce, San Mateo County Chamber of Commerce, San Mateo County Economic Development Association, Santa Monica Chamber of Commerce, Si Se Puede Fresno, Tulare, Kings & Kern, Silicon Valley Leadership Group, Spartan Radar, Stack AV, STAR Milling Co., Technet, Tesla, Tore Robotics, Town of Danville, Uber, United Spinal Association, Valley Industry and

Commerce Association, Volvo Autonomous Solutions, Volvo Group North America, Waabi Innovation US Inc., Waymo, and Zoox.

**Legislative Counsel's Digest:** Local government: autonomous vehicle service.

Existing law authorizes an autonomous vehicle, as defined, to be operated on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle being operated if certain requirements are met, including that the vehicle is being operated solely by employees, contractors, or other persons designated by the manufacturer. Existing law prohibits an autonomous vehicle from being operated on public roads until the manufacturer applies to the Department of Motor Vehicles containing certain certifications regarding safety and other technological requirements and the department approves that application pursuant to adopted regulations. Existing law, commencing January 1, 2030, and to the extent authorized by federal law, prohibits the operation of certain new autonomous vehicles that are not zero-emission vehicles, as defined.

Existing law provides for the local regulation of certain types of transportation services, including taxicab companies. Existing law requires each city or county in which a taxicab company is substantially located to adopt an ordinance or resolution regarding taxicab transportation service, which includes provisions for a permitting program for taxicab drivers. Under existing law, it is unlawful to operate a taxicab company without a valid permit to operate issued by each city or county in which the taxicab company is substantially located.

This bill would prohibit an autonomous vehicle service, which has received approval to conduct commercial passenger service or engage in commercial activity using driverless vehicles by the Department of Motor Vehicles, the Public Utilities Commission, or another state agency, from commencing operation within a local jurisdiction until authorized by a local ordinance enacted pursuant to the bill's provisions. The bill would authorize each city, county, or city and county in which an autonomous vehicle has received authorization to operate, to protect the public health, safety, and welfare by adopting an ordinance or resolution regarding autonomous vehicle services within that jurisdiction. The bill would require each city, county, or city and county that adopts an ordinance or resolution to include certain provisions within that ordinance or resolution. These would include a policy for entry into the business of providing autonomous vehicle services including a permitting program, the establishment of reasonable vehicle caps and hours of service restrictions, and the establishment of an interoperability or override system accessible by first responders in case of an emergency.

This bill would authorize a city with a population of 250,000 or greater that an autonomous vehicle service, as defined, has received authorization by the

Department of Motor Vehicles, the Public Utilities Commission, or any other applicable state agency to operate, to protect the public health, safety, and welfare by enacting an ordinance regarding autonomous vehicle services within that jurisdiction. The bill would require each city that enacts an ordinance to include certain provisions within that ordinance. These would include a policy for entry into the business of providing autonomous vehicle services including a permitting program that includes, among other things, the establishment of reasonable vehicle caps and hours of service restrictions. The bill would authorize a city with a population of less than 250,000 that shares a border or is contiguous to a city that has enacted an autonomous vehicle services ordinance to enact an ordinance substantially consistent with that autonomous vehicle services ordinance.

The bill would authorize each city to levy service charges, fees, or assessments in the amount sufficient to pay for the costs of carrying out an ordinance enacted regarding autonomous vehicle services. The bill would prohibit an ordinance enacted pursuant to this bill from banning the safe operation of autonomous vehicle services.

This bill would require an autonomous vehicle service to include an interoperability or override system in each of its vehicles, as specified, and provide training for first responders on how to interact with the vehicles and the use of the override system. The bill would require an autonomous vehicle service conducting commercial passenger service to take various actions, including maintaining reasonable financial responsibility and keeping its vehicles in safe operating condition, as specified.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

(6) **Senate Bill 961 – Senator Wiener** (Introduced January 23, 2024)

**Status:** Active Bill – In Committee Process.

**Support:** California Bicycle Coalition, Streets for All, Walk San Francisco, AAA Northern California, Nevada & Utah, American Walks, American Academy of Pediatrics, Automobile Club of Southern California, Bike East Bay, Bike LA, Car-Lite Long Beach, Center Community Action & Environmental Justice, City of Goleta, Cleanearth4kids.org, Conor Lynch Foundation, East Bay for Everyone, Everybody's Long Beach, Families for Safe Streets USA, Long Beach Bike Co-op, Los Angeles Walks, Marin County Bicycle Coalition, Move LA, National Safety Council, Pedal Movement, Physicians for Social Responsibility, Safe Routes Partnership, San Francisco Bay Area Families for Safe Streets, San Francisco Bicycle Coalition, SoCal Families for Safe Streets, Streets are For Everyone (SAFE)

(UNREG), The League of American Bicyclists, Transbay Coalition, Transform, Vision Zero Network, and Youth Climate Strike Los Angeles.

**Opposition:** Abate of California - Motorcyclists Rights & Safety Organization, Alliance for Automotive Innovation, California Chamber of Commerce, California Fuels and Convenience Alliance, California Manufacturers & Technology Association, California Manufacturers and Technology Association, California New Car Dealers Association, CMDA-California Motorcycle Dealers Association, Oakland Privacy, Shasta; County of, Specialty Equipment Market Association (SEMA), Truck and Engine Manufacturers Association.

**Legislative Counsel's Digest:** Vehicles: safety equipment.

Existing law prohibits a person from driving a vehicle upon a highway at a speed greater than the speed limit. Existing law also prohibits a person from driving a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed that endangers the safety of persons or property.

This bill would require, commencing with the 2030 model year, certain new vehicles to be equipped with a passive intelligent speed assistance system, as specified, that would utilize a brief, one-time, visual, and audio signal to alert the driver each time the speed of the vehicle is more than 10 miles per hour over the speed limit. The bill would require all specified vehicles to be capable of having the system fully disabled, by the manufacturer or a franchisee, as specified. The bill would require the system, if the system receives conflicting speed limits for the same area, to apply the higher speed limit. The bill would exempt emergency vehicles and certain passenger vehicles from this requirement.

A violation of the above requirements would be punishable as a crime.

c. Pending Federal Legislation of General Interest: None.

This matter is for information only at the August 9, 2024, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Jason at (916) 505-2114.



# ***EXECUTIVE DIRECTOR'S REPORT***

***August 9, 2024***

# **A.**

# **ADMINISTRATIVE MATTERS**

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
1. <u><b>Update Concerning Moving the Board's Offices to DMV Headquarters</b></u> Tim Corcoran	Update regarding moving of the Board's Offices upon the expiration of the current lease to DMV Headquarters.	Ongoing	In progress.
<u><b>Update Guide to the New Motor Vehicle Board</b></u> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	April 2024	<u><b>Completed</b></u> The revised Guide was adopted at the April 25, 2024, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
1. <u><b>Schedule Board Member Education Presentations</b></u> Tim Corcoran	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	Ongoing	In progress. Board education will be presented at each General Meeting.
2. <u><b>Solon C. Soteris Employee Recognition Award Recipient</b></u> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	August 2024	In progress. The nominee will be considered at the August 9, 2024, General Meeting.
<b>EXECUTIVE COMMITTEE</b>			
1. <u><b>Strategic Plan July 2024 - June 2030</b></u> Tim Corcoran	Develop and implement the Board's first Strategic Plan encompassing July 2024 through June 2030. Delegate discretion to the Executive Director to implement action items responsive to the objectives in the Strategic Plan.	Ongoing	In progress. The Strategic Plan was adopted at the April 25, 2024, General Meeting and the Executive Director was granted discretion to implement action items.

#### August 2024 Executive Director's Report

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Revise the Board's Mission and Vision Statements</u></b> Tim Corcoran	Review and potentially update the Board's Mission and Vision Statements.	August 2024	In progress. The Board's mission and vision statements will be reviewed at the August 9, 2024, General Meeting.
<b>3. <u>Consider Amendments to Board delegations</u></b> Tim Corcoran, Robin Parker	Review and consider amendments to the Board adopted delegations in compliance with the 1996 Performance Audit	August 2024	In progress. Amendments to the Board adopted delegations will be considered at the August 9, 2024, General Meeting.
FISCAL COMMITTEE			
<b>1. <u>Quarterly Financial Reports</u></b> Tim Corcoran, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<b>2. <u>Status Report concerning the Board's collection of the Annual Board Fee</u></b> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the Board's collection of the Annual Fee.	August 2024	In progress. A status report will be provided at the August 9, 2024, General Meeting.
<b>3. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	August 2024	In progress. A status report will be provided at the August 9, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>4. <u>Proposed Board Budget for the Next Fiscal Year</u></b> 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.	August 2024	In progress. The 2024-2025 Budget will be presented for consideration at the August 9, 2024, General Meeting.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>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></b> 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.
<b>2. <u>Host Board Industry Roundtable</u></b> 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.	March 2025	In progress. The Industry Roundtable will be held in conjunction with the CNCDA's Dealer Day Event in 2025 in Sacramento.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b><u>Host Board Administrative Law Judge Roundtable</u></b> 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.	April 2024	<b><u>Completed</u></b> The Board ALJs received the same training provided to the Office of Administrative Hearings ALJs on April 18, 2024.
<b>LEGISLATIVE COMMITTEE</b>			
<b><u>1. Review of Pending Legislation</u></b> Tim Corcoran, Jason Rose	The staff will provide an overview of enacted legislation of special and general interest, and pending federal legislation.	Ongoing	In progress. An update will be provided at the August 9, 2024, General Meeting.
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b><u>1. Annual Rulemaking Calendar</u></b> Jason Rose	Consideration of the annual rulemaking calendar.	November 2024	In progress. If applicable, the annual rulemaking calendar will be considered at the November 1, 2024, General Meeting.
<b><u>2. Promulgate Amendment to the Definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Code of Regulations</u></b> Jason Rose	In compliance with the Administrative Procedure Act, amend the definition of Administrative Law Judge to exempt the Board from subdivision (b) in Sections 3067, 3081, and 3085.4 when the Office of Administrative Hearings presides over a merits hearing.	December 2024	In progress. The Board approved the text at the April 25, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b><u>3. Promulgate Amendments to Regulations to Remove References to Facsimile and Residence Addresses in Sections 551.14, 555, and 595 of Title 13 of the California Code of Regulations</u></b> Jason Rose	In compliance with the Administrative Procedure Act, amend Sections 551.14, 555, and 595 of the Board's regulations to remove references to facsimile and residence addresses.	December 2024	The Board approved the text at the April 28, 2023, General Meeting.
<b><u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Robin Parker	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	April 2024	<u>Completed.</u> A report on the assignment of cases to Board ALJs was presented at the April 25, 2024, General Meeting.
<b><u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	April 2024	<u>Completed.</u> The revised Guide was approved at the April 25, 2024, General Meeting.
<b><u>Update the Export or Sale-For-Resale Prohibition Policy Guide</u></b> 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.	April 2024	<u>Completed.</u> The revised Guide was approved at the April 25, 2024, General Meeting.
<b><u>Draft proposed regulation amending the definition of Administrative Law Judge in subdivision (a) of section 550 of Title 13 of the California Code of Regulations</u></b> Robin Parker	In compliance with the Administrative Procedure Act, amend the definition of Administrative Law Judge to exempt the Board from subdivision (b) in Sections 3067, 3081, and 3085.4 when the Office of Administrative Hearings presides over a merits hearing.	April 2024	<u>Completed</u> The Board approved the text at the April 25, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION</b>			
<b>1. <u>Develop Strategies for Board Consideration</u></b> 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

APRIL 8, 2024, THROUGH JULY 23, 2024

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	1	4	3
3060	Modification	0	2	12
3062	Establishment	0	0	0
3062	Relocation	0	0	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	1
3065.1	Incentive Program Reimbursement	0	1	1
3065.3	Performance Standard	0	0	0
3065.4	Retail Labor Rate or Retail Parts Rate	0	1	1
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	3	1
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	1	0
TOTAL CASES:		1	12	23

# PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
<b>ALJ</b>	Administrative Law Judge	<b>Bd. Mtg.</b>	Board Meeting
<b>HRC</b>	Hearing Readiness Conference	<b>IFU</b>	Informal Follow-Up
<b>MH</b>	Merits Hearing	<b>CMH</b>	Continued Merits Hearing
<b>RMH</b>	Resumed Merits Heading	<b>MSC</b>	Mandatory Settlement Conference
<b>CMSC</b>	Continued Mandatory Settlement Conference	<b>RMSC</b>	Resumed Mandatory Settlement Conference
<b>MTCP</b>	Motion to Compel Production	<b>MTC</b>	Motion to Continue
<b>MTD</b>	Motion to Dismiss	<b>PHC</b>	Pre-Hearing Conference
<b>CPHC</b>	Continued Pre-Hearing Conference	<b>RPHC</b>	Resumed Pre-Hearing Conference
<b>PD</b>	Proposed Decision	<b>RFPD</b>	Requests for Production of Documents
<b>PSDO</b>	Proposed Stipulated Decision and Order	<b>ROB</b>	Rulings on Objections
<b>CROB</b>	Continued Rulings on Objections	<b>RROB</b>	Resumed Rulings on Objections
<b>SC</b>	Status Conference	<b>CSC</b>	Continued Status Conference
<b>* Consolidated, non-lead case</b>			

# PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
1.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 8-21-24	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
2.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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
3.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
4.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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
5.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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
6.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
7.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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
8.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
9.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 8-21-24	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
10.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 8-21-24	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

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	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
11.	PR-2803-22 9-15-22	Protestant's Motion to Strike Hearing: 8-5-24 Proposed Decision final 10-10-24 Board Meeting 11-1-24	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
12.	PR-2808-22 11-14-22	ROB: 9-5-24 HRC: 3-25-25 MH: 5-12-25 (10 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
13.	PR-2812-22 11-30-22	Parties working on settlement IFU: 8-1-24	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
14.	PR-2821-23 5-11-23	IFU: 8-1-24	Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Ashley Fickel	Modification

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	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
15.	PR-2826-23 5-25-23	MH: 8-6-24 (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
16.	PR-2827-23 6-1-23	Parties working on settlement IFU: 8-7-24	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
17.	PR-2840-23 9-18-23	Protestant to file Request for Dismissal IFU: 8-2-24	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
18.	PR-2844-23 11-6-23	IFU: 8-1-24	Knight Sunrise Fontana LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor Danhi, Franjo Dolenac  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation
19.	PR-2845-23* 11-7-23	IFU: 8-1-24	Chino Ford, LLC, dba Chino Hills Ford, a limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Alton Burkhalter, Ros Lockwood  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation
20.	PR-2846-23* 11-8-23	IFU: 8-1-24	Ford of Upland, LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Jason D. Annigian, James T. Ryan  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
21.	PR-2854-24 2-22-24	ROB: 9-5-24 HRC: 3-25-25 MH: 5-12-25 (10 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian  Respondent: Steven McFarland	Termination
22.	PR-2855-24 3-12-24	Parties working on settlement. IFU 8-7-24	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: Steven M. Kelso Elayna M. Fiene	Relocation
23.	PR-2856-24 4-30-24	HRC: 9-23-24 MH: TBD by OAH	IVS NorCal LLC, d/b/a Kuhn INEOS Grenadier v. INEOS Automotive Americas, LLC	Protestant: Gavin Hughes, Robert Mayville  Respondent: Michael Educate, Connor Gants, Marlow Svatek, Jim Vogler	Termination

## PETITIONS

CASE			

# **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).**

No judicial matters are pending.

# NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

APRIL 8, 2024, THROUGH JULY 23, 2024

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	
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	
Hyundai/Genesis	1
Kia	
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	2
Subaru	
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	1
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	3
<b>Total</b>	<b>7</b>

## SECTIONS 3062/3072

Manufacturer	Number of Notices
BMW	
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	5
Volkswagen/Audi	1
Miscellaneous Car	3
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	
<b>Total</b>	<b>9</b>