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

**Tuesday, February 16, 2021 at 9:30 a.m.**  
**Via Zoom and Teleconference**

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which removes the requirement that a meeting location be made available for the public to gather for purposes of observing and commenting at the meeting. The New Motor Vehicle Board Meeting will be conducted via Zoom and teleconference. Board members will participate in the meeting from individual remote locations.

Members of the public can attend the meeting remotely via one of several options listed below. Written comments, if any, can be submitted at [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov) or during the meeting.

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

Join Zoom Meeting

<https://us02web.zoom.us/j/87467692957?pwd=aE1oTWtNZVQ0T1d2c2p0TnhWaFErUT09>

Meeting ID: 874 6769 2957

Passcode: 881643

One tap mobile

+16699009128,,87467692957#,,,,,0#,,881643# US (San Jose)

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Dial by your location

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Meeting ID: 874 6769 2957

Passcode: 881643

Find your local number: <https://us02web.zoom.us/j/87467692957>

Items of business scheduled for the meeting are listed on the attached agenda. Recesses may be taken at the discretion of the Chairperson and items may be taken out of order.

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

**A G E N D A**

**GENERAL MEETING**

**Tuesday, February 16, 2021 at 9:30 a.m.**  
**Via Zoom and Teleconference**

<https://us02web.zoom.us/j/87467692957?pwd=aE1oTWtNZVQ0T1d2c2p0TnhWaFErUT09>

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

The Board provides an opportunity for members of the public to comment on each agenda item before or during the discussion or consideration of the item as circumstances permit. (Gov. Code § 11125.7)

1. **9:30 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Approval of the Minutes from the October 27, 2020, and January 19, 2021, meetings of the Ad Hoc Committee on Equity, Justice and Inclusion, November 4, 2020, General Meeting, and November 13, 2020, Special Meeting.**
4. **2021 Election of Board President and Vice President - Executive Committee.**
5. **Annual review and appointment of Committee members to the Administration Committee, Board Development Committee, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, and Policy and Procedure Committee, and Ad Hoc Committee (if applicable), by the incoming Board President.**
6. **Appointment of Board Member designee in compliance with the Board's 1997 "Revised Board Policy Regarding Representation in Court Actions" by the incoming Board President.**
7. **Consideration of presentation of Resolution to Peter Welch, retired President and CEO of the National Automobile Dealers Association (NADA).**

8. **Review and consideration of Board delegations in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency - Executive Committee.**
9. **Discussion and consideration of the Ad Hoc Committee on Equity, Justice and Inclusion's draft Mission Statement - Ad Hoc Committee.**
10. **Consideration of the revised *Guide to the New Motor Vehicle Board* to include information on statutory and regulatory changes - Administration Committee.**
11. **Discussion and consideration of the Board's policy concerning its periodic newsletter, The In-Site - Administration Committee.**
12. **Report on the Board's financial condition and related fiscal matters - Fiscal Committee.**
13. **Consideration of out-of-state travel plans for fiscal year 2021-2022 - Fiscal Committee.**
14. **Discussion regarding the 2021 New Motor Vehicle Board Industry Roundtable - Government and Industry Affairs Committee.**
15. **Annual report concerning Board adopted policies - Policy and Procedure Committee.**
16. **Consideration of the *Export or Sale-For-Resale Prohibition Policy Protest Guide* (Vehicle Code section 3085, et seq.) - Policy and Procedure Committee.**
17. **Consideration of revisions to the *Informational Guide for Manufacturers and Distributors*, which outlines their obligations to provide notices, schedules, and formulas mandated by the California Vehicle Code and Civil Code to the New Motor Vehicle Board and/or impacted dealers - Policy and Procedure Committee.**
18. **Consideration of 2021 Rulemaking Calendar - Policy and Procedure Committee.**
19. **Annual report on the assignment of cases to Board Administrative Law Judges - Policy and Procedure Committee.**
20. **Consideration of proposed regulation amending the Board's Conflict of Interest Code in Section 599 of Title 13 of the California Code of Regulations - Policy and Procedure Committee.**

21. **Executive Director's Report.**

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

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

23. **Adjournment.**

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

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on October 27, 2020, via Zoom and teleconference. Bismarck Obando, Chair and Public Member, called the meeting to order at 10:30 a.m.

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

2. **ROLL CALL**

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

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

3. **CHAIR OBANDO'S INTRODUCTION**

Mr. Obando welcomed the Ad Hoc Committee Members and Staff. On June 12, 2020, the California State Transportation Agency (CalSTA) Secretary, David S. Kim, issued a statement on racial equity, justice, and inclusion in transportation. The statement reads:

"Transportation systems are about people and improving their quality of life. Unfortunately, those improvements historically have disproportionately benefitted certain segments of the population. Far too often, past transportation decisions quite literally put up barriers, divided communities, and amplified racial inequalities, particularly in our Black and Brown neighborhoods. The California State Transportation Agency (CalSTA) strongly condemns systemic racism and discrimination in all forms, including those historically entrenched in transportation. Enhancing the lives of all Californians - particularly people of color and disadvantaged

communities - by connecting individuals to jobs, healthcare, education, and other opportunities, lies at the heart of what we do and why. To that end, CalSTA firmly embraces racial equity, inclusion, and diversity. These values are foundational to achieving our vision of a cleaner, safer, more accessible and more connected future. We will be part of the solution. We will promote policies and programs that reflect principles of diversity, equity, and inclusion, and will work with stakeholders to identify areas of improvement. Through these and other efforts, transportation systems have the potential to achieve their intended purpose - to provide safe and equitable access to opportunity and truly enhance quality of life."

In response to this statement, the Board created this Ad Hoc Committee and will share its recommendations with CalSTA.

4. **DISCUSSION AND CONSIDERATION OF THE ROLE OF THE AD HOC COMMITTEE**

There was a lengthy discussion with input from all members on the role of the Ad Hoc Committee. Mr. Obando summarized two areas the Ad Hoc Committee would initially focus on: (1) Learning more about factory recruitment of new car dealers and demographics of existing dealers by scheduling an educational program with the assistance of Mr. Alvarez and Mr. Dosanjh; and (2) Internal assessment of Board hiring practices.

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

The members discussed future topics, industry input and potential speakers to educate the Ad Hoc Committee. Mr. Obando summarized the topics as: (1) Internal hiring practices of manufacturers; (2) discriminatory practices or programs; (3) predatory lending practices for consumers; and (4) minority outreach. Mr. Alvarez suggested an additional topic of dealer training.

M. Obando indicated that given time constraints, he would work with staff to draft a workplan and Mission Statement that could be reviewed by the Ad Hoc Committee and provided to CalSTA.

6. **DISCUSSION OF DATES**

The members scheduled the next Ad Hoc Committee meeting for Tuesday, January 19, 2021, at 10:30 a.m.

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

No additional public comment was presented.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:43 a.m.

Submitted by

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TIMOTHY M. CORCORAN  
Executive Director

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

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

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

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on January 19, 2021, via Zoom and teleconference. Bismarck Obando, Chair and Public Member, called the meeting to order at 10:31 a.m.

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

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

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

Nanxi Liu (Public Member)

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

Mr. Corcoran noted that there was a quorum.

3. **CHAIR OBANDO'S INTRODUCTION**

Mr. Obando welcomed the Ad Hoc Committee Members, staff and the public. He made the following opening remarks:

Given last week's activities and yesterday's MLK [Martin Luther King] holiday, I want to remind us of things we should consider as we deliberate on a mission statement for our work as a committee. Let me start by talking about Governor Newsom's statement that he issued last week after the insurrection that occurred in Washington, DC last week. Specifically, I want



to acknowledge the lives that were lost last week, but specifically talk about why this committee was created. That is to provide some feedback on what could change under our jurisdiction as the New Motor Vehicle Board as it relates to race, equity, and inclusion.

Mr. Obando then read Governor Newsom's statement:

"Over the last few days, we have seen millions of people lift their voices in anger, rightfully outraged at how systemic racism is allowed to persist. Every single day, people of color are disadvantaged and discriminated against. Black and Latino men in particular face mortal danger all across this country simply because of their race. Every person who has raised their voice should be heard."

Mr. Obando remarked that the Ad Hoc Committee's mission becomes even more important in light of the recent holiday but noted the limited parameters given their role on the Board. Mr. Obando opened the discussion to other Committee members, Board Members, and the public.

Mr. Alvarez commented that the timing of this meeting could not have been better. The more open and transparent we are about these issues, the more quickly they can be solved.

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

There was a lengthy discussion with input from all members on the draft mission statement.

Anthony Bento, Director of Legal and Regulatory Affairs, California New Car Dealers Association (CNCDA) and Les Swizer, Law Clerk, CNCDA applauded the Ad Hoc Committee's efforts. Mr. Bento noted that in lieu of "protected class" that "under-represented groups" might be appropriate. In response to Mr. Obando's question, Mr. Bento indicated that he thought the proposed mission statement would be well-received by the CNCDA.

Ms. Doi moved to adopt the mission statement denoted as Option 2c. Ms. Smith Boland seconded the motion. The motion carried unanimously.

The draft Ad Hoc Committee Mission Statement that will be presented to the full Board for consideration at the February 16, 2021, General Meeting is:

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

the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues relating to the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Mr. Corcoran noted that the full Board would have the ability to adopt, modify or go in a different direction concerning the Ad Hoc Committee's Mission Statement. Ultimately, the Board will communicate with CalSTA regarding this draft but until the mission statement is approved, the Ad Hoc Committee will participate in status discussions.

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

Mr. Obando remarked that Governor Newsom introduced his budget, but that Governor Newsom has not issued his "State of the State" address so it may be best to draft a workplan afterwards. Additionally, there may be legislation introduced that is applicable.

6. **DISCUSSION OF DATES**

The members scheduled the next Ad Hoc Committee meeting for Wednesday, March 3, 2021 at 9:30 a.m.

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

No additional public comment was presented.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:34 a.m.

Submitted by

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

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

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

The New Motor Vehicle Board (“Board”) held a General meeting on November 4, 2020, via Zoom and Teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 9:36 a.m.

Ms. Doi welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff. The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Ramon Alvarez C.  
Anne Smith Boland  
Ardashes “Ardy” Kassakhian  
Daniel P. Kuhnert  
Nanxi Liu  
Bismarck Obando

Board Members Not Present: Inder Dosanjh

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

Anthony M. Skrocki, Administrative Law Judge

Invited Guests: Anthony A. Batarse, Jr.  
Glenn E. Stevens

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 16, 2020, GENERAL MEETING**

Mr. Alvarez moved to adopt the September 16, 2020, General Meeting minutes as amended to correct the spelling of Ms. Liu's name in Agenda Item 15. Ms. Liu seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO ANTHONY A. BATARSE, JR., FORMER DEALER MEMBER**

At the September 16, 2020, General Meeting, the members unanimously moved to present Anthony A. Batarse, Jr., former Dealer Member, with a Resolution in appreciation for his dedication and service to the State. Ms. Doi read the Resolution into the record.

Whereas, Mr. Anthony A. Batarse, Jr., was appointed to the Board in September 2013, by Governor Edmund G. Brown Jr., and was reappointed in March 2015, to serve as a dealer member of the New Motor Vehicle Board; and,

Whereas, Mr. Batarse served on the Fiscal Committee as a Chair and member, and distinguished himself thereby; and

Whereas, Mr. Batarse actively engaged in the Board's business by providing sound advice and leadership, was thoughtful, friendly and outgoing to staff and fellow members; and

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

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

Therefore, be it resolved that each and every member of the New Motor Vehicle Board joins in expressing their profound appreciation to Mr. Anthony A. Batarse, Jr. for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

The members and Mr. Corcoran expressed their thanks and appreciation to Mr. Batarse and noted his kindness, knowledge, and helpfulness. Mr. Batarse indicated that it was an honor to serve the Board and that he treasured the moments working with everyone.

5. **PRESENTATION OF RESOLUTION TO VICTORIA RUSNAK, FORMER DEALER MEMBER**

At the September 16, 2020, General Meeting, the members unanimously moved to present Victoria Rusnak, former Dealer Member, with a Resolution in appreciation for her dedication and service to the State. Ms. Rusnak was not able to attend the meeting today. Ms. Doi read the Resolution into the record.

Whereas, Ms. Victoria Rusnak was appointed to the Board in March 2009, by Governor Arnold Schwarzenegger to serve as a dealer member of the New Motor Vehicle Board. She was reappointed by Governor Edmund G. Brown Jr. in October 2013 and March 2015; and,

Whereas, Ms. Rusnak served on several committees including Chair and member of the Fiscal Committee, served two terms as the Board's Vice President in 2014 and 2015, and distinguished herself thereby; and

Whereas, Ms. Rusnak actively engaged in the Board's business by providing sound advice and leadership, was thoughtful, friendly and outgoing to staff and fellow members; and

Whereas, the foremost concern of Ms. Rusnak is public service to the people of the State of California, being active in political and community affairs, with exemplary service and dedication in the best interest of her fellow citizens, which merits the highest praise and recognition, and

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

Therefore, be it resolved that each and every member of the New Motor Vehicle Board joins in expressing their profound appreciation to Ms. Rusnak for her contribution to the Board, to the motor vehicle industry and to the people of the State of California.

The members noted that they were thankful for Ms. Rusnak's service to the Board and appreciated that she was fiscally savvy, thoughtful, and provided a legal perspective.

6. **PRESENTATION OF RESOLUTION TO GLENN STEVENS, FORMER PUBLIC MEMBER**

At the September 16, 2020, General Meeting, the members unanimously moved to present Glenn Stevens, former Public Member, with a Resolution in appreciation for his

dedication and service to the State. Ms. Doi read the Resolution into the record.

Whereas, Mr. Glenn E. Stevens was duly appointed by Governor Gray Davis in March 2000, and reappointed in May 2003, to serve as a public member of the New Motor Vehicle Board. He was reappointed by Governor Arnold Schwarzenegger in January 2008, and again by Governor Edmund G. Brown Jr. in September 2013 and March 2015; and,

Whereas, Mr. Stevens served on numerous committees, most recently as Chair of the Policy and Procedure Committee and Ad Hoc Committee to Review the Mission and Vision Statements, and member of the Government and Industry Affairs Committee; served five terms as the Board's President in 2003, 2004, 2014, 2015, and 2016 and two terms as Vice President in 2002 and 2011; assisted the Board in many other capacities; and distinguished himself thereby; and

Whereas, Mr. Stevens actively engaged in the Board's business by providing sound advice and leadership, was thoughtful, friendly and outgoing to staff and fellow members; and

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

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

Therefore, be it resolved that each and every member of the New Motor Vehicle Board joins in expressing their profound appreciation to Mr. Glenn E. Stevens for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

The members and Mr. Corcoran thanked Mr. Stevens for his 20 years of service to the Board; they appreciated his guidance, historical knowledge, support, advice, and for setting the tone and culture of the Board. Mr. Stevens was lots of fun and will be missed by the members and staff. Mr. Stevens remarked that he "absolutely loved being on the Board." The friendships he made are invaluable, he learned a lot about the vehicle industry, and met many fine dealers and attorneys. Mr. Stevens remarked that he thinks the Board is going to continue to be very valuable to the industry.

7. **ANNUAL REPORT ON THE BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

Ms. Phomsopha reported that there would be no in-person education for the members in 2021 but the staff will look for virtual educational opportunities. She noted that NADA will be virtual February 9-11, 2021. The Board will register any members that would like to attend. Ms. Doi indicated that she thought some of the staff should participate so there is a Board presence.

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

8. **STATUS REPORT CONCERNING THE BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR, THE ANNUAL BOARD FEE COLLECTION, AND WHETHER ANY FEE ADJUSTMENTS ARE NECESSARY - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for fiscal year 2019-2020, the Annual Board Fee collection, and whether any fee adjustments are necessary. Ms. Luke reported that the Board's appropriated budget was \$1.78 million, the reserve balance was \$2.6 million, and the Board expended 85% of its appropriated budget.

Given the current reserve balance, the staff does not see a need for an adjustment to the Board's fee structure at this time.

With regards to the fee collection, \$876,162 has been collected with 36 payments outstanding out of 138 manufacturers and distributors invoiced. Mr. Corcoran noted that the Board does anticipate a 5% spending reduction from the Administration.

In response to Ms. Doi's question, Mr. Corcoran indicated that due to the pandemic, the Board's expenditures for travel were down but training expenses were higher. The DMV provided the staff with new laptops and docking stations without any cost to the Board.

Mr. Kuhnert inquired about the Board's lease for its offices and whether the lease was expired. Mr. Corcoran indicated that due to an emergency extension, the lease was extended two years. Miss Kindel was unsure of the increase in the rent but will report back to the Board to confirm.

Ms. Doi inquired on the status of Holly Victor, who is a contact tracer for the Administration. Mr. Corcoran and Miss Kindel noted that this was initially a 6-month period but there has been no word on any extensions.

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

9. **UPDATE FROM THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION REGARDING ITS OCTOBER 27, 2020 MEETING AND FUTURE EVENTS - AD HOC COMMITTEE**

Mr. Obando provided an update on the Ad Hoc Committee's October 27, 2020, meeting and noted the committee members: Ramon Alvarez; Kathryn Ellen Doi; Anne Smith Boland and Inder Dosanjh. Mr. Obando summarized the topics as: (1) manufacturer representation; (2) internal Board hiring practices; (3) discriminatory practices or programs; and (4) consumers. Mr. Obando indicated that he would work with staff to draft a workplan and Mission Statement that could be reviewed by the Board at its next meeting. The Ad Hoc Committee will meet again in January 2021. Several members and Mr. Corcoran thanked Mr. Obando for his leadership.

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

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

There was a lengthy discussion on the Board's 2021 Industry Roundtable. Mr. Corcoran suggested electric vehicles as the topic especially considering Governor's Newsom's Executive Order N-79-20, which was issued on September 23, 2020. Ms. Phomsopha provided an overview of the Executive Order's goals as follows:

It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible.

Additionally, Ms. Phomsopha noted that "the Governor's Office of Business and Economic Development, in consultation with the State Air Resources Board, Energy Commission, Public Utilities Commission, State Transportation Agency, the Department of Finance and other State agencies, local agencies and the private sector, shall develop a Zero-Emissions Vehicle Market Development Strategy by January 31, 2021, and update every three years thereafter, that: a) Ensures coordinated and expeditious implementation of the system of policies, programs and regulations necessary to achieve the goals and orders established by this Order. b) Outlines State agencies' actions to support new and used zero-emission vehicle markets for broad accessibility for all Californians."

Lastly, Ms. Phomsopha indicated that the upcoming Industry Roundtable will be a virtual event and is typically held in the Spring.

Ms. Doi remarked that if California State Transportation Agency (CalSTA) is supportive



of this event, it would be an important opportunity for the Board to take in comments and relay that information to CalSTA.

Mr. Obando noted the following policy considerations: (1) financing for state and local roads and privacy; and (2) implementation of charging stations and where you install them. Mr. Kuhnert indicated that Dealer Agreements were changing due to electric vehicles and that some dealers may be excluded all together from selling electric vehicles. Mr. Alvarez suggested that Mr. Corcoran reach out to the Governor regarding the plan and inquired about used vehicles. Mr. Corcoran noted one challenge is affordability. Mr. Obando echoed that underrepresented people are not able to buy electric vehicles. Ms. Smith Boland commented on Mr. Kuhnert's point that she can see electric vehicles being sold outside of dealers like the Tesla model.

The members were supportive of pursuing electric vehicles as the focus of its 2021 Industry Roundtable.

11. **DISCUSSION AND CONSIDERATION OF AMENDING THE BOARD'S PARLIAMENTARY PROCEDURES TO REFLECT THE REPEAL OF ARTICLE 3 (COMMENCING WITH SECTION 3052) OF CHAPTER 6 OF DIVISION 2 OF THE VEHICLE CODE - POLICY AND PROCEDURE COMMITTEE**

Due to a technical problem, Ms. Smith Boland was not present for the Agenda Item 11.

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning amending the Board's Parliamentary Procedures to automatically fill vacant committee chair positions with the member. Ms. Parker reported that the change reflects the repeal of appeals, which was effective January 1, 2020.

The proposed change is as follows:

**ARTICLE 5. DEBATE AND VOTING**

...

2. Once the debate has concluded, a vote shall be taken on the motion, which requires the majority of the Members present to pass. Once a motion regarding a Protest, or Petition, and Appeal has been passed by majority vote, there shall be no further debate on the matter and no reconsideration of the vote. On all other matters, the Members of the Board have the right to reconsider the matter and take any action which they deem appropriate. The Members of the Board may, however, discuss the effect of the Board action or any matter ancillary to implementing the Board action taken by the vote.

...

Mr. Kassakhian moved to adopt the revised Parliamentary Procedures. Mr. Alvarez seconded the motion. The motion carried unanimously.

## 12. EXECUTIVE DIRECTOR'S REPORT

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

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 that procurement of the plaque for the Team Award, which was approved at the September 16, 2020, General Meeting, will wait until the staff are able to come to the office so a picture can be taken. Additionally, Mr. Corcoran noted his industry outreach with IADAC (Independent Automobile Dealers Association California) by attending their annual conference. The Board received an award and plaque for its work on accelerating online sales of motor vehicles during the pandemic. Mr. Corcoran indicated that he would keep the Board apprised of his outreach to other industry organizations and would work to increase this.

Ms. Parker reported that the Public Members were currently reviewing a Proposed Stipulated Decision and Order pertaining to the 12 Fiat Chrysler Automobile modification protests. If there are no objections, then the protests will be dismissed. In response to Ms. Doi's question, Ms. Parker indicated that ALJ Wong presided over two in-person Mandatory Settlement Conferences and one telephonic conference in working to resolve these FCA protests. There was additional staff work with follow-up and ensuring procedural compliance with all the pleadings involved.

Ms. Parker indicated that only 21 termination notices had been filed this year, which was lower than previous years. Most recently, the Board received 12 establishment notices from FCA for Chrysler, Dodge, Jeep and RAM that resulted in eight new protests. To date, 64 new protests have been filed. Ms. Phomsopha indicated that there were currently 64 open protests with some protests from 2017.

Ms. Parker summarized the recent hearing on the writ pertaining to the Board's Decision in *Folsom Chevrolet*. In Phase I of the hearing, the Judge in her tentative ruling found that the Board did not incorrectly apply the legal standard set forth in Section 11713.13(g), which pertains to performance metrics. In Phase II, the tentative ruling denied the writ. Ms. Parker will keep the members apprised and will provide Ms. Doi with the tentative rulings.

Ms. Phomsopha indicated that 10 new protests had been filed since the members received their report and several matters set schedules for discovery and hearing.

Ms. Doi noted that ALJ Skrocki was attending the meeting and thanked him.

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

13. **SELECTION OF BOARD MEETING DATES FOR 2021**

The members were provided with a memorandum from Tim Corcoran concerning Board meeting dates for 2021. The members went off the record for this discussion and decided to select dates using Doodle Poll.

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

No additional public comment was presented.

15. **CLOSED EXECUTIVE SESSION**

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

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

The members convened in Closed Executive Session to discuss Agenda Item No. 20.

16. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Doi announced that Mr. Corcoran's performance review was unanimously adopted. Mr. Obando made the motion and Mr. Kassakhian seconded the motion. Ms. Doi thanked Mr. Kuhnert and Mr. Kassakhian for their work on this matter.

17. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:13 p.m.

Submitted by

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

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

Kathryn Ellen Doi  
President  
New Motor Vehicle Board

P.O. Box 188680  
Sacramento, California 95818-8680  
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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a Special meeting on November 13, 2020, via Zoom and teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 10:05 a.m.

Ms. Doi welcomed everyone to the meeting and stated that hard copies of the materials can be requested by contacting the Board’s legal staff. The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Ardashes “Ardy” Kassakhian  
Daniel P. Kuhnert  
Nanxi Liu  
  
Anne Smith Boland (Dealer Member did not participate)

Board Members Not Present: Bismarck Obando

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

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

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

SOUTH COUNTY CDJR LLC dba SOUTH COUNTY CHRYSLER DODGE JEEP RAM FIAT, California limited liability company v. FCA US LLC, a Delaware limited liability company

Protest Nos. PR-2666-20, PR-2667-20, PR-2668-20, and PR-2669-20

Oral comments were presented before the Public Members of the Board. Victor P. Danhi, Esq. and Franjo M. Dolenac, Esq. of the Arent Fox LLP represented Protestant. John P. Streelman, Esq., Mark T. Clouatre, Esq. and Blake A. Gansborg, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent. Also present on behalf of Respondent was Chris Zammit, Senior in-house counsel, FCA, Brian Freeman, National Dealer Placement Manager, FCA, and Joel Zimmerman, Senior Manager of California Dealer Network, FCA.

4. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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

**CONSIDERATION OF PROPOSED ORDER**

SOUTH COUNTY CDJR LLC dba SOUTH COUNTY CHRYSLER DODGE JEEP RAM FIAT, California limited liability company v. FCA US LLC, a Delaware limited liability company

Protest Nos. PR-2666-20, PR-2667-20, PR-2668-20, and PR-2669-20

Consideration of the Administrative Law Judge's "Proposed Order Dismissing Protests for Lack of Jurisdiction and in the Alternative Granting Respondent's Motion to Dismiss Protests," by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Kassakhian moved to adopt the Administrative Law Judge's Proposed Order with Footnote 20 stricken. Mr. Kuhnert seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

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

6. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:12 a.m.

Submitted by

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

APPROVED: \_\_\_\_\_  
Kathryn Ellen Doi  
President  
New Motor Vehicle Board

STATE OF CALIFORNIA



**MEMO**

**To : NEW MOTOR VEHICLE BOARD**

**Date:** January 8, 2021

**From : KATHRYN E. DOI  
PRESIDENT**

**Subject: COMMITTEE ASSIGNMENTS**

At the February 16, 2021, General Meeting, we are going to review committee assignments. The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Ardy Kassakhian, Chair  
Daniel Kuhnert, Member

BOARD DEVELOPMENT COMMITTEE

Nanxi Liu, Chair  
Ardy Kassakhian, Member

EXECUTIVE COMMITTEE

Kathryn Ellen Doi, President  
Ramon Alvarez C., Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair  
Nanxi Liu, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Ramon Alvarez C., Chair  
Anne Smith Boland, Member

LEGISLATIVE COMMITTEE

Bismarck Obando, Chair  
Inder Dosanjh, Member

POLICY AND PROCEDURE COMMITTEE

Daniel Kuhnert, Chair  
Inder Dosanjh, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

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

The description of the standing committees are as follows:

- **Executive Committee** – comprised of the Board President and Vice President includes approval of Board meeting Agendas, meeting with Department and Agency Directors, monitoring the Business, Transportation & Housing Agency audit of Board activities, and other matters requiring Board representation.
- **Administration Committee** – personnel, hiring, internal operations (as they relate to administration), office forms (including letterhead) and the Board’s website.
- **Board Development Committee** – Board Member education, welcoming new Board Members, meeting with the CNCDA (all Board members, as their schedules allow, may volunteer for this activity) and the employee recognition program.
- **Fiscal Committee** – budget and finance matters related to Board operation.
- **Government and Industry Affairs Committee** – expanding efforts related to government and industry outreach, including the Industry Roundtable. Review industry related advertising laws.
- **Legislative Committee** – comprised of the Board President and Vice President unless otherwise designated by the President. Provides analyses on legislation that directly affects the Board’s laws and functions.
- **Policy and Procedure Committee** – regulations, Board protocol (including parliamentary procedures and meeting minutes), legal action participation, case management and internal operations (as they relate to policy and procedure).

If you have any questions, please do not hesitate to contact me or Tim Corcoran at (916) 445-1888.



# STATE OF CALIFORNIA



## MEMO

**To: KATHRYN E. DOI**

**Date: January 8, 2021**

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

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

In response to the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, the former Judicial Policies and Procedures Committee (members Livingston and Skobin) developed the initial policy regarding representation in court actions that was adopted by the Board at its October 22, 1996, General Meeting. One aspect of the initial policy concerning the Office of the Attorney General filing a "perfunctory answer with the court" was problematic as the Attorney General's Office was reluctant to make any appearance on the Board's behalf without thoroughly reviewing the underlying action. At its February 12, 1997, General Meeting, the Board adopted the attached "Revised Board Policy Regarding Representation in Court Actions" (hereinafter collectively referred to as "Policy").

According to the Policy, the Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. The Policy specifically provides that:

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 (the petitioner and the real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. 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. (See attached Revised Policy, paragraph 2).

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 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 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 ... (See attached Policy, paragraph 4, pages 2-3).

The above policy was modified in 2008 to provide that 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 you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.

The designation of a Board Member by the Board President consistent with this Policy is being agendaized for the February 16, 2021, General Meeting.

If you have any questions, please do not hesitate to contact me at (916) 445-1888 or Robin at (916) 323-1536.

Attachments



## MEMO

To : ALL BOARD MEMBERS

Date: January 29, 1997

From : NEW MOTOR VEHICLE BOARD  
Judicial Policies and Procedures Committee  
(Committee members: Dan Livingston and Alan Skobin)  
(916) 445-2080

Subject: REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

At its General Meeting of October 22, 1996, the members of the Board adopted a policy regarding legal representation of the Board and Board appearances in court proceedings. A copy of the memorandum which sets forth the Board's policy in this regard is attached hereto.

Since the time that the Board's policy has been adopted and implemented, it has been determined that one aspect of this policy has not worked in the manner that we had hoped. Specifically, the policy requires that, in mandamus actions in which an important state issue is not raised, the office of the Attorney General would file a perfunctory answer with the court, and advise the court of the Board's policy not to file a memorandum of points and authorities in opposition to the petition or to present oral arguments on the issues raised. The problem that has arisen is the Attorney General's understandable reluctance to make any appearance on the Board's behalf without thoroughly reviewing the pleadings and Board decision in the underlying action to determine if any significant policy or legal issues are raised by the mandamus action. Accordingly, it is recommended that the Board's policy in this regard be revised as follows. 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 (the petitioner and real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. 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. In all other respects, the policy regarding legal representation of the Board and Board appearances in court proceedings, as set forth in the attached memorandum, would remain unchanged.

This matter will be discussed at the General Meeting of the Board scheduled for February 12, 1997. Your interest in this matter is greatly appreciated.



## MEMO

To : ALL BOARD MEMBERS

Date: October 17, 1996

From : NEW MOTOR VEHICLE BOARD  
Judicial Policies and Procedures Committee  
(Committee members: Dan Livingston and Alan Skobin)  
(916) 445-2080

Subject: BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

This memorandum is in reference to the agenda item discussed at the last Board meeting, specifically the legal representation of the Board in court proceedings. The relevant issues involve the question as to when and to what extent the Board should participate in mandamus actions in which a Board decision is challenged, as well as whether Board staff or the Office of the Attorney General should represent the Board in those actions in which the Board participates<sup>1</sup>. The members of the Board referred this matter to the Board's Judicial Policies and Procedures Committee (the "Committee") for further evaluation and recommendation back to the full Board for consideration. The Committee has thoroughly reviewed the law and policies regarding these issues, and the following recommendations are a result of this analysis.

Government Code sections 11042 and 11043 require that all state agencies utilize the services of the Office of the Attorney General in all legal matters in which the agency is involved. Government Code section 11040 provides that the agency may employ independent legal counsel only after having obtained the written consent of the Attorney General. Section 11041 enumerates several agencies which are exempt from these requirements. The Board is not contained in the list of exempted agencies.

The Committee has reviewed and discussed the circumstances relating to mandamus actions in which the Board may be involved. There are often two distinct phases to the proceedings. In the first phase, the party challenging the decision would seek a court order staying the effect of the Board decision. This would either be done ex parte (with as little as 4 hours notice to the Board), or by noticed motion giving the Board 10 to 15 days notice. In the past, staff of the Board has appeared at the ex parte matters because of the difficulty with getting a Deputy Attorney General assigned to the matter and/or knowledgeable about the case with such short notice. However, as a result of the state of the law

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<sup>1</sup> Pursuant to Vehicle Code sections 3058 and 3068, as well as Code of Civil Procedure section 1094.5, any party to a final decision of the Board may challenge the Board decision by filing a petition for writ of administrative mandamus in the superior court.

regarding the Office of the Attorney General discussed above, it is the Committee's position that, in all future ex parte matters, that staff contact the Attorney General's office to apprise them of the pendency of the ex parte proceedings but to take no further action in representing the Board before the court without the consent of the Attorney General.

The second phase of the proceedings would be the briefing and hearing on the merits of the mandamus actions, ie. whether the Board's decision was supported by substantial evidence and whether the Board's actions were proper procedurally. In the past, the Attorney General's office has represented the Board in these matters, and the Board's staff has provided assistance by way of research and drafting of pleadings, as well support in court. The Committee has reviewed this practice and recommends that it be retained in all future cases, subject to the limitations below.

The second issue which was reviewed by the Committee pertains to when, and to what extent, the Board should participate in mandamus actions challenging a Board decision. An analogy was drawn between the Board and a civil action initiated and tried in the superior court. When the superior court renders a judgment in a civil action and a party files a petition for an extraordinary writ with the Court of Appeal, the superior court is named as the responding party, much the same as in those actions challenging a Board decision. The court, however, does not make an appearance in the writ proceeding before the Court of Appeal, but instead allows the real party in interest to present the relevant arguments to the appellate court supporting the actions taken by the superior court. The Committee has determined that this practice should be utilized by the Board and, as a result, recommends the following policy.

The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. There are a number of sound reasons for such a policy. In most of the mandamus actions in which the Board is named as a respondent, the interests of both parties are adequately represented by their respective counsel. In addition, the appearance by the Board in such cases would lead to an unnecessary expenditure of state resources. Instead, the Attorney General (or Board attorneys, if permission is given by the Attorney General), should be requested to file only a perfunctory answer to the Petition for Writ of Administrative Mandamus, advising the court of the Board policy and that it is not appropriate for the Board to file a memorandum or points and authorities in opposition to the petition or to present oral arguments on the issues raised.

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. Examples of important state issues could include challenges to the jurisdiction of the Board, a decision which could affect future Board cases, unusual issues concerning the standard of review in the mandamus action, as well as serious matters of public safety. 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 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 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. The same policy would apply to ex parte hearings for a stay of the Board's order, as well as law and motion proceedings in which a stay order is sought. In any event, 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.

The Committee has considered the various aspects regarding these issues, and believes that the policies, as set forth above, will ensure that the interests of the State and Board are adequately represented when appropriate.



# New Motor Vehicle Board RESOLUTION

**W**HEREAS, Mr. Peter Welch was appointed by the National Automobile Dealers Association (NADA) in January 2013 as its President and CEO, and under his leadership, NADA strengthened its core mission of advocating on behalf of franchised dealers in the federal legislative, regulatory, industry relations and public affairs arenas; and,

**W**HEREAS, prior to joining NADA, Mr. Welch served in several positions with the California New Car Dealers Association (CNCDA), the nation’s largest state auto dealer association. From 1990 to 2003, Mr. Welch served as CNCDA’s Director of Government and Legal Affairs, and then served as its president and CEO for 10 years. He was instrumental in the formation of CNCDA, and during his tenure oversaw and influenced the enactment of numerous laws affecting consumer protection rights, emissions and environmental matters, and dealer franchising and licensing laws.

**W**HEREAS, during his career, Mr. Welch has capably assisted and supported the New Motor Vehicle Board (Board) throughout the years in many ways, such as guiding important legislation impacting the Board through the California legislature; advocating the importance of the Board to elected officials, the auto industry and new vehicle dealers; actively participating as a speaker and presenter at Board Industry Roundtables; and organizing support and advocacy to prevent legislation to abolish the Board and curtail a Sunset Review; and

**W**HEREAS, Mr. Welch has given with great unselfishness and dedication his time and expertise to matters concerning the motor vehicle industry and helped direct and protect the welfare of the automotive industry in this State and others, thereby enhancing the respect of the auto industry; and,

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

*Dated this 16<sup>th</sup> day of February 2021*

\_\_\_\_\_  
KATHRYN ELLEN DOL, PRESIDENT

\_\_\_\_\_  
ARDASHES KASSAKHIAN

\_\_\_\_\_  
RAMON ALVAREZ C., VICE PRESIDENT

\_\_\_\_\_  
DANIEL P. KUHNERT

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

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

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

\_\_\_\_\_  
BISMARCK OBANDO



## MEMO

**To: EXECUTIVE COMMITTEE  
KATHRYN ELLEN DOI, CHAIR  
RAMON ALVAREZ C., MEMBER**

**Date:** January 29, 2021

**From: 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 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 obligation which now includes costs directly associated with the disposal of hazardous

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



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.

Assembly Bill 179 (Stats 2019, Ch. 796; effective January 1, 2020) re-lettered Section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests, and made many conforming changes. In the "Delegation of Administrative Duties" on page 50, references to Staff Services Manager I have been amended to reflect Dawn Kindel's promotion to Staff Services Manager II. These revised delegations are being considered at the February 16, 2021, General Meeting.

If you have any questions or require additional information, please contact me or Robin at (916) 445-1888.

## 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. The revised delegations are being considered at the February 16, 2021, 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.

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

### 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

(a) 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.

(b) At all meetings of the board, open or executive, involving an appeal from a decision of the Director of Motor Vehicles, the director or his or her authorized representative may attend, present the position of the department<sup>2</sup> and then shall absent himself or herself from any executive session at the request of any member of the board.

(c) Within the limitations of its powers and authority, and in the event of disagreement between the board and the director regarding the decision to be reached, the decision of the board shall be final.

#### 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.
2. Pursuant to Section 3008(b), the Board has a duty to allow the Director of the Department, or the authorized representative, to present the position of the Department in an appeal at all meetings, open or executive. Any Board member, in an executive meeting, shall then have the right to request the Director, or representative, absent himself from the session. These are duties of the members of the Board.
3. Pursuant to Section 3008(c), in the event of disagreement between the Board and Department Director regarding the decision to be reached in an appeal, the decision of the Board shall be final. 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.

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<sup>2</sup> All references to the "department" refer to the Department of Motor Vehicles unless otherwise stated.

## 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) ~~Hear and determine, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for~~

~~in this chapter from a decision arising out of the department.~~

~~(e)~~ 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.

~~(d)(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 become operative on January 1, 2019 and 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 hear and determine an appeal presented by an applicant for a license or a licensee, when the applicant or licensee submits an appeal from a decision arising out of the Department. This is a duty of the members of the Board.
- ~~23.~~ Pursuant to Section 3050(b)(e), 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.
- ~~34.~~ Pursuant to Section 3050(b)(e), 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.
- ~~45.~~ Pursuant to Section 3050(b)(e)(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.
- ~~56.~~ Pursuant to Section 3050(b)(e)(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)(e)(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)(d), 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)(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 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.

192. 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 become operative on January 1, 2019 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 appeal, 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 appeal, 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, ~~or 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 ~~become operative on January 1, 2019~~ ~~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 3052. Form, Filing, Support of Appeal: Effectiveness of Decision

(a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the applicant or licensee may file an appeal with the executive director of the board. The appeal shall be in writing and shall state the grounds therefor. A copy of the appeal shall be mailed by the appellant to the department, and the department shall thereafter be considered as a party to the appeal. The right to appeal is not affected by failure to seek reconsideration before the department.

(b) An appeal is considered to be filed on the date it is received in the office of the executive director of the board, except that an appeal mailed to the executive director by means of registered mail is considered to be filed with the executive director on the postmark date.

(c) The appeal shall be accompanied by evidence that the appellant has requested the administrative record of the department and advanced the cost of preparation of that record. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by an administrative law judge, the exhibits admitted or rejected, the written evidence, and any other papers in the case. All parts of the administrative record requested by the appellant may be filed with the appeal together with the appellant's points and authorities. If the board orders the filing of additional parts of the administrative record, the board may order prior payment by the appellant of the cost of providing those additional parts.

(d) Except as provided in subdivisions (e) and (f), a decision of the department may not become effective during the period in which an appeal may be filed, and the filing of an appeal shall stay the decision of the department until a final order is made by the board.

(e) When a decision has ordered revocation of a dealer's license, the department may, on or before the last day upon which an appeal may be filed with the board, petition the board to order the decision of the department into effect.

(f) With respect to the department's petition filed pursuant to subdivision (e), the department shall have the burden of proof. The board shall act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The board may order oral argument on the petition before the board.

### Duties Relating to Section 3052

1. Pursuant to Section 3052(a), the Executive Director of the Board has a duty to accept an appeal of a decision of the Department, on or before the 10th day after

the last day on which reconsideration of a final decision of the Department can be ordered.

2. Pursuant to Section 3052(b), the Executive Director of the Board has a duty to consider an appeal filed when it is received in the office of the Executive Director, or the Executive Director has a duty to consider an appeal filed on the postmark date when it is mailed to the Executive Director by registered mail.
3. Pursuant to Section 3052(c), the Board has the right to order the filing of additional parts of the administrative record, and may order prior payment by the appellant of the cost of providing those additional parts. This is a duty of the members of the Board.
4. Pursuant to Section 3052(f), if the Department petitions the Board pursuant to Section 3052(e), to order the decision of the Department into effect, the Board has a duty to act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The Board has the right to order oral argument before the Board. This is a duty of the members of the Board.

#### Section 3053. Determination of Appeal

The board shall determine the appeal upon the administrative record of the department, any evidence adduced at any hearing of the board, and upon any briefs filed by the parties. If any party to the appeal requests the right to appear before the board, the board shall set a time and place for such hearing, the production of any relevant evidence and argument.

#### Duties Relating to Section 3053

1. Pursuant to Section 3053, the Board has the duty to determine an appeal upon the administrative record of the Department, any evidence adduced at any hearing of the Board, and upon any briefs filed by the parties. This is a duty of the members of the Board.
2. Pursuant to Section 3053, if any party to the appeal requests the right to appear before the Board, the Board has a duty to set a time and place for a hearing, the production of any relevant evidence and argument. This is a duty of the members of the Board.

#### Section 3054. Amendment or Reversal of Department's Decision

The board shall have the power to reverse or amend the decision of the department if it determines that any of the following exist:

- (a) The department has proceeded without or in excess of its jurisdiction.
- (b) The department has proceeded in a manner contrary to the law.
- (c) The decision is not supported by the findings.



(d) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the board.

(e) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.

(f) The determination or penalty, as provided in the decision of the department is not commensurate with the findings.

#### Duties Relating to Section 3054

1. Pursuant to Section 3054, the Board has the right to reverse or amend the decision of the Department, if the Board determines that any of the circumstances delineated in Section 3054 (a) through (f) exist. This is a duty of the members of the Board.

#### Section 3055. Power Relative to Penalty

The board shall also have the power to amend, modify, or reverse the penalty imposed by the department.

#### Duties Relating to Section 3055

1. Pursuant to Section 3055, the Board has the right to amend, modify, or reverse the penalty imposed by the Department. This is a duty of the members of the Board.

#### Section 3056. Procedure Following Reversal

When the order reverses the decision of the department, the board may direct the department to reconsider the matter in the light of its order and may direct the department to take any further action as is specially enjoined upon it by law. In all cases the board shall enter its order within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the board shall make its final order within 60 days after receipt of the record.

#### Duties Relating to Section 3056

1. Pursuant to Section 3056, the Board has the right to direct the Department to reconsider the matter and direct the Department to take any further action as is specially enjoined upon it by law, when the Board order reverses the decision of the Department. This is a duty of the members of the Board.

2. Pursuant to Section 3056, the Board has the duty to enter its order, in any case, within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the Board shall make its final order within 60 days after receipt of the record. This is a duty of the

~~members of the Board.~~

### ~~Section 3057. Effective Date of Orders of Board: Final Orders~~

~~The board shall fix an effective date for its orders not more than 30 days from the day the order is served upon the parties or remand the case to the department for fixing an effective date. A final order of the board shall be in writing and copies of the order shall be delivered to the parties personally or sent to them by registered mail. The order shall be final upon its delivery or mailing and no reconsideration or rehearing by the board shall be permitted.~~

### ~~Duties Relating to Section 3057~~

- ~~1. Pursuant to Section 3057, the Board has a duty to fix an effective date for its orders not more than 30 days from the day the order is served upon the parties or remand the case to the Department for fixing an effective date. This is a duty of the members of the Board.~~
- ~~2. Pursuant to Section 3057, the Board has the duty to provide a written final order delivered to the parties personally or sent to them by registered mail. This is a duty which has been delegated to the staff of the Board.~~

### 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 ~~fulfill that warranty when the franchisee has fulfilled~~ 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 ~~or formula~~ with the board. The warranty reimbursement schedule ~~or formula~~ 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 ~~recall repair. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a protest with the board. A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time and compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time and compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee. Any protest challenging a reduction in time and 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 compensation~~ 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 ~~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. If in a protest permitted by this section filed by any franchisee the board determines that the what constitutes a reasonable warranty reimbursement schedule or formula fails to provide adequate and fair compensation or fails to conform with the other requirements of this section, within 30 days after receipt of the board's order, the franchisor shall correct the failure by amending or replacing 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 or formula and implementing the correction as to all franchisees of the franchisor that are located in this state 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.

~~(g) For purposes of this section, "warranty" includes a recall conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code. This subdivision is declaratory and not amendatory of existing law.~~

#### 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 ~~or formula~~. This is a duty which has been delegated to the staff of the Board.
- ~~2.~~ Pursuant to ~~Section 3065(a), if a 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.~~
- ~~23.~~ Pursuant to Section 3065(a)~~(3)~~, if a protest challenging ~~the a~~ reduction in time ~~and 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.
- ~~34.~~ 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.
- ~~45.~~ 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.
- ~~56.~~ 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.
- ~~67.~~ 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.

- 78.** 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.
- 89.** 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.
- 940.** 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

(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) 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 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, or 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.

~~(d)~~(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, ~~or~~ 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(e)(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 Staff Services Manager I 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 Staff Services Manager I 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.

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>3</sup>

a. Amicus Curiae Briefs.

The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency<sup>4</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 for consent will be withdrawn.

(July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4)

b. Audit Compliance Officer.

The Board has designated the General Counsel<sup>5</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)

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<sup>3</sup> The Board Meeting(s) in which the delegation occurred is noted in parenthesis after the formal delegation.

<sup>4</sup> Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.

<sup>5</sup> Robin Parker, Senior Staff 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.

c. Bagley-Keene Open Meeting Act Compliance Officer.

The General Counsel<sup>6</sup> is the Bagley-Keene Open Meeting Act Compliance Officer.  
(July 12, 1996; May 25, 2000)

d. 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 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>7</sup> is responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.  
(July 12, 1996; May 25, 2000)

e. 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)

f. 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

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<sup>6</sup> See footnote 5.

<sup>7</sup> See footnote 5.

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 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)

g. 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)

h. 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)

i. 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)

j. 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)

k. 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)

STATE OF CALIFORNIA



## MEMO

**To :** NEW MOTOR VEHICLE BOARD **Date:** January 29, 2021

**From :** BISMARCK OBANDO, CHAIR  
AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION  
TIM CORCORAN, EXECUTIVE DIRECTOR

**Subject:** DISCUSSION AND CONSIDERATION OF THE AD HOC COMMITTEE ON EQUITY,  
JUSTICE AND INCLUSION'S DRAFT MISSION STATEMENT

At the January 19, 2021, Ad Hoc Committee Meeting, the members unanimously approved this draft mission statement:

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

This matter is being considered by the full Board at the February 16, 2021, General Meeting. If you have any questions, please do not hesitate to contact me or Tim Corcoran at (916) 445-1888.

cc: Kathryn E. Doi



# STATE OF CALIFORNIA



## MEMO

**To: ADMINISTRATION COMMITTEE  
ARDY KASSAKHIAN, CHAIR  
DANIEL KUHNERT, MEMBER**

**Date:** February 1, 2021

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

**Subject: CONSIDERATION OF THE REVISED *GUIDE TO THE NEW MOTOR VEHICLE BOARD* TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES**

The *Guide to the New Motor Vehicle Board* was most recently approved at the March 5, 2020, General Meeting. Each year it is thoroughly reviewed for accuracy.

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

The following additional edits are highlighted yellow in underline and strikeout font:

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

This topic is being agendized for discussion and consideration at the February 16, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact us at (916) 445-1888.

Attachment

cc: Kathryn E. Doi



*State of California*

*NEW MOTOR VEHICLE BOARD*

***GUIDE***  
***TO THE***  
***NEW MOTOR VEHICLE BOARD***



**February 2021**

# STATE OF CALIFORNIA

## NEW MOTOR VEHICLE BOARD

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**State of California**  
GAVIN NEWSOM, GOVERNOR

**California State Transportation Agency**  
DAVID S. KIM, SECRETARY

### BOARD MEMBERS

#### Public Members

KATHRYN ELLEN DOI  
ARDASHES (ARDY) KASSAKHIAN  
DANIEL P. KUHNERT  
NANXI LIU  
BISMARCK OBANDO

#### Dealer Members

RAMON ALVAREZ C.  
ANNE SMITH BOLAND  
INDER DOSANJH

### EXECUTIVE STAFF

TIMOTHY M. CORCORAN  
Executive Director

### LEGAL STAFF

ROBIN P. PARKER  
Senior Staff Counsel  
DANIELLE R. PHOMSOPHA  
Staff Counsel

## TABLE OF CONTENTS

---

<b>PREAMBLE</b> .....	i
<b>PREFACE</b> .....	ii
<b>INTRODUCTION</b> .....	1
Purpose.....	1
Organization.....	1
Meetings .....	2
Jurisdiction .....	2
<b>NEW AS OF 2021</b> .....	3
Legislation.....	3
Case Law .....	3
Regulations .....	3
<b>POWERS AND DUTIES IN GENERAL</b> .....	4
Enforcement of Board Orders .....	4
Mandatory Settlement Conferences.....	4
<b>DISPUTES BETWEEN THE DEALER AND THE FRANCHISOR</b> .....	5
<b>PROTESTS IN GENERAL</b> .....	7
Statutory Authority .....	7
Statutory Bases for Protest .....	7
Separate Protests .....	8
Filing Protest.....	8
Franchisor’s Notice of Appearance .....	8
Filing Fee .....	8
Interested Individuals .....	9
Motion for Intervention .....	9
Challenge to Presiding Officer .....	9
Amicus Curiae Briefs .....	9
Table of Contents for Protest Section .....	10
<b>TERMINATION OF FRANCHISE</b> .....	11
Statutory Authority for Protest.....	11
Franchisor’s Notice of Termination .....	11
Time for Filing a Protest.....	12
Required Elements of Protest .....	14
Good Cause.....	15
Determination of Protest .....	15
<b>MODIFICATION OF FRANCHISE</b> .....	16
Statutory Authority for Protest.....	16
Franchisor’s Notice of Modification .....	16
Time for Filing a Protest.....	16
Required Elements of Protest .....	18
Good Cause.....	18
Determination of Protest .....	19
<b>ADDITIONAL OR RELOCATED FRANCHISE</b> .....	20
Statutory Authority for Protest.....	20
Franchisor’s Notice of Additional or Relocated Franchise.....	20

**TABLE OF CONTENTS -continued-**

---

- Exceptions to the Right to Protest..... 21
  - New Motor Vehicle Dealers (including RVs) ..... 21
  - Recreational Vehicle Dealers Only ..... 22
- Time for Filing a Protest ..... 22
- Required Elements of Protest ..... 23
- Good Cause..... 24
- Determination of Protest ..... 24
- ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY** ..... 25
  - Statutory Authority for Protest..... 25
  - Franchisor’s Notice of Additional or Relocated Satellite Warranty Facility ..... 25
  - Time for Filing a Protest ..... 25
  - Required Elements of Protest ..... 27
  - Good Cause..... 27
  - Determination of Protest ..... 28
- COMPENSATION FOR DELIVERY AND PREPARATION** ..... 29
  - Statutory Authority ..... 29
  - Franchisor’s Notice of Compensation for Delivery and Preparation ..... 29
  - Time for Filing a Protest ..... 29
  - Required Elements of Protest ..... 30
  - Determination of Protest ..... 30
- WARRANTY CLAIMS - Motor Vehicle Dealers**..... 31
  - Franchisor’s Notice of Compensation for Warranty Reimbursement ..... 31
  - Reasonableness of the Warranty Reimbursement Schedule ..... 31
  - Protest of Pre-Repair Challenges to the Reduction in Time and Compensation  
(Labor Time Guides) Applicable to Specific Parts or Labor Operations ..... 31
  - Approval of Warranty Claims ..... 32
  - Disapproval of Warranty Claims for a Defective Part ..... 32
  - Disapproval of Warranty Claims..... 32
  - Protest of Initial Disapproval of Warranty Claims ..... 33
  - Franchisor Provided “Reasonable” Appeal Process ..... 33
  - Final Denial of Warranty Claim ..... 33
  - Protest of Final Denial of Warranty Claim Following a Franchisor’s Appeal Process.. 33
  - Audits of Franchisee Warranty Records ..... 33
  - Disapproval of Previously Approved Warranty Claims ..... 34
  - Protest of Warranty Claim Disapproval of a Previously Approved Claim Following  
an Audit..... 34
  - Franchisor Provided “Reasonable” Appeal Process ..... 34
  - Final Denial of Warranty Claim Following an Audit ..... 35
  - Protest of Final Denial of Warranty Claim following an Audit Following the  
Franchisor’s Appeal Process ..... 35
  - Franchisor Chargeback for Warranty Claims ..... 35
  - Required Elements of a Protest ..... 36
  - Warranty Claims Protests Chart..... 37

**TABLE OF CONTENTS -continued-**

**RETAIL LABOR RATE OR RETAIL PARTS RATE - Motor Vehicle Dealers**..... 38

- Establishment or Modification of a Franchisee’s Retail Labor Rate or Retail Parts Rate ..... 38
- How a Franchisee Calculates its Retail Labor Rate? ..... 38
- How a Franchisee Calculates its Retail Parts Rate? ..... 38
- Statutorily Required Notice to the Franchisor by the Franchisee of its Retail Labor Rate and Retail Parts Rate ..... 38
- How Repair Orders are Submitted Pursuant to Section 3065.2 ..... 38
- What Types of Charges Included in a Repair Order Should be Omitted in Calculating a Franchisee’s Retail labor Rate and Retail Parts Rate ..... 39
- A Franchisor may Contest to the Franchisee the “Material Accuracy” of the Retail Labor Rate or Retail Labor Parts Rate by Submitting a “Notification” to the Franchisee ..... 40
- The Franchisor’s Proposed Adjusted Retail Labor Rate or Retail Parts Rate is Effective if the Franchisee Agrees ..... 40
- If the Franchisee does not Agree with the Proposed Adjusted Rate then a Protest can be Filed with the Board..... 41
- If the Franchisor Determines that the Franchisee’s Retail Labor Rate or Retail Parts Rate is “Substantially Higher” than the Franchisee’s Current Warranty Rate, the Franchisor can Request Supplemental Repair Orders ..... 41
- What if the Franchisor does not Contest the Retail Labor Rate or Retail Parts Rate .. 41
- Considerations in Calculating the Retail Labor Rate and Retail Parts Rate ..... 42
- Considerations when the Franchisor is Compensating the Franchisee for the Retail Parts Rate..... 42
- The Method of Establishing or Modifying a Franchisee’s Retail Labor Rate, Retail Parts Rate, or Both ..... 43
- What Actions Franchisors are Precluded from Undertaking..... 43
- Protest for Franchisor’s Failure to Comply with Section 3065.2 or if Franchisee Disputes the Franchisor’s Proposed Adjusted Retail Labor Rate or Retail Parts Rate ..... 44
- Time for Filing a Protest ..... 44
- Required Elements of Protest ..... 45
- Determination of Protest ..... 45
- Retail Labor Rate or Retail Parts Rate Protests Chart ..... 47

**WARRANTY CLAIMS - RV Dealers**..... 48

- Statutory Authority ..... 48
- Franchisor’s Notice of Compensation for Warranty Reimbursement ..... 48
- Approval of Warranty Claims ..... 48
- Disapproval of Warranty Claims..... 48
- Audits of Franchisee Warranty Records ..... 48
- Time for Filing a Protest ..... 49
- Required Elements of a Protest ..... 49
- Good Cause..... 50
- Determination of Protest ..... 50

**FRANCHISOR INCENTIVE PROGRAM CLAIMS - Motor Vehicle Dealers** ..... 51

- Statutory Authority ..... 51
- Franchisor’s Notice of Denial of Franchisor Incentive Program Reimbursement ..... 51

**TABLE OF CONTENTS -continued-**

Approval/Disapproval of Franchisor Incentive Program Reimbursement..... 51

Disapproval of Franchisor Incentive Program Claims ..... 51

Protest of Initial Disapproval of Franchisor Incentive Program Claims..... 51

Franchisor Provided “Reasonable” Appeal Process ..... 52

Final Denial of Franchisor Incentive Program Claim ..... 52

Protest of Final Denial of Franchisor Incentive Program Claim Following a  
Franchisor’s Appeal Process ..... 52

Audits of Franchisee Incentive Program Records ..... 52

Disapproval of Previously Approved Franchisor Incentive Program Claims ..... 53

Protest of Franchisor Incentive Program Claim Disapproval of a Previously  
Approved Claim Following an Audit ..... 53

Franchisor Provided “Reasonable” Appeal Process ..... 53

Final Denial of Franchisor Incentive Program Claim Following an Audit ..... 54

Protest of Final Denial of Franchisor Incentive Program Claim Following an  
Audit Following the Franchisor’s Appeal Process ..... 54

Franchisor Chargeback for Incentive Program Claims..... 54

Required Elements of Protest ..... 55

Franchisor Incentive Program Protests Chart ..... 56

**FRANCHISOR INCENTIVE PROGRAM CLAIMS - RV Dealers..... 57**

Statutory Authority ..... 57

Franchisor’s Notice of Denial of Franchisor Incentive Program Reimbursement ..... 57

Approval/Disapproval of Franchisor Incentive Program Reimbursement..... 57

Audits of Franchisee Incentive Program Records ..... 57

Time for Filing a Protest ..... 57

Required Elements of Protest ..... 58

Good Cause..... 58

Determination of Protest ..... 58

**PERFORMANCE STANDARDS, SALES OBJECTIVES, OR PROGRAMS FOR  
MEASURING A DEALER’S SALES, SERVICE, OR CUSTOMER SERVICE**

**PERFORMANCE - Motor Vehicle Dealers ..... 59**

Statutory Authority ..... 59

Franchisor’s Performance Standard, Sales Objective or Program ..... 59

Time for Filing a Protest ..... 60

Required Elements of Protest ..... 60

Determination of Protest ..... 60

**HEARING PROCEDURES..... 61**

Pre-Hearing Procedure ..... 62

Discovery ..... 62

Subpoenas..... 62

Summary of Board Action ..... 64

Stipulation of Fact ..... 65

Stipulated Decisions ..... 65

Hearings Open to the Public; Protective Orders ..... 65

Failure to Appear at a Hearing ..... 65

Decision of the Board..... 65

Court Reporting and Transcripts of Board Proceedings..... 66

**PETITIONS..... 68**

Statutory Authority for Petitions..... 68

Filing a Petition with the Board..... 68

Time for Filing a Petition ..... 68



**TABLE OF CONTENTS -continued-**

---

Petition Filing Fee ..... 69  
Required Elements of Petition..... 70  
First Consideration..... 71  
Resolution of Petitions without a Hearing ..... 71  
Challenge to Presiding Officer ..... 71  
Motion for Intervention ..... 71  
Amicus Curiae Briefs ..... 72  
Summary of Board Action ..... 72  
Hearing Procedures ..... 72  
Informal Mediation ..... 72  
Members of the Public in Relation to New Recreational Vehicle Transactions ..... 73  
**JUDICIAL REVIEW** ..... 74  
    Appeal to Superior Court..... 74  
**APPENDIX** ..... A-1  
    Sample Form A - Pleading Format of Protest ..... A-2  
    Sample Form B1 - Pleading Format of Petition (Veh. Code § 3050(b)(2))..... A-4  
    Sample Form B2 - Pleading Format of Petition (Veh. Code § 3050(b)(1) or (3)) ..... A-6

## **PREAMBLE**

This publication provides general information only as to the most pertinent Vehicle Code sections as they relate to practice before the New Motor Vehicle Board (“Board”). There are many other important Vehicle Code sections and Department of Motor Vehicles (“Department”) regulations not covered in this publication. The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation. Practitioners as well as the general public are invited to comment on the forms and contents of procedures. Please note the Board’s address is different from the address of the Department. The Board only has one office in Sacramento. All correspondence, protests, and petitions should be sent to:

New Motor Vehicle Board  
ATTN: Legal Department  
P.O. Box 188680  
Sacramento, California 95818-8680

Correspondence can also be sent via email at [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov) or facsimile at (916) 323-1632. The telephone number of the Board is (916) 445-1888 and the website address is [www.nmvb.ca.gov](http://www.nmvb.ca.gov). Detailed information can be found on the Board’s website. Please feel free to contact the Board’s staff for further information.

## **PREFACE**

The purpose of this publication is to familiarize the reader with the organization and jurisdiction of the Board, including the Board's operations and procedures. All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. References to regulations are to Title 13 of the California Code of Regulations (CCR). The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website ([www.oal.ca.gov](http://www.oal.ca.gov)). Once you reach the OAL site, select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code §§ 11400 through 11529) are applicable. Citations to relevant court decisions are interspersed throughout. The provisions of the APA are available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

The Board also publishes the *Informational Guide for Manufacturers and Distributors* to assist manufacturers and distributors in clarifying California's vehicle franchise laws. It is designed for personnel in manufacturer or distributor market representation departments, dealer development departments, or legal departments. The *Informational Guide for Manufacturers and Distributors* is available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov).

## INTRODUCTION

### Purpose

The Board is a program within the Department. The Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board. At that time, the Board's only function was hearing appeals<sup>1</sup> from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative.<sup>2</sup> In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, ch. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry. The constitutionality of this regulatory scheme has survived a due process challenge in the United States Supreme Court (*New Motor Vehicle Board v. Orrin W. Fox Co.* (1978) 439 U.S. 96, 58 L.Ed.2d 361, 99 S.Ct. 403).

### Organization

The organization of the Board is prescribed in Vehicle Code sections 3000 to 3016. The Board is comprised of nine members. The chart below identifies the composition of the Board.

<b>Who</b>	<b>Qualifications</b>	<b>Appointment</b>
Four licensed new motor vehicle dealers. (Dealers that deal exclusively in motorcycles, ATVs, or recreational vehicles are excluded from membership on the Board.)	Must have been licensed as a new motor vehicle dealer for not less than five years.	All by the Governor.
Five members from the general public.	One must be an attorney who has been a member of the California Bar for at least 10 years.	Three by the Governor. One by the Senate Rules Committee. One by the Speaker of the Assembly.

---

<sup>1</sup> Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, ch. 796)

<sup>2</sup> Throughout this Guide, the terms dealer, protestant, and franchisee are used interchangeably, as are the terms manufacturer/distributor, respondent, and franchisor.

## **Meetings**

The Board meets at least twice during each calendar year, with supplemental meetings held as necessary. Board meetings are open to the public with the exception of executive sessions, which are held to deliberate on pending matters before the Board. As public meetings conducted by a state entity, the Bagley-Keene Open Meeting Act (Gov. Code §§ 11120 through 11132) covers all requirements for public notice, agendas, public testimony and the conduct of Board meetings. To the extent practicable, the Board conducts business at meetings using a modern interpretation of procedures set forth in *Robert's Rules of Order*.

## **Jurisdiction**

The Board's statutory jurisdiction under Vehicle Code section 3050(b) extends over any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. In the past, the courts construed this jurisdiction as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the franchise relationship before the Board prior to seeking judicial relief (*Yamaha Motor Company v. Superior Court* (1986) 185 Cal.App.3d 1232; *Yamaha Motor Company v. Superior Court* (1987) 195 Cal.App.3d 652; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal.App.4<sup>th</sup> 51; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal.App.4<sup>th</sup> 288.) However, subsequent court decisions have held otherwise (*Miller v. Superior Court* (1996) 50 Cal.App.4<sup>th</sup> 1665; *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal.App.4<sup>th</sup> 585; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal.App.4<sup>th</sup> 506; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4<sup>th</sup> 1527.) As a consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the Legislature in 1997 and became effective in 1998. It provides that 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.

In 2003, the Board's petition jurisdiction was further narrowed by the Third District Court of Appeal in *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4<sup>th</sup> 1451. The court held that the Board's jurisdiction for licensee versus licensee petitions is limited to those in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(1) or (3) [Effective January 1, 2020, this relief is now in subdivision (b)(1) and (b)(3)]. Subdivision (c)(1) allows the Board to direct the Department to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board 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 occupational license of a manufacturer or distributor. The Board's jurisdiction under Vehicle Code section 3050, subdivision (c)(2) [Effective January 1, 2020, this relief is now in subdivision (b)(2)], which provides that the Board may "undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint [i.e., hold a hearing] existing between any member of the public and any new motor vehicle dealer, manufacturer, ... distributor ...", is now limited to petitions brought by members of the public, and does not include licensees as petitioners.

Effective January 1, 2004, the Vehicle Code was amended to bring new recreational vehicles (“RVs”) as defined in Health and Safety Code section 18010(a) under the jurisdiction of the Board for purposes of dispute resolution and fee collection (Senate Bill 248, Stats. 2003, ch. 703 § 11). This Guide integrates current Board processes and procedures to the extent they can be used to resolve disputes in the RV segment of the new motor vehicle industry and sets forth unique procedures that pertain to RV issues exclusively.

Effective January 1, 2020, the Board’s jurisdiction over appeals was repealed.

## **NEW AS OF 2021**

### **Legislation**

There was no new legislation that impacts the Board’s jurisdiction.

### **Case Law**

There were no new opinions impacting the Board’s jurisdiction that were final in 2020.

### **Regulations**

There were no new regulations that impact the Board.

## **POWERS AND DUTIES IN GENERAL**

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. New motor vehicle dealers, manufacturers, and distributors under the jurisdiction of the Board are charged fees to fund the Board's activities. (Veh. Code § 3016; 13 CCR § 553) In addition to delegating rulemaking authority to the Board, Vehicle Code section 3050 empowers the Board to resolve disputes arising in the form of protest or petitions.

As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

### **Enforcement of Board Orders**

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts. (Veh. Code § 3050.2(a)) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or petition or suspend the proceedings pending compliance. Vehicle Code section 11726 provides for enforcement of Board orders by permitting any licensee to recover damages, attorney fees, and injunctive relief in any court of competent jurisdiction for a willful failure to comply with a Board order.

### **Mandatory Settlement Conferences**

In any protest or petition filed with the Board, the Board, its Executive Director, or an Administrative Law Judge ("ALJ") may order a mandatory settlement conference. (Veh. Code § 3050.4) For any proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties. (13 CCR § 551.11) The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party. (Veh. Code § 3050.4)

## DISPUTES BETWEEN THE DEALER AND THE FRANCHISOR

The Vehicle Code gives the Board jurisdiction to resolve disputes involving the following:

<b>Type of Case</b>	<b>Vehicle Code Authority</b>	<b>Page Nos.</b>
Attempts by the franchisor to terminate, modify, or refuse to continue (renew) the franchise.	3060, 3070	11-19
Attempts by the franchisor to establish a new, or relocate an existing, dealer (of the “same line-make”) if the current franchisee is within a radius of 10 air miles of the proposed location (called the “relevant market area”).	3062(a)(1), 3072(a)(1)	20-24
Attempts by the franchisor to establish a satellite warranty facility at, or relocate an existing satellite warranty facility to, a location that is within 2 miles of any dealership of the same line-make. ( <u>Note</u> : there are no comparable provisions for RV dealers.)	3062(a)(2)	25-28
Disputes relating to the dealers’ delivery and preparation obligations, and compensation for such services.	3064, 3074	29-30
Disputes relating to reimbursement for warranty work performed by motor vehicle dealers.	3065	31-37
Disputes relating to a franchisee’s retail labor rate or retail parts rate. ( <u>Note</u> : there are no comparable provisions for RV dealers.)	3065.4	38-47
Disputes relating to reimbursement for warranty work performed by RV dealers.	3075	48-50
Disputes relating to reimbursement for franchisor incentive programs by motor vehicle dealers.	3065.1	51-56
Disputes relating to reimbursement for franchisor incentive programs by RV dealers.	3076	57-58
Disputes relating to a franchisor’s compliance with subdivision (g) of Section 11713.13. ( <u>Note</u> : there are no comparable provisions for RV dealers.)	3065.3	59-61
All other disputes concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, or distributor submitted by any member of the public <sup>3</sup> or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(b)	68-73

<sup>3</sup> Members of the public have the option to seek informal mediation of their disputes (13 CCR § 551.14 et seq.) as well as administrative hearings on the merits pursuant to the Board’s petition process.



**NOTE:** Vehicle Code section 3050(c) prohibits a dealer member from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed “pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.”

Vehicle Code section 3066(f) states: “[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 [Article 4, i.e., protests involving motor vehicles other than RVs] unless all parties to the protest stipulate otherwise.” These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions.

The dealer members may participate in those matters not involving a dispute between a franchisee and franchisor such as a petition filed by a member of the public. For matters before the Board in which relief is sought pursuant to Vehicle Code section 3050(b), dealer members may not participate and there are no provisions to allow parties to stipulate and permit participation.

In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

## PROTESTS IN GENERAL

### Statutory Authority

Vehicle Code section 3050(c) provides for the Board to hear and decide any protest presented by a franchisee against a franchisor.

### Statutory Bases for Protest

A protest can arise as a result of disputes contemplated by the following statutory provisions:

<b>Vehicle Code Section</b>	<b>Provision</b>
3060, 3070	The franchisor attempts to terminate, modify, or refuses to continue the franchise.
3062(a)(1), 3072(a)(1)	The franchisor attempts to establish an additional dealer or relocate an existing dealer within the relevant market area (any area within a radius of 10 miles from the site of a potential new dealership) where the same line-make is already represented.
3062(a)(2)	The franchisor attempts to establish an additional satellite warranty facility or relocate an existing satellite warranty facility within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)
3064, 3074	Disputes relating to the dealer's delivery and preparation obligations, and compensation for such services.
3065, 3075	Disputes relating to reimbursement for warranty work performed by the dealer.
3065.4	Disputes relating to a franchisee's retail labor rate or retail parts rate or its franchisor's proposed adjusted retail labor rate or retail parts rate. (Note: there are no comparable provisions for RV dealers.)
3065.1, 3076	Disputes relating to reimbursement for franchisor incentive programs.
3065.3	Disputes relating to a franchisor's performance standard, sales objective or program for measuring a dealer's sales, service, or customer service performance. Disputes relating to whether a franchisor complied with subdivision (g) of Section 11713.13. (Note: there are no comparable provisions for RV dealers.)

## **Separate Protests**

A separate protest is required if there is more than one franchise.<sup>4</sup> For example, if a franchised dealer files a single protest to the attempted termination of its Chrysler, Dodge, Jeep, and RAM franchises, consistent with Vehicle Code section 3050 and 13 CCR § 583, the Board would require the dealer to file an amended protest for one of its franchises, i.e., Chrysler, and new protests for the other three franchises, i.e., Dodge, Jeep, and RAM.

## **Filing Protest**

Most protests have specific statutorily imposed time limits for filing. A protest is deemed filed upon its receipt by the Board via regular mail, email or facsimile, or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be either emailed to the Board at [nm vb@nm vb.ca.gov](mailto:nm vb@nm vb.ca.gov) personally filed or mailed by certified or registered to P.O. Box 188680, Sacramento, CA 95818-8680.

## **Franchisor's Notice of Appearance**

The respondent shall file a written notice of appearance within 15 days of receipt of the protest (13 CCR § 585.1). Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

## **Filing Fee**

A filing fee of \$200, which should be in the form of a check, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of

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<sup>4</sup> Vehicle Code section 331 defines a "franchise" in part as follows: "...a written agreement between two or more persons having all of the following conditions:

- (1) A commercial relationship of definite duration or continuing indefinite duration.
- (2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.
- (3) The franchisee constitutes a component of the franchisor's distribution system.
- (4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.
- (5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories."

A recreational vehicle franchise is defined in Vehicle Code section 331.3 as "... a written agreement between two or more persons having both of the following conditions: (a) A commercial relationship of definite duration or continuing indefinite duration; and (b) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail, new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, that are manufactured or distributed by the franchisor, or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities."

appearance. In the event of a financial hardship, either the protestant or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the \$200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)

### **Interested Individuals**

Per Vehicle Code sections 3066 and 3080, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

### **Motion for Intervention**

Any person, including a Board member, concerned with 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 may file a motion to intervene in a pending protest subject to the conditions set forth in 13 CCR § 551.13.

### **Challenge to Presiding Officer**

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party, **excluding an intervenor**, in a protest to one disqualification without cause (peremptory challenge) of the assigned merits ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the merits ALJ or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier (13 CCR § 551.12(b)(1)). A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes. Except for the convenience of the Board or for good cause shown, no merits hearing shall be continued by the filing of a peremptory challenge.

### **Amicus Curiae Briefs**

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

## **Table of Contents for Protest Section**

The chart below identifies the section and page numbers for procedural requirements particular to each type of protest but should be relied on only as a guide.

<b>Protest Section of Guide</b>	<b>Page Nos.</b>
Termination of the Franchise	11-15
Modification of the Franchise	16-19
Additional or Relocated Franchise	20-24
Additional or Relocated Satellite Warranty Facility (Motor Vehicle Dealers)	25-28
Compensation for Delivery and Preparation	29-30
Compensation for Warranty Reimbursement (Motor Vehicle Dealers)	31-37
Retail Labor Rate or Retail Parts Rate	38-47
Compensation for Warranty Reimbursement (RV Dealers)	48-50
Compensation for Franchisor Incentive Program Reimbursement (Motor Vehicles Dealers)	51-56
Compensation for Franchisor Incentive Program Reimbursement (RV Dealers)	57-58
Franchisor Compliance with Section 11713.13(g)	59-61
Hearing Procedures	62-67

## TERMINATION OF FRANCHISE

### Statutory Authority for Protest

Vehicle Code sections 3060 and 3070 give the dealer the right to protest an attempt by the manufacturer or distributor to terminate or refuse to continue an existing franchise agreement.

### Franchisor's Notice of Termination

Vehicle Code sections 3060 and 3070 provide that no franchisor (manufacturer or distributor) shall terminate or refuse to continue a franchise (sales and service agreement) unless written notice of the franchisor's intent to terminate has been received by both the franchisee (dealer) and the Board. The notice must set forth the specific grounds for termination and must contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, one of the following statements:

(When a 60-day notice of termination or refusal to continue 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.**

(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.**

Termination notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if American Honda seeks to terminate a motorcycle/ATV/scooter dealership and has a separate franchise for each line-make, then there should be three separate termination notices sent to the franchisee and the Board.

## **Time for Filing a Protest**

It is essential not to confuse the time within which to file a protest with the Board with the time at which a termination becomes effective. The time at which the termination will become effective is governed by the reasons for termination. The chart below identifies the reasons for termination, corresponding protest filing periods, and effective dates of termination.

<b>Reason for Termination</b>	<b>Filing Period</b>	<b>Effective Date of Termination</b>
Transfer of any ownership or interest in the franchise without the consent of the franchisor. The consent shall not be unreasonably withheld.	10 days from dealer's receipt of notice or 10 days after the end of any appeal procedure provided by the franchisor.	15 days after dealer's receipt of notice.
Misrepresentation by the franchisee in applying for the franchise.	As above.	As above.
Insolvency of the franchisee, or the filing of any petition by or against the franchisee under any bankruptcy or receivership law.	As above.	As above.
Any unfair business practice after written warning thereof.	As above.	As above.
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 (recreational vehicle) dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle (recreational vehicle) dealer or by order of the Department.	As above.	As above.
Any other reason.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, email or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in automatic termination of the franchise as of the time indicated in the notice of termination. Filing a timely protest will prevent the termination from becoming effective until the protest is resolved by the Board.



## **Required Elements of a Protest**

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest to the proposed termination or non-renewal of a franchise must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>5</sup>	13 CCR § 583
Must be responsive to the specific grounds of the termination set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

<sup>5</sup> If the franchisee is a natural person, not a corporation or other legal entity, the protest shall be signed by that person or by the franchisee's attorney or representative. If the franchisee is a corporation or other legal entity, the protest shall be signed by an attorney representing the entity, or by an authorized representative of the entity (13 CCR § 583).

## **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot terminate the franchise until a hearing has been held and the Board acts on the proposed decision. At a hearing, the manufacturer or distributor will have the burden of proving “good cause” for termination. In making a determination of good cause under Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to all of the following:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
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.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational 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 or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee’s failure to comply with the terms of the franchise.	3061(g), 3071(g)

## **Determination of Protest**

If the franchisor, having the burden, cannot establish good cause for terminating the franchise, the protest will be sustained, and the termination will not be permitted.

## MODIFICATION OF FRANCHISE

### Statutory Authority for Protest

Vehicle Code sections 3060(b) and 3070(b) give the dealer the right to protest an attempt by the manufacturer or distributor to modify or replace an existing franchise such that the modification substantially affects the dealer's sales or service obligations or investment.

### Franchisor's Notice of Modification

Vehicle Code sections 3060 and 3070 provide that no franchisor shall modify or replace an existing franchise with a succeeding franchise if the modification or replacement would substantially affect the existing franchisee's sales or service obligations or investment, unless written notice of modification or replacement is given to each affected franchisee and the Board at least 60 days prior to the modification or replacement.<sup>6</sup>

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, 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.**

Modification notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

### Time for Filing a Protest

Filing a timely protest will prevent the modification from becoming effective until the protest is resolved by the Board. It is essential not to confuse the time within which to file a protest with the Board with the time at which a modification becomes effective. The chart below identifies the protest filing period and effective date of modification:

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<sup>6</sup> Despite the franchisor's decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language).

<b>Reason for Modification</b>	<b>Filing Period</b>	<b>Effective Date of Modification</b>
As stated by franchisor.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, email or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in the modification becoming effective as stated in the notice. Filing a timely protest will prevent the modification or replacement from becoming effective until the protest is resolved by the Board.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest of modification or replacement of an existing franchise must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>7</sup>	13 CCR § 583
Must be responsive to the specific grounds of the modification or replacement set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

## **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot modify the franchise if such modification would substantially affect a dealer's sales or service obligations or investment until a hearing has been held by the Board. At the hearing, the dealer has the initial burden to establish that there is a proposed modification, which would substantially affect the dealer's sales or service obligations or investment. If the dealer meets this burden, the burden of proof shifts to the manufacturer or distributor to prove "good cause" for the modification. In making a determination of good cause pursuant to Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

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<sup>7</sup> See footnote 5.

<b>Circumstances</b>	<b>Vehicle Code Section</b>
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
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.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational 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 or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. ( <u>Note:</u> In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. ( <u>Note:</u> In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

### **Determination of Protest**

The modification will not be permitted if the Board decides the manufacturer or distributor failed to establish good cause for the intended modification.

If 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.

## **ADDITIONAL OR RELOCATED FRANCHISE**

### **Statutory Authority for Protest**

Vehicle Code sections 3062(a)(1) and 3072(a)(1) give a dealer the right to protest the establishment of an additional dealership or relocation of an existing dealership of the same line-make within a ten-mile radius of the proposed new or relocating dealership. Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its dealers.

**NOTE:** The proposed new dealer, or the existing dealer seeking to relocate, may appear in the proceedings as an interested individual. The rights of an interested individual to participate in the proceedings are somewhat limited, and subject to the ALJ's management of the hearing. In general, interested individuals have no right to formal discovery or right of cross-examination at the hearing.

### **Franchisor's Notice of Additional or Relocated Franchise**

Vehicle Code sections 3062(a)(1) and 3072(a)(1)<sup>8</sup> require that the manufacturer or distributor must first give written notice to the Board and to dealerships of the "same line-make" within the "relevant market area" of the proposed new or relocating dealership.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, 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.**

Establishment and relocation notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if General Motors LLC seeks to establish an additional Buick/Cadillac/GMC dealership and has a separate franchise for each line-make, then there should be separate establishment notices sent to each franchisee of any of the three line-makes within the relevant market area of the proposed new location (as defined in Vehicle Code section 507) and the Board.

For motor vehicles other than RVs, "line-make" is not defined in the code. What is or is not a same

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<sup>8</sup> The last sentence in the "Notice to Dealer" language in Section 3072(a) contains commas as follows: "If, within this time, you file with the board..."

“line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the Department as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 Form (Certificate of Proposed Franchise) relevant market area requirements. For instance, in the automotive industry, a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado, Impala, and Tahoe “lines” or models.

For the RV industry, which lacks uniformity, “recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.3.” It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure that their makes are registered with the Department.

Relevant market area is defined in Vehicle Code section 507 as “any area within a radius of 10 miles from the site of a potential new dealership.” The distance is determined by a straight-line measurement between the nearest points of the new dealership’s location and the protesting dealership’s location. There are times when a survey will be necessary to determine whether a dealer desiring to protest is within the relevant market area.

## **Exceptions to the Right to Protest**

### **New Motor Vehicle Dealers (including RVs)**

There are exceptions to the requirement of notice to existing dealers within the relevant market area of a franchisor’s intent to establish or relocate a dealership. These exceptions are located in Vehicle Code sections 3062 and 3072, and provide that no notice is required to be given, and there is no right to protest, if:

1. The relocation is of an existing dealership to a location that is both within the same city as, and is within one mile from, the existing (relocating) dealership location;
2. The establishment of a dealership at the same location of a dealership that has been out of operation for less than one year;
3. The relocation entails the establishment at a location of a dealership that is both within the same city as, and is 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; or
4. The establishment entails a display of vehicles at fairs, expositions, or similar exhibits provided that no actual sales are made at the event and the display does not exceed 30 days.

Vehicle Code sections 3062 and 3072 require that if an “off-site sale” is intended, the manufacturer or distributor must give notice to all dealers of the same line-make within 10 miles of the proposed site. Such dealers would have a right to protest the off-site sale, even though a financial institution and a licensed dealer sponsor the event.



## **Recreational Vehicle Dealers Only**

For RVs, the exceptions to notice requirements are found in Vehicle Code section 3072. The exceptions are essentially the same as provided in Vehicle Code 3062 as stated above with the addition of one more exception. That one exception is for an annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Vehicle Code section 11713.15.<sup>9</sup> (Veh. Code § 3072(b)(4))

### **Time for Filing a Protest**

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the dealership until the Board resolves the protest.

The chart below identifies the protest filing period and effective date of the relocation or establishment of a dealership.

<b>Type of Notice</b>	<b>Filing Period</b>	<b>Effective Date of Relocation/ Establishment</b>
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

If, within the above filing period, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed within the statutory filing period, the manufacturer or distributor will be able to establish the proposed dealership or relocate the existing dealership without proceeding before the Board.

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<sup>9</sup> Effective September 19, 2018, subdivision (d) of Vehicle Code section 11713.15 was amended to except a recreational vehicle dealer being issued a temporary branch license from the notice requirements if the show is located in a county with a population of 9,000,000 or more persons, or at a location within 30 miles from the prior approved location of the show, and at least 10 manufacturers are participating in the show. (Assembly Bill 2330, Stats. 2018, ch. 537)

## **Required Elements of Protest**

The required content of a protest pursuant to Vehicle Code sections 3062 and 3072 is set forth in detail in 13 CCR § 585. A protest of the relocation or establishment of a franchise must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>10</sup>	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

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<sup>10</sup> See footnote 5.

## **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot establish an additional franchise or relocate an existing franchise until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional dealer or relocation of an existing dealership. In making a determination of good cause pursuant to Vehicle Code sections 3063 or 3073, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
Permanency of the investment.	3063(a), 3073(a)
Effect on the retail motor vehicle (recreational vehicle) business and the consuming public in the relevant market area.	3063(b), 3073(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.	3063(c), 3073(c)
Whether the franchisees of the same line-make or same recreational vehicle line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make or recreational vehicle line-make in the market area. This includes the adequacy of motor vehicle or recreational vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel. (Note: For RVs, adequate sales shall be considered, however, not all RV franchise agreements require service facilities, equipment, supply of vehicle parts, and qualified service personnel.)	3063(d), 3073(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e), 3073(e)

## **Determination of Protest**

If the Board decides the protesting dealer cannot prove good cause to prevent the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

## **ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY**

### **Statutory Authority for Protest**

Vehicle Code section 3062(a)(2) gives a new motor vehicle dealer the right to protest an additional satellite warranty facility or the relocation of an existing satellite warranty facility within 2 miles of any dealership of the same line-make. Satellite warranty facility is defined as “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.” (Veh. Code § 3062(e)(2)) Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its satellite warranty facilities. There are no comparable statutory provisions for RV dealers for such protests.

### **Franchisor’s Notice of Additional or Relocated Satellite Warranty Facility**

Vehicle Code section 3062(a)(2) requires that the manufacturer or distributor must first give written notice to the Board and to dealerships of the same line-make within 2 miles of the proposed location.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, 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.**

The notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

### **Time for Filing a Protest**

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the satellite warranty facility until the protest is resolved by the Board. The chart on the next page identifies the protest filing period and effective date of the relocation or establishment of a satellite warranty facility.

If, within the filing period set forth in the table, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed in time, the manufacturer or distributor will be able to establish the proposed satellite warranty facility or relocate the existing satellite warranty facility without proceeding before the Board.

<b>Type of Notice</b>	<b>Filing Period</b>	<b>Effective Date of Relocation/ Establishment</b>
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3062(a)(2) is described in 13 CCR § 585. A protest of the relocation or establishment of a satellite warranty facility must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>11</sup>	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation of the satellite warranty facility set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

## **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot establish an additional satellite warranty facility or relocate an existing satellite warranty facility until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional satellite warranty facility or relocation of an existing satellite warranty facility.

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<sup>11</sup> See footnote 5.

In making a determination of good cause pursuant to Vehicle Code section 3063, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
Permanency of the investment.	3063(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area.	3063(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.	3063(c)
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.	3063(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e)

**Determination of Protest**

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation of the satellite warranty facility, the manufacturer or distributor will be permitted to proceed with its intended action.

## **COMPENSATION FOR DELIVERY AND PREPARATION**

### **Statutory Authority**

Vehicle Code sections 3064 and 3074 require every new motor vehicle or recreational vehicle manufacturer and distributor to specify the dealer's delivery and preparation obligations prior to the delivery of new motor vehicles or new recreational vehicles to retail buyers.

### **Franchisor's Notice of Compensation for Delivery and Preparation**

Manufacturers and distributors are required to file with the Board a copy of the delivery and preparation obligations and a schedule of compensation to be paid to the dealers for the work and services they shall be required to perform in connection with the delivery and preparation obligations. The schedule of compensation must be reasonable with the issue of reasonableness being subject to the approval of the Board. In order to initiate Board action, a franchisee must file a protest with the Board.

### **Time for Filing a Protest**

There is no specific statutory time period in the Vehicle Code within which to file a protest involving delivery and preparation obligations and compensation. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.



## **Required Elements of Protest**

The required content of a protest under Vehicle Code sections 3064 and 3074 is described in 13 CCR § 586. A protest involving delivery and preparation obligations must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>12</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

## **Determination of Protest**

If a dealer files a protest challenging the reasonableness of the schedule, the Board will resolve the dispute in light of all the relevant circumstances including, but not limited to, the time required to perform each function.

If there is a hearing, the dealer has the burden of proving that the schedule of compensation is not reasonable (Veh. Code §§ 3066(c) and 3080(c)).

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<sup>12</sup> See footnote 5.

## **WARRANTY CLAIMS - Motor Vehicle Dealers**

### **Franchisor's Notice of Compensation for Warranty Reimbursement**

Vehicle Code section 3065(a) requires every new motor vehicle manufacturer or distributor (franchisor) to properly fulfill every warranty agreement made by it and to adequately and fairly compensate its dealers (franchisees) for labor and parts used to satisfy the warranty obligations of the franchisor, including but not limited to diagnostics, repair, service, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair. (Veh. Code § 3065(a))

Franchisors are required to 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. (Veh. Code § 3065(a)(1))

Additionally, “[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.” (Veh. Code § 3065(a)(1))

Manufacturers and distributors are required to file copies of their warranty reimbursement schedules with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics, repair, and service. (Veh. Code § 3065(a))

### **Reasonableness of the Warranty Reimbursement Schedule**

Subdivision (b) of Section 3065 was amended to clarify what constitutes a reasonable warranty reimbursement schedule: “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.” Effective January 1, 2020, a franchisee no longer has a protest right to contest the reasonableness of its franchisor’s warranty reimbursement schedule or formula. (Veh. Code § 3065(b))

A franchisee and a franchisor can enter 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.” (Veh. Code § 3065(b))

### **Protest of Pre-Repair Challenges to the Reduction in Time and Compensation (Labor Time Guides) Applicable to Specific Parts or Labor Operations**

Manufacturers and distributors are prohibited from imposing a fixed percentage or other reduction in the time or compensation allowed to the dealer for warranty repairs not attributable to a specific

repair. (Veh. Code § 3065(a)(2))

The time or compensation applicable to a specific warranty repair may be reduced only upon 15 days' prior written notice to the dealer. (Veh. Code § 3065(a)(2))

A franchisee can file a protest to challenge the reduction in time or compensation applicable to specific parts or labor operations. The protest needs to be filed within 6 months "following the franchisee's receipt of notice of the reduction." If there is a hearing, the franchisor has the burden of "establishing the reasonableness of the reduction and adequacy and fairness of the resulting reduction in time or compensation." (Veh. Code § 3065(a)(3))

### **Approval of Warranty Claims**

Vehicle Code section 3065(d)(1) requires that warranty claims be 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 30<sup>th</sup> day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3065(d)(5) provides that failure to approve or pay within these time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not violate Article 4 (pertains to motor vehicles other than RVs).

### **Disapproval of Warranty Claims for a Defective Part**

Vehicle Code section 3065(c) requires the franchisor that disallows a franchisee's warranty claim for a defective part on the basis that the part was not defective must return the part to the franchisee at the franchisor's expense, or reimburse the franchisee for the part, at the franchisor's option.

### **Disapproval of Warranty Claims**

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. (Veh. Code § 3065(d)(2))

A franchisor who disapproves a claim is required to notify the franchisee in writing of the disapproval 30 days after receipt by the franchisor and each notice shall state the specific grounds upon which the disapproval is based. (Veh. Code § 3065(d)(3))

### **Protest of Initial Disapproval of Warranty Claims**

A franchisee can file a protest of the initial disapproval of a warranty claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(d)(6))

### **Franchisor Provided “Reasonable” Appeal Process**

Vehicle Code section 3065(d)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the 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.

There are potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

### **Final Denial of Warranty Claim**

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. (Veh. Code § 3065(d)(4))

### **Protest of Final Denial of Warranty Claim following a Franchisor’s Appeal Process**

A franchisee can file a protest of the final denial of a warranty claim following a franchisor’s appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(d)(6))

### **Audits of Franchisee Warranty Records**

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a 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 9-month period.

The franchisor’s notification to the franchisee of any additional audit within a 9-month period shall

be accompanied by written disclosure of the basis for that additional audit. (Veh. Code § 3065(e)(1))

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. (Veh. Code § 3065(f))

### **Disapproval of Previously Approved Warranty Claims**

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. (Veh. Code § 3065(e)(2))

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.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved. (Veh. Code § 3065(e)(3))

### **Protest of Warranty Claim Disapproval of a Previously Approved Claim Following an Audit**

A franchisee can file a protest of the warranty claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(e)(6))

### **Franchisor Provided “Reasonable” Appeal Process**

Vehicle Code section 3065(e)(3) requires franchisors to provide a reasonable appeal process that allows 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 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.

### **Final Denial of Warranty Claim Following an Audit**

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. (Veh. Code § 3065(e)(4))

### **Protest of Final Denial of Warranty Claim Following an Audit Following the Franchisor's Appeal Process**

A franchisee can file a protest of the final denial of a warranty claim following an audit following the franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(e)(6))

### **Franchisor Chargeback for Warranty Claims**

Vehicle Code section 3065(e)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of warranty claim following an audit following the franchisor's appeal process, 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.

In summary, days 45-90 are the only days to chargeback a dealer for warranty claims. A manufacturer or distributor cannot chargeback a dealer before day 44, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. (Veh. Code § 3065(f))

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3065 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>13</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

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<sup>13</sup> See footnote 5.

**WARRANTY CLAIMS PROTESTS**  
**Motor Vehicle Dealers**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice to Dealer</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
3065(a)	<b>Pre-Repair</b> Challenge to the reduction in time and compensation (labor time guides) applicable to specific parts or labor operations	Written notice of reduction provided by the franchisor to the franchisee.	Within 6 months following the franchisee's receipt of the written notice of reduction	Franchisor has burden to establish the reasonableness of the reduction and adequacy and fairness of the resulting compensation (3065(a))
3065(d)(3)	<b>Post-Repair</b> Initial disapproval of warranty claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a warranty claim submitted by a franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(d)(4)	<b>Post-Repair/Post-Appeal</b> Final denial of warranty claim following franchisor's appeal process	Notice of Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(e)(3)	<b>Post-Audit</b> Warranty claim disapproval of a previously approved claim following an audit	Franchisor provides a written Notice of Disapproval within 30 days after the audit stating the specific grounds.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))
3065(e)(4)	<b>Post-Audit/Post-Appeal</b> Final denial of warranty claim following an audit following franchisor's appeal process	Notification of the Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))



## **RETAIL LABOR RATE OR RETAIL PARTS RATE - Motor Vehicle Dealers**

### **Establishment or Modification of Franchisee's Retail Labor Rate or Retail Parts Rate**

A franchisee can establish or modify its retail labor rate or retail parts rate no more often than once per calendar year by submitting in writing to its franchisor whichever of the following is **fewer** in number:

- 100 sequential qualified repair orders, including any nonqualified repair orders in the same time period.<sup>14</sup>
- All repair orders completed during any 90-consecutive-day period.

(Veh. Code § 3065.2(a)(1)(A)-(B))

### **How a Franchisee Calculates its Retail Labor Rate?**

To calculate its **retail labor rate**, a franchisee shall determine the total charges for labor from the qualified repairs orders submitted as indicated above in Vehicle Code section 3065.2(a)(1)(A)-(B) and divide that amount by the total number of hours. (Veh. Code § 3065.2(a)(2))

### **How a Franchisee Calculates its Retail Parts Rate?**

To calculate its **retail parts rate**, a franchisee shall determine the total charges for parts from the qualified repair orders submitted as indicated above in Vehicle Code section 3065.2(a)(1)(A)-(B) and divide that amount by the franchisee's total cost of the purchase of those parts, then subtract one, and multiply by 100 to produce a percentage. (Veh. Code § 3065.2(a)(3))

### **Statutorily Required Notice to the Franchisor by the Franchisee of its Retail Labor Rate and Retail Parts Rate**

The franchisee is statutorily required to provide its franchisor with **notice** of its retail labor rate and retail parts rate as calculated above. (Veh. Code § 3065.2(a)(4))

### **How Repair Orders are Submitted Pursuant to Section 3065.2?**

A franchisee may submit any of the following to its franchisor:<sup>15</sup>

1. For calculating both its retail labor rate and retail parts rate, a franchisee can submit

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<sup>14</sup> As used in Vehicle Code section 3065.2(a), a "qualified repair order" is defined as "a repair order, closed at the time of submission, for work that was performed outside of the period of the manufacturer's warranty and paid for by the customer, but that would have been covered by a manufacturer's warranty if the work had been required and performed during the period of the warranty." (Veh. Code § 3065.2(j)) Qualified repair orders submitted under Vehicle Code section 3065.2(a) shall be from a period occurring not more than 180 days before the submission. (Veh. Code § 3065.2(b))

<sup>15</sup> For purposes of Vehicle Code section 3065.2, a franchisee may submit its repair orders electronically to its franchisor. (Veh. Code § 3065.2(b))

a single set of qualified repair orders; or

2. For calculating only its retail labor rate or only its retail parts rate, a franchisee can submit a set of qualified repair orders.

(Veh. Code § 3065.2(b)(1)-(2))

**What Types of Charges included in a Repair Order should be Omitted in Calculating a Franchisee's Retail Labor Rate and Retail Parts Rate?**

In calculating its retail labor rate and retail parts rate, the franchisee shall omit any charges included in a repair order from the calculation that do not reflect the franchisee's retail customer-pay labor and parts rates including, but not limited to, any of the following:

1. Manufacturer, manufacturer branch, distributor, or distributor branch special events, specials, or promotional discounts for retail customer repairs.
2. Parts sold, or repairs performed, at wholesale.
3. Routine maintenance, including, but not limited to, the replacement of bulbs, fluids, filters, batteries, and belts that are not provided in the course of, and related to, a repair.
4. Items that do not have individual part numbers including, but not limited to, nuts, bolts, and fasteners.
5. Vehicle reconditioning.
6. Accessories.
7. Repairs of conditions caused by a collision, a road hazard, the force of the elements, vandalism, theft, or owner, operational, or third-party negligence or deliberate act.
8. Parts sold or repairs performed for insurance carriers.
9. Vehicle emission inspections required by law.
10. Manufacturer-approved goodwill or policy repairs or replacements.
11. Repairs for government agencies or service contract providers.
12. Repairs with aftermarket parts, when calculating the retail parts rate, but not the retail labor rate.
13. Repairs with aftermarket parts.

14. Replacement of or work on tires, including front-end alignments and wheel or tire rotations.
15. Repairs of motor vehicles owned by the franchisee or an employee thereof at the time of the repair.

(Veh. Code § 3065.2(c)(1)-(15))

**A Franchisor may Contest to the Franchisee the “Material Accuracy” of the Retail Labor Rate or Retail Parts Rate by Submitting a “Notification” to the Franchisee**

A franchisor may contest to the franchisee the “material accuracy” of the retail labor rate or retail parts rate within 30 days after receiving the statutorily required notice from the franchisee discussed above or, if the franchisor requests supplemental repair orders pursuant to paragraph (4) of Vehicle Code section 3065.2(d), within 30 days after receiving the supplemental repair orders. (Veh. Code § 3065.2(d)(1))

If the franchisor seeks to contest the retail labor rate, retail parts rate, or both, it shall submit no more than one **notification** to the franchisee. (Veh. Code § 3065.2(d)(1))

The notification is limited to the assertion that the rate is “materially inaccurate” or fraudulent, and **shall** include the following:

1. A full explanation of any and all reasons for the allegation;
2. Evidence substantiating the franchisor’s position;
3. A copy of all calculations used by the franchisor in determining the franchisor’s position; and,
4. A proposed **adjusted retail labor rate or retail parts rate**, as applicable, on the basis of the repair orders submitted by the franchisee, or if applicable, on the basis of supplemental repair orders submitted pursuant to Vehicle Code section 3065.2(d)(5).

After submitting the notification, the franchisor shall not add to, expand, supplement, or otherwise modify any element of that notification, including, but not limited to, its grounds for contesting the retail parts rate, retail labor rate, or both under Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(1))

**The Franchisor’s Proposed Adjusted Retail Labor Rate or Retail Parts Rate is Effective if the Franchisee Agrees**

If the franchisee agrees with the conclusions of its franchisor and any corresponding adjustment to the retail labor rate or retail parts rate then no further action is required. The new adjusted rate is effective as of the 30<sup>th</sup> calendar day after the franchisor’s receipt of the notice submitted

pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(2))

**If the Franchisee does not Agree with the Proposed Adjusted Rate then a Protest can be Filed with the Board**

In the event the franchisor provides all of the information required in its notification as indicated above, and the franchisee does not agree with the adjusted rate proposed by the franchisor, the franchisor shall pay the franchisee at the franchisor's proposed adjusted retail labor rate or retail parts rate until the Board issues a decision on a protest filed pursuant to Vehicle Code section 3065.4, or until any mutual resolution between the franchisor and the franchisee.

The franchisor's proposed adjusted rate shall be deemed to be effective as of the 30<sup>th</sup> day after the franchisor's receipt of the notice submitted pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(3))

**If the Franchisor Determines that the Franchisee's Retail Labor Rate or Retail Parts Rate is "Substantially Higher" than the Franchisee's Current Warranty Rate, the Franchisor can Request Supplemental Repair Orders**

Based on the franchisee's set of repair orders submitted, if the franchisor determines that the franchisee's submission for a retail labor rate or retail parts rate is substantially higher than the franchisee's current warranty rate, the franchisor may request, in writing, all repair orders closed within the period of 30 days immediately preceding, or 30 days immediately following, the set of repair orders submitted by the franchisee. The written request should be made within 30 days after the franchisor's receipt of the notice submitted pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(4))

If the franchisee fails to provide the *supplemental repair orders*, all time periods under this section shall be suspended until the supplemental repair orders are provided. (Veh. Code § 3065.2(d)(4))

If the franchisor requests supplemental repair orders, the franchisor may calculate a *proposed adjusted retail labor rate or retail parts rate*, as applicable, based upon any set of the qualified repair orders submitted by the franchisee, if the franchisor complies with the requirements outlined in Vehicle Code section 3065.2(d)(5)(A)-(C)

**What if the Franchisor does not Contest the Retail Labor Rate or Retail Parts Rate?**

If the franchisor does not contest the retail labor rate or retail parts rate, or if the franchisor fails to timely contest the rate submitted by the franchisee, the uncontested retail labor rate or retail parts rate takes effect on the 30<sup>th</sup> day after the franchisor's receipt of the notice.

The franchisor shall use the new retail labor rate or retail parts rate, or both, if applicable, to determine compensation to fulfill warranty obligations by the franchisee. (Veh. Code § 3065.2(e))

## **Considerations in Calculating the Retail Labor Rate and Retail Parts Rate**

When calculating the retail parts rate and retail labor rate, all of the following shall apply:

1. Promotional reward program cash-equivalent pay methods shall not be considered discounts.
2. The franchisor is prohibited from establishing or implementing a special part or component number for parts used in warranty work, if the result of the special part or component lowers compensation to the franchisee below that amount calculated pursuant to this section.

This paragraph does not apply to parts or components that are subject to a recall and are issued a new special part or component number.

This paragraph does not prohibit a franchisor from changing prices of parts in the ordinary course of business.

(Veh. Code § 3065.2(f)(1)-(2)(A)-(B))

## **Considerations when the Franchisor is Compensating the Franchisee for the Retail Parts Rate**

When the franchisor is compensating the franchisee for the **retail parts rate**, all of the following shall apply:

1. If the franchisor furnishes a part to a franchisee at no cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant to Vehicle Code section 3065.2.
2. If the franchisor furnishes a part to a franchisee at a reduced cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant Vehicle Code section 3065.2, plus the franchisee's cost of the part.
3. The **wholesale value of the part**, for purposes of Vehicle Code section 3065.2(g), shall be the greater of:
  - A. The amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee.
  - B. The cost of the part shown in a current franchisor's established price schedule.

- C. The cost of a substantially identical part shown in a current franchisor's established price schedule.

(Veh. Code § 3065.2(g)(1)-(3)(A)-(C))

**The Method for Establishing or Modifying a Franchisee's Retail Labor Rate, Retail Parts Rate, or Both**

A franchisee's retail labor rate, retail parts rate, or both shall be calculated only using the method prescribed in Vehicle Code section 3065.2.

A franchisor shall not use or require a franchisee to use any other method including, but not limited to, any of the following:

1. Substituting any other "purported repair sample" for that submitted by a franchisee.
2. Imposing any method related to the establishment of a retail labor rate or retail parts rate that is unreasonable or time consuming, or require the use of information that is unreasonable or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement.
3. Unilaterally calculating a retail labor rate or retail parts rate for a franchisee, except as provided in Vehicle Code section 3065.2(d).
4. Using a franchisee's sample, submitted for establishing or increasing its retail parts rate, to establish or reduce the franchisee's retail labor rate or using a franchisee's sample, submitted for establishing or increasing its retail labor rate, to establish or reduce the franchisee's retail parts rate.

(Veh. Code § 3065.2(h)(1)-(4))

**What Actions Franchisors are Precluded from Undertaking?**

Subdivision (i) of Vehicle Code section 3065.2 precludes a franchisor from:

1. Attempting to influence a franchisee to implement or change the prices for which the franchisee sells parts or labor in retail repairs because the franchisor is seeking compensation or exercising any right pursuant to this section.
2. Directly or indirectly, taking or threatening to take any adverse action against a franchisee for seeking compensation or exercising any right pursuant to Vehicle Code section 3065.2, by any action including, but not limited to, the following:
  - A. Assessing penalties, surcharges, or similar costs to a franchisee.
  - B. Transferring or shifting any costs to a franchisee.

- C. Limiting allocation of vehicles or parts to a franchisee.
- D. Acting or failing to act other than in good faith.
- E. Hindering, delaying, or rejecting the proper and timely payment of compensation due under Vehicle Code section 3065.2 to a franchisee.
- F. Establishing, implementing, enforcing, or applying any discriminatory policy, standard, rule, program, or incentive regarding compensation due under Vehicle Code section 3065.2.
- G. Conducting or threatening to conduct nonroutine or nonrandom warranty, nonwarranty repair, or other service-related audits in response to seeking compensation or exercising any right pursuant to Vehicle Code section 3065.2.

(Veh. Code § 3065.2(i)(1)-(2)(A)-(G))

Subdivision (i) does not prohibit a franchisor from increasing prices of vehicles or parts in the ordinary course of business. (Veh. Code § 3065.2(i)(3))

**Protest for Franchisor's Failure to Comply with Section 3065.2 or if Franchisee Disputes the Franchisor's Proposed Adjusted Retail Labor Rate or Retail Parts Rate**

If a franchisor *fails to comply* with Vehicle Code 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.

If there is a hearing, the franchisor has the burden of proof that it complied with Vehicle Code section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent. (Veh. Code § 3065.4(a))

**Time for Filing a Protest**

Protests pertaining to compliance with Section 3065.2 or franchisee disputes of the franchisor's proposed adjusted retail labor rate or retail parts rate are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3065.4 is described in 13 CCR § 586.<sup>16</sup> A protest involving retail labor rate or retail parts rate must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>17</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

## **Determination of Protest**

In a decision, 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 Vehicle Code section 3065.2 for a period beginning 30 days after receipt of the franchisee's initial submission under Vehicle Code section 3065.2(a). (Veh. Code § 3065.4(b))

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

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<sup>16</sup> The Board is amending Section 586 to incorporate Section 3065.4 protests.

<sup>17</sup> See footnote 5.



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. (Veh. Code § 3065.4(b))

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 relief to enforce the determination or order of the Board. The franchisee may also recover in superior court its actual expenses in bringing and maintaining an enforcement action. (Veh. Code § 3065.4(c))

Either the franchisor or the franchisee may seek judicial review of the Board's determination pursuant to Vehicle Code section 3068. (Veh. Code § 3065.4(d))

**RETAIL LABOR RATE OR RETAIL PARTS RATE PROTESTS**  
**Motor Vehicle Dealers**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
3065.4(a)	Franchisee contends its franchisor failed to comply with Section 3065.2 pertaining to the establishment or modification of the franchisee's retail labor rate, retail parts rate, or both	Franchisee provides notice to the franchisor of its retail labor rate and retail parts rate calculated in accordance with Section 3065.2(a)	None specified	Franchisor has the burden of proof that it complied with Section 3065.2 (3065.4(a))
3065.4(a)	Franchisee disputes the franchisor's proposed adjusted retail labor rate or retail parts rate	Franchisor may contest to the franchisee the material accuracy of the retail labor rate or retail parts rate that was calculated by the franchisee under Section 3065.2(d) within 30 days after receiving notice from the franchisee or, if the franchisor requests supplemental repair orders pursuant to Section 3065.2(d)(4), within 30 days after receiving the supplemental repair orders (3065.2(d)(1))	None specified	Franchisor has the burden of proof that the franchisee's determination of the retail labor rate or retail parts rate is "materially inaccurate or fraudulent" (3065.4(a))

## **WARRANTY CLAIMS - RV Dealers**

### **Statutory Authority**

Vehicle Code section 3075 requires every new recreational vehicle manufacturer or distributor to properly fulfill every warranty agreement made by it and adequately and fairly compensate its dealers for labor and parts used to perform warranty repairs and service.

### **Franchisor's Notice of Compensation for Warranty Reimbursement**

The manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board. The schedule or formula must be reasonable with respect to the time and compensation allowed for the performance of warranty work.

### **Approval of Warranty Claims**

Vehicle Code section 3075(d) also requires that warranty claims be 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 30<sup>th</sup> day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3075(d) states: "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 [Article 5 RV protests]."

### **Disapproval of Warranty Claims**

Vehicle Code section 3075(c) requires that the franchisor that disallows a franchisee's warranty claim for a defective part on the basis that the part was not defective must return such part to the dealer at the franchisor's expense, or reimburse the dealer for the part, at the franchisor's option.

The dealer is also entitled to written notice of disapproval within 30 days after the warranty claims are received by the franchisor. The notice must contain the specific grounds for disapproval (Veh. Code § 3075(d)).

### **Audits of Franchisee Warranty Records**

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 a credit issued. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. (Veh. Code § 3075(e))

## **Time for Filing a Protest**

Protests involving warranty disputes are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3075 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>18</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

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<sup>18</sup> See footnote 5.

### **Good Cause**

Franchisee claims for warranty compensation shall not be disapproved except for good cause such as performance of non-warranty repairs, lack of material documentation, or fraud. (Veh. Code § 3075(e))

### **Determination of Protest**

If a protest is filed, the Board shall determine whether the schedule or formula is reasonable, taking into account the dealer's labor rate to its retail customers. If there is a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule is not reasonable, 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 (Veh. Code § 3080(c)).

## **FRANCHISOR INCENTIVE PROGRAM CLAIMS - Motor Vehicle Dealers**

### **Statutory Authority**

Pursuant to Vehicle Code section 3065.1, all claims made by a new motor vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days after receipt by the franchisor.

### **Franchisor's Notice of Denial of Franchisor Incentive Program Reimbursement**

Vehicle Code section 3065.1(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program shall notify the franchisee within 30 days after receipt by the franchisor and provide specific grounds on which the disapproval was based.

### **Approval/Disapproval of Franchisor Incentive Program Reimbursement**

Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30<sup>th</sup> day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3065.1(f) provides that the 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 Article 4 (pertains to motor vehicles other than RVs).

### **Disapproval of a Franchisor Incentive Program Claims**

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements, if the requirements are reasonable and nondiscriminatory. (Veh. Code § 3065.1(b))

### **Protest of Initial Disapproval of Franchisor Incentive Program Claims**

A franchisee can file a protest of the initial disapproval of a franchisor incentive program claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(e))

### **Franchisor Provided “Reasonable” Appeal Process**

Vehicle Code section 3065.1(c) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the 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 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.

There are potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

### **Final Denial of Franchisor Incentive Program Claim**

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. (Veh. Code § 3065.1(d))

### **Protest of Final Denial of Franchisor Incentive Program Claim following a Franchisor’s Appeal Process**

A franchisee can file a protest of the final denial of a franchisor incentive program claim following a franchisor’s appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(e))

### **Audits of Franchisee Incentive Program Records**

Audits of franchisee incentive program records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a 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 9-month period.

The franchisor’s notification to the franchisee of any additional audit within a 9-month period shall be accompanied by written disclosure of the basis for that additional audit. (Veh. Code § 3065.1(g)(1))

## **Disapproval of Previously Approved Franchisor Incentive Program Claims**

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements, if the requirements are reasonable and nondiscriminatory.

These are the same categories for initial disapproval of a franchisor incentive program claim. (Veh. Code § 3065.1(g)(2))

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.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved. (Veh. Code § 3065.1(g)(3))

## **Protest of Franchisor Incentive Program Claim Disapproval of a Previously Approved Claim Following an Audit**

A franchisee can file a protest of the franchisor incentive program claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(g)(6))

## **Franchisor Provided “Reasonable” Appeal Process**

Vehicle Code section 3065.1(g)(3) requires franchisors to provide a reasonable appeal process that allows 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 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.



### **Final Denial of Franchisor Incentive Program Claim Following an Audit**

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. (Veh. Code § 3065.1(g)(4))

### **Protest of Final Denial of Franchisor Incentive Program Claim Following an Audit Following the Franchisor's Appeal Process**

A franchisee can file a protest of the final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(g)(6))

### **Franchisor Chargeback for Franchisor Incentive Program Claims**

Vehicle Code section 3065.1(g)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process, 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 of receipt of 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.

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. (Veh. Code § 3065.1(g)(6))

In summary, days 45-90 are the only days to chargeback a dealer for franchisor incentive program claims. A manufacturer or distributor cannot chargeback a dealer before day 44, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor

obtains an order from the Board. (Veh. Code § 3065.1(h))

### **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3065.1 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>19</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

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<sup>19</sup> See footnote 5.

**FRANCHISOR INCENTIVE PROGRAM PROTESTS**  
**Motor Vehicle Dealers**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice to Dealer</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
3065.1(a)	<b>Initial Disapproval</b> Initial disapproval of franchisor incentive program claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a claim submitted by a franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(d)	<b>Final Denial/Post-Appeal</b> Final denial of franchisor incentive program claim following a franchisor's appeal process	Written notice of Final Denial to the franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(g)(3)	<b>Post-Audit</b> Franchisor incentive program claim disapproval of a previously approved claim following an audit	Franchisor provides a written notice of disapproval within 30 days after the audit stating the specific grounds.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))
3065.1(g)(4)	<b>Post-Audit/Post-Appeal/Final Denial</b> Final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process	Written notification of the Final Denial.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))

## **FRANCHISOR INCENTIVE PROGRAM CLAIMS - RV Dealers**

### **Statutory Authority**

Pursuant to Vehicle Code section 3076, all claims made by a recreational vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days after receipt by the franchisor.

### **Franchisor's Notice of Denial of Franchisor Incentive Program Reimbursement**

Vehicle Code section 3076(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program, shall notify the franchisee within 30 days and provide specific grounds on which the disapproval was based.

### **Approval/Disapproval of Franchisor Incentive Program Reimbursement**

Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30<sup>th</sup> day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3076(a) provides that the 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 Article 5, pertaining to RVs.

### **Audits of Franchisee Incentive Program Records**

Vehicle Code section 3076(b) provides for audits of franchisee incentive program records if reasonable and for a period of 18 months after a claim is paid or a credit issued. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of completion of the audit. However, if a false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for the audit and any resulting chargeback may be permitted if the franchisor obtains an order to that effect from the Board.

### **Time for Filing a Protest**

Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal and file a protest with the Board.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3076 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>20</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

## **Good Cause**

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. (Veh. Code § 3076(b))

## **Determination of Protest**

The franchisee has 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 (Veh. Code § 3080(c)).

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<sup>20</sup> See footnote 5.

**PERFORMANCE STANDARDS, SALES OBJECTIVES, OR PROGRAMS  
FOR MEASURING A DEALER'S SALES, SERVICE, OR CUSTOMER  
SERVICE PERFORMANCE – Motor Vehicle Dealers**

**Statutory Authority**

Vehicle Code section 3065.3 created a new protest pertaining to alleged violations of subdivision (g) of Section 11713.13.

**Franchisor's Performance Standard, Sales Objective or Program**

Subdivision (a) of Vehicle Code section 3065.3 provides that “[n]o 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.”<sup>21</sup>

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<sup>21</sup> Section 11713.13 provides that:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

...

(g) (1) Establish or maintain a performance standard, sales objective, or program for measuring a dealer’s sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer’s right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless both of the following requirements are satisfied:

(A) The performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is reasonable in light of all existing circumstances, including, but not limited to, the following:

- (i) Demographics in the dealer’s area of responsibility.
- (ii) Geographical and market characteristics in the dealer’s area of responsibility.
- (iii) The availability and allocation of vehicles and parts inventory.
- (iv) Local and statewide economic circumstances.

(v) Historical sales, service, and customer service performance of the line-make within the dealer’s area of responsibility, including vehicle brand preferences of consumers in the dealer’s area of responsibility.

(B) Within 30 days after a request by the dealer, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate provides a written summary of the methodology and data used in establishing the performance standard, sales objective, or program for measuring dealership sales or service performance. The summary shall be in detail sufficient to permit the dealer to determine how the standard was established and applied to the dealer.

(2) In any proceeding in which the reasonableness of a performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.

...

## **Time for Filing a Protest**

There is no specific statutory time period in the Vehicle Code within which to file a protest pertaining to a franchisor's performance standard. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

## **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3065.3 is described in 13 CCR § 586.<sup>22</sup> A protest involving a challenge of a franchisor's performance standard must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>23</sup>	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

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<sup>22</sup> The Board is promulgating a regulation that will be specific to this protest but until then parties are encouraged to rely on the content requirements in Section 586, which are nearly identical to those being proposed.

<sup>23</sup> See footnote 5.

### **Determination of Protest**

If there is a hearing, the franchisor has the burden of proof that its performance standard, sales objective or program is not inconsistent with the standards set forth in subdivision (g) of Section 11713.13 (Veh. Code § 3065.3(b)).



## **HEARING PROCEDURES**

### **Pre-Hearing Procedure**

Upon receiving a protest, the Board shall institute hearing proceedings similar to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

### **Discovery**

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). Section 551.6 of the Board's regulations implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

The enactment of the Electronic Discovery Act (Assembly Bill 5, Stats. 2009, ch. 5, "Act"), effective June 29, 2009, broadened the categories of discoverable materials (documents, tangible things, land or other property) by adding "electronically stored information" (ESI).

Effective January 1, 2013, sections of the Civil Discovery Act relating to ESI were amended in order to address several inconsistencies (Senate Bill 1574, Stats. 2012, ch. 72). ESI is now included among the things under a witnesses control that the witness would be bound by law to produce pursuant to a subpoena. Additionally, when any method of discovery permits, compels, prevents, or limits the production, inspection, copying, testing, or sampling of documents or tangible things, the same method would also apply to ESI. In general, if a demand for production does not specify a form or forms for producing a type of ESI, the responding party would be required to produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable, but need not produce the same ESI in more than one form.

### **Subpoenas**

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2.

Section 551.2(b) of the Board's regulations specifically incorporates Code of Civil Procedure section 1985, et seq., excepting the provisions of subdivision (c) of section 1985. Section 1985.8 of the Code of Civil Procedure imposes additional requirements on the parties, (or the court, if necessary), to resolve ESI issues as to the form, burdens and expenses of production, shifting or allocation of costs, and issues arising from other characteristics of ESI. The Act requires the parties, or the court, to weigh various cost/benefit factors in light of the amount in controversy in the proceeding to shape and limit the scope and nature of requests to produce ESI.

Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the subpoena on the witness or deponent, a copy of the subpoena and executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

## **Summary of Board Action**

All hearings on protests filed pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076, may be considered by the entire Board<sup>24</sup> or may, at its discretion be conducted by one of the Board’s ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code sections 3066 and 3080. The Board on receiving a protest does the following:

<b>Step</b>	<b>Action</b>
1	By order fix a time within sixty (60) days of the order and place of hearing. <sup>25</sup>
2	<p>Send 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 by the Board.</p> <ul style="list-style-type: none"> <li>• Except in the case of a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may accelerate or postpone the date initially established for the hearing.</li> <li>• For the purpose of accelerating or postponing the hearing date, good cause must be established and in no event may the rescheduled hearing date be more than 90 days after the Board’s initial order.</li> <li>• “Good cause” for accelerating or postponing a hearing includes, but is not limited to, the effects on, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted.</li> <li>• Application for continuance shall be in writing and filed with the Executive Director at least 10 days prior to the date of hearing. No continuances otherwise will be granted except in extreme emergencies such as serious accident or death. (13 CCR § 592)</li> </ul>
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. <sup>26</sup>

<sup>24</sup> Board ALJs generally preside over merits hearings not the Board itself. (See discussion on page 6 pertaining to dealer member participation in Article 4 protests.)

<sup>25</sup> In practice, the parties stipulate to a date for the merits hearing and the Board issues the order of time and place of hearing approximately 45 days prior to the hearing.

<sup>26</sup> See footnote 24.

### **Stipulation of Fact**

A hearing initiated by the filing of a protest may be held in whole or in part on a stipulation of fact, which is essentially an agreement between the parties defining points that are not in contention, and other parts of the dispute that have been resolved. Stipulations are of value in that they tend to facilitate and expedite conflict resolution. (See 13 CCR § 587 for procedural details of stipulation of fact before the Board.)

### **Stipulated Decisions**

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code sections 3066 and 3080 to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

### **Hearings Open to the Public; Protective Orders**

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

### **Failure to Appear at a Hearing**

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

### **Decision of the Board**

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the

issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. If the Board fails to act within 30 days after the close of the hearing, within 30 days after the Board receives a proposed decision where the case is heard before an ALJ, or within a period which may be mutually agreed on by the parties, then the proposed action of the franchisor shall be deemed to be approved. (Veh. Code §§ 3067 and 3081)

**Court Reporting and Transcripts of Board Proceedings**

The Board arranges for a court reporter for all Board meetings, all hearings on the merits of a protest or a petition, and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions, reporting costs will be allocated as follows:

<b>Circumstances</b>	<b>Reporting Costs including Appearance and Transcript Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs</b>	<b>Transcript Fees</b>
Hearings on the merits and dispositive motions <sup>27</sup> - First Day	Board (excluding Realtime set-up fees)	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions - After First Day	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter’s appearance fee, the delivery fee and any other costs excluding the Realtime set-up fees, and the Board’s cost of the hearing

<sup>27</sup> “Dispositive motions” are those that result in a final determination of the protest or petition before the Board.

transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

## **PETITIONS**

### **Statutory Authority for Petitions**

Vehicle Code section 3050(b) provides for any person to petition the Board to “[c]onsider 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....”

New Subdivision (b)(2)(B) of Section 3050, in which the relief sought is adjudication, only pertains to petitions filed with the Board by any member of the public, including a consumer, or other person that 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. It is intended that, for the Board to have jurisdiction over a petition pursuant to this subdivision, the petitioner must have filed the petition or consent to the jurisdiction by the Board. This subdivision does not affect petitions filed by licensees nor does it affect respondents (see Vehicle Code section 3051 identifying the licensees within the Board’s jurisdiction).

### **Filing a Petition with the Board**

A licensee or member of the public wishing to bring a dispute before the Board pursuant to Vehicle Code section 3050(b) is required to file a petition (see Appendix for sample Forms B1 and B2). In the past, petitions filed with the Board have alleged such things as the unreasonable refusal of a franchisor to approve a change in ownership, unreasonable refusal of a franchisor to approve a relocation, discrimination in allocation of products, failure to supply products authorized to be sold under the terms of the franchise, and other violations of the Vehicle Code. Such petitions requested a hearing before the Board and sought relief in the form of a Board order that required the respondent to either do, undo, or refrain from doing some action that caused harm to the licensee petitioner.

However, as a result of *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4<sup>th</sup> 1451, the Board’s jurisdiction to hold hearings and issue such orders is now limited to petitioners who are members of the public under Vehicle Code section 3050(b)(2). In all instances where licensees are the petitioners, the Board may only direct the Department to investigate or take licensing action against the respondent under Vehicle Code section 3050(b)(1) and (3).

In all circumstances, the petition shall be served on the respondent and proof of service filed with the Board.

### **Time for Filing a Petition**

There are no specific statutory time limits in the Vehicle Code within which a petition must be filed, but failure to file the petition within a reasonable time after the occurrence of events giving rise to the basis for the petition could result in the Board refusing to take any action.

The respondent shall file a written answer within 30 days of the date the petition is served on the respondent (13 CCR § 558).

**Petition Filing Fee**

A filing fee of \$200, which should be in the form of a check, money order or authorized credit card charge payable to the New Motor Vehicle Board, must accompany the petition and answer. In the event of a financial hardship, either the petitioner or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the \$200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)



**Required Elements of Petition**

The required content of a petition under Vehicle Code section 3050(b) is described in 13 CCR § 555 (see Appendix for sample Forms B1 and B2).

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must set forth in clear and concise language the nature of the matter, which the petitioner wishes the Board to consider.	13 CCR § 555
Must contain the petitioner’s name, mailing address and telephone number; the name, mailing address and telephone number of the petitioner’s attorney or authorized agent, if any; and the name and address of the licensee or applicant for license (respondent) whose activities or practices are in question. All correspondence and notices to the petitioner shall thereafter be addressed to petitioner’s address, if the petitioner appears in person, or to the address of the petitioner’s attorney or agent, if so represented.	13 CCR § 555(a)
Must include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved.	13 CCR § 555(b)
Shall include a concise recitation of applicable law and citation to the applicable statutes and authorities if the actions or practices described in the petition are alleged to be a violation of law.	13 CCR § 555(c)
For petitioners who are members of the public only, petitioner shall state if the petitioner desires that the Board mediate, arbitrate, or resolve a difference between the petitioner and respondent, and describe the relief sought.	13 CCR § 555(d)
Petitioner may submit, as exhibits to the petition, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the petition.	13 CCR § 555(e)
For petitioners who are members of the public only, petitioner shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 555(f)
For petitioners who are members of the public only, petitioner shall request a pre-hearing conference if one is desired.	13 CCR § 555(g)
Petitioner shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Petitioner shall serve a copy of the petition on the respondent and proof of service shall accompany the petition submitted to the Board.	13 CCR § 555.1 13 CCR § 551.24

### **First Consideration**

If the petitioner is a member of the public seeking relief under Vehicle Code section 3050(b)(2), upon the filing of a petition with the Board, a copy shall be forwarded by the Executive Director of the Board to each Board member for consideration. Within 10 days of receipt of a copy of the petition, unless any member of the Board notifies the Executive Director of an objection, the Executive Director shall set the matter for a hearing.

### **Resolution of Petitions without a Hearing**

If the petitioner is a licensee or member of the public seeking relief under Vehicle Code section 3050(b)(1) and/or (3), these petitions would not be submitted to the Board for first consideration, as the authority for first consideration (13 CCR § 557), limits first consideration to matters in which a hearing is sought, i.e., Vehicle Code section 3050(b)(2) petitions. These petitions would be agendaized for consideration of the relief requested by the Petitioner at the next regularly scheduled meeting. Such petitions are not assigned to an ALJ and are not subject to the normal evidentiary hearing process. The Board members, at a noticed meeting, would hear from the parties by way of written and oral arguments, and consider granting the relief requested. After consideration, the public members of the Board shall take final action and issue a written order that either grants the appropriate relief pursuant to Vehicle Code section 3050(b)(1) or (b)(3), or orders the petition dismissed (13 CCR § 562(b), (d), and (e)). The public members of the Board may also request further briefing and/or the submission of further evidence and continue the matter to a later open meeting for consideration and final action.

### **Challenge to Presiding Officer**

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party, **excluding an intervenor**, in a petition to one disqualification without cause (peremptory challenge) of the assigned merits ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the merits ALJ or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier (13 CCR § 551.12(b)(1)). A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes. Except for the convenience of the Board or for good cause shown, no merits hearing shall be continued by the filing of a peremptory challenge.

### **Motion for Intervention**

Any person, including a Board member, concerned with 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 may file a motion to intervene in a pending petition subject to the conditions set forth in 13 CCR § 551.13.

## **Amicus Curiae Briefs**

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

## **Summary of Board Action**

For petitions seeking relief under Vehicle Code section 3050(b)(1) and/or (3) brought by a franchisee, including RV franchisees, 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 petition. (Veh. Code § 3050(b)) For petitions brought by members of the public seeking Vehicle Code section 3050(b)(1) and/or (3) relief, all members of the Board may participate.

After considering this type of petition, the Board may do any one or any combination of the following:

- (1) Direct the Department to conduct an investigation and submit a written report;
- (2) 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 respondent; and/or
- (3) Order the petition dismissed, with or without prejudice.

As stated above, if the petitioner is a member of the public seeking relief under Vehicle Code section 3050(b)(2), the Board retains the authority to hear and/or mediate the matter.

## **Hearing Procedures**

The Board's powers in relation to petitions are discretionary, and there is no automatic right to a hearing for a member of the public seeking relief under Vehicle Code section 3050(b)(2). If the Board orders a hearing, the pre-hearing procedures are similar to those involving protests. For procedural details for hearings on petitions, see 13 CCR § 580.

## **Informal Mediation**

Prior to a member of the public initiating a petition seeking relief under Vehicle Code section 3050(b)(2), a party or parties may request the Board informally mediate the potential dispute, that is, the activities or practices of a licensee or applicant for a license that are in question (13 CCR §§ 551.14-551.17). If both parties consent to informal mediation, then a mutually agreeable date for the mediation is calendared. Each party files and serves a pre-mediation statement setting forth the facts, issues and proposed resolution of the matter. The Board, its Executive Director, or an ALJ designated by the Board or its Executive Director preside over the informal mediation and may authorize discovery (other than interrogatories) as appropriate. Evidence in the form of declarations may also be considered. All communications, negotiations, and settlement discussions between the participants of an informal mediation are confidential. At any time during this process, either party may request that the informal mediation be converted to a formal petition.

## **Members of the Public in Relation to New Recreational Vehicle Transactions**

Members of the public have all the rights and remedies available in disputes with licensees in new recreational vehicle transactions as they do in transactions with other types of new motor vehicles under the jurisdiction of the Board with one distinction. Vehicle Code section 3078(a) states:

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.

Thus, if a member of the public specifically seeks a refund or a replacement of a new recreational vehicle, the Board shall recommend that the complaint be referred to the Department of Consumer affairs, rather than the Board. However, nothing precludes a member of the public from seeking help from the Board in resolving the dispute as is available for any other new motor vehicle purchaser.

## **JUDICIAL REVIEW**

### **Appeal to Superior Court**

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code sections 3068 and 3082 and local rules of court.

## **APPENDIX**

**Form A - Protest**

**Form B1 - Petition (Veh. Code § 3050(b)(2))**

**Form B2 - Petition (Veh. Code § 3050(b)(1) or (b)3))**



11	In the Matter of the Protest of	)	
		)	
12	NAME OF FRANCHISEE,	)	Protest No. PR-
		)	
13	Protestant,	)	PROTEST
		)	
14	v.	)	[Vehicle Code section 3060, 3062,
		)	3064, 3065, 3065.3, 3065.4, 3065.1, 3070,
15	NAME OF FRANCHISOR,	)	3072, 3074, 3075, and 3076]
		)	[Dates of the hearing and any future
16	Respondent.	)	pre-hearing or settlement
		)	conferences, if known]

---

**Introduction:**

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [NAME OF PARTY/DEALERSHIP NAME], files this protest under the  
 21 provisions of the California Vehicle Code section [applicable code section] with  
 22 reference to the following facts:

**Body:**

Using numbered paragraphs, state the allegations in a clear and chronological order.

- 23 1. Protestant is a new motor vehicle dealer selling [type of new motor vehicle or recreational vehicle] and is located at [address]. Protestant's telephone number is [telephone number].
2. Respondent distributes/manufacturers [type/model of product] and is the franchisor of Protestant.
3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].
4. On or about [date of occurrence(s)], Protestant received from Respondent a notice that Respondent intends to [terminate/modify/relocate/establish] its existing franchise agreement effective [number of days] from Protestant's receipt of said notice. A copy of said letter is attached as Exhibit A.
5. Protestant generally denies each and every allegation contained in the written notice of [termination/modification/relocation/establishment].
6. Respondent does not have good cause to [terminate/modify/relocate/establish] the franchise by reason of the following facts:
  - (a) [Specific facts upon which Protestant bases the allegations].
7. Protestant and its attorneys of record desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.
8. A Pre-Hearing Conference is requested.

Dated:

Signed:



**SAMPLE FORM B1 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(b)(2))**

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board’s website, [www.nmvb.ca.gov](http://www.nmvb.ca.gov).**

**Identification of Attorney or Party Representing Self:**

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and email address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the “Petitioner,” and the party responding would be the “Respondent.”

1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and email address, if available]

4 \_\_\_\_\_ Attorney for [Petitioner] or in pro per [if party representing him/herself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

**Title of the Court:**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

**Title of the Case:**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

**Case Number:**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

**Nature of Filing and Name of Action:**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

**Footer:**

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Petition of	)	
		)	
12	NAME OF INDIVIDUAL,	)	Petition No. P-
		)	
13	Petitioner,	)	
		)	
14	v.	)	<b>PETITION</b>
		)	[Vehicle Code section 3050(b)(2)]
15	NAME OF LICENSEE,	)	
		)	
16	Respondent.	)	[Dates of the hearing and any future pre-hearing or settlement conferences, if known]
		)	

20 [NAME OF INDIVIDUAL], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(b), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm, or other representative).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (A hearing and relief available under Vehicle Code section 3050(b)(2)).

Dated:

Signed:

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Petition (Veh. Code § 3050(b)(2))

**SAMPLE FORM B2 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(b)(1) or (3))**

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board’s website, [www.nmvb.ca.gov](http://www.nmvb.ca.gov).**

**Identification of Attorney or Party Representing Self:**

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and email address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the “Petitioner,” and the party responding would be the “Respondent.”

1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and email address, if available]

4 \_\_\_\_\_ Attorney for [Petitioner] or in pro per [if party representing him/herself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

**Title of the Court:**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

**Title of the Case:**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

**Case Number:**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

**Nature of Filing and Name of Action:**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

**Footer:**

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Petition of	)	
		)	
12	NAME OF INDIVIDUAL/LICENSEE,	)	Petition No. P-
		)	
13	Petitioner,	)	
		)	
14	v.	)	<b>PETITION</b>
		)	[Vehicle Code section 3050(b)(1)]
15	NAME OF LICENSEE,	)	[Vehicle Code section 3050(b)(3)]
		)	
16	Respondent.	)	
		)	

---

19 [NAME OF INDIVIDUAL/LICENSEE], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(b), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California or is an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (That the Board provides relief available under Vehicle Code section 3050(b)(1) and/or 3050(b)(3).)

Dated:

Signed:

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Petition (Veh. Code § 3050(b)(1) or (3))

STATE OF CALIFORNIA



MEMO

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

Date: February 2, 2021

From: TIMOTHY CORCORAN  
DAWN KINDEL  
SUZANNE LUKE

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

The following is a financial summary of the Board’s expenditures and revenues through the 1<sup>st</sup> quarter of Fiscal Year 2020-2021.

<i>Expenditures</i>		<i>Revenue</i>	
Budget Appropriation	\$1,760,091	Beginning Reserve Balance	\$2,669,949
Expenditures	\$374,559	Revenues	\$469,096
Unexpended Appropriation	\$1,385,532	Total	\$3,139,045
		Current reserve balance	\$2,764,486

The Board expended 21% of its appropriated budget in the 1<sup>st</sup> quarter.

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

Given the current reserve balance, staff does not see a need for an adjustment to the Board’s fee structure at this time. Based on preliminary indicators, vehicle sales for 2020 remained strong following a slight dip in March and April. Staff will continue to monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.

- Annual Revenue Collection: The Board’s annual manufacturer/distributor fee collection began in August of 2020.

We have collected \$964,699.05 of the \$969,461.10 to be accumulated. Collection of this annual fee has been slowed by the pandemic but is expected to be completed soon.

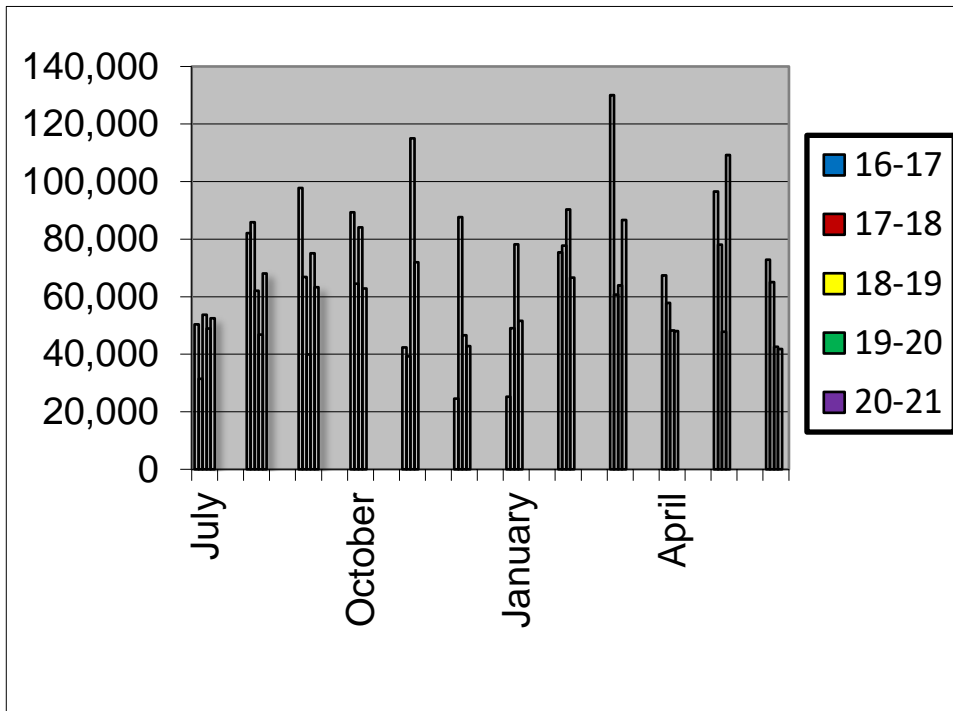
- NMVB Office Space: As mentioned at a previous Board meeting, staff are working with the Department of General Services Department of Motor Vehicles' facilities staff to renew the lease at our current location. At this time we do not have the cost figures for the lease extension. When this information is provided, it will be shared at a future meeting of the Board.

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

Attachments as stated

	<b>16-17</b>	<b>17-18</b>	<b>18-19</b>	<b>19-20</b>	<b>20-21</b>
July	50,376.00	31,415.00	53,667.00	48,900.00	52,500.00
August	82,057.00	85,886.00	62,100.00	46,800.00	68,083.00
September	97,783.00	66,836.00	39,900.00	75,102.00	63,300.00
October	89,275.00	64,500.00	84,087.00	62,876.00	
November	42,410.00	39,250.00	115,050.00	72,000.00	
December	24,600.00	87,600.00	46,585.00	42,764.00	
January	25,220.00	49,060.00	78,220.00	51,600.00	
February	75,410.00	77,772.00	90,300.00	66,600.00	
March	130,017.00	60,758.00	63,938.00	86,700.00	
April	67,375.00	57,782.00	48,303.00	48,000.00	
May	96,550.00	78,040.00	47,790.00	109,215.00	
June	72,860.00	65,100.00	42,600.00	41,820.00	
Ytd	<b>853,933.00</b>	<b>763,999.00</b>	<b>772,540.00</b>	<b>752,377.00</b>	<b>183,883.00</b>

**DEALER FEES  
FIVE YEAR COMPARISON**



**NEW MOTOR VEHICLE BOARD**  
 EXPENDITURE REPORT FOR THE FIRST QUARTER OF FISCAL YEAR 2020-2021  
 (25% of fiscal year)

ACCOUNT CODE	DESCRIPTION	BUDGETED AMOUNT	EXPENDITURE YEAR TO DATE	%	BALANCE REMAINING	%
<b>1000</b>	<b>PAYROLL EXPENSE</b>					
0030	Salaries - full time staff	883,903	180,910.00		702,993	
0330	Salaries - part time staff	74,000	9,467.00		64,533	
0830	Overtime (Holiday Pay 90880)	0	3,640.00		-3,640	
0990	Salary Savings (minus)	0	0.00		0	
0020	TOTAL - salary expense	957,903	194,017.00		763,886	
1010	TOTAL - staff benefits	539,000	95,044.00		443,956	
<b>1000</b>	<b>CATEGORY TOTAL PAYROLL EXPENSE</b>	<b>1,496,903</b>	<b>289,061.00</b>	<b>19%</b>	<b>1,207,842</b>	<b>81%</b>

**3000 OPERATING EXPENSE AND EQUIPMENT**

**2010 General Expense**

2050	Dues and membership	4,000	0.00		4,000	
2230	Library purchases	10,000	4,569.00		5,431	
2260	Minor equipment	300	0.00		300	
2270	Office equipment - rent/maintenance/repair	200	0.00		200	
2380	Miscellaneous general expense	200	148.00		52	
2391	Miscellaneous office supplies	7,300	0.00		7,300	
2395	Meeting expense	2,000	0.00		2,000	
<b>2010</b>	<b>Total - General Expense</b>	<b>24,000</b>	<b>4,717.00</b>		<b>19,283</b>	



ACCOUNT CODE	DESCRIPTION	BUDGETED AMOUNT	EXPENDITURE YEAR TO DATE	%	BALANCE REMAINING	%
<b>2410</b>	<b>Printing</b>					
2440	Office copier expense - rent/maintenance	1,750	49.00		1,701	
2480	Miscellaneous printing expense	1,750	0.00		1,750	
<b>2410</b>	<b>Total - Printing</b>	<b>3,500</b>	<b>49.00</b>		<b>3,451</b>	
<b>2610</b>	Postage -meter rental & service, FedEx	9,000	481.00		8,519	
<b>2910</b>	<b>Travel In-State</b>					
2920	Lodging, mileage, misc.	2,000	0.00		2,000	
2940	Commercial air transportation	5,250	0.00		5,250	
2950	Rental cars / other travel expense	7,750	0.00		7,750	
<b>2910</b>	<b>Total - Travel In-State</b>	<b>15,000</b>	<b>0.00</b>		<b>15,000</b>	
<b>3110</b>	<b>Travel Out-of-State</b>					
3120	Lodging, mileage, misc.	1,000	0.00		1,000	
3140	Commercial air transportation	1,000	0.00		1,000	
3150	Other travel expense/Rental cars	500	0.00		500	
<b>3110</b>	<b>Total - Travel Out-of-State</b>	<b>2,500</b>	<b>0.00</b>		<b>2,500</b>	
<b>3320</b>	Training	3,038	175.00		2,863	
<b>3430</b>	Rent - non State owned building	165,000	39,534.00		125,466	
<b>3445</b>	Janitorial services	0	0.00		0	
<b>3450</b>	Security services	550	0.00		550	
<b>3470</b>	Facilities planning - DGS	10,000	0.00		10,000	
<b>3820</b>	Professional services - internal (Attorney General)	12,000	6,655.00		5,345	
<b>4020</b>	Professional services - external (court reporters)	18,000	287.00		17,713	

ACCOUNT CODE	DESCRIPTION			%	BALANCE REMAINING	%
4324	Data processing software	0	0.00		0	
4350	Data processing minor equipment	0	0.00		0	
4380	Pro rata statewide expense (101,864 TBA)	0	0.00		0	
4520	Equipment replacement	600	0.00		600	
<b>CATEGORY TOTAL</b>						
3000	OPERATING EXPENSE AND EQUIPMENT	263,188	51,898.00	20%	211,290	80%
1000	PAYROLL EXPENSE	1,496,903	289,061.00	19%	1,207,842	81%
3000	OPERATING EXPENSE AND EQUIPMENT	263,188	51,898.00	20%	211,290	80%
<b>Total - Payroll and Operating Expense</b>		<b>1,760,091</b>	<b>340,959.00</b>	<b>19%</b>	<b>1,419,132</b>	<b>81%</b>
	<b>Pro rata statewide expense (101,864) allotment</b>	1 (see above)	0.00			
	Encumbrance balance	2	33,600.00			
			<b>374,559.00</b>	<b>21%</b>		
	<b>DMV Administrative charge (78,000)</b>	3	0	0.00	0%	0
<b>Grand total - fiscal year 2020-2021</b>		<b>1,760,091</b>	<b>374,559.00</b>	<b>21%</b>	<b>1,385,532</b>	<b>79%</b>

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

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

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

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

Revenue and Expenditures July 1, 2020, through September 30, 2020 - (25% of fiscal year)

	<u>2018-2019</u>		<u>2019-2020</u>		<u>2020-2021</u>	
<b>BEGINNING RESERVES</b>	2,358,872		2,623,082		2,669,949	
Prior Year Adjustment	<u>-133,872</u>		<u>-226,082</u>		<u>0</u>	Pending
Adjusted Beginning Balance	2,225,000		2,397,000		2,669,949	
<b>REVENUES</b>						
<b>NMVB Fees and Misc. Revenue</b>						
0100 Dealer License Fee	772,540		752,377		183,883	
0200 NMVB Filing Fee	17,400		11,200		3,400	
0300 NMVB Annual Fee	1,032,686		1,022,039		280,606	
0800 Miscellaneous Services	1,314		0		1,207	
1000 Arbitration Program	2,744		1,471		0	
<b>Total Revenues</b>	<b>1,826,684</b>		<b>1,787,087</b>		<b>469,096</b>	
Adjusted Beginning Balance	2,225,000		2,397,000		2,669,949	
<b>Totals, Resources</b>	<b>4,051,684</b>		<b>4,184,087</b>		<b>3,139,045</b>	
<b>EXPENDITURES</b>						
<b>Payroll Expense (included benefits)</b>						
Budgeted	1,425,227		1,526,286		1,496,903	
Expended	<b>1,126,204</b>	<b>79%</b>	<b>1,263,837</b>	<b>83%</b>	<b>289,061</b>	<b>19%</b>
<b>Operating Expense and Equipment</b>						
Budgeted	263,188		263,188		263,188	
Expended	<b>302,398</b>	<b>115%</b>	<b>250,301</b>	<b>95%</b>	<b>51,898</b>	<b>20%</b>
<b>Encumbrance Balance</b>	<b>0</b> <sup>3</sup>		<b>0</b> <sup>3</sup>		<b>33,600</b> <sup>3</sup>	
	<small>*encumb rolled over (16,981)</small>		<small>*encumb rolled over (6,935)</small>		<small>*encumb roll over (0)</small>	
<b>Total - Payroll and Operating Expense</b>	<b>1,428,602</b>	<b>85%</b>	<b>1,514,138</b>	<b>85%</b>	<b>374,559</b>	<b>21%</b>
<b>ADDITIONAL EXPENDITURES:</b>						
<b>Pro Rata charges (estimate)</b>	<b>128,000</b>		<b>114,000</b>		<b>114,000</b>	
<small>*(final adjustments pending Governor's report)</small>						
<small>NOTE: *includes additional adjs: SCO/Fiscal/etc.</small>						
<b>DMV Administrative charges</b>	<b>78,000</b> <sup>4</sup>		<b>78,000</b> <sup>4</sup>		<b>78,000</b> <sup>4</sup>	
<small>*(deduction made in prior year adjustment)</small>						
<b>Total Budgeted</b>	1,688,415		1,789,474		1,760,091	
<b>Total Expended</b>	<b>1,428,602</b>	<b>85%</b>	<b>1,514,138</b>	<b>85%</b>	<b>374,559</b>	<b>21%</b>
<b>RESERVES</b>	<b>2,623,082</b>		<b>2,669,949</b>		<b>2,764,486</b>	

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

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

**DEPARTMENT OF MOTOR VEHICLES**

**Revenue Summary**

fiscal year 2020-2021

**First Quarter**

	July	August	September	October	November	December	January	February	March	April	May	June	YTD
<b>Object Code 1213</b>													
0100-New MV Dlr Lic.	52,500.00	68,083.00	63,300.00										183,883.00
0200-NMVB Filing Fee	800.00	0.00	2,600.00										3,400.00
0300-NMVB Annual Fee	0.00	0.00	280,606.00										280,606.00
<b>1213 Object Total</b>	<b>53,300.00</b>	<b>68,083.00</b>	<b>346,506.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>467,889.00</b>
<b>Object Code 1425</b>													
0800-Misc. Services	720.00	247.00	240.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,207.00
<b>1425 Object Total</b>	<b>720.00</b>	<b>247.00</b>	<b>240.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,207.00</b>
<b>Object Code 1614</b>													
1000-Arbitration Program <sup>1</sup>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>1614 Object Total</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Revenue this Month</b>	<b>54,020.00</b>	<b>68,330.00</b>	<b>346,746.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>469,096.00</b>
<b>Revenue</b>													
<b>Year to date</b>	<b>54,020.00</b>	<b>122,350.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>	<b>469,096.00</b>

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

**STATE OF CALIFORNIA**



**MEMO**

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

**Date: January 19, 2021**

**From: DAWN KINDEL**

**Subject: CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR  
FISCAL YEAR 2021/2022**

**BACKGROUND**

It is the policy of the Board to review and approve the budgetary allotment and participation in out-of-state travel plans. State policy mandates out-of-state travel be mission critical or beneficial to the state.

**CONSIDERATIONS**

Board staff are proposing attendance for the following event in FY 21/22.

- National Automobile Dealers Association 2022 Show  
Las Vegas, Nevada. March 10-13, 2022  
Staff proposes sending the Executive Director to represent the Board. Travel costs for this trip will be approximately \$2,400.

If the Board approves this trip, a formal request will be submitted to the Department of Motor Vehicles, the California State Transportation Agency, the Department of Finance and the Governor's office for final approval.

It's important to note, that on January 8, 2021, the California Department of Public Health issued a travel advisory to all California residents requiring them to self-quarantine for 10 days if they travel outside of California due to the risk of spreading the COVID-19 virus. If this advisory is still in place or if the risk of the virus is still prevalent in 2022, staff will not travel to the NADA event.

**RECOMMENDATION**

It is recommended the Board approve this travel request.

If you have any questions, please contact me at (916) 323-7201.

cc: Kathryn Doi, President

STATE OF CALIFORNIA

## MEMO



**TO: GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE  
RAMON ALVAREZ, C., CHAIR  
ANNE SMITH BOLAND, MEMBER**

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

**Date: JANUARY 7, 2021**

**Subject: DISCUSSION REGARDING THE 2021 NEW MOTOR VEHICLE BOARD  
INDUSTRY ROUNDTABLE**

Given the desire to move forward with Zero Emission Vehicles (ZEVs) or Alternative Fuel Vehicles as our Industry Roundtable theme, with a focus on the Governor's recent Executive Order N-79-20, below are some topic/speaker suggestions:

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

We welcome any speaker suggestions, including Board Members who want to share their knowledge and insight at the Roundtable.

This matter is being agendaized for consideration at the February 16, 2021, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Danielle at (916) 327-3129.

cc: Kathryn E. Doi, President

STATE OF CALIFORNIA



MEMO

To: POLICY AND PROCEDURE COMMITTEE  
DANIEL KUHNERT, CHAIR  
INDER DOSANJH, MEMBER

Date: January 8, 2021

From: TIMOTHY M. CORCORAN  
ROBIN P. PARKER

Subject: ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES

Over the past 20 years, the Board has adopted a wide range of policies pertaining to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff. They may be modified or abolished as the Board deems appropriate. The staff has consolidated the policies into a single document for purposes of consistency and to educate new members.

The attached summary provides the Board with an opportunity to review the policies. The changes from 2020 are noted in underline and strikeout font; they pertain to:

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

This matter is being agendized for informational purposes only and no Board action is required. If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Robin at (916) 323-1536.

Attachment

cc: Kathryn E. Doi

## NEW MOTOR VEHICLE BOARD ADOPTED POLICIES

Since 1996, the New Motor Vehicle Board (“Board”) has adopted a wide range of policies pertaining to Board operations and practices. They supplement State and Department of Motor Vehicles (herein “Department” or “DMV”) policies and pertain to issues unique to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff.

<b>BOARD MEETINGS</b>		
<b>CATEGORY</b>	<b>POLICY</b>	<b>DATE</b>
Bagley-Keene Open Meeting Act Education and Compliance	<p>The Office of the Attorney General recommended that the Board appoint a full-time employee of the Board who is an attorney as the Bagley-Keene compliance officer, rather than hire outside services. In order to comply with this recommendation, the General Counsel<sup>1</sup> is the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.</p> <p>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 enter in a minute book a record of topics discussed and decisions made at the meeting.” In order to ensure compliance, the General Counsel is responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.</p>	July 12, 1996; May 25, 2000
Board Meeting Procedures	<p>The Board approved Parliamentary Procedures are to be utilized in the conduct of its meetings. In the event that a procedural issue arises which is not covered by the Parliamentary Procedures, the relevant provision(s) of Robert’s Rules of Order, The Modern Edition (1989 Version) will control the situation to which the issue applies. The Board revised the Parliamentary Procedures to reflect the changes in organizational structure and the procedure for debate and voting.</p> <p>At the December 2, 2019, General Meeting,</p>	March 18, 1997 - Business, Transportation & Housing Agency <sup>2</sup> Audit Recommendation 7; January 8, 2003; September 27, 2011  December 2, 2019;

<sup>1</sup> Robin Parker, Senior Staff Counsel, is performing all of the duties previously assigned to the Board’s General Counsel including but not limited to the Bagley-Keene Compliance Officer, maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act, the Audit Compliance Officer, and coordinating with the DMV’s Chief Counsel in the event the Board elects to request DMV to take disciplinary actions against a licensee for failure to file statutorily mandated schedules and formulas.

<sup>2</sup> Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.



CATEGORY	POLICY	DATE
Board Meeting Procedures -continued-	<p>changes were approved to automatically fill vacant committee Chair positions with the Member. <u>At the November 4, 2020, General Meeting, the reference to “appeals” in Article 5 (debate and voting) was deleted due to the repeal of appeals effective January 1, 2020.</u></p> <p>The presiding Administrative Law Judge (“ALJ”) shall prepare a decision cover sheet/analysis which is provided to members with their meeting materials when a proposed decision or ruling is agendized. The decision cover sheet/analysis should be limited to two pages and not contain a recommendation.</p>	<p><u>November 4, 2020</u></p> <p>December 8, 1998; May 25, 2000</p>
Dealer Member Participation in Recreational Vehicle (“RV”) Protests and Petitions	<p>Dealer Board members may not participate in petitions involving RV licensees. Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the Dealer Member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.</p>	<p>December 11, 2003; January 31, 2007; March 28, 2007; November 15, 2007</p>
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act	<p>In compliance with section 11125.7, each agenda item other than an item that requires Board consideration of a proposed decision, ruling, or order, the President or presiding officer shall invite public comment after the item has been presented by staff. The President or presiding officer of the meeting may limit the number and/or the duration of the public comment or comments depending on the time constraints and size of the agenda. The following language is to be inserted into the President’s or presiding officer’s introductory statement prior to Board consideration of a proposed decision, ruling or order, as follows:</p> <p>“Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.</p>	<p>September 10, 2009; February 4, 2010</p>

CATEGORY	POLICY	DATE
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act -continued-	Members of the public may not comment on such matters.”	
<b>BOARD MEMBERS</b>		
Board Development	In order to ensure familiarity with Board operations and the new motor vehicle industry in general, the Board will provide new member orientation and ongoing educational seminars to new and existing members.	July 18, 2000
Gifts and Honoraria	<p>The Board shall comply with the statutory requirements of the Political Reform Act. In general, the Act provides for a limitation on gifts received by state board members as follows:</p> <ul style="list-style-type: none"> <li>▪ Gifts provided for or arranged by a lobbyist or lobbying firm if the lobbyist or firm are registered to lobby the member or the employee’s agency are prohibited if the aggregate value exceeds \$10 per calendar month from a single lobbyist or lobbying firm.</li> <li>▪ State board members and designated staff may not accept gifts aggregating more than \$420<sup>3</sup> from any other single source if that gift would have to be reported on the recipient’s Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of “single source” is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission July 3, 2013, and the Secretary of State on July 24, 2013. The amendments were operative August 23, 2013.</li> </ul>	April 27, 2001; March 23, 2010

<sup>3</sup> The gift amount is ~~\$500.00~~ 520.00 (2 CCR §§ 18700 and 18940.2). For purposes of Government Code section 89503, the adjusted annual gift limitation of ~~\$500.00~~ 520.00 is in effect January 1, 201921, through December 31, 202022.

CATEGORY	POLICY	DATE
Gifts and Honoraria -continued-	With regards to honoraria, the Act provides that members of state boards may not receive honoraria from any source that would be required to be reported on the Form 700 for that official.	
<b>COURT PROCEEDINGS</b>		
Court Participation on Issues of Interest to the Board	<p>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 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</p>	<p>October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation &amp; Housing Agency Audit Recommendation 5</p>

CATEGORY	POLICY	DATE
Court Participation on Issues of Interest to the Board -continued-	own counsel.  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 you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.	June 26, 2008
Filing Amicus Briefs	The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency ("Agency"). 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 for consent will be withdrawn.	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4
<b>CONSUMER MEDIATION PROGRAM</b>		
Consumer Mediation Program	The goal of the Consumer Mediation Program is to informally mediate solutions to disputes between consumers and new car dealers, manufacturers, and distributors. Staff will provide consumers information on the Lemon Law and refer such complaints to the appropriate entity for resolution. Complaints for which other agencies have exclusive jurisdiction will also be referred to those agencies. Program activities will not be advertised, nor will consumer newsletters be disseminated. Rather, activities will be based on referrals from other agencies and sources.  Vehicle Code section 3078 requires that the staff recommend to a member of the public that he or she consult with the Department of Consumer Affairs when seeking a refund involving the sale or lease of, or a replacement of, a recreational	December 8, 1998 - Business, Transportation & Housing Agency Audit Recommendation 1 and 10.  April 22, 2004

CATEGORY	POLICY	DATE
Consumer Mediation Program -continued-	<p>vehicle. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The checklist will enable staff to guide the consumer through key Lemon Law criteria and enable the consumer to choose the proper course of action to pursue.</p> <p>An inter-agency memo will be sent to agencies the Board refers to and those that refer to the Board to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program.</p>	May 26, 2011
<b>HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES<sup>4</sup></b>		
Appointment of Hearing Officers	<p>Under section 590 of Title 13 of the California Code of Regulations, Robin Parker, Senior Staff Counsel, was appointed by the Board as a hearing officer for the purposes of conducting pre-hearing conferences, rulings on discovery objections, and mandatory settlement conferences. Anthony Skrocki was designated the Law and Motion Administrative Law Judge responsible for hearing all pre-hearing and discovery motions. In the event of Judge Skrocki's unavailability, an "Alternate Law and Motion ALJ Assignment Log" was established. Robin Parker was added to the "Alternate Law and Motion ALJ Assignment Log" and authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate.</p> <p>In January 2005, the Board appointed three Administrative Law Judges: Richard J. Lopez;<sup>5</sup> Jerold A. Prod;<sup>6</sup> and Norman Gregory (Greg) Taylor.<sup>7</sup> Marybelle Archibald<sup>8</sup> was also appointed, as was Diana Woodward Hagle. Linda Waits was</p>	<p>August 21, 1997; September 30, 2004; June 26, 2008; November 20, 2008</p> <p>January 26, 2005; September 21, 2005; April 5, 2006; December 13, 2007;</p>

<sup>4</sup> The term hearing officer and Administrative Law Judge are used interchangeably throughout this document. Effective January 1, 2004, references to "hearing officer" were changed to "administrative law judge" in Vehicle Code sections 3000 et seq. The Board's regulations and job classifications for hearing officer were also changed to Administrative Law Judge.

<sup>5</sup> Due to a work-related conflict, Judge Lopez resigned from the Board effective June 30, 2007. Judge Lopez was removed from the MSC and Merits Judge Assignment Logs.

<sup>6</sup> Judge Prod retired in August 2013, so he was taken off the assignment logs.

<sup>7</sup> Due to a work-related conflict, Judge Taylor resigned from the Board. However, in August 2006, Judge Taylor was hired on a contract basis and was available on an initial six-month basis. An extension of this contract was granted until May 14, 2007. On May 1, 2007, Judge Taylor was removed from the MSC and Merits Judge Assignment Logs.

<sup>8</sup> In March 2011, Judge Archibald resigned effective after the completion of the Proposed Decision and Proposed Decision Following Remand in *Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.*, Protest No. PR-2265-10.

CATEGORY	POLICY	DATE
Appointment of Hearing Officers -continued-	also appointed as an ALJ (she resigned in October 2010). In September 2011, the Board appointed three Administrative Law Judges: Lonnie M. Carlson (he resigned in October 2014), Kymberly M. Pipkin and Victor D. Ryerson (resigned effective August 1, 2017). In January 2017, the Board appointed Evelyn M. Matteucci and Dwight V. Nelsen as administrative law judges. These judges have been added to the assignment logs. In December 2019, four Board Members appointed Steven Smith as an administrative law judge subject to checking his references and being ratified by the full Board <u>at its March 5, 2020, General Meeting.</u>	September 27, 2011; January 18, 2017; December 2, 2019; <u>March 5, 2020</u>
Case Assignments	<p>The Board ALJs (excluding Robin Parker and Anthony Skrocki) will preside over merits hearings. To preserve the random selection of ALJs as well as the even distribution of cases, ALJs will be assigned on a rotational basis at the Hearing Readiness Conference utilizing an assignment log similar to the Merits Judge Substitution Log adopted by the Board at its January 8, 2003, meeting. If the judge selected to preside over the next hearing is not available, the Board will attempt to schedule the merits hearing with the next Board ALJ on the log. If for any reason no judge is available, the hearing will be scheduled with an OAH Judge. The new ALJs will be assigned utilizing this process.</p> <p>On an interim basis, ALJs will be assigned based upon a Merits and MSC Judge Assignment Log. All of the ALJs (Archibald, Lopez and Prod until they resigned) were assigned to the respective logs. The effectiveness of this interim system was reported at the March 8, 2006, General meeting. Diana Woodward Hagle was added to the assignment logs, as was Judge Taylor until his contract expired. Judge Wong requested that she be added to the MSC Log.</p> <p>The assignment logs were updated as follows:</p> <ul style="list-style-type: none"> <li>▪ If an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ is inserted first in the rotation so that he or</li> </ul>	<p>September 30, 2004; April 21, 2005</p> <p>November 16, 2005; April 5, 2006; September 28, 2006</p> <p>February 4, 2014</p>

CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>she would be the next ALJ to receive the first opportunity to preside over a merits hearing.</p> <ul style="list-style-type: none"> <li>▪ If an ALJ must decline presiding over a merits hearing because he or she was the Mandatory Settlement Conference ALJ, then the ALJ is inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing.</li> </ul> <p>Merilyn Wong, on an interim basis, was designated the Mandatory Settlement Conference ALJ starting in June 2016. In November 2017, she was designated the permanent Mandatory Settlement Conference ALJ due to her success in settling protests. An Alternative MSC Judge Assignment Log was established in the event ALJ Wong is unavailable. Additionally, at ALJ Wong's request, she was taken off the Alternative Merits Judge Assignment Log and the Alternative Law &amp; Motion Judge Assignment Log so her focus would be exclusively on settlement.</p>	June 28, 2016, January 18, 2017, July 19, 2017, November 7, 2017
Cited Proposed Decisions/ Rulings/Orders	Historically, the Board staff has prepared two versions of proposed decisions, rulings, and orders. One version contained citations to the record and the other version did not. The Board staff will prepare only one version of proposed decisions, rulings, and orders that contains citations to the record. Additionally, the following sentence will be included in all Board issued proposed decisions, rulings, and orders: "The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding, and are not intended to be all-inclusive."	January 26, 2006
Hearing Officer Selection	<p>The following process shall be used in the examination and selection of Board Hearing Officers.</p> <p>(1) The civil service testing panel for the hearing officer classification shall consist of, at a minimum, one member of the Board, one Board employee approved by the Board, the Department's</p>	December 8, 1998; November 28, 2000

CATEGORY	POLICY	DATE
Hearing Officer Selection -continued-	<p>designated representative from its Human Resources Branch (who serves as panel chairman), and a public member assigned from a list certified by the State Personnel Board.</p> <p>(2) Once the civil service list for the classification has been certified by the Department, the actual hiring interview will be conducted by the Administration Committee of the Board. (The Board may also wish to appoint an alternate Board member to this committee in the event that one of the committee members is unavailable for the hiring interview). This committee may request that a member of the Board's executive staff participate in this process as well.</p> <p>(3) Once the hiring committee selects one or more qualified and desirable applicants from the list, these individual(s) will be requested, if practical, to attend the next scheduled General Meeting of the Board, at which time they will be asked to make a brief presentation to the Board concerning their qualifications and experience. Members of the Board will be given an opportunity to ask questions of these applicants. The Board members will then vote on whether to actually hire these individuals as hearing officers. If one or more of the applicants are hired, the Board will then modify the numerical designation on the hearing officer list to assign a number or numbers to the new hearing officers.</p>	
Reclassification of Hearing Officer to Administrative Law Judge	<p>The Hearing Officer series specification which includes Hearing Officer I, Hearing Officer II, and Chief Hearing Officer was changed to an Administrative Law Judge class with two salary ranges, Range A and Range B. This change was necessitated by the passage of Assembly Bill 1718 (Chaptered September 22, 2003) that transferred the authorization granted to a hearing officer to an Administrative Law Judge and deleted references to hearing officer in the Vehicle Code. Also, the responsibilities and duties assigned to incumbents of the Hearing Officer class were no longer an accurate representation. Implementation of this change will require approval of the State Personnel Board and the Department of Personnel Administration, which was completed September 2012.</p>	November 7, 2003



CATEGORY	POLICY	DATE
Source of Board Hearing Officers	The Board will utilize Board Hearing Officers (Administrative Law Judges) as opposed to judges from the Office of Administrative Hearings (“OAH”) because it is more efficient, cost effective, and affords the parties an effective means to resolve disputes. Using Board Hearing Officers that have a full understanding of the franchise relationship, the automotive industry, terminology, practices, and the law, is of obvious benefit to the Board and litigants. Other factors include: (1) costs for hearing officers, court reporters, and transcripts; (2) turnaround time for hearing dates and proposed decisions or rulings; and (3) unlike the Board, OAH is not involved in discovery unless the parties file a motion requesting its involvement.	August 20, 1996; December 8, 1998; May 25, 2000 – Business, Transportation & Housing Agency, Audit Recommendation 1
Separation of Powers	The Board rules prevent the Administrative Law Judge at a settlement conference from presiding at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties (13 CCR § 551.11).	September 9, 1998
<b>CASE PROCESSING</b>		
Administrative Procedure Act	<p>To ensure compliance with the Administrative Procedure Act, the Board has adopted the following discretionary procedures:</p> <ul style="list-style-type: none"> <li>▪ Alternative Dispute Resolution (Government Code section 11420.10, et seq.), which allows the Board, with the consent of all the parties, to refer a dispute to mediation by a neutral mediator, binding arbitration by a neutral arbitrator, or nonbinding arbitration by a neutral arbitrator.</li> <li>▪ Informal Hearings (Government Code section 11445.10, et seq.), which allows the Board to permit informal hearings in certain limited instances. The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer.</li> <li>▪ Declaratory Decisions (Government Code section 11465.10, et seq.), which provides for issuance of a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the Board.</li> </ul>	August 21, 1997

CATEGORY	POLICY	DATE
Case Management Procedures	In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate ALJ for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment. In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance which would violate the above referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time will also be referred to the assigned "merits" ALJ for review.	April 27, 2001
Case Assignment Reports	In order to ensure that the mechanism for assigning cases to Board ALJs is working fairly and efficiently, the Board will receive periodic updates on the status of assigning cases to Board ALJs.	September 12, 2000; November 28, 2000
Review of Case Status	The legal staff will review the status of all cases that are at least one-year old no less frequently than once each quarter. The parties will be contacted informally, or a telephonic Status Conference will be noticed to ascertain what action, if any, the Board can take to resolve the dispute.	July 12, 1996
<b>ADMINISTRATION</b>		
Acceptance of Credit Card Payments	The Board will allow the acceptance of credit card payments for all Board fees and costs subject to Master Service Agreements (13 CCR § 553.40).	April 26, 2002; February 2005
Administrative Law Judge Guide	The Board will establish and maintain a <i>New Motor Vehicle Board Administrative Law Judges' Benchbook</i> .	April 26, 2002; March 11, 2003; March 9, 2004; March 8, 2005; March 8, 2006;

CATEGORY	POLICY	DATE
Administrative Law Judge Guide -continued-		March 28, 2007; May 2, 2008; April 23, 2009; June 15, 2010; December 13, 2011; March 20, 2012; March 13, 2013; July 15, 2014; March 25, 2015; February 10, 2016; July 19, 2017; March 13, 2018
Annual Board Fee in Light of Two-Year License Renewal	The Annual Board fee of \$225.00 for dealers and \$0.338 per vehicle sold in California, with a minimum of \$225.00, for manufacturers and distributors will remain unchanged in light of the Department of Motor Vehicles two-year Occupational License renewal. <sup>9</sup>	September 21, 2005
Annual Board Fee Waiver Criteria	The Board will exempt from collection of its annual fee all manufacturers or distributors of motor vehicles (including motorcycles, recreational vehicles, and all-terrain vehicles) within the purview of its jurisdiction who do not have independent dealers in California or do not sell vehicles in California (13 CCR § 553(b)). Although a manufacturer or distributor may be exempt from collection of the annual Board fee, the Board will continue to exercise jurisdiction over these licensees. An annual questionnaire (Data Summary Form) will be sent to all exempted licensees concerning whether they have dealers or sold vehicles in California during the prior calendar year.	September 6, 2001; see also amendment to 13 CCR § 553(b) operative September 2003
Arbitration Certification Program Fee Collection	The Board will exercise its discretion to collect or not collect fees when the amount to be collected is nominal, and provide the Department of Consumer Affairs, Arbitration Certification Program with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion.	January 31, 2007
Audit Compliance Officer	The Board has designated the General Counsel <sup>10</sup> to service as its Audit Compliance Officer to ensure	November 20, 2008; May 26,

<sup>9</sup> At its February 4, 2011, General Meeting, the members approved reinstating the Annual Board Fee per manufacturer or distributor to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee to \$300.00. This proposed rulemaking was effective March 30, 2012.

<sup>10</sup> See footnote 1.

CATEGORY	POLICY	DATE
Audit Compliance Officer -continued-	that all facets of the 1996 Business, Transportation & Housing Agency Performance Audit are complied with. 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. This report was made an exception report.	2011
Budget Process	The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendized each June. This enables the Board to take a more active role in the budget process.	September 7, 2007
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency	<p>The Audit 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.</p> <p>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.</p> <p>At its September 10, 2009, General Meeting, the members adopted the revised delegations that included minor grammatical changes. Additionally, the "Administrative Duties" delegation pertaining to "Procurement" was revised to delegate to the Executive Director "the authority to procure any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's</p>	<p>March 18, 1997 - Business, Transportation &amp; Housing Agency Audit Finding 15</p> <p>November 20, 2008</p> <p>September 10, 2009</p>

CATEGORY	POLICY	DATE
<p>Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation &amp; Housing Agency -continued-</p>	<p>approved budget. If, due to extenuating circumstance, 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.”</p> <p>This matter was made an exception report.</p> <p>Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014), made a number of non-substantive and substantive changes that resulted in updated delegations being adopted at the July 15, 2014, General Meeting.</p> <p>Effective January 1, 2016, a number of changes were made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted dealers (Assembly Bills 759 and 1178). The revised delegations reflecting these changes were adopted at the February 10, 2016, General Meeting.</p> <p>Effective January 1, 2017, Vehicle Code section 3065 was amended (Assembly Bill 287) to specify that warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall repair.</p> <p>Article 6 of the Vehicle Code was repealed effective January 1, 2019. The Board revised its Legislative Policy, which contained three delegations to the Executive Director.</p>	<p>May 26, 2011</p> <p>July 15, 2014</p> <p>February 10, 2016</p> <p>January 18, 2017</p> <p>June 7, 2019</p>
<p>Delegation of Authority Concerning Promulgating Regulations</p>	<p>The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be</p>	<p>April 26, 2002</p>

CATEGORY	POLICY	DATE
Delegation of Authority Concerning Promulgating Regulations -continued-	submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.	
Document Requests	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
Document Retention Policy	<p>The Board adopted Document Retention Policy:</p> <ul style="list-style-type: none"> <li>▪ The Board’s judicial and administrative case files will be retained in their entirety, including exhibits and transcripts, at the Board’s offices for a period of ten years after the case is no longer active.</li> <li>▪ After the expiration of the ten-year period, all Final Decisions along with all briefs submitted at the close of the administrative record will be separately retained as permanent public records and stored at the Board’s offices. The remainder of each file, i.e., exhibits and transcripts, will then be confidentially destroyed.</li> <li>▪ Records of consumer complaints that are received by the Mediation Services Program will be retained for three years after the case is closed followed by confidential destruction. Administrative records including, but not limited to, budget reports, travel expense claims, purchase agreements, and property survey reports, will be retained, in the Board’s offices for eight years from the end of the fiscal year in which the document was prepared, followed by confidential destruction.</li> <li>▪ Employee personnel files, which include documents relating to health benefits, payroll deductions, performance appraisals, and the like, will be retained for eight years beyond separation followed by confidential destruction.</li> </ul>	October 29, 2002
Electronic Public Mailing List	The Board will maintain a permanent Electronic Public Mailing List.	September 6, 2001

CATEGORY	POLICY	DATE
Employee Recognition	The Board will utilize an Employee Recognition Award Program to recognize staff members for their outstanding accomplishments. On at least an annual basis, employee nominations based on merit are submitted to the Board Development Committee and a recipient is selected in coordination with the Executive Director. The Employee Recognition Award program was renamed the "Solon C. Soteras Employee Recognition Award".	July 18, 2000; September 30, 2004; March 8, 2006
Facsimile Document Requests	There will be no charge for document requests sent via facsimile. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney support service.	December 13, 2006
Financial Reports	In order to keep the Board apprised of its financial condition, the Board will receive quarterly financial updates at regularly scheduled Board meetings.	May 25, 2000; July 18, 2000
<i>In-Site</i> Newsletter	In order to advise dealers, manufacturers, distributors, and other interested parties about the Board, a newsletter, the <i>In-Site</i> , will be published bi-annually (January and August.) The <i>In-Site</i> should emphasize Board activities, cases, and decisions.	June 8, 1999; November 28, 2000; June 17, 2015
Information Security	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 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
Informational Materials	The Board will establish and maintain a <i>Guide to the New Motor Vehicle Board</i> and any necessary related materials. (February 12, 1997 - Business, Transportation & Housing Agency Audit Recommendation 13)	February 26, 1999; September 6, 2001; December 5, 2002; December 11, 2003; December 16, 2004; January 26, 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010; September 27, 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10,

CATEGORY	POLICY	DATE
Informational Materials -continued-	<p>The Board will establish and maintain an <i>Informational Guide for Manufacturers and Distributors</i> that assists factory personnel in complying with California’s franchise laws including the statutorily required notices.</p> <p><u>The Board will establish and maintain an <i>Export or Sale-for-Resale Prohibition Policy Protest Guide</i> that assists associations, as defined, in filing a Vehicle Code section 3085 protest.</u></p>	<p>2016; January 18, 2017; January 24, 2018; January 24, 2019; <u>March 5, 2020</u></p> <p>September 6, 2001; January 8, 2003; March 9, 2004; January 26, 2005 and 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010 and 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; <u>March 5, 2020</u></p> <p><u>March 5, 2020</u></p>
Internal Board Audits	In order to ensure that the Board is scheduled for audits at predetermined fixed intervals, the Board will be considered one of the divisions of DMV for purposes of scheduled compliance audits.	February 12, 1997
Legislative Committee	<p>A Legislative Committee was created. The composition is the Executive Committee unless otherwise designated by the Board President. The Legislative Committee will provide California State Transportation Agency (CalSTA) with its own analysis, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The Committee will be provided a copy of the analysis and fully briefed.</p> <p>The Committee will continue to provide the Department with bill analyses at the Department’s</p>	June 7, 2019



CATEGORY	POLICY	DATE
Legislative Committee -continued-	<p>request, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The committee will be provided a copy of the analysis and fully briefed.</p> <p>In the bill analyses provided to CalSTA, the Committee will not take a formal position on any bill, with the exception of Legislation of Special Interest that proposes to drastically increase or reduce the Board's statutory authority and/or workload or intends to eliminate the Board. Absent CalSTA approval, the Committee will not publicly take a position on any bill.</p> <p>The 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.</p> <p>A Legislative Committee analysis will not be subject to disclosure under the Public Records Act.</p>	
Legislative Policy	The Board staff will provide technical and procedural advice to stakeholders on pending legislation. The Board will participate in industry discussions of legislation, if requested. This will ensure that the Board explains its operations and helps the parties better understand what the fiscal and operational ramifications, if any, will be. The full Board will be apprised of legislation of both special and general interest (as defined) at noticed Board Meetings. Absent CalSTA approval, the Board would not publicly take a position on any bill.	August 20, 1996 June 7, 2019
Licensees for Purposes of Collecting Annual Board Fees	In an effort to ensure those entities that can benefit from the Board's assertion of jurisdiction are properly assessed fees, those licensees that manufacture or distribute products that are legally outside of the Board's jurisdiction because they do not produce motor vehicles regularly used on highways, would be eliminated from the Board's jurisdiction for purposes of collecting the annual Board fee (13 CCR § 553).	April 27, 2001

CATEGORY	POLICY	DATE
Mission and Vision Statements	<p>The Board's mission is: 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.</p> <p>The Board's vision is: To demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes.</p>	March 6, 2001; April 24, 2003; April 22, 2004; March 8, 2005; March 8, 2006; March 28, 2007; June 26, 2008; April 24, 2009; June 5, 2009; March 23, 2010; March 29, 2011; March 20, 2012; May 22, 2012; March 13, 2013; April 9, 2014; March 25, 2015; March 16, 2016; March 15, 2017; March 13, 2018; June 7, 2019; December 2, 2019
Out-Of-State Travel	<p>The Board will approve the budgetary allotment for and participation in any out-of-state travel. It will review all out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations.</p>	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 19
<u>Performance Rating Criteria</u>	<u>Formalize performance appraisal criteria for the Executive Director position.</u>	<u>September 16, 2020, General Meeting</u>
Statutorily Mandated Schedules or Formulas	<p>In light of the amendments to Vehicle Code section 3065 (Assembly Bill 179, ch. 796, effective January 1, 2020), the Board revised its existing policy to provide for the return of an Annual Notice to educate manufacturers and distributors concerning their filing requirements pursuant to Vehicle Code sections 3064/3074 and 3065/3075.</p>	December 13, 2007; December 2, 2019
Proposed Stipulated Decisions and Orders (Confidential, Filed under Board Seal)	<p>If the parties have jointly agreed that the terms of a Proposed Stipulated Decision and Order are confidential and should be maintained under Board seal to affect the agreed upon terms and conditions, then that is the criteria used by the Board.</p>	June 7, 2019

CATEGORY	POLICY	DATE
Transcript Policy	<p>The Board will allow the parties to purchase transcripts directly from the court reporter. The Board will continue to purchase transcripts from the court reporting service. For all merits hearings and dispositive motions, reporting costs including transcript fees, appearance and transcript delivery fees, per diem costs, Realtime set-up fees, expedite rates, and cancellation fees will be allocated as follows:</p> <ol style="list-style-type: none"> <li>1. For the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.</li> <li>2. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fees, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.</li> <li>3. In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.</li> </ol>	March 12, 2002, April 26, 2002, March 20, 2012, June 26, 2013, March 13, 2018
Website	On the Board's website, consumers can access the Board's Consumer Mediation Pamphlet in Spanish.	September 21, 2005

CATEGORY	POLICY	DATE
William G. Brennan Hearing Room	In remembrance of the Board's previous Executive Director, William (Bill) G. Brennan, who passed away November 2, 2017, the Board renamed Hearing Room #1 The "William G. Brennan Hearing Room" as a symbolic gesture to solidify his legacy.	March 13, 2018

STATE OF CALIFORNIA



MEMO

**To:** POLICY AND PROCEDURE COMMITTEE      **Date:** January 8, 2021  
DANIEL KUHNERT, CHAIR  
INDER DOSANJH, MEMBER

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

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

The *Export or Sale-for-Resale Prohibition Policy Protest Guide* is reviewed annually to ensure it complies with recent statutory and regulatory amendments. The changes from the version adopted in March 2020 reflect: (1) The Board's Post Office Box for mailings; (2) The preference for email filings instead of in-person filings considering the current situation; and, (3) That an intervenor is precluded from filing a peremptory challenge as the result of regulatory changes effective April 1, 2020. These changes are highlighted yellow on pages 3 and 4 in the enclosed Guide.

This matter is being agendized for discussion and consideration at the February 16, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Robin at (916) 323-1536.

Enclosure

cc: Kathryn E. Doi



**State of California**  
**NEW MOTOR VEHICLE BOARD**

***Export or Sale-For-Resale Prohibition  
Policy Protest Guide***

*Vehicle Code section 3085, et seq.*



**February 2021**

# **STATE OF CALIFORNIA**

## **NEW MOTOR VEHICLE BOARD**

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**State of California**  
GAVIN NEWSOM, GOVERNOR

**California State Transportation Agency**  
DAVID S. KIM, SECRETARY

### **BOARD MEMBERS**

#### **Public Members**

KATHRYN ELLEN DOI  
ARDASHES (ARDY) KASSAKHIAN  
DANIEL P. KUHNERT  
NANXI LIU  
BISMARCK OBANDO

#### **Dealer Members**

RAMON ALVAREZ C.  
ANNE SMITH BOLAND  
INDER DOSANJH

### **EXECUTIVE STAFF**

TIMOTHY M. CORCORAN  
Executive Director

### **LEGAL STAFF**

ROBIN P. PARKER  
Senior Staff Counsel  
DANIELLE R. PHOMSOPHA  
Staff Counsel

# TABLE OF CONTENTS

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<b>PREAMBLE</b> .....	1
<b>INTRODUCTION</b> .....	2
<b>POWERS AND DUTIES IN GENERAL</b> .....	2
Enforcement of Board Orders .....	2
Mandatory Settlement Conferences .....	2
<b>EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST</b> .....	3
Statutory Authority.....	3
Filing a Protest.....	3
Manufacturer’s or Distributor’s Notice of Appearance .....	3
Filing Fee.....	3
Interested Individuals .....	3
Motion for Intervention .....	3
Challenge to Presiding Officer .....	4
Amicus Curiae Briefs .....	4
Required Elements of a Protest .....	4
Determination of Protest .....	4
<b>HEARING PROCEDURES</b> .....	5
Pre-Hearing Procedure .....	5
Discovery.....	5
Subpoenas.....	5
Summary of Board Action .....	6
Stipulated Decisions .....	6
Hearings Open to the Public; Protective Orders .....	6
Failure to Appear at a Hearing .....	7
Decision of the Board.....	7
Court Reporting and Transcripts of Board Proceedings .....	7
<b>JUDICIAL REVIEW</b> .....	9
<b>APPENDIX</b> .....	A-1
Sample Protest.....	A-2



## **PREAMBLE**

The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation.

All correspondence and protests should be sent to:

New Motor Vehicle Board  
ATTN: Legal Department  
P.O Box 188680  
Sacramento, California 95818-8680

Correspondence can also be sent via email at [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov) or facsimile at (916) 323-1632. The telephone number of the Board is (916) 445-1888 and the website address is [www.nmvp.ca.gov](http://www.nmvp.ca.gov). Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. References to regulations are to Title 13 of the California Code of Regulations. The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website ([www.oal.ca.gov](http://www.oal.ca.gov)). Once you reach the OAL site, select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code § 11400 through 11529) are applicable and available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

The Board also publishes a *Guide to the New Motor Vehicle Board* which details Article 4 (cars, motorcycles, and ATVs) and Article 5 (recreational vehicles) protests and petitions. An *Informational Guide for Manufacturers and Distributors* is also published to assist manufacturers and distributors in clarifying California's vehicle franchise laws. Both guides are available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at [www.nmvp.ca.gov](http://www.nmvp.ca.gov).

## **INTRODUCTION**

Assembly Bill 179, (Stats. 2019, Ch. 796) effective January 1, 2020, was sponsored by the California New Car Dealers Association with essentially the same language that sunset on January 1, 2019. (Assembly Bill 1178 (Stats. 2015, Ch. 526)) This bill returns the Board’s authority to hear export or sale-for-resale prohibition policy protests in Article 6 of the Vehicle Code and now sunsets on January 1, 2030.

An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, 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 (herein “manufacturer” or “distributor”) at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. (Veh. Code § 3085) The purpose of this publication is to familiarize the reader with this protest.

## **POWERS AND DUTIES IN GENERAL**

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

### **Enforcement of Board Orders**

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board’s authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts. (Veh. Code § 3050.2(a)) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or suspend the proceedings pending compliance.

### **Mandatory Settlement Conferences**

In a protest filed with the Board, the Board, its Executive Director, or an Administrative Law Judge (“ALJ”) may order a mandatory settlement conference. (Veh. Code § 3050.4) For any proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties. (13 CCR § 551.11) The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party. (Veh. Code § 3050.4)

## **EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST**

### **Statutory Authority**

Vehicle Code section 3050(d) provides for the Board to hear and decide a protest presented by an association challenging a policy of a manufacturer or distributor pursuant to Section 3085.

### **Filing a Protest**

There is no specific statutory time period in the Vehicle Code within which to file a protest involving an export or sale-for-resale prohibition policy protest.

A protest is deemed filed upon its receipt by the Board via regular mail, email or facsimile, or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be either emailed to the Board at [nmvp@nmvb.ca.gov](mailto:nmvp@nmvb.ca.gov) personally filed or mailed by certified or registered mail to P.O. Box 188680, Sacramento, CA 95818-8680.

### **Manufacturer's or Distributor's Notice of Appearance**

The respondent shall file a written notice of appearance within 15 days of receipt of the protest. (13 CCR § 585.1) Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

### **Filing Fee**

A filing fee of \$200, which should be in the form of a check, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. In the event of a financial hardship, either the protestant or respondent may submit a request for a fee waiver, requesting that the Executive Director, upon a showing of good cause, waive the \$200 filing fee. Samples are available on the Board's website. (13 CCR § 553.40)

### **Interested Individuals**

Pursuant to Vehicle Code section 3085.2, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

### **Motion for Intervention**

Any person, including a Board member, concerned with 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 may file a motion to intervene in a pending proceeding subject to the conditions set forth in 13 CCR § 551.13.

### **Challenge to Presiding Officer**

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request. (13 CCR § 551.1) Further, 13 CCR § 551.12(b) entitles a party, excluding an intervenor, in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier. (13 CCR § 551.12(b)(1)) Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

### **Amicus Curiae Briefs**

The Board, its Executive Director, or an ALJ may, in his or her discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

### **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3085 is as follows:

<b>Content Requirements</b>	<b>Authority</b>
Must be in writing and conform to the provisions of Article 6 commencing with 13 CCR § 593.1.	13 CCR § 583
The association shall simultaneously deliver a \$200 filing fee in the form of a check, money order or authorize a credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
The association shall serve a copy of the protest on the manufacturer or distributor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 551.24

### **Determination of Protest**

If there is a hearing, the association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer or distributor 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.

## **HEARING PROCEDURES**

### **Pre-Hearing Procedure**

Upon receiving a protest, the Board shall institute hearing proceedings similar to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

### **Discovery**

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). Section 551.6 of the Board's regulations implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

### **Subpoenas**

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2. Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the subpoena on the witness or deponent, a copy of the subpoena and executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

### **Summary of Board Action**

Hearings on protests filed pursuant to Vehicle Code section 3085, may be considered by the entire Board or may, at its discretion be conducted by one of the Board’s ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section 3085.2. The Board, on receiving a protest, does the following:

<b>Step</b>	<b>Action</b>
1	By order fix a time within sixty (60) days of receipt of the protest.
2	Send 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 by the Board.
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. (See also 13 CCR § 590)

**NOTE:** Vehicle Code section 3050(d) prohibits a dealer member of the Board from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed “pursuant to Article 6 (commencing with Section 3085), unless all participants to the protest stipulate otherwise.” Vehicle Code section 3085.2(c) states: “[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 [Article 6, i.e., protests filed by an association] unless all parties to the protest stipulate otherwise.” These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions.

### **Stipulated Decisions**

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code section 3085.2 to resolve one or more issues raised by a protest filed with the Board. (Veh. Code § 3050.7)

### **Hearings Open to the Public; Protective Orders**

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

### **Failure to Appear at a Hearing**

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

### **Decision of the Board**

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. 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 ALJ, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties. (Veh. Code § 3085.4)

### **Court Reporting and Transcripts of Board Proceedings**

The Board arranges for a court reporter for all hearings on the merits of a protest and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions (those that result in a final determination of the protest before the Board), reporting costs will be allocated as follows:

<b>Circumstances</b>	<b>Reporting Costs including Appearance and Transcript Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs</b>	<b>Transcript Fees</b>
Hearings on the merits and dispositive motions - First Day	Board (excluding Realtime set-up fees)	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions - After First Day	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter’s appearance fee, the delivery fee and any other costs excluding the Realtime set-up fees, and the Board’s cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board or counsel, at the Board’s discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter’s appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board’s cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter’s appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter’s appearance fee, the delivery fee, and any other costs. Counsel can utilize the Board’s contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.



## **JUDICIAL REVIEW**

### **Appeal to Superior Court**

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code section 3085.6.



11	In the Matter of the Protest of	)	
		)	
12	NAME OF ASSOCIATION,	)	Protest No. PR-
		)	
13	Protestant,	)	PROTEST
		)	
14	v.	)	[Vehicle Code section 3085]
		)	
15	NAME OF MANUFACTURER OR	)	
	DISTRIBUTOR,	)	
16		)	[Dates of the hearing and any
	Respondent.	)	future pre-hearing or
17		)	settlement conferences]

**Introduction:**

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [Name of Association], files this protest under the provisions of  
 21 California Vehicle Code section 3085, with reference to the following facts:

**Body:**

Using numbered paragraphs, state the allegations in a clear and chronological order.

22 1. Protestant is an association as defined in Vehicle Code section 3085(b) challenging the legality of an export or sale-for-resale prohibition policy of [manufacturer or distributor] on behalf of [identify two or more dealers subject to the challenged policy]. These dealers are subject to the policy being challenged pursuant to subdivision (y) of Vehicle Code section 11713.3. Protestant's mailing address is [address] and telephone number is [telephone number].

2. Respondent is a licensed [manufacturer or distributor] authorized to do business and doing business in the State of California. Respondent's mailing address is [address] and telephone number is [telephone number].

3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].

4. [Outline the particulars of the dispute].

5. Protestant and its attorneys desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.

6. A Pre-Hearing Conference is requested.

7. WHEREFORE, Protestant prays for: (A declaration that an export or sale-for-resale prohibition policy of [manufacturer or distributor] violates the prohibitions of subdivision (y) of Vehicle Code section 11713.3.)

Dated:

Signed:

---

STATE OF CALIFORNIA



**MEMO**

**To:** POLICY AND PROCEDURE COMMITTEE  
DANIEL KUHNERT, CHAIR  
INDER DOSANJH, MEMBER

**Date:** January 29, 2021

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

**Subject:** 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

The *Informational Guide for Manufacturers and Distributors* was most recently approved at the March 5, 2020, General Meeting. The proposed revisions in the attached version are highlighted yellow and summarized as follows:

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

There were no other substantive changes.

This topic is being agendaized for discussion and consideration at the February 16, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact us at (916) 445-1888.

Attachment

cc: Kathryn E. Doi



*State of California*

*NEW MOTOR VEHICLE BOARD*

***INFORMATIONAL GUIDE  
FOR MANUFACTURERS  
AND DISTRIBUTORS***



**February 2021**

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

P.O Box 188680  
Sacramento, California 95818-8680  
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Facsimile: (916) 323-1632  
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Web site: [www.nmvb.ca.gov](http://www.nmvb.ca.gov)



**State of California**  
GAVIN NEWSOM, Governor

**California State Transportation Agency**  
DAVID S. KIM, SECRETARY

**BOARD MEMBERS**

**Public Members**

KATHRYN ELLEN DOI  
ARDASHES (ARDY) KASSAKHIAN  
DANIEL P. KUHNERT  
NANXI LIU  
BISMARCK OBANDO

**Dealer Members**

RAMON ALVAREZ C.  
ANNE SMITH BOLAND  
INDER DOSANJH

**EXECUTIVE STAFF**

TIMOTHY M. CORCORAN  
Executive Director

**LEGAL STAFF**

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Senior Staff Counsel  
DANIELLE R. PHOMSOPHA  
Staff Counsel

# TABLE OF CONTENTS

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INTRODUCTION .....	1
LEGAL DISCLAIMER.....	1
QUESTIONS AND ANSWERS.....	1
WHAT IS THE NEW MOTOR VEHICLE BOARD?.....	1
WHAT ARE THE STATUTORILY REQUIRED NOTICES, SCHEDULES, OR FORMULAS?.....	2
IF A MANUFACTURER OR DISTRIBUTOR WANTS TO TERMINATE OR REFUSE TO CONTINUE AN EXISTING FRANCHISE (NON-RENEWAL), WHAT MUST BE DONE?.....	3
WHAT STEPS ARE NECESSARY TO ISSUE A NOTICE OF TERMINATION OR REFUSAL TO CONTINUE (NON-RENEWAL)? ...	4
AFTER PROPER NOTICE OF TERMINATION OR REFUSAL TO CONTINUE (NON-RENEWAL) TO THE DEALER AND BOARD, UNDER WHAT CIRCUMSTANCES CAN THE DEALERSHIP BE TERMINATED? .....	4
IF A MANUFACTURER OR DISTRIBUTOR WANTS TO MODIFY A FRANCHISE, WHAT MUST BE DONE?.....	4
WHAT STEPS ARE NECESSARY TO ISSUE A NOTICE OF MODIFICATION? .....	5
IF A NEW FRANCHISE IS TO BE ESTABLISHED OR AN EXISTING FRANCHISE RELOCATED, WHAT MUST BE DONE? .....	5
WHAT ARE THE EXCEPTIONS TO VEHICLE CODE SECTIONS 3062 AND 3072 NOTICE REQUIREMENTS? .....	6
WHAT STEPS ARE NECESSARY TO ISSUE A NOTICE OF ESTABLISHMENT OR RELOCATION?.....	7
AFTER PROPER NOTICE OF ESTABLISHMENT OR RELOCATION TO THE DEALER(S) AND BOARD, UNDER WHAT CIRCUMSTANCES CAN THE FRANCHISOR ESTABLISH THE PROPOSED DEALERSHIP OR RELOCATE THE EXISTING DEALERSHIP? .....	7
WHAT IS A NOTICE OF OFF-SITE SALE? .....	8
WHAT IS A CERTIFICATE OF PROPOSED FRANCHISE (OL 124)?.....	8
CERTIFICATE OF PROPOSED FRANCHISE .....	9
WHEN IS AN OL 124 NOT REQUIRED?.....	11
WHO IS AUTHORIZED TO SIGN AN OL 124? .....	11
WHAT STEPS ARE NECESSARY TO ISSUE A NOTICE OF OFF-SITE SALE? .....	11
AFTER PROPER NOTICE OF OFF-SITE SALE TO THE DEALER(S) AND BOARD, UNDER WHAT CIRCUMSTANCES IS THE MARKET “CLEAR” FOR PURPOSES OF PROCEEDING WITH THE OFF-SITE SALE? .....	12
IS A FRANCHISOR REQUIRED TO FILE A COPY OF THE OL 124 WITH THE BOARD AS WELL AS DMV? .....	12
WHAT STEPS CAN BE TAKEN IF THERE IS NOT ENOUGH TIME TO “CLEAR THE MARKET?” .....	12

## TABLE OF CONTENTS, Continued

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WHAT TYPES OF INFORMATION DOES THE BOARD NOT REQUIRE?.....	12
WHAT IS THE IMPACT OF A FAULTY OR DEFECTIVE NOTICE? .....	13
WHAT IS A DELIVERY AND PREPARATION OBLIGATIONS COMPENSATION SCHEDULE? .....	13
WHAT IS A WARRANTY REIMBURSEMENT SCHEDULE OR FORMULA? .....	13
WHAT NOTICES ARE REQUIRED WITH RESPECT TO FACTORY OWNERSHIP OR OPERATION OF A DEALERSHIP WITHIN 10-MILES OF AN INDEPENDENT, FRANCHISED DEALER OF THE SAME LINE-MAKE?.....	14
IF A MANUFACTURER OR DISTRIBUTOR SEEKS TO OWN OR OPERATE A DEALERSHIP IN PREPARATION FOR SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE AND NEEDS TO EXTEND THE STATUTORY ONE-YEAR PERIOD, WHAT STEPS ARE NECESSARY TO REQUEST AN EXTENSION OF TIME (VEH. CODE § 11713.3(O)(2)(A))?.....	14
WHAT STEPS ARE NECESSARY TO FILE A REQUEST FOR AN EXTENSION OF TIME? .....	15
WHAT IS THE PROCEDURE AFTER THE BOARD RECEIVES A TIMELY REQUEST FOR EXTENSION OF TIME? .....	16
WHAT IS THE PROCEDURE IF THE BOARD OBJECTS OR AN IMPACTED DEALER OPPOSES THE REQUEST FOR EXTENSION?.....	16
WHAT NOTICES ARE REQUIRED WITH RESPECT TO FACTORY OWNERSHIP OF A DEALERSHIP AS PART OF A DEALER DEVELOPMENT PROGRAM? .....	16
WHAT IS A MOTOR VEHICLE WARRANTY ADJUSTMENT PROGRAM?.....	17
WHAT IS THE CONSEQUENCE OF FAILING TO FILE OR TO TIMELY FILE A STATUTORILY REQUIRED NOTICE, SCHEDULE, OR FORMULA?.....	17
SAMPLE 15-DAY TERMINATION NOTICE.....	18
SAMPLE 60-DAY TERMINATION OR REFUSAL TO CONTINUE NOTICE.....	19
SAMPLE MODIFICATION NOTICE .....	20
SAMPLE ESTABLISHMENT OR RELOCATION NOTICE .....	21
SAMPLE ESTABLISHMENT OR RELOCATION OF A SATELLITE WARRANTY FACILITY NOTICE.....	22
SAMPLE OFF-SITE SALE NOTICE .....	23
SAMPLE NOTICE OF REQUEST FOR EXTENSION OF TIME.....	24



## INTRODUCTION

This Informational Guide has been prepared to assist manufacturers<sup>1</sup> and distributors in clarifying California's vehicle franchise laws and to familiarize the vehicle industry with the statutorily required notices, schedules, and formulas mandated by the Vehicle Code and Civil Code. The Guide consists of frequently asked questions and answers, and sample notices. It is designed for those factory personnel within a Market Representation Department, Dealer Development Department, or Legal Department.

The laws summarized below pertain to a manufacturer's or distributor's obligation to provide notices, schedules, and formulas mandated by the Vehicle Code and Civil Code, to the New Motor Vehicle Board (Board) and/or impacted dealers. For example, the proper procedure for noticing a termination of a franchise, modification of a franchise agreement, or clearing the market for an off-site sale are covered.

Questions concerning the procedural requirements of filing a notice, schedule, or formula, may be directed to the Board legal staff at (916) 445-1888 or [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov). The Board's website ([www.nmvp.ca.gov](http://www.nmvp.ca.gov)) contains detailed information on the Board and contains links to California statutes and the California Code of Regulations.

## LEGAL DISCLAIMER

The purpose of this Informational Guide is to familiarize the automotive industry with the statutorily required notices, schedules, and formulas mandated by the California Vehicle Code and Civil Code. The information contained herein is intended to be informative and not advisory, is limited in scope, and not intended as legal advice or as a substitute for careful reading of the specific statutes and regulations that may apply to a specific situation.

## QUESTIONS AND ANSWERS

### What Is the New Motor Vehicle Board?

The Board is located within the California Department of Motor Vehicles (DMV) with oversight provided by California State Transportation Agency formerly Business, Transportation & Housing Agency. The Board is a quasi-judicial administrative agency with independent authority to resolve disputes between franchised dealers and manufacturers of new vehicles (includes motorcycles, recreational vehicles, and all-terrain vehicles).<sup>2</sup>

Created in 1967, the Board, originally named the New Car Dealer's Policy and Appeals Board, was limited to hearing appeals<sup>3</sup> from final decisions of the Director of DMV that adversely affected the occupational license of vehicle dealers or manufacturers. Legislation enacted in 1973 gave the Board its present name and implemented the statutory framework that created a forum to resolve disputes in an efficient, fair, and cost-effective manner.

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<sup>1</sup> Throughout this Guide, the terms dealer and franchisee are used interchangeably, as are the terms manufacturer/distributor and franchisor.

<sup>2</sup> Effective January 1, 2004, the recreational vehicle industry, excluding park trailers and truck campers, was added to the list of licensees within the Board's jurisdiction. (See Veh. Code § 3070, et seq.) Since 1994, the Board has had jurisdiction over all-terrain vehicle dealers and manufacturers. Effective January 1, 2005, the all-terrain vehicle industry is licensed by the DMV. The reference contained herein to "vehicle dealer" or "franchisee" includes new motor vehicles, motorcycles, recreational vehicles, and all-terrain vehicles.

<sup>3</sup> Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, ch. 796)

In keeping with its mission, most cases brought to the Board are resolved early in the process. Early dispute resolution improves relations between dealers and manufacturers, and reduces the need for costly, protracted litigation in areas where the Board has developed special expertise. A small number of cases proceed to a formal hearing on the merits of the dispute.

The Board also has a Consumer Mediation Services Program that attempts, through informal mediation, to resolve disputes between consumers and new motor vehicle dealers, and/or manufacturers.

**What Are the Statutorily Required Notices, Schedules, or Formulas?**

The Vehicle Code and Civil Code mandate that franchisors file notices, schedules, and formulas with the Board and/or impacted dealers in the following instances:

<b>TYPE</b>	<b>STATUTE</b>	<b>NOTICE TO BOARD</b>	<b>NOTICE TO DEALER</b>
Franchise Termination or Refusal to Continue (Non-Renewal)	Veh. Code § 3060(a) Veh. Code § 3070(a)	Yes	Yes
Franchise Modification or replacement*	Veh. Code § 3060(b) Veh. Code § 3070(b)	Yes	Yes
Establishment**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Relocation**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Off-Site Sale**	Veh. Code § 3062(c) Veh. Code § 3072(b)(3)	Yes	Yes
Delivery and Preparation Schedule	Veh. Code § 3064 Veh. Code § 3074	Yes	No
Warranty Reimbursement Schedule or Formula	Veh. Code § 3065 Veh. Code § 3075	Yes	No
Factory Ownership**	Veh. Code § 11713.3(o)	Yes	No
Dealer Development	Veh. Code § 11713.3(o)	Yes	No
Motor Vehicle Warranty Adjustment Programs	Civil Code § 1795.92	Yes	Yes

\* The Board and dealer are noticed only if the modification or replacement would “substantially affect the franchisee’s sales or service obligations or investment.”<sup>4</sup>

\*\* Notification is required only if there are dealers of the same line-make within the relevant market area. Vehicle Code section 507 defines relevant market area as “any area within a radius of 10 miles from the site of a potential new dealership.” This has been construed as air miles (“as the crow flies”).

Notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and Section 593.1 of Title 13 of the

<sup>4</sup> Despite the franchisor’s decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language.)

California Code of Regulations. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

### **If a Manufacturer or Distributor Wants to Terminate or Refuse to Continue an Existing Franchise (Non-Renewal), What Must Be Done?**

Vehicle Code sections 3060(a) and 3070(a) provide that no franchisor shall terminate or refuse to continue any existing franchise (non-renewal) unless: (1) the franchisee and the Board have received written notice; (2) if a protest is filed, the Board finds that there is good cause for termination or refusal to continue following a hearing; and (3) the franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has lapsed.

The statute provides for either a 60-day or 15-day notice of termination. The **60-day notice of termination** shall set forth the specific grounds for termination or refusal to continue. The **15-day notice of termination** requires the specific grounds with respect to any of the following:

1. Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.
2. Misrepresentation by the franchisee in applying for the franchise.
3. Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.
4. Any unfair business practice after written warning thereof.
5. 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 DMV.

The statutes are unambiguous concerning the format and content for the notices. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

(To be inserted when a **60-day notice of termination** or refusal to continue 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.**

## What Steps Are Necessary to Issue a Notice of Termination or Refusal to Continue (Non-Renewal)?

Steps Necessary to Issue a Notice of Termination or Refusal to Continue	Completed ✓
Determine if a 15-day or 60-day notice of termination is appropriate. A 60-day notice is appropriate for refusal to continue an existing franchise.	
Draft the appropriate notice being mindful of the statutory language outlined above.	
Specify the grounds for termination or refusal to continue in the notice.	
Send the notice to the dealer whose franchise is being terminated or not continued. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. <sup>5</sup>	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

## After Proper Notice of Termination or Refusal to Continue (Non-Renewal) to the Dealer and Board, Under What Circumstances Can the Dealership Be Terminated?

The dealership can be terminated if:

1. The franchisor has received the written consent of the franchisee; or,
2. The appropriate period for filing a protest has lapsed (10 or 30 days from the dealer's receipt of the notice depending on whether a 15-day or 60-day notice of termination); or,
3. If a protest is filed, the Board finds that there is good cause for termination or refusal to continue following an evidentiary hearing.

## If a Manufacturer or Distributor Wants to Modify a Franchise, What Must Be Done?

Vehicle Code sections 3060(b) and 3070(b) provide that 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.

The notice requirements are like those for terminations. The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

<sup>5</sup> The Board's preference is to receive notices by email (nmvb@nmvb.ca.gov). Alternatively, notices can be sent regular, certified or registered mail to P.O. Box 188680, Sacramento, CA 95818-8680.

**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.**

**What Steps Are Necessary to Issue a Notice of Modification?**

Steps Necessary to Issue a Notice of Modification	Completed ✓
Determine if the modification “substantially affects the dealer’s sales or service obligations or investment.” (See footnote 4.)	
Draft the appropriate notice of modification being mindful of the statutory language outlined above.	
Send the notice to the dealer whose franchise is being modified. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. <sup>6</sup>	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

**If a New Franchise Is to Be Established or an Existing Franchise Relocated, What Must Be Done?**

Vehicle Code sections 3062(a) and 3072(a) provide that 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<sup>7</sup> is represented, or seeks to relocate an existing motor vehicle dealership, 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. If a protest is not filed or has already been resolved, this process is referred to as “clearing the market.”

<sup>6</sup> See Footnote 5.

<sup>7</sup> For motor vehicles other than RVs, “like-make” is not defined in the code. What is or is not a same “line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the DMV as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, the DMV considers a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado, Impala, and Tahoe “lines” or models. For the RV industry which lacks uniformity, the “recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.3.” It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure their makes are registered with DMV.

If a franchisor of new cars, trucks, or motorcycles seeks to enter into a franchise that authorizes a **satellite warranty facility** to be established at, or relocated to, a proposed location which is within two miles of any 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. (Veh. Code 3062(a)(2)) The recreational vehicle statutes do not contain a similar provision concerning satellite warranty facilities.

The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.<sup>8</sup>

**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.**

### **What Are the Exceptions to Vehicle Code Sections 3062 and 3072 Notice Requirements?**

The requirements above, do not apply in the following situations:

1. The relocation of an existing dealer to any location that is **both** within the same city as, and within one (1) mile from, the existing dealership location.
2. The establishment at a location that is **both** within the same city as, and within one-quarter (1/4) mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.
3. Any temporary display of vehicles at a fair, exposition, or similar exhibit that does not exceed 30 days. No actual sales may occur at the temporary location.
4. The reopening of a dealership that has not been in operation for less than one year.

An additional exception pertains to recreational vehicle dealers only: An annual show sponsored by a national trade association of recreation vehicle manufacturers that complies with Vehicle Code section 11713.15(d).<sup>9</sup> For example, the **California RV Pomona** Show sponsored by the Recreation Vehicle Industry Association would be exempt from the Vehicle Code section 3072 notice requirements.

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<sup>8</sup> The last sentence in the "Notice to Dealer" language in Section 3072(a) contains commas as follows: "If, within this time, you file with the board..."

<sup>9</sup> Effective September 19, 2018, subdivision (d) of Vehicle Code section 11713.15 was amended to exempt a recreational vehicle dealer being issued a temporary branch license from the notice requirements if the show is located in a county with a population of 9,000,000 or more persons, or at a location within 30 miles from the prior approved location of the show, and at least 10 manufacturers are participating in the show. (Assembly Bill 2330, Stats. 2018, ch. 537)

## What Steps Are Necessary to Issue a Notice of Establishment or Relocation?

Steps Necessary to Issue a Notice of Establishment or Relocation	Completed ✓
Determine if an exception to Vehicle Code section 3062 or 3072 notice requirements applies.	
Draft the appropriate notice of establishment or relocation being mindful of the statutory language outlined above.	
Identify the proposed location for the establishment or relocation.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. <sup>10</sup>	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

## After Proper Notice of Establishment or Relocation to the Dealer(s) and Board, Under What Circumstances Can the Franchisor Establish the Proposed Dealership or Relocate the Existing Dealership?

The proposed dealership can be established, or an existing dealership relocated if:

1. The appropriate period for filing a protest has lapsed (20 days from the dealer's receipt of the notice or 30 days if an extension of time was granted by the Board); or,
2. If a protest was filed, after an evidentiary hearing before the Board, the protesting dealer is unable to prove good cause not to allow the establishment or relocation.

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<sup>10</sup> See Footnote 5.

## What Is a Notice of Off-Site Sale?

Vehicle Code sections 3062(c) and 3072(b)(3) require that if an “off-site sale” is intended, the franchisor must give notice to all dealers of the same line-make within the relevant market area (10 miles) of the proposed site and the Board. The impacted dealer(s) would have a right to protest the off-site sale.

The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.<sup>11</sup>

**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.**

If there are no dealers of the same line-make within 10 miles of the proposed off-site sale location, notice to the Board is not required.

## What Is a Certificate of Proposed Franchise (OL 124)?

The Certificate of Proposed Franchise (OL 124) notifies DMV that a dealer is authorized to sell a line-make at a particular address. The OL 124 (see sample on pages 9-10) requires that a manufacturer or distributor certify that notice to the Board is not required under Vehicle Code section 3062 or 3072 (for example, “no other franchised dealers of the same line-make within the relevant market area”) or that there are franchised dealers of the same line-make within the relevant market area and notice has been given, but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest.) Even though the **Pemona California RV** Show or other annual trade show sponsored by a national trade association of recreation vehicle manufacturers is exempt from the Vehicle Code section 3072 notice requirements (see page 6), an OL-124 form must be issued by the manufacturer to each dealer participating in the show.

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<sup>11</sup> The last sentence in the “Notice to Dealer” language in Section 3072(a) contains commas as follows: “If, within this time, you file with the board...”





LICENSING OPERATIONS DIVISION  
CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY	
OCCUPATIONAL LICENSING NUMBER	

**Instructions:**

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will **NOT** be accepted if modified or altered and must contain an original signature.

The location is a  Permanent Location  
 Temporary Branch Location (must be 30 days or less)

Date(s) of Event: From: \_\_\_\_\_ To: \_\_\_\_\_

I/We

MANUFACTURER/DISTRIBUTOR NAME	LICENSE NUMBER

hereby certify that:

- Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers of the same line-make located within the relevant market area.
- Written notification has been provided to the Board and each franchisee of this line-make of the franchisor's intent to enter into a franchise establishing an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest). (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S)

DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE) DEALER LICENSE NUMBER (IF APPLICABLE)

ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE) CITY STATE ZIP CODE

AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE) DATE

**X**

PRINT OR TYPE NAME OWNER OR REPRESENTATIVE LICENSE NUMBER

**CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072\*, state in part:**

**Establishing or Relocating Dealerships**

3062. (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 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.

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

- (1) The relocation of an existing dealership to a 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. ...

(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. ...

\*Section 3072, pertaining to recreational vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational vehicle manufacturers and distributors are encouraged to review the entire California Vehicle Code Section.



## OL-124, CERTIFICATE OF PROPOSED FRANCHISE

Applicable to New Motor Vehicles, Motorcycles, All-Terrain Vehicle and Recreational Vehicles as defined by Health and Safety Code Section 18010 (a)

TYPE TRANSACTION	OL-124 NOT REQUIRED	OL-124 PURSUANT TO CVC 11704	BOARD/MARKET AREA FRANCHISE NOTICE NOT REQUIRED	BOARD/MARKET AREA FRANCHISE NOTICE REQUIRED
1. New license (Buy/Sell) of a currently occupied location (Main or branch location; application)		X		X
2. New location - Not currently occupied, except as exempt pursuant to CVC 3062(b), 3072(b). See #9, #10, and #11		X		X
3. Change of Business Name		X		X
4. Adding a Make Distinctive Business Name		X - For new Make		X
4a. Adding a Non-Make Distinctive Business	X			
5. Change of Corporate Name/LLC or LLP Name		X		X
6. Change of Corporate Officers/LLC or LLP Manager	X			
7. Change of Address (Postal Service change - no physical movement of location)		X - Formerly known as prior address		X
8. Change of Address (New location is beyond 1 mile of current licensed location)		X		X
9. Change of Address (New location is within 1 mile of current licensed location and within the same city)		X		X
9a. Change of Address (New location is within 1 mile of current licensed location and within a different city)		X		X
10. Establishing location within the same city, within 1/4 mile of a location that has been out of operation for less than 90 days		X		X
11. Reopening a location that has not been in operation for less than one year		X - Or copy of prior OL-124		X
11a. Reopening a location that has not been in operation for one year or more		X		X
12. Temporary Branch locations - Display only with no sales activity that does not exceed 30 days	X - No application required			X
12a. Temporary Branch locations - Display only with no sales activity but display exceeds 30 days	X - No application required			X
13. Temporary Branch locations with sales activity on site and other same line-make dealers within RMA		X		X
13a. Temporary Branch locations with sales activity on site and no other same line-make dealers within RMA		X		X
14. Addition of a line-make to an existing established location and other same line-make dealers within RMA		X		X
14a. Addition of a line-make to an existing established location and there are no other same line-make dealers within RMA		X		X
15. Renewal of License (Application must be submitted no later than 30 days after license expiration date)	X			
16. Establishing or Relocating Satellite Warranty facility more than 2 miles from a same line-make dealer	X - No application required			X
16a. Establishing or Relocating Satellite Warranty facility within 2 miles of a same line-make dealer	X - No application required			X

**Additional Information:**

- 1) The OL-124 must reflect the business name and address as it appears on the corresponding application for an Occupational License.
- 2) The dealer is responsible for submitting the OL-124 with an appropriate application to an Occupational Licensing Inspection's Office.
- 3) The OL-124 must be signed by an owner of the Manufacturer/Distributor on file with Occupational Licensing or a licensed Representative.
- 4) Relevant Market Area pursuant to California Vehicle Code Section 507, is any area within a radius of 10 miles from the site of a potential new dealership.
- 5) The powers and duties of the New Motor Vehicle Board are defined in Division 2, Chapter 6, of the California Vehicle Code.

**APPLICANT SHOULD RETAIN THIS PAGE FOR THEIR INFORMATION.  
DO NOT SUBMIT WITH APPLICATION.**

## When Is an OL 124 Not Required?

An OL 124 is not required for a temporary display of vehicles at a fair, exposition or similar exhibit, if no actual sales are made at those events and the display does not exceed 30 days.

## Who Is Authorized to Sign an OL 124?

A licensed representative or an owner, as reflected in DMV records, of the manufacturer/distributor must sign the OL 124. Vehicle Code section 512 defines a representative as “any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer’s or distributor’s vehicles to their franchisees or for regularly supervising or contacting franchisees or prospective franchisees” in California for any purpose. Vehicle Code section 11900, et seq. pertains to the licensing of representatives.

For additional information concerning the DMV Occupational Licensing requirements, please contact your local DMV Occupational Licensing Inspections office or Occupational Licensing at (916) 229-3153.

## What Steps Are Necessary to Issue a Notice of Off-Site Sale?

Steps Necessary to Issue a Notice of Off-Site Sale	Completed ✓
Determine if an exception to the Vehicle Code section 3062 or 3072 notice requirements applies (e.g., temporary off-site display or Annual National RV Trade Show).	
Identify the proposed location for the off-site sale.	
Draft the appropriate notice of off-site sale being mindful of the statutory language outlined above.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. <sup>12</sup>	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

<sup>12</sup> See Footnote 5.

## **After Proper Notice of Off-Site Sale to the Dealer(s) and Board, Under What Circumstances Is the Market “Clear” for Purposes of Proceeding with the Off-Site Sale?**

The proposed off-site sale can go forward and an OL 124 filed with DMV if the appropriate period for filing a protest has lapsed (20 days from the dealer’s receipt of the notice or 30 days if an extension of time was granted by the Board). The filing of a protest of a proposed off-site sale results in the sale not going forward.

## **Is a Franchisor Required to File a Copy of the OL 124 with the Board as Well as DMV?**

A franchisor is not required to file a copy of the OL 124 with the Board. However, if it is filed, as a courtesy, it will be reviewed for completeness. Please ensure that the appropriate box on the OL 124 form is checked, i.e., notice to the Board is not required or there are franchised dealers of the same line-make within the relevant market area that were noticed but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest).

## **What Steps Can Be Taken If There Is Not Enough Time to “Clear the Market?”**

The statutorily required notice should be sent to the impacted dealers with sufficient time to “clear the market.” Generally, this is not a problem when a franchisor clears the market for an establishment or relocation of a dealership. However, for an off-site sale, the impacted dealers have 20 days to file a protest and may request a 10-day extension upon a showing of good cause. In the event a dealer requests permission to participate in an off-site sale and there is not sufficient time to clear the market, all impacted dealers, i.e., those of the same line-make within the relevant market area, may file a protest with the Board and simultaneously file a request for dismissal of the protest. Unless a request for a fee waiver is received and approved, a \$200.00 filing fee is required. Detailed information concerning a fee waiver can be obtained from the Board legal staff at (916) 445-1888.

## **What Types of Information Does the Board Not Require?**

There are a number of manufacturers and distributors that submit OL 124 forms and correspondence to the Board that are not necessary. The Board does not need to be informed if a dealer does any of the following:

1. Changes name of dealership, dba, or corporation;
2. Changes the ownership structure;
3. Voluntarily terminates;
4. Transfers its ownership interest to another entity;
5. Relocates to another location if no other dealers of the same line-make are within the relevant market area;
6. Is established as a new franchisee if no other dealers of the same line-make are within the relevant market area;
7. Participates in an off-site sale of used vehicles;
8. Participates in an off-site display of vehicles for less than 30 days;
9. Participates in an off-site sale of new vehicles and no other dealers of the same line-make are within the relevant market area.

However, the DMV Inspectors will require this information. If you are not sure, contact your local Inspector for guidance.

## What Is the Impact of a Faulty or Defective Notice?

Providing a timely and accurate notice gives a manufacturer or distributor the ability to quickly finalize its intended action, i.e., termination, modification, establishment, and so on. In the event a notice does not comply with the statute, the Board legal staff may contact the franchisor and offer suggestions to correct the notice. However, the faulty notice may delay the proposed action.

The purpose of a notice is to start the statutory time period in which an aggrieved dealer has to protest its franchisor's intended action. When the notice is not in compliance, the time to file the protest does not commence.<sup>13</sup> The First Appellate District Court (*British Motor Car Distributors, Ltd., d/b/a Maserati Import Company v. New Motor Vehicle Board; British Motors of Monterey, Inc., Real Party in Interest* (1987) 194 Cal.App.3d 81, 91-94) held that the limitations period of Vehicle Code section 3060 is expressly dependent upon the franchisor first complying with the notice provisions and any other interpretation would reward franchisors who send out defective notices. Even if a manufacturer or distributor never provides proper notice to the Board or franchisee, the lack of notice does not prevent the Board from exercising its powers to resolve disputes between franchisees and franchisors.

## What Is a Delivery and Preparation Obligations Compensation Schedule?

Manufacturers and distributors typically reimburse their dealers for preparing the new vehicles for delivery to purchasers. Vehicle Code sections 3064 and 3074 provide that every franchisor **shall** file with the Board a copy of their delivery and preparation obligations, as well as a schedule of compensation to be paid franchisees for the work and services they are required to perform in connection with the delivery and preparation obligations.

The statute does not specify when or how often the compensation schedule should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor are required to file a current copy of their delivery and preparation obligations (PDI) and PDI schedule of compensation with the Board once every three years or whenever there are changes to the information. Please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act. (Gov. Code § 6250, et seq.)

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

## What Is a Warranty Reimbursement Schedule or Formula?

Manufacturers and distributors typically reimburse dealers for warranty repairs at a pre-established rate. Vehicle Code sections 3065 and 3075 provides that every franchisor **shall** file a copy of its warranty reimbursement schedule or formula with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics,<sup>14</sup> repair, service, and all other conditions of

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<sup>13</sup> If a dealer waits an unreasonable period to file a protest when it was put on notice, even though the notice did not comply, an Administrative Law Judge may take equitable defenses into consideration when faced with a motion to reject a protest for timeliness. This would be a factual determination made by an Administrative Law Judge and would be outside the purview of information provided by the Board legal staff.

<sup>14</sup> The requirement pertaining to diagnostics only applies to Vehicle Code section 3065. Senate Bill 155 (Stats. 2013, ch. 512) was effective January 1, 2014. It made many substantive changes to the provisions pertaining to warranty claims

the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair.<sup>15</sup> **Vehicle Code section 3075 provides that every recreational vehicle franchisor shall file a copy of its warranty reimbursement schedule or formula with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty and all other conditions of the obligation.**

The statute does not specify when or how often the warranty reimbursement schedule or formula should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor are required to file a current copy of their warranty reimbursement schedule or formula with the Board once every three years or whenever there are changes to the information. As indicated above, please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act.

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

### **What Notices Are Required with Respect to Factory Ownership or Operation of a Dealership Within 10-Miles of an Independent, Franchised Dealer of the Same Line-Make?**

Vehicle Code section 11713.3(o) clarifies the limited circumstances in which a manufacturer or distributor may operate or control a dealership within 10 miles of an independent, franchised dealer of the same line-make. Specifically, a manufacturer or distributor is not deemed to be competing with an independent, franchised dealer when: (1) owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months [Part A or Veh. Code § 11713.3(o)(2)(A)]; and, (2) owning an interest in a dealer as part of a bona fide dealer development program that satisfies certain requirements [Part B or Veh. Code § 11713.3(o)(2)(B)]. There are several instances in which a manufacturer or distributor may be required to file a statutory notice with the Board.

Under Part A every manufacturer, branch, and distributor that temporarily owns or operates a dealership is required to give written notice to the Board, **within 10 days**, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

### **If a Manufacturer or Distributor Seeks to Own or Operate a Dealership in Preparation for Sale to a Successor Independent Franchisee and Needs to Extend The Statutory One-Year Period, What Steps Are Necessary to Request an Extension of Time (Veh. Code § 11713.3(o)(2)(A))?**

Vehicle Code section 11713.3(o)(2)(A) provides that after a showing of good cause by a manufacturer or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the Board may extend (beyond one year) the time period. The Board regulation (Section 565 of Title 13 of the California Code of Regulations, hereinafter 13 CCR § 565) establishes the timeframe and procedure for filing a request for an extension of the one-year time period in Part A.

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(Veh. Code § 3065) that only impact Article 4 protests (motor vehicles other than RVs such as cars, motorcycles, ATVs, and heavy duty trucks) and not Article 5 RV protests (Veh. Code § 3075).

<sup>15</sup> This requirement pertaining to costs directly associated with the disposal of hazardous materials associated with a recall repair only applies to Vehicle Code section 3065 (Assembly Bill 287, Stats. 2016, ch. 682). It does not apply to Article 5 recreational vehicle protests.

The manufacturer or distributor is required to give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area, i.e., an impacted dealer.

The written notice is required to meet a prescribed format that is like other statutorily required notices in the Vehicle Code. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text. (13 CCR § 565(c))

**NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.**

Upon receipt of a request for extension of time, the Board will notify each franchisee of the same line-make within the relevant market area, that a timely request has been received, that the franchisee has the opportunity to send a letter to the Board opposing the request and have that opposition considered by the Board at its next scheduled meeting, and that the status quo will be maintained until the Board acts upon the request for extension. (13 CCR § 565(d))

**What Steps Are Necessary to File a Request for an Extension of Time?**

Steps Necessary to File a Request for Extension of Time	Completed ✓
Sixty days prior to the expiration of the one-year period, the manufacturer or distributor shall give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area. (13 CCR § 565(b) and (l))	
A list of all franchisees operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(1))	
A statement of facts detailing the specific need for the extension of time shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(2))	
The requested expiration date of the extension shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(3))	
A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(4))	
A statement to the effect that the information required in 13 CCR § 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565 (g)(5))	
A statement that the requesting party does or does not agree that the dealer members of the Board may participate in the consideration of the request shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(6))	

Requests that are not timely received will not be considered by the Board and will be deemed denied.

### **What is the Procedure after the Board Receives a Timely Request for Extension of Time?**

Upon the timely filing of a request for extension, a copy of the request is forwarded to the members of the Board. Unless the manufacturer or distributor consents to dealer member participation (13 CCR § 565(g)(6)), the matter is considered by the public members only.<sup>16</sup>

In determining whether good cause has been shown for granting the request for an extension of time, the Board shall take into consideration the existing circumstances, the written request, written responses in opposition to the request, and comments of interested parties. (13 CCR § 565(e)(1)-(3))

The members of the Board have 30 days from receipt of the request for extension to review it. Any time during the 30-day period, a Board member objection to the request can be lodged with the Executive Director. Within 20 days of receiving the notice, any franchisee required to be given notice may file an opposition to the request for an extension of time. (13 CCR § 565(m)) If there have been no timely objections to the request for extension by the members of the Board and no timely oppositions by impacted dealers have been received, then the Executive Director shall grant the extension. (13 CCR § 565(h)) The granting of the extension occurs without the requirement of a noticed Board meeting.

### **What is the Procedure if the Board Objects or an Impacted Dealer Opposes the Request for Extension?**

In the event of a timely notice of objection to the request for extension by a member of the Board and/or a timely opposition by an impacted dealer has been received, the matter shall be considered by the Board at its next scheduled meeting. (13 CCR § 565(i)) The Executive Director notifies the manufacturer or distributor that the matter will be considered by the Board at its next scheduled meeting and that the status quo will be maintained until the Board acts upon the request. The manufacturer and impacted dealer(s), if any, shall be given at least 10 days notice of the time, date, and location of the Board meeting at which the request will be considered. (13 CCR § 565(j)) The Board meets approximately every 6-to-8 weeks. However, if necessary, a Special Board meeting could be scheduled. Depending on the location of the parties, the meeting could be held in Sacramento, San Francisco, or Los Angeles.<sup>17</sup>

### **What Notices Are Required with Respect to Factory Ownership of a Dealership as Part of a Dealer Development Program?**

Under Part B of Vehicle Code section 11713.3(o) (see discussion on page 14), every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined is required to give written notice to the Board, **annually**, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

The statute does not specify when the annual notice should be sent to the Board. Every January, the Board staff remind the industry of this obligation.

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<sup>16</sup> The Board consists of nine members. Four members are licensed new motor vehicle dealers and five members are from the general public. In most instances, dealer members are precluded from participating in matters involving disputes between a dealer and manufacturer or distributor. In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless a dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

<sup>17</sup> Currently, Board meetings are being conducted by Zoom and teleconference.



## **What Is a Motor Vehicle Warranty Adjustment Program?**

Manufacturers and distributors occasionally establish a motor vehicle warranty adjustment program (“hidden warranties.”) Civil Code section 1795.92 provides that “[a] manufacturer **shall**, within 90 days of the adoption of an adjustment program,<sup>18</sup> subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program.” (Emphasis added.) Copies of all notices mailed shall be sent to the Board. (Civil Code § 1795.92(b)) **The Board’s preference is to receive these notices by email at [nm vb@nm vb.ca.gov](mailto:nm vb@nm vb.ca.gov).**

## **What Is the Consequence of Failing to File or to Timely File a Statutorily Required Notice, Schedule, or Formula?**

Vehicle Code section 3050(b)(3) gives the Board power to “[o]rder the department [DMV] to exercise any and all authority or power that the department [DMV] 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.” (See 13 CCR § 593.3) Depending on the facts and circumstances in a particular case, the Board may exercise this power for inadequate filing of statutorily required notices.

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<sup>18</sup> Civil Code section 1795.90 defines “adjustment program” as “any program or policy that expands or extends the consumer’s warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign. ‘Adjustment program’ does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.”

## Sample 15-Day Termination Notice

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: 15-Day Notice of Termination (Veh. Code §§ 3060(a) or 3070(a))

**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.**

Dear \_\_\_\_\_:

Identify the specific reasons for seeking termination of the franchise set forth in California Vehicle Code section 3060(a)(1)(B) or 3070(a)(1)(B).

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Sincerely,

\_\_\_\_\_  
Manufacturer/Distributor

cc: New Motor Vehicle Board

*This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.*

## Sample 60-Day Termination or Refusal to Continue Notice

Date

Name of Manufacturer/Distributor  
Address

Name of Impacted Dealer  
Address

Re: 60-Day Notice of Termination or Refusal to Continue  
(Veh. Code §§ 3060(a) or 3070(a))

**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.**

Dear \_\_\_\_\_:

Identify the reasons for terminating or refusing to continue the franchise.

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Sincerely,

\_\_\_\_\_  
Manufacturer/Distributor

cc: New Motor Vehicle Board

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## Sample Modification Notice

Date

Name of Manufacturer/Distributor  
Address

Name of Impacted Dealer  
Address

Re: 60-Day Notice of Modification (Veh. Code §§ 3060(b) or 3070(b))

**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.**

Dear \_\_\_\_\_:

Detail information pertaining to the proposed modification or replacement of the franchise agreement.

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Sincerely,

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Manufacturer/Distributor

cc: New Motor Vehicle Board

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## Sample Establishment or Relocation Notice

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Establishment or Relocation (Veh. Code §§ 3062(a)(1) or 3072(a)(1))<sup>1</sup>

**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.**

Dear \_\_\_\_\_:

Designate the location of the site for the proposed establishment of a new dealership, or relocation of an existing dealership, where there is already an existing dealership of the same line-make within the “relevant market area” (that area within a radius of 10 miles of the proposed location.)

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Sincerely,

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Manufacturer/Distributor

cc: New Motor Vehicle Board

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<sup>1</sup> The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

# Sample Establishment or Relocation of a Satellite Warranty Facility Notice

Date

Name of Manufacturer/Distributor  
Address

Name of Impacted Dealer  
Address

Re: Notice of Establishment or Relocation of a Satellite Warranty Facility (Veh. Code § 3062(a)(2))

**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.**

Dear \_\_\_\_\_:

Designate the location of the site for the proposed establishment of a new satellite warranty facility or relocation of an existing satellite warranty facility that is within two miles of any dealership of the same line-make.

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Sincerely,

\_\_\_\_\_  
Manufacturer/Distributor

cc: New Motor Vehicle Board

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## Sample Off-Site Sale Notice

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Off-Site Sale (Veh. Code §§ 3062(c) or 3072(b)(3))<sup>1</sup>

**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.**

Dear \_\_\_\_\_:

Detail information pertaining to the proposed off-site sale where there is an existing dealership of the same line-make within a radius of 10 miles of the location proposed for the off-site sale.<sup>2</sup>

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Sincerely,

\_\_\_\_\_  
Manufacturer/Distributor

cc: New Motor Vehicle Board

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<sup>1</sup> The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

<sup>2</sup> For recreational vehicles, the **Pomona California RV Show** sponsored by the Recreation Vehicle Industry Association is exempt from the 3072 notice requirements.

## Sample Notice of Request for Extension of Time

Date

Name of Manufacturer/Distributor  
Address

Name of Impacted Dealer  
Address

Re: Notice of Request for Extension of Time (Veh. Code § 11713.3(o) and 13 CCR § 565)

**NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.**

Dear \_\_\_\_\_:

Detail information pertaining to the request for extension of time for good cause shown, including, but not limited to, the following:

A list of all franchisees operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(1)).

A statement of facts detailing the specific need for the extension of time (13 CCR § 565(g)(2)).

The requested expiration date of the extension (13 CCR § 565(g)(3)).

A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee (13 CCR § 565(g)(4)).

A statement to the effect that the information required in Title 13 of the California Code of Regulations section 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(5)).

A statement that the requesting party does or does not agree that the dealer members of the Board may participate in the consideration of the request (13 CCR § 565(g)(6)).

Sincerely,

\_\_\_\_\_  
Manufacturer/Distributor

cc: New Motor Vehicle Board

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STATE OF CALIFORNIA

# MEMO



**TO:** POLICY AND PROCEDURE COMMITTEE      **Date:** January 7, 2021  
DANIEL KUHNERT, CHAIR  
INDER DOSANJH, MEMBER

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

**Subject:** CONSIDERATION OF 2021 RULEMAKING CALENDAR

Government Code section 11017.6 requires that every state agency prepare a rulemaking calendar that identifies proposed regulations implementing statutes enacted during the year 2020 and prior to the year 2020. The rulemaking calendar (Attachment 1) is submitted for approval to the Board members, California State Transportation Agency, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law. The text of proposed regulations to be promulgated in 2021 is reflected in Attachment 2.

This matter is being agendized for consideration at the February 16, 2021, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Danielle at (916) 327-3129.

Attachments

cc: Kathryn E. Doi, President

**New Motor Vehicle Board  
2021 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR  
TO THE YEAR 2020**

**Subjects:**

- 1. Case Management**
- 2. Protests and Petitions**

**California Code of Regulations Title and Sections Affected: Title 13, Sections 550, 551.8, 551.12, 553.40, 556, 558, 586, 586.5 and 590.**

**Statute(s) Being Implemented: Vehicle Code sections 3065.3, 3065.4, 3085 and 3085.2**

**Responsible Agency Unit: New Motor Vehicle Board**

**Contact Person and Phone Number: Danielle R. Phomsopha (916) 327-3129**

**Projected Notice Publication Date: February 2021**

**Projected Public Hearing Date: To be determined**

**Projected Adoption by Your Agency Date: June 2021**

**Projected To OAL for Review Date: August 2021**

**Report on the Status of all Uncompleted Rulemaking Described on Previous Calendars: Title 13, Sections 550, 551.8, 551.12, 553.40, 586 and 590 were previously reported on the 2020 Rulemaking Calendar. Due to pandemic delays, they will be noticed in February as indicated above.**

## **PROPOSED REGULATIONS: SUBSTANTIVE**

### **§ 550. Definitions.**

For the purposes of these regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 553.40. Filing Fees.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





**MEMO**

**TO: POLICY AND PROCEDURE COMMITTEE      Date: January 7, 2021**  
**DANIEL KUHNERT, CHAIR**  
**INDER DOSANJH, MEMBER**

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

**Subject: ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD**  
**ADMINISTRATIVE LAW JUDGES**

The Board currently has seven Administrative Law Judges (Judge) appointed to preside over matters. The table below represents the assignments of each Judge, as designated by the Board, and the matters that were heard by each Judge in 2020.<sup>1</sup>

JUDGE	CURRENT ASSIGNMENT	#CASES PRESIDED OVER IN 2020
Matteucci	<ul style="list-style-type: none"> <li>▪ Presides over Merits Hearings in rotation.</li> <li>▪ Presides over Law and Motion Hearings in rotation.</li> <li>▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>0</u> Merits Hearing</li> <li>▪ <u>0</u> Law and Motion Hearings</li> <li>▪ <u>1</u><sup>2</sup> Discovery Hearings</li> </ul>
Nelsen	<ul style="list-style-type: none"> <li>▪ Presides over Merits Hearings in rotation.</li> <li>▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>0</u> Merits Hearings</li> <li>▪ <u>0</u> Law and Motion Hearings</li> <li>▪ <u>0</u> Discovery Hearings</li> </ul>

<sup>1</sup> The hearings and conferences are counted by the case; not by the occurrence. For example, if the hearing of a Motion to Dismiss was resumed three times, only a single hearing is counted. Similarly, if six protests were consolidated for purposes of a single hearing for Ruling on Objections, the single hearing is counted. In addition, Pre-Hearing Law and Motion in relation to a merits hearing is not counted separately.

<sup>2</sup> Judge Matteucci presided over a discovery hearing in connection with a Stipulated Decision and Order which she has been assigned.

JUDGE	CURRENT ASSIGNMENT	#CASES PRESIDED OVER IN 2020
Parker	<ul style="list-style-type: none"> <li>▪ Presides over Law and Motion Hearings (as needed on a back-up basis).</li> <li>▪ Presides over Discovery Hearings (as needed on a back-up basis).</li> <li>▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>0</u> Law and Motion Hearings</li> <li>▪ <u>0</u> Discovery Hearings</li> <li>▪ <u>0</u> Mandatory Settlement Conferences</li> </ul>
Pipkin	<ul style="list-style-type: none"> <li>▪ Presides over Merits Hearings in rotation.</li> <li>▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>0</u> Merits Hearings</li> <li>▪ <u>0</u> Law and Motion Hearings</li> <li>▪ <u>0</u> Discovery Hearings</li> <li>▪ <u>0</u> Mandatory Settlement Conferences</li> </ul>
Skrocki	<ul style="list-style-type: none"> <li>▪ Presides over all Law and Motion.</li> <li>▪ Presides over all Discovery Hearings.</li> <li>▪ Presides over Procedural Matters as needed.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>9</u> Law and Motion Hearings</li> <li>▪ <u>6</u> Discovery Hearings</li> </ul>
Smith <sup>3</sup>	<ul style="list-style-type: none"> <li>▪ Presides over Merits Hearings in rotation.</li> <li>▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>0</u> Merits Hearing</li> <li>▪ <u>0</u> Law and Motion Hearing</li> <li>▪ <u>0</u> Discovery Hearings</li> <li>▪ <u>0</u> Mandatory Settlement Conferences</li> </ul>
Wong <sup>4</sup>	<ul style="list-style-type: none"> <li>▪ Presides over Mandatory Settlement Conferences.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>7</u> Mandatory Settlement Conferences</li> </ul>
Woodward-Hagle	<ul style="list-style-type: none"> <li>▪ Presides over Merits Hearings in rotation.</li> <li>▪ Presides over Law and Motion Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Discovery Hearings in rotation (as needed on a back-up basis).</li> <li>▪ Presides over Mandatory Settlement Conferences (as needed on a back-up basis).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <u>1</u> Merits Hearing</li> <li>▪ <u>0</u> Law and Motion Hearing</li> <li>▪ <u>0</u> Discovery Hearings</li> <li>▪ <u>0</u> Mandatory Settlement Conferences</li> </ul>

<sup>3</sup> Judge Smith has not yet been added to the rotation to preside over matters since he is still completing training.

<sup>4</sup> At the June 28, 2016, General Meeting, Marilyn Wong was temporarily designated the Mandatory Settlement Conference ALJ. At the November 7, 2017, General Meeting, Judge Wong was designated as the permanent Mandatory Settlement Conference ALJ.

Hearing Type	2020 Total
Law and Motion	9
Discovery	7
Mandatory Settlement Conference	7
Merit Hearings	1
Merit Hearing Days	2

This matter is for information only at the February 16, 2021, General Meeting.

If you have any question or require additional information, please contact me at (916) 445-1888 or Danielle at (916) 327-3129.

cc: Kathryn E. Doi, President

**STATE OF CALIFORNIA**



**MEMO**

**To:** POLICY AND PROCEDURE COMMITTEE      **Date:** February 1, 2021  
DANIEL KUHNERT, CHAIR  
INDER DOSANJH, MEMBER

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

**Subject:** CONSIDERATION OF PROPOSED REGULATION AMENDING THE  
BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE  
13 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code section 87300, “[e]very agency shall adopt and promulgate a Conflict of Interest Code...” Additionally, each state entity is required to review its Conflict of Interest Code every odd-numbered year to ensure it remains current and accurate.

Board staff have reviewed the Board’s Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations. “Appendix A – Designated Positions” needs to be updated to reflect Dawn Kindel’s promotion to Staff Services Manager II. The changes are highlighted yellow on unnumbered page two of the attachment. Preliminary review as required by the Fair Political Practices Commission is pending.

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

This matter is being agendized for discussion and consideration at the February 16, 2021, General Meeting. If you have any questions or require additional information, please do not hesitate to contact us at (916) 445-1888.

Attachment

cc: Kathryn E. Doi, President

**CONFLICT OF INTEREST CODE**

**NEW MOTOR VEHICLE BOARD**

The Political Reform Act (Gov. Code, § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation that contains the terms of a standard conflict of interest code that can be incorporated by reference in an agency's code. (Cal. Code Regs., tit. 2, § 18700) After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and disclosure categories, constitute the conflict of interest code of the New Motor Vehicle Board (Board).

Board Members and the Executive Director electronically file their statements of economic interests with the Fair Political Practices Commission; the Board does not retain a copy. Individuals holding any other designated position shall file statements of economic interests directly with the Board.

Authority cited: Section 3050(a), Vehicle Code; Sections 87300, 87304 and 87306, Government Code. Reference: Section 81000, et seq., Government Code.

CONFLICT OF INTEREST CODE  
NEW MOTOR VEHICLE BOARD

APPENDIX A – DESIGNATED POSITIONS

Designated Positions	Assigned Disclosure Category
<u>EXECUTIVE DIVISION</u>	
Board Member	1
Executive Director	1
<u>LEGAL DIVISION</u>	
Administrative Law Judge (all levels)	1
Attorney (all levels)	1
Staff Services Manager <b>† II</b>	1
Staff Services Analyst	1
Associate Governmental Program Analyst	1
Consultant/New Position	*

\* Consultants and new positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitations:

The Executive Director may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Director is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code, § 81008) Nothing herein excuses any such consultant from any other provision of the conflict of interest code.

## APPENDIX B-DISCLOSURE CATEGORY

### Category 1

Designated positions assigned to this category must report:

- (a) Income, including receipt of gifts, loans, and travel payments, received during the reporting period from an individual or entity which the designated position knows or has reason to know is:
  - (1) Any licensee subject to the jurisdiction of the New Motor Vehicle Board pursuant to Vehicle Code section 3050, et seq.;
  - (2) An applicant to the Board who has or has had during the filing period any proceeding pending before the Board;
  - (3) A party contracting with the Board or engaged in the performance of work or services of the type utilized by the Board including, the provision of goods, services, office space or realty.
- (b) Investments held during the reporting period in any business entity, which the designated position knows or has reason to know is described in parts (1), (2) or (3) of subsection (a).
- (c) The fact that the designated position, during the reporting period was a director, officer, partner, trustee, employee or held any position of management in a business entity the designated position knows or has reason to know is described in parts (1), (2) or (3) of subsection (a).



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***February 16, 2021***



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

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b><u>1. Revision of the Board's Policy Concerning the In-Site, a Periodic Newsletter</u></b> Tim Corcoran; Administration Committee	Since 1999, the Board has published The In-Site newsletter in order to advise dealers, manufacturers/distributors, and other interested parties about its activities, cases, and decisions. Given the availability of this information on the Board's website, the small number of entities on the public mailing list, and the limited number of staff, it may be time to retire the In-Site to better focus on other projects.	February 2021	In progress. This will be discussed at the February 16, 2021 General Meeting.
<b><u>2. Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2021	In progress. The revised Guide will be presented at the February 16, 2021 General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b><u>Schedule Board Member Education Presentations</u></b> Danielle Phomsopha; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings	November 2020	<u>Completed</u> This was discussed at the November 4, 2020, General Meeting.
<b>FISCAL COMMITTEE</b>			
<b><u>1. Quarterly Financial Reports</u></b> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<b><u>2. Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2020-2021.	February 2021	In progress. A report will be presented at the February 16, 2021 General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>3. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	June 2021	In progress. A status report will be provided at the June 2021 General Meeting.
<b>4. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed Budget for fiscal year 2021-2022.	June 2021	In progress. The 2021-2022 Budget will be presented for consideration at the June 2021 General Meeting.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>1. <u>Host Industry Roundtable</u></b> Tim Corcoran, Dawn Kindel, Danielle Phomsopha; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/ distributors, dealers, in-house and outside counsel, associations and other government entities.	TBD 2021	In progress. The staff working on the 2021 Roundtable.
<b>LEGISLATIVE COMMITTEE</b>			
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b>1. <u>Annual Rulemaking Calendar</u></b> Danielle Phomsopha; Policy and Procedure Committee	Consideration of the annual rulemaking calendar.	February 2021	In progress. The 2021 Rulemaking Calendar will be considered at the February 16, 2021, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2021	In progress. The updated Guide will be at the February 16, 2021, General Meeting.
<b>3. <u>Update the Export or Sale-For-Resale Prohibition Policy Guide</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	February 2021	In progress. The Guide will be considered at the February 16, 2021, General Meeting.
<b>4. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Danielle Phomsopha; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).	February 2021	In progress. A report on the assignment of cases to Board ALJs will be presented at the February 16, 2021, General Meeting.
<b>5. <u>Draft Proposed Regulation that Amends the Board’s Conflict of Interest Code</u></b> Robin Parker, Danielle Phomsopha; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend the Board’s Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations. Staff identified language that needs to be updated to reflect Dawn Kindel’s promotion to a Staff Services Manger II.	February 2021	In progress. The proposed regulations will be considered at the February 16, 2021, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><b>6. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u></b> Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>New Motor Vehicle Board Administrative Law Judge’s Benchbook</i>.</p>	<p>April 2021</p>	<p>In progress. The revised ALJ Benchbook will be considered at the April 8, 2021, General Meeting.</p>
<p><b>7. <u>Promulgate Substantive Amendments to Regulations that Pertain to Assembly Bill 179 and Petitions</u></b> Danielle Phomsopha; Policy and Procedure Committee</p>	<p>In compliance with the Administrative Procedure Act, amend the Board’s regulations to implement several substantive regulations as a result of the passage of Assembly Bill 179 (Ch. 796, effective January 1, 2020). Clarify that the petitioner can file declarations or other evidence or documents that support the petition and that exhibits may be submitted by declaration in Respondent’s answer to a petition.</p>	<p>July 2021</p>	<p>In progress. The Board approved the text at the December 2, 2019, and March 5, 2020, General Meetings.</p>
<p><b><u>Revised Parliamentary Procedures</u></b> Robin Parker; Policy and Procedure Committee</p>	<p>Amend Board adopted Parliamentary Procedures to reflect that appeals were repealed effective January 1, 2020.</p>	<p>November 2020</p>	<p><u>Completed</u> The Board approved the proposed changes at the November 4, 2020, General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>EXECUTIVE COMMITTEE</b>			
<p><b>1. <u>Review and Consideration of Board Adopted Delegations</u></b> Robin Parker; Executive Committee</p>	<p>At the March 18, 1997, General Meeting, the Board adopted the former Budget and Finance Committee’s analysis of the duties of the Board Members and staff in compliance with the 1996 Performance Audit conducted by Business, Transportation &amp; Housing Agency. These delegations are reviewed by the staff, and amendments are considered as needed by the Board.</p>	<p>February 2021</p>	<p>In progress. This matter is being agendized for consideration at the February 16, 2021, General Meeting.</p>
<b>AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION</b>			
<p><b>1. <u>Develop Strategies for Board Consideration</u></b> Tim Corcoran; Ad Hoc Committee</p>	<p>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.</p>	<p>Ongoing</p>	<p>In progress. At the February 16, 2021, General Meeting, the full Board will consider the draft Mission Statement adopted by the Ad Hoc Committee at its January 19, 2021, meeting.</p> <p>The next Committee Meeting is March 3, 2021.</p>

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

# CASE VOLUME

OCTOBER 21, 2020 THROUGH FEBRUARY 2, 2021

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	6	11	14
3060	Modification	0	12	5
3062	Establishment	12	3	17
3062	Relocation	0	2	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	5	0	6
3065.1	Incentive Program Reimbursement	4	0	8
3065.3	Performance Standard	1	0	5
3065.4	Retail Labor Rate or Retail Parts Rate	0	0	0
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-for-Resale	0	0	0
3050(b)	Petition	0	0	0
TOTAL CASES:		28	28	55



# PENDING CASES

## BY CASE NUMBER

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

## Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2501-17 1-19-17	Parties working on agreement	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Randy Oyler, Bob Davies, Mary Stewart	Modification
2. PR-2506-17* 1-23-17	Parties working on agreement	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	P: Christian Scali R: Randy Oyler, Bob Davies, Mary Stewart	Modification
3. PR-2512-17* 1-23-17	Parties working on agreement	Niello Italian Imports, Inc., dba Niello Maserati v. Maserati North America, Inc.	P: Christian Scali R: Randy Oyler, Bob Davies, Mary Stewart	Modification
4. PR-2542-17 11-13-17	Matter stayed pending appeal	Putnam Automotive, Inc., dba Putnam Subaru v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson	Modification Satellite Warranty Facility

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
5. PR-2553-18 1-26-18	Matter stayed pending appeal	Putnam Automotive, Inc., dba Putnam Subaru v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson	Termination Satellite Warranty Facility
6. PR-2570-18 8-22-18 Reopened 9-4-20	PHC with ALJ: 3-16-21 MH: 5-7-21	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson, Crispin Collins	Termination/ PSDO Dispute
7. PR-2626-19 5-7-19	Parties discussing settlement	Johnson Ford, Inc., dba Antelope Valley Ford Lincoln v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Elizabeth A. McNellie, Marcus McCutcheon	Modification
8. PR-2648-19 12-16-19	MH: 2-22-21 (5 days)	Prieto Automotive, Inc., a California Corporation, dba Subaru of Sonora v. Subaru of America, Inc.	P: Michael Sieving R: Lisa M. Gibson, Crispin Collins, Amy M. Toboco	Termination
9. PR-2649-20 1-2-20	Parties discussing settlement	Johnson Ford, Inc., dba Antelope Valley Ford Lincoln v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Elizabeth McNellie, Marcus McCutcheon	Performance Standard
10. PR-2652-20* 1-10-20	MH: 3-22-21 (14 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Chrysler)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Cloutre, John P. Strelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
11. PR-2653-20* 1-10-20	MH: 3-22-21 (14 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Dodge)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
12. PR-2654-20* 1-10-20	MH: 3-22-21 (14 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (Jeep)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
13. PR-2655-20* 1-10-20	MH: 3-22-21 (14 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge Ram v. FCA US (RAM)	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Blake A. Gansborg, Crispin Collins	Franchisor Incentive
14. PR-2657-20 2-7-20	Parties settled. PSDO pending.	Auto Legend LLC, a California Limited Liability Company, dba Acura of Fremont v. America Honda Motor Company, Inc., a corporation	P: Halbert B. Rasmussen, Monica J. Baumann R: Lauren Deeb, Melissa Fletcher Allaman, Steve McKelvey	Warranty
15. PR-2663-20 5-22-20	Dismissal forthcoming	Fer Rancho Mirage, LLC dba Ferrari of Rancho Mirage v. Ferrari North America, Inc.	P: Elizabeth L. Kolar, Benjamin T. Runge R: Colm Moran	Termination

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
16. PR-2671-20 6-3-20	Proposed Order Pending Board Consideration	Merced Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC, and Does 1-50, inclusive	P: Andrew Stearns R: Megan O. Curran, Dyana K. Mardon, Roberta F. Howell	Termination
17. PR-2673-20 6-4-20	Proposed Order Pending Board Consideration	Bonander Auto, Truck & Trailer, Inc., a California Corporation v. Daimler Truck North America, LLC	P: Andrew Stearns R: Megan O. Curran, Dyana K. Mardon, Roberta F. Howell	Termination
18. PR-2674-20 6-4-20	Parties finalizing settlement	R&L Motors, Inc. dba Rogers and Rogers Kia, a California corporation v. Kia Motors America, Inc., a California corporation	P: Christian J. Scali, Halbert B. Rasmussen R: Michael L. Turrill	Termination
19. PR-2675-20 6-8-20	MTD filed Opposition: 2-5-21 Reply: 3-4-21 Hearing: 3-11-21	Selma Auto Mall, Inc., dba Selma Mazda v. Mazda North America Operations	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Lisa M. Gibson, Crispin Collins, Amy M. Toboco	Performance Standard
20. PR-2696-20 9-14-20	RPHC: 3-2-21	Ford of Montebello, Inc., d/b/a Ford of Montebello v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick R: Steven M. Kelso, Breeanna Brewer, Christopher Mair	Establishment
21. PR-2697-20* 9-14-20	RPHC: 3-2-21	Fox Hills Auto, Inc., d/b/a Airport Marina Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick R: Steven M. Kelso, Breeanna Brewer, Christopher Mair	Establishment

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
22. PR-2698-20* 9-14-20	RPHC: 3-2-21	Central Ford Automotive, Inc., d/b/a Central Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick, Gavin Hughes R: Steven M. Kelso, Breeanna Brewer, Christopher Mair	Establishment
23. PR-2699-20* 9-14-20	RPHC: 3-2-21	Los Feliz Ford, Inc., d/b/a Star Ford Lincoln v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick, Gavin Hughes R: Steven M. Kelso, Breeanna Brewer, Christopher Mair	Establishment
24. PR-2700-20* 9-14-20	RPHC: 3-2-21	Bob Wondries Motors, Inc., d/b/a Bob Wondries Ford v. Ford Motor Company	P: Norris J. Bishton, Jr., Jeffrey S. Gubernick R: Steven M. Kelso, Breeanna Brewer, Christopher Mair	Establishment
25. PR-2701-20 9-14-20	RPHC: 2-11-21	Central Ford Automotive, Inc., dba Central Ford v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Marcus McCutcheon, Elizabeth McNellie	Performance Standard
26. PR-2702-20* 9-14-20	RPHC: 2-11-21	Los Feliz Ford, Inc., dba Star Ford Lincoln v. Ford Motor Company	P: Gavin M. Hughes, Robert A. Mayville, Jr. R: Marcus McCutcheon, Elizabeth McNellie	Performance Standard

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
27. PR-2703-20 10-8-20	ROB: 2-4-21 HRC: 4-22-21 MH: 6-7-21 (5 days)	Palm Springs Motor Sports, Inc., A California Corporation v. Yamaha Motor Corporation, U.S.A., A California Corporation	P: Renell E. Burch, Oscar Verdugo R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
28. PR-2704-20 10-26-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
29. PR-2705-20* 10-26-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
30. PR-2706-20* 10-26-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
31. PR-2707-20* 10-26-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Santa Monica Motor Group dba Santa Monica Chrysler Jeep Dodge RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
32. PR-2708-20* 10-28-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Chrysler)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
33. PR-2709-20* 10-28-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Dodge)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
34. PR-2710-20* 10-28-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (Jeep)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
35. PR-2711-20* 10-28-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	Los Angeles Motor Cars, Inc., dba Los Angeles Chrysler Dodge Jeep RAM v. FCA US LLC (RAM)	P: Gavin Hughes, Robert Mayville, Jr. R: Mark T. Clouatre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
36. PR-2712-20 11-2-20	ROB: 2-22-21 HRC: 7-14-21 MH: 8-30-21(4 days) RMSC: 2-9-21	McKenna Motor Company, Inc. dba McKenna BMW, a California corporation v. BMW of North America, LLC, a Delaware limited liability company	P: Aaron H. Jacoby, Franjo M. Dolenac R: William Berkowitz, Alison Eggers, Michael Kippins	Performance Standard

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
37. PR-2713-20* 11-10-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	JRDTSP, LLC, a Limited Liability Company, dba Scott Robinson Chrysler Dodge Jeep RAM v. FCA US, LLC, a Limited Liability Company (Chrysler)	P: Halbert B. Rasmussen, Jade F. Jurdi R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
38. PR-2714-20* 11-10-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	JRDTSP, LLC, a Limited Liability Company, dba Scott Robinson Chrysler Dodge Jeep RAM v. FCA US, LLC, a Limited Liability Company (Dodge)	P: Halbert B. Rasmussen, Jade F. Jurdi R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
39. PR-2715-20* 11-10-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	JRDTSP, LLC, a Limited Liability Company, dba Scott Robinson Chrysler Dodge Jeep RAM v. FCA US, LLC, a Limited Liability Company (Jeep)	P: Halbert B. Rasmussen, Jade F. Jurdi R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment
40. PR-2716-20* 11-10-20	ROB: 4-5-21 HRC: 8-27-21 MH: 10-18-21 (15 days)	JRDTSP, LLC, a Limited Liability Company, dba Scott Robinson Chrysler Dodge Jeep RAM v. FCA US, LLC, a Limited Liability Company (RAM)	P: Halbert B. Rasmussen, Jade F. Jurdi R: Mark T. Cloutre, John P. Streelman, Corey R. Nevers, Crispin Collins	Establishment



# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
41. PR-2717-20 11-19-20	ROB: 5-6-21 HRC: 9-23-21 MH: 11-8-21 (11 days)	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (15-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
42. PR-2718-20* 12-9-20	ROB: 5-6-21 HRC: 9-23-21 MH: 11-8-21 (11 days)	Patriot Hyundai of El Monte, LLC, dba Patriot Hyundai of El Monte v. Hyundai Motor America (60-day notice)	P: Timothy D. Robinett R: Richard H. Otera, Lauren A. Deeb, Jessica M. Higashiyama	Termination
43. PR-2719-21 1-20-21	PHC: 2-8-21	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
44. PR-2720-21 1-20-21	PHC: 2-8-21	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
45. PR-2721-21 1-20-21	PHC: 2-8-21	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
46. PR-2722-21 1-20-21	PHC: 2-8-21	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
47. PR-2723-21 1-20-21	PHC: 2-8-21	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
48. PR-2724-21 1-20-21	PHC: 2-8-21	YNOT6 II, LLC, a California limited liability company, dba Russell Westbrook Hyundai Of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty
49. PR-2725-21 1-20-21	PHC: 2-8-21	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Termination
50. PR-2726-21 1-20-21	PHC: 2-8-21	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty

# PENDING CASES

## BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
51. PR-2727-21 1-21-21	PHC: 2-8-21	YNOT6 I, LLC, a California limited liability company, dba Russell Westbrook Hyundai of Anaheim v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
52. PR-2728-21 1-21-21	PHC: 2-8-21	M&N Dealerships X, LLC, an Oregon limited liability company, dba Temecula Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
53. PR-2729-21 1-21-21	PHC: 2-8-21	YNOT6 II, LLC, a California limited liability company dba Russell Westbrook Hyundai of Garden Grove v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
54. PR-2730-21 1-21-21	PHC: 2-8-21	YNOT6 III, LLC, a California limited liability company, dba Huntington Beach Hyundai v. Hyundai Motor America, a California Corporation	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Franchisor Incentive
55. PR-2731-21 1-22-21	PHC: 2-8-21	YNOT6 III, LLC, a California limited liability company, fdba Genesis of Huntington Beach v. Genesis Motor America, LLC, a California limited liability company	P: Alton G. Burkhalter, Ros M. Lockwood R: John P. Streelman, Jacob F. Fischer, Crispin Collins	Warranty

# PENDING CASES

BY CASE NUMBER

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## Petitions

CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL

# **C. JUDICIAL REVIEW**

# Judicial Review

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**Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure, § 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure, § 1084).**

1. BARBER GROUP, INC., dba BARBER HONDA, a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC., a California corporation, and GALPINSFIELD AUTOMOTIVE, LLC  
Sacramento County Superior Court No. 34-2020-80003479  
New Motor Vehicle Board No. CRT-279-20  
Protest No. PR-2539-17

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

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

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

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

Barber Honda seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. In the alternative, the issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. Also, alternatively, Barber Honda seeks the issuance of a writ of administrative or traditional mandate directing the Board to set aside and vacate its Decision and to "consider evidence improperly excluded from the underlying hearing and to issue findings required by Sections 3063 and 11713.13(b)." Barber Honda also seeks the issuance of a stay pending the judgment of the writ of

administrative mandate directing the Board to stay the operation of the Decision until judgment by the court.

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

*The Board's counsel, Michael Gowe, received the bates stamped record on November 30, 2020. Therefore, the Board's answer was due December 30, 2020. The parties stipulated to the following schedule subject to the Court's approval: Barber Honda's opening brief due Tuesday, April 6, 2021; American Honda's and the Board's opposition briefs due Monday, April 26, 2021; Barber Honda's reply brief due Thursday, May 6, 2021; and the hearing Friday, May 21, 2021.*

2. R&H AUTOMOTIVE GROUP, INC., a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC. ACURA AUTOMOTIVE DIVISION, INC., a California Corporation, Real Party in Interest  
Los Angeles County Superior Court, Central District No. 20STCP01262  
New Motor Vehicle Board No. CRT-278-20  
Protest No. PR-2605-19

At the March 5, 2020, General Meeting, the Public Members of the Board adopted ALJ Skrocki's Recommendation and Proposed Order Granting Respondent's Motion to Dismiss as the Board's final Decision.

R&H Automotive filed a "Petition for Writ of Administrative Mandate, Writ of Traditional Mandate, and Seeking Stay" on April 3, 2020.

R&H Automotive contends that the Proposed Order drafted by the ALJ and adopted by the Board includes conclusions that are unsupported by the findings. Petitioner alleges it provided evidence regarding its failure to attend the Mandatory Settlement Conference (MSC) and produce documents. Additionally, Petitioner claims the findings drafted by the ALJ and adopted by the Board are not supported by the evidence. Next, Petitioner maintains the ALJ's order finding its failure to comply with discovery and MSC obligations "as to counsel are without notice in violation of procedural due process and unsupported by the factual record."

Petitioner argues that in adopting the ALJ's Proposed Order, "the Board exceeded its jurisdictional authority and its actions constitute an abuse of discretion because (1) the Board's decision is not supported by evidence, (2) the decision is not supported by the findings, (3) petitioner was not provided a fair trial, and (4) the Board's hearing did not proceed in a manner required by law."

R&H Automotive seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and "to adopt and issue a new and different decision reinstating the Protest." Alternatively, Petitioner seeks: (1) issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and "to adopt and issue a new and different decision reinstating the Protest;" and (2) issuance of a writ of administrative or traditional

mandate directing the Board to set aside and vacate its Decision and “consider evidence improperly excluded from the underlying hearing or evidence discovered after the hearing.” Petitioner seeks a stay pending the judgment of the writ.

On May 28, 2020, Petitioner’s “Ex Parte Application for Temporary Restraining Order to Compel the Real Party in Interest to Return the \$186,000 Improperly Taken from Petitioner Without Authorization or, in the Alternative, Order to show Cause Re: The Unauthorized Taking of Same” was denied.

Kathryn Doi, Board President, determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General’s Office.

At the July 14, 2020 Trial Setting Conference, Judge Chalfant set an Order to Show Cause re Dismissal for Failure to Appear and for Failure to Order the Administrative Record for July 30, 2020 at 9:30 a.m. in Department 85. At the September 10, 2020, trial setting conference, the Judge set the hearing for December 1, 2020 at 1:30 p.m. in Department 85 and set the briefing schedule with Petitioner’s opening brief due on September 29, 2020. Petitioner’s “Ex Parte Application to Continue Deadline on Petitioner’s Opening Brief” for a 30-day continuance was granted on September 25, 2020. Petitioner’s Opening Brief is due October 29, 2020, Real Party in Interest’s Opposition is due December 4, 2020, Petitioner’s Reply Brief is due December 22, 2020, the Trial Notebook and Administrative Record is to be lodged with the Court on or before December 30, 2020, the Joint Appendix (hard copy) is to be lodged with the Court on or before December 30, 2020.

*Oral arguments were presented on January 12, 2021. Judge Chalfant adopted his Tentative Ruling denying the petition for writ of mandate. Counsel for American Honda will prepare the judgment. An Order to Show Cause regarding the judgment is set for February 18, 2021, at 9:30 a.m.*

3. FORD MOTOR COMPANY, a corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; VISTA FORD OXNARD, LLC dba VISTA FORD LINCOLN OF OXNARD, a California LLC; and FORD OF VENTURA, INC. dba VENTURA FORD  
Ventura County Superior Court No. 56-2020-00542092-CU-WM-VTA  
New Motor Vehicle Board No. CRT-277-20  
Protest No. PR-2575-18

At the March 5, 2020, General Meeting, the Public Members of the Board adopted ALJ Kymberly Pipkin’s Proposed Decision as the Board’s final Decision. The Decision sustained the protest and did not permit Ford Motor Company (“Ford”) to proceed with the relocation of Ford of Ventura, Inc. dba Ventura Ford (“Ventura Ford”) at the proposed location in the Ventura Auto Center.

On April 17, 2020, Ford served a Petition for Writ of Administrative Mandate. Ford contends that: (1) The Board erred as a matter of law and engaged in a prejudicial abuse of discretion in failing to dismiss the protest based upon the waiver of protest rights contained in the “Stipulation for Settlement and Order Thereon” in Protest



No. PR-1569-97 regarding the proposed relocation; (2) The Board's decision that Vista Ford Oxnard, LLC dba Vista Ford Lincoln of Oxnard ("Vista Ford") met its burden of establishing good cause under Vehicle Code 3063 was not supported by the findings of ALJ Pipkin and was based on matters not relevant under the Vehicle Code; and (3) The Board's finding that Vista Ford met its burden of establishing good cause under Vehicle Code 3063 was not supported by the evidence presented at the hearing before ALJ Pipkin and was based on matters not relevant under the Vehicle Code.

Ford seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different Decision rejecting the Recommended Decision of ALJ Pipkin dated January 17, 2020: (1) dismissing the Protest on the basis that Vista Ford's predecessor Mike Wallace Ford effectively waived Vista Ford's right to protest the proposed relocation; or (2) finding that Vista Ford failed to satisfy its burden to show good cause under Vehicle Code Section 3063.

Kathryn Doi, Board President, determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

During the July 27, 2020, Status Hearing, the following briefing schedule was set: Ford's brief is due Thursday, September 10, 2020; Vista Ford's Opposition is due Tuesday, October 13, 2020; and Ford's Reply to the Opposition is due Friday, October 30, 2020.

*The hearing on the writ was held on Monday, November 16, 2020, at 1:30 p.m. in Department 41 before Judge Rhonda McKaig. This matter was taken under submission. The hearing on Elizabeth McNellie's application pro hac vice was also heard and granted. Judge McKaig issued her ruling dated January 14, 2021, denying the writ.*

4. GENERAL MOTORS LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FOLSOM CHEVROLET, INC. d/b/a FOLSOM CHEVROLET, Real Party in Interest  
Los Angeles County Superior Court No. BS175257  
New Motor Vehicle Board No. CRT-276-18  
Protest No. PR-2483-16

At the August 13, 2018, General Meeting, the Public Members of the Board adopted ALJ Evelyn Matteucci's Proposed Decision as amended as the Board's final Decision. The Decision sustained the protest and did not permit GM to terminate the protesting dealer's Chevrolet franchise.

On September 27, 2018, General Motors LLC (GM) filed a Petition for Writ of Administrative Mandate. GM contends that in adopting the Proposed Decision, the Board exceeded its jurisdictional authority and committed numerous prejudicial abuses of discretion. GM seeks a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and adopt a new and different decision overruling the protest or, in the alternative, to strike down the termination provisions of Sections 3060 and 3061 of the Vehicle Code as

unconstitutional on their face and/or as applied. The Board received the writ on October 3, 2018. A copy of the record has been requested and is being copied.

GM contends that: (1) The Board, by its own admission, has never allowed a sales-based termination of a dealer agreement, unless it was accompanied by other grounds for termination; (2) The findings in the Decision are not supported by substantial evidence, its conclusions are not supported by its findings, and it failed to proceed in a manner required by law; (3) The ALJ altered the language of subdivision (g) of Section 11713.3 in order to “broadly and generally find RSI [retail sales index] unreasonable—a conclusion that neither the ALJ nor the Board had jurisdiction to make;” (4) There was no meaningful opportunity to rebut the Proposed Decision; (5) The Decision “invents impossible qualifications on GM’s sales performance standards, gutting the terms of valid and binding contracts GM entered into with all of its Chevrolet dealers;” (6) The Board’s longstanding refusal to approve sales-based terminations constitutes an underground regulation that cannot be enforced under controlling law and that precludes any claim that the Board is an impartial tribunal in termination cases; and, (7) The language and application of the Vehicle Code’s termination provisions are unconstitutional under both the California and United States Constitution, violating basic due process and equal protection rights.

Kathryn Doi, then Vice President and Attorney Member, determined there is a State interest at issue in the writ so the Board will participate via the Attorney General’s Office. The writ challenges the Board’s jurisdiction and could affect future Board cases. Michael Gowe, Deputy Attorney General, has been retained to represent the Board.

GM stipulated to December 10, 2018, as the date for the Board to file its Motion to Transfer Action to the Sacramento County Superior Court, which was scheduled for hearing on Tuesday, April 2, 2019, at 9:30 a.m. in Department 82. Folsom Chevrolet filed a Notice of Joinder in the Board’s Motion to Transfer. The hearing on Mark Clouatre’s Pro Hac Vice Application was also heard April 2. The Motion to Transfer was denied. The Pro Hac Vice Application was granted.

The hearing on the writ scheduled for January 21, 2020, was continued at the request of Petitioner’s counsel, to April 30, 2020 at 1:30 p.m. GM’s opening brief is due December 20, 2019. Folsom Chevrolet’s and the Board’s oppositions are due February 14, 2020. GM’s reply brief is due April 3, 2020. The parties stipulated to a 30-page limit for opening and responding memoranda, and 20 pages for the reply memorandum. However, the Court refused to sign the stipulation to file briefs that exceeded the page limits under California Rule of Court, rule 3.1113. Instead, the court ordered that each party move ex parte to receive permission to file a longer brief. On January 16, 2020, the Court denied GM’s motion and set the following limits: 20 pages for opening briefs and responsive briefs; 15 pages for reply. GM already filed its brief, so it needed to comply with the new page limits. The parties proposed January 27, 2020, for GM’s revised opening brief, Folsom Chevrolet and the Board’s oppositions were filed March 9, 2020, and GM’s reply brief is due April 15, 2020.

On April 14, 2020, the Court issued the following order: “Based on current conditions including, but not limited to, the spread of Covid-19, the need for social distancing, and the states of emergency having been declared by Governor Gavin Newsom and President Donald Trump, the General Orders issued by the Presiding Judge and Statewide Orders issued by the Chief Justice, the court finds good cause to continue the hearing on the petition for writ of mandate set for April 30, 2020, to July 30, 2020, at 1:30 p.m. in Department 82.”

During the July 30, 2020, hearing on the writ, the Judge made no changes to her tentative ruling. Of note: (1) the Judge said it was ok for the Board to use the factors listed in Vehicle Code section 11713.13(g) in assessing good cause to terminate; (2) GM wants to eliminate paragraphs 217-223 of the Decision but the Judge said a lot in those paragraphs pertain to (1) above; (3) the Judge was not persuaded that the Board as a whole misconstrued or misapplied the Section 11713.13(g) factors; and (4) the Judge has a problem with finding a violation of Section 11713.13(g).

Phase II of the hearing (whether the Board’s findings were supported by substantial evidence and any other remaining grounds for reversal) will be on October 9, 2020 at 10:00 a.m. This hearing was continued to October 23, 2020. *After hearing oral arguments, the Judge took the matter under submission. On December 18, 2020, Judge Strobel issued a Minute Order indicating that the writ shall order the Board to set aside that portion of its decision finding that GM violated section 11713.13(g)(1)(A) generally, and in this specific case. Otherwise, the petition is denied.*

*On January 22, 2021, the Court issued its Judgment on Petition for Writ of Administrative Mandate, in accordance with the Court’s final decision, as set forth in the Court’s minute orders dated July 30, 2020 and December 18, 2020. A peremptory writ of administrative mandamus will issue under seal commanding the Board to set aside that portion of its decision finding that GM violated section 11713.13(g)(1)(A) generally and in this specific case. The petition for writ of administrative mandate filed by GM is otherwise denied and the Board’s decision is otherwise affirmed. The Public Members of the Board will consider its Decision in light of this at the February 16, 2021, Special Meeting.*

D.

NOTICES FILED

PURSUANT TO  
VEHICLE CODE SECTIONS  
3060/3070 AND 3062/3072

# NOTICES FILED

## PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

OCTOBER 21, 2020 THROUGH FEBRUARY 2, 2021

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

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW (includes Mini)	
FCA (Chrysler, Jeep, Dodge, RAM)		FCA (Chrysler, Jeep, Dodge, RAM)	12
FCA (Alfa Romeo, FIAT)		FCA (Alfa Romeo, FIAT)	
FCA (Maserati)		FCA (Maserati)	
FERRARI		FERRARI	
FORD	7	FORD	
GM (Buick, Cadillac, Chevrolet, GMC)		GM (Buick, Cadillac, Chevrolet, GMC)	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI/GENESIS	6	HYUNDAI	
INFINITI		INFINITI	
JAGUAR		JAGUAR/LAND ROVER	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MINI		MINI	
NISSAN		NISSAN	
POLARIS		POLARIS	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU		SUBARU	
SUZUKI	52	SUZUKI	
TOYOTA		TOYOTA	1
VOLKSWAGEN		VOLKSWAGEN	
VOLVO TRUCKS		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	2	MISCELLANEOUS	
TOTAL	68	TOTAL	13



## MEMO

**To: ALL BOARD MEMBERS**

**From: TIMOTHY M. CORCORAN  
NEW MOTOR VEHICLE BOARD  
(916) 445-1888**

**Subject: UPCOMING EVENTS**

**Date:** February 4, 2021

The following highlights the upcoming Board events:

- February 9-11, 2021, NADA (Virtual)
- February 16, 2021, General Meeting (via Zoom and teleconference)
- February 16, 2021, Special Meeting (via Zoom and teleconference)
- April 8, 2021, General Meeting (via Zoom and teleconference)
- Industry Roundtable (date and location to be confirmed)
- June/July 2021, General Meeting (date and location to be determined)
- September/October 2021, General Meeting (date and location to be determined)
- September 2021 NAMVBC Annual Conference (date and location to be confirmed)
- November/December 2021, General Meeting (date and location to be determined)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 324-6197.