

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Thursday,
February 6, 2020

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Guillermo "Memo" Treviño, Chair
Charles Bacarisse, Vice Chair
Stacey Gillman
Brett Graham
Tammy McRae
John Prewitt
Joel Richardson
Paul Scott
Shelley Washburn

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locations; and

- SB 604, eliminating representative licenses and adding licensing education and training requirements for independent motor vehicle dealers)

(Proposal Published August 23, 2019 - 44
Tex. Reg. 4462)

(Review by the Office of the Governor, Regulatory Compliance Division; submission November 22, 2019; comment period closed December 27, 2019)

8. Chapter 217, Vehicle Titles and Registration 111
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- HB 1548, establishing procedure for issuance of license plates to golf carts and off-highway vehicles, charging a fee, and updating statutory citations;
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 - HB 3068, use of certain license plates on classic motor vehicles and travel trailers, custom vehicles, street rods, and certain exhibition vehicles; use of embossed disabled veterans' license plates on certain vehicles; and
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- (Proposal Published August 30, 2019 - 44
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(Proposal Published August 30, 2019 - 44
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15.	Public hearing to receive spoken and written comments on proposed amendments to 43 TAC §§217.3, 217.141-217.143 and new §§217.401-217.407. - The proposal was published in the December 20, 2019 issue of the <i>Texas Register</i> (44 <i>Tex. Reg.</i> 7866).	149
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P R O C E E D I N G S

1
2 MR. TREVIÑO: Ladies and gentlemen, good
3 morning. My name is Memo Treviño, and I am pleased to
4 open the Board meeting of the Texas Department of Motor
5 Vehicles. It is 8:02 a.m., and I'm now calling the Board
6 meeting for February 6, 2020 to order.

7 I want to note for the record that the public
8 notice of this meeting, containing all items on the
9 agenda, was filed with the Office of Secretary of State on
10 January 29, 2020.

11 Before we begin today's meeting, please place
12 all cell phones and other communication devices in the
13 silent mode, and please, as a courtesy to others, do not
14 carry on side conversations or other activity in the
15 meeting room.

16 If you wish to address the Board or speak on an
17 agenda item during today's meeting, please complete a
18 speaker's sheet at the registration table. Please
19 identify on the sheet the specific item you're interested
20 in commenting on and indicate if you wish to appear before
21 the Board to present your comment.

22 If your comment does not pertain to a specific
23 agenda item, we'll take your comment during the general
24 public comment portion of the meeting. Also, you can
25 leave a copy of any written comments you wish to have

1 entered into the record at the registration table.

2 In accordance with Department administrative
3 rule, comments to the Board will be limited to three
4 minutes. To assist each speaker, a timer has been
5 provided. The timer light will be green for the first two
6 minutes, yellow for one minute, and then red when your
7 time is over. Individuals cannot accumulate time from
8 other speakers. Comments should be pertinent to the
9 issues stated on the comment sheet.

10 When addressing the Board, please state your
11 name and affiliation for the record. Before we begin
12 today, I'd like to remind all presenters and those in
13 attendance of the rules of conduct at our Board meetings.

14 In the Department's rules, Section 206.22, the Board
15 chair is given authority to supervise the conduct of the
16 meetings. This includes the authority to determine when a
17 speaker is being disruptive of the meeting or is otherwise
18 violating the timing or presentation rules I just
19 discussed.

20 And now I'd like to have a roll call of the
21 Board members.

22 Board Member Bacarisse?

23 MR. BACARISSE: Here.

24 MR. TREVIÑO: Board Member Gillman?

25 MS. GILLMAN: Present.

1 MR. TREVIÑO: Board Member Graham?

2 MR. GRAHAM: Present.

3 MR. TREVIÑO: Board Member McRae?

4 MS. McRAE: Present.

5 MR. TREVIÑO: Board Member Prewitt?

6 MR. PREWITT: Here.

7 MR. TREVIÑO: Board Member Richardson?

8 MR. RICHARDSON: Here.

9 MR. TREVIÑO: Board Member Scott?

10 MR. SCOTT: Here.

11 MR. TREVIÑO: Board Member Washburn?

12 MS. WASHBURN: Here.

13 MR. TREVIÑO: And let the record reflect that
14 I, Memo Treviño, am here too. We have a quorum. Also the
15 record reflect that no one is absent.

16 Now we'll start and stand our honor our country
17 and state with the pledges of allegiance. Mr. Bacarisse,
18 would you lead us in the Pledge of Allegiance, and Mr.
19 Prewitt, would you lead us in the Texas state pledge?

20 MR. BACARISSE: Join me in the pledge to the
21 American flag.

22 (The Pledge of Allegiance to the American Flag
23 was recited.)

24 MR. PREWITT: Now if you'll join me, please,
25 for the pledge of allegiance to the Texas flag.

1 (The Pledge of Allegiance to the Texas Flag was
2 recited.)

3 MR. TREVIÑO: All right. So we'll start with
4 Member Richardson. We have a new member.

5 On November 6, 2019, Governor Abbott appointed
6 Sheriff Joel W. Richardson to the Board of the Texas
7 Department of Motor Vehicles as the law enforcement
8 representative. His term is set to expire on February 21,
9 2021.

10 He has fulfilled the required training and has
11 completed all required paperwork, has been duly sworn into
12 office, and received his commission from the Texas
13 Secretary of State. You can read more about our new Board
14 member on the department website under the About Us
15 section.

16 I look forward to working with him and really
17 would like to thank Sheriff Richardson for accompanying me
18 yesterday to the MVCPA meeting and also for his
19 willingness to serve and step into the big hole that was
20 left on this Board by the passing of Sheriff Painter.

21 Thank you very much for being willing to serve,
22 Sheriff Richardson. Would you like to say anything?

23 MR. RICHARDSON: Thank you, Mr. Chairman, if I
24 might.

25 It's a great honor to get to serve on this

1 Board, especially filling the shoes of Sheriff Painter.
2 Those are big shoes, figuratively and literally, and I've
3 known Sheriff Painter since 1985 when he took over as
4 sheriff of Midland County, and he was a lawman's lawman, a
5 true gentleman, and it's absolutely my honor to get to
6 fill his unexpired term, Mr. Chairman. Thank you.

7 MR. TREVIÑO: Thank you very much, Sheriff
8 Richardson. I know you will discharge the duties of your
9 appointment well. But again, Sheriff Painter was one of a
10 kind, good friend, a great supporter of this organization
11 and a great Texan, and thank you for stepping up to take
12 that spot.

13 All right. We'll now move on to item 3.B.
14 Section 1001.023 of the Transportation Code sets out the
15 duties of the Board chair and vice chair. One of the
16 duties of the Board chair is to report to the Governor on
17 the state of affairs of the department. The annual report
18 is in the final draft and will be submitted before our
19 next meeting. This report includes updates on the
20 agency's key accomplishments, revenues, expenditures,
21 performance data, technological improvements and
22 significant legislation enacted by the 86th Legislature.

23 Once published the report will be distributed
24 to legislators and Board members electronically. It will
25 also be sent to all govDelivery subscribers and posted on

1 the agency's external website at www.txdmv.gov, at the
2 bottom of the page located under Learn More and Reports
3 and Data.

4 With that, I will turn it over to our executive
5 director, Whitney Brewster, for agenda item 4.

6 MS. BREWSTER: Good morning, Mr. Chairman,
7 members, guests and staff.

8 This is the time that we recognize our recent
9 retirees and employees who have reached major milestones
10 in their state service. We celebrate these folks as a
11 show of our appreciation for their years of service at
12 this agency, and more importantly, to the citizens of
13 Texas.

14 So Mr. Chairman, board members, if you would
15 please join me at the front of the dais.

16 MS. YANCEY: Good morning. My name is Martha
17 Yancey, Human Resources Division.

18 The following employee has reached 25 years of
19 state service. DeLisa Dedeaux, come on up.

20 (Applause.)

21 MS. YANCEY: DeLisa joined the Motor Carrier
22 Division in September 2018 as a permit specialist.
23 Throughout here many years of state service across
24 multiple agencies, she has been extensively involved in
25 hiring, training, and numerous improvement projects, which

1 includes the transition and implementation project for the
2 current driver's license system.

3 While employed with the state and raising three
4 sons, she earned an associate's of applied science in
5 paralegal studies. DeLisa has done an excellent job
6 learning all the processes in the permit section and has
7 become a great asset to our organization. With her can-do
8 attitude and her vibrant personality, she brings a
9 contagious and uplifting spirit to our office.

10 Congratulations on 25 years, DeLisa.

11 (Applause; pause for presentation and photos.)

12 MS. YANCEY: The following employees have
13 reached a state service milestone but were unable to join
14 us this morning: 20 years, Tiffany Roybal, Motor Carrier
15 Division; 30 years, Melissa Bennett, Motor Carrier
16 Division.

17 And last, the following employees recently
18 retired from the department: Antonia, or Toni, Knight,
19 Motor Vehicle Division; Idalia Illa-Lopez, Vehicle Titles
20 and Registration Division; Patricia Flores, Vehicle Titles
21 and Registration Division; Beverly Fisher, Enforcement
22 Division; Joyce Wendler, Office of General Counsel;
23 Michael Zalaznich, Motor Carrier Division.

24 Thank you.

25 (Applause.)

1 MS. BREWSTER: Mr. Chairman, that concludes my
2 report.

3 MR. TREVIÑO: The next item is the memorandum
4 of understanding between Motor Vehicle Crime Prevention
5 Authority and the department.

6 Yesterday, Chairman Hansen was kind enough to
7 invite me to MCVPA's quarterly board meeting, and I was
8 accompanied by Sheriff Richardson. I would like to thank
9 the chairman for the invitation and thank the Authority
10 for all the meaningful work that they do for the citizens
11 of Texas. The board book includes the MOU which updates
12 legal citations and streamlines the authority and duties
13 of the Texas DMV and the MVCPA from the previous version.

14 No substantive legal changes were made. The Authority
15 considered and approved the MOU at its February 5, 2020
16 meeting.

17 Today the Authority's chairman is here to
18 discuss the item, so I'm pleased to welcome Chairman
19 Hansen and Bryan Wilson.

20 Chairman Hansen, thank you very much for
21 hosting us yesterday. We really enjoyed the meeting and
22 can't say enough good things about the work MVCPA is
23 doing.

24 MR. HANSEN: For the record, my name is Tommy
25 Hansen. I'm the Board chair of the Motor Vehicle Crimes

1 Prevention Authority, formerly the Automobile Burglary and
2 Theft Prevention Authority. It's an honor to be here.
3 We've had several meetings with Chairman Treviño, and I
4 think our future looks very bright together.

5 As you see, we've had a name change and a lot
6 of that name change is we're changing a lot of the
7 direction in which our organization is traveling,
8 including enhancing our relationship with the DMV Board.
9 We have a great relationship with DMV as well, as well as
10 the tax assessor-collectors, which we've already met with
11 them several times and we're scheduled to be at their
12 meeting coming up in June. With the Texas Automobile
13 Dealers Association we're going to greatly enhance what we
14 do for the citizens of the State of Texas.

15 We have a great group of law enforcement
16 officers throughout the state that are literally the best
17 of the best in the world, and we hope with the legislative
18 last session bill that we're going to be able to greater
19 enhance what we're doing already for the citizens of the
20 State of Texas.

21 So thank you very much for your time and we
22 look forward to working with y'all on a much more
23 interactive basis than we have in the past.

24 MR. TREVIÑO: Thank you, Chairman Hansen.

25 Are there any questions for Chairman Hansen.

1 (No response.)

2 MR. HANSEN: Also, we have some staff members
3 here from the Motor Vehicle Crime Prevention Authority.
4 Dan and Mary, would y'all wave your hand over there for
5 us? David, our attorney, is over there. He's the one
6 that keeps me straight.

7 (General laughter.)

8 MR. HANSEN: Again, I just can't thank you for
9 being there yesterday. It's a sign of the times to come,
10 and bless you for that.

11 MR. TREVIÑO: It was a pleasure and an honor,
12 and again, before I joined this Board I wasn't aware of
13 the work MVCPA and the prior acronym was doing, but since
14 I've joined the Board and become familiar with your work,
15 I'm a big fan and advocate, and continue the great work
16 that you do for the citizens of Texas.

17 MR. HANSEN: Well, we're trying to fix that. I
18 think we're the best kept secret in Texas.

19 (General laughter.)

20 MR. HANSEN: I mean, literally the amount of
21 recoveries and stuff that this small elite groups does.
22 I'll give you just an example, we're looking at about 230
23 people for the whole state recovering 11,000-plus vehicles
24 in one year, that's good work.

25 MR. TREVIÑO: I'm looking forward to the

1 coordination work that you're talking about, coordinating
2 with all the agencies who are working in that area, I
3 think it will pay big dividends for everybody.

4 MR. HANSEN: Well, for the rest of the Board
5 too, with the change in the name came changes in
6 responsibilities, thanks to the Sunset Commission. We
7 used to work title fraud and odometer fraud and those type
8 of things, but it really wasn't in our statute, and now
9 all of that has changed to allow us and our groups to
10 openly really work with DMV investigators and others on
11 virtually any kind of case involving vehicles, whether it
12 be insurance fraud, title fraud, odometer fraud. So with
13 that permission from the legislature to greatly expand
14 that and we get our funding corrected, then we can be a
15 much major asset to your organization.

16 MR. TREVIÑO: Great. Thank you very much.

17 MR. WILSON: This is Bryan Wilson, for the
18 record. Thank you for the opportunity to be here and
19 recognize our staff, and thank you.

20 But I have nothing else to add. Available to
21 take questions. Thank you.

22 MR. TREVIÑO: Thank you, Bryan.

23 Any questions from the Board?

24 (No response.)

25 MR. HANSEN: Thank y'all very much.

1 MR. TREVIÑO: Gentlemen, thank you very much
2 for coming to speak with us.

3 Before we move to the next item which is a
4 contested case, before moving to the contested case
5 presentation, we'll hear from our general counsel, Ms.
6 Tracey Beaver.

7 MS. BEAVER: Thank you. Tracey Beaver, general
8 counsel, for the record.

9 I just wanted to let the Board know that after
10 staff's presentation, both parties will be given to
11 present their case and five minutes for rebuttal. The
12 parties will make sure that their verbal presentations do
13 not go into information outside the record, and they will
14 specify where in the record their statements can be found.

15 If a question from Board members is asked, the speaker
16 will tell you when it's not in the record, and also, if
17 it's not in the record, you wouldn't be able to use it to
18 make a decision anyway.

19 Thank you.

20 MR. TREVIÑO: Thank you, Ms. Beaver.

21 Daniel Avitia and Michelle Lingo will now
22 address agenda item 6. Contested Case.

23 MR. AVITIA: Thank you, Chairman.

24 Chairman, members, Ms. Brewster, good morning.
25 For the record, I'm Daniel Avitia, director of the Motor

1 Vehicle Division. Alongside me this morning is Ms.
2 Michelle Lingo. Ms. Michelle Lingo is an attorney with
3 the Motor Vehicle Division and created or put together the
4 executive summary and collective relevant documents for
5 the Board's review and consideration on this matter.

6 Materials for agenda item 6 can be found on
7 pages 10 through 78 of your Board books.

8 Regarding agenda item 6, the Board is hearing a
9 complaint by two World Car Hyundai dealerships against
10 Hyundai Motor America, LLC. The matter is before the
11 Board after the Third Court of Appeals, one, reversed the
12 Board's August 17, 2017 order, and two, remanded the
13 contested case to the Board for further proceeding,
14 consistent with the Third Court of Appeals July 2019
15 opinion and August 2019 mandate.

16 The issue presented in this case is whether
17 World Care established by a preponderance of the evidence
18 that Hyundai's actions or programs violate Texas
19 Occupations Code by: one, requiring adherence to
20 unreasonable sales or service standards; two, directly or
21 indirectly discriminating against a franchised dealer or
22 otherwise treating franchised dealers differently as a
23 result of a formula or other computation or process
24 intended to gauge the performance of a dealership; three,
25 by discriminating unreasonably between or among

1 franchisees in the sale of motor vehicles owned by the
2 distributor; or four and finally, by failing its duty of
3 good faith and fair dealing owed to its franchisee.

4 The ALJ found that World Car failed to meet its
5 burden of proof to show that Hyundai violated the
6 Occupations Code. The ALJ recommended the Board deny
7 World Car's complaint.

8 Hyundai Motor America is represented by Bruce
9 Bennett, with Prichard Hawkins McFarland & Young. Lead
10 counsel for the two World Car dealers is Lee Kaplan, with
11 Smyser Kaplan & Veselka. All parties received notice of
12 the Board's meeting and counsel are present to provide
13 comments today.

14 Members, that concludes my remarks on this
15 matter for now.

16 MR. TREVIÑO: Thank you, Mr. Avitia.

17 Any questions from Board members?

18 (No response.)

19 MR. TREVIÑO: We will now proceed with
20 Complainant's presentation. I believe it's Mr. Lee
21 Kaplan.

22 MR. KAPLAN: Members of the Board. My name is
23 Lee Kaplan.

24 This matter has been before the Board twice,
25 the first time by a vote of six to three, the second time

1 by a vote of five to two, with two of the current members
2 participating in the majority on both cases. The Board
3 found in favor of Complainants and reversed the ALJs
4 decision. That was then appealed to the Court of Appeals.

5 The Court of Appeals has given us explicit instructions
6 on what the Board must do to comply with the requirements
7 of the law in not accepting the ALJ's decision.

8 We had previously submitted a proposed order to
9 the Board on prior occasions, and the previous counsel
10 apparently advised the Board not to enter that order. We
11 have filed a corrected final order this time which is
12 virtually the same as the last order, with additional
13 citations to make sure that everything the Court of
14 Appeals mentioned is in our current corrected final order
15 which we've proposed to the Board which was filed on
16 January 28. I don't know if members of the Board have
17 seen that, but it was filed and we requested it be
18 provided to the Board. We've been told today that we are
19 not to use any visual aids or handouts. This is an
20 official filing made by us eight days ago and it is the
21 correct order that should be entered.

22 Let me tell you why. The reason is that the
23 Board has the authority to make legal decisions and in
24 making legal decisions it also has the authority to decide
25 what are the relevant facts, and based entirely on the

1 record, the relevant facts show that Hyundai, during the
2 tenure of one particular regional manager over several
3 years, violated the rights of the Complainants. If I were
4 to direct you to no other piece of paper, it would be
5 Plaintiff's trial exhibit 126, which is in the record at
6 R16584, which showed that during a three-year period the
7 manual allocations alone, not any algorithmic ones, just
8 the manual allocations alone to two similar situated
9 dealers over the two of Complainants' dealers in San
10 Antonio outstripped them by roughly three to one, almost
11 1,800 to 600. That was in the record and never disputed
12 at any time in the proceedings or before the Board on two
13 occasions.

14 The other piece of record that I think is very
15 critical is that the requirement was placed on the
16 Complainants to essentially sell cars they didn't have,
17 and we contended, and I think the evidence is undisputed,
18 that that's an unreasonable -- an unreasonable sale or
19 service standard because you can't sell cars you don't
20 have.

21 The ALJ misinterpreted this to mean that if the
22 dealer agreement, the written agreement didn't require it
23 that it wasn't a requirement. In fact -- and we showed at
24 Plaintiff's trial exhibit 67 which is Record-159189 --
25 that the regional manager told this dealer: Your

1 dealership is in material breach of the dealer agreement
2 because you are not selling at what's called 100 percent
3 sales efficiency by this manufacturer. To reach that the
4 dealer would have had to sell cars that the manufacturer
5 refused to allocate to it. And while there are various
6 excuses offered for that, the bottom line is you cannot
7 put people in peril of their dealership agreement if you
8 won't give them the cars and let them fail. They never
9 got the chance. Two members of this Board were there at
10 the time that we've argued this twice before and both
11 times agreed with us about that.

12 So what we have done is gone back to the
13 statute, and there are three parts to the statute that
14 were violated. The first is 2301.4682 which is that there
15 may not be unreasonable discrimination between or among
16 franchisees. The second is the Occupations Code
17 2301.467(a)(1) that a manufacturer or distributor may not
18 require adherence to unreasonable sales or service
19 standards. And finally, at 2301.478(b) each party to a
20 franchise owes to the other party a duty of good faith and
21 fair dealing. All of these are legal concepts that are
22 determined on facts, but the legal determination of what
23 facts matter is obviously the Board's decision.
24 Otherwise, the Board is just a rubber stamp and we might
25 as well have ALJs do all the work.

1 The ALJ did not receive the authority that the
2 Board has, and that's something that was pretty clear in
3 the Court of Appeals' opinion, that what the Board has to
4 do is articulate its reasons for departing from the ALJ's
5 findings. It may determine that certain findings of fact
6 are simply not relevant and that other findings of fact
7 matter more, and that's why we submitted the first time
8 around an order which ultimately was not adopted, and this
9 time around, on January 28, another proposed final order
10 which we think is extremely specific and points out
11 exactly where the ALJ went wrong. All of these things are
12 policy-related and it's the Board's responsibility.

13 I think it was Mr. Treviño and Mr. Graham who
14 were members of the Board at the time, and while we were
15 not privy to the discussions, but what was said in the
16 hearing it was pretty clear that what we were offering to
17 the Board is our proposition made sense.

18 I want to say one other thing, and that is that
19 each of the findings of fact which we have proposed have
20 extensive record excerpts from the hearing transcript and
21 from the actual exhibits so that the Board, if it reviews
22 the order we provided on January 28, can find comfort that
23 we have supported everything which we have offered. All
24 we're doing is conforming to the rulings of the Court of
25 Appeals, which we tried to do originally and for whatever

1 reason did not occur.

2 Our proposed order makes sense and it really
3 recognizes what ought to be the result. This is a dealer
4 who was similarly-situated but for other reasons was not
5 treated fairly and was discriminated against, held to
6 unreasonable standards, not dealt with in good faith, and
7 these are legal issues for the Board to decide. So I
8 implore the Board to take a look at the order that we've
9 submitted.

10 And I want to say something else and that is
11 if, in fact, the Board decides that the ALJ's decision is
12 fine and should be upheld, then we're setting a very
13 dangerous precedent. That case, this case will be cited
14 for years to come by franchisees, perhaps in other
15 industries but certainly in this one, that basically say a
16 manufacturer can do whatever it wants, can allocate as
17 many vehicles or as few as it wants, can threaten dealers
18 with breaches of standards that are not even in the dealer
19 agreement, and if that happens then we will have disserved
20 the legislature's policy where it gave the Board the
21 authority to make those decisions.

22 So if there are any questions, I'll be happy to
23 answer them. Otherwise, I'll reserve the rest of my time
24 for the second argument.

25 MR. GRAHAM: I do have a question.

1 MR. KAPLAN: Yes, sir.

2 MR. GRAHAM: I don't believe I've seen that
3 final order from January 28.

4 MR. TREVIÑO: Counsel Beaver, if you can
5 discuss that, please.

6 MS. BEAVER: Thank you, Chairman. Tracey
7 Beaver, general counsel, for the record.

8 Both parties were advised that they were not to
9 be providing any additional evidence for this case in
10 writing and that they would be giving verbal presentations
11 only, and if there were documents presented a week before
12 the Board meeting, both parties would need an opportunity
13 to review that as well.

14 MR. KAPLAN: May I comment on that, Member
15 Graham?

16 MR. GRAHAM: Let me respond. That is of
17 interest to me simply because I'm not an attorney. I've
18 struggled with the role as a Board member without being an
19 attorney on some of these facts, and so you know, I would
20 be very interested to hear both sides case as to why and
21 how it could be done and why it shouldn't be done. I want
22 to hear both of those in detail because I think that's
23 very relevant.

24 MR. KAPLAN: I can respond very briefly. First
25 of all, the Texas Occupations Code 2301.153 gives the

1 Board general powers which includes receiving evidence and
2 pleadings. We actually filed this January 28 before we
3 were advised -- and we had prepared a power point --
4 before we were advised that the Board would not accept any
5 handouts or materials at the hearing. This is actually --
6 I have multiple copies of it that I can give to the
7 general counsel and the Board can decide whether it wants
8 it -- but we eFiled this on January 28, well in advance of
9 the hearing. We also sent an email to Mr. Richards, the
10 associate general counsel.

11 We understand the instructions we've received,
12 but this is in the file, and in our view the Board should
13 have it. It is correct, it's the right order. It's very
14 similar to the one we had submitted in 2016 or '17, and
15 for whatever reason, Mr. Duncan -- I don't know what
16 advice the Board received. But this is proper filing,
17 it's in the official record, service was made, of course,
18 on opposing counsel, and we think that's the regular order
19 of business, that the Board should see what it is we're
20 asking the Board to do. And that's in the Board's
21 discretion. The Board may decide it's not interested in
22 our proposed order, it just wants to accept the ALJ's
23 findings. But we've done it the way we understand the law
24 allows us to do and requires us to do.

25 We want you to do the right thing, we don't

1 want to run afoul of any requirements of this law or the
2 administrative procedure, so we've proceeded in what we
3 think is the regular order.

4 MR. TREVIÑO: General Counsel Beaver.

5 MS. BEAVER: Thank you, Chairman. Tracey
6 Beaver, general counsel, for the record.

7 I'd just like to reiterate that both parties
8 were notified that no additional evidence outside of the
9 record from when the case was originally heard would be
10 permitted. The Board is restricted to looking at the
11 findings of fact and conclusions of law in the ALJ's
12 proposal for decision, and if there is any additional
13 information that either party would like to verbally
14 present to the Board today, they may do so. So if there's
15 information or arguments in a proposed final order or
16 other documents the parties would like to present to the
17 Board, they're more than welcome to do so verbally.

18 Thank you.

19 MR. KAPLAN: And I guess my only comment is
20 it's a filing, it's an official filing. The Board is
21 authorized to receive it if it wants it, it's authorized
22 to say we're not interested. But this is not an argument,
23 it's a proposed order. That's why we filed it and we
24 invite the Board to review it and decide whether to enter
25 it or not.

1 MR. TREVIÑO: And we did discuss this, counsel
2 did discuss this with me. It wasn't specific to this
3 information, I wasn't aware of the type of information but
4 we agreed, based on counsel's recommendation, that since
5 no new material was to be presented, I concurred with that
6 and that's what we went with.

7 MR. KAPLAN: Understood. We just don't regard
8 it as evidence, it's a filing, it is a proposed order that
9 the Board can enter or not enter. And we actually filed
10 it before we received any of that kind of notification.

11 MR. TREVIÑO: Thank you.

12 Member Gillman.

13 MS. GILLMAN: So your suggestion is yes, you
14 can -- Mr. Kaplan can read his proposed corrected order,
15 we just can't get a copy?

16 MS. BEAVER: Tracey Beaver, general counsel,
17 for the record.

18 No new evidence or information would be able to
19 be admitted for this case. The Board has the information
20 from the SOAH PFD and the Appeals Court. If the parties
21 wanted to present additional argument, such as what they
22 would present in a proposed final order, they're free to
23 do so in their verbal presentation in ten minutes.

24 MR. GRAHAM: But not upon -- so I would like to
25 hear the other side and the in the event that I wanted to

1 circle back to this, you're saying if it's going to be
2 done it has to be done now?

3 MS. BEAVER: Absolutely. I'm sorry. It
4 doesn't have to be done during the presentation, there's
5 also a rebuttal, and then the Board will have an
6 opportunity to ask questions of both parties.

7 MR. GRAHAM: Okay. Perfect. Thank you.

8 MS. BEAVER: Thank you.

9 MR. TREVIÑO: Member Prewitt.

10 MR. PREWITT: Mr. Kaplan, going back to SOAH
11 Docket Number 608-14-1208.LIC on the PFD, it sounds like
12 you're basing a lot of your arguments on the behavior of
13 the GM that was in place for Hyundai at the time and how
14 that affected. What specifically on the 53 findings of
15 fact in that document on page 23 through page 27 are you
16 disputing on the findings of fact for SOAH?

17 MR. KAPLAN: In the proposed final order that
18 we filed, long before being told we couldn't provide
19 anything else to the Board and something that under law we
20 are entitled to file, we contested findings of fact 20 and
21 21, finding of fact 27, finding of fact 30 -- I'm sorry --
22 20, 21, 27, 30, 50, 52, 53, and some conclusions of law,
23 and our order has all of this. I couldn't read it out in
24 ten minutes but it points out why the findings of fact
25 were simply as a matter of law contradicted by the

1 evidence or irrelevant.

2 You know, there are plenty of facts in this
3 world which are true but don't matter to the question of
4 law, and this is all in our proposed final order which was
5 drafted explicitly in compliance with the rulings of the
6 Court of Appeals. And I would invite the Board to read it
7 because we gave the specific reasons and legal basis there
8 on pages 2 through 4 of our proposed order.

9 MR. TREVIÑO: I would just remind Board members
10 to press their mic buttons on if they are going to
11 comment.

12 MR. KAPLAN: I hope I was heard.

13 MR. TREVIÑO: No, you were fine, you were
14 great, everybody heard you.

15 MS. GILLMAN: It is just really frustrating
16 that we can't -- I was thinking it was not new evidence,
17 that it's just proposed corrective order.

18 MR. KAPLAN: That's our view.

19 MS. GILLMAN: So it's frustrating that we
20 can't see that.

21 MR. TREVIÑO: Under the advice of counsel when
22 we discussed this, I was not told whose party was entering
23 information, I wasn't aware of the nature of the
24 information, it was just an agreement based on counsel's
25 recommendation that we do not accept any new information

1 this late in the game without having both parties an
2 opportunity to review, and so that's where we're at.

3 MS. McRAE: Mr. Chairman.

4 MR. TREVIÑO: Yes.

5 MS. McRAE: I have a question.

6 MR. TREVIÑO: Member McRae.

7 MS. McRAE: Tracey, is it possible for Mr.
8 Kaplan to verbally tell us what changes that he has in
9 between the original order and the amended order that he
10 has now? Can he do that verbally?

11 MS. BEAVER: Tracey Beaver, general counsel,
12 for the record.

13 Absolutely. He can verbally present any
14 information he'd like and during the ten-minute
15 presentation that's absolutely something he could have
16 presented. And also, as Board members you're able to ask
17 questions. If you would like to ask him those questions,
18 that would be appropriate.

19 Thank you.

20 MS. McRAE: Okay.

21 MR. TREVIÑO: So Member McRae, if you'd like to
22 put that in the form of a question.

23 MS. McRAE: Mr. Kaplan, is it possible for you
24 to -- I don't know how many changes you have in the new
25 order, proposed order.

1 MR. KAPLAN: I'm very reluctant to violate any
2 instructions I've received and incur the wrath of the
3 Board, but I have to tell you as a lawyer of 40 years
4 standing, I have never been told that a board or a court
5 cannot consider a formal filing of a proposed order. I've
6 never heard that ever, and we simply disagree. And the
7 Board will be handicapped if it can't see the official
8 filing of what we've offered and just read it. I mean,
9 I've got on each of these findings of fact that we are
10 rejecting and replacing or modifying, we have like a
11 paragraph.

12 MR. TREVIÑO: Mr. Kaplan, I don't mean to
13 interrupt you but Member McRae has a question for you --

14 MR. KAPLAN: I may have misunderstood the
15 question.

16 MR. TREVIÑO: -- and we have counsel, and
17 counsel has advised that it's okay for you to explain
18 those changes that you make.

19 If I'm correct on this. Right, Counsel Beaver?

20 MS. BEAVER: General Counsel Tracey Beaver, for
21 the record.

22 Yes, that is correct.

23 MR. TREVIÑO: Member McRae has put it to you in
24 the form of a question, we have counsel's agreement that
25 it's fine to be entered into the record, so if you would

1 like, you are welcome to articulate the changes that you
2 are suggesting.

3 MR. KAPLAN: Thank you. I will do so. On page
4 2 of the order --

5 MS. BEAVER: I'm sorry. Tracey Beaver, general
6 counsel, for the record.

7 I'm sorry to interrupt. I just wanted to
8 clarify that it's not being entered as an exhibit in the
9 record but counsel is free to verbally explain his
10 position if it's responsive to Member McRae's question.

11 Thank you.

12 MR. TREVIÑO: Thank you very much for the
13 clarification.

14 MR. KAPLAN: That's right. The proposed order
15 is on file, it's a public filing already. I will be happy
16 to verbally read it. Now, to me verbal also means
17 written, but I'll just read it.

18 MS. BEAVER: Tracey Beaver, general counsel,
19 for the record. Sorry to interrupt.

20 It's fine for the presenters to go ahead and
21 use documents to refresh their memory if they would like
22 to use those in order to remember what the arguments are,
23 and so counsel is free to use that document to refresh his
24 memory but not actually enter it as an exhibit.

25 Thank you.

1 MR. KAPLAN: I'm not offering it as an exhibit,
2 I'm not making an argument, I am reading what we have
3 filed in a public filing that the Board should have. And
4 that's what I'll do unless the Board instructs me not to
5 do so.

6 MR. TREVIÑO: Under advisement of counsel, you
7 are welcome to do so.

8 MR. KAPLAN: Thank you.

9 All right. On the second page of our order we
10 define specific reasons and legal bases for changes to
11 findings of fact and conclusions of law.

12 (Mr. Kaplan is reading from document.)

13 Findings of Fact 20 and 21 are rejected and
14 replaced with Finding of Fact 20A under Texas Government
15 Code 2001.058(e)1) because the ALJ did not properly apply
16 or interpret the applicable law, namely Occupations Code
17 Section 2301.468(2). Central to whether HMA's different
18 treatment of World Car versus Red Combs constituted
19 "unreasonable" discrimination in violation of Occupations
20 Code Section 2301.468(2) is whether the dealerships were
21 similarly-situated when the different treatment began.
22 The ALJ improperly regarded and failed to mention in the
23 PFD the undisputed facts that Red McCombs closed an entire
24 Hyundai dealership in 2009, turned down nearly three times
25 as many allocations than World Car did in the first six

1 months of 2010, and had a similar level of inventory as
2 World Car in mid 2010.

3 See Hearing Transcript at 726, 1005-06;
4 Defendant's Trial Exhibit 46, 47; Hearing Transcript at
5 80-81, 643, 1046-47; Plaintiff's Trial Exhibit -- I'm
6 saying Plaintiff's Trial Exhibit instead of PTX and
7 Defendant's Trial Exhibit instead of DTX -- PTX 18;
8 Defendant's Trial Exhibit 175, Defendant's Trial Exhibit
9 181, Defendant's Trial Exhibit 188.

10 By disregarding these undisputed facts, the ALJ
11 misinterpreted and misapplied the concept of "unreasonable
12 discrimination" in Occupations Code Section 2301.468(2)
13 because the ALJ did not consider that the dealerships were
14 similarly-situated when the different treatment began.

15 Next bullet point. Finding of Fact 27 is
16 rejected under Texas Government Code 2001.058(e)(1)
17 because the ALJ did not properly apply or interpret the
18 applicable law, namely Occupations Code Section
19 3201.468(2). The inquiry under Occupations Code Section
20 2301.468(2) is whether HMA unreasonably discriminated
21 against World Car. Whether World Car "chose to
22 participate" in the "programs" mentioned by the ALJ would
23 not excuse HMA's discriminatory treatment and is therefore
24 irrelevant. Moreover, the ALJ improperly speculated about
25 the inventory that World Car might have received if it had

1 participated in the "programs" mentioned by the ALJ. The
2 ALJ's misapplication and misinterpretation of the test for
3 "unreasonable discrimination" led to the ALJ's misplaced
4 emphasis on possible inventory that World Car "might have"
5 received rather than properly focusing on HMA's actual
6 allocations to World Car as compared to Red McCombs for
7 which there was a threefold disparity.

8 See PTX 110, PTX 123, PTX 126.

9 Next bullet point. Finding of Fact 30 is
10 rejected and replaced with Finding of Fact 30A under Texas
11 Government Code 2001.058(e)(1) because the ALJ did not
12 properly apply or interpret the applicable law, namely
13 Occupations Code Section 2301.468(2). It is undisputed
14 that between July 2010 and September 2013 HMA provided Red
15 McCombs with 1,788 manual allocations as compared to 621
16 manual allocations to World Car.

17 See Plaintiff's Trial Exhibit 109, 110, 111,
18 126.

19 This disparity in allocations to similarly-
20 situated dealerships was not rational, sensible,
21 acceptable or fair. There was no material dealership
22 difference between the dealerships that would justify this
23 unreasonable disparity.

24 See Hearing Transcript at 726, 1005-06;
25 Defendant's Trial Exhibits 46, 47; Hearing Transcript at

1 80-81, 643, 1046-47; Plaintiff's Trial Exhibit 10,
2 Plaintiff's Trial Exhibit 17, Plaintiff's Trial Exhibit
3 18, Plaintiff's Trial Exhibit 82; Defendant's Trial
4 Exhibit 175, Defendant's Trial Exhibit 181, Defendant's
5 Trial Exhibit 188.

6 The Board finds that as a matter of policy and
7 to ensure a sound and equitable system of distribution of
8 motor vehicles in the State of Texas, a distributor's
9 (here HMA) discrimination and allocation is unreasonable
10 under Occupations Code Section 2301.468(2) when one
11 dealership (here Red McCombs) receives nearly three times
12 manual allocations as a similarly-situated dealership in
13 the same city (here World Car).

14 Next bullet point. Finding of Fact 50 is
15 rejected and replaced with Finding of Fact 50A under Texas
16 Government Code 2001.058(e)(1) because the ALJ did not
17 properly apply or interpret the applicable law, namely
18 Occupations Code Section 2301.467(a)(1). The ALJ
19 improperly assumed that Occupations Code Section
20 2301.467(a)(1) is limited to unreasonable sales standards
21 that are expressly stated in the dealer agreement. The
22 text of 2301.467(a)(1) does not mention or include any
23 reference to the dealer agreement or franchise agreement.

24 The statute is not so limited but rather prohibits a
25 manufacturer or a distributor from requiring adherence to

1 any unreasonable sales standard wherever and however it is
2 imposed. HMA "required adherence" to 100 percent sales
3 efficiency as contemplated by Section 2301.467(a)(1)
4 because the consequence for non-compliance was to be in
5 "material breach" of the franchise and risk losing the
6 dealership franchise.

7 See Plaintiff's Trial Exhibit 67, Plaintiff's
8 Trial Exhibit 1 at 16.B.3, page 19; Hearing Transcript at
9 113, 437, 1013, 1086-87.

10 Next bullet point. Is there a reporter? Am I
11 going too quickly for the reporter. Are we being recorded
12 also?

13 THE REPORTER: Yes, sir.

14 MR. KAPLAN: All right. Thank you.

15 Finding of Fact 52 is rejected and replaced
16 with Finding of Fact 52A under Texas Government Code
17 Section 2002.058(e)(1) because the ALJ did not properly
18 apply or interpret the applicable law. World Car's
19 complaint is not that "measuring sales efficiency" was
20 unreasonable but rather that requiring adherence to 100
21 percent sales efficiency was unreasonable. This
22 requirement was unreasonable because HMA knew that World
23 Car did not have sufficient inventory to meeting 100
24 percent sales efficiency and HMA ignored or rejected World
25 Car's repeated requests to buy more inventory so that it

1 could achieve 100 percent sales efficiency.

2 PTX 3; PTX 4; PTX 67; PTX 81; PTX 120, at 180-
3 81; Hearing Transcript at 1004, 1033-34.

4 Next bullet point. Finding of Fact 53 is
5 rejected and replaced with Finding of Fact 53A under Texas
6 Government Code Section 2001.058(e) (1) because the ALJ did
7 not properly apply or interpret the applicable law, namely
8 Occupations Code 2301.478. The ALJ did not properly apply
9 the concepts of fairness and good faith. HMA's
10 discretionary allocations to Red McCombs were nearly
11 triple the amount provided to World Car, which was unfair
12 based on the circumstances, i.e. similarly-situated
13 dealerships all asking for more inventory.

14 See PTX 109, PTX 110, PTX 111, PTX 123, PTX
15 127; Hearing Transcript at 726, 1005-06; DTX 46, 47;
16 Hearing Transcript at 80-81, 643, 1046-47; PTX 20, 17, 18,
17 PTX 82; DTX, that's Defendant's Trial Exhibit 175,
18 Defendant's Trial Exhibit 181, Defendant's Trial Exhibit
19 188.

20 It was also unfair for HMA to know that World
21 Car did not have enough inventory to meet 100 percent
22 sales efficiency, to turn down World Car's request for
23 more inventory so it could achieve 100 percent sales
24 efficiency, and then tell World Car that it was in breach
25 of the franchise for not meeting 100 percent sales

1 efficiency.

2 See PTX 3, PTX 4, PTX 67, PTX 81, PTX 120 AT
3 180-81; Hearing Transcript at 1004, 133-34.

4 Next bullet point. Conclusion of Law 6 is
5 rejected and replaced with Conclusion of Law 6A under
6 Texas Government Code 2001.058(e)(1) because the ALJ did
7 not properly apply or interpret the applicable law, namely
8 Occupations Code Section 2301.467(a)(1). Based on the
9 Board's adoption of Findings of Fact Numbers 50 and 52A,
10 the Board finds that World Car met its burden to show HMA
11 violated Occupations Code Section 2301.467(a)(1) by
12 requiring adherence to an unreasonable sales standard.

13 Conclusion of Law 8 is rejected and replaced
14 with Conclusion of Law 8A under Texas Government Code
15 2001.058(e)(1) because the ALJ did not properly apply or
16 interpret Occupations Code Section 2310.468(2). Based on
17 the Board's adoption of Findings of Fact 20A and 30A, the
18 Board finds that World Car met its burden to show HMA
19 violated Occupations Code Section 2301.467(2) by
20 unreasonably discriminating against World Car in manual
21 allocations between 2010 and 2013.

22 Next bullet point. Conclusion of Law 9 is
23 modified under Texas Government Code 2001.058(e)(1)
24 because the ALJ did not properly apply or interpret the
25 applicable law. Based upon the Board's adoption of

1 Findings of Fact 20A and 30A, HMA's discretionary
2 allocations were not reasonable. Based on the Board's
3 adoption of Findings of Fact 50A and 52A, HMA required
4 adherence to unreasonable sales standards. The Board
5 therefore finds that World Car met its burden to show HMA
6 violated the duty of good faith and fair dealing through
7 manual allocations and by requiring World Car to meet 100
8 percent sales efficiency between 2010 and 2013.

9 Having considered the evidence, the arguments,
10 and the findings of fact of conclusions of law presented
11 in the PFD, the Board enters these findings of fact and
12 conclusions of law. The ALJ's Findings of Fact 10, 21,
13 27, 30, 50, 52 and 53 and Conclusions of Law 6, 8 and 9
14 are rejected. The ALJ's Findings of Fact 1 through 19,
15 22-26, 28, 29, 31-49 and 51 and Conclusions of Law 1-5 and
16 7 are adopted and therefore not restated herein.

17 Then we provided the actual modified findings
18 of fact.

19 20A. In 2009 and 2020, World Car and Red
20 McCombs voluntarily reduced their inventories and in mid-
21 2010 their inventories were at similar levels.

22 30A. It was not reasonable for Hyundai to
23 provide nearly three times as many discretionary
24 allocations to Red McCombs (1,788) as to World Car (621)
25 between July 10 and September 2013 because the dealerships

1 were similarly-situated.

2 50A. Maintaining 100 percent sales efficiency
3 is a requirement to avoid being in material breach of the
4 franchise agreement with Hyundai.

5 52A. Requiring World Car to meet 100 percent
6 sales efficiency in order to avoid material breach of the
7 franchise agreement was requiring adherence to an
8 unreasonable sales standard because Hyundai was aware that
9 World Car did not have sufficient inventory to meet 100
10 percent sales efficiency.

11 53A. Hyundai's discretionary allocations to
12 the San Antonio market between 2010 and 2013 were unfair,
13 and Hyundai's requirement that World Car meet 100 percent
14 sales efficiency despite the dealership's known lack of
15 inventory was also unfair.

16 And then modified conclusions of law.

17 6A. World Car met its burden of proof to show
18 that Hyundai required adherence to unreasonable sales
19 standards. Texas Occupations Code 2301.467(a)(1).

20 8A. World Car met its burden of proof to show
21 that Hyundai violated the Occupations Code by engaging in
22 unreasonable sales discrimination in the allocation of
23 vehicle inventory between 2010 and 2013 because Hyundai
24 provided disproportionate discretionary allocations of
25 inventory to World Car's nearest competitor in San Antonio

1 that were not justified by any material differences
2 between the dealerships. Texas Occupations Code
3 2301.468(2) (2003).

4 9A. World Car met its burden of proof to show
5 that Hyundai violated its duty of good faith and fair
6 dealing through disparate manual allocations and by
7 requiring World Car to meet 100 percent sales efficiency
8 between 2010 and 2013. Texas Occupations Code
9 2301.478(b).

10 And then the final is just ordering the that
11 those findings and conclusions are adopted and that the
12 complaints are upheld.

13 MR. TREVIÑO: General Counsel.

14 MS. BEAVER: Tracey Beaver, general counsel,
15 for the record.

16 If there's any other Board member questions,
17 they can ask those at this time.

18 MR. TREVIÑO: Great. Thank you very much.

19 Any other questions from Board members at this
20 point?

21 MR. PREWITT: I want the general counsel to let
22 me know if it's appropriate to ask this question. If not,
23 then I withdraw the question. And the question is was
24 there any economic damage -- I'll restate this. As far as
25 meeting the 100 percent sales efficiency, what was the

1 consequence of that to World Car dealerships?

2 MS. BEAVER: Tracey Beaver, general counsel,
3 for the record.

4 Are you asking about what happened after the
5 closure of the case?

6 MR. PREWITT: Yes.

7 MS. BEAVER: Anything that happened after the
8 closure of the case wouldn't be relevant to the decision
9 for today.

10 MR. PREWITT: Okay. Then what happened during
11 the term of the case then? Would that be appropriate to
12 ask that?

13 MS. BEAVER: As it relates to the facts of the
14 case?

15 MR. PREWITT: Yes.

16 MS. BEAVER: If you're asking about a specific
17 finding of fact, that would be permissible.

18 MR. PREWITT: Right.

19 MR. KAPLAN: If I understand your question,
20 when the complaint was filed, this discrimination
21 magically ceased. If that's the answer to your question.

22 MR. TREVIÑO: Mr. Kaplan, hold on a second.

23 MR. KAPLAN: As to actual economic damage,
24 that's a matter for another forum. I'm not sure if I've
25 answered your question.

1 MR. TREVIÑO: General Counsel.

2 MS. BEAVER: Tracey Beaver, general counsel,
3 for the record.

4 That's fine to ask the question and then if
5 there's any information that's provided that's outside the
6 record from the case, that wouldn't be able to be used by
7 the Board in their final decision.

8 MR. PREWITT: Thank you.

9 MR. KAPLAN: Actually, sir, that is in the
10 record. It's part of Plaintiff's Trial Exhibit 126 which
11 is in the record at 160584. There's a timeline which
12 shows that and it's supported by the documents. It's in
13 the record.

14 MR. PREWITT: Thank you.

15 MR. SCOTT: I have a question.

16 MR. TREVIÑO: Member Scott.

17 MR. SCOTT: Thank you.

18 Following up on John's question, I think the
19 question is you've referred several times to failure to
20 meet sales efficiency and that being a material breach of
21 the franchise agreement. And the question is when Hyundai
22 said that World Car was in material breach of their
23 franchise agreement, that's one statement, but were there
24 consequences to World Car as a result of that finding.

25 MR. KAPLAN: Yes, sir. That's an important

1 question. Following up on my earlier statement about what
2 is in the record, the record shows that the consequences
3 that are outside the record that we're not going to
4 discuss are for another day, but we do know that the
5 dealership did not have its dealership terminated. The
6 threat was made, the lawsuit was filed, and these damaging
7 events slowed down or ceased. It took assertion of our
8 rights to change the conduct.

9 MR. TREVIÑO: Mr. Kaplan, thank you.

10 Any other questions from Board members.

11 MR. KAPLAN: Thank you for your patience.

12 MR. TREVIÑO: Thank you.

13 General Counsel, any other comments? Please
14 feel free to jump right in there if you see we need to be
15 doing something different.

16 Okay. We'll now proceed with Respondent's
17 presentation. I believe we have Mr. Bennett.

18 MR. BENNETT: Yes, Mr. Chairman. I will take
19 the first eight minutes of our ten minutes, and then Mr.
20 Hance, Kent Hance, is going to take the last two minutes
21 of our first opening presentation.

22 MR. TREVIÑO: Thank you very much. Great.
23 Welcome

24 MR. BENNETT: Mr. Chairman, members of the
25 Board, I am Bruce Bennett, and along with Kent Hance,

1 Dudley McCalla, David Prichard, we represent Hyundai Motor
2 America. Also present is Mr. John deNeve, who is regional
3 general manager for Hyundai.

4 First I want to take up this proposed order.
5 It was filed, Board members, with SOAH, the State Office
6 of Administrative Hearings, not with your agency. We did
7 not see it until last night. So all the stuff about an
8 official filing, it wasn't filed here, they filed it over
9 at SOAH, and they didn't copy us on it.

10 Now, another thing I want to address right up
11 front is the implication is here from Kaplan's
12 presentation that the Third Court approved the prior Board
13 decision, just said, well, you just need to clean it up.
14 That's not at all correct. The Board's order was
15 reversed. The Court of Appeals expressed no opinion on
16 the merits. That's for you to decide today, but it told
17 you how the process must work to reach that decision, and
18 that is what we're here again. The PFD is before you, the
19 Court of Appeals has expressed no one way or the other on
20 it, it's just given you guidance on how this decision must
21 be made.

22 Now, I have to quote President Reagan: "There
23 you go again." He is trying to retry this case, World Car
24 is trying to retry the case before this Board, and this is
25 a case that World Car lost after two years of discovery,

1 after five days of trial, and after 350 exhibits were
2 introduced, and the ALJ weighed the evidence. There were
3 conflicts in the evidence, there were many disputes in the
4 evidence, there's been reference here to undisputed facts,
5 there were hardly any undisputed facts, the facts were
6 hotly contested, and the ALJ made basic findings of fact
7 to support her recommended decision to you that World Car
8 failed to prove its case. And now here we are again
9 today, and World Car is once again trying to get this
10 Board to step outside its proper role and find facts the
11 ALJ never found, find facts contrary to the ALJ's
12 findings.

13 Now, World Car is claiming unreasonable
14 discrimination by now focusing on the difference in
15 allocations during the period from July 2010 to September
16 2013. And he says, well, these dealerships, the McCombs
17 dealerships and the New World Car dealerships were
18 similarly-situated. That could not be further from the
19 truth.

20 What was going on during that period? Well,
21 first and foremost, the difference in allocations existed
22 because World Car made the business decision not to
23 participate in the programs that Hyundai offered that
24 would have increased discretionary allocations. During
25 this time period, McCombs was remodeling its northwest

1 Hyundai store, it was upgrading it to add the Equus line,
2 it was converting the store into an exclusive Hyundai
3 dealership. McCombs other store, the Superior store, it
4 became an exclusive Hyundai dealership during this time
5 period.

6 McCombs participated in the service loaner
7 program, you know, where you bring your car in to get
8 serviced, your Hyundai, they put you in a new Hyundai.
9 That helps increase your allocations because you bought
10 those service loaner cars from the manufacturer and that
11 ups your allocations. McCombs was doing that but during
12 that same period World Car chose not to participate in any
13 of those programs. If you took your Hyundai into a World
14 Car dealership to get serviced, you know what they put you
15 in? A Nissan. They wouldn't even do that which would
16 have increased their allocation.

17 They chose not to go exclusive, they chose not
18 to do the upgrades to get the luxury line, all those
19 things, those are huge differences, that's apples and
20 oranges, folks, that's not apples to apples comparison.
21 These people were not similarly-situated. The McCombs
22 dealerships were investing a lot of money to do these
23 upgrades to go exclusive and that was why they received
24 more allocations than World Car.

25 Now, again, it's their voluntary business

1 decision, but the critical findings that run throughout
2 the ALJ's proposal for decision is that New World Car
3 could have participated, there were no barriers to
4 participation, and they would have received more
5 allocations had they participated. So what Mr. Kaplan
6 puts up here is, well, it was three to one. That's three
7 to one with New World Car voluntarily choosing not to
8 participate. It would have been different, and that's
9 what the ALJ's findings are. Mr. Kaplan tries to pass
10 that off as speculation. That's not speculation, that was
11 based on the evidence. The testimony and the evidence
12 was: Yes, you, World Car, would have gotten more
13 discretionary allocations had you participated.

14 So there were no barriers and they would have
15 received more, and the would finding is there's no
16 improper motive here, and that's why the ALJ found that
17 Hyundai made a reasonable business judgment in making the
18 discretionary allocations that it made. And based on
19 these facts, that's why the ALJ said they didn't prove
20 their case.

21 Now, World Car is trying to say, well, the non-
22 participation in those programs, that's just irrelevant,
23 just don't even pay attention to that. That's the
24 relevant fact in this case, that's the outstanding fact in
25 this case, that explains why there was a discrepancy in

1 allocations. It's highly relevant. And there was no
2 improper speculation, the evidence convinced her that they
3 would have and could have received more allocations if
4 they'd just only participated.

5 Now, World Car, in their proposed order that
6 was read to you, seems to be advocating a per se rule,
7 three to one allocation is just always unreasonable as a
8 matter of law. Well, that's not true. You have to look
9 at the facts. As the Third Court said, in determining
10 whether this is unreasonable discrimination, it's a highly
11 fact-specific inquiry that you have to make, and the ALJ's
12 basic findings of fact explain why the allocation
13 difference existed and why it was reasonable.

14 Creating a per se rule like they want you to do
15 would be harmful to the Texas consumers and to this
16 state's automobile industry. Dealers participate in these
17 programs by making investments that improve the
18 facilities, spur increased demand for the brand, and
19 enhance customer service to the motoring public. Those
20 investments justify an award of extra allocations.

21 Why would manufacturers offer incentive
22 programs that are beneficial to the consumers if the
23 dealer can choose not to participate but then turn around
24 and sue the manufacturer because it didn't get similar
25 allocations as the participating dealers? Why should non-

1 participating dealers, like World Car, be allowed to make
2 successful claims and bring lawsuits when they themselves,
3 by their own decisions, caused or contributed to the
4 allocation differences they complain about?

5 And you know, he says you're going to set a
6 dangerous precedent if you rule for Hyundai. Absolutely
7 not. You're going to set a dangerous precedent if you
8 rule for them because they want you to create some rule
9 that's going to guarantee any dealer who can sit back and
10 decide not to participate in these programs can bring some
11 lawsuit against the manufacturers and seek damages for
12 claimed lost sales that wouldn't have been lost if they'd
13 just participated in the programs.

14 The rest of his order goes on about adherence
15 to sales, 100 percent sales efficiency. The ALJ found
16 there was no such requirement, it is not a breach. The
17 dealer agreement, the franchise agreement does not require
18 that, that they be 100 percent sales efficient.

19 And just to clear up real fast, there is no
20 requirement, there was no punishment, Commissioner, there
21 was no consequences, they still got allocations, they
22 still had their dealership franchise renewed, they're
23 still operating under valid agreements as of the close of
24 the record, so there were not consequences, there were not
25 penalties.

1 I'll yield the balance of my time to Mr. Hance.

2 MR. TREVIÑO: Thank you very much, Mr. Bennett.

3 MR. BENNETT: Unless you have questions for me.

4 MR. TREVIÑO: Does any Board members have any
5 questions for Mr. Bennett?

6 MS. WASHBURN: Mr. Chairman.

7 MR. TREVIÑO: Member Prewitt.

8 MR. PREWITT: And again, I run this question
9 through general counsel.

10 It is asserted by opposing counsel that Red
11 McCombs closed down a dealership during this time of -- I
12 guess time of record-keeping. Is that true?

13 MR. BENNETT: I'm sorry?

14 MR. PREWITT: It was asserted that Red McCombs
15 closed down a dealership.

16 MR. BENNETT: Red McCombs closed a dealership
17 before this period in question began, Commissioner. I
18 think he closed it down in 2009. What they're complaining
19 about is from July 2010 through September 2013. Red
20 McCombs had two dealerships. Those are the dealerships
21 that were renovated and became exclusive Hyundai
22 dealerships.

23 MR. PREWITT: And the second question was in
24 relation to turning down inventory at levels equal to or
25 greater than World Hyundai. Can you address that, or is

1 that possible to address during the time period?

2 MS. BEAVER: Tracey Beaver, general counsel,
3 for the record.

4 It's fine to ask questions for the other party
5 about the rebuttal of the previous party.

6 MR. BENNETT: Yes. World Car was turning down
7 inventory requests before this period began. They had
8 decided to cut back on their inventory, and the ALJ so
9 found. The ALJ also found that McCombs was maintaining
10 their inventory levels. But they turned down cars. They
11 continued to turn down cars during this period of time
12 we're talking about.

13 MR. PREWITT: Right.

14 MR. BENNETT: And they refused to do anything
15 that would have increased their sales and increased their
16 allocations, despite Hyundai working with them, asking
17 them to cooperate.

18 MR. PREWITT: Okay. That's all I have.

19 MR. TREVIÑO: Thanks, Member Prewitt.

20 Any other questions for Mr. Bennett?

21 (No response.)

22 MR. TREVIÑO: Hearing none, Mr. Hance.

23 MR. HANCE: My name is Kent Hance, and I'm
24 proud to represent Hyundai. And Mr. Chairman and members
25 of the Board, I appreciate your service to the state of

1 Texas. It's not a high-paying job, and I've had some of
2 those.

3 This is a simple case. There was
4 discrimination or there was not discrimination, and there
5 was not discrimination. We had discretionary programs.
6 We come out with a new car, they refused. We asked them
7 to remodel, they refused. We asked them to be a stand-
8 alone dealership, they refused. This is unbelievable to
9 me. We asked them to use our car as the loaner cars and
10 they refused consistently.

11 Administrative law judge, they worked a period
12 of five days, they heard 17 witnesses. We had experts,
13 they had experts. And they found in our favor. Your
14 staff went along with them, said that's correct. And then
15 there was a mistake made, made a decision, didn't have
16 findings of law and you didn't have the facts, and so then
17 you put some in and the Third Court of Appeals reversed
18 it. If you take the order that Mr. Kaplan -- and he's a
19 good lawyer, he's been practicing 40 years, but when he's
20 been practicing 52, I think he will learn more -- just had
21 to throw that in, I couldn't let it get by.

22 (General laughter.)

23 MR. HANCE: The Third Court of Appeals, the
24 Sunset Commission, they're saying this is wrong, and this
25 is big.

1 Let me tell you one last thing to look at.
2 We've got 64 dealers, this is the only one that's done
3 this. We want to sell cars. We've tried to help them
4 sell cars, and they wanted to wait and say when we get the
5 same benefits as Red McCombs -- who participated with us -
6 - they want the same benefits but didn't do the work.
7 It's kind of a Bernie Sanders approach, and that's not an
8 approach that should be in the State of Texas. This case
9 should be dismissed.

10 Thank you very much.

11 MR. TREVIÑO: Thank you, Mr. Hance.

12 Any questions for Mr. Hance?

13 (No response.)

14 MR. TREVIÑO: No? Okay. Now each party will
15 have five minutes for rebuttal. First we'll hear from Mr.
16 Kaplan for the Complainant.

17 MR. GRAHAM: While he's coming up, a question
18 for general counsel.

19 So they'll have rebuttal and then that's when
20 the Board will be able to discuss the matter among
21 ourselves?

22 MS. BEAVER: Tracey Beaver, general counsel.

23 MR. GRAHAM: And potentially ask further
24 questions should it be needed?

25 MS. BEAVER: Absolutely. Tracey Beaver,

1 general counsel, for the record.

2 After the rebuttal of each party you're
3 absolutely welcome to ask questions.

4 MR. GRAHAM: But they're going to rebut, we ask
5 questions, then we're going to have a conversation amongst
6 ourselves here in front of God and the public.

7 MR. TREVIÑO: Yes.

8 MR. GRAHAM: Because we have not been able to
9 do that in any way. And then should a question arise in
10 the course of this Board's deliberation, can we then
11 return and ask a question if a question comes up?

12 MS. BEAVER: Absolutely. During our
13 deliberation if you want to bring a party back up to ask a
14 question, then you would be able to bring both parties
15 back up so they could have an opportunity to respond.

16 MR. GRAHAM: Okay. Thank you.

17 MR. TREVIÑO: And also, at any time if any
18 member of the Board would like to speak with counsel
19 privately, feel free, we can call a recess at any time,
20 and just give me a heads up and we'll make sure that
21 happens.

22 Any other questions? Any other comments?

23 (No response.)

24 MR. TREVIÑO: Mr. Kaplan, please.

25 MR. KAPLAN: While I bow to Mr. Hance's

1 seniority, I contributed to one or more of his campaigns
2 and I can promise the Board I've never contributed to Mr.
3 Sanders' campaign.

4 (General laughter.)

5 MR. TREVIÑO: Let the record show.

6 MR. KAPLAN: Everything I'm about to tell you
7 is also in the full record and was discussed in 2016 when
8 we first presented to the Board and/or 2017 when we
9 presented again to the Board.

10 First of all, the reduction in inventory was
11 accomplished by the other dealerships by closing a
12 dealership, which our dealer did not do. Second, the
13 promotions we allegedly refused to participate in, we
14 asked for exactly the same kind of aid or assistance that
15 the other dealership received and we did not get it. We
16 sought to build a new dealership down on 410, a brand new
17 dealership that would be freestanding, and were turned
18 down because they said that's not a good neighborhood. In
19 other words, they decided the dealer can't do that.

20 We didn't renovate the dual facility because we
21 had been told we wouldn't get any aid for it, whereas, the
22 other dealership that received favorable treatment got aid
23 for those renovations. And we found that that renovation,
24 the aid had been promised, the renovation took later.

25 And our refusal to participate in a deceptive

1 service loaner program is something I really need to talk
2 about. Something I never knew, until I got into this
3 case, is when you buy a car that's called like -- if you
4 have a service loaner in service a short enough period of
5 time you can still call it a new car, but the customer, at
6 least with this manufacturer, doesn't learn that the
7 warranty started when they first put it into service
8 loaner business. So if you walked in on March 31 and
9 bought a car that had been a service loaner for a little
10 while back in, say, December, you didn't know that you ran
11 out of warranty four months sooner than the, say, seven-
12 year warranty that you think you got.

13 Mr. Zabihian -- and he's in the room -- I'm
14 proud to say he thought that was deceptive and improper.
15 He wouldn't do it. And Mr. Hetrick, the regional manager
16 who discriminated against him, at another national
17 dealer's meeting admitted that that was a process that had
18 caused a lot of heartburn for dealers. I don't know if
19 they changed or not, but calling Mr. Zabihian a bad man
20 for refusing to participate in something that's
21 deceptive -- because Hyundai had no requirement that
22 dealers tell consumers you're buying a car with a warranty
23 already started -- that's the most outrageous thing that I
24 heard in the entire case.

25 Now let me talk about allocations. It is not

1 true that these manual allocations are dependent on these
2 programs. You can participate in some of these programs
3 and you may get extra allocation that way, but Mr.
4 Zabihiyan wanted good cars, these dealerships wanted good
5 cars, just like everybody else, and the good cars went to
6 the other dealers who turned down many more vehicles than
7 did the World Car dealerships, many more.

8 And in fact, one of the other things that's in
9 the record, Hearing Transcript at 1086-87, which I
10 mentioned in the order, is that before Mr. Hetrick ever
11 met this dealer, he presented him with a letter to get
12 signed authorization to sell the dealership. They wanted
13 to get rid of him from the beginning. And only the
14 existence of this proceeding forestalled that effort, and
15 fortunately there's a new regional manager now.

16 Another thing that's in the record and is very
17 important is that this dealer, like other dealers, has
18 other franchises. The other franchises sell hundreds more
19 cars. You don't walk across the street at a dealership
20 and suddenly become a bad dealer for one manufacturer when
21 you are a good dealer right next door. Human nature being
22 what it is, you're a good dealer or you're not a good
23 dealer. It's a hard business, but you don't suddenly walk
24 across the lot to the other dealership and become
25 successful when you're an awful dealer here, and vice

1 versa.

2 That's exactly what happened, and that record
3 is undisputed, and it's something that was made clear to
4 this manufacturer and I believe it's in the record of one
5 of the two presentations -- it's also in one of the two
6 presentations that we made to the Board earlier. Mr.
7 Zabihian had made a letter of complaint about that and
8 pointed out that he had many more cars in stock at a Kia
9 dealership than a Hyundai dealership.

10 So I want to explode these false notions that
11 he's just some kind of an uncooperative person who made
12 them mad and deserves unfavorable treatment. There was
13 discrimination, and to the extent anybody says there
14 wasn't any, that's just wrong. The question is a legal
15 one: is it unreasonable discrimination? And if the Board
16 doesn't get to decide that and the ALJ does, then we might
17 as well not have a Board.

18 MR. TREVIÑO: Thank you, Mr. Kaplan.

19 Any questions for Mr. Kaplan at this point?

20 (No response.)

21 MR. TREVIÑO: Hearing none, then we'll go to
22 the rebuttal from Mr. Bennett, I believe, for the
23 Respondent.

24 MR. BENNETT: There he goes again. He's
25 rehashing evidence that was disputed. He keeps trying to

1 act like it's undisputed. These things were all disputed.
2 There's no deceptive programs. There's no findings of
3 deception, there's no findings to support anything you
4 just heard. These are just theories and excuses that they
5 presented to the ALJ that she found not credible and she
6 refused to make findings that supported what you just
7 heard because the evidence was disputed and the evidence
8 was this is a proper program. There's nothing in the
9 proposed order of findings about anything being deceptive
10 or improper. These are programs that are common in the
11 industry. That is in her PFD: these are common in the
12 industry. All manufacturers have these kinds of programs;
13 there's nothing wrong about them at all.

14 Now, again you just heard pieces of evidence,
15 a small part of five days of testimony and hundreds of
16 exhibits, but it was disputed and there's no findings to
17 support what Mr. Kaplan just told you.

18 This letter that he mentioned that Mr. Hetrick
19 when he came on board. What was the situation? World Car
20 was cutting back on their inventory, World Car was not
21 participating in any of the programs, and Mr. Hetrick just
22 says, You know, if you want to sell, we'll help you find a
23 buyer. That's all it was. There's no threat to
24 terminate. He was just saying, you know, you seem to be
25 interested in your other brands, you're not really focused

1 on Hyundai, and that's all that was about. And again,
2 there's no findings by the ALJ that there was a threat

3 These are basic findings, and what the Third
4 Court said is, look, the basic findings which are like
5 who, what, when, where, how, those are for the SOAH judge
6 to decide. You make a decision based on the basic
7 findings that are found by the SOAH judge, and those basic
8 findings support only one conclusion here: Hyundai didn't
9 do anything wrong.

10 I mean, World Car and Mr. Kaplan, I'm sorry,
11 they're just at war with the legislature, they're at war
12 with the Sunset Commission, they're at war with the Third
13 Court of Appeals. There is this process on how this works
14 and it's a good process. SOAH is your agent by statute.
15 They are delegated the power to find these basic facts for
16 you so you don't have to sit for five days of testimony,
17 and that's the process.

18 And I mean, if you adopt the order that he read
19 to you this morning -- which we only got last night --
20 we'll be back here in two or three years. This is
21 contrary to the Third Court of Appeals. He's got stuff in
22 here about requiring adherence to sales standards. That
23 was all argued in the Court of Appeals and the Court of
24 Appeals said the ALJ found there was no requirement of a
25 100 percent sales efficiency, it's not required in the

1 dealer agreement. These are findings that were made and
2 the Third Court says those are basic findings that the ALJ
3 makes, and the Board cannot make contrary findings.

4 That's what he's asking you. This order is littered with
5 new basic findings that the ALJ never made and he's trying
6 to get you to make. I'm an appellate lawyer. That's been
7 most of my career besides from being at this Board, and I
8 can tell you if you adopt this order, we will be back.

9 The course here and the only course really,
10 proper course here and legal course here is to adopt the
11 proposal for decision. It's sound, it was based on
12 evidence and it's based on the proper legal procedures
13 that the legislature has established for how this Board
14 goes about making its decisions.

15 Unless the Board has any questions for me, I
16 think that's it. We just implore you do not create a bad
17 precedent by adopting this order that MR. Kaplan wants you
18 to order. It will make us an outlier. All the other
19 states in the Union this is permissible. It will make
20 Texas an outlier because the manufacturers they'll fear
21 any unequal allocation they make will lead to a lawsuit.
22 Lawyers, fees, costs, lawsuits they have to deal with. It
23 will guarantee it. Adopting some per se rule that any
24 three to one or whatever they're trying to pick out of the
25 air, that's not how this works. It's a fact-intensive

1 issue, it's something that the manufacturers look at who's
2 participating, who's not participating. And again, you
3 would take us out the mainstream if you do what Mr. Kaplan
4 and World Car want you to do.

5 So unless you have any questions for me, thank
6 you for your time.

7 MR. TREVIÑO: Thank you, Mr. Bennett.

8 Does the Board have any questions for Mr.
9 Bennett?

10 MR. BACARISSE: Mr. Chairman.

11 MR. TREVIÑO: Member Bacarisse.

12 MR. BACARISSE: I just have a question for
13 general counsel. There's been a lot of very impassioned
14 arguments both sides this morning. I want to make sure
15 I'm not getting lost in what we're actually here being
16 asked to find.

17 The issue that really is before us -- tell me
18 if I'm right -- the issue that's before us as a Board is
19 whether World Car has established that Hyundai's actions
20 or programs violate the Texas Occupations Code, period,
21 end of story. It's not about anything else. Is that
22 right?

23 MS. BEAVER: Tracey Beaver, general counsel,
24 for the record.

25 That's correct. The Occupations Code sections

1 that are applicable in this particular case are also
2 outlined in the conclusions of law in the SOAH ALJ's PFD.

3 MR. BACARISSE: And is it counsel's opinion
4 that the administrative law judge's outlines of the
5 Occupations Code were correct in their findings of fact?
6 Do you have a problem with any of those?

7 MS. BEAVER: The charge of the Board today is
8 to review the PFD and both the basic findings of fact as
9 well as the conclusions of law and make a policy choice as
10 to whether or not they would uphold that PFD and making
11 sure that they set forth with sufficient justification any
12 reasons if they disagree and any explanation of basic
13 facts that would contradict that final finding and make
14 sure it's sufficiently explained in the deliberation
15 portion.

16 MR. BACARISSE: Okay. Thank you.

17 MR. TREVIÑO: Thank you, Member Bacarisse.
18 Any other questions? Member Graham.

19 MR. GRAHAM: I would just like to speak to the
20 Board since, you know, we haven't been able to do that,
21 and as one of two Board members who was present when this
22 came to this Board and as, of those two members, the
23 franchised dealer, I kind of feel obligated to visit with
24 you about all of this and where I was at the time. I'll
25 be hesitant to tell you where I think this Board was.

1 MR. TREVIÑO: Excuse me. General Counsel
2 Beaver.

3 MR. GRAHAM: Yes.

4 MS. BEAVER: Tracey Beaver, general counsel,
5 for the record.

6 Sorry to interrupt, Member Graham. Before the
7 Board goes into the discussion and deliberation there will
8 need to be a call for the motion from the chairman.

9 MR. TREVIÑO: Okay. So before we start
10 discussion.

11 So at this point are there any other questions
12 for either side any member -- I'm sorry -- of the either
13 Respondent or the Complainant and their attorneys? No
14 questions?

15 MR. GRAHAM: I've got a question.

16 MR. SCOTT: Mr. Chairman. I have a motion that
17 I would like to make, please.

18 MR. TREVIÑO: Member Scott, we'll get to that
19 in one second.

20 MR. GRAHAM: Well, go ahead, go ahead. It's
21 just staying with Robert's Rules of Order when it comes to
22 this, but that's another fight for another day.

23 MR. TREVIÑO: We're trying to work through this
24 thing here.

25 MR. GRAHAM: Yeah, I know, I know.

1 MR. TREVIÑO: Appreciate your patience, Member
2 Graham.

3 So at this point we're in the question phase,
4 questioning the attorneys who have presented to us today.
5 We're good with that. Right?

6 MR. GRAHAM: But again, if we make a motion we
7 can still circle back if we have a question. Is that
8 correct.

9 MR. TREVIÑO: Yes.

10 MS. BEAVER: Tracey Beaver, general counsel,
11 for the record.

12 Absolutely.

13 MR. GRAHAM: Okay. Just making sure.

14 MR. TREVIÑO: So let's get back to this.
15 Questions, no questions for the attorneys who presented to
16 us today?

17 (No response.)

18 MR. TREVIÑO: So hearing none, I would like to
19 entertain a motion.

20 MR. SCOTT: Mr. Chairman, I have a motion.

21 MR. TREVIÑO: Okay. The chair recognizes
22 Member Scott.

23 MR. SCOTT: Mr. Chairman, I move that the Board
24 uphold SOAH's PFD and adopt the Findings of Fact 1 through
25 53 and conclusions of law, as stated in the proposal for

1 decisions, with amendments to Conclusion of Law Number 3
2 and Number 8, to correct the typographical errors in the
3 citation.

4 Mr. Chairman, I believe the SOAH proposal for
5 decision should be upheld because World Car made several
6 business decisions that caused them to receive less
7 inventory. World Car did not prove that Hyundai treated
8 them unfairly, used unreasonable sales discrimination, or
9 violated their duty of good faith and fair dealing.

10 MS. BEAVER: Tracey Beaver, general counsel,
11 for the record.

12 Sorry to interrupt, but then before the
13 deliberation there will need to be a second.

14 MR. TREVIÑO: Correct. He's still making his
15 motion, I think. Thank you for bringing that up.

16 MR. SCOTT: Some of those business decisions
17 that World Car made that ultimately caused them to receive
18 less inventory include World Car voluntarily reducing
19 their inventory in 2009 and 2010, as stated in Finding of
20 Fact Number 20. In Finding of Fact Number 23, World Car,
21 unlike Red McCombs was not an exclusive Hyundai
22 dealership. In Finding of Fact Number 27, 28 and 29,
23 World Car made a business decision not to participate of
24 some available programs provided by Hyundai that could
25 have caused the increased allocation available to them.

1 Additionally, in Conclusion of Law Number 8 the ALJ found
2 that World Car did not participate in several programs
3 that would have permitted additional discretionary
4 allocations.

5 It is clear to me from reviewing the PFD
6 several times that World Car did not prove their case and
7 that World Car had the burden of proof. In making this
8 motion I take into consideration that during the relevant
9 time periods in question a devastating tsunami hit Japan
10 which resulted in lower vehicle production in Japan which
11 led to a greater demand in U.S. for Hyundai by both
12 franchised dealerships and consumers. As a result,
13 available inventory for Hyundai motor vehicles available
14 for allocation became greatly reduced by this sudden
15 demand. I view this case as one in which World Car made a
16 conscious business decision not to participate in Hyundai
17 programs that could have produced additional inventory for
18 Complainants' dealerships.

19 Finally, I support the findings of fact and
20 conclusions of law reached by the SOAH ALJ in the PFD.

21 Thank you.

22 MR. RICHARDSON: Second.

23 MR. TREVIÑO: We've got a motion from Member
24 Scott, second from Member Richardson, and now we can begin
25 discussion.

1 Member Graham.

2 MR. GRAHAM: Okay. Thank you.

3 MR. TREVIÑO: Go ahead.

4 MR. GRAHAM: First of all, my first question is
5 for Sheriff Richardson. You got all that, Sheriff?

6 (General laughter.)

7 MR. GRAHAM: Sort of. I mean, what a way to
8 start. Oh, my gosh. I think this has been the doozy for
9 us since I've been on the Board, very difficult, a lot of
10 considerations.

11 I want the Board to know that as a franchised
12 dealer in think this might be one of the most important
13 things we do as a board, and it is extremely important,
14 and that's why we're here, one of many reasons but one of
15 the most important reasons

16 So going back to 2016 when we heard this case
17 in 2016 and SOAH's decision that they failed to meet their
18 burden of proof, and as you know, at that time the Board
19 disagreed with those conclusions and that Hyundai held New
20 World Car to an unreasonable sales standard, and it was
21 really based, at least at that time for me -- again, I'll
22 be very cautious to speak for anybody else on the Board --
23 it was just a common sense approach that having a dealer
24 that is held to a sales standard that is unattainable was
25 just unreasonable. I disagreed with the ALJ on that case.

1 In Texas our statute provides dealers the
2 opportunity to make business decisions, as you pointed
3 out, that's based on the best interests of their family,
4 of their business, their employees, and at that time this
5 dealer made decisions that they felt, I presume, was in
6 the best interests of all of those. Sometimes those
7 decisions don't necessarily line up with best interests of
8 the manufacturers; manufacturers want to sell vehicles.
9 But we have a statute to protect them in the event that
10 they do that.

11 So you know the result, we reversed the ALJ
12 decision. General counsel at that time didn't tell us we
13 needed anything else, so off it went and back it came.
14 Once it came back, general counsel, again at that time,
15 wrote up and drafted what he believed was -- this was not
16 general counsel that we have in place today -- what he
17 believed was a case of our points. I think we've learned
18 since that that was poorly executed, and as I go back and
19 read it, it deserved to come back to the Board, and I
20 think as a Board member of DMV, we owe an apology to both
21 parties for not getting that right. They've spent a lot
22 of time and a lot of money having to continue this
23 process.

24 So here we are, we're back square one, and
25 we've still got the question at hand which is is the ALJ's

1 conclusion that New World Car failed to prove its case
2 correct, or did Hyundai in some violate statute and
3 perhaps hold them to an unreasonable sales standard.

4 As a franchised dealer, I take no issue with
5 the manufacturer's decision to allocate vehicles in the
6 way that they did. There are underlying things there but
7 we can't consider that in this deliberation, in my
8 opinion. I know that when a dealer makes a business
9 decision they can sometimes do things that will get them
10 more vehicles or they can bow out, not make the investment
11 and not get the inventory. I'm not going to disagree that
12 manufacturers have that right.

13 In this case, however, New World Car alleges
14 discrimination in allocation in Conclusion of Law 7 and in
15 this case the manufacturer allowed a regional manager a 15
16 percent discretion of vehicle allocation, and I was
17 surprised that the ALJ did not take issue with that, but
18 after I go back and I've studied this thing inside and
19 out, I have concluded that the reality is that this agency
20 and this Board really hasn't clarified that. It is my
21 understanding that the statute gives us broad guidance and
22 this Board then makes rules to provide clarity to some of
23 those things. We have not provided clarity in the history
24 of this agency, and so in all reality, there was nothing
25 to hold the manufacturer to one way or the other. So I

1 don't believe there's an issue there either.

2 I do believe that this is something this Board
3 needs to consider in the future and take a hard look at
4 because a 15 percent discretion is significant, that is a
5 lot of vehicles. You know, we could figure out what might
6 be or what might not be, but anyway, I'm going to move on
7 from that because that is a discussion for another day.

8 In Finding of Fact 50, it states: "Maintaining
9 100 percent sales efficiency is not a requirement to be or
10 to remain a licensed Hyundai dealer." So as I worked all
11 the way through this, this is where I get hung up. I
12 remain perplexed by the ALJ's conclusion because when you
13 read the statute, this big book that I've got right here
14 that has become half my friend -- well, it's always my
15 friend but we've spent a lot of time together lately -- if
16 you look in that statute, in 2301.455 this is the section
17 of the statute that lays out very clearly the reasons of
18 good cause and termination of a dealer. The very first
19 item reads: "The dealer's sales in relation to the sales
20 in the market is good cause for termination." Number one.

21 Fortunately, our legislature had the sense to add, after
22 it lists about eight things, then there's (b) to add a
23 sentence that said that in and of itself basically can't
24 be cause -- market penetration does not in and of itself
25 constitute good cause. So number one can't be the only

1 reason but it is a reason.

2 So in this case Hyundai stated in record, in
3 the PFD -- which is what we can look at -- that sales
4 efficiency is measured to help dealers improve their
5 performance and sales efficiency is not a standard that
6 World Car or any other dealer is required to adhere to.
7 And if that's the case, then that would be in full
8 compliance, and obviously that is what the ALJ concluded.

9 However, when you look at the facts in the PFD
10 that in 2013 they sent New World Car a notice of failure
11 of performance based on their sales efficiency, advising
12 them either meet your standards or we'll work with you on
13 a sale, and stating that it left them in material breach
14 of the dealer agreement. Based on how I read it, their
15 testimony contradicts themselves.

16 When this dealer failed to meet those sales
17 efficiency goals or standards, for all the reasons -- and
18 there are a bunch of reasons in this case, there was a lot
19 going on in this market with Toyota -- well, I'm not going
20 to go through that because I didn't cross-reference that
21 in the PFD -- there was a lot of reasons going on as to
22 why they may or may not have been able to do that. But
23 clearly, it looked to me that the manufacturer said it was
24 required based on their actions. So that is why it is
25 imperative that sales standards be reasonable and

1 attainable for dealers.

2 Their own testimony stated that they knew that
3 New World Car couldn't reach -- they were not going to get
4 enough allocation to reach their standards, they testified
5 that they knew other dealers weren't going to get enough
6 to reach their standards, but when New World Car asked
7 them either provide us more cars so we can reach our
8 standard or just lower our standard, they didn't do
9 either. So again, that's my primary issue in this case,
10 my struggle is to understand how the ALJ came up with that
11 conclusion in Finding of Fact 50. If a manufacturer can
12 set sales standards that are unattainable, they only need
13 to go find something else and then they can terminate you,
14 and as a dealer that is very concerning to me.

15 I think the fact that they may have -- the
16 dealer may have very well prevented or got ahead of the
17 manufacturer from sending them a termination notice, and
18 that may factor into this at the end of the day, but
19 that's where I'm hung up. I don't think there's any
20 question that it was an unreasonable sales standard and
21 the fact that the ALJ decided that because they really
22 didn't enforce anything it was okay. I disagree with that
23 entirely.

24 So I'll yield the microphone and say that's
25 where I'm hung up on this case.

1 MR. TREVIÑO: Thank you, Member Graham.
2 Member Gillman.

3 MS. GILLMAN: Mr. Chairman -- am I on?

4 MR. TREVIÑO: Yes.

5 MS. GILLMAN: I move that the Board amend or
6 add amend Findings of Fact 30, 52 --

7 MR. TREVIÑO: General Counsel Beaver.

8 MS. BEAVER: Sorry to interrupt, Member
9 Gillman. Since there was already a motion and a second,
10 the deliberation will be around that particular motion and
11 second, but you're free to deliberate and discuss any
12 reasons that you disagree with the PFD. New motions at
13 this time couldn't be made unless they're to amend or
14 substitute the first motion, and that would only be if
15 it's in support of the first motion, it couldn't be to
16 reject and do a new motion.

17 MS. GILLMAN: When can I reject and do a new?

18 MS. BEAVER: Tracey Beaver, general counsel,
19 for the record.

20 MS. BEAVER: If the Board does not vote to
21 adopt the first motion, then the chairman may call for a
22 new motion, but at this time, the deliberation is for all
23 the Board members to express their viewpoints, and then a
24 final vote will be taken.

25 MS. GILLMAN: Okay. Noted.

1 I'd like to address some of the points. Number
2 one, with regard to allocation. So I feel that the ALJ
3 misapplied the law in finding that Hyundai's discretionary
4 allocations were not unreasonable or discriminatory.
5 Discretionary allocations are on their face unreasonable
6 and to me this is a clear case where Hyundai allocated
7 more cars to World Car's closest competitor which in turn
8 made it impossible for World Car to obtain 100 percent
9 sales efficiency, which made World Car receive less
10 allocation, which further reduced its ability to meet
11 sales efficiency targets. The discretionary allocations
12 created a situation where World Car was trapped in a cycle
13 of ever-reducing inventory.

14 The word discretionary is really what I have a
15 problem with. The word discretionary, in my opinion,
16 lends itself to unfair practices. Dealers would like
17 manufacturers' policy to be clear and transparent,
18 reasonable formulas that can be enjoyed by all.
19 Discretionary allocation lends itself to unregulated,
20 unpredictable, subjective ways of doing business.

21 A more precise formula is a more reasonable way
22 to behave when both parties can have confidence in their
23 professional partnership. The word discretionary means
24 arbitrary and up to the whim of a person. This creates
25 unclear non-transparent distribution methods and I think

1 the formula needs to be clear and not discretionary.
2 Hyundai should have a defined method of calculation, which
3 is the standard in the industry. Hyundai should have a
4 defined method of calculation, which is a standard in the
5 industry.

6 In this case the standard formula was only 85
7 percent, under Findings of Fact Number 9 and 11, yet I
8 feel the standard allocation should have been 100 percent
9 of a dealer's units earned. Any human being, such as a
10 national sales manager or a zone manager, that has the
11 ability to manipulate or alter the earned formula is
12 subjecting their franchise to potential litigation.
13 Findings of Fact Number 8, 11, 18 and 19 are not a metric
14 by which you can hold any dealer to.

15 Finding of Fact Number 18 shows that in just
16 six months of that one year, 134 units went to Red McCombs
17 and only 20 to World Car. That shows Red McCombs received
18 114 more cars in just six months. Under Finding of Fact
19 19, the differences in discretionary allocations continued
20 for four more years. Four more years of that same
21 treatment would result in a serious delta.

22 Page 2 of the proposal for decision under the
23 heading Applicable Law Section 2301.468 says, A
24 manufacturer may not otherwise treat franchised dealers
25 differently as a result of a formula. I feel that's

1 what's happened here. They may not -- this is another
2 point in Section 2301 -- they may not discriminate
3 unreasonably between franchisees in the sale of motor
4 vehicles owned by the manufacturer. Additionally, Texas
5 Occupations Code 2301.468 says, Manufacturers have a duty
6 of good faith and fair dealings in their relationships
7 with franchisees.

8 I feel that the Finding of Fact Number 8
9 supports my argument that Hyundai's allocation consists of
10 formula allocations, discretionary allocations and manual
11 allocations. The discretionary allocations piece is an
12 unfair business practice under Section 2301.468. A
13 manufacturer may not otherwise treat franchised dealers
14 differently.

15 To support this, Finding of Fact Number 11
16 supports my arguments. Discretionary allocations are made
17 by Hyundai's regional general manager who may distribute
18 up to 15 percent. Discretionary allocations are an unfair
19 business practice under 2301.468.

20 I'd like to talk a little bit about these
21 programs. Participation in manufacturer programs may
22 result in increased allocations, and it is reasonable for
23 dealers to be rewarded if they participate in certain
24 manufacturer programs. I do not dispute that. But the
25 formula about deciding the number of additional units

1 should not be discretionary. That's what I have a problem
2 with. The discretionary allocation needs to be redefined
3 as bonus allocation over and above a standard. In my
4 opinion, bonus allocations should be a manufacturer's
5 prerogative over and above a standard formula of
6 allocation.

7 For example, if a manufacturer has more supply
8 than a standard formula offers, they can offer more
9 vehicles to a dealer. Or if a dealer has achieved some
10 wonderful monumental task, like being number one in
11 customer satisfaction in the nation, you might earn one or
12 two extra, but this is over and above a standard
13 allocation that's equal for all dealers, not 85 percent
14 lending itself to 15 percent discretion. So I think that
15 regular allocation to dealerships should not have a
16 component of discretionary allocation in it at all. And
17 although Findings of Fact Number 22, 24, 25, 26 and 36
18 show that Red McCombs participated in programs and World
19 Car did not, it is unfair for Hyundai to give more
20 discretionary allocation to Red McCombs because these
21 allocations were not based on a standardized transparent
22 formula.

23 I feel it is reasonable to reward dealers to
24 participate in renovating their facilities, however, I
25 disagree with that formula being at someone's discretion.

1 I feel a formula that's well defined, transparent and
2 published is a more reasonable method of rewarding dealers
3 for participation in Hyundai's facility program.

4 Regarding the facility renovations, upgrades and new
5 construction, preferably a standard formula and method of
6 calculation based on actual receipts, actual dollars
7 spent, rather than discretionary decisions made by one
8 person that would affect allocation of new cars.

9 So because of this misapplication of the law, I
10 feel like parts of the PFD should be amended, and we'll
11 get to that motion later.

12 I'd also like to talk about sales efficiency.
13 Despite the fact in Finding of Fact Number 50 that says,
14 Maintaining 100 percent sales efficiency is not a
15 requirement to be a licensed Hyundai dealer, it does
16 affect allocation, and the resulting unfair discriminatory
17 practices. From page 18 of the PFD, Mr. Hetrick rewarded
18 discretionary allocations by looking at sales efficiency.

19 For this reason, sales efficiency was a significant
20 factor in determining whether or not World Car received
21 any of their 15 percent discretionary allocation.

22 Please note Finding of Fact Number 42. Hyundai
23 was aware some dealers could not achieve 100 percent sales
24 efficiency with their lower inventory. Therefore, a
25 dealer's sales efficiency should not be a measurement by

1 which allocation is distributed arbitrarily. That's the
2 key point. Hyundai had an unreasonable expectation for
3 World Car to meet sales efficiency with their formula of
4 discretionary allocation.

5 I have, of course, specific amendments to
6 findings of fact and conclusions of law that while I am
7 not a lawyer at all, I tried to be thorough, I'll wait.

8 MR. GRAHAM: Well, let me ask this question.

9 MR. TREVIÑO: Member Graham, would you hold on
10 a second.

11 I'd ask Ms. Gillman if she's finished with her
12 statement.

13 MS. GILLMAN: Yes. For right now, yes.

14 MR. TREVIÑO: Great.

15 MS. GILLMAN: Thank you.

16 MR. TREVIÑO: So if we could, I would like to
17 call a recess just for a minute here. Okay? We're
18 recessed just for a moment.

19 MS. BEAVER: And the time is now 9:53. When we
20 will be getting back on the record?

21 MR. TREVIÑO: In a moment.

22 MS. BEAVER: Thank you.

23 (Whereupon, a brief recess was taken.)

24 MR. TREVIÑO: So let the record show that it is
25 now approximately ten o'clock, we are back in session. I

1 hope everybody feels more comfortable now.

2 All right. Let's go back to this. So Member
3 Gillman had just finished her eloquent summation there,
4 and now any other?

5 Member Washburn.

6 MS. WASHBURN: Thank you, Chairman. So I've
7 got quite a few comments.

8 So on sales efficiency, so it's my
9 understanding that sales efficiency is measured the same
10 way for every dealer based on -- what I read in here --
11 based on a national average, so that's one thing to
12 consider. And there's on case or prior Board decision or
13 statutory provision that I'm aware of that says a
14 manufacturer cannot set a sales standard that's in excess
15 of the vehicles that a dealer is allocated to sell. And in
16 this instance the dealer turned vehicles down, so there's
17 no unreasonable discrimination. So that's on sales
18 efficiency.

19 As far as the letter that was sent, so the
20 record is pretty clear that Hyundai was not trying to
21 terminate this dealer. While Hyundai may have wanted
22 their performance to improve, they had not sent a notice
23 of termination. So a buyer's assist letter, which is what
24 this letter was, is very customary in the industry.
25 Manufacturers send them to dealers for all kinds of

1 reasons, things like succession planning, to evaluate the
2 value of their store, or perhaps what it sounds like in
3 this case would be the dealer might want to sell in order
4 to be eligible or financially ready to purchase a
5 different kind of store, or maybe just didn't want to be a
6 dealer anymore.

7 So let's look at World Car wanted in this case.

8 They wanted the ALJ, and therefore the Board, to conclude
9 that what Hyundai had done was a violation of statute in
10 Texas, but let's look at what they were complaining about
11 and let's look at the actions that Hyundai took.

12 So number one, McCombs got additional
13 allocation of vehicles because it participated in
14 Hyundai's rental car program. World Car did not, although
15 they could have. This was their decision. There was no
16 unreasonable discrimination by Hyundai in not giving World
17 Car the same number of vehicles as McCombs.

18 The buyer's assist letter that we talked about,
19 this had nothing to do with the vehicle allocation and
20 Hyundai was not seeking to terminate World Car's
21 franchise, just wanted to see if they were committed to
22 the brand, because unlike McCombs, World Car had not
23 chosen to invest in their facility. Had they invested in
24 their facility they would have been eligible for
25 additional vehicle allocation like McCombs.

1 Discretionary allocation of 15 percent by
2 Hyundai's regional manager. It is customary in the
3 industry that manufacturers have some amount of
4 discretionary allocation of vehicles that they can spread
5 across their dealers, so this comes into play when there
6 are things like a hailstorm and a dealer has depleted
7 inventory, or in some cases dealers will raise their hand
8 to take vehicles that maybe a dealer turned down or more
9 vehicles during a changeover. So the fact that Hyundai,
10 like other manufacturers, has a discretionary allocation
11 of 15 percent is not unreasonable discrimination.

12 Facility upgrade. The de-dual facility by
13 McCombs receiving additional vehicles. That's okay.
14 Manufacturers want dealers to invest in their brand in
15 their facilities, it's good for the customers. And
16 manufacturers want dealers to be financially successful
17 after they make those investments, so they provide those
18 dealers with additional vehicles if they want them. World
19 Car had the same opportunity to make a similar investment
20 in their facility to obtain additional vehicle allocation.

21 So Hyundai's actions were not actions that were
22 unreasonably discriminatory towards World Car. Stated in
23 another way, they were actually reasonable. Just to be
24 clear, on these facility programs that result in rewarding
25 dealer with additional vehicle allocation, that is

1 customary in the industry. Toyota, Ford and many other
2 manufacturers utilize these same kind of programs. And
3 I'm not aware of any Texas case or decision suggesting
4 that these programs are inappropriate or wrong.

5 To the contrary, these programs are so
6 customary that in one of our neighboring states Arkansas,
7 codified in their Motor Vehicle Code to say the following:

8 A franchisor may, consistent with its allocation
9 obligations at law to its other dealers, provide a dealer
10 a commitment to supply additional vehicles or provide a
11 loan or grant of money as an inducement for the dealer to
12 expand, improve, remodel or renovate its facilities if the
13 provisions of the commitment are contained in writing,
14 voluntarily agreed by the dealer, and are made available
15 on substantially similar terms to any of the franchisor's
16 dealers who voluntarily agree to make a substantially
17 similar facility expansion, improvement, remodeling,
18 alteration, or renovation.

19 So there's really no argument here that
20 providing additional vehicles to dealers as a reward for
21 investing in their facilities as being customary in the
22 industry and certainly not an unreasonably discriminatory
23 practice by any stretch.

24 MR. TREVIÑO: Thank you, Member Washburn.

25 Any other comments? I see Member Gillman, but

1 I think I'd like to let all the other members of the Board
2 speak before we kind of go back, circle back. Member
3 Gillman will have plenty of time to speak, but I'm just
4 kind of throwing it out there on McRae's side, Prewitt's
5 side, Richardson's side, Bacarisse's side.

6 Member Bacarisse.

7 MR. BACARISSE: Thank you.

8 Just a brief observation from a public member.

9 It seems to me in what my colleagues have very, very well
10 stated issues that are brought up in their comments -- I
11 mean, I hear them and am appreciative of them -- it seems
12 to me that it's incredibly important for any business who
13 deals with a franchisor that supplies them with product to
14 have an incredibly well negotiated contract between the
15 two parties so that expectations are laid out well in
16 advance and so that there is as little gray area as
17 possible.

18 And then secondly, I would comment, just a
19 thought, question really, is if something needs to be
20 fixed and you can't fix it in a contract relationship,
21 then the other best remedy is to try to take that issue to
22 the legislature, and I'm sure that industry does that on a
23 regular basis.

24 So I think there's some interesting and
25 important points that have been brought forward today and

1 I appreciate my members, and I'm learning by being here
2 and listening to each of you, so thank you.

3 MR. TREVIÑO: Thank you, Member Bacarisse.
4 Member Prewitt, did you?

5 MR. PREWITT: I have really no discussion at
6 this time.

7 MR. TREVIÑO: Thank you very much.
8 Member Graham, I think you were the one, I
9 interrupted you.

10 MR. GRAHAM: No. Well, actually all I was
11 going to say to Board Member Gillman was she could discuss
12 why -- and I wasn't trying to interrupt to take over, I
13 apologize for that. Let me just point to a couple of
14 things and then I'll come back to that.

15 First and foremost, it is extremely important
16 that everybody on this Board asks these questions. Thank
17 you for your input, all of you. The last thing we need
18 are the two dealer representatives up here running this
19 show, we do not need them to run this show, we need to
20 give important input to the Board based on our knowledge
21 of this industry and then we need your input and reach a
22 conclusion. So I just wanted to say that I thought that
23 was extremely important.

24 In regards to your comment about the
25 relationship between manufacturer and franchised dealer be

1 clear, I couldn't agree with that more. I can tell you
2 that I have a 30-year-old contract and there are dealers
3 with much older contracts. I wish I could tell you, but I
4 don't know, that's the way it works, I guess. There's not
5 much in our contract so we're having to work on this
6 relationship that's really a relationship governed more by
7 statute than by contract because statute trumps contract.

8 And then back to Board Member Gillman's point,
9 I was just going to say I would like to hear your points
10 on what you're discussing about a potential motion because
11 we have to make sure anything we do complies with those
12 three items that falls in the range of what we can and
13 can't do. So I'm trying to tie anything together there to
14 make sure if we do take any kind of action like this it's
15 got to be rock solid. So anyway, I was just going to ask
16 her to expand on that, not necessarily make a motion but
17 expand.

18 Thank you.

19 MR. TREVIÑO: So back to Member Gillman, and
20 Member Graham has asked you to kind of maybe articulate
21 your thoughts on amendments.

22 MS. GILLMAN: I think what I'd like to clarify
23 is -- and Member Bacarisse, I completely agree with you.
24 A well negotiated contract with little gray area is
25 preferred, and I will say in my experience with ten other

1 franchises it is more well defined. Formulas for
2 allocation are printed, transparent. Formulas for
3 facility renovations are printed, transparent. It is
4 industry standard. It is not, however, apparently in this
5 case with Hyundai, and I feel that it is setting a
6 precedent allowing this discretion to go on.

7 And I feel like I would be really proud to have
8 Texas stand up and be an outlier, I would be very proud to
9 have Texas say that, like most all manufacturer programs
10 that exist today, Hyundai needs to comply as well to make
11 all dealers treated equally. The word discretionary just
12 lends itself to unfair practices.

13 I agree that dealers should be rewarded if they
14 participate in programs. I just want a clear defined
15 formula and then let the dealers decide whether they want
16 to participate. That's okay.

17 The authority by one guy in a regional capacity
18 to withhold vehicles at his discretion is, in fact, the
19 argument that I want to hone in on that's a violation of
20 the Occupations Code. It's an unfair business practice to
21 have it at his discretion. That's what I'm refuting.

22 And if there are vehicles that are -- you know,
23 after a standard equation or a formula has been used, if
24 there are vehicles that are extra -- because in Houston,
25 Texas we had Hurricane Harvey, remember, and a lot of

1 dealers lost all of their inventory, and thank goodness
2 the manufacturers stepped in and dealers came and
3 voluntarily gave up allocation to be distributed to those
4 dealers that needed it. I mean, sometimes that happens.
5 Hailstorms happen, like you said, Shelley. But all of
6 those are exceptions or bonus outside of a standard
7 formula.

8 I just feel like if, Paul, you -- Member Scott,
9 if you did a million-dollar renovation and I did a
10 million-dollar renovation, I don't want it to be up to the
11 discretion of one guy to give you 20 cars and me zero
12 cars. The point is that if there's a standardized formula
13 then dealers can make a decision, a business decision that
14 would affect their allocation.

15 I feel like while the meeting sales efficiency,
16 100 percent sales efficiency was not a condition of the
17 sales and service agreement, if it was a determining
18 factor in allocation and every single time the 15 percent
19 was withheld over a four-year period, that one dealer gets
20 less and less and less and less.

21 The problem that I have with Hyundai's business
22 rules is that it's gray and lends itself to one guy making
23 up his own rules. A contract should be more clear, I
24 completely agree with you. A method of calculation should
25 be used that's equal and fair treatment to all dealers.

1 MR. TREVIÑO: Thank you, Member Gillman.

2 Any other comments?

3 And is your suggestion that there's a way to
4 fold that into Member Scott's motion as an amendment of
5 some kind? I'm not suggesting Member Scott change his
6 motion, I'm just asking if that was what you were thinking
7 about.

8 MS. GILLMAN: If I'm correct, Member Scott, you
9 moved that we adopt the SOAH findings, and I think I'm
10 wanting to amend and find in favor the way the Board has
11 voted in the past.

12 MR. TREVIÑO: Okay. All right.

13 Member Scott.

14 MR. SCOTT: Thank you, Mr. Chairman.

15 I agree to some extent with Member Gillman's
16 frustration with the discretionary allocation. I think
17 that that's something that could or should be addressed by
18 this Board or by this agency, but I don't think that that
19 is what we're here for today. We have a specific case,
20 and the burden of proof in this case falls on World Car to
21 prove that Hyundai treated them unfairly and used
22 unreasonable sales discrimination, and the burden of
23 proof, again, is on World Car.

24 And I've been back and forth on this myself,
25 I've read this PFD several times. I started with a

1 completely different approach to this as to who should
2 prevail, back and forth. I just don't see that World Car
3 has been able to prove that they were discriminated
4 against. There were several programs made available to
5 World Car that they chose not to participate and there's a
6 finding of fact that says that in the beginning of this
7 process World Car voluntarily reduced their inventory
8 while McCombs maintained a higher inventory level at the
9 beginning of the recession in 2008 forward.

10 And I think that McCombs made business
11 decisions that ultimately turned out to be beneficial to
12 them, and I think that World Car made business decisions
13 that ultimately turned out to have a different consequence
14 for them. So as we go through our business situations, we
15 all have to make decisions, some of those work out for us
16 and some of them don't. And I think in this case World
17 Car made some decisions that ultimately did not work out
18 for them as well as the business decisions that McCombs
19 made. McCombs made a decision to continue to invest in
20 the franchise, to remodel facilities, to have
21 participation in the loaner car program, and World Car
22 chose not to. Those decisions have consequences.

23 So I don't believe that World Car proved that
24 they were unfairly discriminated against. That's it.

25 Thank you.

1 MR. TREVIÑO: Great. Thank you, Member Scott.
2 Member Prewitt.

3 MR. PREWITT: Just a couple of thoughts. One
4 is in regards to codifying franchise agreements that they
5 have to be specific in every manner as far as the
6 allocation of cars of vehicles, I think that gets in the
7 area of where we're trying to basically determine what
8 free enterprise is. And I think if a dealer who's
9 obviously a very competent dealer, has ten dealerships,
10 enters into a franchise agreement where he knows in
11 advance there's a 15 percent discretionary allocation,
12 he's doing so with open eyes and as a prudent man. And to
13 say he's not and we need to protect him tells me he's
14 imprudent, which I don't think is true. I think he's
15 obviously a competent person and a competent dealer.

16 So then it's a question of why would he enter
17 into that agreement. It's because he wants to sell that
18 brand of car, and if he doesn't want to, he doesn't have
19 to enter into that agreement. He doesn't have to sell
20 Hyundai, he can sell Honda or some other car.

21 A far as the sales efficiency, I concur with
22 Member Scott in the sense that there's been no consequence
23 to World Car as far as termination of the dealership, as
24 far as restriction of dealership opportunities from them
25 not meeting the 100 percent sales efficiency standard. So

1 I find, much like Member Scott, that they haven't met the
2 burden of proof in saying that they were discriminated
3 against by Hyundai.

4 Thank you.

5 MR. RICHARDSON: Mr. Chairman.

6 MR. TREVIÑO: Thank you, Member Prewitt.

7 Member Richardson.

8 MR. RICHARDSON: Board members, I know that I'm
9 the new kid on the block, but I did spend 12 years at
10 TCOLE and I disagreed with very many ALJ decisions in the
11 past. First thing I did when I was appointed to this
12 Board was to read Sunset, and there were some very
13 important parts of Sunset. The second thing that I did
14 was read the ruling from the Third Court of Appeals.

15 Now, not knowing anything about automobile
16 dealerships other than, oh, that's a pretty car, the first
17 time I read the PFD and then I read the Court of Appeals,
18 it was my opinion that the PFD nailed it and that's why I
19 seconded Board Member Scott's motion.

20 MR. TREVIÑO: Thank you very much, Sheriff
21 Richardson.

22 Member Graham.

23 MR. GRAHAM: I have a question for Mr. Bennett.

24 Thank you.

25 In regards to the sales goal, as we have

1 discussed at great length here the dealer made decisions
2 that impacted their allocation of vehicles. Right? Those
3 were business decisions they made. Right, wrong or
4 indifferent, they were allowed to make them, you were
5 allowed to impact, in my opinion, their allocation.
6 When they requested for their sales goals to be adjusted
7 to reflect those business decisions, why would Hyundai not
8 do that?

9 MR. BENNETT: Board Member, my memory is not
10 clear on what the reason was. I recall that being raised.

11 I don't know that they were adjusted. But I think it's
12 very important for you to understand that World Car's own
13 witnesses said that the sales efficiency numbers had
14 nothing to do with the allocations. This is page 452 of
15 the transcript. The question: So do you understand that
16 sales efficiency calculations which are based off of
17 registrations, do you understand the sales efficiency
18 numbers had nothing to do in the Hyundai system of
19 allocations? The answer: Yes. This is a World Car
20 official. Nothing at all. Right? Answer: Yes.

21 Another Hyundai official, same thing. This is
22 on page 597. Mr. Willis, a Hyundai official. Question:
23 And I think it's been established fairly clearly that
24 sales efficiency plays no part in inventory or allocation.
25 Correct? Answer: That's my understanding.

1 Sales efficiency had nothing to do with their
2 allocations. They got allocations during this whole time.

3 MR. GRAHAM: Understood and don't disagree, but
4 in regards to the goals that you set for that dealer, it
5 impacts their ability to hit their goals, and so if you
6 start the year and you say your goal is 1,000 vehicles and
7 you say you've got to do this, this and this, don't have
8 to do it but you can elect to do it, and then they elect
9 not to do it and then they don't receive enough cars to
10 reach the goal, to even have a chance to reach the goal
11 that you've set, it seems like that would be problematic.

12 MR. BENNETT: Well, Board Member, remember
13 World Car was making those decisions not to do things that
14 would have increased their sales, not only increased their
15 allocations but would have increased their sales. So they
16 were not cooperating with Hyundai in a manner that would
17 have increased the allocations and would have increased
18 their sales. These are findings in the PFD. So you know,
19 I don't remember exactly why the goals weren't adjusted
20 but I can imagine that the ALJ thought that, well, these
21 guys just weren't cooperating, they weren't doing anything
22 to up their sales when they could have upped their sales.
23 So why should we adjust those goals when these guys won't
24 do anything to increase their sales? I think that's where
25 we are. That's what the ALJ thought, that's what she

1 found.

2 MR. GRAHAM: Okay. Thank you.

3 MR. TREVIÑO: Any other questions of Mr.

4 Bennett.

5 MS. GILLMAN: Yes.

6 MR. TREVIÑO: Member Gillman.

7 MS. GILLMAN: One more.

8 MR. TREVIÑO: Mr. Bennett, you're still in the
9 hot seat there.

10 MS. GILLMAN: During Mr. Kaplan's rebuttal he
11 said that World Car was turned down for a move and
12 renovation aid was not approved. Can you speak to that?

13 MR. BENNETT: I think the evidence was disputed
14 over that, and again, that was their theory, that was
15 their argument, but that argument did not prevail, the ALJ
16 found that argument not to be credible. And they did
17 ultimate renovate in 2014 after the time period we're
18 talking about, but it didn't happen during the time period
19 we're talking about, so they didn't pursue that. But
20 again, these arguments were made, Ms. Gillman, but they
21 were rejected. I mean, the ALJ who judges the credibility
22 of the evidence and the witnesses and weighs everything
23 did not make such a finding.

24 MS. GILLMAN: I guess I was looking for what
25 did Hyundai, did Hyundai, not what the ALJ ruled or did

1 not rule, did Hyundai approve a move or not?

2 MR. BENNETT: I'm going to ask Mr. Young to
3 come up because he's the trial attorney on this and he
4 would have a better recollection of the evidence than I
5 would, so I will yield the floor.

6 Thank you.

7 MR. YOUNG: Good morning -- it's still morning,
8 Board members. I'm Kevin Young, counsel for Hyundai.

9 To directly answer your question, Board Member
10 Gillman, there was evidence about the way that the Red
11 McCombs dealerships were funded. They received some
12 financial assistance from Hyundai, but the evidence was
13 that they performed the renovations and then they applied
14 for assistance and received it. World Car wanted to do it
15 the other way, they wanted the money up front, and the
16 evidence as the trial was that's not how it works, you do
17 your renovations, just like everybody else, you submit to
18 Hyundai, just like everybody else, and then we'll get you
19 some assistance. I hope that answers your question about
20 assistance.

21 As for the opening of another dealership, the
22 evidence --

23 MS. GILLMAN: A move, a move.

24 MR. YOUNG: I don't remember any evidence about
25 a move. But I can tell you that during this time frame

1 the evidence was that because the market was so tight for
2 Hyundai vehicles that Hyundai was not opening any new
3 dealerships at all anywhere in Texas during that year.
4 And I don't believe there was evidence that World Car
5 wanted to open a brand new dealership during this time.

6 MS. GILLMAN: A move.

7 MR. TREVIÑO: Relocation maybe.

8 MS. GILLMAN: I guess that was the suggestion.
9 Not a new additional, but a move.

10 MR. YOUNG: I actually do remember, I do
11 remember what you're talking about. I don't have a record
12 cite for you but I do remember that World Car -- it was a
13 disputed point of fact. World Car indicated that they had
14 wanted to move their south store to a different location
15 but that the Hyundai official had declined that move.
16 That was just a disputed fact, but that is correct.

17 MS. GILLMAN: So I guess my clarifying
18 questions are in a regular allocation and month after
19 month after month, there is 15 percent discretion at the
20 regional level. Yes?

21 MR. YOUNG: Up to 15 percent, it's not always
22 15 percent.

23 MS. GILLMAN: Okay.

24 MR. YOUNG: And during this time period it
25 wasn't actually 15 percent.

1 MS. GILLMAN: Okay. And also, participation in
2 programs also have a discretionary allocation if you
3 participate in programs, as in you may earn more cars if
4 you participate. Yes?

5 MR. YOUNG: Yes. Again, I think there was some
6 evidence of that, I would agree.

7 MS. GILLMAN: And if you achieve sales
8 efficiency there's also discretionary allocation
9 available, meaning you may earn more if you're sales
10 efficient. Discretionary vehicles if you are meeting
11 sales efficiency.

12 MR. YOUNG: That's actually not the evidence.
13 That was not evidence in our trial.

14 MS. GILLMAN: I guess I read page 18 of the
15 PFD: Mr. Hetrick rewarded discretionary allocation by
16 looking at sales efficiency.

17 MR. YOUNG: But I believe Mr. Bennett read the
18 actual portions from the record where those topics were
19 discussed.

20 MS. GILLMAN: My contention is that in all
21 three situations discretionary allocation was used rather
22 than a formula that the dealer understands. And please
23 understand, I'm not really disputing that Hyundai can't
24 reward dealers for being efficient, sales efficient or
25 participating in programs. I'm agreeing. However, I just

1 think the word discretionary lends itself to the whim of
2 one guy, and that is what I think should -- that's why I
3 think World Car has met the burden of proof because it is
4 discriminatory. It is an unfair practice to allow
5 discretion. That's what I have a major hang-up with
6 because other manufacturers don't do it that way; they
7 don't do it that way because it's unfair.

8 I go back to if it's not well-defined, then if
9 you sell a hundred and I sell a hundred, he might get 90
10 and I might get 85. That up to the whim of a person is
11 what I find a clear violation of the Texas Occupations
12 Code. If the formula if you sell a hundred and I sell a
13 hundred and the formula the next month gives us each an
14 equal amount, that's something that's reasonable, but if
15 it's up to the whim of a human being, that's when it's
16 unreasonable.

17 Thank you for listening to me and confirming
18 the discretion in all three areas, the discretionary
19 ability of the regional manager. Thank you.

20 MR. TREVIÑO: Any questions for Mr. Young or
21 Bennett?

22 MS. McRAE: Mr. Chairman.

23 MR. TREVIÑO: Yes, Member McRae.

24 MS. McRAE: I've been fairly quiet through this
25 process because this is not the industry that I'm most

1 familiar with.

2 MR. TREVIÑO: Do you have a question for Mr.
3 Bennett, or can he sit down?

4 MS. McRAE: No, no, no, I don't. Thank you.

5 MR. TREVIÑO: Thank you.

6 MS. McRAE: So I've been listening to the
7 experts in this area, both our witnesses and other Board
8 members, and I think that what's important to note, at
9 least for me, is that regardless of what industry we may
10 be in, there's guidelines and there's standards in all of
11 these areas. And just based upon the findings of facts
12 and the conclusions of law that are before us that we are
13 allowed to consider, that for Hyundai -- and I don't know,
14 to Board Member Gillman's comment that that's not the same
15 standard for other manufacturers, I don't know that
16 because I'm not in that industry -- but it appears to be
17 Hyundai's standard that all Hyundai dealers understand and
18 know that there's these incentives and the incentives and
19 the sales efficiencies affect their allocation.

20 And I think that just looking at this case, at
21 least for me -- and I relate these incentives even to my
22 own industry -- incentives promote and help to improve our
23 industry in some way usually, we're rewarding people for
24 going that extra mile, taking that extra step to do
25 whatever it is that the incentive is providing. And in

1 this case those incentives were offered to increase their
2 allocations, and I agree with the comments that were made
3 in the motion by Board Member Scott. And I appreciate all
4 of the discussion, and I understand, Board Member Gillman,
5 that having something clearly defined is always a better
6 policy, but I think that based on what we have before us,
7 it's hard to say, for me at least, that World car has met
8 their burden of proof.

9 MR. TREVIÑO: Thank you very much, Member
10 McRae.

11 MR. TREVIÑO: Member Bacarisse, did you have a
12 point?

13 MR. BACARISSE: I call the question, Mr.
14 Chairman.

15 MR. TREVIÑO: Great. Yeah, no, absolutely.
16 Is there any further discussion?

17 MR. BACARISSE: I'm sorry. For the record, I
18 call the question. Sorry, I didn't have my mic on. Thank
19 you.

20 MR. TREVIÑO: Thank you very much.

21 So we have a motion by Member Scott and
22 seconded by Member Richardson.

23 General Counsel, do we need to restate the
24 motion, or is everybody comfortable with the motion that
25 was made?:

1 MS. BEAVER: You can always ask Member Scott to
2 restate the motion, if you'd like.

3 MR. TREVIÑO: Okay. Member Scott.

4 MR. SCOTT: I move that the Board uphold SOAH's
5 PFD and adopt the Findings of Fact 1 through 53 and
6 conclusions of law as stated in the proposal for decision,
7 with amendments to conclusions number 3 and 5 to correct
8 the typographical errors.

9 MR. TREVIÑO: Great. Motion and a second by
10 Member Richardson, and with that, all those in favor
11 please signify by raising your hand.

12 (A show of hands: Members: Bacarisse, McRae,
13 Prewitt, Richardson, Scott, Treviño, and Washburn.)

14 MR. TREVIÑO: Okay. Member Richardson, Scott,
15 Washburn, Prewitt, McRae, Bacarisse, Treviño.

16 All those against?

17 (A show of hands: Members Gillman and Graham.)

18 MR. TREVIÑO: Member Gillman and Member Graham.

19 Okay. Motion passes. Thank you very much.

20 Moving on to next we've got a lot of stuff to
21 take care of.

22 MR. GRAHAM: Just a quick generic comment, if I
23 may. Just tell the Board that I really appreciate -- this
24 was a hard one.

25 MR. BACARISSE: Amen.

1 MR. GRAHAM: And I appreciate each of you
2 taking the time. Obviously I can tell each of you spent a
3 lot of time looking at it, and even though we disagreed, I
4 respect your opinions greatly and thank you for doing what
5 you did.

6 MR. TREVIÑO: Member Graham, thank you very
7 much for bringing that up. I wanted to move into rules
8 and kind of just keep the thing flowing, but I did want to
9 thank the Board for the reasoned comments everyone at a
10 level of discussion, the ability to kind of focus on
11 issues, everybody allowing everyone else to talk, and the
12 good culture that was evidenced by the way this was
13 handled and the discussion.

14 And I also would like to thank staff for all
15 their hard work.

16 Member Bacarisse, did you have anything?

17 MR. BACARISSE: No, just to echo your points,
18 Mr. Chairman. I appreciate and respect the members of
19 this Board and your opinions and what we learned together
20 today from one another. Thank you.

21 MR. TREVIÑO: Great. So now we're into rules.

22 I would now like to hear agenda item 7, rule adoption for
23 Chapter 2 and 5. I will turn it over to Daniel Avitia.

24 Mr. Avitia.

25 MR. AVITIA: Chairman, thank you. Members, Ms.

1 Brewster, again good morning. Daniel Avitia for the
2 record.

3 Today I'm asking the Board's approval and
4 permission to publish adoption of rules as amended in the
5 *Texas Register*. These proposed rule changes are listed as
6 agenda item number 7. The details of these rule changes,
7 including the comments we received, may be found on pages
8 79 to 108 of your Board book.

9 These rules were first published in the *Texas*
10 *Register* on August 23, 2019 and public comment closed on
11 September 23, 2019. These rules implement three bills
12 from the 86th Legislature. House Bill 1667 allows
13 independent motor vehicle dealers to perform salvage
14 functions without also obtaining a salvage dealer's
15 license. House Bill 3842 clarifies that a dealer must
16 hold a general distinguishing number for a consignment
17 location. Senate Bill 604 contained provisions
18 authorizing licensing statutory changes recommended by the
19 Sunset Advisory Commission. These changes include
20 eliminating representative licenses and adding licensing
21 training for independent motor vehicle dealers.

22 The department received 15 comments on the
23 proposed rules. Thirteen were from count tax assessors,
24 one from the TAC Association of Texas and one from TIADA,
25 each in support of licensing education.

1 Members, I request your approval to proceed
2 with adoption as amended and publication in the *Texas*
3 *Register*. If the Board adopts these amendments, new
4 sections and repeal, the staff anticipates publication in
5 the February 28, 2020 issue of the *Texas Registers*, with
6 an effective date of March 5, 2020.

7 Members, this concludes my remarks. I'm happy
8 to answer any questions.

9 MR. TREVIÑO: Thank you, Mr. Avitia.

10 And I would ask staff and anyone else who is in
11 the room to please try and speed things up. We're
12 somewhat behind schedule because of the excellent
13 discussion points.

14 Are there any questions for Mr. Avitia?

15 (No response.)

16 MR. TREVIÑO: No.

17 Are there any comments from the public? And
18 yes, we have two, so I would ask that Michelle French, and
19 then after that we've got Jeff Martin right after that, so
20 if you could kind of maybe tee up so we get this thing
21 moving, kind of stand on deck or something like that and
22 warm up.

23 (General laughter.)

24 MS. FRENCH: Hello. Good morning, Board. My
25 name is Michelle French. I serve as the Denton County Tax

1 Assessor-Collector and also the liaison to DMV for our Tax
2 Assessor-Collector Association. I'll be very brief
3 because I know there is very little time.

4 We are very much in support of the rule on the
5 pre-licensing education. Just in my county alone, I think
6 definitely having that licensing education before a dealer
7 can get their license is going to be so important so they
8 understand what is really the rules, what is really at
9 stake, what they need to do.

10 We deal with so many dealers that they just
11 don't understand and they don't get their reports in or
12 they didn't know they even had to do reports, and they
13 don't understand what the law requires. And while we do
14 expect that they do education, they do review these things
15 on their own, I think definitely having that requirement
16 for that pre-licensing is going to be extremely valuable
17 to everyone, to our constituents, to the dealership, to
18 the department, to our offices, to help everyone be on the
19 same page.

20 MR. TREVIÑO: Thank you, Ms. French. It's
21 always a pleasure to have you before this Board. Thank
22 you for your service to the citizens of Texas.

23 And we've got Mr. Martin next. Always a
24 pleasure to see you as well, so please step on up.

25 MR. MARTIN: Thank you, Mr. Chairman, Board

1 members. For the record, my name is Jeff Martin and I
2 represent the Texas Independent Automobile Dealers
3 Association.

4 We support the proposed motion, and certainly
5 want to thank Daniel Avitia and his team for all the work
6 that they've done on this. I have a fantastic
7 presentation that I'll pass on, unless you guys have any
8 questions.

9 MR. TREVIÑO: Great. Questions?

10 (No response.)

11 MR. TREVIÑO: Thank you very much, Mr. Martin.
12 Okay. Any further discussion, questions?

13 (No response.)

14 MR. TREVIÑO: With that, the chair would
15 entertain a motion.

16 MR. BACARISSE: Mr. Chair, I move that we
17 approve item 7, the adoption of the Motor Vehicle
18 Distribution amendments, as proposed.

19 (Member Richardson raised his hand to second.)

20 MR. TREVIÑO: Great. We've got a motion from
21 Member Bacarisse, and a second from Member Richardson.

22 Any further discussion?

23 (No response.)

24 MR. TREVIÑO: Hearing none, I'll call for the
25 vote. All those in favor please raise your hand.

1 (A show of hands.)

2 MR. TREVIÑO: Motion carries unanimously.

3 MR. BACARISSE: I'm sorry I stepped on Member
4 Graham.

5 MR. GRAHAM: You didn't step on me, I was
6 asleep at the wheel.

7 MR. BACARISSE: You helped me with the pledge.

8 (General laughter.)

9 MR. TREVIÑO: That's right. We had the pledge
10 issue and now we're resolved and we've all paid our dues
11 back.

12 We're now going to move on to number 8 with
13 Jeremiah Kuntz.

14 MR. KUNTZ: For the record, Jeremiah Kuntz,
15 director of the Vehicle Titles and Registration Division.
16 I'll talk as fast as I possibly can, slow me down if you
17 want me to.

18 This agenda item before you is for the final
19 adoption of rules to Chapter 217.2, 217.45 and 217.46.
20 This is implementation of House Bill 1548, House Bill
21 1755, House Bill 3068, and House Bill 3171. We are adding
22 new definitions for off-road vehicles, recreational
23 vehicles, all-terrain vehicles, as well as implementing
24 the adoption of a license plate for those vehicles. We
25 are also defining a sand rail, which was required by House

1 Bill 1755. Amendments for House Bill 3068 allow for the
2 issuance of disabled veteran embossed license plates on
3 classic motor vehicles, and amendments for House Bill 3171
4 include updating our definition of a moped.

5 With that, that concludes my presentation.

6 MR. TREVIÑO: Thank you very much, Mr. Kuntz.

7 There are no comments from the public.

8 Any comments? Oh, there is. Member Gillman.

9 MS. GILLMAN: No comment.

10 MR. TREVIÑO: No comment?

11 MS. GILLMAN: I move.

12 MR. TREVIÑO: Okay, great. Okay, we're jumping
13 right into the motion. Member Gillman, please step right
14 up to the mic.

15 MS. GILLMAN: I move that the Board approve the
16 adoption of amendments to Section 217.2, 217.45, 217.456
17 as recommended by staff.

18 MR. TREVIÑO: Well done, Member Gillman.

19 Is there a second?

20 MR. PREWITT: Second.

21 MR. TREVIÑO: I've got a second from Member
22 Prewitt over here.

23 Any further discussion?

24 (No response.)

25 MR. TREVIÑO: Hearing none, I'll call for the

1 vote. All those in favor?

2 (A show of hands.)

3 MR. TREVIÑO: Motion carries unanimously.

4 Great. Thank you very much, Mr. Kuntz. You're
5 still here, so we're going to go to 9 then.

6 MR. KUNTZ: Again for the record, director of
7 the Vehicle Titles and Registration Division.

8 Before you is agenda item number 9. These are
9 final adoption of rules amendments to Chapter 217.40 and
10 New 217.16. Again, these are to implement legislation
11 from the last legislative session relating to House Bill
12 3842. This relates to the issuance of titles and permits
13 when a dealer goes out of business. These rules are
14 intended to allow for the waiving of title and
15 registration fees for customers when those dealerships go
16 out of business and allows for the waiver of one 30-day
17 permit as well as the title and registration fees. It
18 also defines when a dealer is out of business as a dealer
19 whose license has been closed or has expired or its
20 operations have ceased at the licensed location as
21 determined by the department.

22 We did not receive any comments on this rule.
23 And with that, that concludes my presentation.

24 MR. TREVIÑO: Great. Any further discussion,
25 questions?

1 (No response.)

2 MR. TREVIÑO: Hearing none.

3 MS. McRAE: I would like to make a motion,
4 Chairman.

5 MR. TREVIÑO: Thank you, Member McRae.

6 MS. McRAE: Okay. I move that the Board
7 approve the adoption of the new Section 217.16 and
8 amendments to Section 217.40 as recommended by staff.

9 MR. TREVIÑO: Thank you very much.

10 Do we have a second?

11 MR. BACARISSE: Second.

12 MR. TREVIÑO: Second from Member Bacarisse.
13 Any further discussion?

14 (No response.)

15 MR. TREVIÑO: Hearing none, I'll call for the
16 vote. All those in favor please signify by raising your
17 right hand.

18 (A show of hands.)

19 MR. TREVIÑO: Motion carries unanimously.

20 And I would also like to thank staff for taking
21 action. This is a big issue and it's very important for
22 consumer protection matters for the citizens of Texas, and
23 I thank you very much for jumping on that quickly.

24 Okay. We'll now hear item 10. I'll turn it
25 over to Mr. Kuntz again and now Mr. Menke is here with us

1 as well.

2 MR. KUNTZ: We're going to speed on through
3 these again.

4 MR. TREVIÑO: Great. Let 'er rip.

5 MR. KUNTZ: Before you is agenda item number
6 10. This is to adopt legislation from the last
7 legislative session related to Senate Bill 604. These
8 rules are New Chapter 217.76 through 217.78. They relate
9 to the suspension or denial of access to the registration
10 and title system.

11 These rules have been worked on quite a bit.
12 They are to incorporate different processes and procedures
13 related to turning off access of anybody who has
14 permissions granted in the registration and titling
15 system. This process is something that we had actually
16 worked on and developed for full service deputies and then
17 we took that as a structure in order to develop these
18 rules so that there is a clearly defined process when we
19 can actually terminate access to somebody who is utilizing
20 the registration and titling system.

21 We did receive comments from the Tax Assessor-
22 Collector Association of Texas. There were two pertinent
23 comments that they made because in one letter they made
24 comments to both this rule and the rule that's following
25 this one, but the two comments related to this, the TACA

1 does not oppose the rule providing the county tax
2 assessor-collector maintains the ability to manage their
3 employees, full service deputies pursuant to both
4 department rules and county policies and provisions.
5 These rules do not supersede any authority that a county
6 tax assessor-collector has vested in them to terminate
7 access for their employees or anyone that they have
8 granted access to.

9 The way the system is set up, they have
10 administrative permissions to create new users and delete
11 users so when they get a new employee they can grant
12 access. They still have the ability to terminate that
13 access if the employee has been terminated, if they
14 believe that that employee needs more training before they
15 are given permissions, they still retain those rights to
16 be able to terminate those as well. These rules apply to
17 the department's authority to step in and terminate access
18 if a county tax assessor-collector has not already done
19 so.

20 The next point that was made is if a county tax
21 assessor-collector believes a violation has occurred, the
22 department may be notified and requested that the access
23 be denied. Again, if a county tax assessor-collector
24 wanted to take action or notify the department that action
25 should be taken to terminate access, these rules would

1 facilitate all of those actions taking place.

2 Based on that, there were no changes to the
3 rule. I just wanted to make sure that we clarified for
4 the record that, yes, that is still something that they
5 could do.

6 MR. KUNTZ: And that's the end of my
7 presentation.

8 MR. TREVIÑO: Great. Mr. Menke. No comments?

9 MR. KUNTZ: He's got another agenda item.

10 MR. TREVIÑO: Okay, very good.

11 So any comments, any discussion, questions?

12 (No response.)

13 MR. TREVIÑO: Hearing none, I would entertain a
14 motion. I have a motion from Member Scott.

15 MR. SCOTT: I move the Board approve the
16 adoption of Section 217.76 and 217.78 as recommended by
17 staff.

18 MR. TREVIÑO: Great. Got a motion from Member
19 Scott.

20 Do we have a second?

21 (Member Washburn raised her hand to second.)

22 MR. TREVIÑO: Second from Member Washburn.

23 Any further discussion?

24 (No response.)

25 MR. TREVIÑO: Hearing none, I call for the

1 vote. All those in favor please raise your right hand.

2 (A show of hands.)

3 MR. TREVIÑO: Motion carries unanimously.

4 Thank you very much, Mr. Kuntz.

5 Mr. Menke, you're still here. Would you like
6 to go ahead and get started on number 11?

7 MR. MENKE: Good morning. Tim Menke, director
8 of Compliance and Investigations Division.

9 In front of you you have agenda item number 11,
10 it's an action item, and it has to do with the adoption of
11 the new Chapter 223, Compliance and Investigations
12 Division related to county tax assessor-collector
13 reporting suspected fraud, waste and abuse. It formalizes
14 our red flag reporting process that we've had in place for
15 years. It also provides an option for the county to
16 request action for suspected fraud, waste and abuse.

17 We had two comments from the Tax Assessor-
18 Collector Association regarding wording. One word they
19 suggested "must" report rather than "may" report, but we
20 chose the word "may" because we didn't want to mandate
21 that they must report to TID. That leaves an avenue open
22 for them to report directly to law enforcement. Reporting
23 to CID would have a cooperative effort with the department
24 and the tax assessor-collector that is reporting the
25 information.

1 Secondly, they suggested that the reporting
2 process and the investigation process communication mirror
3 that of the Enforcement Division, but since CID is working
4 with criminal investigations and we are non-commissioned,
5 we are working in a liaison capacity with law enforcement,
6 we are not at liberty to divulge active information
7 regarding a criminal investigation, and that was addressed
8 as well.

9 By adopting this proposal it moves us from
10 issuing and investigating to more of a preventive role
11 where our tax assessor-collectors are the front line and
12 they can actually prevent fraud from taking place rather
13 than reporting and then we investigating and it's in a
14 partnership where we can help prevent.

15 So with that, if you have any questions I'd be
16 happy to answer them.

17 MR. TREVIÑO: Great. Thank you, Mr. Menke.

18 Any questions for Mr. Menke?

19 (No response.)

20 MR. TREVIÑO: Hearing none, Mr. Menke, we don't
21 have the option to may, we must call for a vote, I guess.

22 So with that, the chair would entertain a motion.

23 MR. GRAHAM: I move that the Board approve the
24 adoption of New Chapter 223 rules as recommended by staff.

25 MR. TREVIÑO: Thank you, Member Graham.

1 Do we have a second?

2 MR. PREWITT: Second.

3 MR. TREVIÑO: Member Prewitt.

4 I'll call for the vote. All those in favor
5 please raise your right hand.

6 (A show of hands.)

7 MR. TREVIÑO: Motion carries unanimously.

8 Thank you very much, Mr. Menke.

9 Okay. Mr. Kuntz, are we done or do you have
10 anything else to cover?

11 MR. KUNTZ: I was just going to stand on deck
12 for item number 13.

13 MR. TREVIÑO: Great. Thank you very much.

14 (General talking and laughter.)

15 MR. TREVIÑO: Okay. We're going to move to
16 agenda item number 12.A. and those are Board committee
17 appointments. Now that we have a full Board again, I
18 would like to make a few changes. Member Richardson has
19 agreed to join the Legislative and Public Affairs
20 Committee as a member. Member McRae has also agreed to
21 join the same committee, replacing John Prewitt, as he was
22 on all three committees. He wanted to be on all
23 committees, he actually wanted to start several other
24 committees as well, which I think we all agree would be a
25 little overwhelming.

1 (General laughter.)

2 MR. TREVIÑO: But I would like to welcome
3 Member Prewitt back, and also, I think I speak for the
4 Board on this one that you look great.

5 MR. PREWITT: Thank you.

6 MR. TREVIÑO: We're very happy to have you back
7 here at home.

8 (Applause.)

9 MR. TREVIÑO: This new structure provides for
10 balance and diverse membership on the Legislative and
11 Public Affairs Committee. It doesn't require any action.

12 Okay. Now back to Mr. Kuntz.

13 MS. BREWSTER: You skipped one.

14 MR. TREVIÑO: 12.B. Oh, I'm sorry. We will
15 move to agenda item 12.B. I always want to get back to
16 Mr. Kuntz, that guy is very interesting.

17 We'll move to agenda item 12.B. Advisory
18 committee appointments. We're going to take up the
19 appointment of members to the Consumer Protection Advisory
20 Committee, presented by Executive Director Brewster.

21 MS. BREWSTER: Thank you, Mr. Chairman,
22 members. I'm addressing item number 12.B. which starts on
23 page 192 of your Board books.

24 I am recommending that the Texas Department of
25 Motor Vehicles Board appoint the individuals from the list

1 of those potential members to the Consumer Protection
2 Advisory Committee. That list is on 193 of your Board
3 materials.

4 The Board is required to appoint members to an
5 advisory committee by selecting them from a list of
6 potential members provided by the executive director. The
7 Board is required to look at various factors, including
8 the balance of the advisory committee, to ensure
9 representation of industry or occupations of the regulated
10 committee or indirectly regulated by the Board, consumers
11 of services provided by the Board, and then also
12 geographical regions of the state.

13 And so I have reviewed approximately 24
14 applications for the Consumer Protection Advisory
15 Committee. I considered the various eligibility
16 standards, I looked at the applicants' knowledge and
17 interests in the work of the committee, differing
18 viewpoints, as well as the industry or occupation of the
19 applicant. I also looked at the different geographical
20 regions of the state, as well as whether the applicants
21 were consumers of our services. A review was also done to
22 ensure that these members are in good standing with the
23 department, meaning that there are no outstanding
24 sanctions by the department.

25 And so at this point I would recommend that the

1 Board appoint the members provided to you on page 193.

2 With that, I would be happy to answer any questions.

3 MR. TREVIÑO: Are there any questions for Ms.
4 Brewster? Member Graham.

5 MR. GRAHAM: I'm just looking, does it show
6 what their position is with their respective organization?

7 MS. BREWSTER: Yes, sir, it does. On page 193.

8 MR. GRAHAM: Area of expertise, but not the
9 position within the organization. It seems like last time
10 we saw, you know, titles.

11 MS. BREWSTER: It has the employer and
12 underneath the employer it also shows the position.

13 MR. GRAHAM: Oh, there it is. Okay, I've got
14 it. Thank you. I was looking at the location.

15 MR. TREVIÑO: Great. Does that answer your
16 question, Member Graham?

17 MR. GRAHAM: Yes.

18 MR. TREVIÑO: Good.

19 Member Bacarisse, did you have a question?

20 MR. BACARISSE: Mr. Chairman, I'd be happy to
21 make a motion if it's appropriate at this time.

22 MR. TREVIÑO: Any other comments or questions
23 for Member Brewster?

24 (No response.)

25 MR. TREVIÑO: I was encouraged to see the

1 number of people who agreed to serve on this board. That
2 speaks well for not only the department but the State of
3 Texas.

4 Member Bacarisse, I would take your motion.

5 MR. BACARISSE: Thank you, Mr. Chairman.

6 I move that the Board appoint the following
7 individuals to serve on the Consumer Protection Advisory
8 Committee: Melissa Ann Colvin of Midlothian, Texas; Laird
9 McGraw Doran of Houston, Texas; Donna Ferguson of Belton,
10 Texas; Ruben P. Gonzalez of El Paso, Texas; Cheryl E.
11 Johnson of Friendswood, Texas; Will D. Johnson of
12 Arlington, Texas; Raymond "Ray" George Olah of Austin,
13 Texas; Robert E. Raney of Converse, Texas; Jeanette A.
14 Rash of New Caney, Texas; Michael S. Rigsby of Austin,
15 Texas; James Robert Snell of Dallas, Texas; and Juan
16 Alfredo Solis of Brownsville, Texas.

17 MR. TREVIÑO: Great. Thank you very much,
18 Member Bacarisse.

19 Do we have a second?

20 MS. GILLMAN: Second.

21 MR. TREVIÑO: Member Gillman.

22 Any further discussion?

23 (No response.)

24 MR. TREVIÑO: Hearing none, I call for the
25 vote. All those in favor please raise your right hand.

1 (A show of hands.)

2 MR. TREVIÑO: Motion carries unanimously, and
3 we have new members for that committee.

4 MS. BREWSTER: Thank you very much.

5 MR. TREVIÑO: Thank you very much, Director
6 Brewster.

7 And now back to Jeremiah Kuntz, crowd favorite.
8 Let 'er rip, number 13.

9 MR. KUNTZ: Which crowd?

10 (General talking and laughter.)

11 MR. TREVIÑO: With that, we'll go to Jeremiah
12 Kuntz, item number 13

13 MR. KUNTZ: All right, members. For the
14 record, I'm Jeremiah Kuntz, director of the Vehicle Titles
15 and Registration Division, member favorite of the tough
16 crowd.

17 (General laughter.)

18 MR. KUNTZ: Members, I'm opening up agenda item
19 number 13, the VTRAC recommendations regarding the digital
20 license plates.

21 The Vehicle Titles and Registration Advisory
22 Committee met on November 19, 2019, as well as December 19
23 of 2019. The committee's first meeting was
24 organizational, they got together, appointed their chair
25 and vice chair, and then the committee also met a second

1 time to take up and consider questions the agency had
2 regarding the implementation of Senate Bill 604, Article
3 3, related to digital license plates. So this was the
4 first advisory committee that we have set before them
5 questions for them to take up and consider and then bring
6 back recommendations to the Board.

7 The agency presented the document you can find
8 in page 194 of your Board book. Those were the questions
9 as well as staff recommendations that were made to the
10 advisory committee. The committee deliberated on the
11 items in that document, made recommendations consistent
12 with staff recommendations. They did have some slight
13 variations that they made to the specific language for the
14 recommendations but everything was consistent with the
15 staff's position related to those questions.

16 And today Shay Luedecke, the Bell County tax
17 assessor-collector and the VTRAC committee vice chair, is
18 here to present their recommendations to the Board.

19 MR. TREVIÑO: Great. Vice Chair Luedecke,
20 welcome.

21 MR. LUEDECKE: Thank you, Board. Good morning.
22 My name is Shay Luedecke. I serve as first vice chair of
23 the Vehicle Titles and Registration Advisory Committee,
24 also known as VTRAC.

25 So the VTRAC committee would like to take a

1 moment to thank you for giving us the opportunity to voice
2 our group advice. We understand that VTRAC is a new part
3 of the process and each of us is excited to take part in
4 it. Our committee met in December to discuss the rules on
5 the digital license plates and I would like to present our
6 recommendations to you.

7 MR. TREVIÑO: Please do.

8 MR. LUEDECKE: In the packet we received there
9 were several questions with possible solutions that we
10 also reviewed and discussed as a committee. The first
11 question we discussed was concerning what is a reasonable
12 administration fee for obtaining a digital license plate
13 and when should the administration fee be collected. We
14 looked at the formulas given for the development costs to
15 integrate digital license plates in the DMV systems and we
16 also took some advice from California, mostly how many
17 customers they have for digital license plates.

18 The department's recommendation was to charge a
19 \$95 administration fee. VTRAC agrees with this fee. It
20 was also recommended that the department collect the
21 administration fee for the initial registration and at the
22 time of the renewal. VTRAC also agreed with this
23 recommendation from the department.

24 The next question we received for digital
25 license plates was should a customer be able to opt out of

1 digital license plate advertising that is proposed by the
2 digital plate provider and approved by the department.
3 There are four types of advertising options: emergency
4 alerts and public safety alerts; vehicle manufacturing
5 recalls; static logos; and advertising approved by the
6 department.

7 Our recommendation is to allow the customer the
8 option to opt in for any advertising. The customer will
9 not have these advertising options displayed unless they
10 expressly say yes, I do choose to opt in for advertising,
11 with the following two exceptions which would
12 automatically display when the vehicle is stopped and
13 that's manufacturing safety recall notices and emergency
14 alerts and public safety alerts issued by a governmental
15 entity that will be displayed regardless if the customer
16 would opt in.

17 The final question we discussed was should the
18 department adopt a rule on what a digital plate provider
19 may do with the global positioning system, the GPS data,
20 collected from a customer's digital license plate. We
21 recommended administrative code should be proposed to
22 protect a person's personal information, as well as GPS
23 data retrieved from the digital license plate. If the
24 vendor discloses to the customer the manner that data will
25 be used, a customer may allow for disclosure for personal

1 information and GPS data by the digital license plate
2 provider.

3 This concludes VTRAC's recommendations for
4 digital license plates, and I'd like to thank each one of
5 you for the opportunity to share them with you today.

6 MR. TREVIÑO: Any questions? Member Gillman.

7 MS. GILLMAN: Forgive me. I don't know about
8 digital license plates. Can you tell me what it is?

9 MR. KUNTZ: For the record, Jeremiah Kuntz,
10 director of the Vehicle Titles and Registration Division.

11 During the last legislative session included in
12 the Senate Bill 604, the Sunset bill for the department,
13 there were provisions that required the department to
14 allow for digital license plates to be utilized in the
15 State of Texas.

16 As you all are aware today, we have metal
17 license plates that are affixed to the front and rear of a
18 vehicle. This legislation would allow for a digital
19 display to display the alphanumeric pattern that is
20 currently on a metal plate on that digital display and
21 have that serve as a license plate in the State of Texas.

22 MS. GILLMAN: I've just never seen one.

23 MR. KUNTZ: That's because they've never been
24 available.

25 MS. GILLMAN: And there's 1,800 of them in

1 California, 1,500?

2 MR. KUNTZ: There are a couple of plates that
3 have started to utilize digital license plates. California
4 is one of those. I believe that they have been offer
5 digital license plates for approximately four years and
6 that number has now grown over four years to about 3,000,
7 so they're slowly growing in number in California.

8 MS. GILLMAN: In addition to the numbers and
9 letters, they would also be advertising, and also GPS
10 tracking, and how many miles?

11 MR. TREVIÑO: I think all of those are being
12 taken up by VTRAC. Right? I mean, there's
13 recommendations.

14 MS. BEAVER: Tracey Beaver, general counsel,
15 for the record.

16 The department is currently looking into
17 options to draft rules and also a possible procurement to
18 implement this legislation, and so our first step was to
19 get some input on our very beginning opening questions
20 from this VTRAC committee to help us formulate those
21 policy statements within the rule. So the idea is for the
22 VTRAC committee to provide us expertise both from folks in
23 the industry as well as consumers of our services as we
24 are drafting these rules as provided by Sunset and the
25 legislature.

1 MR. KUNTZ: This agenda item is not for any
2 action. There would still be a future rule package that
3 would come before the Board for proposal, but VTRAC was
4 advising the department on how to build those rules, what
5 provisions should be included in that rulemaking.

6 MS. GILLMAN: And you all think that we should
7 continue and work towards adoption of a digital license
8 plate? Are you recommending that, yes, we proceed forward
9 and keep looking at it, that it's a good idea for Texas.

10 MR. KUNTZ: So Senate Bill 604 put the charge
11 before the department to take up and consider digital
12 license plate rules for those to be put into place on
13 Texas roadways.

14 MR. TREVIÑO: So the legislature has opined on
15 this.

16 MR. KUNTZ: Correct.

17 MR. TREVIÑO: So it's not for us to decide.

18 MS. GILLMAN: It's to be considered?

19 MR. KUNTZ: The legislation required the
20 department to adopt rules to facilitate the issuance of
21 digital license plates in Texas.

22 MR. TREVIÑO: So it's coming. We have to
23 decide the best way to do it. Is that pretty much it?

24 MR. KUNTZ: Yes.

25 MR. TREVIÑO: Thank you.

1 MS. GILLMAN: Can we see what one looks like?

2 MR. KUNTZ: Yes.

3 MS. GILLMAN: Okay.

4 MR. TREVIÑO: Okay. We have Member Graham as
5 well has a question.

6 MR. GRAHAM: Did the legislation -- was there
7 anything in the legislation regarding the advertising
8 aspect of digital license plates?

9 MR. KUNTZ: Yes, sir.

10 MR. GRAHAM: And so just to make sure I have
11 this clear, the legislature basically approved electronic
12 license plates to run not just license plates but
13 advertisements and other things, but have yet to pass
14 legislation to remove a front license plate that
15 essentially on some vehicles dismantles the entire safety
16 aspect of collision avoidance. Would that be accurate?

17 MR. TREVIÑO: Is that a question?

18 MR. GRAHAM: Yes.

19 MR. KUNTZ: Senate Bill 604 relating to digital
20 license plates allows for the placement of a digital
21 license plate in the rear of the vehicle while still
22 maintaining a metal license plate in the front of the
23 vehicle.

24 MR. GRAHAM: Okay. I just wanted to make sure
25 I was clear on that. Thank you.

1 MR. TREVIÑO: Any other questions on digital
2 license plates at this point?

3 (No response.)

4 MR. TREVIÑO: I would like to thank Vice Chair
5 Luedecke for taking up this important job, this charge
6 given to us by our elected officials, the legislature, and
7 thanks for doing this. We have some tight timelines that
8 we have to submit to, and thank you very much.

9 I think we have another member of the VTRAC
10 committee here as well, if you could stand and be
11 recognized. Anybody else here from VTRAC? There you go.
12 Thanks a lot for your service to the State of Texas.

13 (Applause.)

14 MR. TREVIÑO: And I'm sure we're going to be
15 hearing a lot more about digital license plates. They
16 make great Christmas gifts, by the way.

17 (General laughter.)

18 MR. TREVIÑO: So now we're going to go -- Mr.
19 Kuntz, are you done?

20 MS. McRAE: Mr. Chairman.

21 MR. TREVIÑO: Yes. I'm sorry, Member McRae.

22 MS. McRAE: I have a motion.

23 MR. TREVIÑO: You have a motion. I'm sorry.
24 Okay, we have a motion on this. We do have a motion. I
25 apologize, Mr. Luedecke.

1 MS. McRAE: That's okay.

2 MR. TREVIÑO: We have to accept. I call for a
3 motion.

4 MS. McRAE: Yes. I would like to make that
5 motion.

6 MR. TREVIÑO: Member McRae, thank you for
7 keeping me on track.

8 MS. McRAE: And I like that name VTRAC.

9 MR. TREVIÑO: Yes.

10 MS. McRAE: I move that the Board adopt the
11 Vehicle Titles and Registration Advisory Committee
12 recommendations for the department to incorporate into the
13 development of their proposed rules.

14 MR. TREVIÑO: Great. Thank you, Member McRae.
15 Do we have a second?

16 (Member Scott raised his hand to second.)

17 MR. TREVIÑO: Member Scott.

18 Any further discussion?

19 (No response.)

20 MR. TREVIÑO: Hearing none, I would like to ask
21 all members in favor to please raise your right hand.

22 (A show of hands.)

23 MR. TREVIÑO: Motion passes unanimously. And
24 thank you very much for reminding me that we needed to
25 accept those recommendations from VTRAC.

1 MR. BACARISSE: Mr. Chairman, if I may.

2 MR. TREVIÑO: Member Bacarisse.

3 MR. KUNTZ: Mr. Kuntz, when you bring this back
4 to us, would you also -- I'm not going to ask you a
5 question, I'm just going to ask you for a favor -- would
6 you also provide examples of the digital plate, what it
7 looks like, how it functions in California, perhaps, just
8 for our understanding, knowing that ours may end up
9 different, but I can't get my mind around what that looks
10 like or how it functions.

11 MR. KUNTZ: I would be more than happy to
12 provide the Board with any kind of briefings related to
13 digital license plates that you need.

14 MR. BACARISSE: Great. Thank you.

15 MR. TREVIÑO: Thank you, Jeremiah Kuntz.

16 And let me remind, before I move on to the next
17 item, why Jeremiah Kuntz is a crowd favorite. We were
18 behind, we're not back on schedule. You may actually get
19 to eat some lunch, Member Bacarisse.

20 MR. KUNTZ: Mission accomplished.

21 MR. TREVIÑO: A round for Jeremiah Kuntz, hear,
22 hear. He is a favorite.

23 (Applause.)

24 MR. TREVIÑO: And you have time now, Ms.
25 Menjivar-Suddeath.

1 We'll now be taking up agenda item 14.A. today,
2 and the next item is 14.B. So both 14.A. and 14.B. from
3 Sandra Menjivar-Suddeath. Thank you very much for being
4 here.

5 MS. BEAVER: Tracey Beaver, general counsel,
6 for the record.

7 I just wanted to note that agenda item 14.A.
8 will not be taken up today, so we'll be moving straight to
9 14.B.

10 MR. GRAHAM: So how's that for driving
11 efficiency?

12 MR. TREVIÑO: Thank you, Member Graham.

13 MR. GRAHAM: I'll just say we were scheduled to
14 have a meeting yesterday, Finance and Audit Committee
15 meeting, and we had some folks that had some things come
16 up and we were unable to due to a lack of a quorum. It
17 was a very short meeting, it was riveting. I did get to
18 hammer the gavel one time. That's pretty much it. That's
19 the full extent.

20 MS. BEAVER: Tracey Beaver, general counsel,
21 for the record.

22 I just wanted to note that there was no
23 meeting, it was canceled. Thank you.

24 MR. GRAHAM: It was canceled. I still hit the
25 gavel but it was canceled.

1 MR. TREVIÑO: This Board would like to thank
2 Member Graham for his lack of contribution to today's
3 proceedings only in the interest of time.

4 MR. GRAHAM: Absolutely.

5 (General laughter.)

6 MR. TREVIÑO: So we will now move into agenda
7 item 14.B. as presented by Sandra Menjivar-Suddeath.

8 MS. MENJIVAR-SUDDEATH: Good morning, Board
9 members. Like the chairman said, my name is Sandra
10 Menjivar-Suddeath. I'm the Internal Audit director. I'm
11 presenting item 14.B. which is the fiscal year 2020 second
12 six-month audit plan. It's on page 199 of your Board book
13 and it is an action item.

14 The second six-month audit plan covers the work
15 being done by the Internal Audit function from February to
16 August 31. It includes four engagements, two which are
17 risk-based, two that are required, division initiatives,
18 added value services, and a contingency audit, as well as
19 a discussion on two deferred engagements that we were
20 planning to do in the first half that we did not do.

21 With that, I'm open to any questions.

22 MR. TREVIÑO: Great. Does anybody have any
23 questions?

24 MS. McRAE: I just have a comment I'd like to
25 make.

1 MR. TREVIÑO: Member McRae.

2 MS. McRAE: I just want to tell Sandra what an
3 outstanding job I think you and your department do. You
4 obviously put so much time and effort into all these
5 assessments and audits, and it's very much appreciated.
6 So thank you.

7 MS. MENJIVAR-SUDDEATH: Thank you. I'll convey
8 that to the team.

9 MR. TREVIÑO: Hear, hear. Well, said, well
10 said.

11 Any other comments? Member Graham.

12 MR. GRAHAM: I'll just make a motion if you so
13 desire.

14 MR. TREVIÑO: Great. So if there are no
15 further questions, the chair would entertain a motion.

16 MR. GRAHAM: I move the Board approve the
17 fiscal year 2020 second six-month Internal Audit Plan.

18 MR. TREVIÑO: W have motion.

19 MR. BACARISSE: Second.

20 MR. TREVIÑO: Second from Member Bacarisse.
21 All those in favor please raise your right
22 hand.

23 (A show of hands.)

24 MR. TREVIÑO: Motion carries unanimously.

25 And just a question, how do you feel about the

1 six-month cadence? Is that working well for you?

2 MS. MENJIVAR-SUDDEATH: Yeah. Even with the
3 six months we still had to defer some projects, so there's
4 some lessons learned from that, but I think it definitely
5 has helped us stabilize a little bit more and not have my
6 staff working a lot of hours.

7 MR. TREVIÑO: Great. Well, thank you very
8 much. I would like to echo Member McRae's compliments of
9 the work that you do. We're all very proud of what you
10 and your staff are doing. You guys are doing great work
11 with limited resources, and we appreciate that.

12 Do you have sufficient resources to ensure the
13 safety and soundness of this institution?

14 MS. BEAVER: Tracey Beaver, general counsel,
15 for the record.

16 For the record, I'm sorry to interject, but the
17 personnel and resources weren't posted on the agenda for
18 today's meeting for discussion.

19 MR. TREVIÑO: I'm sorry. What?

20 MS. BEAVER: Personnel resources for Internal
21 Audit were not posted on the agenda for discussion at this
22 meeting.

23 MR. TREVIÑO: I'm sorry. Great. Okay. Thank
24 you very much.

25 MS. MENJIVAR-SUDDEATH: Can I just comment and

1 say Ms. Flores probably loves you right now.

2 (General laughter.)

3 MR. TREVIÑO: Great. Thank you very much.

4 All right. So General Counsel.

5 MS. BEAVER: Sure. Tracey Beaver, for the
6 record.

7 Since we have some extra time, there is the
8 option to also take public comment earlier if you would
9 like to take that earlier in the agenda. We can have a
10 second one after the public meeting as well. I wanted to
11 provide that option.

12 MR. TREVIÑO: Sure. Okay. Great. We can
13 definitely do that so we'll skip to that.

14 So public comment. Okay. And we do have
15 somebody here. Is see we have a comment sheet from the
16 public, so we'll now hear the public comment. I see we
17 have comment sheets from the public so now we'll hear the
18 public comments.

19 I'm sorry, General Counsel.

20 MS. BEAVER: While you're looking through that,
21 I can go ahead and make an opening statement for the
22 public comment period.

23 MR. TREVIÑO: Sure.

24 MS. BEAVER: Tracey Beaver, general counsel,
25 for the record.

1 I'd like to remind the Board that under the
2 Texas Open Meetings Act the Board can't comment or
3 deliberate on a public comment that doesn't relate to an
4 item on the posted agenda. This is because the public
5 would not have been on notice that the Board might discuss
6 that subject. If the Board desires, we can always
7 schedule any aspect of commenters' remarks for a future
8 agenda with approval from the chairman at a later date.

9 Thank you.

10 MR. TREVIÑO: Great. Thank you, General
11 Counsel.

12 So we will now hear public comment. As a
13 reminder, please state your name for the record, and if
14 you are representing or affiliated with a group, please
15 state that as well. You will have three minutes.

16 Our first speaker is Pheng Khov.

17 Welcome, Mr. Khov. Good morning.

18 MR. KHOV: Good morning, sir. Sorry for being
19 short.

20 Good morning, Board members. Thank you for
21 taking the time to allow me to address some of the topics
22 regarding my unjust removal from the position as a network
23 manager.

24 I was removed from my position as of January
25 15, 2000 -- of this year. I don't have 40 years of

1 experience or 52 years of experience but I do come from
2 three executive branch of the United States: Department
3 of Justice, Department of Defense, and Department of
4 Homeland Security. My goal when I accepted this position
5 was to bring a legacy and help the agency grow to meet the
6 highest standards, but yet I was unable to complete that.
7 During a six-months period I have accomplished many
8 things, activities, as well as projects that the agency
9 has not yet seen. But yet that goal has been shattered.

10 In front of you I gave the package to the
11 Office of General Counsel for the Board to review and
12 hopefully conduct a full investigation on my unjust firing
13 and removal from my position.

14 With that, thank you.

15 MR. TREVIÑO: Thank you very much, Mr. Khov,
16 for coming to speak before us.

17 MS. BEAVER: Tracey Beaver, general counsel,
18 for the record.

19 I just wanted to note that the personnel
20 actions are under the direction of the executive director,
21 not the Board, but folks are welcome to come and provide
22 public comment.

23 So thank you.

24 MR. TREVIÑO: Thank you very much for coming to
25 speak, Mr. Khov.

1 MR. KHOV: Thank you, sir.

2 MR. BACARISSE: Thank you.

3 MR. TREVIÑO: Okay. We now have R. Bill
4 Crocker.

5 Mr. Crocker, welcome.

6 MR. CROCKER: Thank you, Mr. Chairman and
7 members of the committee. You were trying to read my
8 writing and I apologize for that. That's William R.
9 (Bill) Crocker.

10 MR. TREVIÑO: William R. (Bill). I apologize.
11 Thank you, Mr. Crocker.

12 MR. CROCKER: No problem.

13 I want to make you aware of a circumstance that
14 hasn't developed a disaster yet but it's like ignoring the
15 shortcomings in the Challenger launch vehicle before it
16 exploded. Your Rule of Practice and Procedure, Rule
17 215.305 requires that all complaints, protests and
18 petitions required or allowed to be filed under the
19 Occupations Code, Chapter 2301 or this chapter -- meaning
20 this chapter of rules -- must be delivered to the
21 department in person by first class mail or by electronic
22 document transfer at a destination designated by the
23 department.

24 Currently the practice is -- and this is what I
25 have to do as a lawyer. Some of you may know me as way

1 back in the dim and distant past, the first executive
2 director of the Texas Motor Vehicle Commission. Some of
3 you may know me as a longtime -- and I did not say old --
4 lawyer representing car dealers, truck dealers, RV
5 dealers, motorcycle dealers, and what I have to do to file
6 a protest on behalf of a client who wants to protest a
7 proposed termination or the encroachment of another
8 dealership is draft a document, give it to the client, who
9 must then submit it to the agency under the eLICENSING
10 system.

11 Now, most big city dealers cannot do that but
12 they've got somebody in an office somewhere who can, but
13 you ask some mom-and-pop dealership to do that and it's
14 like asking them to play Chinese sheet music. They have
15 no clue how to do that.

16 I've got one minute left. I would urge you --
17 and if you want to talk about little dealerships, try an
18 ambulance dealers dealership or a little RV dealership, or
19 a mom-and-pop this, that or motorcycle dealership. They
20 can't do that with any certainty at all.

21 I'm terrified that we're going to find somebody
22 who tried to file through the eLICENSING system and didn't
23 get it done and the time expired for their protest to be
24 filed, and that's going to be a disaster because there's
25 on fixing it. Your staff that I have complained to about

1 this all do not condemn or defend the system, they just
2 say we can't fix it. I hope I'm talking to the people who
3 can fix it because it does need to be fixed, your rule
4 needs to be observed in person or by any other means has
5 got to be allowed.

6 MR. TREVIÑO: Great. Thank you very much, Mr.
7 Crocker.

8 MR. CROCKER: If you have any questions, I'll
9 be happy to respond to them.

10 MR. TREVIÑO: We're not allowed to; since it's
11 not on the agenda, we can't ask any questions.

12 MR. CROCKER: Okay. I'm sorry.

13 MR. TREVIÑO: Mr. Crocker, thank you very much
14 for coming to speak with us today.

15 MR. CROCKER: My pleasure, and my name and
16 contacts are online. If you want to talk about it, I'll
17 be happy to do that. Thank you.

18 MR. TREVIÑO: William R. (Bill) Crocker.

19 MR. CROCKER: This is not pertinent to what I
20 have to say, but I have watched you people work through a
21 very difficult case this morning under paragraph 6 and
22 give it a lot of time and attention and your very best
23 efforts. I know what you get paid. The good news is
24 they're going to double that pay this year, the bad news
25 is it will still be zero. And so thank you for your

1 service. You render a huge service to the people of this
2 state.

3 Thank you.

4 MR. TREVIÑO: Thank you, Mr. Crocker.
5 Appreciate you coming to talk with us today.

6 MS. GILLMAN: Mr. Chairman.

7 MR. TREVIÑO: Member Gillman, yes, ma'am.

8 MS. GILLMAN: Relating to Mr. Crocker's
9 problem, but I want to understand a better solution, can
10 we --

11 MR. TREVIÑO: I don't know if we can discuss
12 it, since General Counsel Beaver, and this is a comment
13 from a member of the public.

14 MS. GILLMAN: I'm talking about for a future
15 agenda item.

16 MR. TREVIÑO: Okay.

17 MS. GILLMAN: Can we have Mr. Crocker's
18 solution or options available to us. If we did add it to
19 an agenda item next meeting, can we see or can you
20 investigate with Mr. Crocker other options instead of
21 submitting under the eLICENSING system? Will you consider
22 that?

23 MR. TREVIÑO: That question would be to
24 Director Brewster.

25 MS. BREWSTER: For the record, Whitney

1 Brewster.

2 If it is the will of the Board to have an
3 update on that item that Mr. Crocker just spoke about,
4 that's certainly within your purview, Mr. Chairman, to put
5 that on the agenda and we certainly would be able to
6 address that.

7 MR. TREVIÑO: Member Prewitt.

8 MR. PREWITT: Do you need a motion for that?

9 MS. BEAVER: Tracey Beaver, general counsel.

10 No motion needed. We can make a note for a
11 future agenda.

12 MR. BACARISSE: Mr. Chairman, I'd appreciate it
13 as well. I've had experiences as district clerk in this
14 world and the state is vast and size and technological
15 capabilities and we need to find a solution that will work
16 for all Texans.

17 So thank you.

18 MR. TREVIÑO: Whether we make a motion or not,
19 I think staff understands the general feelings of this
20 Board at this point and would like to hear more about it
21 as we move forward.

22 So we're now moving on to agenda item number
23 19, so unless there's any further business, I would like
24 to entertain a motion -- no, we're not going to adjourn.
25 I'm hoping we were going to adjourn.

1 (General talking and laughter.)

2 MR. TREVIÑO: We're going into executive
3 session. I apologize, everything is out of order here.

4 Okay. We will now take agenda item 16 out of
5 order, and the hearing, agenda item 15, will begin at 1:00
6 p.m.

7 We're going to go into closed session. It is
8 now 11:26 a.m. on February 6, 2020. We will go into
9 closed session under Texas Government Code Sections
10 551.071, 551.074, 551.076, and 551.089.

11 For those of you in the audience, I anticipate
12 being in executive for approximately an hour and a half,
13 and we will reconvene in open session after that. With
14 that, we are recessed from the public meeting and we're
15 going into executive session.

16 (Whereupon, at 11:26 a.m., the meeting was
17 recessed, to reconvene this same day, Thursday, February
18 6, 2020, following conclusion of the executive session.)

19 MR. TREVIÑO: It is now 1:00 p.m., and the
20 Board of the Texas DMV is now back in open session.

21 The Board will now take up item 17. Action
22 items from executive session. There are no actions
23 arising from the executive session that the Board must act
24 upon in open session pursuant to Section 551.102 of the
25 Texas Government Code.

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PUBLIC HEARING

(Time noted: 1:01 p.m.)

MR. TREVIÑO: We'll now move to agenda item 15 and we will now begin the public hearing on the department's proposed rules regarding the titling and registration of assembled vehicles and other matters, published in the December 20, 2019 issue of the *Texas Register*. It is approximately 1:01 p.m.

Today's hearing was requested by the Assembled Vehicle Coalition of Texas on January 19, 2020. Notice of today's hearing was posted on the Texas DMV website on January 24, 2020, posted in the Open Meetings Notice on the Office of the Secretary of State's website on January 29, 2020, and published in the *Texas Register* on January 31, 2020.

Jeremiah Kuntz will now address agenda item 15.

Mr. Kuntz.

MR. KUNTZ: For the record, Board members, Jeremiah Kuntz, director of the Vehicle Titles and Registration Division.

The hearing today concerns the department's rule proposals to implement House Bill 1755 regarding assembled vehicles. The proposal, as was just mentioned, was presented to the Board for permission to publish the

1 proposal for public comment at its December 5, 2019
2 meeting. The proposal was published on December 20, 2019
3 and the public comment period notice in the proposal ended
4 on January 21, 2020. We have received some comments
5 during that comment period and those are being reviewed
6 and the purpose of this is to hear additional comments
7 from the public regarding those proposed rules.

8 MR. TREVIÑO: Great.

9 As a reminder, it is not necessary to speak to
10 have your comments in the record. Emailed comments will
11 be accepted if received between 8:00 a.m. and 5:00 p.m.
12 today, February 6, 2020. Comments can be mailed to
13 Rules@txdmv.gov. You may also provide a copy of your
14 comments to Texas DMV staff at the registration table.

15 A person speaking before the Board today is
16 limited to three minutes and time allotted to one speaker
17 may not be reassigned to another speaker. Organizations,
18 associations or groups are encouraged to present their
19 commonly held views and same or similar comments through a
20 representative member where possible.

21 We will now hear from the speakers registered
22 to speak on this item.

23 General Counsel Beaver, did you have any other
24 comments to add to that?

25 MS. BEAVER: Tracey Beaver, general counsel,

1 for the record.

2 No, thank you. Mr. Kuntz and the chairman
3 covered everything. Thank you.

4 MR. TREVIÑO: Great. Thank you very much.

5 Okay. We're now going to hear from our first
6 speaker, and it would be Faron Smith.

7 Mr. Smith, welcome.

8 MR. SMITH: Thank you.

9 MR. TREVIÑO: Yes, sir.

10 MR. SMITH: Hi. My name is Faron Smith, and
11 I'm going to ask you to forgive me if I stutter or
12 something like that. There's nothing I can do about it, I
13 just do it once in a while.

14 MR. BACARISSE: That's all right. I forgot the
15 pledge of allegiance, so don't worry about it.

16 (General talking and laughter.)

17 MR. TREVIÑO: Good to have you here, Mr. Smith.

18 MR. SMITH: Well, here's where we're at. My
19 name is Faron Smith, for the record, and I represent the
20 Assembled Vehicle Coalition and the Save the Texas Dune
21 Buggy initiative. I'm kind of the guy that started off
22 the conversation, if you will, and I run the Facebook page
23 that kind of helps move it along, if you will.

24 There's been countless hours that have gone
25 into this and I appreciate it, and getting our cars back

1 on the road, I think there's a pretty good chance that
2 we're going to get them back on the road in a way that is
3 reasonable, that works for both the DMV and car owners,
4 people that are building them and wanting to enjoy them,
5 or hobbyists, as we call them in the rule. And the amount
6 of time that has been put into this is a huge amount, and
7 not just from myself and my team but from Jeremiah Kuntz,
8 you guys, and I just can't thank you enough.

9 That's pretty much all I have to say, and the
10 reason being is because I spoke to Mr. Kuntz a little bit
11 earlier and he answered all of my questions.

12 I do appreciate everything that you guys are
13 doing. Thank you.

14 MR. TREVIÑO: Thank you, Mr. Smith. Thank you
15 very much for coming to speak with us today.

16 Great. Next is Bruce Leveque.

17 (General talking and laughter.)

18 MR. LEVEQUE: Chairman and Board members, my
19 name is Bruce Leveque. I'm here from Euless. I drove up
20 this morning on the icy overpasses where there were a
21 couple of wrecks, so a little bit delayed getting here.
22 I'm, again, talking about the assembled vehicles.

23 I bought one in 2010, toward the end of 2010.
24 It was called a SL-C Superlite Coupe. It was built by a
25 company in Detroit that sells you all the components to

1 assemble your car. And I went to a couple of other guys
2 that had cars in the North Texas area, looked at their
3 cars, rode in them, and they had all had no problems
4 getting registered and titled in the state, that I know
5 of, and there's only four of them up there other than me.
6 There's ten in the state, I believe, approximately.

7 Some of these guys build them just to race and
8 some build them as street cars, and they can do both. So
9 mine is basically a street car, not a race car. Now, I
10 don't know if someone saw race car. In the title of the
11 company is called Race Car Replicas, they build the kit,
12 or components, as they call them, and they have other cars
13 that are replicas, they build a GT-40 and a couple of
14 other ones, Cobras and some other ones also.

15 I completed my car in December 2018, eight
16 years of piddling around with it in a shop doing a lot of
17 the work because a lot of it had to be fabricated, exhaust
18 systems, things like that were all fabrication type
19 duties. I did have it inspected by an ASE master
20 mechanic, as required by the rules at the time that I
21 thought were all that I needed, and I had a safety
22 inspection. I got a temporary for a month so I could
23 drive it to at least get it inspected by the safety
24 inspection place, and then submitted all the records to
25 Tarrant County Tax Assessor.

1 They turned everything in. That was in January
2 18 of 2019. Got my plates and a sticker, I was very
3 happy, thought everything was great. Six months later I
4 go, you know, my title hasn't shown up. So I went in and
5 asked them. Your registration was rejected. I said,
6 Really? Why? And nobody could tell me. I called down
7 here, talked to Kyle Kirk, I believe I talked to in Title
8 Services and they just said it was rejected.

9 So continuing on, they say we've been waiting
10 for the rules to change, I'm now talking with Kimberly
11 Jasso in the department up there. I'm sorry, I've run out
12 of time.

13 MR. TREVIÑO: Your time is up but I'll give you
14 30 seconds, just kind of wrap it up.

15 MR. LEVEQUE: Yeah, I did talk with her and she
16 said the rules were being changed, and I've read the rules
17 and it looks like it's okay. Now I'm just wondering how
18 long the process is going to take to get me a car I can
19 drive that's been sitting in my garage for the last month
20 and a half since the registration ran out.

21 MR. TREVIÑO: Thank you very much, Mr. Leveque.
22 Thank you very much for coming to speak with us today.

23 MR. LEVEQUE: Thank you.

24 MR. TREVIÑO: Okay. This is our last speaker?

25 MS. BREWSTER: Yes.

1 MR. TREVIÑO: Okay. We've got Karen Phillips.

2 Ms. Phillips, welcome. It's good to see you.

3 MS. PHILLIPS: Good afternoon. My name is

4 Karen Phillips, Texas Auto Dealers Association.

5 First of all, I did file, on behalf of TADA,
6 written comments with respect to the proposed rules, and I
7 certainly appreciate Jeremiah and y'all's work on this,
8 this has been a long process.

9 Just a couple of things that I wanted to
10 reiterate with respect to what I filed. One, of course,
11 is that now a replica vehicle is going to be able to be
12 traded in to a dealer, and since a replica can now be
13 traded in to a dealer, there are several things that I
14 would request that the staff and the Board consider.

15 First of all, in noticed that the master
16 technician's inspection is going to be on a form which
17 hasn't been promulgated but which I would request that on
18 that form that that master technician verify that there
19 has not been any use of any non-repairable vehicle, body
20 or frame in the assembly of that vehicle.

21 In addition to that, I would request that the
22 master technician verify that there's not been any use of
23 any water-damaged engines or electrical parts that have
24 been incorporated into the building of that assembled
25 vehicle for purposes of safety.

1 In addition that, that the parts that are used
2 are required and requested and capable of meeting the
3 Federal Motor Vehicle Safety Standards, that the master
4 technician also verify that those parts do meet FMVSS
5 standards.

6 In addition, I would like for that master
7 technician's report to be a public record so it's
8 available to any further purchaser, whether that's a
9 dealer or an individual, so that they understand what has
10 been incorporated on that unit.

11 Finally, when an applicant for title is
12 registering and titling that unit, I would suggest that we
13 make certain that it was a hobbyist who was the builder of
14 that unit because the statute requires that an assembled
15 vehicle be built by a hobbyist, and so we need to verify
16 who that hobbyist so that we are in compliance with
17 Chapter 731 because a hobbyist is defined as someone who
18 builds or assembles for personal use, not engaging in
19 continuous sale of vehicles, and is not a maker of a kit
20 or a manufacturer.

21 So those are the suggestions that I would like
22 for this Board and the agency to consider. And I know
23 that there's a rule that's going through NHTSA right now
24 and there's going to be incorporated, it looks like, and
25 adopted a label for certain manufacturers.

1 And I would just like for those suggestions to
2 be incorporated and looked at for purposes of the replica
3 vehicle.

4 MR. TREVIÑO: Great.

5 MS. PHILLIPS: Any questions?

6 MS. GILLMAN: I have a question.

7 MR. TREVIÑO: Can we accept questions?

8 MS. BEAVER: Yes, it's fine to ask questions.

9 MR. TREVIÑO: Great. Okay. Member Gillman.

10 MS. GILLMAN: So is the reason you're
11 requesting the verifications from the ASE master tech, is
12 that because it's comparable to what a manufacturer has to
13 certify when they are assembling a vehicle, that there's
14 no water damage, that the body and frame hasn't been
15 previously non-repairable, and that their parts meet
16 certain standards? It sounds similar to what a
17 manufacturer would have to certify.

18 MS. PHILLIPS: I don't think any manufacturer
19 wants to put non-repairable pieces on a unit, nor do they
20 want to use non-FMVSS parts, nor do they want to use
21 water-damaged parts, especially if we're talking a new
22 motor vehicle. That just would not be something I think
23 we would have an issue of.

24 The concern I have is that these replica
25 vehicles, if they are going to be traded in to you as a

1 dealer and something occurs later on in the electrical
2 system and you find out that it had water damage, then the
3 customer is going to come back to you, they're not going
4 to go look for that builder, they're going to come back to
5 you. So that's why we'd like for the master technician to
6 verify these things and incorporate that into their form
7 and to the report so that not only do you have some level
8 of comfort but that the public has a level of comfort with
9 respect to that unit. Otherwise, we don't know exactly
10 what we're going to be getting.

11 MS. GILLMAN: So it's kind of like -- this is
12 maybe not a correct statement -- kind of like a
13 CARFAX/history of its origin.

14 MS. PHILLIPS: Sort of. However, I'm concerned
15 with respect to deceptive trade. That's the primary
16 concern that I've got because these vehicles are going to
17 be coming in to you. And of course, I think it's best
18 practices for us to protect the public also so that they
19 know that these units don't have these water-damaged, non-
20 repairable and non-FMVSS use of parts.

21 MS. GILLMAN: So, Jeremiah, if there was this
22 form -- I'll back up -- if the vehicle is traded in to a
23 dealer, where do I go to see this form, where would I go?

24 MR. KUNTZ: For the record, Jeremiah Kuntz,
25 director of Vehicle Titles and Registration Division.

1 We have been reviewing the comments that were
2 submitted by TADA to evaluate different administrative
3 processes that could be utilized. I don't know that I've
4 got an answer for you today on the feasibility of where
5 that would go. And the reason I say that is our standard
6 process for title paperwork is when a vehicle comes in to
7 be titled, all paperwork is submitted to a county tax
8 assessor-collector, whether that's the MCO, whether that's
9 a blue Texas title, any supporting documentation if it's a
10 rebuilt salvage vehicle or something like that, is
11 submitted.

12 All of that paperwork is electronically scanned
13 and stored in our records in our database and retained for
14 ten years. We have a ten-year retention on all title
15 paperwork. After the ten-year period that electronic
16 record is purged according to our retention schedule. So
17 this is something that would potentially be outside of the
18 norm. If a vehicle was assembled prior to ten years ago,
19 we would have to have a different retention for that
20 documentation in order to retain that certification or
21 anything like it in our title records.

22 MS. GILLMAN: And one last question. Karen,
23 are you suggesting that on the title that's issued to the
24 hobbyist that it just be labeled a hobbyist assembled
25 vehicle, kind of a brand of some kind, differentiating it

1 from others?

2 MS. PHILLIPS: Well, what you might do -- and
3 I'm happy to talk with Jeremiah and Tracey and whomever
4 about this -- is on the manufacturer section on that
5 application for title or on the model or whatever you name
6 whoever the hobbyist is who actually built the unit so
7 that it becomes part of that title record. That way you
8 know it was an individual and then the agency can also
9 verify that that hobbyist is an actual hobbyist, i.e. they
10 meet the definition under Chapter 731 of a hobbyist.

11 Does that make sense?

12 MS. GILLMAN: Thank you.

13 MS. PHILLIPS: Any other questions?

14 MR. TREVIÑO: Any other questions? Member
15 McRae.

16 MS. McRAE: Hi, Karen. It's more of, I think,
17 a comment for Jeremiah just as a follow-up to what you
18 were saying, though, and to Stacey.

19 Right now the department, as a tax assessor as
20 we submit these titles to the department and they are
21 being scanned and stored, the department doesn't review
22 each of those titles before they're issued, so I'm not
23 sure how you would be able to validate unless we did
24 something along the lines of red flag, or I don't know.
25 There would have to be a process for separating those out

1 for the department to be able to verify, I think.

2 MR. TREVIÑO: So you're just making a
3 suggestion. We're not going to decide this here today,
4 this is just to hear comment.

5 MS. McRAE: Right, right.

6 MR. TREVIÑO: But your comment is that it would
7 be difficult to implement in some way, shape or form.

8 MS. McRAE: Well, it would require a process.

9 MR. TREVIÑO: A process. Okay.

10 MR. KUNTZ: To address that, the rules as
11 proposed contemplate that the application for an assembled
12 vehicle is reviewed by the department prior to going to
13 the county tax assessor-collector for processing, so that
14 is already built into the current proposed rules as
15 proposed.

16 MR. TREVIÑO: All right. Great. Very good.
17 Question answered.

18 Okay. Any other questions?

19 (No response.)

20 MS. PHILLIPS: Okay. Thank you.

21 MR. TREVIÑO: Thank you, Ms. Phillips.

22 So I think those are all our -- Melanie, is
23 that everybody, we don't have any other speakers? Good.

24 So I would like to thank everyone who provided
25 written and verbal comments regarding the department's

1 proposed assembled vehicles rules during the comment
2 period and at today's public hearing.

3 After consideration of the verbal and written
4 comments, the department will prepare a draft adoption to
5 be presented to the Board for consideration at a future
6 meeting.

7 Thank you all for participating in this
8 hearing.

9 (The public hearing concluded at 1:20 p.m.)

10 MR. TREVIÑO: Unless there is any further
11 business, I would like to entertain a motion to adjourn.

12 MR. BACARISSE: I move we adjourn this meeting.

13 MS. McRAE: Second.

14 MR. TREVIÑO: I've got a motion and a second by
15 Member McRae. Thank you.

16 All in favor?

17 (A chorus of ayes.)

18 MR. TREVIÑO: Let the record reflect the vote
19 is unanimous. It is now 1:21 p.m. We are adjourned.

20 (Whereupon, at 1:21 p.m., the meeting was
21 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TxDMV Board
4 LOCATION: Austin, Texas
5 DATE: February 6, 2020

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 163, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Motor Vehicles.

11 DATE: February 14, 2020
12
13
14
15

16 /s/ Nancy H. King
17 (Transcriber)
18

19 On the Record Reporting
20 7703 N. Lamar Blvd. #515
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