

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

OPEN MEETING VIA VIDEOCONFERENCE CALL OR
TELEPHONE CONFERENCE CALL
PURSUANT TO GOVERNOR'S MARCH 16, 2020, TEMPORARY
SUSPENSION OF
CERTAIN OPEN MEETING PROVISIONS

8:00 a.m.
Thursday,
April 1, 2021

BOARD MEMBERS:

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

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9.	The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551: Section 551.071 Section 551.074 Section 551.076 Section 551.089	none
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P R O C E E D I N G S

1
2 MR. TREVIÑO: Good morning. My name is Memo
3 Treviño, and I'm pleased to open the Board meeting of the
4 Texas Department of Motor Vehicles.

5 It is approximately 8:00 a.m. and I am now
6 calling the board meeting for April 1, 2021, to order. I
7 want to note for the record that the public notice of
8 this meeting, containing all items on the agenda, was
9 filed with the Office of the Secretary of State on March
10 24, 2021.

11 This meeting is being held by telephone
12 conference call in accordance with Texas Government Code,
13 Chapter 551, as temporarily modified under Governor Greg
14 Abbott's authority to suspend certain statutes due to
15 COVID-19. Governor Abbott suspended various provisions
16 of the Texas Open Meetings Act that require government
17 officials and members of the public to be physically
18 present at specified meeting locations.

19 Under that suspension the public will not be
20 able to physically attend this meeting in person.
21 Instead, the public may attend this meeting by using the
22 link or by calling the toll-free telephone number which
23 are both posted in our agenda, which was filed with the
24 Office of the Secretary of State on March 24, 2021. All
25 board members, including myself, will be participating

1 remotely via Webex.

2 At this time, will attendees please mute your
3 telephone for the entire duration of this meeting. I'm
4 asking our Webex meeting host to make sure all attendees'
5 phones are muted and their video is turned off, except
6 for board members and those who are presenting. Callers
7 will be removed for any disruption, including background
8 noise.

9 I would like to remind all participants that
10 this is a telephone conference call meeting. Because
11 this meeting is being held by telephone conference call,
12 there are a few things that will assist in making the
13 meeting run smoother and assist the court reporter in
14 getting an accurate record.

15 Please identify yourselves before speaking;
16 speak clearly. Remember that there may be a slight delay
17 due to the telephone conference call meeting, so please
18 wait a little longer than usual before responding to
19 participants. Do not speak over others, and please ask
20 the chairman to proceed and be sure to get recognized
21 before speaking.

22 I would also like to thank our court reporter
23 who is transcribing this meeting. They always do a
24 wonderful job.

25 To make sure we have an accurate recording of

1 this meeting, it is very important that board members and
2 anyone presenting today identify themselves before
3 speaking and speak clearly and slowly.

4 If you wish to address the board or speak on
5 an agenda item during today's meeting, please send an
6 email to GCO_General@TxDMV.gov. Please identify in your
7 email the specific item you are interested in commenting
8 on, your name and address and whether you are
9 representing anyone or speaking for yourself. If your
10 comment does not pertain to a specific agenda item, we
11 will take your comment during the general comment portion
12 of the meeting.

13 In accordance with department administrative
14 rule, comments to the board will be limited to three
15 minutes, then the call will be muted by the meeting host
16 when your time is up. You will be notified when you have
17 one minute remaining. Comments should be pertinent to
18 the issues stated in your email. When addressing the
19 board, please state your name and affiliation for the
20 record.

21 Before we begin today, I'd like to remind all
22 presenters and those in attendance of the rules of
23 conduct at our board meetings. In the department's rules
24 under Section 206.22, the board chair is given the
25 authority to supervise the conduct of meetings. This

1 includes the authority to determine when a speaker is
2 being disruptive of the meeting or is otherwise violating
3 the timing or presentation rules I just discussed.
4 Disruptive speakers will be muted, given a warning about
5 disruptive behavior, then removed from the meeting for
6 any continued disruption.

7 And we'll now move into the roll call of board
8 members. Please respond verbally when I call your name.

9 Board Member Bacarisse, are you on?

10 MR. BACARISSE: Aye.

11 MR. TREVIÑO: Board Member Gillman?

12 MS. GILLMAN: Aye.

13 MR. TREVIÑO: Board Member Graham?

14 MR. GRAHAM: Aye.

15 MR. TREVIÑO: Board Member McRae?

16 MS. McRAE: Here.

17 MR. TREVIÑO: Board Member Prewitt?

18 I believe Member Prewitt is not with us
19 today. Is that correct, Tracey?

20 MS. BEAVER: Tracey Beaver, general counsel,
21 for the record. Member Prewitt is not able to attend the
22 meeting this morning. Thank you.

23 MR. TREVIÑO: Thank you.

24 Board Member Ramirez?

25 MR. RAMIREZ: Here.

1 MR. TREVIÑO: Board Member Scott?

2 MR. SCOTT: Here.

3 MR. TREVIÑO: And let the record reflect that
4 I, Memo Treviño, am here too. We have a quorum.

5 Okay. We now move to the pledges of
6 allegiance. Before we begin, I ask the board and other
7 panelists to please turn off their audio and video. I
8 will also turn off my video.

9 And I'm asking Member Gillman to lead us in
10 the U.S. Pledge and Member McRae to lead us in the Texas
11 pledge. We'll pause to give presenters and board members
12 a moment to turn off their audio and video.

13 Please all stand and honor our country and
14 state with the pledges of allegiance.

15 (The Pledges of Allegiance, U.S. and Texas,
16 were recited.)

17 MR. TREVIÑO: Okay. Thank you, Members
18 Gillman and McRae. Well done.

19 We'll move to the chair's report now.

20 Section 1001.023 of the Transportation Code
21 sets out the duties of the board chair and vice chair.
22 One of the duties of the board chair is to report to the
23 governor on the state of affairs of the department. The
24 annual report was submitted to the governor on March 11,
25 2021.

1 It is posted on the agency's external website
2 at www.TxDMV.gov, at the bottom of the page located under
3 Reports and Data and then under Annual Reports. I have a
4 copy here in front of me. These are available in bulk if
5 anyone would like their own personal copy and to hand out
6 to friends. They make great holiday gifts.

7 I would also like to thank staff for all their
8 efforts in producing this detailed report.

9 Okay. We now have the distinct pleasure of
10 talking with the new MVCPA chair, Mike Rodriguez.
11 There's been a recent change to the Motor Vehicle Crime
12 Prevention Authority, or MVCPA. Texas Governor Greg
13 Abbott appointed Laredo Police Department Assistant Chief
14 Miguel "Mike" Rodriguez, Jr. as chairman of the MVCPA.

15 The MVCPA is administratively attached to
16 Texas DMV. Its funds are appropriated in the Texas DMV
17 budget bill pattern, but they have separate but
18 complementary responsibilities to Texas DMV. MVCPA also
19 has its own board appointed by the governor to carry out
20 their duties, and the chairman is on the conference call
21 with us today.

22 Chairman Rodriguez, how are you today?

23 MR. RODRIGUEZ: Good morning, Chairman
24 Treviño. I'm pretty good. Yourself?

25 MR. TREVIÑO: Great, great. I've got a few

1 more things to say about your wonderful career, so if you
2 can just hold on with your remarks there for a second,
3 but we are very excited to have you with us.

4 Chairman Rodriguez was once the commander of
5 the Laredo PD Auto Theft Task Force. He knows firsthand
6 about the Motor Vehicle Crime Prevention Authority's
7 grant program and the key relationships in the MVCPA
8 network of law enforcement, insurance stakeholders, motor
9 vehicle dealers and businesses and county tax assessor-
10 collectors.

11 While Chief Rodriguez was commander, the
12 Laredo Task Force broke up multiple theft rings in the
13 city and impressively went from having the highest per
14 capita auto theft rate in the nation to becoming amongst
15 the lowest.

16 Chairman Rodriguez became a peace officer in
17 1997 and joined the Laredo Police Department in 1999. He
18 has been in patrol and investigative divisions and he has
19 worked at crime scene investigations, special
20 investigations unit and auto theft.

21 After starting his duties at the motor vehicle
22 crime task force as sergeant, he promoted to the rank of
23 lieutenant and kept his assignment of leading the auto
24 theft task force. In 2017, Chief of Police Treviño
25 appointed then Lieutenant Rodriguez as deputy chief to

1 oversee the criminal investigations and support
2 divisions.

3 Please welcome Assistant Chief Rodriguez and
4 now also chairman of the Motor Vehicle Crime Prevention
5 Authority. Chairman Rodriguez, welcome, and would you
6 like to say a few words?

7 MR. RODRIGUEZ: Sure. Good morning,
8 everyone. Pleasure to be here. Chairman Treviño, thank
9 you for that introduction.

10 I'm honored to have been asked by our governor
11 to serve as chairman for the Motor Vehicle Crime
12 Prevention Authority. These past couple of weeks have
13 been exciting. I can honestly say that I had no idea the
14 amount of work our support staff and director do day in
15 and day out.

16 I also had no idea of the involvement and work
17 of the staff and our Texas DMV directors. I really want
18 to take this opportunity to thank all of them for the
19 work they do. Everyone is very responsive and
20 task-driven.

21 I can honestly say they're just awesome in all
22 aspects between the Motor Vehicle Crime Prevention
23 Authority and the Texas DMV. I love the way they work.
24 I know our director is always in constant communication
25 with your staff, with the Texas DMV staff, and they're

1 just all across the board awesome people, awesome
2 personnel.

3 As you may know, I'm an assistant chief for
4 the City of Laredo Police Department. I oversee the
5 detective division, the intelligence division, research
6 and technology and the records division. That aspect of
7 the police department I oversee.

8 I do have a deputy chief under me, so I always
9 try and say I'm going to delegate a little bit more
10 things to you now that I was appointed chairman for the
11 MVCPA. I know it's a lot of work that we have to do.
12 I've always been a very low-profile kind of guy, but I
13 love police work, and having agreed to be chair, I'm
14 thinking the low profile is no longer there. So I need
15 to be a little bit more out there and be more responsive
16 to a lot of things that happen in MVCPA.

17 As Chairman Treviño said, Laredo was very much
18 in a hole back in 2008-2009, because of the fact that our
19 auto theft was out the roof, that it would be around
20 2,000-2,500 vehicles stolen from Laredo per year. Those
21 vehicles, the problem was that there was no way to stop
22 them going into Mexico. And by the time somebody
23 reported their vehicle stolen, that vehicle was long gone
24 into Mexico.

25 So when I was assigned the auto theft

1 division, I understood that part. I understood the fact
2 that we had to do more. And the fact that the problem
3 was not the community not responding to the actual
4 problem, the problem was the cartels wanting these
5 vehicles and were going to do it at any cost to get these
6 vehicles for their war and to pursue their smuggling of
7 weapons or smuggling of illegal aliens or smuggling of
8 drugs. They use all these vehicles to do that.

9 So it was very important for us to start
10 working and going against all that. So we worked from
11 the person that would break into the vehicle, to the
12 person that would drive the vehicle into Mexico, to the
13 person that was wanting that vehicle. So working all the
14 organization itself took us about two years to get to
15 them, but we finally did.

16 It got so bad that actually the chief of
17 police back then received a letter from the cartel
18 threatening our investigators, myself. It got even worse
19 when they stole my family's Suburban and burned it in
20 central Laredo.

21 It was a threat to the organization. It was a
22 threat to the task force. And I found that -- that was
23 the push that I said, you know what, auto theft is not
24 simply a vehicle stolen and paid by insurance; auto theft
25 was more than that.

1 So it drove us to do more. And this is how I
2 got involved with the Motor Vehicle Crime Prevention
3 Authority, before the ABTPA. And at that point I saw
4 that we needed more resources, and I thank the City of
5 Laredo and our organization that fully supported us.

6 And at that point I said, we need to do more
7 with the MVCPA. And I knew that there were cities -- so
8 right now we have Houston, Dallas that also continue to
9 have a problem, but more than anything it's Lubbock,
10 Amarillo and Odessa which are now in the top ten cities
11 in the nation for auto theft.

12 So we have a lot of work to do. I know that
13 operationally we have a lot of changes that have to be
14 made. But more than that, we need to continue pushing
15 for additional funding so that we can fund these
16 organizations -- these task forces properly and give them
17 the tools to fight this crime.

18 And I know that we're not only fighting auto
19 theft, we're also fighting the burglary of
20 vehicles. We're fighting the now catalytic converters
21 that are being stolen by the day in, I want to say,
22 thousands. And also the problems that we have with the
23 paper plates that are being used to disguise, you know,
24 most of the trafficking that's happening.

25 Especially in my hometown, Laredo, they use

1 those plates to transport illegals and for us to not be
2 able to identify the vehicles and things of that
3 nature. But we have a lot of work to do and I'm here to
4 work with our Texas DMV partners and I'm here to work at
5 any level.

6 I know I spoke to Chairman Treviño. When I
7 met him, I want to say he's just an awesome person and
8 has always opened the doors for me. And I want to say
9 that I think we're in good hands, but at the same time I
10 know that we have a lot of work to do.

11 I know I have a lot of people to meet. So I'm
12 here, again, I'm Miguel. Most people call me Mike, but
13 at any point that you wish to call, I'm also very, very
14 responsive and feel free to reach out.

15 Thank you.

16 MR. TREVIÑO: Great. Thank you very much,
17 Chairman Rodriguez.

18 I had the pleasure of visiting Chairman
19 Rodriguez's auto task force a few years ago here in
20 Laredo and it completely changed my understanding of why
21 the work of the MVCPA is so important here in Texas.
22 Auto theft doesn't just happen in isolation. It's part
23 of other crimes, and by addressing auto theft we not only
24 protect the assets of Texans, we make all of Texas safer.

25 So his task force continues that work.

1 MS. GILLMAN: Mr. Chairman?

2 MR. TREVIÑO: Yes.

3 MS. GILLMAN: I just wanted to complement
4 exactly what you're saying. I'm a car dealer down in a
5 neighboring city, down in Harlingen, and I know firsthand
6 our dealerships also have had exactly what you were just
7 describing: our vehicles being used to go across with
8 some pretty heavy crimes.

9 And I just am learning also of the intricacies
10 of the challenges that you have faced down at our
11 southern border. And the number of fraud cases that
12 we're getting in Houston also are just astounding, and
13 I've got a great working relationship with the task force
14 in Houston.

15 But I commend you and congratulate you, Mike,
16 on your chairmanship of MVCPA, and welcome.

17 MR. TREVIÑO: Well said, Member Gillman.

18 Chairman Rodriguez, thanks again, and we
19 expect great things from you. And thank you also for
20 agreeing to chair this board and be of service to all
21 Texans, not just the citizens of Laredo. We expect great
22 things from you.

23 I would also like to recognize the former
24 chairman, Tommy Hansen, for his dedication and his
25 passion to protect the citizens of Texas.

1 So Chairman Rodriguez, you've got big boots to
2 fill, but we know you're up for the task.

3 MR. RODRIGUEZ: Thank you, Chairman.

4 MR. TREVIÑO: Anybody else like to say
5 anything?

6 (No response.)

7 MR. TREVIÑO: Great. And that moves us to our
8 next agenda item, speaking of big boots to fill. It is
9 my reluctant duty to recognize Member Washburn's
10 departure from this board.

11 Shelley Washburn has served since 2019, but it
12 is my pleasure to talk about all the significant
13 contributions she made in substance and character to
14 these deliberations. Member Washburn has the rare gift
15 of being able to hold her ground, speak her mind, also
16 disagree, but also doing it without being disagreeable,
17 which makes working with her not only an honor, but a
18 pleasure.

19 I know I speak for the board when I say how
20 much we will miss working with you, and we wish you good
21 luck and Godspeed with your new project.

22 Shelley, are you on? Have they unmuted you?

23 MS. WASHBURN: I'm here.

24 MR. TREVIÑO: Shelley, would you like to say a
25 few words?

1 MS. WASHBURN: I would. I really appreciate
2 the nice comments, and a little bit hard to follow
3 Chairman Rodriguez, but I do have a few things I'd like
4 to say.

5 I'd really like to start by thanking Governor
6 Abbott and his office for the appointment. I've learned
7 a ton and it's certainly been an honor and a privilege to
8 serve the people of the State of Texas.

9 And it's been an absolute pleasure to work
10 with the team. Whitney, Carrie, Tracey, all the
11 directors, you guys are amazing. You certainly exceeded
12 what my expectations were in your professionalism, your
13 knowledge, your dedication, the amount of work that goes
14 on in this agency.

15 It's certainly a well-oiled machine. And I
16 know -- everybody, we all know how hard that you work to
17 provide our citizens with the absolute best service.

18 And of course, I have to recognize my board
19 members. It's been absolutely amazing working with you
20 guys. I've learned from all of you.

21 Maybe to follow up on what Memo said, we
22 certainly had a lot of spirited discussions, but I feel
23 like we all listened to each other. We always did keep
24 an open mind and really tried to make the best decisions
25 for our constituents.

1 So I thank you guys very much. I enjoyed
2 everything, hope that we can keep in touch. And as you
3 can see behind me, I got some amazing gifts from you
4 guys, a shadow box here and then these beautiful flowers.

5 So thank you very much. It's been an honor
6 and a pleasure and everybody take care.

7 MR. TREVIÑO: Great. Well said, well said,
8 Shelley.

9 Would any members like to jump in here and add
10 any comments?

11 MS. GILLMAN: Certainly. Shelley, you will be
12 missed. Thank you for your professionalism and grace and
13 working together with us. We enjoyed it very much.

14 MS. McRAE: Shelley, I would just like to say
15 that it has been an honor and a pleasure to serve with
16 you, and you will be missed. And I appreciate the
17 expertise that you brought to this board.

18 And we did have spirited discussions, but in
19 the end I think all the decisions that were made and the
20 discussions were, like you said, for our constituents'
21 mutual interests. But thank you so much for your service
22 to DMV but also to the State of Texas, and you will be
23 missed.

24 MR. TREVIÑO: Hear, hear.

25 MS. WASHBURN: Thank you so much. Really

1 appreciate the comments.

2 MR. GRAHAM: I'll just jump in and say,
3 Shelley, gonna miss you. It was great to work with
4 you. I'm really proud -- you know, this is such a
5 diverse board with people all across the state doing
6 different things. And I think it is those spirited
7 discussions that are so critical to leading us to the
8 right decision.

9 And gosh, you were great to work with and sure
10 gonna miss you. All the best.

11 MS. WASHBURN: Thank you.

12 MR. TREVIÑO: Well said, well said.

13 Well, you know, expertise, Shelley, we get
14 expertise in buckets, you know, in dump truck loads of
15 expertise, but grace and that sense of service are rare
16 commodities, and I really appreciate that aspect of what
17 you brought to the table. So you know, just the complete
18 package, Shelley, and look forward to continuing to work
19 with you hopefully on other projects soon.

20 MS. WASHBURN: Awesome. Thanks, Memo. Let me
21 know if I can ever be of any more assistance to you guys.

22 MR. TREVIÑO: Right.

23 MS. WASHBURN: Take care.

24 MR. TREVIÑO: Thanks again.

25 Okay. Well, those are never fun.

1 Okay. We will now move to agenda item number
2 4. Now we'll turn it over to Executive Director Whitney
3 Brewster for her report.

4 MS. BREWSTER: Thank you, Mr. Chairman.

5 Good morning, Chairman, members, guests and
6 staff.

7 I know that they're no longer on the line but
8 on behalf of agency staff I, too, want to warmly welcome
9 Chairman Rodriguez in his new role as the MVCPA chairman.
10 We are here to support Chairman Rodriguez and all of the
11 MVCPA board members, and we are certainly dedicated to
12 the success of the program and we will provide any
13 support that Chairman Rodriguez needs to be able to be
14 successful in this new role.

15 And I also want to sincerely thank Shelley
16 Washburn. Staff has always felt extremely appreciated
17 and supported, and we are going to miss her leadership,
18 her expertise, and just her overall warm demeanor.

19 For the record, I'm Whitney Brewster. I'm the
20 executive director, and I appreciate the time to share a
21 few things with you this morning.

22 First, I'll begin with an update on the
23 lifting of the temporary COVID-19 suspensions of vehicle
24 registration and title requirements, including some of
25 the external communications and impacts that have been

1 occurring. As the board knows, Governor Abbott suspended
2 vehicle registration and title requirements in March of
3 2020 to accommodate public needs during COVID-19. And
4 after almost 13 months, those suspensions will conclude
5 on April 14, 2021, and this is our last board meeting
6 before the lifting of those waivers.

7 We as department staff have been continuously
8 analyzing compliance with registration and titling
9 requirements this past year. And Ms. Flores, our CFO,
10 will be talking about the financial impacts later on in
11 the report, but just to give you and those listening to
12 the board meeting a little bit of information about where
13 we are.

14 At the end of January of 2020, pre-COVID-19,
15 we reported approximately 25.3 million registered
16 vehicles. In January of this year, we reported 23.9
17 million registered vehicles. And so based on that data,
18 we suspect there could be up to 1.4 million motorists who
19 have delayed registration renewal.

20 This is a very rough estimate of what the
21 total universe of backlog could be at its worst. As we
22 know, some of these vehicles could no longer be on the
23 roadway, the vehicle has been either junked due to a
24 crash or the vehicle has gone out of state.

25 Also, we know that there has been lower

1 vehicle sales during COVID-19. All of these things have
2 an impact on these numbers and could be responsible for
3 the decline in registration.

4 Our team has continued to hold regular
5 meetings with tax assessor-collectors and the tax
6 assessor-collector association leadership as we've neared
7 the conclusion of the waivers, because, as Member McRae
8 is very well aware, it is the tax assessor-collectors
9 that are going to be impacted and are impacted the most
10 from the lifting of the waivers. We've also been
11 coordinating information on the number of vehicles we
12 estimate needing to comply by April 14, and we have
13 communicated that closely to the tax assessor-collectors
14 to make sure we're all on the same page as we near the
15 deadline.

16 We've issued two press releases, one in
17 December when Governor Abbott announced well in advance
18 that the waivers would be coming to an end in April, and
19 we really appreciate the extra time that we have had to
20 be able to prepare for the conclusion of the waivers.
21 And we've also done in February another press release as
22 we headed into the final 60 days of the waiver. We will
23 also be issuing another press release on Monday, April 5,
24 to help ensure that the public is again reminded of this
25 deadline.

1 Just to give you a little bit of information
2 about what has gone out. As of yesterday, 98 stories
3 have been published by 74 different news organizations
4 since December 15 with this information, and we really
5 appreciate the tax assessor-collectors getting the word
6 out about this deadline as well.

7 We have provided a press release template to
8 the counties and they have used those locally, so that
9 has really helped with getting the message out. We've
10 also provided information and updated information and
11 resources for tax assessor-collectors for their
12 reference.

13 TxDMV is also continually updating our social
14 media platform media pages regarding the deadline, and
15 Texas.gov, the online registration renewal portal, has
16 also been using their social media handles and
17 advertising to help spread the word as well. We've also
18 forwarded these announcements to legislative offices to
19 share with their constituents through legislative
20 newsletters.

21 So we'll continue to maintain our contact with
22 the tax assessors, as well as state leadership, in these
23 final two weeks to provide support. But we feel like we
24 are at this point in a very good position, especially
25 with the partnership of the tax assessor-collectors and

1 state leadership in moving forward in conjunction with
2 the lifting of these waivers.

3 So that concludes item A of the executive
4 director's report. Are there any comments or questions
5 before I move on to the next item in my update?

6 MR. TREVIÑO: Comments or questions, thoughts?

7 (No response.)

8 MR. TREVIÑO: Whitney, go right ahead.

9 MS. BREWSTER: Thank you, sir.

10 It's hard to believe that we first completed
11 our reopening plan or our return to office plan in May of
12 last year. We have since revised the reopening plan
13 multiple times in the last ten months as circumstances
14 have changed, but most recently we revised our reopening
15 plan in response to Governor Abbott's executive orders on
16 March 2, 2021.

17 And in response to those executive orders
18 reopening Texas and subsequent guidance to state
19 agencies, the TxDMV reopening plan was revised. The
20 TxDMV is reopening in compliance with the directive to
21 provide all services at or above pre-pandemic levels on a
22 timeline established by TxDMV management and consistent
23 with the expiration of the registration and title waivers
24 on April 14.

25 So some of the criteria that we are using to

1 determine employees returning to the work site. The
2 first is that the work site needs to be fully 100 percent
3 open to respond to customer visits, and that is making
4 sure that we have representation from all of our
5 divisions during regular business hours to be able to
6 provide onsite service.

7 The second is any employees handling sensitive
8 information or confidential paper documents must return
9 to the work site. For example, employees that work with
10 paper documents, they must return to the work site to be
11 able to access those documents in a centralized secure
12 location.

13 And then lastly, employees must return to work
14 onsite in any area where we are less than 100 percent of
15 the work performance pre-pandemic. All services must be
16 provided fully and at the same or better level of service
17 pre-COVID-19. So telecommuting still remains an option
18 and will remain an option as long as work performance is
19 equal or greater than work performance prior to COVID-19.

20 Just a couple of other things, activities.
21 The department has revised our face covering, social
22 distancing and employee illness policies. The revisions
23 include the optional use of thermal temperature scanners
24 that we will have at all locations, at TxDMV locations,
25 before entering the work site, and emphasizing that

1 wearing face coverings is highly encouraged but optional
2 for both employees and customers. We are still making
3 available PPE at all of our offices, both to customers as
4 well as our employees.

5 Division directors have been working very
6 closely with staff to implement this transition, and I
7 thank sincerely the executive team for all the work.
8 There has been many, many, many hours that have gone into
9 transitioning staff back and making sure everyone is
10 taken care of.

11 There is a small team to help plan and
12 implement this change of employees returning to the work
13 site with more coming back. They're working with
14 managers and our employees to ensure our continued
15 reopening is as seamless as possible, with a focus on the
16 highest levels of communication with our employees and
17 service to our customers. And we expect that we'll
18 continue to move forward smoothly, consistent with our
19 timeline with the expiration of the waivers on April 14.

20 Some really good news. In anticipation of
21 more people coming back to the office, we teamed up with
22 DPS to offer COVID-19 vaccinations to our employees
23 across the state, and just yesterday DPS vaccinated 102
24 employees here in Austin in the Lone Star Room at Camp
25 Hubbard, with more vaccinations being offered to our

1 employees across the state next week. I am incredibly
2 grateful to our sister agency, DPS, for doing this for
3 us, and specifically Jason Dush, for offering these
4 lifesaving vaccines to our employees. The DPS team has
5 been nothing but responsive and eager to help us and we
6 are just so very appreciative.

7 And I also want to thank Matthew Levitt and
8 the reset of our incredible HR team for their quick
9 action in setting up and working through all of the
10 logistics of making the vaccine available to our team.
11 DPS, in fact, expressed to me how well the HR team worked
12 to make the process so efficient for everyone involved.
13 So big kudos to our HR team.

14 That concludes item B of the executive
15 director's report. Are there any comments or questions
16 from the board members?

17 MR. TREVIÑO: Board members? The chair
18 recognizes Member Ramirez.

19 MR. RAMIREZ: Whitney, you guys did an
20 incredible job, and 100 employees vaccinated just
21 yesterday, that's remarkable. I know it's a heavy lift
22 getting any workforce to participate like that, and you
23 guys are doing a phenomenal job, so thank you for looking
24 out for the employees.

25 MS. BREWSTER: Thank you, Member Ramirez. And

1 I have to say our HR team has been incredible. We've had
2 to move very quickly because when the vaccines are
3 available, we have to move quickly because, as we know,
4 the availability of those and the handling of those is so
5 very important of those vaccinations in a very timely
6 manner. And so hats off to the HR team. Thank you,
7 Member Ramirez.

8 MR. TREVIÑO: Any other comments or questions?

9 (No response.)

10 MR. TREVIÑO: Executive Director Brewster, I
11 would like to compliment you and staff and recognize that
12 running an organization of this size and complexity is
13 difficult at any time, but during this whole process you
14 guys have really just been amazing. So congratulations
15 and well done.

16 What percentage of team members do you think
17 are going to come back physically and what percent do you
18 think will continue to telecommute? Think a month from
19 now, two months from now, three months from now, some
20 kind of a staged return.

21 MS. BREWSTER: Thank you for that question,
22 Chairman.

23 We have Phase 3 which for the plan April 14 is
24 Phase 3, and that's when we are bringing the next group
25 of people coming back, and I would estimate that we have

1 about 150 more people coming back. And then we will see
2 how things go with the vaccine and possibly moving into
3 our new normal which will be Phase 4 where, again, that
4 will be our new normal, and there are areas of the agency
5 that will continue to heavily telecommute. We've seen
6 great success, for instance, in our call center and in
7 IT, and what that has led to is we've been able to
8 recruit outside of Austin to be able to bring staff on in
9 areas where we have high turnover.

10 So I don't have specific statistics on Phase 4
11 at this point, but certainly I will make sure that I
12 provide that to the board as we move into Phase 4.

13 MR. TREVIÑO: And it would be useful for you
14 to share your thoughts about how this plays out over the
15 next couple of months, and I know it's completely
16 uncertain. You know, there's too many variables, but
17 just your thoughts on how you see it evolving would be
18 useful.

19 MS. BREWSTER: Yes, sir.

20 MR. TREVIÑO: But congratulations again, and
21 recognize you're working in a time of just heightened
22 uncertainty, and it's amazing that you guys are even able
23 to come in and turn on the lights every day. That's
24 amazing. So well done, well done.

25 MS. BREWSTER: Thank you.

1 MR. TREVIÑO: Okay. So would you like to move
2 on?

3 MS. GILLMAN: One other thing, one other
4 comment.

5 MR. TREVIÑO: Member Gillman.

6 MS. GILLMAN: I just wanted to say the lifting
7 of the temporary suspensions of registration and title
8 requirements, it has been communicated well across the
9 dealer body, I think, but definitely you're correct,
10 Whitney, when you say the TAC's office should be flooded,
11 all TACs' offices should be flooded, and then, of course,
12 your office as well.

13 So I'm glad that we're all back to 100 percent
14 capacity. I think the next 60 days is going to be a
15 grind to get through it all and get caught up, so good
16 luck.

17 MS. BREWSTER: Thank you, Member Gillman. And
18 I can tell you that the tax assessor-collectors have been
19 nothing short of amazing through this process and just
20 being great team partners as we've moved forward. It's
21 been all hands on deck, and so can't thank enough the tax
22 assessor-collectors for the good work that they're doing
23 and trying to keep up.

24 MS. GILLMAN: And thank you to Member McRae.

25 MR. TREVIÑO: Hear, hear.

1 Okay. Executive Director Brewster, would you
2 like to continue with your presentation?

3 MS. BREWSTER: Yes, sir. Thank you.

4 The call center upgrade project. I think the
5 board has heard a little bit about this, but it's an
6 effort to update the department's call center in order to
7 better serve our customers. And the project includes
8 upgrades to call center recording, reporting systems and
9 management and automated agent routing software, and I am
10 thrilled to be able to report that these enhancements
11 were successfully rolled out earlier this week on Monday
12 morning.

13 These upgrades provide several benefits, such
14 as increasing call center efficiency with more automated
15 routing and handling of standard agent tasks and an
16 increased number of licenses to be able to handle
17 incoming calls. Our internal database access will
18 provide greater and more detailed customer information
19 also to the divisions, and we now have integration of
20 email and chat functionality while an agent is currently
21 engaged in an online call.

22 There's also the ability to integrate into
23 social media platforms to create targeted constituent
24 campaigns and an ability to create outbound calling
25 campaigns for public outreach. So all of these

1 enhancements will allow for improved customer service and
2 an overall improved customer experience.

3 So kudos to the project team, for our IT staff
4 who have been integral in the rollout. And I would be
5 remiss if I did not mention the leadership of Ginny
6 Booton, who was the executive sponsor on this project,
7 and her and her team for the work that they have done to
8 roll out the new functionality.

9 So with that, just congratulations to them and
10 thank you to the team. And are there any questions from
11 the board members?

12 MR. TREVIÑO: Questions or comments? Member
13 McRae.

14 MS. McRAE: I just wanted to thank Whitney and
15 her team because they have worked very, very closely with
16 the tax assessors, and they have been very gracious in
17 providing us the template for us to use and it has been
18 used widely amongst the tax assessor-collector community
19 to get that message out. And the rush is on.

20 Rest assured that Montgomery County, anyway,
21 we have been very, very busy. But I think everyone is up
22 for the challenge and we are anxious to get back to
23 normal.

24 And again, Whitney, thank you and your group
25 for all the assistance that you've provided to get us

1 back to this point.

2 MR. TREVIÑO: Hear, hear. Well said, well
3 said.

4 Thank you, Ms. Booton, for your hard work on
5 this. Anything customer-facing is extremely important
6 because it's how people see our agency in so many ways on
7 a given day. I know it's been a long time coming.

8 Congratulations on finally getting this out
9 there. Good luck with it.

10 MS. BREWSTER: Thank you.

11 If I could move on to the next item, item D?

12 MR. TREVIÑO: Please.

13 MS. BREWSTER: Thank you.

14 It is a great pleasure to introduce you to the
15 newest member of the TxDMV executive team. Monique
16 Johnston has been selected as the new director for the
17 Motor Vehicle Division, and Monique has been with the
18 department since January of 2020 as the manager for the
19 licensing section.

20 Just a little bit about Monique. She's a
21 native Texan, originally from Lake Jackson, and she
22 graduated from Texas State University with a degree in
23 geographic information systems.

24 Immediately after she graduated from college,
25 she began her employment in state government with the

1 Texas Medical Board, and she served there within the
2 licensure department for over 21 years, starting as a
3 licensing analyst and then the licensure manager for four
4 years, overseeing the agency's largest division.

5 During her tenure at the Texas Medical Board
6 she served as a resource witness during Sunset -- which
7 we're all very familiar with -- and legislative
8 sessions. She also oversaw the transfer of four new
9 license types to the Texas Medical Board and the issuance
10 of over 14,000 new licenses and permits each fiscal year.

11 As the licensing manager for our department,
12 Monique has orchestrated the adjustment to teleworking
13 and led an extremely successful adaptation to keep
14 customer service and application processing, certainly
15 team spirit, at a level that was truly seamless and
16 appreciated by our customers and stakeholders.

17 So please join me in welcoming Monique
18 Johnston to this new and important role as she continues
19 to serve the TxDMV and the motoring public in Texas.

20 Mr. Chairman, if you wouldn't mind, I'd like
21 to just turn it over to Monique for just a moment. She
22 is online.

23 MR. TREVIÑO: Please, yes.

24 MS. BREWSTER: Thank you.

25 MR. TREVIÑO: Welcome, Ms. Johnston, and would

1 you like to say a few words?

2 MS. JOHNSTON: Sure. Thank you, everybody.
3 Thank you, Whitney.

4 I just briefly want to say I've truly enjoyed
5 this past year with DMV serving as MVD's licensing
6 manager, and I'm really excited about this opportunity to
7 work with everyone in this new capacity as MVD
8 director. So I'm looking forward to it. Thank you.

9 MR. TREVIÑO: Well said, well said. And we're
10 excited to have you there and we expect great things from
11 you.

12 MS. JOHNSTON: Thank you very much.

13 MR. TREVIÑO: Sure.

14 MS. BREWSTER: And members, you'll be hearing
15 from Monique in just a moment here on another board
16 meeting agenda item, but we are really excited to have
17 Monique join the executive team and welcome.

18 Mr. Chairman, if I could move on to the final
19 item in my report.

20 MR. TREVIÑO: Go right ahead.

21 MS. BREWSTER: Thank you.

22 At this time we would like to recognize our
23 employees who have reached a state service milestone, and
24 we have some big ones. We celebrate these employees as a
25 show of our appreciation for their years of service to

1 the citizens of Texas.

2 And I'd first like to start with the following
3 employee who has reached 30 years of state service, and
4 that is Mary Lou Cardenas from our Compliance and
5 Investigation Division.

6 Mary Lou has always been devoted to the
7 service of her fellow Texans. Her state career began in
8 1991, serving as customer support at the University of
9 Texas Pan American. She was then hired in 2001 at TxDOT
10 as a customer service representative at the Pharr
11 Regional Service Center, where she served for 11-1/2
12 years.

13 In 2012 she was promoted to one of the first
14 field service representative positions providing risk
15 assessment and support to 17 counties consisting of 42
16 TACs offices. Since then she has become an invaluable
17 asset to the county tax assessor-collectors in the
18 southern portion for the state due to the wealth of
19 knowledge and experience she possesses.

20 Now, outside of work, Mary Lou's two-year-old
21 twins keep her quite busy and she keeps looking forward
22 to their FFA and 4-H competitions soon. She enjoys
23 traveling, going to rodeos and spending quality time with
24 her family doing barbecues.

25 It is an honor to have Ms. Mary Lou Cardenas

1 from the Compliance and Investigations team, and we wish
2 to congratulate her on the state service milestone of 30
3 years.

4 Is Mary Lou on the line?

5 MS. CARDENAS: Good morning. Can you hear me?

6 MS. BREWSTER: Yes, ma'am.

7 MS. CARDENAS: Good morning, Ms. Brewster,
8 board members and TxDMV family.

9 I'm honored to be receiving this
10 recognition. It truly is a privilege working for the
11 Great State of Texas. I just realized that if you really
12 enjoy what you do, the years pass like the speed of
13 lightning.

14 It's incredible. But I do find my job
15 challenging at times but it's also very rewarding. So
16 like you said, with my twin toddlers they do keep me
17 going, but I believe they'll keep me young, keep me going
18 several more years of employment, I would think, at least
19 I'll give the state another ten years if possible. And
20 that's about it.

21 Thank you very much. Again, I'm honored for
22 this recognition and for the opportunity to share a few
23 thoughts. Thank you and y'all have a blessed day.

24 MR. TREVIÑO: Ms. Cardenas, thank you very
25 much for your service to the citizens of Texas.

1 MS. CARDENAS: Yes, sir. Thank you.

2 MS. BREWSTER: Thank you, Mr. Chairman. I
3 have a few more that I'd like to mention.

4 MR. TREVIÑO: Go right ahead.

5 MS. BREWSTER: The following employee has
6 reached 35 years of state service: Dewitt Juul from our
7 Finance and Administrative Services Division.

8 Dewitt came to TxDMV on November 1, 2009, and
9 has worked with the state for 35 years, and during his
10 entire state service he has been stationed at Camp
11 Hubbard in Building 1. Dewitt is an incredible man. He
12 offers a great deal of knowledge and expertise in the
13 mail and warehouse field.

14 He is such a pleasure to work with. He is
15 often sought after by others to share his historical
16 knowledge and is always there to assist with a problem or
17 an issue. It is an absolute pleasure to congratulate him
18 on this major state service milestone of 35 years.

19 Is Dewitt on the line?

20 MR. JUUL: Yes, ma'am. Can you hear me?

21 MS. BREWSTER: Good morning. Yes, sir.

22 MR. JUUL: Good morning. Thank you, Whitney.
23 Thank you, board members.

24 It's been a privilege and an honor working
25 here for 35 years and I appreciate the kind words, and

1 thank you very much.

2 MR. TREVIÑO: Mr. Juul, thank you for your
3 service to the citizens of Texas and for all your hard
4 work. Thank you.

5 MR. JUUL: Thank you, Chairman Treviño, thank
6 you. I appreciate that.

7 MS. BREWSTER: Thank you, Dewitt.

8 MR. JUUL: Thank you.

9 MS. BREWSTER: We have another. The following
10 employee has reached 40 years of state service: Rene
11 Medrano from our Vehicle Titles and Registration Division
12 in the Pharr Regional Service Center.

13 Rene has worked for what is now the TxDMV
14 since March 1 of 1981. He started with TxDOT as a
15 customer service representative and approximately seven
16 years later he was promoted to a field auditor. And as a
17 field auditor, he worked with various agency
18 stakeholders, certainly including the tax assessor-
19 collectors, motor vehicle dealers and salvage yards.

20 And Rene eventually became an office manager,
21 which was later classified as a coordinator, and retired
22 in that role in August of 2014. But his retirement did
23 not last long. He returned to the TxDMV and into his
24 previous role as a coordinator a year after his
25 retirement, and in September of 2018 Rene was promoted to

1 the Pharr Regional manager.

2 And as regional manager, Rene is responsible
3 for the daily operations of the Pharr Regional Service
4 Center. And he works closely with his nine county tax
5 assessor-collector offices within his area.

6 He is grateful to work alongside the great
7 people of the department and management, and we feel the
8 exact same way about him. We wish to congratulate him on
9 this state service milestone of 40 years.

10 Is Rene on the line?

11 MS. MEDRANO: Yes, I am, Whitney.

12 MS. BREWSTER: Hi, Rene.

13 MR. MEDRANO: Can you hear me?

14 MS. BREWSTER: Yes, sir, we can.

15 MR. MEDRANO: Okay. Thank you. Thank you,
16 board members.

17 Yes, 40 years, and it's gone by so fast. I
18 mean, I think about it and I say, wow, how have the years
19 gone by so fast. But yes, I'm very grateful working for
20 the department, working for the State of Texas, and I'm
21 not going to say it's been an honor because it sounds
22 like I'm leaving, but it has been an honor working for
23 this department, this agency. All personnel, as well as
24 upper management, have been wonderful.

25 So again, thank you all for allowing me to say

1 a few words.

2 MR. TREVIÑO: Thank you, Mr. Medrano, and
3 thank you for the 40 years you've dedicated to the
4 citizens of Texas. Great work. Thank you.

5 MS. GILLMAN: Congratulations on that
6 milestone, congratulations.

7 MS. BREWSTER: Isn't that amazing?

8 Mr. Chairman, there are just a few more things
9 that I would like to mention here.

10 MR. TREVIÑO: Go right ahead.

11 MS. BREWSTER: Some folks that we want to make
12 mention of but that are not on the line this morning:
13 Noemi Edington in our Motor Carrier Division with 20
14 years, as well as Brenda Shelton in our Enforcement
15 Division, and Seberina Palamarez in our Vehicle Titles
16 and Registration Division in our San Antonio Regional
17 Service Center. Congratulations to those employees for
18 20 years of service.

19 And for 25 years of service: William "Butch"
20 Grote in our Information Technology Service Division --
21 you may know him as Butch, our CIO. Congratulations to
22 Butch on 25 years of service.

23 And last, but certainly not least, I did want
24 to mention those that have recently retired from the
25 department: Margaret Zapata in our Vehicle Titles and

1 Registration Division, Mimi Shelton in our Enforcement
2 Division, and Reuben Patschke in our Information
3 Technology Services Division.

4 That completes the service section of the
5 report, but I do have one more person to honor, Mr.
6 Chairman, and that's the Pinnacle of Excellence Award.
7 And the Pinnacle of Excellence Award is an annual award
8 designed to recognize one regional service center
9 employee for outstanding performance.

10 Each of the 16 regional managers nominated
11 staff who they felt were very deserving of this
12 prestigious award and the nominees were carefully
13 evaluated on a variety of criteria, including customer
14 service, job performance and contributions to their
15 offices.

16 This year's Pinnacle of Excellence Award
17 winner grew up in Ore City, Texas, graduated as the high
18 school valedictorian, and then went on to earn an
19 associate of science degree from the Northeast Texas
20 Community College before joining the United States Navy,
21 where she served as an information systems technician.
22 She then worked for the Gregg County Tax Assessor-
23 Collector before joining the Texas Department of Motor
24 Vehicles in 2013.

25 Please join me in congratulating Jessica

1 Kelley, who works in our Longview Regional Service Center
2 as a customer service representative and serves as the
3 primary trainer, mentor to new employees, and the
4 webDEALER expert in the office. Jessica has been married
5 to her husband and fellow Navy veteran, Guy, for 14
6 years.

7 Jessica, congratulations on this prestigious
8 award. Thank you for your service to Texans and your
9 contributions to your team and to the overall TxDMV.

10 Is Jessica on the line? Jessica, are you
11 there?

12 General Counsel Beaver, do we have Jessica on
13 the line?

14 MS. BEAVER: Tracey Beaver, general counsel.

15 No, I don't believe she'll be speaking this
16 morning. Thank you.

17 MS. BREWSTER: Okay. Thank you.

18 So Mr. Chairman, please join me in
19 congratulating Jessica Kelley on this outstanding
20 achievement. We're so proud of her and thankful.

21 (Applause.)

22 MR. TREVIÑO: Absolutely. Wow, what a record
23 of service. We're lucky to have her.

24 MS. BREWSTER: Yes, we are. Thank you.

25 And Chairman and members, thank you very much

1 for the time today. That concludes my report.

2 MR. TREVIÑO: Thank you very much, Executive
3 Director Brewster. I'd like to congratulate and thank
4 all those members that you mentioned and the entire staff
5 of the Texas DMV for everything they do day in and day
6 out for the citizens of Texas.

7 So we are now about to move into the contested
8 case, and I think we'll take -- let's see here, let's say
9 we get back together let's say 9:05, take a break and get
10 back about 9:05 to get this thing started. Does that
11 sound good with everyone?

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

14 Just wanted to remind board members that they
15 might want to stop their video and mute their lines as we
16 go on break. Thank you.

17 MR. TREVIÑO: Thank you very much, General
18 Counsel Beaver.

19 We stand adjourned for the moment.

20 (Whereupon, at 8:57 a.m., a brief recess was
21 taken.)

22 MR. TREVIÑO: So I think if everybody is ready
23 to go, we'll start with the next item on the agenda.
24 We're going to move to agenda item number 5 which is the
25 contested case, Continental Imports, Inc. d/b/a

1 Mercedes-Benz of Austin v. Swickard Austin, LLC d/b/a/
2 Mercedes-Benz of South Austin, Applicant, and Mercedes-
3 Benz USA, LLC is the Intervenor.

4 Before we move on to the contested case
5 presentations, I would like to let the board know that
6 each party will have 15 minutes for their oral
7 presentation. Parties will be given a one-minute warning
8 before their time is up and then the meeting host will
9 mute the line.

10 The timer will sound like this. Can we hear
11 the sound?

12 (Timer sounded.)

13 MR. TREVIÑO: Can you do that one more time?

14 (Timer sounded.)

15 MR. TREVIÑO: You will hear this sound at the
16 one-minute warning and then again when the time is up,
17 and this was a suggestion by Member Graham and I think
18 it's a good one instead of somebody actually coming on
19 the line and saying "You have one minute left." So it's
20 a little less intrusive; we'll try this out and see how
21 it goes.

22 Additionally, the parties were given the
23 opportunity to provide written materials, 15 pages, prior
24 to the board meeting. Written materials for Mercedes-
25 Benz of Austin may be found in the board books beginning

1 on page 368. Written materials for Mercedes-Benz of
2 South Austin may be found in the board books beginning on
3 page 383. And written materials for Mercedes-Benz USA,
4 LLC may be found in the board books beginning on page
5 388. Board members please do not reference any portion
6 of the materials submitted that were marked as
7 confidential.

8 I would also like to remind board members and
9 the parties that the board's final decision must be based
10 solely on evidence contained within the administrative
11 record from SOAH and the board shall not consider new
12 information.

13 Monique Johnston will now address agenda item
14 number 5, contested case. Ms. Johnston, would you like
15 to get started?

16 MS. JOHNSTON: Yes, sir.

17 Chairman, members, Ms. Brewster, good morning
18 and hello again. For the record, I am Monique Johnston,
19 director of the Motor Vehicle Division.

20 Agenda item 5 is found starting on page 10 of
21 your board books. The contested case involves existing
22 dealer's protest of an application for a new franchised
23 dealer license. The existing dealer is Continental
24 Imports, Inc. d/b/a Mercedes-Benz of Austin, and the new
25 dealership applicant is Swickard Austin, LLC d/b/a

1 Mercedes-Benz of South Austin. The distributor,
2 Mercedes-Benz USA, LLC intervened in the case in support
3 of the new dealership.

4 The issue before the board is whether
5 Mercedes-Benz of South Austin established good cause for a
6 new Mercedes-Benz dealership in Austin, Texas. A panel of
7 two SOAH administrative law judges, or ALJs, conducted a
8 hearing across eight days in November 2019. The parties
9 filed post-hearing briefs and the ALJs closed the record
10 of the administrative hearing in May of 2020.

11 The ALJs issued a proposal for decision, or
12 PFD, on July 2, 2020, finding that Mercedes-Benz of South
13 Austin met its burden of showing good cause for a new
14 dealership and recommended that the board approve the
15 application. On July 24, 2020, Mercedes-Benz of Austin
16 filed exceptions to the PFD and on August 10, 2020,
17 Mercedes-Benz filed a reply which was joined by Mercedes-
18 Benz of South Austin.

19 An ALJ considered the exception and reply
20 pleadings and issued an exceptions letter on August 21,
21 2020. The ALJ exceptions letter recommended minor changes
22 to findings of fact 38 and 122 and related text and
23 corrected two additional references in the PFD. The
24 following three recommendations remained unchanged: the
25 original evidentiary analysis, the decision not to delay

1 the case or reopen the case due to COVID-19 pandemic, and
2 the recommendation to deny the protest and approve the
3 application of the new dealership.

4 The board has jurisdiction to consider the
5 contested case and issue a final order and determining
6 whether Mercedes-Benz of South Austin established good
7 cause for the new dealership. Texas law requires the
8 board to consider seven factors. Each party submitted
9 written materials and these materials are included in the
10 board book.

11 The Protestant, Mercedes-Benz of Austin, is
12 represented by Bill Crocker and Bruce Bennett. The
13 attorneys representing the Applicant are Shawn Mercer,
14 Jason Allen, Nicholas Bader and Britt Brown. The
15 Intervenor is Mercedes-Benz USA, LLC, and attorneys are
16 Buddy Ferguson, Steven Kelso, and Gwen Young. The
17 parties' attorneys received notice of this meeting and are
18 available today.

19 Members, this concludes my remarks. Thank you.

20 MR. TREVIÑO: Great. Thank you, Ms. Johnston.

21 Are there any questions for Ms. Johnston from
22 board members?

23 (No response.)

24 MR. TREVIÑO: Hearing none, Ms. Johnston, thank
25 you very much for that presentation. We're happy to have

1 you here.

2 MR. JOHNSTON: Thank you very much.

3 MR. TREVIÑO: Great. So before we proceed,
4 will the meeting host please move attendee Leon Komkov to
5 panelist so he can have his video and audio on? Mr.
6 Komkov represents the Protestant, Mercedes-Benz of Austin.

7 Will the meeting host also move attendees
8 Nicholas Bader and Jeff Swickard to panelists so they can
9 have their video and audio on. Mr. Bader represents
10 Applicant, Mercedes-Benz of South Austin, and Mr. Swickard
11 is the Applicant.

12 Will the meeting host please move attendees
13 Steven Kelso and Lloyd "Buddy" Ferguson to panelists so
14 they can have their video and audio on. Mr. Kelso and Mr.
15 Ferguson represent the Intervenor, Mercedes-Benz USA, LLC.

16 And General Counsel Beaver, I will defer to you
17 when everybody is good to go.

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

20 Since it looks like the Protestant's oral
21 presentation will be given by Mr. Leon Komkov, we'll go
22 ahead and wait for Mr. Komkov to be promoted before
23 proceeding.

24 MR. KOMKOV: Am I audible now, Ms. Beaver?

25 MS. BEAVER: Yes.

1 MR. TREVIÑO: I see and hear you.

2 So General Counsel Beaver, are we good to go
3 for the next part?

4 MS. BEAVER: Yes, we're good to go. You can go
5 ahead and let Mr. Komkov know how much time he has to
6 present and as soon as you're ready, he can proceed.
7 Thank you, Chairman.

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

9 Welcome, Mr. Komkov. We will now proceed with
10 the Protestant's oral presentation by Leon Komkov. You
11 have a total of 15 minutes to present, then will be
12 automatically muted by the meeting host at 15 minutes.

13 Time begins as soon as you unmute yourself and
14 start speaking. You will also hear that sound at the one-
15 minute mark letting you know that you have one minute left
16 to finish up the presentation.

17 Mr. Komkov, welcome, great to have you here.
18 Please get started when you're ready.

19 MR. KOMKOV: All right. Thank you, Mr.
20 Chairman, thank you members of the board, and thank you
21 agency staff. My name is Leon Komkov and I represent the
22 Protestant, Continental Imports.

23 The legislature empowers this board to vacate a
24 PFD and to remand a case to SOAH if there's been a failure
25 of evidence on any critical issue of the good cause

1 issues, or you may remand if the ALJs have not properly
2 interpreted and applied applicable law or this board's
3 prior decisions. We contend both have occurred here.

4 This case involves whether a third
5 Mercedes-Benz dealership should be added to the Austin
6 luxury market. As found by the ALJs on page 90 of the
7 PFD, the Austin luxury market is "extremely competitive
8 already."

9 As noted on page 59 of the PFD, Mercedes-Benz,
10 the Intervenor, admitted the Austin luxury market is
11 hyper-competitive already. MB currently has two
12 dealerships in this market. None of its chief
13 competitors, BMW, Audi, or Lexus, has three dealerships in
14 this market.

15 Respectfully, let me focus on today's
16 presentation. There were fatal evidentiary gaps in the
17 SOAH record that prevent this board from making informed
18 findings on five of the good cause factors. To state the
19 obvious, this board is not charged with finding is Austin
20 growing rapidly, as emphasized by the Applicant in its
21 written materials. This board is not charged with finding
22 whether the Protestant is highly profitable, as Intervenor
23 emphasizes in its written materials. This board is
24 specifically charged with finding whether this Applicant,
25 Mercedes-Benz of South Austin, at this proposed location

1 meets the good cause factors.

2 Now, one of the good cause factors is this
3 particular applicant's financial expectations. Applicant
4 offered no evidence of business plans or financial data
5 about this particular dealership, which your prior
6 decisions correctly say are essential to this board making
7 a reasoned decision.

8 In at point cases where the manufacturer
9 already has dealerships in a highly competitive market,
10 this board's precedent says the applicant must provide
11 evidence to answer the following four questions: How many
12 new vehicle sales must the applicant make to exceed its
13 break-even point and be profitable? How many new vehicle
14 sales realistically are available to capture from
15 Mercedes-Benz competitors, not from other Mercedes-Benz
16 dealers, that are not being captured by the existing
17 dealers?

18 Does the new vehicle sales number realistically
19 available for capture from Mercedes-Benz competitors
20 exceed the applicant's break-even point, that is, how many
21 new vehicles will this Applicant have to see before he can
22 become profitable? And finally, how much Mercedes-Benz
23 service business realistically is available but not being
24 captured by the existing Mercedes-Benz dealers?

25 From the SOAH record, one cannot answer these

1 questions about this Applicant. And without this missing
2 evidence, neither the ALJs nor this board can make
3 informed findings on these five statutory good cause
4 issues.

5 What are this dealership's financial
6 expectations? Will it be profitable? Is Mercedes-Benz
7 adequately represented in the Austin luxury market by the
8 two existing dealerships? What harm will those existing
9 dealerships suffer if this Applicant is licensed? Will
10 licensing this proposed dealership promote healthy
11 competition in the Austin market? And will licensing this
12 proposed dealer be in the public interest?

13 Now, I keep talking about break-even.
14 Mercedes-Benz argues in its written materials that
15 break-even is irrelevant. For the board, why is it
16 critical that his board know what break-even of the
17 Applicant is?

18 I quote from this board's landmark Chevrolet
19 decision in which Bill Munday Chevrolet -- you'll hear the
20 name Munday -- was the applicant. "Munday and Landmark
21 are asking this board" -- Munday and GM, apologies, we
22 represented Landmark. "Munday and GM are asking this
23 board to find that Munday's establishment in the Houston
24 market will enhance healthy competition, absent showing
25 quantifiable, reasonably achievable opportunity in the

1 market that is in excess of the amount Munday needs to
2 break even without harming Landmark."

3 So Landmark tells you, in highly competitive
4 markets break-even is a key evidentiary finding to
5 determine the factors of harm, competitive marketplace,
6 public interest, and the applicant's financial
7 expectations. Applicant refused to offer any evidence of
8 his break-even point. Applicant refused to offer any hard
9 evidence of the planning volumes, what it intends to sell
10 out of this dealership.

11 So realistically, this board lacks half the
12 equation that's going to be necessary to determine those
13 five good cause factors. In other words, there may be a
14 quantity of lost opportunity in this market, but the
15 question is, is that quantity sufficient to support the
16 Applicant at or above break-even without cannibalizing the
17 existing dealers.

18 Mercedes-Benz's testimony about lost
19 opportunity in this market means little if the board can't
20 take those lost opportunity numbers and find out that that
21 is less than what the Applicant needs to sell to break
22 even. That is the harm component.

23 Applicant did not introduce at SOAH any
24 business plans, no pro formas, no estimate of its fixed
25 costs that it will have at this dealership, no evidence of

1 projected revenues or profits. And the Applicant's lack
2 of financial data goes actually deeper than the SOAH
3 record.

4 I will refer to the SOAH record, I'm not going
5 to escape it, but during the testimony at SOAH a
6 Mercedes-Benz representative testified, at pages 330 and
7 331 of the transcript, that Mercedes-Benz normally
8 requires franchise applicants to file business plans, pro
9 forma balance sheets, income and expense statements with
10 their application for a franchise. Applicant was not
11 asked by Mercedes-Benz to provide such information when it
12 applied for this site in south Austin.

13 The Mercedes-Benz representative testified at
14 pages 331 and -32 of the transcript that the financial
15 information normally required was not given because there
16 is this licensing matter. In other words, this board
17 can't see that material in making its decision, but if the
18 board grants a license, presumably Mercedes-Benz can.

19 So what evidence was offered at trial about the
20 Applicant's financial expectations? Well, Applicant's
21 principal owner, Mr. Swickard, testified he runs high-end
22 operations at a Mercedes-Benz dealership in Oregon.
23 That's in their written materials at page 2.

24 But even if this board decides that an
25 affiliated Mercedes-Benz store is relevant to the decision

1 about this Applicant in south Austin, the Applicant didn't
2 give SOAH any financial evidence about its Oregon store's
3 business plans, revenues, expenses or profits. So if that
4 is the analogy, look at that and that will prove my
5 financial expectations here. The Applicant didn't give
6 any evidence on that, no evidence tying together why a
7 high-end dealership in Oregon is relevant to the Austin,
8 Texas luxury market as it existed in 2019.

9 When asked about business plans for South
10 Austin, at page 83 of the transcript the Applicant
11 testified: Well, we have a responsibility to build a
12 spectacular facility, so for me, that's our plan. Each
13 member of this board was appointed specifically to bring
14 your business acumen and your experience to the board's
15 determinations. In your business lives if you are
16 presented with a business proposal that contained no
17 estimates of sales, costs, revenues or profits, you would
18 not accept that as a basis for making an informed
19 decision.

20 In this PFD at page 74, the ALJs actually
21 ducked this issue of proof. They misinterpreted this
22 board's decision in the Lee Treviño Ford case and held,
23 well, dealership profitability, that standard only
24 concerns the profitability of the protestant, not the
25 applicant. But the language of Treviño specifically

1 refutes the ALJs' misreading of the law.

2 I quote from Treviño: "The risk in this case
3 is greater than what can be considered acceptable, that
4 risk being a market not sufficient to support the existing
5 dealers and additional dealers on a profitable basis."

6 I believe Mercedes-Benz is aware of the hole in
7 the SOAH evidentiary record. It makes several arguments
8 in its written materials to explain this gap. It argues
9 at pages 5 and 6: Applicant doesn't have to give this
10 board evidence of break-even, evidence of profits,
11 expenses or pro formas.

12 It's true they don't have to. But it's also
13 true the Applicant risks denial if it doesn't bring to
14 this board evidence that it can use to make findings on
15 the good cause factors.

16 Next, Mercedes-Benz urges this board to ignore
17 Landmark and Treviño due to the decision this board made
18 in the Hammond Nissan case. This case is not similar to
19 Hammond. Landmark and Treviño were at point cases in
20 competitive markets, Hammond was a relocation case.

21 The dealer in that case was already in the
22 market, already was competing, and simply seeking to move
23 within that market to a better location. The board in
24 Hammond was not being asked to add a new dealer to the
25 mix.

1 And the board in Landmark did not interpret
2 Hammond to make break-even or financial projections
3 irrelevant. In fact, in 2009 after Hammond, the
4 legislature amended the Code to add a good cause factor
5 being financial projections of the applicant.

6 Mercedes-Benz argues break-even is a
7 nonexistent standard. Well, you heard that Landmark used
8 it as a standard, but more importantly, break-even is a
9 standard contained in the Mercedes-Benz dealer accounting
10 manual, Exhibit P-66 at trial.

11 The dealer accounting manual of Mercedes-Benz
12 defines break-even as "the estimated volume of new vehicle
13 units required to reach zero operating profit." That's
14 not a bad definition to be adopted by this board.

15 Finally, Mercedes-Benz argues the proof of the
16 proposed dealer's financial expectations is not important
17 in this case because the Applicant is going to focus on
18 "entry level vehicle sales," Mercedes-Benz written
19 materials at page 5. Please note, the Applicant offered
20 no evidence at trial of the number of entry level models
21 the proposed dealership plans to sell or any evidence
22 about the profit margins on such proposed sales.

23 Applicant admits at transcript page 98 of the
24 trial that the very few preliminary projections it offered
25 at SOAH were simply a "guess." Transcript 98, 1 through

1 14.

2 Besides failing to show this dealerships
3 financial expectations, Applicant didn't prove the
4 realistic lost opportunity that's available in the Austin
5 market. The lost opportunity calculations they put in
6 evidence are a combination of hypothetically available,
7 gross loss and end sale. Mercedes-Benz expert, Mr. Farhat
8 testified -- transcript 570 through 571 -- that gross loss
9 and end sale would continue to exist even if an additional
10 dealer was added to this market.

11 Mercedes-Benz advises this board, at page 6 of
12 its written materials, that the Landmark appellate court
13 expressly adopted the gross loss and end sale standard to
14 show lost opportunity. It's not true. They added a
15 different word.

16 The court affirmed this board's holding that
17 the applicant failed to prove the amount of gross loss and
18 end sale that "was realistically available for capture."
19 That's a subset of gross loss and end sale that which is
20 realistic.

21 Now, the Applicant and Mercedes-Benz argue that
22 unadjusted gross loss and end sale opportunity in this
23 market, they ensure that this Applicant will be
24 profitable. They're wrong. As I told you, half the
25 equation is missing.

1 First of all, the gross loss and end sale has
2 not been adjusted for realism, and second, you have to
3 compare those numbers to "what does this Applicant have to
4 sell to break even." If the Applicant builds a
5 spectacular state-of-the-art facility that costs tens and
6 tens and tens of millions of dollars, they're going to
7 have to sell more cars.

8 Applicant had to prove to this board the amount
9 of realistic lost opportunity in the market is big enough
10 for this dealership to capture from competing brands, not
11 from other Mercedes dealers, and to break even without
12 cannibalization.

13 Now, hypothetical, realistic, their words --
14 they were in the court decision, but this case offers a
15 very concrete illustration of the difference between
16 hypothetical and realistic, and that's in the area of
17 service business, which is one of the standards that this
18 board measures the adequacy. Mercedes-Benz uses a metric
19 called service opportunity index, or SOI, to evaluate how
20 its dealers are performing and capturing all of qualified
21 Mercedes-Benz service business in a market.

22 They compare that to benchmarks, how is
23 Mercedes-Benz doing nationally, how is it doing
24 regionally, how is it doing in the district and area --
25 sorry, district is, I believe, not a term they used.

1 That's not in the record.

2 The most recent SOI index introduced into
3 evidence at trial, P-61 and P-62, show that in the months
4 immediately prior to the commencement of the SOAH
5 proceeding, the Mercedes-Benz dealers, the existing body,
6 were capturing all of the realistically available
7 qualifying service business in the Austin area of
8 influence.

9 P-62, a great illustration. The month before
10 the SOAH proceeding, the capture rate for service business
11 in the Austin AOR was 70.8 of 100 percent total service
12 business that theoretically is available. But at 70.8 the
13 Austin dealers were exceeding Mercedes-Benz's market, its
14 area, its regional and its national benchmarks.
15 Mercedes-Benz argues that service opportunity above 70
16 percent hypothetically is capturable but at 70 percent
17 they are -- (timer sounds).

18 For reasons never explained, the ALJs declined
19 to rely on the most current SOI figures to support their
20 finding. The ALJs reached back to December 2018, I-26, an
21 exhibit offered by Mercedes, and used some of the most
22 outdated data available at trial to find lost service
23 opportunity.

24 On the topic of outdated data, this hearing
25 commenced November 2019 before this COVID pandemic. The

1 ALJs issued the PFD in July, well after a pandemic had
2 been declared. Before the PFD was issued, the Protestant
3 asked to reopen the record to take evidence regarding this
4 huge pandemic's impact on current foreseeable.

5 We heard earlier in Chairman (sic) Brewster's
6 report there has been COVID impact throughout the state.
7 The ALJs noted the existence of the COVID pandemic but
8 refused to open the record, refused to allow testimony as
9 to the effects it was having.

10 Respectfully, you should reject the PFD or in
11 the alternative, you should deny this application. But we
12 think fairest is sending it back to get the evidence in
13 the record that was required.

14 Thank you.

15 MR. TREVIÑO: Thank you very much, Mr. Komkov,
16 for that presentation and for staying within the 15-minute
17 time limit.

18 We will now proceed with the Applicant's oral
19 presentation by Nicholas Bader, Jeff Swickard and Steven
20 Kelso. You will have 15 minutes to present, then will be
21 automatically muted by the meeting host at 15 minutes.
22 Time will be split between counsel for Applicant and
23 Intervenor, and begins as soon as you unmute yourself and
24 begin speaking.

25 General Counsel Beaver, can we confirm the

1 sound again? I want to make sure that the applicants are
2 clear on what the sound is when they have the one-minute
3 mark. It came on twice for Mr. Komkov. And that came on
4 twice for Mr. Komkov, so just to be clear of when that
5 is. Right?

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

8 Yes, that sound will come on one minute before
9 the end of the 15-minute mark and then again after the
10 15-minute mark has concluded. And just like to emphasize,
11 like you stated, that the Intervenor and Applicant will be
12 splitting up that 15 minutes as they see fit.

13 MR. TREVIÑO: Right. Thank you very much for
14 clarifying that.

15 And I guess, Mr. Bader, you're first up. Is
16 that correct?

17 MR. BADER: Yes, sir.

18 MR. TREVIÑO: Is your team ready to go?

19 MR. BADER: Yes. Can you hear me okay?

20 MR. TREVIÑO: Hear you fine, and welcome, glad
21 to have you here, and please get started when you're
22 ready.

23 MR. BADER: Thank you. Good morning. I'm Nick
24 Bader with Bass Sox Mercer. We represent Swickard Austin,
25 LLC. Jeff Swickard, the principal of Swickard Austin, is

1 also present. He has other dealerships, including three
2 Mercedes-Benz dealerships, and has been elected by his
3 peers to be chair of the National Dealer Council.

4 He previously lived and worked in Austin and he
5 loved it here. It's a dream for him to come to Austin as
6 a Mercedes-Benz dealer, and should the application be
7 approved, his intent would be to spend as much time in
8 Austin as he can.

9 The Mercedes-Benz product line has expanded in
10 recent years, in part by adding models and entry level
11 segments. Part of Swickard's success has been increased
12 sales in those segments. By doing this they grow their
13 business and gain new customers for the Mercedes brand.
14 Swickard has invested approximately \$7 million in
15 purchasing land for the dealership and intends to build a
16 spectacular state-of-the-art Mercedes-Benz dealership that
17 customers will want to visit.

18 MBUSA intervened in this case. I'm going to
19 yield the rest of the presentation to Mercedes' counsel.
20 Thank you for your time and attention in this important
21 matter.

22 MR. KELSO: Thank you very much. Good
23 morning. I'm Steve Kelso from Mercedes-Benz USA, LLC, or
24 MBUSA.

25 Some quick things to keep in mind about the

1 record in this case. As you probably know, there were
2 eight hearing days, 13 live witnesses testified, all were
3 cross-examined. Five were expert witnesses; two of the
4 experts testified twice.

5 Sixty-five exhibits were admitted into
6 evidence, including seven expert reports; the seven expert
7 reports totaled over 850 pages. Almost 300 pages of post-
8 hearing briefing, all with extensive citations to the
9 evidentiary record. Two separate post-hearing motions by
10 Protestant seeking to have the case abated or the record
11 reopened for pandemic evidence, both motions were
12 denied. A 98-page proposal for decision, including 223
13 findings of fact.

14 The Protestant filed 60-plus pages of
15 exceptions. Those exceptions were considered, minor
16 corrections were made. This case has been fully,
17 completely and exhaustively litigated.

18 The arguments made by Protestant today have, in
19 really the same form, been made before and been made
20 repeatedly and rejected repeatedly, not out of hand but on
21 thorough, comprehensive, and well-reasoned bases. MBUSA
22 respectfully requests that you reject the invitation to
23 remand this case for what would amount to a time-wasting
24 and expensive and repetitive re-litigation.

25 For the next 11 or 12 minutes I'm going to

1 cover two topics: one, some of the actual driving facts
2 of this matter, and two, how the pandemic does not justify
3 a remand.

4 First, the real facts that drove the proposal
5 for decision. It's difficult to distill them in just a
6 few minutes. It can be hard to know exactly what to trust
7 when you hear different things from different sides, but
8 when you think about trust, think about this.

9 On page 4 of its written materials to you the
10 Protestant stated: "A manufacturer has an incentive to
11 establish a new dealership, regardless of whether the
12 market needs it, because doing so creates a new customer
13 obligated to buy inventory from the manufacturer."
14 Protestants do cite to the record for this statement,
15 transcript pages 36 and 37.

16 On those pages no witness was testifying, no
17 evidence was being admitted. At the hearing this was said
18 before any witnesses testified. This was said by Mr.
19 Komkov right at the beginning of the hearing, it's his
20 opening statement. No witness said this, but the written
21 materials provided to you imply this point was real
22 evidence when it was not.

23 What is the real evidence on this point? As
24 noted on page 61 of the proposal for decision, Mr. Fred
25 Newcomb testified that MBUSA would not add a dealer if it

1 would take away sales from existing dealers. The
2 Protestant alleged and theorized nefariousness where the
3 evidence actually shows none.

4 What is the real evidence in this case? Four
5 points: Austin is exceptional; two, the opportunity is
6 there; three, MBUSA made a good decision; and four,
7 Mercedes-Benz of Austin will not suffer harm.

8 One, Austin is exceptional. You'd be hard
9 pressed to find a witness that did not testify about
10 Austin's remarkable growth. I'd like to refer you to
11 Applicant's written materials, specifically page 4.

12 There's two tables on page 4 from Exhibit I-71,
13 pages 013 and 023. It's the expert report of Professor
14 Steven Nivin, he's a PhD economist. Among other things,
15 Professor Nivin runs a think tank at St. Mary's University
16 on regional economic issues.

17 Table 5 shows that Professor Nivin testified
18 between January 1990 and February 2019, employment in the
19 Austin metro grew by 179 percent. That is stunning all on
20 its own, but it really hits home when compared to other
21 areas in the fast growing state of Texas.

22 Austin's employment is growing fastest and it's
23 not even close. It isn't just employment, it's wages,
24 which is important for luxury vehicles. As table 7 shows,
25 and as Professor Nivin testified, not only is there growth

1 in wages across different industries in Austin, but wages
2 are growing at a greater rate in Austin than in other
3 Texas areas.

4 But this isn't just about what has happened or
5 even what is happening, but what is going to happen.
6 Austin's economy is going to keep growing, like it or not,
7 no stopping it and no economic recession is going to
8 change it.

9 How about Austin's growth in the context of
10 luxury vehicle sales? I draw your attention to page 8 of
11 the Applicant's written materials. This page shows
12 Exhibit I-65-085.

13 As Mr. Sharif Farhat, an expert in dealer
14 network analysis, explained, the growth of Austin will
15 lead to increased luxury vehicle sales. This chart shows
16 a projected 34 percent increase in luxury vehicle sales in
17 the local MSA from 2018 to 2022. As Mr. Farhat testified,
18 when you talk about the number of people, the congestion,
19 the access to opportunity, all of those things, there's no
20 argument that the number of Mercedes-Benz dealers has not
21 kept up with the growth that has occurred in the market.

22 Two, the opportunity is there. With Austin's
23 growth in people, wages, and luxury vehicle sales, it
24 should not be a surprise that there is sufficient
25 opportunity for a new Mercedes-Benz dealership. Lots of

1 evidence and lots of noise exists on the topic of market
2 opportunity in this case. Protestant claims a failure of
3 proof here, but it is wrong.

4 A competitive market is not the same as a lack
5 of opportunity. This is how this is different from
6 Landmark entirely, where there was virtually no
7 opportunity and a barely profitable protesting dealer.

8 Let me draw your attention to the last page of
9 MBUSA's written materials, page 15. The top half of that
10 page is an image of the substantive part of Exhibit
11 I-65-099. This part of Mr. Farhat's analysis shows
12 available opportunity in the Austin AOR.

13 As he explained, using 2018 data, the lost
14 opportunity for Mercedes-Benz was 755 new vehicles. This
15 is opportunity not just available to the new dealer but
16 for MB of Austin and MB of Georgetown too, opportunity
17 waiting to be captured.

18 Estimated sales from the new dealer in this
19 analysis ranged between 525 to 697 new vehicles. The
20 opportunity number is greater. That means there's room
21 without MB of Austin having to lose any new vehicle sales
22 at all.

23 This is the analysis that the ALJs found
24 credible. This is the same method of analysis that this
25 board has credited in the past. Protestant can claim all

1 they want that there was no evidence of reasonably
2 available opportunity and seek a remand for more evidence
3 on the topic, but this is the actual evidence in the case.

4 It is there. It was credible. It was
5 credible and it is credited. Saying it isn't there
6 doesn't make it true, there it is.

7 And it doesn't even account for the growth
8 coming to Austin and luxury vehicle sales projected for
9 2022 that we just discussed. Even back in 2018 there was
10 room for a new dealership. There will certainly be room
11 for it tomorrow.

12 Three, MBUSA made a good decision. Is it any
13 surprise that MBUSA wants to come here? There are more
14 and more people, more and more money, and more and more
15 opportunity. This was not done on a lark.

16 Fred Newcomb explained that MBUSA studied the
17 Austin market for years. MBUSA's internal studies showed
18 the Mercedes-Benz brand was not adequately represented in
19 the Austin market and it hadn't been for a long time.
20 This analysis was confirmed by Mr. Farhat in his report
21 and testimony.

22 Mercedes-Benz has been losing in Austin against
23 BMW, against Lexus, against Audi, against Acura.
24 Mercedes-Benz usually wins. Not in Austin, and it's been
25 getting worse and worse.

1 As Mr. Newcomb explained, in Austin,
2 Mercedes-Benz has considerable catch-up to do and it needs
3 to anticipate the future. A new dealership is a long-term
4 decision. It's not about tomorrow, but beyond five
5 years. MBUSA is executing a long-term plan here with Mr.
6 Swickard, an excellent dealer, who will be good for
7 competition, who will provide more convenient access to
8 Mercedes-Benz products in south Austin, and who will be
9 good for the current economy as it recovers from a
10 pandemic.

11 This next sentence is a foot-stomper. The new
12 dealership will bring an economic impact of \$150 million
13 every year to the local economy and revenues to the local
14 government of \$30.9 million every year, this from the
15 testimony of Professor Nivin.

16 Four, Mercedes-Benz of Austin will not suffer
17 harm. This is so in part because they have sufficient
18 opportunity. This is also so because MB of Austin is a
19 stable successful dealership that is prepared to
20 effectively compete, unlike the dealership in Landmark.

21 Just a few high points. In 2018 it had zero
22 long-term debt, working capital of 200 percent of what
23 MBUSA requires for a healthy dealership. It has
24 diversified profit streams including profitability not
25 dependent on new vehicle sales.

1 I draw your attention to page 15 of MBUSA's
2 written materials, the bottom of the page, which is an
3 exhibit of I-70-073. The red bars show five years of
4 profitability for Protestant. Protestant is extremely
5 profitable and on an upward trajectory.

6 In 2018 their net profits were up to \$5.6
7 million. Protestant does not just make a lot of profit in
8 a vacuum, it does so compared to the composites of other
9 luxury dealers, especially in 2017 and 2018 NADA luxury
10 dealers, exclusive of like-size Mercedes-Benz dealers in
11 the Southern Region, dealers in Area D which is
12 essentially Texas and two dealers in Oklahoma.

13 There's nothing wrong with making money in
14 America, I'm not saying that. But keep in mind this is
15 the same dealer that filed a protest to keep competition
16 out of south Austin.

17 Now, Ms. Heinemann also analyzed and the ALJs
18 considered the what-if world; what would be the harm to
19 Protestant if it loses all the new vehicle sales that it
20 frets it could lose. Now, in 2018 I want you to look at
21 the little number with the plus and minus next to it on
22 the chart: 4.1 million, 3.8 million. This is what
23 Protestant's net profits would have looked like in 2018
24 if, one, the new dealer was already fully operating and
25 competing, and two, the Protestant lost every single

1 vehicle sale that their expert claimed they might lose.
2 There are two numbers here because their expert gave a
3 range.

4 Now, those two numbers, this is their Chicken
5 Little, sky-is-falling scenario, and the ALJs rejected
6 it. The ALJs considered exhaustive argument and
7 briefing. They evaluated the witnesses' testimony and
8 voluminous reports and they concluded MB of Austin
9 arguments of potential losses were not supported by the
10 record or they relied on expert testimony and reports that
11 were found to be unpersuasive.

12 For example, the ALJs noted that Mr. Stockton,
13 Protestant's expert, his projections were based on non-
14 statistically significant results, some of which were
15 doubled, though he testified he merely rounded up. Even
16 in their worst case and even back in 2018, and not even
17 accounting for the future of luxury vehicle sales growth
18 we just discussed, MB of Austin still would have made more
19 profit than all the composites. Even in their worst case,
20 MB of Austin would still be financially healthy and
21 stable.

22 This brings me to my second point, the
23 pandemic. This does not justify a remand. That word did
24 not come up in the hearing, but its effects were
25 considered.

1 After the hearing, but before the proposal for
2 decision, Protestant made two motions to either abate the
3 case or have an almost complete redo on five of the seven
4 good cause factors because they fretted the pandemic may
5 have changed everything. The ALJs denied these requests
6 but they took judicial notice of various orders regarding
7 the pandemic.

8 That is, the ALJs already considered the
9 pandemic and concluded it wasn't necessary to reopen the
10 hearing. It could be hard to set aside personal loss that
11 happened or obvious disruptions of normal daily
12 activities, but in the context of a commercial case, a
13 pandemic is really just a cause of an economic turndown or
14 recession.

15 Professor Nivin may not know what would cause a
16 recession, but he gave his opinion to this case fully
17 expecting one. In unrebutted evidence, Professor Nivin
18 testified that Austin's economic diversification and
19 economic strength positions it to recover quickly from a
20 future recession. Even with a recession, Professor Nivin
21 sees no substantial reason why the Austin economy will not
22 continue to grow strongly over the next ten years and
23 remain very strong. Recessions stink for those affected,
24 but in Austin it's a short-term issue.

25 As for MB of Austin itself, Ms. Heinemann

1 explained its profitability is tied to more recession-
2 proof areas, like fixed operations. Now, it should not be
3 surprising that the evidence submitted -- I'm sorry?

4 (Timer sounds.)

5 It should not be surprising that the evidence
6 submitted in opposition to Mercedes-Benz of Austin's
7 motions shows Mercedes-Benz of Austin made more new
8 vehicle sales and more profit through April 2020 than it
9 did in 2019. Relative to 2018, its profits were up
10 \$300,000.

11 The evidence submitted in response to these
12 motions also noted Mercedes-Benz of Austin remained open
13 and operational. Whatever the pandemic did, its effects
14 will wane. Austin is still exceptional.

15 The undisputed evidence is the proposed
16 dealership won't even be open for years. And remember,
17 the addition of another dealership is not about today but
18 tomorrow. It's about five years from now.

19 I have a few seconds left so I'm happy to
20 answer questions about Landmark and Treviño, but in short,
21 neither case says what they say it says. The concepts
22 have been discarded or disregarded, and even if it did say
23 what is claimed, these old board decisions are not somehow
24 binding precedent that must be followed today, and the
25 facts of those cases were completely different.

1 MBUSA respectfully requests you adopt the PFD
2 and do not remand it for repetitive evidence, a waste of
3 time and continuing unnecessary delay in Applicant's
4 application. Thank you.

5 MR. TREVIÑO: Thank you very much, Mr. Kelso,
6 Mr. Bader and Mr. Swickard, for your comments.

7 Are there any questions from board members?

8 MS. GILLMAN: Yes, sir, I have a question.

9 MR. TREVIÑO: Member Gillman.

10 MS. GILLMAN: Yes. I would like to know if the
11 ALJ ever asked for financial data from the new dealer from
12 Oregon.

13 MR. TREVIÑO: And who is that question
14 addressed to?

15 MS. GILLMAN: It could go to either party, but
16 I would say from the MBUSA attorney, Mr. Kelso.

17 MR. TREVIÑO: Kelso. Right.

18 MS. GILLMAN: Can you answer that question?
19 Did the ALJ ever ask you for the dealer from Oregon's
20 financial data, their personal financial statements and
21 viability?

22 MR. KELSO: Well, viability is a different
23 question. As for financial statements, no ma'am, not that
24 I can remember. And I will say --

25 MS. GILLMAN: Second question: Did the ALJ ask

1 for a pro forma or a forecast from the new dealer from
2 Oregon? Did the ALJ ask from the new dealer a pro forma
3 or a forecast?

4 MR. KELSO: One of the things I'm struggling
5 with, ma'am, is the ALJ doesn't usually ask for things in
6 that regard. The parties present evidence as they see
7 fit. There was evidence presented of a forecast of sales;
8 there was not a pro forma in evidence.

9 With all due respect, ma'am -- and it's not
10 relevant -- under number 7 of the good cause factors when
11 it talks about financial expectations, it doesn't say
12 financial expectations of the applicant. It's really tied
13 to the expectations of the market, and Austin is and will
14 continue to be exceptional.

15 Keep in mind not only is Mercedes-Benz of
16 Austin extraordinarily profitable, but it is also a market
17 that has massive opportunity, so a pro forma of the
18 Applicant is not relevant.

19 MS. GILLMAN: That is where I think I'm
20 disagreeing. And you're probably right --

21 MR. TREVIÑO: Member Gillman, we've got to
22 stick with the facts, and I would just caution board
23 members to stay away from how they're feeling or how
24 they're thinking about the case and confine it to the
25 evidence presented by SOAH and the statements by the

1 attorneys.

2 MS. GILLMAN: So the question that I had, did
3 the new dealer present financial data or a pro forma
4 forecast, the answer is no?

5 MR. KELSO: No, ma'am, that's not correct.
6 They provided a forecast -- evidence of a forecast of
7 sales was provided. That evidence was considered. If
8 you're asking for the other items, the answer is no, not
9 that I recall.

10 MS. GILLMAN: Thank you.

11 MR. KOMKOV: May I respond one moment, just one
12 comment? There's a statement about a pro forma that would
13 be Exhibit A-2. I will leave the board with their own
14 conclusions when they see it, but as I noted earlier, it's
15 a half page.

16 And at trial when we were trying to explore on
17 the record, is this what you say you're going to do, is
18 this what you say you're going to sell, that is when Mr.
19 Swickard at page 83 said, No, this is just a guess. So to
20 that extent, if you call it a pro forma, you can review
21 the transcript of trial and it's not. And Mr. Newcomb
22 also testified saying this Applicant didn't have to give
23 his pro formas in advance of licensing.

24 MR. TREVIÑO: Thank you, Mr. Komkov.

25 Member Gillman, did that answer your question?

1 MS. GILLMAN: Yes, sir. Thank you.

2 MR. TREVIÑO: Great. Any other questions?
3 Would you like to pose any other ones, or any other board
4 member?

5 MR. GRAHAM: I have a question, yes, sir.

6 MR. TREVIÑO: Member Graham.

7 MR. GRAHAM: Thank you. This is Member Graham.

8 I'm sitting here looking through my notes. I
9 do not recall writing down what the investment for the new
10 point was expected to be. Was that part of evidence in
11 this case?

12 MR. TREVIÑO: That is directed to?

13 MS. GILLMAN: I direct that to Mr. Kelso.

14 MR. KELSO: Yes, it was. I don't have the
15 numbers on my fingertips. My recollection is it was
16 something like \$7 million in land and the building was
17 going to be in excess of \$10 million.

18 It is in the record; those were discussed.
19 When I mentioned earlier about the economic impact on the
20 local economy that this business is going to have every
21 single year, the building costs are part of the initial
22 investment and then the operation of the business itself,
23 all the employees, that's the propagating effects of the
24 annual economic impact.

25 MR. GRAHAM: Okay. Thank you.

1 And a follow-up question for Mr. Kelso. You
2 made a statement earlier that Section 2301.652, section
3 (7) -- I believe that's the one you referenced regarding
4 financial expectations -- that it only applied to the
5 market. Is that what you stated?

6 MR. KELSO: No. What I'm saying is it's not
7 directed specifically toward the applicant. The statute
8 doesn't say financial expectations of the applicant. It's
9 a more general financial expectation, so it's more all-
10 inclusive.

11 And really in the Austin market that's growing
12 like it is, it's hard not to find someone who doesn't want
13 to talk about traffic. It was hard to find someone at the
14 hearing that didn't. The financial expectations for a
15 dealership in south Austin, if that's what you're asking,
16 are high.

17 Mr. Swickard testified -- to answer very
18 directly, Mr. Swickard testified that he cannot imagine
19 operating a Mercedes-Benz dealership in south Austin and
20 not making money. This is a lucrative market with
21 lucrative products.

22 MR. GRAHAM: Appreciate that. I'm looking at
23 number 6 which is just before number 7. It says any harm
24 to the applicant, as well as number 4 which says any harm
25 to the protesting franchised dealer.

1 So I guess my interpretation of 2301.652 must
2 be different, because I do feel like that this board does
3 have an obligation to look at those things. But we can
4 get into that. We'll discuss that further in a little
5 bit.

6 But that was my question, I just wanted to make
7 sure I understood your statement.

8 MR. KELSO: Sir, I think I may be able to help.
9 That was actually considered in the record. The ALJs
10 considered the Applicant's investment.

11 They considered the idea that he has carrying
12 costs and that sort of thing, but because property is so
13 valuable in Austin, there's no great indication that the
14 Applicant is necessarily going to lose money despite the
15 money invested. And so the ALJs concluded that they
16 weren't swayed one way or another by harm to the
17 Applicant.

18 Harm to the Protestant, of course, the ALJs
19 concluded that there need not be any harm at all because
20 there's so much opportunity in the market it need not lose
21 any sales.

22 MR. GRAHAM: Thank you.

23 Thank you, Mr. Chairman.

24 MS. BEAVER: Chairman, I believe you may be
25 muted.

1 MR. TREVIÑO: Thank you, Member Graham, for
2 that question.

3 Any other questions from board members? Member
4 Ramirez.

5 MR. RAMIREZ: Whenever I'm considering the
6 effect on the public, the public's interest, one note that
7 stuck out to me was that MB Austin --

8 MR. TREVIÑO: Member Ramirez, this is a
9 question for the attorneys who presented. We'll have
10 plenty of time to discuss the case once a motion is made,
11 but for right now we're going to limit it to questions to
12 the attorneys.

13 MR. RAMIREZ: Okay. So this is a question for
14 Mr. Komkov.

15 MR. KOMKOV: Yes, sir.

16 MR. RAMIREZ: Mr. Komkov, one note that stuck
17 out to me in the PFD was that MB Austin was at full
18 service capacity. I mean, that makes a difference to the
19 public interest. Do you have any comment on that?

20 MR. KOMKOV: I do, sir, and I've got Mr.
21 Bennett who can cite to the record, but I will say there
22 was also testimony about a very large scale construction
23 project that MB Austin has adding a large facility to
24 store cars, service bays and the like.

25 Again, I'm trying not to go off record, so I

1 don't want to say much but the record does show that
2 they've got a very large scale expansion currently going
3 on. At this point, I don't frankly know, it may be
4 completed. The record said what the estimated completion
5 date was.

6 MR. RAMIREZ: Thank you.

7 MR. KELSO: May I respond to that, sir?

8 MR. TREVIÑO: Mr. Ramirez, would you like to
9 extend the question to Mr. Kelso?

10 MR. RAMIREZ: Yes. Mr. Kelso, please.

11 MR. KELSO: Thank you. Including and
12 considering the expansion, Mr. Ed Hoefl, the service
13 person for MBUSA that calls on the dealers in the area, he
14 testified that there would not be enough capacity to serve
15 the consuming public. There was evidence from Mr. Hoefl
16 about long wait times for service appointments, and even
17 more than that, Mr. Hoefl testified that at times MB
18 Austin refused to advertise its service business because
19 it was at such capacity, they were afraid if they
20 advertised it would get even worse and there would be even
21 longer wait times.

22 There is a huge need for a service facility in
23 south Austin that would be easier to access and more
24 convenient for consumers in the south part of the city
25 without having to brave Austin's ever more famous

1 traffic. This was all in the record, testimony of Mr. Ed
2 Hoefl.

3 MR. RAMIREZ: Thank you, Mr. Kelso, and thank
4 you, Mr. Komkov.

5 MR. KOMKOV: If I may, Mr. Ramirez? I actually
6 do have the cite on the statistics if you should care for
7 them.

8 MR. RAMIREZ: No, I got it. Thank you.

9 MR. TREVIÑO: Thank you very much, Member
10 Ramirez, for that question.

11 Do any other board members have questions they
12 would like to weigh in at this point?

13 (No response.)

14 MR. TREVIÑO: Hearing none, I would like to
15 thank the attorneys presenting today for staying within
16 the SOAH record. That is an important point.

17 So with that, if there's no more discussion,
18 the chair would entertain a motion from board members if
19 anyone has one.

20 MR. BACARISSE: Mr. Chairman?

21 MR. TREVIÑO: The chair recognizes Member
22 Bacarisse.

23 MR. BACARISSE: Thank you. Can you hear me?

24 MR. TREVIÑO: Hear you fine.

25 MR. BACARISSE: Okay, great. I'm having a

1 little bit of problem with my technology and I apologize.

2 MR. TREVIÑO: No worries.

3 MR. BACARISSE: I would like to make a motion,
4 if I could, please, sir.

5 MR. TREVIÑO: Go right ahead.

6 MR. BACARISSE: I would like to move that the
7 board uphold the SOAH PFD that recommends Mercedes-Benz of
8 South Austin's application for a new franchise dealership
9 be approved, as stated in the proposal for decision,
10 including the changes to the findings of fact on number 38
11 and 122, as amended, I think, by the August 21, 2020, SOAH
12 exceptions letter, and any information submitted by those
13 parties that was not made part of the administrative
14 record was not considered.

15 That's my motion.

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

18 Do we have a second to that motion?

19 MR. RAMIREZ: I'll second.

20 MR. TREVIÑO: Second by Member Ramirez. And
21 now we can have discussion. Would any board members --
22 does anybody have any comments or discussion?

23 MS. GILLMAN: I do, Mr. Chairman.

24 MR. TREVIÑO: Member Gillman. The chair
25 recognizes Member Gillman.

1 MS. GILLMAN: I feel that the PFD is not quite
2 complete. I feel that the PFD has not fully vetted the
3 new dealer. I feel like with the decision today the new
4 dealer will be issued a license to operate and that the
5 board deserves -- not just in this case but for all future
6 cases, the board should have a complete PFD that properly
7 does require applicants to provide their own financial
8 status.

9 A pro forma and a forecast for the new market
10 should be expected. While I definitely appreciate
11 Mercedes-Benz USA vetting their own candidate, I think the
12 State of Texas also, before issuing a license in any
13 market, should have information in order to provide the
14 best interest for the public and to serve the market.

15 And so while I do not disagree with anything
16 that Mr. Kelso said with regard to the Austin market and
17 Austin viability, I feel that the new dealer from Oregon
18 should and has the burden of demonstrating the good cause
19 for his own establishment by convincing either the ALJ or
20 this board that they are viable and sustainable. I'm
21 merely making a comment that I do not disagree with the
22 economic conditions of Austin, but I feel that in the
23 future the ALJ should require the new applicant to provide
24 financial information, such as pro formas and financial
25 statements and a forecast, in order to prove up their own

1 viability and sustainability for the market that they're
2 applying for.

3 Thank you, Mr. Chairman.

4 MR. TREVIÑO: Thank you, Member Gillman. Point
5 well taken.

6 Any other comments?

7 MR. BACARISSE: Mr. Chairman, I just have a
8 question for perhaps Mr. Kelso.

9 MR. TREVIÑO: Yes, sir, Member Bacarisse.

10 MR. BACARISSE: Being a public member -- and I
11 do yield to the expertise of my fellow board members who
12 are in this business and I respect that.

13 MR. TREVIÑO: Member Bacarisse, can I ask
14 General Counsel Beaver are we allowed to ask questions at
15 this point?

16 MR. BACARISSE: Oh, sorry.

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

19 Yes, Chairman, it's up to your discretion if
20 you'd like to reopen it for questions.

21 MR. TREVIÑO: Absolutely. Member Bacarisse,
22 fire away. I just wanted to make sure we're okay.

23 MR. BACARISSE: It's really a question that's
24 asked out of ignorance for me, so if Mr. Kelso isn't the
25 right person to answer it, perhaps General Counsel Beaver

1 or someone else is.

2 I did see in the PFD finding on page 98, number
3 14, the ALJ believed that there was a burden of
4 demonstrating good cause for the establishment -- or
5 that's number 15 -- demonstrating good cause for
6 establishment of the proposed dealership was met. That's
7 from the ALJs' opinion, anyway.

8 My question is, when a dealer wants to
9 establish a new dealership in any market anywhere in the
10 country, they have some proprietary or confidential
11 business information that they may share with their
12 manufacturer but yet would cause a competitive
13 disadvantage if it were shared publicly. And you know,
14 I'm generally a free market kind of guy; I don't want to
15 create hurdles for the free market to do business.

16 My question is, if certain financial data was
17 disclosed, would that cause some sort of harm or challenge
18 to a proposed dealer coming into a market publicly?

19 MR. KELSO: Thank you, sir. I can answer this
20 question within the confines of the record, I think, or at
21 least I'm going to. I hope it answers your question.

22 So Mr. Newcomb, when he testified about the
23 selection process of Mr. Swickard and whether or not they
24 required him to submit at that time of his application pro
25 forma materials and such things, what Mr. Newcomb

1 testified that, as you alluded to, with respect to the
2 manufacturer-dealer relationship, Mr. Swickard was a known
3 quantity because they do share financial information and
4 operational information that is not disclosed to other
5 dealers. He operated, if memory serves, a dealership in
6 Oregon, a dealership in Washington and a dealership in
7 Georgia, all Mercedes-Benz dealerships.

8 He was actually elected by all the dealers as
9 the president of the Mercedes-Benz dealer board. This is
10 a known quantity in that regard. And of course, there's
11 no good cause or factor associated with vetting the
12 financials of the applicant.

13 There really is a separate process in Texas for
14 an application that is different from this protest and the
15 seven good cause factors.

16 MR. KOMKOV: May I interrupt? We are going
17 outside the record here.

18 MR. TREVIÑO: One second, Mr. Komkov. You
19 can't interrupt. This question was directed at Mr. Kelso,
20 and if Mr. Bacarisse chooses to ask the same question to
21 you, he's more than welcome to, but this is not a public
22 debate. Mr. Kelso has the floor. Please control that.

23 I know your burning desire to get in there, but
24 you're good.

25 MR. KOMKOV: I really just wanted to object to

1 going outside the record on Mercedes' process.

2 MR. TREVIÑO: This is not an objection. This
3 is a question directed to Mr. Kelso. Thank you.

4 MR. KELSO: So that was the testimony about him
5 being a known quantity and submitting that information to
6 MBUSA, and yes, that information is not shared with other
7 dealers.

8 MR. TREVIÑO: And Mr. Kelso, this all has to
9 stay within the SOAH record.

10 Mr. Bacarisse, if you'd like to extend the
11 courtesy of the same question to Mr. Komkov, please feel
12 free.

13 MR. BACARISSE: Yes. Thank you, Mr. Chairman.

14 Mr. Komkov, you'll stay within the record, I'm
15 sure, but I would like to hear from you as well if you
16 would like to give me the facts, please.

17 MR. KOMKOV: Thank you, Member Bacarisse. I
18 shouldn't have interrupted, but when we were talking about
19 Mercedes' process, we were off.

20 In this case, and the real answer to your
21 question is, the parties enter into confidentiality
22 agreements which are standard for these cases because
23 business information will be shared. And those documents
24 that you see in there that were marked "Confidential" are
25 part of that.

1 So it's not that the parties don't share
2 financial information, it's just that they put deep
3 restrictions on them, as was done in this case. Mr.
4 Newcomb's testimony was typically anyone asking for a
5 franchise from Mercedes-Benz files a complete application
6 with financial data; in this case the Applicant did not
7 and that that would await the end of this licensing
8 process.

9 Thank you, sir.

10 MR. TREVIÑO: Thank you, Member Bacarisse, for
11 that question.

12 MR. BACARISSE: Thank you, Mr. Chairman.
13 That's great. Thank you.

14 MR. TREVIÑO: Great.

15 Member Ramirez, I think I saw your hand up?

16 MR. RAMIREZ: I was going to touch on the
17 things that we're charged with considering when we're
18 making these decisions, and that is whether or not we feel
19 that the Applicant (sic) established good cause for not
20 establishing the dealership. And in considering all the
21 factors, you know, working 1 through 7, I just can't find
22 the evidence in the PFD that would make us change our
23 mind.

24 Now, I definitely understand Member Gillman's
25 assertion that the PFD might be incomplete. That is a

1 cause for concern knowing that she feels that way, but
2 personally I feel like it's not our charge to determine
3 whether or not Mr. Swickard is qualified to own a
4 dealership or that he's submitted his financial
5 projections, aside from what's required by MBUSA to start
6 the dealership.

7 So I think that it ticked the boxes for me in
8 requiring that there be no harm to the Applicant, that
9 there be no harm to the Protestant. One of the big things
10 for me on no harm to the Protestant was that they were
11 already at full service capacity, just knowing that there
12 was not going to be any take-away from them because they
13 were already operating at full capacity.

14 Harm to the Applicant, obviously, I think like
15 I heard Mr. Kelso say, the Applicant would not have chosen
16 to start a dealership in south Austin if he believed he
17 was going to be unprofitable. And the economic conditions
18 in south Austin, I don't think that we can reasonably say
19 that they've been drastically affected by COVID-19,
20 considering the recovery that we've seen thus far.

21 So just everything that I've seen in the PFD, I
22 feel comfortable going ahead and accepting the ALJs'
23 decision.

24 MR. TREVIÑO: Thank you very much for those
25 comments, Member Ramirez.

1 Are there any other comments or questions from
2 the board? Member Graham. The chair recognizes Member
3 Graham.

4 MR. GRAHAM: Thank you, Mr. Chairman.

5 I just kind of wanted to walk through my
6 thoughts here as I try to piece together my decision or
7 where I'm going on this and make sense of it.

8 I don't think there's any question that it is
9 in the best interest for the public, first of all, for
10 strong competition in the marketplace. I'm a very strong
11 proponent that in the case of auto dealers or truck
12 dealers there should be multiple dealers within a
13 marketplace. I don't think it serves anyone well, other
14 than maybe the manufacturer and the dealer, if that's not
15 the case.

16 I also think the board has a statutory
17 obligation to ensure that a new point doesn't do
18 significant harm to either of the parties in the case, and
19 most importantly, the public. You know, if you think
20 about some of the things that happened in the past couple
21 of years when we had dealers that are unable to stay in
22 business, I mean, it's a terrible thing to the public when
23 that happens.

24 So I think that's why when you look at the
25 statute, you know, it asks us to consider each of these

1 seven items. And I think that's one of the reasons why
2 we're asked to do that.

3 I also agree with the ALJs' assertion that a
4 new dealership in all likelihood can be profitable in this
5 case. It's a strong market. You know, I read all of the
6 data that clearly says it's a strong market getting
7 stronger by the day, and I think we're all smart enough to
8 know that Austin is on a pretty steep trajectory
9 upwards. And so I really don't have any concern about
10 that.

11 It's just, you know, I'm blown away by the fact
12 that I can't even go down and get a \$20,000 bank loan
13 without giving them my financial statement to ensure that
14 I'm credible. And I'm not worried at all about the
15 financial viability of the dealer as much as I'm worried
16 about the financial viability of the dealership.

17 I mean, it's not our place to worry whether
18 this particular dealer is financially -- what his
19 financial position is. I think what we're tasked with is
20 making sure that we don't drop a point in that does harm
21 to the public, particularly, or either one of them.

22 I can't believe in this case that we're being
23 asked to look at this and make a decision, and I feel like
24 I'm being asked to do that just on the assumption that
25 everything is going to be okay. Because there is no data,

1 we don't know how long the new dealer expects to go, how
2 many years before they're profitable. And clearly, they
3 have to have that.

4 You don't put in a \$20 million dealership
5 without knowing what those numbers are. So I just would
6 like to talk about that with my fellow board members. I'd
7 like to hear your thoughts, because I'm really struggling
8 with that one.

9 The last thing I want to do is put something
10 off that, you know, may inevitably be coming. I don't
11 want anyone to have to spend a bunch of money on
12 attorneys -- not that I don't like attorneys, I just don't
13 like wasting money on attorneys. I don't want that.

14 I don't want to delay this into the future.
15 But I'm really struggling with, if we do this today does
16 that then give the ALJ the right to not ever give us that
17 information again, which I think is critically important
18 to making these decisions.

19 So that's just kind of where I'm at mentally
20 and I'd love to hear my fellow board members' thoughts on
21 that. Thank you.

22 MR. TREVIÑO: Thank you, Member Graham.

23 Would any board members like to comment on
24 Member Graham's questions?

25 MS. GILLMAN: I have a comment.

1 MR. TREVIÑO: Member Gillman.

2 MS. GILLMAN: Mr. Chairman, I'm also thankful
3 for Member Graham's -- the way he put it that in the
4 future I also think that it is irresponsible of this board
5 not to have full information in front of them before -- in
6 order to make a good, informed decision.

7 I just think that really this is a process
8 issue, and I don't know exactly how to communicate it to
9 the ALJ but we are on the record here. And so I would
10 just ask that in the future for the State of Texas, for
11 the future boards, that a complete PFD with the
12 applicant's financial information, a pro forma, a
13 forecast, some kind of financial data that Mercedes-Benz
14 certainly gets every single month, and Mr. Swickard is a
15 known entity to Mercedes-Benz but not to Texas here in
16 this application.

17 And similarly for any other protest going
18 forward, I think it is in our best interest, for the State
19 of Texas, to have a qualified, viable applicant. And I
20 too don't really want to linger the process and cause more
21 pages of lawyer documents, but I think the message should
22 be delivered somehow that this PFD could be more complete
23 for this board if it had not just economic testimony and
24 professors from universities giving us what the Austin
25 market is, market conditions, which -- we like it, you

1 know, we're not disputing.

2 So I don't know exactly -- the way to send a
3 strong hard message is to remand this back to the ALJ and
4 say, you need to give us this information. Like Member
5 Graham said, we're just expected to just hope it works
6 out.

7 And I know that Mercedes, a very strong
8 manufacturer, well respected, has done their own
9 vetting. And just like he said, this dealer already has
10 three dealerships and represents Mercedes very well on
11 dealer council. I respect that very much.

12 So I'll end my comments there. Thank you, Mr.
13 Chairman.

14 MR. TREVIÑO: Thank you very much for those
15 comments, Member Gillman.

16 The chair recognizes Member Bacarisse.

17 MR. BACARISSE: Just a question to our general
18 counsel for my edification again. Ms. Beaver, is this in
19 statute, is it in regulation, is it silent as to what
20 elements any applicant has to submit for approval of a
21 license?

22 I mean, is financial data that Member Graham
23 and Member Gillman have been discussing, is that asked
24 for, and if not, what guides us, what guides the ALJs? Is
25 it statute or is it some other?

1 MS. BEAVER: Thank you. Tracey Beaver, general
2 counsel, for the record.

3 The factors that the board may consider on
4 whether deciding to uphold the SOAH PFD approving the
5 application or denying the application for this location
6 is in Section 2301.652. It's seven factors laid out in
7 the Occupations Code. The viability of a dealer is not
8 listed in those seven factors specifically.

9 The SOAH judges were the fact-finders in this
10 case and were the ones that determined whether there was
11 sufficient evidence presented in this case to make a
12 decision as to whether this application should be approved
13 or denied. If you do have additional questions on the
14 application process, I would have to turn that over to
15 program, our Motor Vehicle Licensing Division, but I would
16 say that that is not an aspect for this particular case.

17 MR. BACARISSE: Right. And I'm looking for the
18 law, and I think I heard you say there is not a demand for
19 the kinds of financial information that we're discussing
20 here from an applicant in the law currently. Is that
21 correct?

22 So if we want to see a change, this is
23 something that the legislature would have to take up at
24 some point. Am I hearing you correctly?

25 MS. BEAVER: Correct. It's not currently in

1 statute.

2 MR. BACARISSE: Thank you.

3 MR. TREVIÑO: Great. But Member Gillman's
4 comments are well taken, if it would somehow make board
5 members feel more comfortable with a decision.

6 MR. BACARISSE: Absolutely.

7 MR. TREVIÑO: It will be something that
8 hopefully we can get with Ms. Johnston and perhaps
9 communicate that in the future board members perhaps might
10 feel more comfortable. And again, we can't get too much
11 into what Mercedes does in their vetting process as well,
12 so I'm not quite sure where that all fits.

13 MR. BACARISSE: Right.

14 Mr. Chairman, I agree completely. I just
15 wanted to try to understand, because I think Member Graham
16 and Member Gillman's points are very well made and I am
17 sympathetic to them.

18 My question was where is the law or where is
19 the process, and I understand from our general counsel
20 that it's not currently asked for, which is shocking to me
21 personally, but yet maybe the legislature needs to take
22 this issue up.

23 MR. TREVIÑO: Thank you very much for that,
24 Member Bacarisse.

25 Member Gillman.

1 MR. GRAHAM: You're muted, Member Gillman.

2 MS. GILLMAN: Thank you. I interpret and my
3 interpretation may be -- well, that's what interpretations
4 are, you can take it one way or the other -- number 7 to
5 me is the applicant's financial expectations, the
6 applicant's viability and his sustainability for the
7 market. And that number 7 I take as the applicant.

8 Not necessarily is Austin ready, it is is the
9 applicant also viable. But that is my interpretation of
10 number 7.

11 MR. BACARISSE: Great. Okay.

12 MR. TREVIÑO: But to Member Bacarisse's point,
13 there's not a specific requirement, but are you satisfied,
14 board members? I mean, it might be a useful thing to add
15 to the body of -- to the body presented to the SOAH judges
16 in the future.

17 Member Graham.

18 MR. GRAHAM: I'd just like to add, I would
19 actually just respectfully disagree with Counsel Beaver's
20 position on this. It's historically been a consideration
21 for the board in previous cases.

22 It was discussed ad nauseam in this case. It
23 was a factor in this case, and at the end of the day, we
24 just weren't given -- well, I'll say we weren't
25 provided -- we're just being asked to take the ALJs' word

1 on it as opposed to being able to see those documents that
2 would demonstrate that out. I mean, I think it says in
3 the statute that those are considerations for the board in
4 this.

5 So anyway, I just wanted to voice that. Thank
6 you.

7 MR. TREVIÑO: Thank you, Member Graham.

8 Any further -- Member Ramirez.

9 MR. RAMIREZ: I wanted to take a minute and
10 thank Member Gillman for her perspective there. You know,
11 I think having a pro forma in the PFD would be very
12 helpful, you know, as a Cliff's Notes version as to why
13 this dealer feels that they're going to be profitable. I
14 think that would help us digest a whole lot better.

15 You know, in my fact-finding, going through the
16 PFD, you know, really we had to extrapolate that from
17 their financial forecast and market conditions, which
18 obviously the dealer is going to base their pro forma
19 on. But we didn't have their hardline this is what we
20 expect to perform year one, year two, and you're right,
21 when that benchmark of profitability will be.

22 So in the future that would be very, very
23 helpful. And it might be something that we do ask in
24 future cases that applicants provide so that we can make
25 more sound decisions.

1 In this case specifically, though, I do think
2 that I'm comfortable extrapolating that data, and I do
3 agree with the ALJs' assertion that the market is ready
4 and the market can handle a new dealer and there's
5 capacity there for a dealer to be profitable. So I think
6 they considered that, but they had to do their own
7 calculations and digging to get there. And for our
8 purposes for this board I don't think that we necessarily
9 should have to do that.

10 So while I do agree with the PFD and my opinion
11 hasn't changed, I think that that was a very good point
12 and I think that will help us in the future greatly.

13 MR. TREVIÑO: Thank you, Member Ramirez, for
14 those comments. And again yes, we've got the future. We
15 have this case in front of us.

16 Any other comments or questions?

17 (No response.)

18 MR. TREVIÑO: Hearing none, there is one thing
19 before I call for the vote. Regarding objection outside
20 the record, the board cannot consider information outside
21 the record. If you have any questions, you can ask the
22 general counsel on this one, but there was some question
23 as to whether some of this information was outside the
24 record. Remember, board members can't consider that when
25 making their decisions.

1 General Counsel Beaver, is that pretty clear?

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

4 Yes. Thank you, Chairman, regarding that
5 objection and ruling. I did also just want to mention
6 that there are no public comments for this item either, as
7 you move into calling for a vote.

8 Thank you.

9 MR. TREVIÑO: Thank you very much. Thank you
10 very much, General Counsel.

11 So hearing no further comments or questions, we
12 have a motion in front of us to approve the SOAH PFD, so
13 I'll call for the vote. Board members, when I call your
14 name, please state your vote for the record.

15 Board Member Bacarisse?

16 MR. BACARISSE: Aye.

17 MR. TREVIÑO: Board Member Gillman?

18 MS. GILLMAN: Aye.

19 MR. TREVIÑO: Board Member Graham?

20 MR. GRAHAM: Nay.

21 MR. TREVIÑO: Board Member McRae?

22 MS. McRAE: Aye.

23 MR. TREVIÑO: Board Member Prewitt? I'm sorry,
24 Member Prewitt is not here. We wish him Godspeed and good
25 luck.

1 Member Ramirez?

2 MR. RAMIREZ: Aye.

3 MR. TREVIÑO: Member Scott?

4 MR. SCOTT: Aye.

5 MR. TREVIÑO: And I, Chairman Treviño, also
6 vote aye. Let the record reflect that there are one, two,
7 three, four, five, six ayes, and one opposed. The motion
8 carries.

9 And thank you very much for the spirited
10 discussion and thank you very much for all the people who
11 presented today, for your patience and for your material
12 that you presented to us today.

13 Is everyone in good shape? We've got a break
14 scheduled now, but is everybody in good shape? Should we
15 move on or should we take a break?

16 MR. GRAHAM: Break.

17 MR. TREVIÑO: Break. Okay. I'll call a
18 five-minute break, back here at 10:35 or so. Thank you
19 very much. Stand adjourned.

20 (Whereupon, at 10:29 a.m., a brief recess was
21 taken.)

22 MR. TREVIÑO: Board members, are we close to
23 being ready to go? We're approximately 15 minutes behind
24 schedule, but that was 15 minutes well spent.

25 General Counsel Beaver, if you can just give us

1 a heads up when we have everyone back from break.

2 MS. BEAVER: Tracey Beaver, general counsel.

3 It looks like we're still waiting on three
4 members to return. I'll let you know. Thank you.

5 MR. TREVIÑO: Thank you very much. So it looks
6 like we're just waiting for Member Bacarisse and Member
7 Gillman at this point. Member Gillman is back, we're just
8 waiting for Member Bacarisse. Is that correct?

9 MS. BEAVER: Tracey Beaver, general counsel.

10 Yes, that's correct, just Member Bacarisse. It
11 looks like there's some technical issues so if we could
12 give him just one moment, it looks like he's logging back
13 in.

14 MR. TREVIÑO: We'll give him a minute but since
15 we have a quorum, I think we'll go ahead and get started,
16 if it's okay with you.

17 Would you like to make any mention of special
18 supplemental materials?

19 MS. BEAVER: Yes, thank you, Chairman. Tracey
20 Beaver, general counsel.

21 I just wanted to mention that there are some
22 supplemental materials. They're just presentation slides
23 that were presented to the Finance and Audit Committee
24 yesterday afternoon when they met and they were posted on
25 the TxDMV website, so folks can reference those slides

1 during the meeting on our website, and they were also
2 provided to board members late yesterday afternoon after
3 the committee meeting. So if you hear reference to slides
4 or supplemental materials during staff presentations, I
5 just wanted to make everyone aware that's what they're
6 referring to.

7 Thank you.

8 MR. TREVIÑO: Thank you very much, General
9 Counsel Beaver.

10 So is Member Bacarisse on yet?

11 Maybe we should take this opportunity before
12 Member Bacarisse logs on to create some new committees and
13 have him chair them. Anybody up for that? Should we do
14 that?

15 MS. GILLMAN: What a great idea. Perfect.

16 (General laughter.)

17 MR. TREVIÑO: Great.

18 MS. GILLMAN: I'd like to ask when you do
19 expect to be back in-person meetings?

20 MR. TREVIÑO: That's a great question.

21 Executive Director Brewster, would you like to
22 answer that question while we're waiting?

23 MS. BREWSTER: Sure. Thank you.

24 MR. TREVIÑO: And can we discuss that? Tracey,
25 can we talk about that?

1 MS. BEAVER: Thank you, Chairman. Tracey
2 Beaver, general counsel, for the record.

3 It's fine to give public open information, but
4 no, that was not noticed on the agenda.

5 MR. TREVIÑO: So is that a yes or a no?

6 MS. BEAVER: Yes, Executive Director Brewster
7 can answer that question. Thank you.

8 MR. TREVIÑO: All right. Having gone through
9 what we just went through, I want to make sure we stay on
10 track. Go ahead.

11 MS. BREWSTER: Thank you, Chairman.

12 Member Gillman, we have gotten direction that
13 those board meetings that are currently scheduled will
14 continue to be done remotely, however, the waivers that
15 are allowing for these meetings are being considered by
16 state leadership for lifting. And so like the June board
17 meeting, we will have to make sure we have conversations
18 with state leadership on where they are with lifting those
19 waivers.

20 So at this point we've been told that they will
21 likely not be in place for too much longer, and so we
22 don't have an exact time when those are going to be
23 lifted, only that we know that they are being considered.

24 MR. TREVIÑO: Thank you for that clarification,
25 Executive Director Brewster.

1 Well, Member Bacarisse is not on yet, but I
2 suggest we go ahead and get started. I'm sure he'll join
3 us in a moment.

4 We'll move on to agenda item number 6 which is
5 the Finance and Audit Committee update, and we will now
6 turn it over to Chairman Brett Graham to give a summary
7 from the Finance and Audit Committee meeting that was held
8 yesterday afternoon.

9 And Member Graham, thank you again for chairing
10 this committee. I know it's a lot of work.

11 MR. GRAHAM: Yes, sir, my pleasure. We have a
12 lot of audits, audits are just dizzying, but Sandra does a
13 great job. I just try to keep up with it, so I do my
14 part, as do my committee members.

15 All right. So we will now move to item 6.A.
16 The Finance and Audit Committee met yesterday, I'm proud
17 to report, and we had a quorum of members present. Ms.
18 Menjivar-Suddeath provided the results of the second
19 six-month internal audit risk assessment.

20 The Internal Audit Division assessed 315 risks
21 during that risk assessment. This included the 247 risks
22 that were discussed in the August 2020 board meeting. As
23 a part of the assessment, IAD received information on how
24 department management addressed the high and very high
25 risks that were not in the scope for the first six-month

1 Internal Audit Plan.

2 Based on actions taken by the department and
3 engagements conducted during the first half of the fiscal
4 year, IAD determined that the department mitigated 20
5 total audits which were 42 percent of 48 original high and
6 very high risks, but additional high risks were identified
7 in the second six-month risk assessment. That's a
8 mouthful. Currently the department has 39 total high and
9 very high risks.

10 The risk assessment led to the identification
11 of internal audit engagements to be conducted in the
12 second six months. In total there are five engagements
13 that were recommended to be conducted. These engagements
14 include a review of PCI compliance with the firewall
15 requirements, strategic communications, internal audit
16 follow-up, external assessment review, and the risk
17 assessment audit plan for the first half of fiscal year
18 2022.

19 The Finance and Audit Committee approved Ms.
20 Menjivar-Suddeath's recommendation to recommend to the
21 full board approval of the second six-month Internal Audit
22 Plan.

23 With that, that is the report for item 6.A, Mr.
24 Chairman.

25 MR. TREVIÑO: Thank you, Chairman Graham. And

1 is there an action item associated with this report?

2 MR. GRAHAM: Yes, 6.A is an action item, and
3 when you are ready, I will be glad to make a
4 recommendation or a motion.

5 MR. TREVIÑO: Great. So any questions for
6 Member Graham or for Ms. Sandra Menjivar-Suddeath?

7 (No response.)

8 MR. TREVIÑO: Sandra, is there anything you'd
9 like to add to this?

10 MS. MENJIVAR-SUDDEATH: No, Chairman. Board
11 Member Graham covered it well.

12 MR. TREVIÑO: Great. Thank you, and thank you
13 again for all that work on all those audits that Chairman
14 Graham referenced. Keep them on their toes.

15 Okay. Hearing no questions, Chairman Graham,
16 please go ahead.

17 MR. GRAHAM: I move the board approve the
18 fiscal year 2021 second six-month Internal Audit Plan as
19 presented.

20 MR. TREVIÑO: Great. We have a motion the
21 floor.

22 MS. GILLMAN: Second.

23 MR. TREVIÑO: Second by Member Gillman. Any
24 comments, questions, or discussion?

25 (No response.)

1 MR. TREVIÑO: Hearing none, the chair calls for
2 a vote. As I state your name, please indicate your
3 preference here.

4 Member Bacarisse, is he present? No.

5 Member Gillman?

6 MS. GILLMAN: Aye.

7 MR. TREVIÑO: Member Graham?

8 MR. GRAHAM: Aye.

9 MR. TREVIÑO: Member McRae?

10 MS. McRAE: Aye.

11 MR. TREVIÑO: Member Prewitt is not with us.

12 Member Ramirez?

13 MR. RAMIREZ: Aye.

14 MR. TREVIÑO: Member Scott?

15 MR. SCOTT: Aye.

16 MR. TREVIÑO: And I, Chairman Treviño, also
17 vote aye. The vote is unanimous, motion carries.

18 Member Graham, you have the floor. Please
19 proceed.

20 MR. GRAHAM: Thank you, sir. I will move on to
21 item 6.B. Internal Audit Division status update. This is
22 a briefing item only.

23 Ms. Menjivar-Suddeath provided an update on the
24 status of current internal audit activities and laid out
25 the new format for the Internal Audit Division status

1 report. The new format will allow the board to keep up
2 with internal and external activities through the various
3 phases. The update included information on the external
4 coordination efforts, including the recently released
5 State Auditor's Office Sunset Commission management action
6 report, and the status of all internal audit engagements.
7 Ms. Menjivar-Suddeath went into detail on the peer review
8 assessment as well.

9 Mr. Chairman, that is a briefing only and I
10 will move on to item 6.C, if that's okay.

11 MR. TREVIÑO: Does any of the board members
12 have any questions for Chairman Graham or for
13 Ms. Menjivar-Suddeath?

14 (No response.)

15 MR. TREVIÑO: Hearing none, Chairman Graham,
16 keep rolling.

17 MR. GRAHAM: Okay. Item 6.C is fiscal year
18 2020 end of year reports. Ms. Flores and her staff
19 briefed the committee on the annual financial report and
20 the annual report of nonfinancial data for the fiscal year
21 ending August 31, 2020. These two reports were submitted
22 to our oversight agencies by November 20 and December 31,
23 respectively, in accordance with the requirements set by
24 statute and governmental accounting and reporting
25 guidelines.

1 Regarding the annual financial report, the
2 report summarized the department's activities for fiscal
3 year 2020. The TxDMV continues to grow in its fund
4 balance in the TxDMV Fund which is the Fund 0010. An
5 overall decrease in revenue of 8.82 percent compared to
6 fiscal year 2019 is primarily attributable to economic
7 changes in the second half of the year due to the COVID-19
8 pandemic. Expenditures for the department increased in
9 fiscal year 2020 primarily from salaries and wages due to
10 an overall increase in staffing, professional fees and
11 services and other operating expenditures.

12 The committee had some discussion on that topic
13 regarding the increased expenditures with staff, and
14 fortunately, as many of you probably are aware, we very
15 often have 50 to 75 open positions at any given time.
16 During the pandemic they worked really hard to be able to
17 continue to conduct interviews and hire folks, and so we
18 were very fortunate that we were really prepared in staff
19 to handle the challenges that came with all of the
20 different aspects of management during the pandemic.

21 \$1.75 million in total expenditures through the
22 end of August 2020 were related to the COVID-19
23 response. That's something we keep track of, we are
24 currently at \$1.75 million in total expenditures for the
25 planning and maintaining of that.

1 The annual report of nonfinancial data
2 summarizes the department's activities of nonfinancial
3 data requested by our oversight agencies. Notable changes
4 in the fiscal year 2020 report are the increases to our
5 indirect costs associated with payroll and with the
6 state's enterprise system comprised of CAPPs financials
7 and CAPPs HR payroll modules, also the purchase of four
8 new vehicles, and the increase in our professional
9 services expenditures attributable to information
10 technology and consultant services primarily related to
11 the registration and titling system refactoring project.

12 So I know that's a mouthful. Mr. Chairman,
13 that is my report for item 6.C. and we will stand by for
14 any questions anyone may have.

15 MR. TREVIÑO: Chairman Graham, very much. And
16 thank you, Ms. Flores and staff, for those detailed and
17 extensive reports. There's a lot of great stuff in there.

18 Do any of the members of the board have any
19 questions for Member Graham or Ms. Flores?

20 (No response.)

21 MR. TREVIÑO: Ms. Flores, is there anything in
22 particular you'd like to call our attention to in the
23 report?

24 MS. FLORES: Thank you, Chairman.

25 As Chairman Graham mentioned, there was a lot

1 of discussion about how the agency continued to hire
2 individuals, and one thing that I did not mention
3 yesterday but remembered -- it's always after the meeting
4 ends that's when you remember certain things -- in FY20,
5 because of the legislative process the prior year, we
6 actually received approximately 23 new people.

7 They authorized twelve new people in
8 Information Technology for infrastructure activities.
9 They authorized nine new staff in Consumer Relations
10 Division to address call volumes, which exploded, as you
11 can imagine, with the COVID pandemic. We started
12 receiving all kinds of phone calls because we did have a
13 lot of closures in the tax assessor-collector offices, so
14 some of that workload came back to the department.

15 And finally, we had two new staff people
16 authorized for the implementation of the digital license
17 plate program. So not only did we continue to hire
18 individuals to address regular attrition, we actually
19 received additional staff through the process. And because
20 we are financed through fees, as Board Member Bacarisse
21 mentioned yesterday, the government is a little bit
22 different from the private sector.

23 Our monies are set aside once the budget is
24 certified, so the funding was available. We continued to
25 use that, and we also continued to use some of our salary

1 savings that we normally accrue at the end of the year to
2 address some of those pandemic activities that we had to
3 absorb, having to buy face masks and disinfecting cleaning
4 services. So we tried to use our dollars very judiciously
5 and just kind of wanted to mention that as well.

6 Thank you, sir.

7 MR. TREVIÑO: Thank you very much, Ms. Flores,
8 for that.

9 Chairman Graham, is there anything else you'd
10 like to add?

11 MR. GRAHAM: I still have a couple more items
12 to cover.

13 MR. TREVIÑO: Sure, okay. Please keep on
14 going.

15 MR. GRAHAM: All right. 6.D, that is the
16 fiscal year 2021 second quarter financial summary report,
17 including cumulative fiscal impacts of COVID-19. Staff
18 provided the cumulative revenue and expenditure impacts of
19 the department, primarily from waivers granted by the
20 governor and economic deadlines.

21 The most significant items included a
22 cumulative fiscal year 2020 and 2021 loss of \$26,559,000
23 to the General Revenue Fund 0001. This was representative
24 of the economic declines for that number. Also a
25 cumulative fiscal year 2020 and fiscal year 2021 loss of

1 \$255,848,000 to State Highway Fund 0006. This loss of
2 \$255 million consisted of \$21 million in waivers and then
3 \$234 million, approximately, in economic decline.

4 So that is kind of the cumulative number of
5 impact to the agency as a whole. And then a cumulative
6 fiscal year 2020 and 2021 loss of \$38,709,000 to TxDMV
7 Fund 0010 which represented \$16 million, approximately, in
8 waivers and \$22,600,000 in economic decline. So those
9 basically represent the revenue losses, or an explanation
10 of the revenue losses.

11 On the expenditure side, through February 2021,
12 TxDMV has \$3.2 million in response to COVID-19. The
13 expenditures are primarily from staff time for cleaning
14 and preparation of COVID-19 response activities, the
15 acquisition of PPE for employees and customers, cleaning
16 supplies, temporary support, and facility preparation
17 activities such as cleaning and the installation of
18 plexiglass partitions for public areas.

19 The total projected cost for COVID-19 response
20 is estimated to be \$3.9 million from the beginning of
21 March 2020 to the end of fiscal year 2021. The year-end
22 estimate assumes continued staff time to the middle of
23 June and continued cleaning services and cleaning supplies
24 and PPE replenishment through the end of this fiscal year.

25 That is the conclusion of item 6.D, Mr.

1 Chairman.

2 MR. TREVIÑO: Thank you very much, Chairman
3 Graham.

4 Do any members of the board have any questions
5 for Member Graham?

6 (No response.)

7 MR. TREVIÑO: I would like to thank Member
8 Graham and the committee yesterday for raising the
9 questions about hiring during the pandemic. I think this
10 board is very sympathetic to the challenges that the staff
11 have faced during the course of the pandemic, but any line
12 item that comes before the board, it's our duty to
13 question and to raise the issue as to why any expenditure
14 seems unusual or we'd like clarification on.

15 So again, during the pandemic -- and Ms.
16 Flores, thank you very much for clarifying those hires,
17 those were essential and also they were driven by the
18 legislature. Some of those were driven by the
19 legislature.

20 But I do think that our largest expense is
21 staffing so going into a more stable environment, I would
22 suggest that we look closely at efficiencies again and try
23 to -- I know you guys have been making a lot of effort and
24 hopefully we can get back on that footing again. But
25 again, thank you to Chairman Graham and the committee for

1 raising those questions and Ms. Flores for clarifying some
2 of those expenditures.

3 MR. GRAHAM: You bet.

4 All right. Are you ready for 6.E?

5 MR. TREVIÑO: Ready, Member Graham.

6 MR. GRAHAM: Okay. I don't know how I got so
7 lucky to have so much time with you today, but we just
8 have a lot to cover and there's definitely been a lot
9 going on.

10 Item 6.E is the 2022-2023 Legislative
11 Appropriations Request update, briefing only. There is a
12 session going on, apparently, I've heard, and Ms. Flores
13 and her staff briefed the committee on the status of how
14 that LAR process was going. The update included TxDMV
15 budget based on filed versions on the General
16 Appropriations Act.

17 Now, both the House and the Senate versions of
18 the GAA were identical. The baseline budget appropriation
19 amount of \$302.5 million was for the fiscal year 2022-2023
20 biennium, \$302.5 million baseline. No exceptional items
21 included in the initial versions of the General
22 Appropriations Act, and reductions were included for
23 automation capital and the MVCPA, the grants for that.
24 All requested riders that assist in department operations
25 were also included.

1 Now, TxDMV submitted a revised exceptional item
2 list in January of 2021 to the LBB based on reductions
3 included in the initial versions of the General
4 Appropriations Act. The two new exceptional items that
5 were added were the restoration of automatic funding to
6 complete the webSALVAGE project and the restoration of the
7 MVCPA grant funding which had previously been cut.

8 One existing exceptional item was modified.
9 That was -- the expansion of the MVCPA grants was
10 increased to match the updated revenue estimates.

11 So that is item 6.E, Mr. Chairman.

12 MR. TREVIÑO: Thank you, Mr. Chairman.

13 Do any of the board members have any questions
14 for Chairman Graham or for Ms. Flores?

15 (No response.)

16 MR. TREVIÑO: Ms. Flores, is there anything
17 you'd like to add or highlight?

18 MS. FLORES: Yes, sir. For the record, Linda
19 Flores, chief financial officer.

20 I would like to mention that in your board
21 SharePoint website you will see a more current status of
22 where we're at with both the Senate Finance Committee and
23 House Appropriations Committee because they did meet this
24 week. They met on the 30th and the 31st, and they took
25 some actions that actually address a lot of our

1 exceptional items.

2 For example, on the Senate side they adopted
3 the restoration of the automation capital funds of \$3.1
4 million. They also approved the accounts receivable
5 system request of \$3.5 million, and they also pushed our
6 item number 2, the building to what they call Article 11,
7 which is the wish list.

8 What they did not approve were the complaint
9 management system and the Dallas and Houston regional
10 service center substations and any of the Motor Vehicle
11 Crime Prevention requests.

12 But turning to the House Appropriations side,
13 they actually approved the restoration of capital, item
14 number 2, the building, number 3, accounts receivable,
15 number 4, complaint management system. The House did
16 provide 50 percent funding for the restoration of MVCPA
17 grant funding and they pushed the other 50 percent to
18 Article 11, and then items 8 and 9 for the MVCPA program
19 were moved to Article 11.

20 And what this means at the end of the day is
21 both chambers will select committee members to serve on a
22 conference committee, and because all of our items are
23 basically still in play and still alive, they will
24 consider those and work together to develop a holistic
25 approach to address the department's appropriations going

1 into the next biennium. So that's the good news to
2 provide to y'all is that everything is still in play,
3 which is awesome.

4 MR. TREVIÑO: Great. Thank you very much for
5 that update, Ms. Flores, and this board recognizes your
6 work.

7 Member Bacarisse, you're back with us.

8 MR. BACARISSE: Hi. Sorry for my absence. My
9 hamster died and so I lost power.

10 But anyway, just a question on the
11 reconciliation process. Linda, do you know the timing of
12 when that House-Senate conference committee will be formed
13 yet?

14 MS. FLORES: Based on how they've been moving
15 most recently, it's probably going to happen in the next
16 couple of weeks. That would be my guess.

17 MR. BACARISSE: Great. They're moving pretty
18 fast now.

19 MS. FLORES: Yes, sir.

20 MR. BACARISSE: Thank you.

21 MR. TREVIÑO: Please keep us updated, Ms.
22 Flores, and Caroline Love, our legislative director, on
23 how this is working, and Chair Scott, we look forward to
24 hearing from you.

25 Good to have you back, Vice Chair Bacarisse.

1 Member Graham, what else do you have?

2 MR. GRAHAM: I have one more item to cover, but
3 I'll say, make sure to check out that additional item that
4 they added to your packet regarding what Ms. Flores just
5 covered. It does a great job of giving you the hard
6 numbers on that and we're feeling good about where we are
7 in that process for the agency.

8 Clearly there's more water to go under that
9 bridge, but still hanging in there. So far, so good.

10 The last item I'll cover, Mr. Chairman, is just
11 a very brief update on the winter storm impacts to our
12 facilities. I could go building by building -- I don't
13 think that's necessary. I'll just tell you that we were
14 very fortunate.

15 We also had a couple of employees who were
16 really on top of things and prevented what could have been
17 some really, really serious issues and we came out of it
18 not completely unscathed but in great shape, better than a
19 lot. So that wraps up all of my items.

20 I just say thank you to Linda Flores, as well
21 as Sandra, and their staff and their team. They do a
22 great job of keeping me updated and apprised of what's
23 going on and communicating with me on where everything is
24 at. And I appreciate that and I know the committee does
25 as well.

1 Thank you, Mr. Chairman.

2 MR. TREVIÑO: Thank you, Chairman Graham.

3 Ms. Flores, is there anything you'd like to add
4 on the winter storm impact to facilities.

5 MS. FLORES: Well, at this point I would like
6 to turn it over to Ms. Brewster. She has a few words.

7 MR. TREVIÑO: Okay. A few choice words.
8 Please, Executive Director Brewster, please feel free.

9 MS. BREWSTER: Thank you, Chairman.

10 Speaking of the winter storm and the quick
11 action of staff, there are a couple of staff that we want
12 to make sure that we publicly thank. Donny Ruemke, our
13 facilities manager -- despite the weather he was on site
14 and receiving and processing new vehicles that were
15 brought in the day the storm started.

16 And J.T. Moyer, he's our safety officer and
17 security coordinator. He was at Headquarters Building 1
18 at the start of the storm when the pipe burst, and his
19 quick action really saved us. He not only got the water
20 turned off to prevent further damage, but he also helped
21 address a similar problem at TxDOT's Building 6 when their
22 security team was unable to get a quick response from
23 their facilities team.

24 So his quick action really helped to minimize
25 the flooding that occurred on the first floor of Building

1 1. And these two gentlemen went above and beyond. We're
2 extremely appreciative of all of our team but we
3 specifically wanted to recognize these two for going above
4 and beyond with this unprecedented weather event.

5 So thank you very much for allowing me just a
6 minute to speak to that.

7 MR. TREVIÑO: Thank you very much for that
8 update, Executive Director Brewster. The winter storm was
9 a real challenge for the State of Texas, we cannot
10 minimize that. There was human tragedy all across the
11 state, but again, it's the story you're telling about
12 heroism.

13 You know, we expect our law enforcement and our
14 firefighters to be heroic and they are, and they serve us
15 every day, but sometimes they're overwhelmed. And what I
16 really take away from this natural disaster is just the
17 thousands of acts of selfless heroism and kindness that
18 Texans performed.

19 These are the ones we know about, but it's the
20 millions that we don't know about that just happened.
21 People just went out and did stuff to help all the people
22 who are charged with keeping us safe and protecting us.
23 That gives you some hope for the future. That gives you
24 some hope about who we are as a state and what we hold
25 dear and what we think is important, gives you courage.

1 So thank you very much for all your efforts and
2 thank you staff and the people that you mentioned for what
3 you did during that difficult and challenging time.

4 Okay. So with that, we move from the winter
5 storm to specialty license plates, not that there's any
6 correlation between the two.

7 Mr. Luna, are you ready to move us into agenda
8 item number 7?

9 MR. LUNA: Yes, sir, Chairman Treviño.

10 MR. TREVIÑO: You have some exciting stuff
11 today, so please.

12 MR. LUNA: Good morning, Chairman, board
13 members. I'm the director of the Vehicle Titles and
14 Registration Division. The action item before you is a
15 request from the Vehicle Titles and Registration Division
16 for board approval or denial in accordance with the
17 board's statutory authority.

18 The two plate designs submitted for your
19 consideration can be referenced on page 565 of your board
20 book. I would like to clarify agenda item 7.B is for a
21 new design and not a redesign, as previously listed. Both
22 plate designs are from the state's specialty license plate
23 marketing vendor, My Plates.

24 The first plate design from My Plates seeks
25 approval for the design and issuance of the Baylor

1 Bears --

2 MR. TREVIÑO: Mr. Luna, if I can interrupt just
3 one second. I apologize. If there's no objections, we'll
4 take both of these together in one motion if that's okay
5 with you. So please go through both, if that's all right.

6 Any objections?

7 (No response.)

8 MR. TREVIÑO: Great. Mr. Luna, go right
9 ahead. I apologize for the interruption.

10 MR. LUNA: Yes, sir. Not at all.

11 The first plate design is from My Plates who
12 seeks approval for the design and issuance of the Baylor
13 Bears crossover design plate proposed under Transportation
14 Code 504.6011 and 504.851. The department posted the
15 proposed design for public comment in February of 2021;
16 176 people liked this design and 98 did not.

17 The second plate, also from My Plates, seeks
18 approval for the design and issuance of a new Texas
19 Criminal Defense Lawyers Association plate proposed under
20 Transportation Code 504.851. The department posted the
21 proposed design for public comment in February of 2021;
22 133 people liked this design, 66 did not.

23 The agency requests your consideration for
24 approval of these plates. This concludes my presentation
25 for this agenda item, and I'm happy to take any questions

1 that you have, Chairman.

2 MR. TREVIÑO: Thank you, Mr. Luna, for the
3 presentation.

4 Do we have any questions from members for Mr.
5 Luna on the license plates?

6 (No response.)

7 MR. TREVIÑO: Hearing none, are there any
8 Baylor Bears out there that might like to make a motion to
9 approve these or deny these plates if they have an issue
10 with them? Anybody out there?

11 MR. GRAHAM: It's like the Brady Bunch, I see
12 Charles pointing at me on the screen and I'm looking over
13 here because I can't see him.

14 MR. BACARISSE: Sic 'em, Brett, sic 'em.

15 MR. GRAHAM: Sic 'em, that's right. Well, the
16 problem is I like the old plate better than the new plate.

17 MR. TREVIÑO: Well, you're welcome to deny
18 these plates if you don't like them.

19 (General laughter.)

20 MR. GRAHAM: Clearly more people appreciate the
21 new plate. I don't want to stand in the way of
22 progress. I make a motion to approve the new plates as
23 presented.

24 MR. TREVIÑO: Well, the chair thanks Member
25 Graham for putting his own personal feelings aside on this

1 one and going with the feelings of the citizens of
2 Texas. The chair recognizes and appreciates that.

3 Do we have a second on this motion?

4 MS. GILLMAN: I'll second.

5 MR. TREVIÑO: Okay. Member Gillman seconds
6 this. Great.

7 Any further discussion on the merits of these
8 plates?

9 MS. GILLMAN: I, for the record, like the first
10 design also, but I don't want to stand -- I like the
11 screaming bear but I don't want to stand in the way of
12 progress either for the great State of Texas.

13 MR. TREVIÑO: The selflessness of this board.
14 I'm sorry, did I hear a comment from another board member?

15 Member Ramirez.

16 MR. RAMIREZ: As a Horned Frog myself, I'm of
17 the opinion that we don't need any more Baylor Bears
18 plates out on the streets. This is representative of our
19 conference so I'm going to go along.

20 (General laughter.)

21 MR. TREVIÑO: Your comment is duly noted and
22 we're willing to explore a subcommittee to discuss this
23 issue further if you would like.

24 MR. GRAHAM: I think he said to approve both of
25 them, just keep them both. Is that what you said?

1 MR. RAMIREZ: Not by me.

2 MR. TREVIÑO: Okay. I'm losing control here,
3 we're losing control, but again, the selflessness of this
4 board in approving these even though they don't
5 particularly agree with them necessarily is awe-inspiring.

6 So with that, is there any further discussion?

7 (No response.)

8 MR. TREVIÑO: Hearing none, I would call for
9 the vote.

10 Member Bacarisse?

11 MR. BACARISSE: Aye.

12 MR. TREVIÑO: Member Gillman?

13 MS. GILLMAN: Aye.

14 MR. TREVIÑO: Member Graham?

15 MR. GRAHAM: Aye.

16 MR. TREVIÑO: Member McRae?

17 MS. McRAE: Aye.

18 MR. TREVIÑO: Member Ramirez?

19 MR. RAMIREZ: Aye.

20 MR. TREVIÑO: Member Scott?

21 MR. SCOTT: Aye.

22 MR. TREVIÑO: Member Prewitt is not with us
23 today, and I, Chairman Treviño, also vote aye on this
24 issue. Motion carries, both those plates are approved.

25 Thank you very much, Mr. Luna, for that great

1 presentation.

2 Okay. We will now move into agenda item 8
3 which is the legislative update with Ms. Caroline Love.

4 Caroline, are you with us?

5 MS. LOVE: I am. Good morning, Mr. Chairman
6 and members.

7 MR. TREVIÑO: Good morning, good morning. Good
8 to have you with us, as always.

9 MS. LOVE: Yes, it's great to be here. So as
10 mentioned before, we are in the middle of a legislative
11 session and so I have a briefing for you all today. The
12 memo that accompanies that can be found on page 570 of
13 your board books.

14 And we are 80 days into the 87th Legislative
15 Session, which means that we have 60 more to go. Yes,
16 yay. And there has been quite a bit of pick-up in
17 activity with the legislature these past few weeks, and
18 that momentum is certainly going to continue throughout
19 April. Once we hit mid-May, that will be when some of the
20 deadlines start kicking in of when legislation needs to be
21 considered before the deadlines of the final day for sine
22 die come on May 31. So we're kind of marching towards
23 that date.

24 And the main update that I wanted to provide to
25 the board today is on page 570. You'll see a list of all

1 the bills that have been filed that reflect the DMV board
2 recommendations. So there are kind of a little bit of
3 here-and-there components.

4 Some bills have several board recommendations
5 while others may have just one. But there's a summary
6 there of each of those, and then those are bills that my
7 team, and of course, the department are tracking very
8 closely for any activity.

9 And I am happy to say they are all set for
10 hearing next week. And that was my poor attempt at an
11 April Fool's joke, because it's not. I'm sorry, someone
12 had to do an April Fool's joke today, so I figured that
13 would be the kindest one to do.

14 (General laughter.)

15 MS. LOVE: But all joking aside, Senate Bill
16 15, which is by Senator Nichols, the Texas Consumer
17 Privacy Act Phase 1, does include the TxDMV board
18 recommendation that any records that are maintained by an
19 entity that's no longer eligible to receive that
20 information must be purged and they can no longer maintain
21 it. So that's a good sign, and there was a good hearing
22 on that yesterday.

23 A lot of the stakeholders that use our data to
24 help customers, they help through notifying customers when
25 there might be a recall on your vehicle or if your vehicle

1 has been towed, allowing those towing entities to get in
2 touch with you to help you get your vehicle back. Those
3 entities testified yesterday on the importance of that
4 information, and there is a Senate Committee substitute
5 that does factor in use for those types of purposes. So
6 it seems like the bill is moving along well and so there's
7 a lot of good activity and momentum behind that one.

8 And of course, as I mentioned, the month of
9 April will have a lot of hearings. Our team has been very
10 engaged with providing resource witness availability as
11 these bills are heard.

12 There are a lot of other bills, of course, that
13 would impact the agency, such as House Bill 1105 that
14 would expand the digital license plate program. Currently
15 it's applicable to commercial and government fleets, and
16 so that bill would open it up to any vehicle.

17 There is other legislation creating specialty
18 license plates, so you can have even more license plate
19 designs to consider in the future. And certainly we're
20 watching all of these and being available as we can to
21 help out.

22 So that is my briefing for today; nothing more
23 at the moment. I'm happy to answer any questions.

24 MR. TREVIÑO: Great. Thank you, Ms. Love.

25 Does anybody have any questions for Ms. Love on

1 her update, legislative update?

2 (No response.)

3 MR. TREVIÑO: Great. Hearing none.

4 MS. LOVE: Board Member Rodriguez (sic) looks
5 like he has.

6 MR. TREVIÑO: Board Member Ramirez.

7 MS. LOVE: Ramirez. I'm sorry.

8 MR. TREVIÑO: Board Member Ramirez, I'm sorry,
9 I can't see the images here. Please go ahead, you have
10 the floor.

11 MR. RAMIREZ: Caroline, thank you very much for
12 the briefing.

13 Were we consulted or asked about House Bill
14 2173? It's from Krause, who is seeking to, I guess, stop
15 the DMV's ability to collect fees for data that's
16 provided. Have we been asked about that?

17 MS. LOVE: So that bill was heard in the House
18 Transportation Committee on Tuesday this week. We did
19 reach out to the office to ensure they were aware that the
20 department would have a fiscal impact from that, and when
21 that fiscal note was completed by the LBB it reflected an
22 approximate \$2.5 million loss of revenue to the TxDMV
23 Fund. And so the office has been coordinating with us,
24 but during the discussion we were not called to provide
25 any resource testimony.

1 There was one witness for that bill. There was
2 a representative from LexisNexis who did discuss that the
3 information from TxDMV is likely not the cause of a lot of
4 the issues that we'll see in the media or hear about from
5 constituents of legislators.

6 He mentioned that the use of that information
7 is, again, trying to help customers and research and
8 things like that. But the DMV was not called as a
9 resource.

10 MR. RAMIREZ: Thank you very much, Caroline.

11 I think it's important to note that the
12 Transportation Code 730 -- regardless of whether or not
13 we're able to collect fees, we're still mandated by the
14 Transportation Code to release that data to serve
15 customers. So that bill would not have any impact on the
16 data that's out there, it would just stop the agency from
17 being able to collect fees to release that data. Am I
18 correct?

19 MS. LOVE: That is correct. That's our reading
20 of that bill as well. And interestingly, in the
21 discussions, particularly as Senator Nichols has been
22 talking about this issue, he has reminded members of the
23 legislature that agencies aren't just out there doing this
24 release of records on their own, that there are very
25 specific statutes that direct agencies to do this, and

1 those statutes do allow for that cost of recovery for
2 funds that are expended on the program to release that
3 information.

4 So we'll continue to monitor the progress of
5 that bill, but there are certainly a lot of moving parts
6 at the moment. So we'll keep the board informed on the
7 status of bills that make it through this process.

8 MR. TREVIÑO: Executive Director Brewster,
9 would you like to add anything to that?

10 MS. BREWSTER: Thank you, Chairman.

11 The bill that Member Ramirez brings up, I just
12 want to clarify that the revenue loss to the TxDMV Fund is
13 \$2.6 million annually. That is not a one-time loss, so
14 just wanted to make sure that that was clear to members.

15 Thank you.

16 MR. RAMIREZ: Thank you very much for the
17 clarification. Yeah, and in my fact-finding on
18 researching that bill too. It's just an important
19 clarification for the public also to know that this board
20 does not set policy to release any data, any user
21 data. That's all set by legislative statute, and we're
22 actually mandated by the Transportation Code to release
23 certain data to certain entities.

24 So this board does not set those policies, so
25 that's an important clarification, I believe.

1 MR. TREVIÑO: Member Ramirez, thank you very
2 much for bringing that up. This is a hot topic, cyber
3 risk in general is, and this specific issue is, but thank
4 you very much for bringing that up and helping clarify
5 that for the board members.

6 You know, this issue needs to be addressed.
7 And thanks for bringing it up and for the clarification
8 from Ms. Brewster and Ms. Love.

9 Any other questions on the legislative update?

10 (No response.)

11 MR. TREVIÑO: Hearing none, Caroline, I think
12 we're in good shape. Thank you very much for the
13 presentation and for all your hard work in a very fluid
14 environment.

15 MS. LOVE: Thank you. Well, have a good April
16 Fool's Day, everyone.

17 MR. TREVIÑO: Thank you.

18 General Counsel Beaver, do we have any public
19 comments?

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

22 Yes, we don't have a closed session so we're
23 not going to take up agenda items 9 and 10, so the next
24 agenda item is public comment. We do have a general
25 public commenter, and I did also want to note that we did

1 not have anybody registered to comment for any of the
2 other agenda items except for this agenda item number 11,
3 Public Comment.

4 And I did want to just let the board know that
5 under the Open Meetings Act the board cannot comment or
6 deliberate on any public comments that don't relate to an
7 item on the posted agenda, and that's because the public
8 would not have been on notice that the board might discuss
9 that subject.

10 And we do have one person who signed up for
11 public comment, and that is Bill Crocker. And Mr. Crocker
12 is an attendee, so when you're ready, Chairman, you can
13 queue him in for his comment.

14 MS. GILLMAN: Can I ask a question, Mr.
15 Chairman?

16 MR. TREVIÑO: Yes, Member Gillman. What?

17 MS. GILLMAN: Why is there no closed session
18 today?

19 MR. TREVIÑO: We have no issues that require a
20 closed session, so we don't have a closed session unless
21 there are issues -- and again, General Counsel, jump in
22 here if I'm wrong -- if there's no issues that need to be
23 addressed in a closed session, then we don't have a closed
24 session. Everything we discussed today is public
25 knowledge and part of the public record.

1 MS. GILLMAN: Okay. Thank you.

2 MR. TREVIÑO: General Counsel Beaver, would you
3 like to clarify that or has that pretty much got it?

4 MS. BEAVER: That was accurate. Thank you,
5 Chairman.

6 MR. TREVIÑO: We strive to be accurate. Thank
7 you.

8 And thank you very much, General Counsel
9 Beaver, for noting the closed session is not necessary and
10 the public comments skipped since we had none.

11 Okay. We'll now hear from Mr. Crocker. Mr.
12 Crocker, are you ready? Please raise your hand using the
13 instructions provided to you and please be mindful about
14 limiting any background noise.

15 Also, please state your name for the record and
16 if you are representing anyone. You will have three
17 minutes. You will be muted by the host after speaking for
18 three minutes.

19 General Counsel Beaver, will he be given the
20 one-minute noise as well?

21 MS. BEAVER: Yes. Staff will also do a
22 one-minute warning when there's -- two minutes have been
23 taken by public comment and then at the three-minute mark
24 when the time has run. Thank you.

25 MR. TREVIÑO: Terrific. Thank you.

1 Mr. Crocker, are you with us, you ready to go?

2 MR. CROCKER: Yes, sir.

3 MR. TREVIÑO: Mr. Crocker, welcome. Good to
4 have you here. Go right ahead when you're ready.

5 MR. CROCKER: Thank you, Chairman Treviño, and
6 thank you, members of the board. Thank you all very much
7 for allowing me to speak to you today, and thank you also,
8 all of you, for your service to the State of Texas.

9 I'm Bill Crocker, and Austin lawyer, and
10 represent only myself today.

11 The Texas Motor Vehicle Commission Code, the
12 predecessor of Chapter 28.301 of the Texas Occupations
13 Code, now administered by your Motor Vehicle Division, was
14 adopted by the Texas Legislature in 1971. The vote in the
15 Texas House was 145 to 5; the vote in the Texas Senate was
16 31 to nothing. A similar law has been adopted by every
17 other state in the Union without exception.

18 The core purpose of all those statutes was, and
19 still is, to protected franchised motor vehicle dealers
20 from abuse of the superior bargaining position the
21 franchising motor vehicle manufacturers have in the
22 dealer-manufacturer relationship.

23 You have extensive powers to enforce the
24 provisions and prohibitions of the law. You have an
25 Enforcement Division that regularly conducts

1 investigations after receiving complaints against licensed
2 dealers, as they should. Over the last several years I
3 have filed many complaints on behalf of dealers alleging
4 violations of the Texas statute by manufacturers. The
5 complaints have been and are being totally ignored by both
6 the Licensing Division and the Enforcement Division.

7 I kept trying to find out why your staff didn't
8 care whether or not manufacturers were violating the
9 law. Recently I was finally given a reason. I was told
10 it is because you haven't adopted a rule delegating the
11 authority for the staff to deal with complaints by dealers
12 against manufacturers.

13 The idea that such a rule is necessary is
14 highly questionable; the law is very clear. I am sure no
15 one ever told you that such a rule was necessary. In
16 fact, there is no such rule authorizing the investigations
17 of licensed dealers pursuant to the same statute.

18 The factories unilaterally change franchise
19 agreements, they refuse to repurchase vehicles and parts
20 when a franchise is terminated, they require dealers to
21 purchase unaltered vehicles or other goods, they require
22 expensive modifications of dealership facilities. They
23 even ignore the stay imposed by the statute you're
24 supposed to enforce when dealers protest the proposed
25 termination of their franchise. Those all are violations

1 of the law you are supposed to enforce, and there are
2 others, but your staff doesn't care or is not allowed to
3 care.

4 I urge you please direct your staff to start
5 enforcing the Texas law against manufacturers for their
6 illegal treatment of Texas dealers. And I'll be happy to
7 respond to any question that any member of the board may
8 have.

9 And thank you for the new Baylor plate, by the
10 way.

11 MR. TREVIÑO: Mr. Crocker, thank you very much
12 for your comments and for being with us today.

13 I don't think the board can ask questions
14 because this wasn't posted on the agenda. Is that
15 correct, General Counsel?

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

18 That is correct. Thank you, Chairman. But we
19 will definitely be reaching out to Mr. Crocker to continue
20 the conversation and follow up with board members as well.

21 MR. TREVIÑO: But this board does take public
22 comment seriously, Mr. Crocker, and we appreciate you
23 raising these issues.

24 Do we have any other commenters, General
25 Counsel?

1 MS. BEAVER: No other public commenters for
2 today. Thank you, Chairman.

3 MR. TREVIÑO: Terrific.

4 Do any of the board members have any additional
5 questions, perhaps around the closed session?

6 MS. GILLMAN: Well, I do have a comment for the
7 board to consider related to Mr. Crocker's assertions.

8 MR. TREVIÑO: Well, hold on a second. I'm not
9 sure we can discuss this issue since it's not a posted
10 item.

11 General Counsel?

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

14 That is correct, the board cannot comment or
15 deliberate on the public comment since it wasn't posted on
16 the agenda.

17 MR. TREVIÑO: On this specific public comment.

18 MS. GILLMAN: When is the appropriate time to
19 have discussion?

20 MR. TREVIÑO: I think the best way to address
21 this would be for staff to look into some of the questions
22 raised by Mr. Crocker, and then any of the board members
23 can raise the issue with staff offline at any time, and we
24 are looking forward to a substantive report in the future
25 on these issues.

1 MS. GILLMAN: I'll defer to Member Bacarisse.
2 What is your comment?

3 MR. BACARISSE: Member Gillman, I appreciate
4 your sentiment and would look forward to the chairman
5 directing staff to work with Mr. Crocker and then report
6 back to us at a future time on what we heard. That's
7 great, because we do want to take that comment very
8 seriously.

9 MS. GILLMAN: Is that possible, Mr. Chairman,
10 to have an expectation of a report back to us in a future
11 appropriate time?

12 MR. TREVIÑO: Member Gillman, I think I speak
13 for the board that this board takes public comment
14 seriously, whoever brings it, regardless of the issues
15 addressed that are brought up.

16 So in the past when people have brought
17 questions up in public comment, staff has been directed to
18 address them and to get an answer as to the merits of the
19 comments raised and report back to the board. I don't see
20 why this would be treated any differently, and I do
21 believe that there is the will among this board to discuss
22 issues raised today in the future if there's a need, and
23 would invite board members to raise those issues with
24 staff to perhaps post this on a future agenda, or if we
25 can address this in a different way then we will.

1 So, General Counsel Beaver, is that a fair
2 statement?

3 MS. BEAVER: Tracey Beaver, general counsel.

4 Yes, that's an accurate statement and we will
5 follow up with Mr. Crocker following this meeting. Thank
6 you.

7 MR. TREVIÑO: And just as in the past we have
8 looked into issues raised on movers and other concerns
9 that public commenters have raised.

10 MR. SCOTT: Mr. Chairman?

11 MR. TREVIÑO: Yes, Member Scott.

12 MR. SCOTT: I guess to follow up on Member
13 Gillman's comment, the question I have is -- we've had
14 something like this come up before -- how does a member of
15 the board actually get something put on the agenda? When
16 we have the meeting, and we get the agenda and it's all
17 prepared.

18 If we want to follow up on something like this,
19 what's the proper way to see to it that this gets on an
20 agenda so that it can be discussed?

21 MR. TREVIÑO: Okay. General Counsel Beaver,
22 would you like to address that, or would you like to issue
23 some kind of statement or document detailing that?

24 MS. BEAVER: Sure. Tracey Beaver, general
25 counsel.

1 Any board member may request that any item be
2 posted on the agenda, and it is the chairman's discretion
3 as to which items ultimately make it on the agenda. And
4 so we'll be happy, as we follow up with Mr. Crocker, as we
5 do with other public commenters that the board takes very
6 seriously, follow up with the board as to timing on a
7 future agenda and whether or not you would like to have it
8 on a future agenda.

9 MR. TREVIÑO: Great. So there definitely seems
10 to be a sense that this board is interested in the
11 subject, so we'll look forward to addressing this with
12 staff in the future. Okay?

13 Thank you, Member Scott, for raising that
14 question, and if there's other issues too besides this one
15 that you feel need to be addressed -- this one seems to
16 have struck a nerve, but if there are other ones that any
17 of our board members -- Member Ramirez, are very active in
18 our legislative process -- if anyone has any issues that
19 need to be addressed, please share them with our general
20 counsel. And General Counsel, please share any of those
21 with me as well. Okay?

22 MS. GILLMAN: Thank you, Mr. Chairman.

23 MR. TREVIÑO: My pleasure. Thank you for
24 raising the issue.

25 Any other comments or questions?

1 MS. BEAVER: There are no other public
2 comments. Tracey Beaver, for the record. Thank you,
3 Chairman.

4 MR. TREVIÑO: No more public comments. Thank
5 you very much, General Counsel Beaver.

6 So with that, it takes us to agenda item number
7 12, adjourning the meeting. Unless there's any further
8 business, if not, this chair would entertain a motion to
9 adjourn.

10 MR. RAMIREZ: I move.

11 MR. TREVIÑO: We have a motion. Do we have a
12 second?

13 MR. SCOTT: I second.

14 MS. GILLMAN: Second.

15 MR. TREVIÑO: Thank you for being so eager.

16 So now we'll call for the vote.

17 Member Bacarisse, would you like to stay or
18 should we adjourn?

19 MR. BACARISSE: Aye.

20 MR. TREVIÑO: Member Gillman, would you like to
21 go or stay?

22 MS. GILLMAN: Aye.

23 MR. TREVIÑO: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. TREVIÑO: Chairman Graham, I might add.

1 Member McRae?

2 MS. McRAE: Aye.

3 MR. TREVIÑO: Aye. And Member McRae,
4 congratulations again on receiving that great award on
5 your staff and your department's work there.

6 Member Prewitt is not at this meeting.

7 Member Ramirez?

8 MR. RAMIREZ: Aye.

9 MR. TREVIÑO: Member Scott?

10 MR. SCOTT: Aye.

11 MR. TREVIÑO: And I, Chairman Treviño, also
12 vote aye. This meeting stands adjourned.

13 Thank you everyone for your patience and your
14 good will and hard work on these issues.

15 See y'all soon. We stand adjourned.

16 (Whereupon, at 11:34 a.m., the meeting was
17 adjourned.)

C E R T I F I C A T E

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MEETING OF: TxDMV Board
LOCATION: via telephone conference call
DATE: April 1, 2021

I do hereby certify that the foregoing pages,
numbers 1 through 150, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Department of Motor Vehicles.

DATE: April 9, 2021

/s/ Nancy H. King
(Transcriber)

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