

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

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

Thursday,
October 1, 2020

BOARD MEMBERS:

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

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13.	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	165
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P R O C E E D I N G S

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

5 It is approximately 8:00 a.m. and I am now
6 calling the Board Meeting for October 1, 2020 to order. I
7 want to note for the record that the public notice of this
8 meeting, containing all items on the agenda, was filed
9 with the Office of Secretary of State on September 23,
10 2020.

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 of
16 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. Instead
21 the public may attend this meeting by using the link or by
22 calling the toll free telephone number, which are both
23 posted in our agenda which was filed with the Office of
24 Secretary of State on September 23, 2020.

25 All board members, including myself, will be

1 participating remotely via Webex. At this time, will
2 attendees please mute your phone for the entire duration
3 of this meeting?

4 I am asking our Webex meeting host to make sure
5 that all attendees' phones are muted and their video is
6 turned off, except for board members and those who are
7 presenting. Callers will be removed for any disruption
8 including background noise.

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

15 Department staff and any commenters should
16 identify themselves before speaking. Speak clearly.
17 Remember that there may be a slight delay due to the
18 telephone conference call meeting, so please wait a little
19 longer than usual before responding to participants.

20 Do not speak over others, and speakers should
21 ask the chairman to proceed and be sure to get recognized
22 before speaking. If you wish to address the board or
23 speak on an agenda item during today's meeting, please
24 send an email to GCO_general@TxDMV.gov.

25 Please identify in your email the specific item

1 you're interested in commenting on, your name and address,
2 and whether you are representing anyone or speaking for
3 yourself. If your comment does not pertain to a specific
4 agenda item, we will take your comment during the general
5 public comment portion of the meeting.

6 In accordance with department administrative
7 rule, comments to the board will be limited to three
8 minutes, then the call will be muted by the meeting host
9 when your time is up. Comments should be pertinent to the
10 issues stated in your email. When addressing the board,
11 please state your name and affiliation for the record.

12 Before I begin today, I'd like to remind all
13 presenters and those in attendance of the rules of conduct
14 at our board meetings. Under the department's rules under
15 Section 206.22, the board chair is given authority to
16 supervise the conduct of meetings.

17 This includes the authority of the chairman
18 when a speaker is being disruptive of the meeting or is
19 otherwise violating the timing or presentation rules I
20 just discussed. Disruptive speakers will be muted, given
21 a warning about disruptive behavior, and removed from the
22 meeting for any continued disruption.

23 We will now move to agenda item 1 which is roll
24 call and establishment of a quorum. And now I will call
25 the roll. Please respond verbally when I call your name.

1 Board Member Gillman, are you here?

2 MS. GILLMAN: Good morning.

3 MR. TREVIÑO: Good morning.

4 Member Graham?

5 MR. GRAHAM: Present.

6 MR. TREVIÑO: Member McRae.

7 MS. McRAE: Here.

8 MR. TREVIÑO: Member Prewitt?

9 MS. McRAE: Here.

10 MR. TREVIÑO: Member Scott?

11 MR. SCOTT: Here

12 MR. TREVIÑO: Member Washburn?

13 MS. WASHBURN: I'm here.

14 MR. TREVIÑO: And let the record reflect that

15 I, Memo Treviño, am also here, and we have a quorum.

16 Also, let the record reflect that Member Bacarisse is

17 absent today.

18 Now the Pledge of Allegiance and the Texas
19 Pledge. Before we begin, I ask that the board and other
20 panelists please turn off their audio and video except for
21 Jeremiah Kuntz. We will pause to give presenters and
22 board members a moment to turn off their audio and video.

23 We are very fortunate today to have Mr. Parker
24 Kuntz, member of Cub Scout Pack 333 and the son of
25 Jeremiah Kuntz, to lead us in the pledges of allegiance.

1 Please, once you have turned off your video and
2 audio, all stand and honor our country and state with the
3 pledges of allegiance.

4 Parker and Jeremiah, you ready to go?

5 (The Pledge of Allegiance and the Texas Pledge
6 were recited.)

7 MR. TREVIÑO: Jeremiah and Parker, thank you
8 very much again. Great job, as always. Well, well done.

9 It's the highlight of the meeting; it's all downhill from
10 here. Thank you very much, thank you very much.

11 PARKER KUNTZ: Bye.

12 MR. TREVIÑO: Bye. Thank you very much.

13 Okay. How do you follow that? That's just
14 amazing. Well done, Parker.

15 Okay. We're going to move to agenda item
16 number 3, the chair's report.

17 We're going to cover the proposed 2021 Board
18 Meeting schedule which may be found in your board books on
19 page 7. These dates are tentative but we wanted to make
20 this available for your planning purposes.

21 We typically meet the first Thursday of every
22 other month, which is reflected in the draft schedule. If
23 there is a change, we will notify everyone. As meeting
24 dates are confirmed, they will be posted on the department
25 website.

1 The only other thing I would add with the chair
2 report is I would like to congratulate Chair Scott for
3 running a very successful and productive Legislative and
4 Public Affairs Committee yesterday. So well done,
5 congratulations, and just expect great things from
6 Legislative and Public Affairs.

7 Members Scott, any comments?

8 MR. SCOTT: Mr. Chairman, thank you.

9 MR. TREVIÑO: My pleasure, my pleasure.

10 We'll now turn it over to Executive Director
11 Whitney Brewster for agenda item 4.

12 Director Brewster.

13 MS. BREWSTER: Thank you, Chairman Treviño.
14 And good morning, board members, staff and guests.

15 And congratulations to you, Chairman, on the
16 birth of your new granddaughter. What an exciting time
17 for you and your family and just wanted to congratulate
18 you on behalf of the department on the new addition.

19 MR. TREVIÑO: Thank you. Very kind of you.

20 MS. BREWSTER: For the record, Whitney
21 Brewster, executive director.

22 I appreciate the time to share a few things
23 with you this morning, the first being a standing item
24 that I include in all of my reports and that is an update
25 on the impacts of COVID-19 on TxDMV. Ms. Flores will be

1 giving an update in the meeting later on relating to the
2 revenue and expenditure impacts of COVID-19, so I won't
3 get into that here.

4 Just wanted to briefly share with you that we
5 remain steady providing all services to customers during
6 this time. All of our regional service centers remain
7 open by appointment to the public. All services are being
8 provided to our customers and stakeholders.

9 Internally I would say we've adjusted and we're
10 carrying on. Our cases of COVID-19 amongst our staff have
11 fortunately dropped considerably. We currently have one
12 member of our team that is currently recovering from
13 COVID-19.

14 One of the big focuses during COVID-19
15 internally has been on wellness. We have a great
16 committee that focuses and makes recommendations on ways
17 in which we can help keep our folks healthy, both mind and
18 body.

19 We've also continued on with our leadership
20 academy. We've shifted that to a virtual world and it's
21 still as popular as ever amongst our staff, fills up
22 within the first couple of hours of posting a class.

23 We're also looking at making significant
24 changes to our ongoing telecommuting policy as a result of
25 some of the things that we've learned during COVID-19, and

1 certainly, come to find out, we're actually pretty good at
2 telecommuting. And so we will continue to have a heavy
3 telecommuting presence I think even post COVID-19.
4 Currently we have about 30 percent of our employees
5 onsite, with 70 percent telecommuting.

6 As Governor Abbott has started opening up more
7 businesses due to the decline of COVID-19, so has TxDMV
8 started looking at bringing more of our folks back to the
9 office, starting with those that volunteer to come back.
10 And this is actually phase two of our reopening plan, and
11 we're looking at any changes to our facilities that we may
12 need to make as we have an identified list of volunteers
13 before we move into phase two. So the date for moving
14 into the next phase has not yet been determined, but we
15 will certainly share that with TxDMV staff and the board
16 as soon as we know that we can safely bring those
17 volunteers back.

18 Any questions from the board members before I
19 move on to the next item in my update?

20 MR. TREVIÑO: No. Go ahead.

21 MS. BREWSTER: All right. Thank you.

22 One of the things that we've also continued to
23 do is bring on employees, onboard new employees during
24 COVID-19. I know many of our board members have already
25 met him through our various meetings, but I want to

1 officially and publicly welcome Roland Luna as the new
2 director of the Motor Vehicle Division for our department.

3 He took on the role back on August 17th.

4 And just a little bit about Roland. He began
5 his service with the Texas Department of Public Safety as
6 a state trooper, and then was promoted into other
7 positions which include serving as, interestingly, an
8 agent on the protective detail for Governor Greg Abbott
9 who was then attorney general. Also has served as a
10 criminal investigations sergeant and lieutenant in
11 internal affairs.

12 He's also served in various director positions,
13 such as assistant chief with the Texas Alcoholic Beverage
14 Commission, deputy inspector general, and chief of
15 investigations for the Health and Human Services
16 Commission Office of the Inspector General, and chief
17 inspector general for the Texas Juvenile Justice
18 Department Office of the Inspector General where he
19 actually reported to the board. Prior to joining our
20 agency, he served as director of administration for the
21 Williamson County Judiciary.

22 He has a bachelor of business administration
23 from Sam Houston State University, and also a master's of
24 arts in legal studies from Texas State University. He is
25 certified in mediation and legal research, and holds a

1 commission on law enforcement, master peace officer
2 license, and he's also a certified inspector general.

3 So that was a mouthful. As you can see, Roland
4 has an extremely impressive resume, but also I want to
5 note that he has quickly adapted to our culture of
6 providing great customer service and support. And he's
7 already making a great impact in the Motor Vehicle
8 Division by just really getting up to speed on processes,
9 and working towards continuing and improving upon the good
10 work left by Daniel Avitia.

11 So I'm really happy that Roland has joined our
12 team, and please join me in welcoming Roland to the Texas
13 Department of Motor Vehicles.

14 MR. TREVIÑO: Roland, good to have you aboard.
15 Expect great things from you.

16 MS. BREWSTER: Last but certainly not least is
17 the recognition of years of service. At this time I'd
18 like to recognize our employees who have reached a state
19 service milestone. We celebrate these employees as a show
20 of appreciation for their years of service to the citizens
21 of Texas.

22 Chairman Treviño and board members, we will
23 first start with congratulating our first recipient who
24 has reached a 20-year state service milestone, and that's
25 Lori Ely from our Human Resources Division. Lori Ely

1 works in the Human Resources Division where she
2 coordinates new employee onboarding, employee benefits,
3 wellness and a variety of other tasks, including
4 coordinating this service recognition information for you
5 at each of our board meetings.

6 She started her state career at the State
7 Department of Human Services in 1997 and joined our
8 department in 2013 but left in 2015 to work at the State
9 Comptroller. She rejoined our team in the Human Resources
10 Division last November and has really been an excellent
11 addition to the team. She brings a strong customer
12 service commitment to her work every day and always tries
13 to go the extra mile to support all of TxDMV's employees.

14 On a personal note, she is eagerly looking
15 forward to her first grandchild in January. Her manager,
16 Matthew Levitt, looks forward to her next 20 years of
17 service at TxDMV, or at least for her not to leave until
18 after he retires.

19 So please join me in congratulating Lori on 20
20 years of state service.

21 (Applause.)

22 MS. BREWSTER: And Chairman, just a few others
23 that I would like to be able to mention. With 25 years of
24 state service we have John Poole, III with our Motor
25 Carrier Division, and Rachel Vasquez with our Vehicle

1 Titles and Registration Division in Austin. With 30
2 years, Lisa Conley with the Finance and Administrative
3 Services Division. And with 40 years, Rosario Villarreal
4 with the Motor Carrier Division. That's incredible. That
5 is a lot of years of service. And congratulations to our
6 recipients, what an enormous milestone.

7 And last but certainly not least, I did want to
8 mention our employees who have recently retired from the
9 department, and we miss them already: Ellen Blackwell of
10 the Motor Vehicle Division; Juanita Bustos from the
11 Vehicle Titles and Registration Division in San Antonio;
12 and Victoria Nichols of our Compliance and Investigations
13 Division.

14 With that, Mr. Chairman, members, that
15 completes my report.

16 MR. TREVIÑO: Thank you for all those team
17 members and for their service to the citizens of Texas and
18 just for their years of service. Thank you very much,
19 Whitney.

20 MS. BREWSTER: Thank you.

21 MR. TREVIÑO: Thank you to all the team members
22 that you listed there.

23 Any questions for Ms. Brewster?

24 (No response.)

25 MR. TREVIÑO: Okay. Hearing none, we'll move

1 on.

2 Our next item is a contested case. Before we
3 move on to the contested case presentations, we'll first
4 hear from our general counsel, Tracey Beaver. This is
5 Star Houston, Inc. d/b/a/ Star Motor Cars v. Volvo Motor
6 Cars of North America, LLC, briefing our contested case by
7 Roland Luna, Sr. later.

8 But Tracey, do you want to get us started here?

9 MS. BEAVER: Thank you, chairman, board
10 members, executive director. I'm Tracey Beaver, general
11 counsel, for the record.

12 I just wanted to let the board know that each
13 party to this case will have a total of 15 minutes for
14 their initial presentation and seven minutes for rebuttal.

15 A reminder will be given on the record before the end of
16 their presentation and rebuttal time. Upon conclusion of
17 the time allotted for presentation and rebuttal, staff
18 will state on the record that the allotted time has ended.

19 Additionally, the parties were given the
20 opportunity to provide electronic presentation aids, four
21 pages for their presentation and two pages for their
22 rebuttal, to be provided to the board prior to the board
23 meeting. The presentation aids for Star Motor may be
24 found in the board books beginning on page 300, and the
25 presentation aids for Volvo may be found in the board

1 books beginning on page 307.

2 I'd also like to remind board members and the
3 parties that the board's final decision must be based
4 solely on evidence contained within the administrative
5 record from SOAH, and that the board shall not consider
6 new information or re-litigate cases. The parties will
7 make sure their verbal presentations do not go to
8 information outside the record and may specify where in
9 the record the evidence may be found.

10 If a question from the board is asked, the
11 speaker will tell you when it's not in the record. And if
12 it's not in the record, you wouldn't be able to use it to
13 make a decision one way or the other anyway.

14 We will first begin with the Motor Vehicle
15 director, Mr. Luna, Sr., giving an overview of the case,
16 and then the parties will be promoted to panelists, upon
17 your cue, Chairman, to begin their presentation.

18 And that concludes my remarks. Thank you.

19 MR. TREVIÑO: Great. Thank you, Tracey.

20 I would ask counsel, if they could, at the one
21 minute mark to begin to wind down their presentation so
22 that we kind of stop at the 15-minute mark that's the
23 allotted time. That way it relieves me of the burden of
24 having to stop you mid-sentence, which I don't want to do.

25 But by the rules, that's what we're required to

1 do at the 15-minute mark is to stop the presentations in
2 fairness to both parties involved. So if you guys
3 would -- I know it's a difficult situation -- but do your
4 level best to please stop at the 15-minute mark if
5 possible -- well, stop at the 15-minute mark, let's just
6 leave it there.

7 Okay. Roland Luna, Sr. will now address agenda
8 item 5, contested case.

9 Roland.

10 MR. LUNA: Chairman, members, Ms. Brewster,
11 good morning. I am Roland Luna, Sr., director of the
12 Motor Vehicle Division. Michelle Lingo is also available.

13 Agenda item 5 is found on page 10 of your board
14 books. This protest termination case involves two TxDMV
15 license holders, a franchised dealership, Star Houston,
16 Inc. d/b/a Star Motor Cars, and a distributor, Volvo Cars
17 of North America, LLC.

18 The issue for board consideration is whether
19 Volvo established by preponderance of the evidence that
20 there is good cause for the proposed termination of the
21 party's franchise. A panel of two SOAH ALJs conducted a
22 hearing across seven days and then issued a proposal for
23 decision.

24 The ALJs found that Volvo met its burden of
25 proof that Volvo showed good cause for terminating the

1 franchise. The ALJs recommended the board deny Star's
2 protest.

3 The ALJs also considered Star's defenses and
4 counterclaims. The ALJs recommended the board grant no
5 relief to Star on its defenses or counterclaims. The ALJs
6 considered the parties' exceptions and reply briefs. The
7 ALJs' exceptions letter recommended minor changes to
8 findings of fact 63 and 201 to clarify any overstatement
9 of the degree to which Star's dealership is isolated from
10 other luxury auto dealerships.

11 The Occupations Code requires the board to
12 include a separate finding of fact for each specific issue
13 the board is required to consider in reaching its
14 decision. In determining whether Volvo established good
15 cause for the termination, Texas law requires the board to
16 consider: one, seven specific statutory factors; two, all
17 existing circumstances; and three, whether the termination
18 is based solely on the desire for market penetration.

19 Star is represented by David Coffey and Volvo
20 is represented by Brit Brown. The parties' attorneys
21 received notice of this meeting and are available.

22 Members, this concludes my remarks. Thank you.

23 MR. TREVIÑO: Thank you, Mr. Luna.

24 Are there any questions for Mr. Luna from board
25 members?

1 (No response.)

2 MR. TREVIÑO: Okay. Hearing none, so before we
3 proceed will the meeting host please move attendee Mr.
4 David Coffey to panelist so the video at his location can
5 be turned on? Mr. Coffey and Mr. Martin Alaniz are both
6 at the same location under this panelist's name and
7 represent Star Motor Company -- Star Motor Cars, excuse
8 me.

9 Will the meeting host please also move
10 attendees Mr. Brit Brown and Mr. Benjamin Escobar to
11 panelists so they can have their video on as well. Mr.
12 Brown and Mr. Escobar signed in individually and they
13 represent Volvo Cars of North America, LLC.

14 Tracey, could you just give us a heads up when
15 all that has been accomplished?

16 MS. BEAVER: I see that someone with the user
17 name "Ben" was promoted to panelist, just for purposes of
18 technology and location check only. Could the person
19 signed in under Ben please unmute themselves and turn on
20 the video. Just want to confirm that this is the correct
21 person, Mr. Escobar, to promote. Wonderful. Thank you.

22 And I see we also have Mr. Brown and Mr.
23 Coffey. Are there any other presenters that either party
24 needs to have promoted to panelist?

25 (No response.)

1 MS. BEAVER: Looks like we've got it covered.
2 Thank you, Chairman.

3 MR. TREVIÑO: Thank you, Tracey.

4 I ask that board members please hold their
5 questions to the end of the presentations and rebuttals by
6 both parties.

7 We will now proceed with complainant's
8 presentation by David Coffey and Martin Alaniz. You have
9 a total of 15 minutes to present. Out of respect for the
10 process and out of fairness to the parties, I ask that
11 you stick to your allotted 15 minutes.

12 Staff will give a one-minute warning, at which
13 time you will need to wrap up your presentation. Staff
14 will then state on the record when your 15 minutes has
15 ended.

16 Please be sure to stop your presentation at
17 that time so that the meeting host will not need to mute
18 the parties. Your time begins as soon as you unmute
19 yourself and start speaking.

20 Mr. Coffey, are you ready to go?

21 MR. COFFEY: I am ready to go, Mr. Chairman.
22 Thank you very much for having us.

23 MR. TREVIÑO: Welcome, Mr. Coffey.

24 MR. COFFEY: Thank you.

25 MR. TREVIÑO: Go right ahead. I think you can

1 start your presentation.

2 MR. COFFEY: Thank you, sir.

3 First of all, good morning, board members. My
4 name is David Coffey. I do represent Star Motor Cars. I
5 am attended with my partner, Martin Alaniz, here in our
6 offices today, as well as our clients, Glenn Seureau and
7 Lee Bureau, who have shown intense interest in this case
8 from the very beginning. And actually it's been going on
9 for years now and they haven't missed anything.

10 I would just add one thing to what Mr. Luna
11 said. He forgot to mention that Star Motor Cars did bring
12 counter complaints against Volvo in this proceeding and we
13 were awarded conclusions to the effect that the retail
14 bonus program, which we had challenged in this proceeding,
15 was found to be in violation of several code provisions.
16 Unfortunately, the SOAH decided that it would not penalize
17 Volvo, while at the same time allowing Volvo to terminate
18 Star Motor Cars when the evidence showed that the two
19 illegal programs had severely suppressed Star Motor Cars'
20 sales performance.

21 That is very unjust in our opinion and we are
22 vehemently opposed to this PFD. We are asking the board
23 to reject the PFD and to institute instead the proposed
24 order with findings of fact and conclusions of law that we
25 had included as appendix items to our exceptions to the

1 PFD.

2 Now, there are a number of grounds for
3 reversing this PFD. Your statute, the APA, says that you
4 can reverse a SOAH PFD in the event that it fails to
5 properly apply the law or fails to properly apply agency
6 policy. Both of those grounds for reversal are present in
7 this case.

8 The most glaring error, in our opinion, is that
9 this board is mandated by its statute, the Texas
10 Occupations Code, to put the interests of the consumer
11 first. In other words, you've got a number of competing
12 interests in this case, the consumer, the distributor and
13 the dealer, but the only thing the statute says in terms
14 of the mandate to the board is to protect the consumer.

15 You can see this, in fact, even in the board's
16 own mission statement -- I've got a copy of it right here.

17 It says, "About Us. The Texas Department of Motor
18 Vehicles is the dynamic state agency dedicated to customer
19 service, consumer protection, and the success of motor
20 vehicle related industries."

21 So I believe that this agency itself, much like
22 the agencies which preceded it, the MVB and the TMVC, all
23 considered themselves consumer protection agencies, as
24 they should. They do not elevate the interests of dealers
25 over that of the public, neither does this agency elevate

1 the distributor's interests over that of the public.

2 That, however, is exactly what happened in this
3 case, whether SOAH does not understand what this agency's
4 mission is and what its mandate is from the legislature.
5 But for whatever reason, the SOAH elevated the interests
6 of the distributor, that is the interest in achieving more
7 sales in the Houston market, over the interests of the
8 public with exemplary service and outstanding warranty,
9 which is what the SOAH found Star Motor Cars provided.

10 Also, the SOAH PFD ignores prior agency
11 precedent. Back in the 2002 time frame, Star Motor Cars,
12 along with a consortium of other dealers, brought a case
13 against Volvo for very, very similar retail bonus
14 programs. The agency director at that time, a Mr. Brett
15 Bray, determined that they violated the law and they could
16 not be implemented or enforced in the State of Texas.

17 We made that precedent available to the SOAH
18 ALJs. They ignored it completely, didn't even mention it
19 in their PFD. But Volvo has, in fact, 14 years after that
20 decision brought additional retail bonus programs into
21 this state virtually identical in that they all contain
22 the same components, two of which the SOAH found to be
23 unlawful in the State of Texas.

24 Nevertheless, sadly, SOAH decided to implement
25 and enforce those unlawful programs by allowing them to

1 suppress Star's sales performance and then determined that
2 Star Motor Cars was at fault, did not sell enough cars for
3 Volvo, and thus should be terminated.

4 The only other ground for termination that was
5 noticed in this case against Star Motor Cars was the
6 facility. The facility is an older facility, granted, but
7 it's perfectly usable, perfectly functional. We
8 demonstrated that it has ample capacity.

9 It's well kept. Its personnel are well
10 trained. They have all the special tools and parts and
11 everything that Volvo requires. The only thing that Volvo
12 could point to as a deficiency in this facility was the
13 fact that it didn't carry the new Volvo image, which it
14 wanted in all of its facilities throughout the country,
15 throughout North America.

16 Now, we have to really get into the weeds on
17 this why Star Motor Cars did not build a new facility.
18 Frankly, it tried. The evidence showed that Star Motor
19 Cars went to great effort to get Volvo to assist it in
20 coming up with some sort of plan by which this older
21 facility, which is solid steel and concrete, could be
22 adapted to the new image.

23 Volvo just ignored Star Motor Cars pleas and
24 basically just let Star Motor Cars wither on the vine
25 until it got to the point where they felt they could bring

1 the notice of termination against Star Motor Cars.
2 Totally unjust.

3 So when we got to that point in the case -- and
4 remember, we have been fighting the fact that they claimed
5 there was something wrong with the facility, it wasn't
6 good enough for Volvo, whatever, never mentioned anything
7 about the location. The location of that facility had
8 actually been chosen by Volvo when it first entered into
9 the Houston market. It chose that location off I-10 and
10 on Old Katy Road near the communities of River Oaks and
11 Tanglewood.

12 They chose it. Star Motor Cars bought into
13 that by buying the facility from its distributor of the
14 time, a Mr. Neil Seffeld [phonetic] -- I believe his name
15 is pronounced -- bought it from him, continued to maintain
16 that facility in that location all along.

17 Now I want to take you through a couple of my
18 exhibits in this case. First we have slide number 1 on
19 page 1 of our production. These are the conclusion of law
20 by which the SOAH itself found that Volvo's CSI and SSI
21 bonus programs violated several code provisions.

22 Then it goes on in slide numbers 2 and 3 to
23 laud Star Motor Cars on how good its facility was in terms
24 of competence, ability to serve the public, excellent
25 warranty work, but then it goes over here on slide 2, PFD

1 page 82, and says, No, I guess we were wrong, Star Motor
2 Cars' facility is inadequate and that weighs in favor of
3 termination.

4 Well, the way they got to that so-called
5 inadequacy is they came up with this ridiculous argument
6 that if Star Motor Cars would achieve sales effectiveness
7 in its market, it would have so much more service business
8 to work on that its facility would not be adequate. It
9 would no longer have the capacity.

10 So one of the grounds for termination is that
11 at some point in the future, according to Volvo's metrics,
12 Star Motor Cars' facility might not have the capacity to
13 handle all the business available to it. It is
14 ridiculous. It is pure speculation. They did not prove
15 up the efficacy of the metrics by which they arrived at
16 that conclusion, SOAH just bought into it because it was
17 glossy and slick and they thought Volvo, I guess, should
18 win.

19 Now I'm going to have to have to skip through
20 some of my stuff here over to -- well, let's go to slide 7
21 real quickly. These are the bonuses that were paid out in
22 the Houston market over the three-year period for which we
23 have data. You can see that Star Motor Cars, on the
24 bottom lines, achieved bonuses of only \$140,274, whereas,
25 other dealers in the market achieved bonuses as high as

1 \$990- and \$982-. This was strictly a result of the fact
2 that they had new or remodeled facilities and the CSI/SSI
3 bonus questions -- which were found to be unlawful --
4 those questions accentuated whether or not the dealer had
5 a facility which portrayed the glossy image that Volvo
6 wanted. Since Star Motor Cars did not, it lost out in the
7 bonus game which means that it lost out in the competitive
8 equation in Houston.

9 The way these things work is that bonuses are
10 essentially additional margin that are attributable to
11 sales that a dealer makes if in fact it achieves the bonus
12 criteria. So Star Motor Cars did not have this additional
13 margin to apply towards retail prices -- it's called
14 trading margin -- did not have the additional margin to
15 apply towards retail prices. It could not lower its
16 retail prices as low as some of the other dealers with
17 which it was competing, and slowly over a period of time
18 it became marginalized to a point where Volvo felt that
19 they could terminate Star Motor Cars.

20 So let me skip real quickly to the last couple
21 of slides, and these are slides 8, 9 and 10. You'll
22 recall that we talked about Star Motor Cars' facility.
23 Well, Star Motor Cars saw that it was in a losing game,
24 that Volvo was not going to assist it in adjusting its
25 existing facility, so Star proposed that it build a new

1 facility for Volvo.

2 You can see the new facility at slide 8 in our
3 packet. This is the facility that Volvo's engineers and
4 designers said that Star Motor Cars must build if it wants
5 to comply with the facility requirements of the contract
6 that Volvo claims is at issue here. It isn't the best
7 site issue.

8 So then we go on to slides 9 and 10. This is
9 where Volvo rejects Star Motor Cars' proposed facility.
10 And I don't have time to take you through each line, but
11 basically it's saying, No, Star Motor Cars, we're not
12 going to let you build that big expensive facility because
13 your location will not support it. Your location will not
14 produce the 500 new vehicles per year necessary to support
15 that facility.

16 So now we find out at the end of the case it's
17 not the facility that's the problem, it's the location, a
18 location that Volvo itself chose and which Star Motor Cars
19 bought into. So now they're saying, No, we're going to
20 terminate you because you -- essentially because you do
21 not have a location out on the highway where you make more
22 sales, the amount of sales that we want a Volvo dealer to
23 make, otherwise, you're not worth our time.

24 MS. BEAVER: You have one minute remaining.

25 MR. COFFEY: Thank you. I will conclude my

1 presentation at this time, and ask the board members if
2 they have any questions.

3 MR. TREVIÑO: Thank you, Mr. Coffey.

4 Does anybody have any questions?

5 MR. GRAHAM: Memo, this is Board Member Graham.
6 I do have some questions.

7 MR. TREVIÑO: Okay. Go ahead, Member Graham.

8 MR. GRAHAM: Thank you.

9 MR. TREVIÑO: Actually, Member Graham, why
10 don't we go through the presentations and then we can
11 address because maybe --

12 MR. GRAHAM: That's fine.

13 MR. TREVIÑO: So why don't we do that? We'll
14 just go through the presentations and then we'll ask for
15 questions at the end. Is that okay with you?

16 MR. GRAHAM: Absolutely, yes, sir.

17 MR. TREVIÑO: Mr. Coffey, is that all right
18 with you, we'll just kind of roll through both
19 presentations?

20 MR. COFFEY: That's fine, Mr. Chairman.

21 MR. TREVIÑO: Okay. We'll do that then.

22 All right. We'll now proceed with the
23 respondent's presentation by Mr. Brit Brown and Mr.
24 Benjamin Escobar.

25 You have 15 minutes to present. Out of respect

1 for the process and fairness to the parties, I ask that
2 you stick to your allotted 15 minutes.

3 Staff will give a one-minute warning at which
4 time you will need to wrap up your presentation. Staff
5 will then state on the record when your 15 minutes has
6 ended.

7 Please be sure to stop your presentation at
8 that time so that the meeting host will not need to mute
9 the parties. Your time begins as soon as you unmute
10 yourself and start speaking.

11 Mr. Brown, are you with us?

12 MR. BROWN: Yes, sir. Can you hear me?

13 MR. TREVIÑO: Yes, I can, and I can see you.

14 Welcome.

15 MR. BROWN: Mr. Chairman, may I proceed?

16 MR. TREVIÑO: Please. Please do, Mr. Brown.

17 Welcome.

18 MR. BROWN: All right. Thank you, sir.

19 I understand time is pretty limited so I'm
20 going to kind of jump into it. As was introduced at the
21 beginning, we've also provided some presentation aids at
22 the eBook page number 307 to 312. I might not reference
23 those at all except maybe to address some questions.

24 I'm going to focus my presentation on the
25 proposal for decision, which is at the eBook number page

1 15 through 155. This was a 140 page proposal for decision
2 with extensive evidentiary references. It has 243
3 findings of fact and 24 conclusions of law, and it has in
4 an overwhelming sense established and recommended findings
5 that Volvo: one, complied with its duty of good faith and
6 fair dealing to the dealer; two, acted with reasonable --
7 or upon reasonable judgment; and three, met its burden of
8 proving good cause for termination.

9 In that analysis which I'll discuss -- which
10 wouldn't be till later if I have time -- the ALJs, the
11 judges, there were two of them, referred specifically to
12 the Texas Administrative Code -- or Occupations Code --
13 sorry -- Section 2301.455(a). That's the seven factors
14 that were referenced earlier that the board is required to
15 take into account or to consider when determining whether
16 good cause exists. It's not our burden to establish each
17 of the seven. Any one of the seven can establish good
18 cause for termination, but it's seven factors to consider.

19 The proposal for decision finds and supports
20 with over a hundred specific findings of fact in the
21 proposal for decision that six of the seven clearly
22 support a finding of good cause for termination. The
23 seventh, which Mr. Coffey discussed briefly, frankly, we
24 did not contest, and I'll talk about that in more detail
25 because I think there may be confusion on that and that

1 goes with warranty.

2 But six of the seven -- and we only need to
3 show one -- six of the seven support a finding of good
4 cause for termination. What they also found was that our
5 motivations were not solely for the increase of market
6 share -- which is one of the items also in the statute --
7 so in other words, we passed that test also.

8 Briefly, for the time I have I want to talk
9 about the relationship between Star and Volvo. The dealer
10 agreement that the parties are operating under is from
11 1970. Now, since 1970, 50 years ago, Volvo, of course, as
12 every other manufacturer has, periodically comes out with
13 new dealer agreements that are more current to the times,
14 more contemporary in form.

15 Star Motor refused to sign any other agreement.

16 They're the only dealer that refused to sign, so we're
17 operating under that agreement. There's no dispute there;
18 that's the agreement we have, and that's the one
19 referenced by the ALJs.

20 The agreement is not the only thing that
21 remained unchanged for 50 years. Star Motors is in the
22 same location. Location has been discussed with Star
23 Motors, and there's plenty of evidence in the record about
24 discussions that were had, not only by Volvo to Star
25 management but also by Star personnel, about the location.

1 When it was formed, and still at the time, they're on the
2 Old Katy Freeway.

3 In 1970 it was not the Old Katy Freeway in
4 Houston, it was the Katy Freeway, and that was a pretty
5 high trafficked area. It was right on the major
6 thoroughfare. But Houston, as most cities in Texas, has
7 dramatically changed in the last 50 years.

8 Now the Old Katy Freeway, which is the road
9 frontage of their facility, is no longer on the major
10 thoroughfare, it's a very low trafficked venue. You can
11 easily cross the street walking it, you don't have to
12 worry about getting run over.

13 The high traffic thoroughfare going east-west
14 through Houston is Interstate 10. Every dealer in the
15 Houston market, every dealer in Texas in the south market,
16 in the southern region, and frankly, most in the country,
17 are on major thoroughfares. Star is not and has not been
18 since I-10 took over the major load of the traffic.

19 Now, if you're driving westbound or eastbound
20 on I-10, you cannot see Star. You cannot see the
21 buildings, you cannot see the signage. That's pretty
22 significant both to Volvo and also to Star personnel. It
23 doesn't have, as the Star expert witness, Ted Stockton
24 with the Fontana Group, testified -- it does not have,
25 using his term, the billboard effect, and because of that

1 it will always be a low-volume niche player.

2 What did he mean by billboard effect? You
3 don't have in the situation in Houston tens or hundreds of
4 thousands of commuters driving by your dealership every
5 day, seeing your business, seeing the product and running
6 traffic through your store. In this case it's out of the
7 way, it's not seen, and frankly, is not known about.

8 Now, the sales manager, Al Velasco. This is
9 the Star sales manager who testified in both deposition
10 and at the final hearing. He's referenced throughout the
11 proposal for decision and he had several very significant
12 statements that the ALJs, and frankly, Volvo took as being
13 quite relevant.

14 To give a little background for Mr. Velasco.
15 Before he became the sales manager at Star, he was a
16 salesman, a Volvo salesman working with Westside Volvo,
17 also on I-10, also in Houston a few miles down the road
18 off roughly Dairy-Ashford and I-10 is where he was located
19 at the time. He did a good job, he won some awards. I
20 think he said he averaged about eight cars a month, he
21 sold some pretty good product, just that one salesperson.

22
23 He was asked: When you were a salesman at
24 Westside Volvo, after having lived in Houston for several
25 years, did you consider Star to be a competitor? He said,

1 No, I did not even know about Star. This is a man that's
2 lived in Houston for many years, worked as a Volvo
3 salesperson at a Volvo dealership, did not even know Star
4 existed. He knew the other Houston dealerships, he knew
5 Texas dealerships, did not know about Star.

6 Now, in addition to that, he was asked at one
7 point: You've got lots of problems, right, you've got
8 lots of problems with this dealership?

9 And by the way, Mr. Chairman, these are facts
10 that are specifically stated in the proposal for decision,
11 not just in the record but they're in the PFD.

12 But he was asked: What do you really need to
13 overcome all your inadequacies, all your holes to sell
14 more vehicles? He responded -- and this is in the PFD: I
15 could sell 20 to 25 cars eyes closed if I had what I want.

16 The obvious question: What do you want? More
17 advertising. Why? Because no one knows that we're here.

18 Now, his advertising budget had been slashed in
19 2017-2018 -- the trial of the case or the final hearing
20 was in 2018 in September -- and that had an impact on him.

21 He even testified that his immediate area has a great
22 demographic for selling Volvos or other premium
23 vehicles -- and I'll talk about that in just a second --
24 but he said, Even right next door -- and he was talking
25 about the high-end condos that were in the neighborhood

1 adjacent to the dealership -- don't even know that we're
2 here, and there's a reason for it.

3 But going on to their AOR, area of
4 responsibility, their market area -- different
5 manufacturers call them different things, all of them have
6 a similar concept -- the Star AOR, dead center Houston,
7 Texas, is the highest volume AOR in the Houston market.
8 There's six dealers -- or were at the time -- dealers in
9 Houston.

10 The Star AOR has the highest volume and that's
11 based on registrations and a percentage of your
12 competitive mix. It's also the third highest in the State
13 of Texas. It's one of the highest in the southern region,
14 and despite that, going back for not just a year or two or
15 five but in fact decades, Star has been significantly an
16 under-performer.

17 Now, we had evidence that was presented by men
18 like Sandy Seidman, who had known Star for many years. He
19 retired right before the final hearing but he testified at
20 the hearing. Also, Bill De Winne, who had been working at
21 the time of the hearing, been working with Star for over
22 19 years.

23 This was a problem that had gone back for many
24 years. Now testifying about where they stood, regardless
25 of the metrics that's being used, be it sales

1 effectiveness, market penetration or sales proportion,
2 each of those metrics they were last in the Houston
3 market, the Texas market, the south market, the southern
4 region, and yes, the national market.

5 You'll see references that the ALJs cite. They
6 use various years for reference, focusing on 2012 to 2018,
7 year-to-date 2018, they were last. In 2012 you had 304
8 dealers; they were 304 out of 304.

9 And then the number of dealers went down and
10 started to come back up when Volvo started having a
11 renaissance and very, very heavy sales in '16 and '17,
12 going into '18, and they were still last, 281 out of 281.

13 Why? It's not just the location, but the location makes
14 a big difference. It's other inadequacies in their
15 personal decisions or business decisions on not to invest.

16 The record is replete. The ALJs cite the
17 testimony -- they give the transcript page line on where
18 it comes from -- from Mr. Seureau, the owner, dealer and
19 principal of Star Motors, of their sales manager, Al
20 Velasco, of their service manager, Rodney Bunch. There
21 was a systemic, or what they called a longstanding
22 reluctance, or in other places in the PFD, outright
23 refusal to make investments in the business, not just
24 investments in cash but also time and effort.

25 And this goes all the way back. This is why

1 you still have a facility that has not undergone any
2 capital improvements since 1950. It's a cinder block,
3 single story, small showroom facility that the sales
4 manager and service manager both admit and readily state
5 that it's a turnoff. It doesn't look like a premium
6 experience and it's not good or conducive to getting
7 customers into our shop.

8 Al Velasco, again testimony that was cited in
9 the record -- in the PFD, he testified that, one, very few
10 people know we're here, we have very small traffic, but
11 even of those people that know we're here or see us, he
12 estimated 75 percent -- his testimony -- 75 percent will
13 be turned off by the appearance and not even come in -- 75
14 percent, and of the 25 percent that come in they have
15 other problems that can't close the deal.

16 This is a dealer of very high planning volume,
17 very high potential and sells -- I think even one of the
18 demonstratives that Mr. Coffey put in showed two of the
19 years like 29 or 30 per year. One year they did
20 relatively good. It was around 70, that was good for
21 them. The planning volume was close to 400. They just
22 haven't gotten it done.

23 What else have they had? It's just a
24 stubbornness and a refusal to invest in your own business,
25 a failure to recognize you have to spend money to make

1 money. The sign that stands out front is a sign that has
2 not been built since the 1970s. It's called the old Volvo
3 hockey stick. No other dealer has those in front of their
4 signs, it's not compliant.

5 They have refused to buy a new sign when
6 offered to sell, they refused to lease the new sign. They
7 turned down a \$45 a month maintenance fee on the sign that
8 Volvo was going to provide. That's in the PFD.

9 They also refused to pay \$250 a month for
10 inventory management system that every other dealer has
11 implemented. By the way, no other dealer in the country
12 has the old hockey stick signage, it's way out of date.
13 Even the sign on the front of their building -- there's
14 testimony that people have not seen those signs on a Volvo
15 store for 20-30 years, talking about on the face of the
16 building.

17 But going to the inventory management system,
18 which every dealer embraces, it helps you manage your
19 inventory, not buy too much and get rid of it when it's
20 too old and get paid back by the manufacturer when you
21 return it. Well, it cost \$45 [sic] a month.

22 Star has never participated in that, and Star
23 loses a lot of money on its inventory management by
24 overbuying inventory, not returning until it's too old and
25 can't be returned, and they lose the money. Now, that's

1 just one of many examples that's in this 140-page PFD of
2 bad business decisions that cost them money.

3 They have not been profitable. As the ALJs
4 state in the PFD, Mr. Seureau was asked: Over the last
5 ten years -- ten years prior to his testimony in 2018 --
6 do you recall ever being profitable? He could not recall
7 if they had profitable any one year of those last ten
8 years. And sir, that's even with what is clearly a low
9 cost provider.

10 Mr. Seureau owns the land. He's only recently
11 charged rent to the occupants -- he has four brands -- and
12 he charges them \$2,500 a month which is so grossly under
13 market it's like paying nothing for rent. They pay their
14 salespeople \$2,000 or \$2,500 a month. They cut their
15 advertising budget, they cut everything needed to have a
16 good experience and a good product for the consumer, for
17 the brand, for themselves to generate a profit, and
18 they've not been willing to.

19 MS. BEAVER: You have one minute left.

20 MR. BROWN: Thank you very much.

21 In the last minute -- and I will cut it short,
22 Mr. Chairman -- we had them on a Volvo retailer
23 improvement program, which doesn't cost them anything,
24 costs us a lot. They didn't cooperate, no improvements
25 over many years.

1 We filed notice of termination in February of
2 2016, we went to the final hearing in September of 2018,
3 eight live witnesses over two weeks, 300-plus exhibits, a
4 lot of time, a PFD that gave the rulings I mentioned
5 earlier, and I'll talk more in my rebuttal.

6 Sir, thank you very much.

7 MR. TREVIÑO: Mr. Brown, thank you for your
8 presentation.

9 Mr. Coffey, Mr. Brown, I'd like to thank you
10 both for staying within your allotted time.

11 Now each party will have seven minutes for
12 rebuttal. First we will hear from Mr. Coffey and Mr.
13 Alaniz for the complainant. Again, you'll have seven
14 minutes to speak and staff will say one-minute notice and
15 a notice when your time ends. Time begins as soon as you
16 unmute yourself and start speaking.

17 And Mr. Coffey, you're up.

18 MR. COFFEY: Thank you.

19 Before I respond to all of Mr. Brown's points,
20 I want to bring up a couple of things about their
21 exhibits.

22 Page 1 of their exhibits shows -- or purports
23 to show a red circle around Star Motor Cars. That is not
24 Star Motor Cars, I don't know what they're trying to do
25 there by circling the facility across the street which is

1 an entirely different dealership than we have. But our
2 facility is on the opposite side of Old Katy Road from the
3 red-circled dealership.

4 That is the Star Motor Cars campus right there.

5 It starts with several sports car brands, then Volvo,
6 then Mercedes Benz, and to the right of that campus you
7 will see some additional unused acreage. That is where we
8 proposed to put the new Volvo facility which I showed you
9 in slide 8. Volvo calls that a relocation, so in slides 9
10 and 10 where you see Volvo talking about a relocation,
11 they're talking about relocating Volvo two doors down to
12 some vacant property next to Mercedes Benz.

13 The second thing I want to comment on is the
14 page 2, it shows the write-up desk in the service facility
15 and you can see that there's some splotches on the floor.

16 Well, by the time we got to trial, all of that had been
17 repainted, resealed and was no longer in that condition,
18 so why they chose an old photo of that facility is
19 obvious, but they shouldn't have done that.

20 Let's go on to some of the points that Mr.
21 Brown made.

22 He says that six of the seven statutory
23 criteria, they only need to achieve one of those statutory
24 criteria and they've got a good termination. Well, that
25 would be true if it wasn't for the board's mandate to

1 protect the consumer.

2 That is the overriding consideration. You
3 don't just sit around and juggle the three of the seven
4 statutory criteria and say, Oh, in our opinion sales
5 performance is more important over any of these other
6 things. No. The consumer interests is the most
7 important.

8 Now, ask yourself what is more important to the
9 consumer: is it close-in, high quality service and
10 warranty or is it the factory getting more sales out on a
11 highway someplace removed from your community? I think
12 the answer to that question is obvious. SOAH didn't see
13 it that way, they saw sales performance as the most
14 important thing and that's why Star Motor Cars is in
15 danger of losing its license.

16 The old dealer agreement, Mr. Brown mentioned
17 that. Yes, Star Motor Cars did stay under its old dealer
18 agreement, which it is entitled to do under the Texas
19 Occupations Code. If Volvo doesn't like that, they can
20 bring a proceeding under that same code to remove Star
21 from its old dealer agreement and put it under their new
22 dealer agreement, each iteration of which, of course, is
23 harder and tougher on the dealer than the one before which
24 is why Star stayed under the old dealer agreement.

25 Star's advertising. I want to read you

1 something from the PFD -- I'm sorry -- our exceptions to
2 the PFD, and it cites to the record, that's why I'm using
3 this. They complained that Star Motor Cars is not
4 visible. Well, Star Motor Cars spends millions of dollars
5 a year to make itself visible to the consumer.

6 Star recognizes that it is off the major
7 highway so it doesn't have the billboard effect of
8 thousands and thousands of cars going by every day, so
9 Star spends a fortune on advertising. Here's what the
10 exhibits show in the record. Exhibits P-171 through 174
11 show that Star outspent every other Houston dealer by
12 several hundred dollars per new vehicle sold in
13 advertising.

14 Star spends the money but it cannot overcome
15 the limitations of the sale performance program. You can
16 spend all the money in the world on advertising. It
17 doesn't help you a bit if you can't offer the same retail
18 price to the customer because you are out-bonused by one
19 of these phony programs that awards dealers additional
20 bonus because they have a new facility which caters to
21 Volvo's vanity, its corporate vanity, but doesn't do the
22 consumer a darn bit of good. Those are some of the
23 dynamics that are playing out in this case.

24 Lack of investment, refusal to invest. You saw
25 the facility that Star Motor Cars proposed that it build.

1 Yes, it took them a while to get to that point because
2 they were hoping that Volvo would work with them and help
3 them remodel their existing facility. That didn't happen
4 so Star said, Look, we will spend \$16 million to put a new
5 facility on this patch of ground that we own next to our
6 campus.

7 They refused that not because it wasn't a good
8 facility -- it was their design -- it was because they
9 wanted Star Motor Cars, or whoever replaces Star, out on
10 I-10 or one of the other freeways where you can get the
11 huge traffic volume moving past the dealership and getting
12 that billboard effect. It was all about what can you do
13 for Volvo, it wasn't about what we can do for the
14 consumer, it was all about how much more money --

15 MS. BEAVER: You have one minute remaining.

16 MR. COFFEY: Thank you -- how much more money
17 can you make for us by selling more cars.

18 This is the most perverted PFD I have ever
19 seen. The only thing I can say about SOAH producing a PFD
20 like this, knowing what they knew, is that they simply
21 didn't understand the board's mission. They didn't
22 understand the board's mission statement to take care of
23 the consumer over the interests of anybody else, including
24 the almighty distributor.

25 So we are absolutely opposed to this PFD, we

1 will fight it every step of the way as far as it takes,
2 and Volvo has done an unjust thing by attempting to
3 terminate its oldest dealer in the State of Texas from the
4 location that it, in fact, chose just because Volvo wanted
5 another dealer out on the highway rather than on Old Katy
6 Road. And we again urge you board members to reject this
7 PFD and --

8 MS. BEAVER: Your seven minutes are over.

9 MR. COFFEY: Thank you.

10 MR. TREVIÑO: Thank you.

11 We will now hear from Mr. Brit Brown and Mr.
12 Benjamin Escobar for the respondent. Again, you will have
13 seven minutes to speak and staff will state on the record
14 a one-minute notice and a notice when your time ends.
15 Time begins as soon as you unmute yourself and start
16 speaking.

17 Mr. Brown, are you ready to go?

18 MR. BROWN: Yes, sir.

19 MR. TREVIÑO: Yes, sir, Mr. Brown, you can
20 start now.

21 MR. BROWN: Thank you.

22 First, a point that Mr. Coffey made which
23 totally agree and I apologize. The photograph does have
24 the wrong circle, and when the circle was superimposed on
25 the photograph -- and we, frankly, just noticed this -- it

1 slipped down. Actually where the circle is mistakenly
2 shows Star closer to the freeway than they are. Star is
3 on the other side of the Old Katy Freeway, further away
4 from I-10. It's even worse than what my demonstrative
5 shows, but my demonstrative is wrong and I correctly stand
6 corrected by Mr. Coffey.

7 Some other photographs, frankly, these
8 photographs that were submitted were all admitted into the
9 record, I think, without objection. Some of the
10 photographs that we did not submit that maybe we should
11 have to give an idea is the new customer lounge, I think,
12 was just started like a year or so, maybe two before the
13 final hearing. The customer lounge is an interior --

14 MR. COFFEY: I'm going to have to object to
15 bringing in any new evidence that they did not bother to
16 include in the record of the proceeding. I believe the
17 very first thing that the board told us this morning
18 was -- or Ms. Brewster perhaps told us, or maybe Ms.
19 Beaver told us that there will be no new evidence
20 considered by the board.

21 If the board is going to consider new evidence,
22 then I want to open up the proceedings right now because
23 we have a lot of new evidence about the pandemic which has
24 reduced jobs in this state by a huge percentage. Thirty-
25 four jobs will be lost at Star Volvo in the event that

1 this PFD goes through. I believe that --

2 MS. BEAVER: Mr. Coffey, I believe Mr. Treviño
3 is trying to speak. It looks like the chairman is muted.

4 MR. TREVIÑO: Mr. Coffey, thank you very much
5 for that.

6 Tracey, do you have any comments on Mr. Brown's
7 comments there?

8 MS. BEAVER: You're able to rule on any motions
9 or objections, and if there's any evidence outside the
10 record, it should not be considered in this case.

11 MR. TREVIÑO: So again, if this is outside the
12 record, Mr. Brown, we cannot admit it and I would ask you
13 to refrain from -- if it's in the record, go right ahead,
14 but again, to Mr. Coffey's point, if it's not in the
15 record we can't accept it because Mr. Coffey can also
16 bring things in and we don't want to re-litigate the case.

17 And also, just add Mr. Brown's time from when
18 Mr. Coffey broke in so Mr. Brown will have full use of his
19 time.

20 MR. BROWN: Yes, sir. Before I proceed, I know
21 Mr. Coffey well and if he thought it went outside the
22 record, he may have thought of something I'm not aware of,
23 but my intent is not to go outside the record. The
24 photographs I reference are inside the record, certainly
25 not part of my presentation materials that we were linked

1 to the page limit, but I don't think I have gone outside
2 the record. Certainly it's not my intent.

3 But with that, may I proceed?

4 MR. TREVIÑO: Please.

5 MR. BROWN: The other discussion -- in fact,
6 this is in the PFD -- is of the waiting area, and if
7 you're read it, you might recall. The waiting area is an
8 old salesman's office that was basically recaptured. They
9 used this furniture that was reupholstered, they put the
10 TV in that we gave to them, but it's a cinder block office
11 that has no windows and to disguise the fact that it's an
12 interior office with no windows, there are curtains
13 hanging up against the cinder block.

14 It's not Brit Brown's testimony, it's even the
15 discussions and admissions of Al Velasco, the sales
16 manager, and Rodney Bunch, the service manager, that said
17 that it has a negative impact when you don't have
18 amenities. We don't have snacks, we don't have beverages,
19 we only have coffee, or we don't have beverages or we
20 don't have a nice sitting area.

21 Rodney Bunch even testified that he's worried
22 because they don't have air conditioning in the service
23 bays. He's worried of losing good technicians working in
24 a pretty harsh environment.

25 But more perhaps unique is the fact that

1 they're the only dealer that does not have an air-
2 conditioned customer write-up area for service work. The
3 customer sits or stands outside in the service bay area,
4 exposed to the fumes, the noise and the Houston heat and
5 humidity -- if you're wearing a suit and tie, good luck --
6 and that's where you do your service write-up. The only
7 dealer in the Texas market, southern market, frankly, that
8 doesn't have an air- conditioned area for the customers to
9 write up their service.

10 A couple of things I wanted to refute. I
11 implore the board to look at the evidence that was
12 actually submitted. There were several claims that were
13 made in argument and also on the record during the
14 hearing. No evidence was presented to support it and the
15 ALJs make that clear when there's no evidence to support
16 it.

17 For example, this trumped CSI/SSI or other
18 bonus programs. The ALJs did find a technical error with
19 the CSI/SSI program. Another case we tried a year before
20 in front of ALJs Bennett and Vickery -- this is in the
21 record because we briefed it -- said that those programs
22 were valid under Texas law.

23 Regardless, what these ALJs -- ALJs Barnes and
24 Card said that even if there's a violation, there's no
25 evidence that anything regarding the CSI/SSI or any other

1 program at all deterred from Star's ability to market and
2 sell vehicles. To the contrary, even during those years
3 where all dealers received the same bonus, there was no
4 differentiation. There was no improvement in their
5 performance, and that was key.

6 Even their expert witness, again, Ted Stockton,
7 testified that he had no analysis. He has no reason to
8 believe, based on analysis or study, that the lack of
9 bonuses under CSI or SSI impaired sales at all. And he
10 also admitted that there was no material difference in
11 performance at all even when they were getting the bonus,
12 the years that they were getting the bonus. We do have an
13 exhibit in our set that illustrates that by bar chart.

14 But he also acknowledged, Ted Stockton -- and
15 not just Mr. Stockton as the expert -- that every one of
16 the bonus programs, all the others were held to be legal
17 and typical in the industry, that all the other programs,
18 all of them, incur a cost and the cost is typically more
19 than the value of the bonus. You spend a lot of money to
20 build a new facility or to upgrade your facility and any
21 bonus that's provided is not going to come close to
22 offsetting that cost. In fact, by the nature of the
23 program, even for relatively small upgrades, the bonus
24 could never exceed 40 percent of the cost that the dealer
25 incurred.

1 So going to this new facility that they
2 proposed building, and the first suggestion of it was June
3 2018. This was before the September trial, after the case
4 was already two years, four months old, and after this had
5 been discussed with the parties for years, not just new
6 facility but new location.

7 The new facility is also shown on that map,
8 it's the same place. Ted Stockton admitted that, yeah,
9 you're still not going to have the billboard effect,
10 you're still not going to have the high visibility, or
11 you're still not going to have high traffic. You're still
12 not going to be a high volume dealership when you stay in
13 that location.

14 But what they propose, to be clear, is a 46,000
15 square foot facility, which would be larger than any other
16 facility in Houston -- in fact, I think, but I'm not sure
17 of the record, I'll stick with Houston, that's the only
18 thing I know is in the record. They had no budget on how
19 much it would cost, not even how much it would cost to
20 staff or air-condition it.

21 MS. BEAVER: One minute remaining.

22 MR. BROWN: Thank you very much.

23 They had no business plan on who they were
24 going to staff it. They had no cost-benefit analysis.
25 They had no analysis at all on whether or not they would

1 be able to generate a profit.

2 In fact, Mr. Seureau testified he doesn't like
3 to do business plans. He just had a number in his head of
4 500 a year, which the ALJs correctly noted was far, far by
5 many multiples greater than any number they'd ever sold,
6 and he's not even sure if 500 a year would support that
7 facility.

8 So it wasn't a serious offer. It was done
9 right on the eve of the final hearing. It was done for
10 obvious reasons, and frankly, had they built it, it would
11 have been a very expensive eyesore. It would have been
12 bad for him and for us.

13 He's talking about an \$18 million cost when he
14 hadn't even done anything but change the paint on his
15 existing facility.

16 Sir, I think I'm probably done. Thank you.

17 MR. TREVIÑO: Great. Thank you very much, Mr.
18 Brown.

19 Thank you both for staying within the allotted
20 time.

21 Now we'll open it up to any questions from
22 board members. Anyone have any questions?

23 Member Gillman, the chair recognizes Member
24 Gillman.

25 MS. GILLMAN: Can you hear me now?

1 MR. TREVIÑO: Yes, I can.

2 MS. GILLMAN: Brett, I didn't want to jump in
3 front of you.

4 MR. TREVIÑO: No. You're doing fine, Member
5 Gillman. Jump on in.

6 MR. GRAHAM: No problem.

7 MS. GILLMAN: Okay. Well, to address just some
8 of the points, I wanted to say that from my perspective I
9 think that Mr. Coffey, the way you began your presentation
10 is exactly correct, that the main job of this board is
11 consumer protection and serving Texans, and from what I
12 have heard, even though there is a whole lot of chatter
13 about other things, Star Motor Cars undisputedly has
14 performed service well.

15 They have sold cars and they have happy
16 customers. They have trained employees, and for many,
17 many years -- I think you said one of the first Volvo
18 dealers in Texas. Fifty years, that's a long time.
19 So I think that there's no consumer harm here.

20 Secondly --

21 MR. TREVIÑO: Member Gillman, I don't want to
22 interrupt you but when we start discussing the motions I
23 think that's a good time to -- do you have any specific
24 questions for them? And then we'll move to the
25 discussions around any motions made by members.

1 MS. GILLMAN: Yes, I do.

2 In the testimony of Mr. Velasco, can you tell
3 me how long did Mr. Velasco work for Star Motor Cars?

4 MR. TREVIÑO: Mr. Coffey, you're back on.

5 MR. COFFEY: I was just asking if that question
6 was directed to me.

7 MS. GILLMAN: I don't care who answers as long
8 as someone does.

9 MR. TREVIÑO: Does anybody know how long Mr.
10 Velasco worked for the dealership?

11 MR. COFFEY: I can give you a ballpark figure.
12 He was relatively new to Star Motor Cars. It was under
13 two years is my understanding.

14 MS. GILLMAN: Thank you.

15 MR. COFFEY: Yes.

16 MR. TREVIÑO: Under two years. Okay.

17 MS. GILLMAN: I'll refrain from discussion
18 topics until after questions.

19 MR. TREVIÑO: You will have plenty of time.
20 I'll make sure you've got all the time you need for
21 discussion, but at this point I think it would be good to
22 get through any questions from any board members.

23 I think you had some questions earlier. Have
24 they been satisfied?

25 MR. GRAHAM: Was that for me, Mr. Chairman?

1 MR. TREVIÑO: Yes, sir.

2 MR. GRAHAM: No. I do have questions, yes,
3 sir.

4 MR. TREVIÑO: Go right ahead.

5 MR. GRAHAM: I will start with Mr. Coffey.
6 There's evidence in the record clearly that the facility
7 was dated, the signage was dated, had been for many years,
8 and it appears from the PFD that your contract obligated
9 you in your contractual relationship with Volvo to meet
10 some requirements to maintain those facilities. My
11 question for you would be, how did SOAH misinterpret that
12 part of the contract.

13 MR. COFFEY: Well, I think, if that's for me,
14 Mr. Graham, I'll be happy to answer it. I think SOAH
15 placed undue emphasis on a provision in the franchise
16 agreement that said -- and it's an ancient provision, no
17 longer valid in the State of Texas -- but basically it
18 said you have to provide a facility reasonably
19 satisfactory to the distributor, words to that effect.
20 I'm not quoting there, I'm giving you my best
21 recollection.

22 Those types of provisions are not really
23 enforceable in this industry in the State of Texas because
24 of all the protections that we have in the Texas
25 Occupations Code. In other words, everything now has to

1 be reasonable from a disinterested observer's perspective.

2 You can't go in with a contract and say we're
3 going to terminate you because you didn't satisfy us.
4 They have to be reasonable criteria in order for you to
5 enforce a provision like that. We argued up and down that
6 these were not reasonable provisions.

7 Volvo built the facility. It's well
8 maintained, it's well staffed. The only thing it didn't
9 have was the new face that Volvo wanted. So the question
10 comes down: Can Volvo require a new face and in this case
11 a relocation every ten years, or whatever it is, that
12 their market plan called for? We say no. Apparently SOAH
13 disagreed with us and said yes.

14 MR. GRAHAM: Thank you.

15 You just clarified but it's -- Mr. Brown did
16 confirm that you said that they -- you discussed earlier
17 that they refused your proposed facility but it wasn't
18 until two years after the termination was sent. So that
19 to me seems that that's after the fact, and really, I
20 don't even know that it should be considered in the case
21 of a termination agreement at the time it was filed. Just
22 like to get your thoughts on that.

23 MR. COFFEY: And I can understand your
24 perspective on that. You have to remember, however, that
25 this statute says that the board is required to consider

1 all existing circumstances. We believe that Star Motor
2 Cars' good faith attempt to build the facility and cure
3 the breach is a circumstance that has to be considered
4 because the statute requires it.

5 Now, Mr. Brown -- who I respect greatly -- went
6 to the trouble of advising you that it was not a sincere
7 attempt, that it came after the fact. It came too late in
8 the proceedings, and therefore, we have to assume that it
9 is a phony proposal.

10 The only reason that proposal came late was
11 because for years Star Motor Cars tried to get Volvo to
12 work with it and help them come up with a design, a plan
13 that would conform that facility to their image. They
14 never did that. They never made any attempt, not even a
15 specious attempt to comply to work with Star Motor Cars.

16 Towards the end of the proceedings, as we felt
17 that that was a big issue for the ALJs, we finally decided
18 to put up the money, and it cost, I don't know, \$116,000
19 plus another, I don't know, \$8- or \$9,000 just to make the
20 application to Volvo. So it's not a specious attempt.

21 Star put its money where its mouth is, had
22 those plans drawn up by Volvo's own designers and
23 engineers and made the best application it knew how to
24 make. We were astonished -- after hearing for all these
25 weeks or months that it was the facility, facility,

1 facility that was the problem, we were astonished to find
2 out, as shown in slides 9 and 10, that it was really
3 location.

4 MR. GRAHAM: Mr. Coffey, that's great, and I'm
5 just trying to be respectful of everybody else's time. I
6 appreciate all of that. I want to follow up with that and
7 ask you, as I have looked at the -- and this is just along
8 that same line -- I have looked at some of the locations
9 of other luxury car lines in that downtown area. Is it
10 fair for me to call it the downtown area? Is that
11 generally where it is?

12 I live in Sherman, Texas, so to me it looks
13 like it's pretty close to downtown. It's very populated,
14 very dense. And I'm looking at these other automotive
15 lines, I really don't see any other lines, yours or
16 others, located on an interstate. Is it even plausible to
17 build -- I mean, I say plausible, whether that's land or
18 spending a reasonable amount of money to build on an
19 interstate location in that area?

20 MR. COFFEY: Well, I don't know if it's
21 plausible or not, Member Graham. We never explored that.
22 Volvo never came up with any kind of a specific location
23 for us to consider. I'm sure Star Motor Cars would have
24 at least considered it and run the numbers on it to see if
25 it was financially viable. Never got to that point.

1 What I can tell you, as far as your earlier
2 question is concerned, Old Katy Road is not exactly
3 downtown but I would call it on the fringes of downtown.
4 It's very close to the neighborhoods of River Oaks and
5 Tanglewood, which are old neighborhoods which were
6 originally developed just outside of the downtown area of
7 Houston, so close to downtown but not exactly there.

8 Now, you're getting to a very good point, Mr.
9 Graham, and that is why don't we see other dealerships as
10 close in as Star Motor Cars, and the reason for that is
11 that the industry changed immensely over the last 50
12 years. Factories used to want their dealerships downtown.

13 They don't want them downtown anymore. They
14 want them out on major freeways where they can get that
15 billboard effect of thousands and thousands of cars going
16 by the dealership every day. That's the reason why we
17 don't have downtown dealerships anymore.

18 Star Motor Cars is somewhat of an outlier. It
19 chose to continue to serve those inner -- not inner city
20 but inter-communities of River Oaks, Tanglewood, Jersey
21 Village, all those very highly affluent neighborhoods
22 whose customers Star had been servicing for all those
23 decades.

24 Star Motor Cars was not as interested in making
25 a lot of money out on a freeway; it was more interested

1 in taking care of the same customers, generations of them,
2 that it had taken care of for decades. That was what
3 motivated Star Motor Cars.

4 And we sincerely believe that there is still
5 room in this industry for a dealership like Star Motor
6 Cars that wants to take care of its long-term generations
7 of customers and is not interested in just slinging metal
8 out on the highway. So that's what motivates Star Motor
9 Cars and that's why we're fighting so hard in this case.

10 MR. GRAHAM: Thank you.

11 I have one last question for Mr. Coffey before
12 we discuss a few questions for Mr. Brown.

13 Mr. Coffey, it appears from the PFD that over
14 the course of the years you did make more significant
15 investments -- and if this is not in the record, I think
16 it is, if it's not in the record, tell me -- I believe it
17 clarified that the other lines, there were investments
18 made in those but not in the Volvo facilities. Was that
19 in the record? Can anyone tell me that?

20 MR. COFFEY: I think that argument was made,
21 Mr. Graham, but it isn't true. There was an enormous
22 investment made in the Volvo facility and much more would
23 have been made. If we could get Volvo to cooperate with
24 us and come up with a plan, Star would have spent whatever
25 was necessary to achieve the face that Volvo wanted.

1 But they wouldn't help us on that and so
2 basically it just got shoved off and shoved off until it
3 got to the point in the case where we felt like, we've got
4 to do something. We can't rely on Volvo to help us, let's
5 just propose the kind of facility that they want or that
6 they say they want on the existing Star campus.

7 That's what we did, and we saw from exhibits 9
8 and 10 or slides 9 and 10 that it was never really about
9 the facility, it was all about location. They wanted us
10 out on the highway.

11 But we were never noticed with termination on
12 location, and there's no provision in the code that would
13 have allowed Volvo to terminate us because we didn't move
14 to a location which they never told us they wanted us to
15 have and from a location which they, in fact, chose
16 themselves.

17 MR. GRAHAM: Okay. Thank you, Mr. Coffey.

18 MR. TREVIÑO: Member Graham, before you proceed
19 with the other questions, let me just check and see if
20 other board members have questions.

21 MR. GRAHAM: That's fine.

22 MR. TREVIÑO: Member Prewitt. You're still on
23 mute.

24 MR. PREWITT: Sorry. My apologies.

25 Mr. Brown, on page 16 of the SOAH proposal for

1 decision, it states in the second paragraph: "Witnesses
2 described a general reluctance on Mr. Seureau's part to
3 make any significant upgrades to the facility or offer
4 amenities that are standard at other dealerships." So I
5 guess what they're saying is they're trying to -- you
6 know, I'm going back between that and the slide which was
7 shown on the presentation from other counsel on the
8 customer service desk. That's interesting.

9 A couple of questions. When was the decision
10 made to fix the splotched floor and why? Why did you not
11 just leave it the same?

12 MR. COFFEY: Is that question for me, Mr.
13 Prewitt, David Coffey?

14 MR. PREWITT: It is, yes.

15 MR. BROWN: I'm sorry. I thought it was for
16 me. I apologize.

17 MR. PREWITT: No.

18 MR. COFFEY: I think that was for me, Mr.
19 Prewitt.

20 MR. PREWITT: It was.

21 MR. COFFEY: I'm not sure that the record
22 reflects exactly when the improvements were made to that
23 part of the facility. I do know that they used a photo
24 prior to the improvements being implemented at the
25 facility. In other words, by the time we got to trial,

1 they were using an old photo which showed the facility
2 before the improvements were made.

3 Star Motor Cars -- the evidence did show that
4 Star Motor Cars was continuously improving its facility to
5 better serve the customer. We couldn't put a new face on
6 it because that requires Volvo's approval. They have to
7 come in with the plans and say, hey, you've got to do it
8 this way.

9 We kept trying to get them to tell us how they
10 would want it done. They never would tell us how they
11 wanted it done, and we know now the reason for that was
12 because they didn't want to do anything with Star Motor
13 Cars' existing facility. If anything, they wanted Star
14 Motor Cars out on the highway.

15 So I hope that answers your question, sir.

16 MR. PREWITT: It does. Thank you.

17 MR. TREVIÑO: Mr. Brown, do you know when those
18 changes were made?

19 MR. BROWN: Sorry, sir. Is that a question to
20 me?

21 MR. TREVIÑO: That's for Mr. Brown, yes,
22 because Mr. Coffey couldn't say when they were. So if you
23 could just add a little color about the dates when those
24 changes were made.

25 MR. BROWN: Yes, sir, I can, and there was

1 discussion at the trial on it. I don't know if it's in
2 the PFD. The changes were made pretty shortly prior to
3 trial.

4 The photographs that were submitted, and I
5 think admitted without objection, were also taken after
6 the commencement of the termination. So the photographs
7 would be after February 2016, the photographs that we put,
8 you know, without the painted floor. The painted floors
9 were done much closer to the time of trial. I don't
10 recall the month and year but I think it was 2018.

11 MR. TREVIÑO: If it's not part of the record,
12 Mr. Brown, please leave that out.

13 MR. BROWN: It is part of the record. I don't
14 think it's part of the PFD. So in other words, there's
15 testimony on it on the record but I don't think it's
16 listed in the PFD, but it was, I think, in 2018.

17 MR. TREVIÑO: Thank you.

18 MR. BROWN: And sir, can I ask a question of
19 you, sir?

20 MR. TREVIÑO: Before you do that, Mr. Prewitt
21 has his hand raised.

22 MR. PREWITT: Let me ask our attorney, Tracey
23 Beaver, if I can ask this question. But Mr. Brown, was
24 Volvo's permission required for them to paint the floor
25 and maintain the facility?

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

3 Of course, that question can be answered and
4 Mr. Brown can let you know if that's something is that
5 outside of the record and that he doesn't have the
6 information to provide to you.

7 MR. BROWN: Thank you. I can't answer that and
8 I can tell you how it's in the record because it wasn't
9 asked in that way but it was painting the floor, the roof,
10 the lighting. All those things were considered nothing
11 but maintenance work, which is the responsibility of the
12 dealer and the total right of the dealer. They don't have
13 to get our consent to do it.

14 MR. PREWITT: So what you're saying is in
15 opposition, I believe, to what Counselor Coffey said which
16 was, it required Volvo's permission to make those
17 maintenance decisions. Is that correct?

18 MR. BROWN: Yes, sir, that did not require
19 Volvo's permission. And that's not how I heard Mr.
20 Coffey's comments, but definitely they did not require our
21 permission to do ordinary maintenance, including the
22 painting the floor, as the example given.

23 MR. PREWITT: You know, I keep going back to
24 the statement Mr. Coffey made in his comments about
25 putting the interests of consumers first and being part of

1 our mission statement for the Texas Department of Motor
2 Vehicles. And I guess what I'm really trying to determine
3 in a more intangible sense is what the spirit of the
4 dealership is in terms of how it wants to do that, how it
5 wants to put the interests of consumers first.

6 Mr. Coffey, could you give me examples of how
7 the dealership has done that when I've seen evidence
8 presented by opposing counsel that you guys are sub par
9 customer service in your rating both on a national and
10 regional scale, local scale is where it is?

11 MR. COFFEY: Well, thank you, Mr. Prewitt. I'm
12 not sure that they have ever made that allegation. I
13 don't see how they could in light of the actual findings
14 by the SOAH.

15 For example, slides 2 and 3 in our packet -- we
16 have collected in slide 3, for example, findings of fact
17 151 through 163 and all of those are to the effect that we
18 had a functional facility where all of Volvo's warranty
19 procedures are being followed. Nothing improper or
20 incorrect had ever been done in service. It was competent
21 service which satisfied the customers -- that's finding of
22 fact 161.

23 And in fact, in the entire proceeding, 50 years
24 of service, they did not bring forward a single consumer
25 complaint on anything that Star Motor Cars has done. That

1 is exceptional. In fact, in 30 years of practicing in
2 this industry I've never seen a dealership that gets no
3 consumer complaints, but they did not bring forward a
4 single one. That is how Star Motor Cars satisfies the
5 consumer: it does the work right the first time and
6 whenever a customer, if they ever do have a complaint,
7 Star Motor Cars fixes it.

8 Star Motor Cars is not as interested in selling
9 maximum volumes of vehicles, it is interested in serving
10 the same customers that it has served for generations.
11 That is Star Motor Cars. That is its mission statement.

12 Volvo does not want dealers like that anymore.
13 It wants dealers that move metal in vast quantities so
14 that Volvo can make more money.

15 I hope that answered your question, Mr.
16 Prewitt.

17 MR. PREWITT: Thank you.

18 MR. TREVIÑO: Member McRae.

19 MS. McRAE: I have a question, Chairman, for
20 Mr. Coffey and Mr. Brown.

21 I guess I'll start with Mr. Coffey first. As
22 part of the dealer agreement, I think that you mentioned
23 that advertising falls under that agreement and you stated
24 that Star out-advertised other dealers. What is -- how
25 much do they spend in advertising, how do you measure

1 that?

2 MR. COFFEY: Thank you, Member McRae. This is
3 David Coffey, I'll attempt to handle that.

4 We have an enormous amount of evidence in the
5 record about what Star Motor Cars spent on advertising. I
6 don't have any numbers directly at hand right now. I read
7 that one excerpt from the record which references exhibits
8 171 and 174 -- which should be available to the board
9 members -- those exhibits will contain the exact numbers.

10 But what we conclude from them is that Star
11 outspent every other Houston dealer by \$700 per new
12 vehicle sold. That, in fact, is how the manufacturer
13 measures whether or not you are doing sufficient
14 advertising is by amount of dollars per new vehicle sold.

15
16 In other words, they want to know how much per
17 vehicle you are advertising on average because a big
18 dealer that spends millions on advertising can look really
19 good over a smaller dealer that spends less but spends
20 more per new vehicle sold. So that's how it's measured,
21 and Star Motor Cars was at the top of the chart in that
22 category. Star Motor Cars spends the money to advertise
23 the product for a number of different reasons.

24 MS. McRAE: Okay. Thank you.

25 And Mr. Brown, I'm assuming that based on Mr.

1 Coffey's statement as far as the advertising, when
2 comparing this data as far as advertising, is it like just
3 the Houston market or is it the national market for Volvo?

4 MR. BROWN: I think I can answer that, ma'am.

5 First of all, I don't believe that's what the
6 exhibit says. It's certainly not what the testimony said.

7 Star is not outspending other dealers. In certain
8 segments, in certain snapshots of time they might on a per
9 car basis, but that's because at that time they may have
10 sold 20 as opposed to 4- or 500 for another dealer.

11 Now, going to the advertising. The
12 advertising, depending on the year you look at, has both
13 national initiatives, has local advertising initiatives
14 and then has a dealer-only initiative, be it website,
15 email flyers, signage, whatever it might be. In that
16 category the testimony was pretty clear -- and the
17 findings of facts specifically talk about they're just
18 grossly inadequate.

19 And I can give you a for instance that's in the
20 proposal for decision and a finding of fact. The
21 website -- and the testimony was uncontested -- new buyers
22 look at websites before they go to dealers, a lot of them
23 do. And it was uncontested by both Rodney Bunch and also
24 Al Velasco, their sales and service managers, that their
25 website turned off people, not just the facility.

1 During the trial we pulled up the website, took
2 screen shots, admitted them into the evidence, it's in the
3 record, their website does not show any price incentives,
4 any special deals, any kind of product specials or service
5 specials. In fact, when you look at the people that could
6 assist you, it identified at least one person that had
7 died over a year before and a couple of members, at least
8 two that I remember, that had been gone, had left the
9 dealership for quite some time.

10 This materializes when it comes to internet
11 leads. Internet leads is part of the advertising but it's
12 something that Volvo finances, so leads that come in to
13 the Volvo site of people that have an interest in buying a
14 Volvo, Volvo will send those to the dealer.

15 Star received more internet leads than any
16 other dealer in the Houston market, mainly because their
17 AOR was so high potential, but they had by far the lowest
18 close rate, less than 2 percent of internet leads, which
19 was far, far, far lower than the Houston, Texas, southern
20 or the national average. They weren't taking advantage
21 even of the Volvo effort.

22 Now, maybe I'll stop there. I don't want to
23 abuse the courtesy of the board. But one question I had,
24 there are several statements that kind of touch, Member
25 McRae, on advertising but not directly on your question

1 that were asked to Mr. Coffey that I would like maybe an
2 opportunity to rebut or respond to, but I won't do that
3 now because I'm not sure if that's appropriate.

4 Member McRae, I think I responded to your
5 direct question, I believe; hopefully I did.

6 MS. McRAE: You did. Thank you.

7 MR. BROWN: Yes, ma'am.

8 MR. TREVIÑO: Member Washburn.

9 MS. WASHBURN: Yes. So I have a question based
10 on some of the answers you guys gave to some of these
11 questions. So I heard Star is a niche player in the
12 market, that they're not really interested in volume the
13 manufacturer or the distributor would like. Then I heard
14 that the amount for the facility, I heard \$16 million and
15 I heard \$18 million, so I don't know which one was right,
16 but let's call it \$16 million. So they're not interested
17 in volume yet they want to spend \$16 million to build a
18 new facility. How would you support that?

19 MR. COFFEY: Is that for me, Board Member,
20 David Coffey?

21 MR. TREVIÑO: Member Washburn, who is that
22 question addressed to?

23 MS. WASHBURN: I'm sorry. Mr. Coffey.

24 MR. TREVIÑO: Thank you.

25 MR. COFFEY: Thank you, Member Washburn. Why

1 would Star Motor Cars build such a large and expensive
2 facility if it wasn't interested in selling high volumes
3 of automobiles? Let me just say this, Volvo assigned Star
4 Motor Cars a planning volume of 500 new vehicles per year.

5 A planning volume is basically what the
6 manufacturer says your market will support. This is what
7 you should sell, if you don't sell it, we may have words
8 with you. Five hundred new vehicles per year is what
9 Volvo assigned Star Motor Cars in its existing facility at
10 its existing location. Star Motor Cars used that number
11 on which to base the amount of money that it would or
12 could spend on a new facility.

13 We put all this evidence into the record,
14 including the fact that that 500 new vehicles per year was
15 Volvo's number and then they come in -- you saw exhibits 9
16 and 10 -- and they say, hey, your location is never going
17 to support 500 new vehicles per year. You're building too
18 expensive a facility for a location that isn't going to
19 sell that many vehicles.

20 Well, if, in fact, that's the case, Volvo, why
21 did you assign that number to us as a planning volume?
22 Why did you give us reason to believe that we should use
23 that 500 vehicles per year as our projected sales on which
24 to base the amount of investment that we would be willing
25 to put into that facility?

1 At any rate, \$16 million, it might be a little
2 large but that's because Volvo -- I mean Star Motor Cars
3 wanted a big service facility and it expected to grow with
4 the Volvo product. Star Motor Cars has a lot of belief in
5 the Volvo product. It has really improved over recent
6 years, and Star Motor Cars likes the product, believes
7 that it can sell a lot of it into the affluent communities
8 that surround the dealership. That's the reason why Star
9 was willing to build such a large facility and put so much
10 money into it.

11 I hope that answers your question, ma'am.

12 MR. TREVIÑO: Member Washburn, do you have any
13 other questions?

14 MS. WASHBURN: No.

15 MR. TREVIÑO: Great. Any other board members?

16 MR. BROWN: I apologize, Mr. Chairman. This is
17 Mr. Brown. Can I comment on that last question also?

18 MR. TREVIÑO: Member Washburn, that is your
19 prerogative. You can ask Mr. Brown any questions that you
20 feel are necessary.

21 MS. WASHBURN: Yeah. I would like to hear your
22 point on that question because -- and maybe I didn't ask
23 the question correctly -- I heard at the beginning that
24 Star wants to be a niche player, protect the public by not
25 selling as many cars -- hope that that is correct -- yet

1 wants to build a \$16 million facility, and I heard they
2 haven't been profitable. Like how would that work, in
3 your opinion?

4 MR. BROWN: Yes, ma'am. Thank you. And first,
5 the number \$18 million, there's different numbers thrown
6 out, \$18 million is on page 22 of the PFD or it's page 41
7 of the eBook that references that, that's both the
8 facility and the land.

9 To answer your specific question, there was a
10 lot of testimony on that, and the concern, and frankly, we
11 believe the impossibility -- and so did the ALJs -- that
12 you would never be able to support a facility of 46,000
13 square feet, be it \$15- or \$18 million, whatever it was,
14 at that location, particularly with all the other problems
15 that they have that were specifically identified. It's not
16 just the facility, it's the staffing, it's the location,
17 it's the advertising, it's the budgeting, it's the lack of
18 planning.

19 In testimony from Mr. Seureau, being asked
20 specifically on this point, have you -- let me start back
21 for a second. The planning volume, that's not the number
22 we give to Star saying you better sell this or we're going
23 to have problems with you. That's a mistake by Mr.
24 Coffey.

25 The planning volume just says what the

1 potential of the AOR is, and it was 500-plus of the area.

2 The target that they were given was far smaller, and the
3 target is based on a percentage of planning volume and a
4 percentage of your historic performance. But regardless,
5 they never met their targets. It was always a much lower
6 number.

7 But regardless, it's really unclear whether 500
8 cars would support that facility, it all depends on how
9 you manage it. And what Mr. Seureau and Mr. Al Velasco
10 both said, there's no planned budgeting, there is no
11 intent to change the staffing. They're going to use the
12 same staffing to start out with to see how it went. There
13 is no estimate of what the cost of the building
14 maintenance would be.

15 You know, we're talking about multiples over
16 the existing facility, the multiples in cost would be
17 there too. And there is no break-even analysis: how many
18 cars would I have to sell for what price to even support
19 the facility.

20 Our conclusion was and our recommendation --
21 talking about the business recommendation, and it's in the
22 record -- was that if you're going to build a new
23 facility, be much more conservative. This is far too big
24 for you to support at this location. AOR is nice but this
25 location and your business practice is not going to do it.

1 We also said by itself you're not going to fix
2 it; you have to change your business planning and
3 management and staffing and structure. Which, by the way,
4 Ted Stockton also agreed with. That's the Fontana Group
5 expert witness for Star. Needless to say, our witnesses
6 said it too, but their witnesses said it.

7 So you are not going to support the facility.
8 You'd have a very expensive facility that would be grossly
9 underutilized, that would not make a profit, that would
10 not support its employees or maintenance of the
11 facility -- even the existing facility is not running at a
12 profit -- and it would just compound the problem, not cure
13 it. And that was the findings of the ALJs as well in
14 their findings of fact and discussion leading up to it.

15 MS. WASHBURN: Thank you.

16 That's all I have, Mr. Chairman.

17 MR. TREVIÑO: Thank you, Member Washburn.

18 Any other questions from board members? Member
19 Graham, I cut you off before and I think you had further
20 questions. Were they addressed or would like to continue?

21 MR. GRAHAM: I do have some questions. And
22 that's okay. I'm perfectly fine with that, Mr. Chairman.
23 I want everybody to get their questions answered. I do
24 have some questions for Mr. Brown.

25 And let me just start by -- I do want to

1 respectfully correct a statement that Mr. Brown made that
2 I don't believe to be factually correct at the very
3 beginning, where you had said any one of those seven items
4 listed in the statute can be cause for termination, and I
5 think it is important to note that market penetration in
6 and of itself alone cannot be cause for termination.

7 Mr. Brown, would you consider that to be an
8 accurate statement?

9 MR. BROWN: You're right. The same section
10 says that that cannot be the sole motivation for
11 termination. You're correct. And there was a finding
12 that that was not the sole motivation.

13 MR. GRAHAM: I just wanted to make sure
14 everyone was clear on that.

15 Okay. So my first question regarding the CSI
16 bonus programs that were found to be in violation of the
17 statute, and I did hear your testimony that they had
18 previously been found to not be in violation but were now
19 found to be in violation. Are those CSI programs still in
20 place today?

21 MR. TREVIÑO: Member Graham, who is that
22 question directed towards?

23 MR. GRAHAM: Mr. Brown.

24 MR. TREVIÑO: Thank you.

25 MR. BROWN: No, sir.

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

3 I'd just like to mention that that would be
4 outside the record, anything that happened after the case.

5 MR. GRAHAM: You're correct. Thank you. I
6 stand corrected on that.

7 MR. BROWN: Ms. Beaver, I would stand corrected
8 by Mr. Coffey, and I won't say if Mr. Coffey disagrees
9 with me, but I don't believe that's outside the record,
10 the answer to that question. It's not in the PFD but it
11 is in the record, and if Mr. Coffey disagrees, I won't say
12 further.

13 MR. TREVIÑO: Mr. Coffey?

14 MR. COFFEY: Mr. Chairman, I don't know how it
15 could be in the record. We're what, two years after that
16 record was created and now the question is are those
17 CSI/SSI programs still in effect. I just don't know how
18 Mr. Brown, who I respect immensely, how he can say that
19 and it be accurate. But maybe he can explain it.

20 MR. TREVIÑO: Thank you, Mr. Coffey.

21 Mr. Brown, at the end of the record, at the
22 time of the record, were they still in effect?

23 MR. GRAHAM: There you go.

24 MR. BROWN: Not the bonus part of it. In other
25 words, they're still measurements but a bonus is not based

1 on CSI/SSI. That ended in 2018.

2 MR. TREVIÑO: So that was in the record?

3 MR. BROWN: Yes, sir. It was discussed as far
4 as the plan.

5 MR. TREVIÑO: That was not in the record.

6 MR. BROWN: Yes, sir.

7 MR. TREVIÑO: Member Graham, does that answer
8 your question?

9 MR. GRAHAM: Yeah. Thank you for clarifying
10 that. I should have restated that a little bit better.

11 Mr. Brown, was there any discussion in the
12 record as to -- and I'm sure you know I have a reason for
13 asking this -- was there any discussion in the record as
14 to what Volvo's plan was to -- if they were successful in
15 this termination, whether or not this AOR would be
16 reassigned to other dealers or whether there would be a
17 new dealer put in this AOR? Was there any discussion in
18 the record on that subject?

19 MR. BROWN: Both Sandy Seidman and also Steve
20 Klipstein, both Volvo witnesses, they made it clear they
21 had not contacted anyone. They had not reached out to any
22 prospects. They had certainly not promised it to any
23 other party, but their plan would be to replace the
24 dealer. It's considered to be a very high volume, very
25 attractive AOR.

1 MR. GRAHAM: Okay. And would it be your -- was
2 there any discussion as to whether or not it was -- and
3 I'm looking back to the question on and my concern about
4 the location of this dealership. I mean, clearly it's not
5 located on a major interstate, and I just simply don't
6 know how another dealership -- how a new or replaced
7 dealership could be in that area. Could you shed any
8 light to me?

9 Maybe it doesn't necessarily have to be on an
10 interstate. Clearly, Volvo did not like the proposed new
11 location put forward by Star. Is it even plausible in
12 your opinion, or was there anything in the record
13 regarding the ability of this dealer or another dealer to
14 put a location anywhere that had that visibility?

15 MR. BROWN: Yes, sir, and partially in the
16 context of the last question you asked about would the
17 intent be to have a new dealer if termination was
18 approved. There is a belief that there's acreage or
19 there's dirt that's more visible from the major artery --
20 in this case I-10.

21 MR. TREVIÑO: I'm sorry to interrupt you. That
22 was in the record. Right?

23 MR. BROWN: Yes, sir.

24 MR. TREVIÑO: Go ahead.

25 MR. BROWN: And I also agree with Mr. Coffey,

1 what he stated -- which I think was also in the record
2 which I agree with -- that there was never any intent to
3 move by Star nor did Star look at it. They were not
4 willing to look at it nor did they ever look at it, and
5 that was also in the record.

6 MR. TREVIÑO: Thank you.

7 Member Graham?

8 MR. GRAHAM: Thank you. That's all I have, Mr.
9 Chairman.

10 MR. TREVIÑO: Any other questions from board
11 members?

12 (No response.)

13 MR. TREVIÑO: Okay. If none, Tracey, are there
14 any comments from the public?

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

17 No public comments.

18 MR. TREVIÑO: Hearing none, the chair would
19 entertain a motion from the board. The chair recognizes
20 Member Gillman.

21 You're on mute, Member Gillman. You're on
22 mute, I can't hear you.

23 MS. GILLMAN: Is it open for discussion?

24 MR. TREVIÑO: We have to have a motion first
25 and a second, then we can have discussion, so we need a

1 motion first.

2 MR. PREWITT: Mr. Chairman?

3 MR. TREVIÑO: The chair recognizes Member
4 Prewitt.

5 MR. PREWITT: I would like to make a motion. I
6 move that the board uphold SOAH's PFD finding that the
7 termination of Star's franchise be approved and adopt the
8 conclusions of law 1 through 24 and findings of fact 1
9 through 243, as stated in the proposal for decision, with
10 the changes to findings of fact 63 and 201 as recommended
11 by SOAH's exceptions letter of June 24, 2019.

12 MR. TREVIÑO: I have a motion from Member
13 Prewitt. Do we have a second?

14 MS. WASHBURN: Second.

15 MR. TREVIÑO: Second from Member Washburn.

16 Now we're open for discussion. Member Prewitt,
17 you made the motion so I would give the courtesy, if you'd
18 like, to start the discussion.

19 MR. PREWITT: I know this has been a case of
20 long standing since 2016, and obviously it appears from
21 reading the history of the case it goes back farther than
22 that in terms of it seems like the two parties have been
23 at odds for some time. I keep going back to what was said
24 by Mr. Coffey and putting the interests of the consumer
25 first.

1 And it just appears -- as I look at this
2 dealership and I look at the facts of the case and how
3 SOAH handled the case, I feel that they made a decision of
4 the right type. So that's the basis of me making this
5 motion.

6 MR. TREVIÑO: Any other discussion, comments?
7 Member Gillman, I think you had wanted to speak?

8 MS. GILLMAN: Yes.

9 MR. TREVIÑO: Go right ahead.

10 MS. GILLMAN: Thank you, Mr. Chairman.

11 I wanted to say that I think that while, yes, I
12 agree that the parties have been at odds for many, many
13 years, I'm so sorry that it's come to this. But as far as
14 serving Texans and performing the sales and service, I
15 think that they have done that, and I don't have any
16 testimony of customer complaints. So that's my number
17 one.

18 Number two is there's been a whole lot of
19 conversation about location and through the years it seems
20 that even though Volvo approved the location in 1970,
21 you're right, things do change and traffic patterns
22 change. It's not on a major freeway anymore, but what
23 also has changed is Google Maps, and Google Maps, when you
24 punch it in, it is ten minutes from River Oaks and ten
25 minutes from Tanglewood, those two neighborhoods that you

1 all talked about.

2 And so I agree, it's not on a major freeway but
3 the good news is in 2020 you don't need that. And in
4 fact, I live in Houston and I don't go anywhere without
5 punching in the traffic trying to figure out the fastest
6 way for me to get there. So it's no longer necessary to
7 be on the freeway.

8 MR. TREVIÑO: Member Gillman, you're muted
9 again. I don't know how that happened but you got muted.

10 MS. GILLMAN: Okay. So I would respectfully
11 disagree and reject the fact that Star Motor Cars needs to
12 relocate because anyone using a cell phone these days can
13 find them just fine.

14 Next on my list is while I guess it's fine to
15 have an opinion from a sales manager that worked for two
16 years, the Seureau family has, in fact, put their money
17 where their mouth is. They have bought property, built
18 buildings, furniture, special tools, equipment, trained
19 technicians and salespeople. That is millions of dollars
20 in investments over the years, and I guess I value that.
21 Mr. Velasco does not counterbalance that investment in my
22 eyes.

23 My next comment is about sales and being last
24 in sales, and the good news is that just because you're
25 last in sales doesn't mean that you violated the law in

1 Texas. Somebody has got to be last. There's going to be
2 someone, and the good news is that we don't have cases in
3 front of us every year for every manufacturer because
4 there's got to be somebody that's last, and so I'm happy
5 that that does not violate our law.

6 But my last point is about the CSI, and I
7 appreciate the fact that two ALJs both said that their CSI
8 programs violate the code. And so if that is true, if
9 that is the fact, and if upon this motion and upon our
10 vote you agree because it is in the conclusions of law
11 from these judges that the CSI violates the code, I think
12 it very appropriate for Volvo to stop violating the code,
13 modify the CSI program, or the way it's calculated.

14 And I think it would be very appropriate for
15 the department, the Motor Vehicle Department, to send a
16 violation letter, a warning letter to Volvo calling them
17 out, if the board agrees with the ALJ in that respect.

18 Thank you, Mr. Chairman. Those are all my
19 comments.

20 MR. GRAHAM: You're muted, Mr. Chairman.

21 MR. TREVIÑO: Is that better? I was telling
22 you, Member Washburn, that you're on mute and I'm on mute.
23 I apologize.

24 The chair recognizes Member Washburn.

25 MS. WASHBURN: Thank you. I'd also like to

1 make some comments.

2 First I would like to say that I recognize that
3 this case involves someone's livelihood. It's a Volvo
4 dealer that's been around for 50 years, so we need to take
5 this very seriously, and I'm clearly aware of the
6 consequences of the board's decision. But I do think we
7 need to remember our role as the board.

8 Under Government Code Section 2001.058, the
9 only way a board can change a finding of fact or a
10 conclusion of law in a PFD is: number one, if the
11 administrative law judge did not properly apply or
12 interpret applicable law, rules or prior administrative
13 decisions; two, if a board decision on which the ALJ
14 relied is incorrect or should be changed; or three,
15 because of a technical error in a finding of fact.

16 So you know, we're really not here to re-
17 litigate this case. What we are charged with, though, is
18 reviewing the conclusions of law and findings of fact to
19 determine if the judge failed to properly interpret the
20 applicable law in the PFD.

21 The law issue in this case is Occupations Code
22 2301.455 which lists seven factors that the board must
23 consider, and I know we've heard about a few of these, but
24 I'd like to kind of quickly go through all of them so that
25 we make sure that we're really looking at everything.

1 So the first one is dealer sales in
2 relationship to the market. So if you look at findings of
3 fact 108 to 132, this found that Star has the largest
4 market opportunity in Houston but the lowest sales. In
5 each year from 2012 to 2017, Star had the lowest sales
6 effectiveness in Texas and often in the nation.

7 So Star's consistently low sales and failure to
8 capitalize on the opportunity of having the largest
9 planning volume in Houston weighs as a factor in
10 termination. And as you understand, this is not the only
11 factor that we should consider.

12 So the second factor in 2301.455 is the
13 dealer's investment and obligations. If you take a look
14 at findings of fact 133 through 142, it states that Mr.
15 Seureau has demonstrated a longstanding reluctance to make
16 even modest investments in this business. Other than
17 basic maintenance, Star has made little investment in the
18 building over the years, so this weighs in favor of
19 termination.

20 Number three, injury or benefit to the public.

21 And I think we talked a little bit about this with the
22 claim of, you know, the dealership being a small -- not
23 small, I'm sorry -- a boutique-type dealership and that
24 this would hurt the public, so just injury or benefit to
25 the public. So if you look at findings of fact 143 to

1 148, it found that terminating the franchise agreement
2 would not harm the public.

3 It also noted that local potential buyers were
4 driving further to buy a Volvo from another dealership
5 than from Star. So the public could potentially benefit
6 from having a dealer that could provide better service and
7 be in a better location, so this weighs in favor of
8 termination.

9 The fourth factor is the adequacy of the
10 dealer's service facilities, equipment, parts and
11 personnel in relation to other dealers in like markets.
12 If you take a look at findings of fact 149 to 157, the ALJ
13 found in favor of termination noting that Star had not
14 made a significant upgrade in 50 years and the dated
15 appearance might repel customers. Star is the only Volvo
16 dealership in Houston or anywhere else that has not had a
17 significant update in 50 years. The CSI scores show that
18 compared to other Volvo dealers the service department
19 ranks far below national average in customer satisfaction.

20 Number five, whether warranties are honored by
21 the dealer. Findings of fact 158 to 163 found that Star
22 follows warranty guidelines. Star is able to provide its
23 customers with adequate warranty service and is honoring
24 its customers' warranties. This factor should be found in
25 favor of Star.

1 Number six is compliance with the franchise.
2 If you look at findings of fact 164 to 194 it discussed
3 this at length and weighs in favor of termination. So a
4 few of the facts include: Star is the worst performing
5 dealer in the nation in terms of sales effectiveness and
6 penetration each year since 2012; Star has a high number
7 of vehicles come into its market each month and is
8 routinely outsold in its own market by other Houston Volvo
9 dealers; Star has also resisted the efforts of Volvo to
10 modernize the business facility and increase sales; Star
11 failed to develop a business strategy that would help
12 overcome its limitations in its location in a low traffic
13 area.

14 Number seven, and the final, is the
15 enforceability of the franchise agreement. Findings of
16 fact 195 through 197 note there's nothing to prove that
17 Volvo's franchise agreement is unreasonable. Star is not
18 complying with some of the core requirements of the
19 agreement. This factors in favor of termination.

20 So in summary, there is considerable effort --
21 I think everybody read, I don't know how many pages it
22 was, I had to read it several times to have the process of
23 the PFD -- but there's a lot of effort to explain the
24 ALJs' conclusions. Six of the seven statutory good cause
25 factors for termination have been met, and I agree with

1 SOAH's ALJs' conclusion.

2 And I know there's been a little bit of talk
3 about the CSI bonus program, and while the judges found
4 that Volvo's CSI bonus program violated code in
5 conclusions of law 19 and 20, if you take a look at page
6 114 of the SOAH PFD, they did find that these violations
7 do not affect the ultimate good cause for termination.

8 Thank you, Mr. Chairman.

9 MR. TREVIÑO: Thank you, Member Washburn.

10 Any other comments from board members?

11 MR. GRAHAM: Yes, sir. This is Brett -- Board
12 Member Graham.

13 MR. TREVIÑO: The chair recognizes Member
14 Graham.

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

16 And Board Member Washburn, thank you for those
17 comments. That was well stated and I'll try not cover
18 some of the things you've already covered.

19 But just as I'm kind of digesting all this,
20 looking through my notes, you know, no question that Star
21 is a small dealer that's kind of built this business based
22 on being a niche dealer. They're not a high volume
23 operation.

24 I know that manufacturers want dealers that
25 will sell as much as they can, but at the end of the day,

1 you know, in many cases dealers get to make those
2 decisions how they run their business and this dealer has
3 been in operation for 50 years. Clearly they have done a
4 pretty good job and have other dealerships. They may not
5 be the largest, most sophisticated dealer, but that's
6 their prerogative, and a manufacturer just simply can't
7 dictate to a dealer how they run their business.

8 That being said, a relationship between a
9 manufacturer and a dealer is a two-way street and it
10 requires effort from both parties to end up serving the
11 customer in the best way they can at the end of the day.
12 Clearly this dealer did not make the financial investments
13 that they could have and very possibly should have, and
14 that is clearly stated all throughout the record.

15 And there's things that I will agree with and
16 disagree with, that I like and I don't like, but at the
17 end of the day the only thing that really matters is did
18 the ALJs' decisions -- did they properly apply and
19 interpret the law, did they rely on accurate
20 administrative decisions and make no technical errors in
21 findings of fact.

22 As I said, there's some things I don't
23 particularly like about this case but I have not been able
24 to identify where they misinterpreted the law, and if
25 somebody knows better, please speak up. But that is where

1 I am at on this case.

2 Thank you, Mr. Chairman.

3 MR. TREVIÑO: Thank you for your comments,
4 Member Graham.

5 Are there any further comments from the board
6 members?

7 (No response.)

8 MR. TREVIÑO: I would like to echo Member
9 Gillman's and Member Washburn's comments about that I'm
10 very sorry that this case has had to come before this
11 board, very sad state of affairs.

12 So hearing no more comments, any further
13 comments?

14 (No response.)

15 MR. TREVIÑO: I will call for the vote. Board
16 members, when I call your name, please state your vote for
17 the record.

18 Board Member Gillman? You're on mute. Member
19 Gillman, you're on mute, still don't hear you.

20 MS. GILLMAN: I vote nay.

21 MR. TREVIÑO: Nay from Member Gillman.

22 Member Graham?

23 MR. GRAHAM: Aye.

24 MR. TREVIÑO: Member McRae?

25 MS. McRAE: Aye.

1 MR. TREVIÑO: Member Prewitt?

2 MR. PREWITT: Aye.

3 MR. TREVIÑO: Member Scott?

4 MR. SCOTT: Opposed.

5 MR. TREVIÑO: Nay. Two opposed.

6 Member Washburn?

7 MS. WASHBURN: Aye.

8 MR. TREVIÑO: And I, Chairman Treviño, also
9 vote aye.

10 So that is one, two, three, four, five ayes,
11 two opposed. Let the record reflect that there are five
12 votes for, two votes against. The members voting aye are
13 Graham, Prewitt, Washburn, and myself and Member McRae.
14 Is that correct? Members voting against are Member
15 Gillman and Member Scott.

16 MS. GILLMAN: Correct.

17 MR. TREVIÑO: The vote is five to two, the
18 motion carries.

19 MR. PREWITT: Mr. Chairman?

20 MR. TREVIÑO: Member Prewitt.

21 MR. PREWITT: Could I recommend a five-minute
22 break, please?

23 MR. TREVIÑO: Certainly, Member Prewitt. Thank
24 you very much for your suggestion. We'll have a five-
25 minute break and be back in five minutes.

1 MR. BROWN: Can we be excused?

2 MR. TREVIÑO: Pardon me?

3 MR. BROWN: Can counsel be excused?

4 MR. TREVIÑO: Yes. Mr. Coffey, Mr. Brown,
5 thank you very much for your comments and for staying
6 within the allotted time. We appreciate your efforts.
7 Thank you.

8 (Whereupon, at 10:14 a.m., a brief recess was
9 taken.)

10 MR. TREVIÑO: It's approximately 10:22 and the
11 board is back in session.

12 So we will move on to agenda item 6 which is
13 rule adoption, and I'll turn it over to Daniel Avitia and
14 Roland Luna, Sr. to discuss agenda item 6.

15 MS. GILLMAN: Is everyone back, Memo?

16 MR. TREVIÑO: Okay. Let me call roll. That's
17 a good question.

18 Board Member Gillman?

19 MS. GILLMAN: Present.

20 MR. TREVIÑO: Board Member Graham?

21 MR. GRAHAM: Here.

22 MR. TREVIÑO: Board Member McRae?

23 MS. McRAE: Here.

24 MR. TREVIÑO: Board Member Prewitt?

25 MR. PREWITT: Here.

1 MR. TREVIÑO: Board Member Scott?

2 MR. SCOTT: Here.

3 MR. TREVIÑO: Board Member Washburn?

4 MS. WASHBURN: Here.

5 MR. TREVIÑO: And I, Chair Treviño, am still
6 here, and Member Bacarisse is not present today. So with
7 that, we have everybody present.

8 And Daniel and Roland, we'll turn it over to
9 you.

10 MR. AVITIA: Thank you, Chairman.

11 Chairman and members, Ms. Brewster, good
12 morning. For the record, Daniel Avitia, deputy director,
13 Texas Department of Motor Vehicles. I will be co-
14 presenting today with Mr. Roland Luna, the director of the
15 Motor Vehicle Division.

16 Chairman, members, today we are asking the
17 board's permission to adopt criminal history and fitness
18 rules. This rule package is listed on your agenda as item
19 number 6 and details may be found on pages 313 to 365 of
20 your board books.

21 This rule package has three proposals: a new
22 Chapter 211 which applies to both motor vehicle
23 distribution and salvage vehicle dealers, and two related
24 fitness proposals, the first for 215, Motor Vehicle
25 Distribution, and the second for 221, Salvage Dealers.

1 This rule package implements the Sunset Advisory
2 Commission's recommendation 4.6 to implement criminal
3 history evaluation rules for the salvage industry,
4 consistent with Occupations Code, Chapter 53, and three
5 bills passed in the 86th Legislative Session to include
6 Senate Bill 604, House Bill 1342, and Senate Bill 1217.

7 We believe these rules strike a good balance
8 between protecting the public by maintaining high fitness
9 standards for license holders while also implementing the
10 legislature and statutory intent to enhance opportunities
11 for convicted persons to obtain gainful employment after
12 completing their sentences.

13 In his October 8, 2019 letter, Governor Abbott
14 requested government agencies to carefully review
15 occupational licensing requirements, ensure rules are not
16 overly burdensome to potential license holders or
17 consumers. We believe this rule package implements the
18 governor's directive.

19 This rule package was published for comment in
20 the June 26, 2020 issue of the *Texas Register*. The
21 comment period closed July 27, 2020. The department
22 received written comments from the Lubbock County Tax
23 Assessor-Collector, the Tax Assessor-Collectors
24 Association of Texas, and the Texas Automobile Dealers
25 Association. All comments received were addressed in the

1 preamble sections and rule text was clarified in response
2 to one comment.

3 If the board adopts these rules this morning,
4 staff anticipates publication in the October 16, 2020
5 issue of the *Texas Register*, with an effective date of
6 October 31, 2020.

7 Chairman, members, we certainly request your
8 approval to adopt this rule package. Before I conclude my
9 remarks, I'd like to certainly recognize the long term
10 hard work provided by the Office of the General Counsel,
11 the Motor Vehicle Division, the Enforcement Division, as
12 well as to thank them for their efforts on these rules.

13 Members, this concludes my remarks. I'm
14 certainly happy to answer any questions you may have.

15 MR. TREVIÑO: Thank you, Mr. Avitia, thank you
16 for the presentation.

17 Do any members have any questions for Mr.
18 Avitia or Mr. Luna?

19 Member McRae.

20 MS. McRAE: I just want to clarify that it is
21 convicted in order to lose license eligibility. Correct?

22 MR. AVITIA: Member McRae, yes, ma'am. Thank
23 you for that question. It is conviction that would
24 require us to consider any license determinations as an
25 arrest does not imply that an individual is convicted or

1 is guilty of anything at that time.

2 MS. McRAE: Thank you.

3 MR. AVITIA: Yes, ma'am.

4 MR. TREVIÑO: Thank you, Member McRae, for that
5 question.

6 Any other questions from board members?

7 MR. GRAHAM: This is Brett. I would just add,
8 Board Member McRae, that I did get clarification on the
9 question that you just asked and there was a word that had
10 been included, I think it was "deemed," and what exactly
11 does deemed mean. Anyway, that has been struck from it so
12 that kind of just cleaned that up. And I had the same
13 question, I just wanted to share that with you.

14 Mr. Chairman, I have a motion when the board
15 will hear one.

16 MR. TREVIÑO: Great. Are there any other
17 questions from any board members?

18 (No response.)

19 MR. TREVIÑO: Hearing none, the chair would
20 entertain a motion.

21 MR. GRAHAM: I move that the board approve the
22 adoption of rules in agenda item 6, as recommended by
23 staff, including New Chapter 211.1 through 211.5 --

24 MR. TREVIÑO: Member Graham, hold on a second.
25 I apologize.

1 Tracey, are there any comments from the public
2 on this?

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

5 No, no public comments. Thank you.

6 MR. TREVIÑO: Member Graham, I apologize.

7 MR. GRAHAM: No apology needed. Your job is to
8 keep us out of trouble, Mr. Chairman, so I'm down with
9 that.

10 Mr. Chairman, I will move that the board
11 approve the adoption of rules in agenda item 6, as
12 recommended by staff, including New Chapter 211.1 through
13 211.5, amendment to Section 215.89, and repeal of Section
14 215.88, and amendments to Sections 221.15, 221.19, 221.111
15 and 221.112, and repeal of Sections 221.113 and 221.114.

16 MR. TREVIÑO: Member Graham, thank you very
17 much for that motion.

18 Do we have a second?

19 MR. PREWITT: (No audible response.)

20 MR. TREVIÑO: The chair recognizes Member
21 Prewitt.

22 Any discussion?

23 (No response.)

24 MR. TREVIÑO: Hearing none, I would call for
25 the vote. Please board members, when I call your name

1 please state your vote for the record.

2 I'm sorry. Member Gillman, did you have a
3 question?

4 MS. GILLMAN: No, sir. I'm anticipating you
5 calling my name.

6 MR. TREVIÑO: Okay. Thank you very much for
7 anticipating.

8 Member Gillman?

9 MS. GILLMAN: Aye.

10 MR. TREVIÑO: Aye.

11 Member Graham?

12 MR. GRAHAM: Aye.

13 MR. TREVIÑO: Member McRae?

14 MS. McRAE: Aye.

15 MR. TREVIÑO: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. TREVIÑO: Member Scott? Member Scott?

18 Going once, going twice, Member Scott?

19 MR. SCOTT: Aye.

20 MR. TREVIÑO: Aye.

21 Member Washburn?

22 MS. WASHBURN: Aye.

23 MR. TREVIÑO: And I, Chairman Treviño, also
24 vote aye.

25 Let the record reflect that it's unanimous and

1 the motion carries.

2 MR. AVITIA: Thank you, Chairman, members.

3 MR. TREVIÑO: Thank you, Mr. Avitia and Mr.
4 Luna.

5 We will now move on. We will now hear item 7,
6 and I will turn it over to Mr. Jeremiah Kuntz.

7 Again, Mr. Kuntz, thank you very much for your
8 son's valiant efforts this morning getting the pledges
9 done. Always fantastic.

10 Mr. Kuntz, are you there with us?

11 MR. KUNTZ: Yes. Sorry, trying to get my mute
12 button to get off there and get my video started.

13 Good morning, members.

14 Before you is agenda item number 7 relating to
15 amendments to 217.74. These amendments are relating to a
16 legislation that passed during the last legislative
17 session, Senate Bill 604, which require each county tax
18 assessor-collector to make webDEALER available to any
19 licensed motor vehicle dealer requesting access. These
20 rules were published for public comment and are before the
21 board for final approval.

22 We did receive public comment from multiple
23 commenters. The comment period closed on July 27 of 2020.

24 The department received written comments from the Bexar
25 County Tax Assessor-Collector, the Lubbock County Tax

1 Assessor-Collector, and the Tax Assessor-Collectors
2 Association of Texas. The staff did not make any
3 amendments to the rules based on the comments received as
4 we believe there may be some misunderstanding from the
5 commenters on the statutory requirements and those
6 requirements as they are related to the rules that were
7 adopted.

8 The statute requires that the webDEALER
9 application be made available to all licensed dealers in
10 the state. It does not give flexibility for a county tax
11 assessor-collector to reject or not allow any licensed
12 dealer to have access to that system based on any of the
13 factors that were raised in the comments.

14 The staff's response to those comments are that
15 if a tax assessor-collector believes that a dealer is not
16 putting forward a proper title application, the title
17 application itself can be rejected and not approved by the
18 county tax assessor-collector, but access to the system
19 must be provided in accordance with state law. And so as
20 such, we have not made any amendments to the rules as they
21 were proposed, and at this time I will answer any
22 questions that the board has.

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

24 Any questions from the board?

25 Member McRae.

1 MS. McRAE: Can you hear me?

2 MR. TREVIÑO: We can.

3 MS. McRAE: Jeremiah, this is more just for the
4 record. The comments that were received from the tax
5 assessor-collectors, the various ones and the association,
6 are out of concern of fraud, waste or abuse primarily, and
7 we currently have avenues or tools in place to address
8 those issues.

9 As you stated, we can reject the application,
10 we can report such activity to CID or go through the title
11 fraud red flag remedy. So I just wanted to just kind of
12 clarify that.

13 MR. KUNTZ: Absolutely. As you've stated, yes,
14 there are options if there is suspected fraud, waste or
15 abuse that is occurring, and in particular, if there are
16 violations of a dealer in their obligations to timely
17 submit title or any of those other kind of avenues.

18 You've mentioned two of the things: you could
19 either reject the transaction back to the dealership to
20 make corrections if it's believed to be fraudulent or not
21 proper; you could also submit it through the red flag
22 process which the department has rules that address how to
23 submit through the red flag process. And in addition, if
24 you believe that a dealer, a licensed dealer in the State
25 of Texas is not fulfilling their statutory obligations, a

1 complaint can be filed with our Enforcement Division
2 against that dealer for them to take administrative
3 actions as well.

4 MS. McRAE: Right. Thank you.

5 MR. TREVIÑO: Thank you, Member McRae, for that
6 question.

7 Any other questions from the board?

8 (No response.)

9 MR. TREVIÑO: Okay. Hearing none, Tracey, any
10 comments from the public?

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

13 No public comments.

14 MR. TREVIÑO: Okay. So any further discussion?

15 (No response.)

16 MR. TREVIÑO: Hearing none, I would call for a
17 motion on agenda item 7.

18 MS. McRAE: Chairman, I'd like to make a
19 motion.

20 MR. TREVIÑO: The chair recognizes Member
21 McRae.

22 MS. McRAE: I move that the board approve the
23 adoption of rules in agenda item 7, including amendments
24 to Section 217.74, as recommended by staff.

25 MR. TREVIÑO: Thank you very much.

1 We have a motion from Member McRae. Do we have
2 a second?

3 MS. GILLMAN: Second.

4 MR. TREVIÑO: Member Gillman, a second from
5 Member Gillman.

6 Any further discussion?

7 (No response.)

8 MR. TREVIÑO: Hearing none, I'd call for the
9 vote. Please, when I call your name please state your
10 vote for the record.

11 Member Gillman?

12 MS. GILLMAN: Aye.

13 MR. TREVIÑO: Aye.

14 Member Graham?

15 MR. GRAHAM: Aye.

16 MR. TREVIÑO: Aye.

17 Member McRae?

18 MS. McRAE: Aye.

19 MR. TREVIÑO: Member Prewitt?

20 MR. PREWITT: Aye.

21 MR. TREVIÑO: Another aye.

22 Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: Aye.

25 Member Washburn?

1 MS. WASHBURN: Aye.

2 MR. TREVIÑO: Aye.

3 And I, Chairman Treviño, also vote aye.

4 Let the record reflect that the vote is
5 unanimous, motion carries.

6 Thank you very much, Mr. Kuntz. Thank you very
7 much, Member McRae, for the motion.

8 So moving on to agenda item number 8, please
9 continue, Mr. Kuntz.

10 MR. KUNTZ: Yes. For the record again,
11 Jeremiah Kuntz, director of the Vehicle Titles and
12 Registration Division.

13 Before you is agenda item number 8 which are
14 rules for final adoption. These rules are amendments to
15 215.150 through 215.158. They relate to House Bill 3760
16 from the last legislative session which addressed the
17 issuance of buyer's tags for vehicles sold by governmental
18 agencies.

19 These vehicles are generally vehicles that are
20 surplus vehicles that are being disposed of by state,
21 federal or local entities, and in order for them to be
22 sold and operated off of the lot by the purchaser, this
23 law allows for those entities to issue a buyer's tag.
24 Like a dealer would issue a buyer's tag to a vehicle that
25 they've sold at no fee so that those purchasers, those

1 buyers can operate those vehicles to get them home or
2 wherever they're taking them.

3 These rules are for final adoption. The rules
4 were published for comment on June 26th, comment period
5 closed on July 27th. We did receive a written comment
6 from the Tax Assessor-Collectors Association, taking no
7 position on the rules.

8 With that, I would seek your determination on
9 these rules.

10 MR. TREVIÑO: Thank you, Mr. Kuntz.

11 Any comments or questions for Mr. Kuntz at this
12 point?

13 (No response.)

14 MR. TREVIÑO: Tracey, are there any comments
15 from the public?

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

18 No public comments. And I'd also like to note
19 that it looks like we lost the video for Member Gillman or
20 she's having technical issues.

21 MR. TREVIÑO: Member Gillman, can you hear us?
22 You're on mute now so we can't hear you. You're also
23 muted. Your video is down and you're muted.

24 MS. GILLMAN: I can see you and I can hear you.

25 MR. TREVIÑO: All right. Well, it's our loss

1 that we can't see you, but it's great that we can hear
2 you.

3 So at that point no comments from the public,
4 no further questions.

5 Oh, you're back. Great. Good to have you
6 back.

7 The chairman will now entertain a motion for
8 agenda item number 8.

9 MS. McRAE: Chairman, I'd like to make a
10 motion.

11 MR. TREVIÑO: The chair recognizes Member
12 McRae.

13 MS. McRAE: I move that the board approve the
14 adoption of rules in agenda item number 8, including
15 amendments to Sections 215.150 through 215.158, as
16 recommended by staff.

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

19 Is there a second?

20 MS. GILLMAN: Second.

21 MR. TREVIÑO: Member Gillman, second from
22 Member Gillman.

23 Any further discussion?

24 (No response.)

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

1 the vote. When I call your name, please state your vote
2 for the record.

3 Member Gillman?

4 MS. GILLMAN: Aye.

5 MR. TREVIÑO: Member Graham?

6 MR. GRAHAM: Aye.

7 MR. TREVIÑO: Member McRae?

8 MS. McRAE: Aye.

9 MR. TREVIÑO: Member Prewitt?

10 MR. PREWITT: Aye.

11 MR. TREVIÑO: Member Scott?

12 MR. SCOTT: Aye.

13 MR. TREVIÑO: Member Washburn?

14 MS. WASHBURN: Aye.

15 MR. TREVIÑO: And I, Chairman Treviño, also
16 vote aye.

17 Let the record reflect that it is unanimous and
18 the motion carries.

19 At this time I would also like to mention that
20 around 11:00 a.m. Member Washburn will be dropping off, so
21 just thank you very much for participating this morning,
22 so whenever you're ready to go. Also, just be aware that
23 any committees that we establish you will probably be
24 chair of, so just be prepared for that.

25 (General laughter.)

1 MS. WASHBURN: Thank you, Chairman.

2 MR. TREVIÑO: No worries, Member Washburn. I'm
3 sure you have good reason. So thank you, thank you for
4 your service.

5 We'll now move on and hear agenda item number
6 9, rule proposals, and I will turn it again over to Mr.
7 Jeremiah Kuntz.

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

11 Before you are rules for proposal that we are
12 seeking approval from the board to publish for public
13 comment. These rules are amendments to 217.3. These are
14 pretty simple rules but I will explain to you why we are
15 doing them very quickly.

16 During the legislative session, the 86th
17 Legislative Session, House Bill 3171 passed which impacted
18 the Department of Public Safety, and it repealed a section
19 of the Transportation Code 521.255 which required DPS to
20 maintain a list of moped manufacturers and moped vehicles
21 for the State of Texas and determining the proper titling
22 and registration of these vehicles. That section of code
23 was repealed and DPS is no longer required to maintain the
24 list of mopeds for the State of Texas. And as such, we've
25 had a reference in our Administrative Code to rely upon

1 that list of mopeds in order to make title determinations
2 for these vehicles.

3 As such, we are removing that reference to the
4 list, and instead will merely rely upon Transportation
5 Code 541.201, which defines what a moped is, for our
6 determinations of titling and registration of these
7 vehicles.

8 And I would answer any questions that the board
9 may have.

10 MR. TREVIÑO: Great. Thank you, Mr. Kuntz.

11 Any questions for Mr. Kuntz?

12 (No response.)

13 MR. TREVIÑO: Thank you.

14 Tracey, any comments from the public?

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

17 No public comments.

18 MR. TREVIÑO: Okay. So hearing no further
19 comments, the chair will now entertain a motion for agenda
20 item 9.

21 MR. SCOTT: Mr. Chairman, I'd like to make a
22 motion.

23 MR. TREVIÑO: The chair recognizes Member
24 Scott.

25 MR. SCOTT: I move that the board approve the

1 proposed amendments to Section 217.3 for publication in
2 the *Texas Register* for public comment.

3 MR. TREVIÑO: Thank you, Member Scott.

4 Do we have a second?

5 MS. WASHBURN: Second.

6 MR. TREVIÑO: Member Washburn.

7 Any further discussion?

8 (No response.)

9 MR. TREVIÑO: Hearing none, I would call for
10 the vote. When I call your name, please state your vote
11 for the record.

12 Member Gillman?

13 MS. GILLMAN: (No audible response.)

14 MR. TREVIÑO: I take that as an aye.

15 Member Graham?

16 MS. GILLMAN: Yes, aye.

17 MR. GRAHAM: (No audible response.)

18 MR. TREVIÑO: Member McRae?

19 MS. McRAE: Aye.

20 MR. TREVIÑO: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: Member Washburn?

25 MS. WASHBURN: Aye.

1 MR. TREVIÑO: And I, Chairman Treviño, also
2 vote aye.

3 Let the record reflect that it's unanimous and
4 the vote carries.

5 MS. BEAVER: Mr. Chairman. General counsel,
6 for the record, Tracey Beaver.

7 I just wanted to clarify if Member Graham had
8 voted in favor of that.

9 MR. GRAHAM: Aye.

10 MR. TREVIÑO: I'm sorry, Member Graham. I
11 heard somebody say it. I think I got Member Gillman and
12 you confused. I apologize, my bad -- which is to your
13 point earlier that my job is to keep you guys following
14 the rules. That's why you guys need to help me with this.

15 MR. GRAHAM: We can go back and watch the video
16 and see me go --

17 (General talking and laughter.)

18 MR. TREVIÑO: Okay. We'll move on to agenda
19 item 10.A, and I'll turn it over to Committee Chair Paul
20 Scott, assisted by Caroline Love.

21 Chairman Scott.

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

23 MS. GILLMAN: Mr. Chairman, can you tell me
24 what page in the board book are we on?

25 MR. TREVIÑO: Okay. So a tip on the board

1 book, if you go to the table of contents at the very
2 beginning, you can click on it for agenda item 10.A.
3 Sunset Implementation Status Update.

4 Is that right, Member Scott?

5 MR. SCOTT: No. This is the -- it is, yes.

6 MR. TREVIÑO: Click on that number next to it,
7 that 420, it takes you right to where we are.

8 MS. GILLMAN: Got it, 420. Thank you.

9 MR. TREVIÑO: Yes, ma'am.

10 Member Scott -- Chairman Scott, sorry for the
11 interruption.

12 MR. SCOTT: Thank you.

13 Yesterday the Legislative and Public Affairs
14 Committee received an update from TxDMV Government and
15 Strategic Communications director, Caroline Love, on
16 several topics. She will be joining us in a moment for
17 some key dates and agency processes to be aware of during
18 the session, as well as discuss potential recommendations
19 to provide members of the legislature for the upcoming
20 season. But before she begins, I want to provide the
21 board with a summary of her update on a couple of items.

22 Sunset implementation. First, on the
23 department's implementation efforts from last session's
24 Sunset Advisory Commission review of TxDMV, when Sunset
25 reviews an agency, their staff develops a report that

1 includes both management and statutory recommendations.
2 The Sunset Advisory Commission then adopts the report
3 which results in continuing legislation.

4 For TxDMV, that continuing legislation was
5 Senate Bill 604 from the 86th Legislative Session. There
6 were provisions to be implemented as part of that
7 legislation, many of which are already implemented.

8 These include the ability for all counties to
9 offer webDEALER to dealers in all Texas counties. Prior
10 to this legislation, not every county offered that
11 service, which not only helps streamline vehicle
12 transaction processes for dealers and counties, but also
13 allows for such transactions to be completed remotely
14 without in-person visits to the county offices.

15 Other items implemented from the legislation
16 include the availability of TxDMV-provided fraud training
17 required for all staff at the state and county levels
18 performing registration or titling services. The
19 establishment of advisory committees to provide expertise
20 on rulemaking and other issues facing the department.

21 There are two significant items of interest
22 that are still in the process of being implemented from
23 Senate Bill 604.

24 First we have the alternatively-fueled vehicle
25 study. This requires TxDMV to submit a study to the

1 legislature by December 1, 2020 on opportunities to assess
2 a fee on alternatively-fueled vehicles, such as electric
3 vehicles, that do not pay motor fuels taxes for their use
4 on Texas roads.

5 This study is to be completed with information
6 and data from several other agencies, including the Texas
7 Department of Transportation, Texas Department of Public
8 Safety, the Texas Commission on Environmental Quality, and
9 the Public Utility Commission. TxDMV staff have regular
10 contact with these agencies to obtain the information
11 outlined in the bill and are on target to meet the
12 December 1, 2020 submission deadline. This board will
13 continue to receive updates on the status of this study.

14 Another legislative item included in the bill
15 is for the board to adopt rules allowing for the use of
16 digital license plates by commercial and government fleet
17 vehicles. These rules were to be adopted by the end of
18 this year and this board adopted those rules at our June
19 11th meeting, which then became effective in July.

20 While this provision is effectively
21 implemented, further efforts continue to allow for these
22 plates to be used. Staff has selected a vendor to provide
23 these plates and is now in the process of developing the
24 technological interface with the provider. Staff
25 anticipates this interface will be available for the

1 provider to use by December 31, 2020.

2 I mentioned there were also management
3 recommendations resulting from the Sunset review which
4 were not part of Senate Bill 604, however, the State
5 Auditor's Office recently reached out to receive
6 information on the status of the department's
7 implementation of this recommendation. Staff provided an
8 update to the State Auditor's Office on the status of
9 implementing management recommendations by their September
10 21st deadline.

11 Executive Director Whitney Brewster has been
12 giving regular updates to this board on the status of
13 implementing these recommendations and most of all the
14 recommendations are implemented. Those that remain to be
15 implemented include efforts that require broader
16 technology initiatives that are underway, such as
17 opportunities to improve enforcement data tracking.

18 Included in your board materials is a chart
19 which lists each Sunset recommendation, both statutory and
20 management recommendations, with the status of those
21 items.

22 Mr. Chairman, that ends my presentation of
23 agenda item 10.A.

24 MR. TREVIÑO: Thank you, Chairman Scott.

25 Ms. Love, would you like to comment on that or

1 anything you'd like to add?

2 MS. LOVE: Good morning, Mr. Chairman and
3 members of the board.

4 I thought Chairman Scott did a great job. I
5 don't have anything else to add.

6 MR. TREVIÑO: Thank you, Ms. Love. I thought
7 he did a great job too.

8 Any comments or questions for Chairman Scott or
9 for Ms. Love?

10 (No response.)

11 MR. TREVIÑO: Tracey, are there any comments
12 from the public?

13 MS. BEAVER: No comments from the public.
14 Thank you, Chairman.

15 MR. TREVIÑO: Okay. We'll now move to agenda
16 item 10.B. Please continue, Chairman Scott.

17 MR. SCOTT: Thank you.

18 10.B is the driver licensing study. The
19 committee also received an update related to item 10.B,
20 the driver license study. This also relates to the Sunset
21 process in that the Texas Department of Public Safety,
22 DPS, went through Sunset review last session.

23 Their continuing legislation, Senate Bill 616,
24 stated that DPS is required to conduct a study analyzing
25 the challenges and opportunities of transferring the

1 driver's license program to be delivered to the
2 legislature by September 1, 2020. If that study was not
3 delivered by the date of that legislation, the transfer of
4 that program to TxDMV would become automatic as of
5 September 1, 2021.

6 The study was to be completed by an independent
7 third party and the General Appropriations Act providing
8 DPS the authorization to use appropriated for this study
9 further specified it was to be completed by an institution
10 of higher education. DPS acquired the services of the
11 University of Texas at Austin Center for Transportation
12 Research to conduct the study, and CTR delivered the study
13 to the legislature on August 28, 2020. CTR held several
14 meetings with DPS and TxDMV staff while conducting the
15 research and also looked at other states and their
16 programs.

17 CTR considered three options for the future of
18 the driver's license program, including the program
19 remaining at DPS, a transfer of the program to TxDMV, and
20 transitioning the program to a new stand-alone agency.
21 CTR's research resulted in the recommendation to establish
22 a new stand-alone agency to administer the driver's
23 license program. Your board materials include an
24 executive summary of their report, found on page 428 of
25 the board book, which includes a Likert chart that briefly

1 outlines the pros and cons of each scenario.

2 Mr. Chairman, that concludes my presentation of
3 agenda item 10.B.

4 MR. TREVIÑO: Great. Thank you very much,
5 Chairman Scott.

6 Does anybody have any questions for Chairman
7 Scott or for Ms. Love?

8 Member Gillman. The chair recognizes Member
9 Gillman.

10 MS. GILLMAN: Is it appropriate or
11 inappropriate, can I hear what Chairman Scott thinks of
12 the recommendation to change driver's license to a stand-
13 alone agency? Does the DMV have the same opinion? After
14 reading the report, do you concur? Do you think it's a
15 good recommendation, Member Scott?

16 MR. TREVIÑO: I think before Chairman Scott
17 speaks, I think the agency itself is agnostic on this
18 question. We don't have an opinion or a position on it. I
19 don't think we've come out on record saying we're for or
20 against or anything else, so I'm not sure if that's been
21 asked of us.

22 Whitney, is that correct?

23 MS. BREWSTER: Chairman Treviño, thank you for
24 bringing that up. That is absolutely correct. This is a
25 policy decision that the legislature is to make. This

1 study was at the request of the legislature to get more
2 information so they could get to a sound policy
3 recommendation should they choose to bring that up this
4 session.

5 MR. TREVIÑO: Just for the record, Member
6 Scott, as a member of this board and as a citizen of
7 Texas, is always allowed his own opinion, so the board
8 anxiously awaits to hear his opinion if he would like to
9 venture in that direction.

10 So Chairman Scott, I don't know if you have
11 thoughts.

12 MR. SCOTT: I concur with what's been said.
13 The agency doesn't have a position. The study was not
14 done for the agency, the study was done for the
15 legislature so the study goes to the legislature. It's a
16 policy or a political decision from there.

17 So I think the next thing for us, if they
18 decide it is to come to DMV, then we're in a spot where
19 we've got to do something. But at this point, the study
20 was done for the legislature and the ball has been passed
21 back to them.

22 MS. GILLMAN: So does a stand-alone agency mean
23 a private company or another government agency?

24 MR. SCOTT: That would be another government
25 agency. They would have to establish the department of

1 drivers's license.

2 MS. GILLMAN: Interesting.

3 MR. PREWITT: Mr. Chairman?

4 MR. TREVIÑO: The chair recognizes Mr. Prewitt.

5 MR. PREWITT: Just a point of information. On
6 the Likert scale, I'm trying to understand how they're
7 rating DMV as average in compliance and security, culture
8 is average -- which I thought was interesting that they
9 would find a brand new agency having a good culture, don't
10 really understand how you get there when you don't know
11 the future -- and then saying that DMV was very poor in
12 disruption.

13 I totally agree it would be a disruptive event
14 for DMV but I don't like it in terms of it looks like a
15 report card on the DMV, and I want to get an
16 understanding. That's not the case, is it?

17 MR. TREVIÑO: Thank you for those comments,
18 Member Prewitt.

19 Director Brewster or Ms. Love, would you guys
20 like to comment on that?

21 MS. BREWSTER: Go ahead, Caroline.

22 MS. LOVE: Okay. Thank you.

23 For the record, Caroline Love, director of
24 Government and Strategic Communications Division.

25 It really was more of a comparison between the

1 various options. The comment about the disruption is even
2 broader as it relates to our programs, just the other
3 component of that being the current services that we
4 provide and how that would take a backseat to such a large
5 and significant initiative there. So I definitely think
6 it's more of a comparison and not necessarily a report
7 card of the agency in that regard.

8 MR. PREWITT: Thank you.

9 MR. SCOTT: Mr. Chairman?

10 MR. TREVIÑO: Chairman Scott.

11 MR. SCOTT: A comment I would have on that is,
12 I find it difficult for me to believe that given the
13 situation of the budget and the emphasis on COVID and all
14 the things that are going to be going on in the
15 legislature, I don't think it's going to be reasonable to
16 think that the legislature is going to establish a
17 completely new and separate agency. The plan was to
18 either keep it at DPS or move it to DMV.

19 There was a lot of heated political activity,
20 people are not very happy with what's been going on at
21 DPS, so this idea was let's get this moved someplace else.

22 That's just how I see it. I can't see the legislature,
23 given the current situation, establishing a completely new
24 agency.

25 Now, it may well be, given the situation with

1 what's going on with the economy and so forth, that this
2 deal doesn't get solved and action taken on it in this
3 upcoming legislative session. It may just get kicked back
4 for a couple more years.

5 MR. TREVIÑO: Thank you, Chairman Scott.

6 Just let the record reflect I don't see Member
7 Washburn anymore, I think she's dropped off.

8 And to Chairman Scott's point, people far
9 smarter than me have had difficulty gauging the role of
10 the legislature. But you're right, I don't see this as
11 being a real high priority at this point going in with all
12 the challenges that the state faces. Great point,
13 Chairman Scott, great point.

14 Any other comments or questions? Member
15 Gillman.

16 MS. GILLMAN: I didn't see any
17 recommendations -- I probably missed it -- for the
18 financial aspect. I see where it does talk about \$200
19 million in additional funds, but I didn't see in the study
20 a financial impact of moving it to a new agency or not.
21 It just seemed -- maybe this is just a briefing, what we
22 have in our book here.

23 MS. LOVE: Mr. Chairman, if I may?

24 MR. TREVIÑO: We'd love to hear you.

25 MS. LOVE: Thank you.

1 So one of the analyses that the study included
2 was that if the function were to transfer to the
3 Department of Motor Vehicles, it would be essentially a
4 budget wash for the state in that the funds that were
5 appropriated for that program would simply be appropriated
6 to DMV to administer the program.

7 There's a similar approach if a brand new
8 agency were to be established where, again, the funds that
9 were appropriated would go to the new agency, but they did
10 identify some additional costs for a new agency in terms
11 of setting up a new administration. And I don't recall
12 the exact figure off the top of my head but it was --

13 MR. TREVIÑO: Twelve point seven, I think they
14 said. To create a new stand-alone should cost an
15 estimated additional \$12.7 million to the state for total
16 biennial cost of \$607.1-, against the \$594.4 million
17 that's already allocated.

18 MS. LOVE: That's it.

19 MS. BREWSTER: And Mr. Chairman, that's on page
20 430 of your board books.

21 MR. TREVIÑO: That was a great question, Member
22 Gillman.

23 MS. GILLMAN: So it sounds like it's not in our
24 court, regardless.

25 MR. TREVIÑO: Well, that hasn't been determined

1 by the legislature.

2 MS. GILLMAN: I mean their recommendation is.

3 MR. TREVIÑO: Careful what you wish for.

4 MS. GILLMAN: Right.

5 (General laughter.)

6 MS. BREWSTER: Mr. Chairman, Whitney Brewster,
7 executive director. If I may?

8 MR. TREVIÑO: Director Brewster, yes, ma'am.

9 MS. BREWSTER: Ms. Love, would you mind sharing
10 information on the select committee on driver licensing?
11 I think that might be helpful for the board to know more
12 about that.

13 MS. LOVE: Certainly. Thank you.

14 So at the beginning of the interim, about a
15 year ago, the speaker established a House select committee
16 on driver license issues and renewal. And that committee
17 has interim charges that included looking at the study
18 once it was submitted, but also looking at the potential
19 future of the program outside of the study as well.

20 As we talked about in our committee hearing
21 yesterday with the committees not meeting due to the
22 pandemic, they are instead requesting information from
23 agencies and stakeholders. And so they have, for those
24 interim charges, issued a request for information and
25 we're looking at that currently.

1 Our response would be due by October 15th, and
2 so we're checking to see what opportunities we have to
3 provide in coordination with them to help the legislature
4 with their decision-making in the future.

5 MR. TREVIÑO: Thank you, Ms. Love.

6 Member Gillman, any other questions on that
7 one?

8 MS. GILLMAN: No further questions, Mr.
9 Chairman.

10 MR. TREVIÑO: Thank you, Member Gillman, for
11 those comments and questions.

12 Any other comments or questions for Chair
13 Scott?

14 (No response.)

15 MR. TREVIÑO: And Tracey, I'll ask you one more
16 time on comments from the public, but do we have any more
17 comments from the public that you're aware of? Can I just
18 dispense with this question?

19 MS. BEAVER: No comments from the public for
20 agenda item 10 but there may be some during the public
21 comment period towards the end of the meeting.

22 MR. TREVIÑO: Okay. So just at the public
23 comment period I can ask you but for the rest of the
24 motions and everything else, I can just skip it. Right?

25 MS. BEAVER: Correct.

1 MR. TREVIÑO: You interrupt if there is some.

2 MS. BEAVER: I will, yes.

3 MR. TREVIÑO: Thank you.

4 Okay. We'll move on to agenda item 10.C and we
5 will continue with Chair Scott.

6 MR. SCOTT: Thank you.

7 10.C, process for legislative session. As I
8 mentioned, Caroline Love will present the next two times,
9 starting with information on some key dates for the
10 upcoming legislative session, along with details on how
11 she and her team will support the board and the department
12 in the coming months during the session.

13 At this time I'll turn it over to Caroline
14 Love, director of Government and Strategic Communications.

15 MS. LOVE: Thank you.

16 For the record, my name is Caroline Love, and I
17 will go ahead and start with a small disclaimer that I'm
18 going to present what the agency intends to follow in
19 terms of processes for the session as if we were headed
20 into a normal legislative session. But as we talked about
21 yesterday, the rumors abound about what the session may
22 look like, but I think the consensus is that the capacity
23 of this legislature will be far less than previous
24 legislative sessions.

25 So we may not see as many bills filed or passed

1 and as many meetings and hearings and those sorts of
2 things. But certainly the top priority the legislature
3 has is the budget and this agency will be very engaged in
4 that process.

5 So with that, I'll go ahead and start with some
6 key dates that are important to keep in mind. So November
7 9th is the first day that legislators can start filing
8 bills. And that's a helpful date, we start to see trends
9 at that point about really hot topics or things that are
10 on their minds.

11 And as that bill filing starts, my team, along
12 with general counsel, will be looking at everything filed
13 to determine if it has an impact to DMV, and that could be
14 operationally or fiscally. So we have our legislative
15 tracking system that we use internally to help track those
16 bills and get them out to our subject matter experts
17 within the department for those types of analysis.

18 And after November 9th, of course, the next key
19 date will be January 12th, which will be the first day of
20 the 87th Legislative Session. And then 60 days after that
21 on March 12th is when there's a bill filing deadline, so
22 all legislation must be filed by that date. And then the
23 sine die, the last day for the legislature to meet, is set
24 for May 31st.

25 So those are some of the key dates that will be

1 driving a lot of the things that occur over these next
2 several months. And throughout that time, as I mentioned,
3 my team, along with general counsel, will be very engaged
4 in looking at all the legislation filed, but we also work
5 closely as well with our CFO, Linda Flores, on that budget
6 process.

7 And as you all will hear in a little bit, we
8 have submitted our Legislative Appropriations Request.
9 It's anticipated there will be some meetings forthcoming
10 in the next month or two to hear from agencies about what
11 they're requesting for budgets, and then those will lead
12 into the legislative hearings that will occur with Senate
13 Finance and House Appropriations and then with their
14 subcommittees.

15 As the department works through this, my group
16 will help identify when those hearings are, any related
17 meetings, and we engage department leadership to ensure we
18 have the proper people attending those hearings and
19 meetings. And in addition to these efforts, we will have
20 weekly meetings with executive leadership and subject
21 matter experts to review legislation filed that has
22 impacts to the department and also determine any actions
23 or information that might be needed to provide to the
24 legislature on those items as well.

25 This information will be posted as well to the

1 board's Sharepoint legislative site. That's a new tool
2 we'll use this time around to help ensure that the board
3 is kept up to date, and my team will also provide updates
4 on any relative hearings or floor debates that might be of
5 interest. We'll put those on that site as well, in
6 addition to all of those key dates.

7 So that is a summary of how we anticipate
8 functioning for the next several months. Of course, I'm
9 sure you can plan to see me at the next several board
10 meetings as well to provide updates, but with that, I'm
11 happy to answer any questions.

12 MR. TREVIÑO: All right. Do any of the board
13 members have questions for Chair Scott or for Caroline?

14 (No response.)

15 MR. TREVIÑO: Great presentation. Thank you
16 for those dates, it's very useful.

17 So hearing no further comments or questions and
18 having no comments from the public, the chair would
19 entertain a motion for agenda item 10.D that has been
20 recommended to us by the Legislative and Public Affairs
21 Committee for approval. Is that correct?

22 MS. LOVE: I'm happy to run through those items
23 before adoption, but I'll hand it back over to you.

24 MR. TREVIÑO: Okay, Caroline, great.

25 So without further discussion, call for a

1 motion. Is that correct? Did you have any other
2 comments, Caroline?

3 MS. LOVE: Well, I provided a summary of the
4 recommendations to the Legislative and Public Affairs
5 Committee yesterday, and they were unanimously adopted,
6 and I would be happy to give a summary of those
7 recommendations to the full board as well.

8 MR. TREVIÑO: Great. Please do.

9 MS. LOVE: Sounds good.

10 So the Texas Transportation Code does task the
11 TxDMV Board with providing recommendations to the
12 legislature on opportunities to improve operations and
13 streamline efficiencies. So earlier this year my team
14 went to the divisions within the department to ask if they
15 have identified any statutory impediments to meeting their
16 missions in terms of their work on day-to-day activities,
17 and we took those recommendations and talked through them
18 internally and then sent them out for stakeholder review.

19
20 The stakeholder review provided us with some
21 very helpful feedback and so we have some items that we
22 are going to recommend for the board to consider for
23 adoption today. But we also have other items that we're
24 going to research further and maybe come back to the board
25 in December with those.

1 And then once the board adopts any items, we'll
2 take those recommendations and provide them to the
3 relevant committees that we work with. Generally
4 speaking, that tends to be House Transportation and Senate
5 Transportation, but we often work with some of the other
6 committees such as Senate Business and Commerce or the
7 House Licensing and Administrative Procedures Committee as
8 well. So we'll be working with those committees on any
9 recommendations that are adopted.

10 And so with that, I'll go ahead and start
11 providing a summary of those that we've had positive
12 stakeholder feedback, and they're broken out by function
13 within the department.

14 And so the first one that we have -- and this
15 begins on page 436 of your board materials today -- we
16 have the first related item on the mandatory tax appraiser
17 reporting of dealers who do not file their vehicle
18 inventories. We would like to make this reporting not
19 mandatory in certain cases to help provide greater
20 flexibility to tax appraisers when they're working with
21 their dealers on their reports for inventory.

22 We still have the ability as an agency to run
23 reports and follow up with dealers, and we work closely
24 with the tax appraisers as well. We've received very
25 positive feedback from them on this item and we'd like to

1 move forward with that.

2 There's also another item under the enforcement
3 section that has statutory cleanup. There were two bills
4 that passed in 2013 that amended the same section of code
5 and so we're cleaning up some references to be sure that
6 portion of the statute is clear.

7 And then moving on to motor carrier related
8 items, we have a new one as it relates to certain outdated
9 oversize and overweight permit requirements for bonds.
10 There are very small bonds associated with some
11 oversize/overweight permits that the Texas Department of
12 Transportation or the counties could use for damage done
13 to their roads by these trucks.

14 Throughout the history of this bond requirement
15 being in place, they've never been called upon that we
16 know of. We have coordinated with TxDOT, as well as the
17 counties, on this item to ensure that they were good with
18 this requirement no longer being in statute and they
19 support it. It does have a significant lift for agency
20 staff to work through these so it would be helpful to no
21 longer keep that requirement in place.

22 Another motor carrier item relates to motor
23 transportation brokers who are required to file with the
24 department currently. There are only four such motor
25 transportation brokers that file, and keeping up with the

1 paperwork on that is also complicated for our staff, so we
2 are recommending to do away with that. And we shared that
3 with the trucking industry as well as those brokers, and
4 they're supportive of this item.

5 And the next two items on the motor carrier
6 related subject relate to a cleanup of statutes that this
7 board has previously approved in previous sessions, but a
8 lot of times in a session, as we know, even during a
9 regular session, timing can be very short, and so these
10 particular items just didn't have the time available to
11 continue them forward. They were on calendars for
12 consideration but didn't make it so we would like to
13 pursue these.

14 They clean up some of the references to various
15 permits, as well as references to federal statutes and
16 rules that states should be in compliance with. There is
17 a risk that if you don't bring state statutes into
18 compliance that federal funds could jeopardized.
19 Thankfully that hasn't happened, but we would like to
20 prevent that from occurring.

21 And now we move on to the Motor Vehicle Crime
22 Prevention Authority. There are two items on this one.
23 Many years ago when the MVCPA function was under the Texas
24 Department of Transportation, their grant statistics were
25 reported as part of their annual Districts and Counties

1 Statistics Report, which is also called DISCOS, and TxDOT
2 provided that report to legislators to help people
3 understand where money is being allocated as it relates to
4 transportation projects and maintenance and this was part
5 of that report.

6 The MVCPA program now provides reports on the
7 grants that are issued through various other channels.
8 And since they are no longer under TxDOT, we'd like to
9 remove this requirement to help streamline processes
10 there.

11 And then another item is recovery of insurance
12 fees that may be overpaid. So currently we want to make
13 sure the statutory authority is clear to recover those
14 costs for the MVCPA program for any overpaid insurance
15 costs there.

16 And as it relates to the Motor Vehicle
17 Division, we only have one item that's a cleanup. There
18 was an old reference to the Motor Vehicles Board so we
19 want to update that to the Texas Department of Motor
20 Vehicles Board.

21 And then as it relates to the Office of
22 Administrative Hearings, there's a recommendation that
23 will help streamline and clean up the Lemon Law and
24 warranty performance case processes. Many of the items in
25 this are truly a cleanup for information that's allowed

1 for public release if we get an open records request on
2 these cases. But also in an instance when there is a case
3 where the manufacturer is not on the prevailing side,
4 currently our staff has to write a final order to require
5 the payment of the filing fees to the manufacturer. This
6 would just put that requirement in statute to reduce some
7 paperwork on that side.

8 And then we had an internal audit that
9 recommended there should be an opportunity for rehearing
10 motions to be made by someone other than a chief hearings
11 examiner, so this recommendation includes that language as
12 well.

13 And then we have a couple of registration
14 related items. One relates to the effectiveness of local
15 option fees. Many county fees that are assessed at time
16 of registration go into effect on January 1st, but
17 oftentimes people who are ahead of the curve that have a
18 registration due in January may submit their registration
19 renewal by mail or another way in December, and this will
20 help clarify when those fees take effect, which would be
21 January 1 of any given year.

22 And another item cleans up some license plate
23 issues. You'll hear more from Jeremiah in a moment about
24 new license plate designs, but as you can imagine, there's
25 always license plates that tend to be created during the

1 legislative sessions. There are a few that were created
2 that never actually have been manufactured or produced.

3 This statute says that when a license plate is
4 created in statute, then the sponsoring entity shall come
5 forward with the deposit to help manufacture that plate
6 and then that deposit is refunded when plates are issued.

7 But there are some plates that have been in statute for
8 more than five years and never received the deposit or
9 been manufactured, so we would like to clean up the
10 statute to remove those.

11 And then the last one I have relates to
12 cleaning up some title statutes as it relates specifically
13 to salvage and rebuilt vehicles. We want to make sure
14 that it's clear that title holds cannot be placed on those
15 vehicles during lawsuits and that those vehicles are also
16 not eligible for title hearings or bonds.

17 So that is a summary of the recommendations
18 which I mentioned were provided to the Legislative and
19 Public Affairs Committee yesterday and adopted by that
20 committee. And with that, I'm happy to answer any
21 questions.

22 MR. TREVIÑO: Caroline, thank you very much for
23 that recap.

24 Any questions for Chair Scott or for Caroline
25 Love?

1 (No response.)

2 MR. TREVIÑO: Hearing none, Chairman Scott,
3 thank you for recommending these for board approval.

4 The chair will now entertain a motion for
5 agenda item 10.D.

6 MR. PREWITT: Mr. Chairman?

7 MR. TREVIÑO: Chair recognizes Member Prewitt.

8 MR. PREWITT: Thank you, sir.

9 I move that the board approve the following
10 recommendations of the Legislative and Public Affairs
11 Committee by adopting the proposed legislative agenda as
12 developed by the department staff, with stakeholder input
13 and involvement, direct staff to finalize and submit this
14 agenda to the legislature as directed in Transportation
15 Code Section 1001.025 for further consideration by members
16 of the legislature for bill drafting and potential filing.

17 Lastly, staff will provide the board regular updates
18 through the session the status of the approved agenda
19 items.

20 Thank you, Mr. Chairman.

21 MR. TREVIÑO: Thank you for the motion, Member
22 Prewitt.

23 Do we have a second?

24 MS. GILLMAN: Second.

25 MR. TREVIÑO: Member Gillman.

1 Any further discussion?

2 (No response.)

3 MR. TREVIÑO: Hearing none --

4 MR. SCOTT: Mr. Chairman?

5 MR. TREVIÑO: Chairman Scott.

6 MR. SCOTT: Before we vote I'd just like to
7 take a second and recognize Caroline for the work that she
8 did for the great presentation she made for us this
9 morning. There's a lot of work that goes into this.

10 Caroline did a good job of summarizing, but as
11 you can imagine the work the staff has done over the
12 period of time to dig through all this and clean all this
13 stuff up, it's certainly not something that would be in my
14 wheelhouse to do. So I really appreciate folks that can
15 do that type of work for us, and as has been said before,
16 keep us out of trouble. And commend again Caroline and
17 the staff for their hard work on this.

18 Thank you.

19 MS. LOVE: Thank you.

20 MR. TREVIÑO: Chairman Scott, well said, well
21 said. And I'll also echo that, but also I'd like to say
22 we don't commend all staff enough for all the hard work
23 they do for us as a board and for the citizens of Texas.

24 So thank you, Caroline, for all your hard work
25 here in this case, and thank you to all the members of the

1 Texas DMV staff as well.

2 Okay, great comments, Chairman Scott.

3 So any further comments?

4 (No response.)

5 MR. TREVIÑO: Hearing none, I would call for
6 the vote. Board members, when I call your name, please
7 state your vote for the record.

8 Member Gillman?

9 MS. GILLMAN: Aye.

10 MR. TREVIÑO: Yes.

11 Member Graham?

12 MR. GRAHAM: Aye.

13 MR. TREVIÑO: Member McRae?

14 MS. McRAE: Aye.

15 MR. TREVIÑO: Member Prewitt?

16 MR. PREWITT: Aye.

17 MR. TREVIÑO: Member Scott?

18 MR. SCOTT: Aye.

19 MR. TREVIÑO: Member Washburn? Oh, Member
20 Washburn is no longer present.

21 And I, Chairman Treviño, also vote aye.

22 Let the record reflect that the vote is
23 unanimous. We have a quorum, and the motion carries.

24 Thank you.

25 So next we'll hear from Mr. Kuntz on agenda

1 items 11.A through 11.C regarding specialty license
2 plates.

3 MR. KUNTZ: Good afternoon, members, again.
4 For the record, Jeremiah Kuntz, director of the Vehicle
5 Titles and Registration Division.

6 Before you for your consideration are three
7 license plate designs. You can find those on page 440 of
8 your board book, and as we've done in the past, since we
9 don't have the big board, we've got the larger digital
10 images of those license plates.

11 The three license plates are all new license
12 plates: the Zeta Phi Beta, Texas Is Home, and the Master
13 Naturalist license plates. The Zeta Phi Beta is a license
14 plate that is sponsored by MyPlates.

15 The other two license plates are actually
16 sponsored by other state agencies, and the Texas Is Home
17 is a new design sponsored by the Texas Department of
18 Housing and Community Affairs. For these license
19 plates -- and I'll talk about the Texas Master Naturalist
20 as well -- for license plates that are sponsored by a
21 state agency, the license plate fee is \$30.

22 The state agency would receive \$22 of those
23 plate fees and the sale of this plate will go to support
24 the Texas Realtors Housing Opportunity Foundation. The
25 Texas Master Naturalist is a new design sponsored by the

1 Texas A&M Agrolife Extension Service. Again, it is a \$30
2 license plate, \$22 of which would go to the Texas A&M
3 Agrolife Extension for the Texas Master Naturalist state
4 programs and conservation initiatives for species of great
5 conservation needs.

6 So these three license plates are being brought
7 before you for your consideration, and I am happy to
8 answer any questions that you may have.

9 MR. TREVIÑO: Thank you for the presentation,
10 Mr. Kuntz.

11 Any questions for Mr. Kuntz?

12 (No response.)

13 MR. TREVIÑO: Hearing none, and there are no
14 comments from the public, the chair would entertain a
15 motion for items 11.A through 11.C.

16 MS. GILLMAN: Mr. Chairman, I'll make a motion.

17 MR. TREVIÑO: Member Gillman.

18 MS. GILLMAN: I move that the board approve
19 specialty plates under agenda items 11.A through C as
20 recommended by staff.

21 MR. TREVIÑO: Thank you, Member Gillman, for
22 the motion.

23 Do we have a second?

24 MS. McRAE: I'll second.

25 MR. TREVIÑO: Member McRae.

1 Any further comments or discussion?

2 (No response.)

3 MR. TREVIÑO: Hearing none, I will call for the
4 vote. Board members, when I call your name, please state
5 your vote for the record.

6 Member Gillman?

7 MS. GILLMAN: Aye.

8 MR. TREVIÑO: Member Graham?

9 MR. GRAHAM: Aye.

10 MR. TREVIÑO: Member McRae?

11 MS. McRAE: Aye.

12 MR. TREVIÑO: Member Prewitt?

13 MR. PREWITT: Aye.

14 MR. TREVIÑO: Member Scott?

15 MR. SCOTT: Aye.

16 MR. TREVIÑO: Member Washburn is no longer with
17 us. I, Chairman Treviño, also vote aye.

18 Let the record reflect that the vote is
19 unanimous and the motion carries.

20 Okay. We will move on to agenda item 12.A. I
21 will turn it over to Linda Flores and Sergio Rey for some
22 financial updates.

23 Ms. Flores.

24 MS. FLORES: Thank you. Good morning. For the
25 record, Linda Flores. I'm the chief financial officer for

1 the Texas Department of Motor Vehicles. I am joined today
2 by Sergio Rey, but with your indulgence, I will give you a
3 brief update on where we are with our Legislative
4 Appropriations Request.

5 If you recall back in August, the first week of
6 August, we did present an appropriations request that
7 included a baseline appropriations of \$310.8 million. And
8 for your reference, this information begins on page 445 of
9 your board book.

10 In that presentation we did not have
11 instructions yet from the Legislative Budget Board. Those
12 instructions were eventually received on August the 18th,
13 with the policy letter and instructions and guidance to
14 state agencies. And two days later on August 20th we
15 received the adjusted general revenue baseline for the
16 Motor Vehicle Crime Prevention Authority.

17 That is the only program in the department that
18 is financed with general revenue, the rest of it is
19 financed through the DMV Fund. Our deadline to submit our
20 appropriations request was September 25th, and therefore,
21 I'm providing an update as to what was actually submitted.

22 The good news is that the Motor Vehicle Crime
23 Prevention Authority actually received an increase in
24 appropriations. Their current appropriations are roughly
25 \$25.7 million for the two years; it went up to \$34.2

1 million.

2 So what we submitted last Friday includes a
3 baseline request, including that bump for MVCPA, in the
4 amount of \$319.3 million. Because of that increase and
5 bump for MVCPA, we also did make three changes that all
6 focused on Motor Vehicle Crime Prevention Authority. One
7 was the base amount increase. The other was a new
8 exceptional item that is shown on page 451 of your
9 materials to expand the Motor Vehicle Crime Prevention
10 Authority.

11 There was some legislation that was passed
12 during the last legislative session that required a
13 statutory distribution of a certain amount to MVCPA based
14 on fee collections. On our insurance policies as
15 motorists that fee went from \$2 to \$4 and that statute
16 provided specific statutory distributions to various
17 entities.

18 Even though they did receive an increase of
19 approximately \$8.5 million, this did not meet that
20 statutory distribution. So we did submit an exceptional
21 item request in the amount of \$2.5 million that would take
22 them up to that statutory distribution.

23 The final thing that we did for Motor Vehicle
24 Crime Prevention Authority is we did have an exceptional
25 item request for a fee collections unit with three FTEs

1 and approximately \$560,000. They removed the cost
2 necessary to finance those three FTEs in that unit due to
3 the increase in their baseline, but we still have to ask
4 for the additional staff, if you will.

5 So bottom line, our appropriations -- the base
6 was \$319.3 million, as I previously mentioned, we do have
7 seven exceptional items that total \$19.5 million, so the
8 agency's total appropriations request totals \$338.8
9 million.

10 Finally, we did continue the riders that we
11 mentioned in August, including one that we did not, and
12 that is a rider that directs the department to submit a
13 DMV Fund report to the Legislative Budget Board. That is
14 in our current bill pattern, if you will, so we are
15 continuing that specific guidance that was provided by the
16 legislature to the agency.

17 And that really concludes my presentation. Do
18 you have any questions for me?

19 MR. TREVIÑO: Does anybody on the board have
20 any questions for Ms. Flores?

21 (No response.)

22 MR. TREVIÑO: Hearing none, I'd just like to
23 recognize the hard work that Chairman Hansen is doing with
24 the MVCPA. For them to get some type of increase in this
25 climate speaks well of what they're doing with that group,

1 with that agency.

2 Any other comments for Ms. Flores?

3 (No response.)

4 MR. TREVIÑO: Hearing none, we'll move on to
5 agenda item 12.B.

6 MS. FLORES: Thank you, Mr. Chairman.

7 With me today is Sergio Rey, and he will be
8 providing an update on the fourth quarter financial
9 activity for the department.

10 MR. REY: Good morning.

11 MR. TREVIÑO: Good morning, Mr. Rey.

12 MR. REY: Good morning. For the record, my
13 name is Sergio Rey, assistant chief financial officer.

14 Today I have the summary for the fiscal year
15 2020 fourth quarter financial report, which for further
16 reference, I will begin on page 492 of your board
17 material.

18 Our revenue collections for fiscal year 2020
19 were \$1.84 billion through the fourth quarter ending on
20 August 31, 2020. This is less than the projected \$2
21 billion forecasted for this year, and less compared to the
22 2019 collection of \$1.97 billion.

23 Now, in the next presentation, Mr. Brian Kline
24 will provide more details associated with the COVID
25 impacts to the department's revenue, but two main

1 contributors to this reduction in fiscal year 2020 are the
2 postponement of registration revenue and related fees
3 stemming from the pandemic and the governor's associated
4 announcements attributing to the decline. Since this is a
5 deferral, it is anticipated that much of this revenue will
6 come in during fiscal year 2021 after the resumption of
7 normal registration operations are announced.

8 The second item was the motor vehicle
9 certificates of title revenue which was also impacted from
10 this economic downturn, where we saw decreases in sales of
11 new and used cars which resulted in decreases of 10.7
12 percent revenue in the category of certificates of title.

13 For the TxDMV Fund, which you'll see on page
14 495, the fund's revenue collections of \$156 million during
15 the year was 8.9 percent less than in 2019. Now, the
16 primary decreases specific to this fund come from the
17 processing and handling fees and the certificates of title
18 revenue. Now, although we did experience this decrease of
19 revenue, the TxDMV Fund covered the \$125.8 million in
20 expenditures that we had during the fiscal year.

21 Speaking of expenditures, in our summary of the
22 department's obligations for the year, the department did
23 have an increase of 2.6 percent in its expenditures and
24 obligations compared to this time last year. The
25 department incurred \$1.7 million in obligations as a

1 response to the COVID-19 pandemic. Now, these obligations
2 range for equipment for telecommuting, health and safety
3 signage, plexiglass for customer service areas, as well as
4 personal protective equipment and cleaning services.

5 For capital projects budgets, the department's
6 \$44 million in budget have various in-flight automation
7 projects which will continue into fiscal year 2021.
8 During this latter part of the year, our technology
9 replacement budget focused on ensuring staff had the
10 technology needed in this very much different
11 telecommuting environment.

12 Our headquarters maintenance project will also
13 continue through fiscal year 2021 as it's in the process
14 of evaluating options for major building maintenance
15 projects, in part, one of them being the Building 5 roof.

16 On a final note for this summary, this
17 department is expected to lapse \$10.2 million from its
18 fiscal year 2020 budget, however, for this biennial budget
19 cycle, TxDMV has the authority to transfer these budget
20 dollars into fiscal year 2021. This will permit the
21 department to address any unanticipated needs during this
22 new fiscal year, including any additional responses to any
23 COVID-19 needs.

24 This concludes my presentation for the fourth
25 quarter financial report, and I'm available for any

1 questions you may have.

2 MR. TREVIÑO: Thank you, Mr. Rey.

3 Does anybody have any questions for Mr. Rey or
4 Ms. Flores?

5 (No response.)

6 MR. TREVIÑO: Mr. Rey, I just want to be clear,
7 you did say that our TxDMV revenue was down 8.9 percent,
8 roughly \$15 million. Is that correct?

9 MR. REY: Yes, sir.

10 MR. TREVIÑO: Great. Okay. Thank you very
11 much.

12 Hearing no comments and no comments from the
13 public, we can move on to agenda item 12.C.

14 MS. FLORES: Thank you, Chairman.

15 Again for the record, Linda Flores, and with me
16 is Brian Kline. He is the team lead for the revenue
17 estimation forecasting unit.

18 As you know, we have previously provided
19 routine updates on the department's response to the
20 pandemic as well as the fiscal impacts to the State of
21 Texas. Those impacts continue. We will continue to
22 report them to both our oversight state agencies as well
23 as to the board.

24 And at this point I will turn it over to Mr.
25 Kline to provide an overview of the revenue impacts over

1 the past year.

2 MR. TREVIÑO: Thank you, Ms. Flores.

3 Mr. Kline on? I don't see him, I don't see him
4 as a speaker. There he is.

5 MR. KLINE: Hi there. I'm not seeing the
6 ability to do video right now. Give me one moment.

7 MR. TREVIÑO: We can hear you now, though.

8 MR. KLINE: I think I know why, I think I need
9 to plug it in. It helps if you plug the video cord in.

10 MR. TREVIÑO: The old video cord.

11 (General laughter.)

12 MR. KLINE: Thank you so much, Honorable
13 Chairman and board members, executive director. My name
14 is Brian Kline with the Finance and Administrative
15 Services Division at TxDMV.

16 The chief financial officer has asked me to
17 provide you all a brief overview of the fiscal year 2020
18 final numbers in terms of our projected revenues versus
19 our actual revenues for the fiscal year. This is also
20 similar to a monthly exercise that we've been providing to
21 the Legislative Budget Board since March or April.

22 Before I move forward, I just want to
23 acknowledge my teammates, Laura Fowler and Steve Sandoval,
24 for all the excellent work that they've done. It's been a
25 real team effort to put together these numbers and the

1 narrative that goes along with it.

2 This is the third time I've visited either with
3 you all or the Finance and Audit Committee since this
4 started back in March, and there have been a lot of
5 fluctuations and a lot of uncertainties about the fee
6 streams related to the economic response to the COVID
7 virus. And I'm reminded of Yogi Berra's quote that
8 "Prediction is difficult, especially about the future."
9 And it's been a lot of ups and downs, but right now I
10 don't have to predict anything because fiscal year 2020 is
11 over and I can give you the actual numbers.

12 I'm going to refer mostly to page 511 of the
13 board book which is entitled Financial Impacts of COVID-
14 19, and you'll see in the rightmost column in the top
15 table compared to projections the actual collections in
16 all three funds: General Revenue, State Highway Fund, and
17 TxDMV Fund. We're about \$157.5 million below our
18 anticipated revenue collections at the beginning of the
19 fiscal year. That's about a 7.9 percent drop from
20 projections, and I'm going to add a caveat to that a
21 little bit later in the presentation.

22 As you can see, the tables below break that
23 \$157.5 million down. General Revenue Fund 1 has seen
24 about a \$10.1 million drop. No surprise that the largest
25 drop from projections is in the State Highway Fund because

1 that's what we collect the most of, and that's about a
2 \$127.5 million drop, and TxDMV Fund 10, about a \$19.9
3 million drop from projections.

4 There's three key factors at play and those are
5 broken down into the columns to the left of the right-hand
6 column. First of all, the fee waivers that Ms. Flores and
7 Mr. Rey talked about, and that you all are familiar with
8 the governor's proclamation back in March just completely
9 waived delinquent title transfer penalty revenue, as well
10 as some of the temporary permit revenues during the period
11 that his proclamation is in effect.

12 Even though he didn't mention the processing
13 and handling fee, because that fee is charged on temporary
14 permit transactions, that fee was effectively waived as
15 well for temporary permit transactions. And these waivers
16 are in place until 60 days after the agency announces to
17 the public that the normal operations have resumed, and
18 that hasn't happened yet. So of the \$157.5 million in
19 less than projected revenue, we estimate about \$24.9
20 million is due to the fee waivers.

21 The second column that Mr. Rey talked about
22 this concept is the postponements or the deferrals of
23 revenue. So the governor's proclamation also allowed
24 customers, if they choose, to defer paying for their
25 registration renewal during the period that the waiver is

1 in effect as well, so this would just be a deferral of
2 revenue. Most of the customers have actually been paying
3 their registrations along the way but we estimate there's
4 still some FY20 registration expirations that are still
5 expired but have not been renewed. We anticipate that
6 will be renewed in fiscal year 2021, so there's about a
7 \$34.7 million deferral that we expect to come next fiscal
8 year, so that's part of that \$157.5 million.

9 And finally, just the general economic impact,
10 maybe fewer cars being sold, fewer dealer licenses, fewer
11 motor carrier permits that are not directly related to the
12 waivers, and that's about a \$97.9 million drop from
13 projections caused by that.

14 So those are the three things that make up the
15 \$157.5 million decrease from projections, and I mentioned
16 earlier that that's about a 7.9 percent drop from
17 projections, but if you take out the effect of the
18 deferral -- which is not so much a drop within the fiscal
19 year as it is a deferral into next fiscal year -- if you
20 take out the effect of that revenue, the 7.9 percent drop
21 actually becomes a 6.1 percent drop.

22 So that concludes my presentation. We are, of
23 course, continuing to monitor customer activity as we go
24 month by month by month, and I'm happy to answer any
25 questions that you all may have.

1 MR. TREVIÑO: Thank you, Mr. Kline, for that
2 great presentation -- well, I won't say great
3 presentation, you did a great job. The numbers are better
4 than they were but still we'd love getting back to the
5 State of Texas.

6 Any comments or questions for Mr. Kline?

7 MR. SCOTT: Mr. Chairman?

8 MR. TREVIÑO: Chairman Scott.

9 MR. SCOTT: Mr. Kline, do you have any
10 indication, or does the agency have any indication when
11 the 60-day deferral will be lifted and the resumption of
12 normal activity will be put in place?

13 MR. KLINE: May I defer, please, sir, Board
14 Member Scott, to Ms. Flores or Executive Director
15 Brewster?

16 MR. TREVIÑO: Executive Director Brewster, I
17 think, is in a position to answer that question.

18 MS. BREWSTER: Yes. Thank you for the
19 question. Thank you, Chairman Treviño, for the
20 opportunity to respond. Great question and certainly one
21 we are working diligently on now.

22 We have been having discussions with a number
23 of the tax assessor-collectors, as well as the Governor's
24 Office and the Department of Public Safety and ones that
25 we might coordinate efforts once we do receive that notice

1 from the Governor's Office that he has chosen to lift the
2 waivers. Those conversations are still occurring, and
3 certainly it's a high priority for the agency. So as soon
4 as we get additional information, we will share it with
5 the board and certainly our impacted stakeholders and the
6 public.

7 MR. TREVIÑO: Chairman Scott, is that enough of
8 a non-answer for you?

9 MR. SCOTT: Exactly. Kind of what I expected
10 but I thought, well, maybe there's some inside baseball
11 ears, somebody really knows but nobody has let it out yet,
12 so apparently that's not the case.

13 MS. BREWSTER: We're working on it but we don't
14 have a definitive date at this point.

15 MR. SCOTT: I understand, I understand. Okay.
16 Thank you very much.

17 MR. TREVIÑO: Great. Thank you for the
18 question.

19 Any other questions for Mr. Kline?

20 (No response.)

21 MR. TREVIÑO: Mr. Kline, thank you for the
22 great presentation, and again, very serious implications
23 for the State of Texas, but the takeaway is it's better
24 than what we initially expected. Is that correct?

25 MR. KLINE: It is better than what was expected

1 because in the first month or two we definitely had a much
2 higher loss because there was so much uncertainty and we
3 just didn't know where we were going with this, and we
4 were a little bit conservative as well in the beginning.

5 MR. TREVIÑO: Well, thank you very much for
6 wrapping that all up.

7 Any other questions for Mr. Kline or Ms.
8 Flores?

9 (No response.)

10 MR. TREVIÑO: Thank you very much.

11 We will move on to agenda item 12.D and we'll
12 turn it over to Sandra Menjivar-Suddeath.

13 MR. KLINE: Mr. Chairman, I'm so sorry. This
14 is Brian again. I think I may need to turn it over to Ms.
15 Flores to talk about the expense side of the COVID-19, if
16 I'm not mistaken. I forgot to say that before.

17 MR. TREVIÑO: No worries, no worries.

18 MR. KLINE: Thank you so much.

19 MS. FLORES: This is Linda again. I believe
20 Mr. Rey covered those expenditures, so we're good.

21 MR. KLINE: Okay. Thank you.

22 MR. TREVIÑO: Great. Thank you very much, Mr.
23 Kline, for bringing that up, and Ms. Flores, for clearing
24 that up.

25 And now on to 12.D, Sandra Menjivar-Suddeath.

1 Welcome, Ms. Menjivar-Suddeath.

2 MS. MENJIVAR-SUDDEATH: Thank you, board
3 members. Good morning. For the record, Sandra Menjivar-
4 Suddeath, Internal Audit director. I'm presenting agenda
5 item 12.D which is just the Internal Audit Division
6 status.

7 This is a briefing item only and it's on page
8 514 of your board books. The Internal Audit Division
9 status for this board meeting includes an update on the
10 progress in the Internal Audit Plan, as well as external
11 coordination efforts.

12 Since the beginning of the fiscal year, the
13 division has begun five engagements and actually has
14 concluded one, the required annual audit activities
15 report. That report is on page 516 of the board book.
16 This report has to be submitted to the Governor's Office,
17 the Legislative Budget Board, and the State Auditor's
18 Office by November 1, 2020. We will do that after this
19 meeting.

20 The information in the report is prescribed by
21 the State Auditor's Office, and for this report the State
22 Auditor's Office required us to include information on the
23 engagements that we conducted in fiscal year 2020, the
24 fiscal year 2021 Internal Audit Plan, any external audits
25 we've had, as well as information on our peer review

1 process. We've included all that information in the
2 report.

3 Other engagements that are still in flight,
4 which are on page 515, include our quality assurance and
5 improvement program. This is an annual review of the
6 internal audit function to see how we are performing
7 against audit standards, as well as our performance on
8 efficiency and effectiveness. And we are in reporting and
9 do plan on releasing that report to the Finance and Audit
10 Committee and the board in October.

11 The procurement measures and advisory service
12 and the employee relations audit has begun. They're both
13 in planning. We do anticipate finishing those audits by
14 January 2021.

15 The final item on the internal audit status is
16 the fiscal year 2021 internal audit followup. We released
17 the third and fourth fiscal year 2020 verified
18 implementation status memorandum to the board earlier this
19 week, and so now we're evaluating the first quarter audit
20 recommendations. So those are the items for the Internal
21 Audit Plan.

22 On external coordination efforts, as already
23 discussed on the recap from the Legislative and Public
24 Affairs Committee, the State Auditor's Office has already
25 requested our status on the Sunset recommendations and

1 where we are on the management actions. We do anticipate
2 the State Auditor's Office coming in in the next couple of
3 months and actually asking for the documentation to
4 support the implementation status, and so Internal Audit
5 will coordinate those.

6 Those concludes my update and I'm open to any
7 questions.

8 MR. TREVIÑO: Thank you, Ms. Menjivar-Suddeath.
9 Does anybody have any questions?

10 (No response.)

11 MR. TREVIÑO: Okay. Well, hearing none, I
12 guess we'll move to agenda item 13 which is executive
13 session. I think before we do that should we take a
14 break? Great. We'll take a five-minute break and before
15 we move into executive session -- or should we move into
16 executive session and take the break?

17 Ms. Beaver, what is your suggestion on this?

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

20 I'd recommend going ahead and going on break
21 first and then coming back on the record before going into
22 closed session.

23 MR. TREVIÑO: Sounds great. So we'll take a
24 break until high noon and then we'll come back and get
25 back in session, and then we'll move into executive

1 session.

2 (Whereupon, at 11:53 a.m., a brief recess was
3 taken.)

4 MR. TREVIÑO: Okay, Tracey, are we ready to go?
5 Is everybody back?

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

8 It is approximately 11:59 and I think we're
9 ready to go.

10 MR. TREVIÑO: Okay. If everyone is ready, I
11 think we'll reconvene and start the meeting. We've got
12 Member Gillman there, Member Prewitt I see, Member Graham
13 and McRae, we are only missing Board Member Scott. Member
14 Scott is here. We're all present so we're good to go.

15 One other note, Member Scott, your question
16 about the waivers. I have it on good authority that the
17 Governor's Office is working hard on this question but
18 they're just trying to find the right solution for the
19 citizens of Texas. It's not something that's arbitrary.

20 They're working on this. They just want to
21 chart the right path for the citizens of Texas. So I
22 wanted to comment on that.

23 MR. SCOTT: Thank you.

24 MR. TREVIÑO: Yes, sir.

25 So with that, I think we're going to move into

1 executive session, if everyone is okay. We'll now pick up
2 agenda item number 13. For those of you in the audience,
3 I anticipate being in executive session for approximately
4 30 minutes and we will reconvene in open session after
5 that. We will go into closed session under Texas
6 Government Code Section 551.071, 551.074, 551.076, and
7 551.089.

8 Will the meeting host please move all
9 panelists, except the board members and those needing to
10 be in closed session to attendees. It is approximately
11 noon on October 1, 2020 and we're going into closed
12 session.

13 (Whereupon, at 12:02 p.m., the meeting was
14 recessed, to reconvene this same day, Thursday, October 1,
15 2020, following conclusion of the executive session.)

16 MR. TREVIÑO: It is approximately 12:21 on
17 October 1, 2020, and the Board of the Texas DMV is now
18 back in open session.

19 Will board members and panelists please turn on
20 your video and unmute your lines. I ask the meeting host
21 to move Tracey Beaver to panelist.

22 So we're good to go, Tracey?

23 MS. BEAVER: Yes, good to go. Thank you.

24 MR. TREVIÑO: Thank you.

25 We will now move on to agenda item number 14.

1 So one of the things we've been talking about is the
2 process around evaluating our executive director. And in
3 terms of good governance, I'd like to appoint a committee
4 charged with the review of the executive director's
5 performance of her job description to be comprised of the
6 chair -- and I'm going to take names off of this, but it's
7 chair, vice chair, and then the third person would
8 normally be the person who would be third person in line
9 for the agency.

10 Member Graham has his hands full, so we've
11 deferred to the longest serving chair on the committee
12 which would be Member Prewitt, and Member Prewitt has
13 graciously agreed to serve. So we are able to fill a
14 three-person group.

15 This in no way eliminates the board's ability
16 to comment on the chair's performance, and one of the
17 things I'm going to require is that the members of the
18 committee reach out to members to gauge their sense of it.

19 But just from a governance standpoint, a little bit
20 easier process about going through it.

21 Although I have the authority to create board
22 subcommittees, the board appoints the executive director
23 of the department. I've decided to put this issue before
24 the full board for a vote. The chair will now entertain a
25 motion on agenda item 14.

1 MR. GRAHAM: Mr. Chairman, I will make a
2 motion. I move that the board approve the creation of the
3 Personnel Subcommittee with the members recommended by the
4 chairman during this meeting. I also move that the board
5 delegate the Personnel Subcommittee the task of evaluating
6 the performance of the executive director.

7 MR. TREVIÑO: Great. We've got a motion from
8 Member Graham. Do we have a second?

9 Member Gillman.

10 MR. SCOTT: Mr. Chairman?

11 MR. TREVIÑO: Yes.

12 MR. SCOTT: I second for the plan to appoint a
13 committee to work on the executive director's performance
14 plan.

15 MR. TREVIÑO: Are you seconding?

16 MR. SCOTT: Yes.

17 MR. TREVIÑO: Okay. All right. Member
18 Gillman, you've been knocked out. I'm going with Member
19 Scott there.

20 Are there any questions or discussion on this
21 item?

22 (No response.)

23 MR. TREVIÑO: Okay. And no comments from the
24 public, so hearing none, I would call for the vote. We
25 have a motion from member Graham and a second from Member

1 Scott. Any further discussion?

2 (No response.)

3 MR. TREVIÑO: Hearing none, I'd call for the
4 vote. Board members, when I call your name, please state
5 your vote for the record.

6 Member Gillman?

7 MS. GILLMAN: Aye.

8 MR. TREVIÑO: That's an aye.

9 Member Graham?

10 MR. GRAHAM: Aye.

11 MR. TREVIÑO: Member McRae?

12 MS. McRAE: Aye.

13 MR. TREVIÑO: Member Prewitt? I guess that's
14 an aye. I can't hear you.

15 MR. PREWITT: Aye.

16 MR. TREVIÑO: Yes. Okay.

17 Member Scott?

18 MR. SCOTT: Aye.

19 MR. TREVIÑO: And Member Washburn is no longer
20 with us, and I, Chairman Treviño, also vote aye.

21 Let the record reflect that the vote is
22 unanimous and the motion carries.

23 Okay. We will now move on to agenda item 15
24 which is public comment.

25 Tracey, are there any comments from the public?

1 MS. BEAVER: Yes, there is a public commenter,
2 Gay McAllister, who is being given instructions on how to
3 raise their hand to be recognized by you, Chairman, when
4 you're ready.

5 MR. TREVIÑO: Okay, great. We will now hear
6 from Ms. McAllister. Please raise your hand using the
7 instructions provided to you, and please be mindful about
8 eliminating any background noise.

9 Also, please state your name for the record and
10 if you are representing anyone. You will have three
11 minutes and you will be muted by the host after speaking
12 for three minutes.

13 Ms. McAllister, welcome. I don't see you.

14 So is Ms. McAllister ready to go? And I don't
15 want any of his time taken away until she starts talking.

16 Are we good to go with Ms. McAllister.

17 MS. McALLISTER: Hello.

18 MS. BEAVER: You may go ahead and proceed.

19 MS. McALLISTER: Thank you very much. This is
20 Gay McAllister, I'm representing myself. I'd like to
21 thank the chair and the board members and the employees
22 who have done important work. I've been here this morning
23 and I appreciate the time and your expertise and what you
24 have contributed for the protection and the safety of the
25 Texas public.

1 I'm speaking about Transportation Rule Chapter
2 218, Subchapter E, Section 218.53 that has to do with
3 household good carrier cargo liability.

4 I recently moved from Dallas to Houston. I
5 used a moving company, All My Sons, in Dallas. It was a
6 two-part move with moving from Dallas to storage to
7 Houston. The final step of the move I was overcharged for
8 two trucks when one was adequate for the move from the
9 Dallas residence to storage, and from storage in Dallas to
10 Houston, they showed up with three trucks and one of them
11 was almost empty. They couldn't give me an adequate
12 breakdown of the charges. I was charged for four movers,
13 there were only three.

14 But then the final insult was the reimbursement
15 and my claim for damages. I submitted a claim for only
16 \$2,200 which included a broken Stiffel floor lamp and
17 completely demolished a broken antique Jenny Lind crib
18 that couldn't be repaired, and seven pieces of crystal,
19 four Waterford hiball glasses and three goblets, and I was
20 offered a settlement claim of 60 cents on the pound which
21 amounted to \$250.

22 I would implore the board to review this. It
23 may not help me but this is a ridiculous charge, and I
24 feel sure that the ladies on the board will get the sense
25 of a reimbursement by pound for Waterford crystal is

1 certainly going to be inadequate. This rule, I don't know
2 what is the origin of, and this is certainly a small issue
3 in the important work that you do, but for those of us
4 that hire moving vans, this reimbursement is totally
5 inadequate.

6 MS. BEAVER: This is Tracey Beaver, general
7 counsel, for the record. If I may, Chairman?

8 MR. TREVIÑO: Yes, please jump in here.

9 MS. BEAVER: I'd just like to remind the board
10 that under the Texas Open Meetings Act the board can't
11 comment or deliberate on a public comment that doesn't
12 relate to an item that's posted on the agenda. This is
13 because the public would not have been on notice that the
14 board might discuss that subject. However, the department
15 is able to give information about procedures that would be
16 available to the public.

17 And so I would just like to note for this
18 particular commenter that there are processes at the
19 department in order to help folks who have these types of
20 complaints to reach out to our Enforcement Division and
21 file a complaint. And so if it's permissible with you,
22 Chairman, we could definitely reach out to this particular
23 commenter and provide this individual more information on
24 how that process works at the department as well.

25 MR. TREVIÑO: I'd first like to thank Ms.

1 McAllister for her comments and the challenges that she's
2 facing. Speaking for the board, I rarely do, but I
3 sympathize with her plight.

4 And we can ask staff to look into the matter,
5 can't we, and come back to us on this. Right?

6 MS. BEAVER: Absolutely, Chairman.

7 MR. TREVIÑO: Great. So I personally -- I
8 don't know about the rest of the board -- would like to
9 hear more about it and if you could return back with some
10 kind of assessment of how it went, and also just reach to
11 Ms. McAllister so she has some way to address her
12 grievances.

13 MS. BREWSTER: Mr. Chairman, this is Whitney
14 Brewster, executive director.

15 Yes, we would certainly be happy to reach out
16 the commenter and circle back to the board at the next
17 appropriate venue.

18 MR. TREVIÑO: Thank you very much.

19 Thank you very much, Ms. McAllister, for your
20 comments.

21 MS. McALLISTER: Thank you.

22 MR. TREVIÑO: Tracey, are there any other
23 comments?

24 MS. BEAVER: No other public comments. Thank
25 you.

1 MR. TREVIÑO: Then we'll now move on to Member
2 Prewitt's favorite next agenda item which is adjournment,
3 and if there's no further business to attend with, I would
4 entertain a motion, Member Prewitt.

5 MR. PREWITT: I would so move, Mr. Chairman.

6 MR. TREVIÑO: Second?

7 MS. McRAE: Second.

8 MR. TREVIÑO: Member McRae jumped in there.

9 Do we need a vote on this?

10 Okay. Board members, when I call your name,
11 please state your vote for the record. According to the
12 script, I've got to read it.

13 Member Gillman?

14 MS. GILLMAN: Aye.

15 MR. TREVIÑO: Member Graham?

16 MR. GRAHAM: Aye.

17 MR. TREVIÑO: Yes, aye.

18 Member McRae?

19 MS. McRAE: Aye.

20 MR. TREVIÑO: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. TREVIÑO: Member Scott?

23 MR. SCOTT: Aye.

24 MR. TREVIÑO: yes. And Member Washburn is no
25 longer with us, and I, Chairman Treviño, also vote aye.

1 And let the record reflect that the vote is
2 unanimous.

3 It is now approximately 12:30. We are
4 adjourned.

5 Thank you very much for everyone's diligent
6 work on this. Really appreciate everybody's efforts.

7 (Whereupon, at 12:30 p.m., the meeting was
8 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TxDMV Board
4 LOCATION: via conference call
5 DATE: October 1, 2020

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 176, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Motor Vehicles.

11 DATE: October 9, 2020
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16

17 /s/ Nancy H. King
18 (Transcriber)
19

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