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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”). Addition 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. 5th 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 100th ANNIVERSARY**

Member Doi moved to present a Resolution to the California New Car Dealers Association to commemorate their 100th 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 50th ANNIVERSARY (JULY 1, 2024)**

Mr. Corcoran discussed the activities and events commemorating the Board's 50th 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 50th 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 1st 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 1st. 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 1st 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 13th at the Roseville Automall and May 14th 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 31st. The Governor then has until September 30th 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 nmvp@nmvp.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.¹ (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

¹ 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.² (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

² 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**

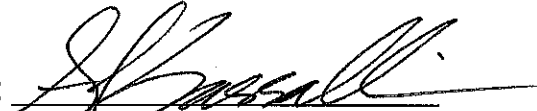
With no further business to discuss, the meeting was adjourned at 2:09 p.m.

Submitted by



TIMOTHY M. CORCORAN
Executive Director

APPROVED:



Ardashes ("Ardy") Kassakhian
President
New Motor Vehicle Board