

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Texas Department of Motor Vehicles
4000 Jackson Avenue
Building 1
Lone Star Room
Austin, Texas 78731

Thursday,
April 13, 2023
9:00 a.m.

BOARD MEMBERS:

Charles Bacarisse, Chair
Christian Alvarado
Stacey Gillman
Brett Graham
Tammy McRae (absent)
Sharla Omumu
John Prewitt
Paul R. Scott

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CLOSED SESSION

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| 10. | 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, including briefing, discussion, and deliberation regarding Temporary tags:
Section 551.071
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P R O C E E D I N G S

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

5 It is now 9:00 a.m., and I am calling the Board
6 meeting for April 13, 2023 to order. I want to note for
7 the record that the public notice of this meeting,
8 containing all items on the agenda, was filed with the
9 Office of Secretary of State on April 5, 2023.

10 Before we begin today's meeting, please place
11 all cell phones and other communication devices in the
12 silent mode. Also, as a courtesy to others, please do not
13 engage in side conversations in the meeting room.

14 I want to welcome those who are with us for
15 today's Board meeting. Good morning.

16 If you do wish to address the Board or speak on
17 an agenda item during today's meeting, please complete a
18 speaker's sheet at the registration table, or send an
19 email to GCO_general@TxDMV.gov. Please identify in your
20 email the specific item you're interested in commenting
21 on, your name and address, and whether you are
22 representing anyone or speaking for yourself. If your
23 comment does not pertain to a specific agenda item, we'll
24 take your comment during the general public comment
25 portion of the meeting.

1 In accordance with the department's
2 administrative rule, comments to the Board will be limited
3 to three minutes. A timer has been provided on the
4 podium. The timer light will be green for the first two
5 minutes, yellow when the speaker has one minute left, and
6 then red when the speaker's time is up.

7 Individuals cannot accumulate time from other
8 speakers. Comments should be pertinent to the issues
9 stated on the comment sheet. When addressing the Board,
10 please state your name and affiliation for the record.

11 And there are a few things that will help us
12 make the meeting run more smoothly and also assist the
13 court reporter to get an accurate record. First of all,
14 please do identify yourself before speaking. Speak
15 clearly and slowly, do not speak over others, and ask me
16 for permission to speak and be sure to get recognized
17 before speaking.

18 I'd like to thank our court reporter who is
19 transcribing this meeting.

20 Before we begin today, I'd like to remind all
21 presenters and those in attendance of the rules of conduct
22 at our Board meetings. In the department's administrative
23 rule, I have the authority to supervise the conduct of the
24 meetings and this includes the authority to determine when
25 a speaker is being disruptive of the meeting or is

1 otherwise violating the timing or the presentation rules
2 that I just went over.

3 So now I'd like to have a roll call of the
4 Board members. Please respond verbally when I call your
5 name.

6 Member Alvarado, are you present?

7 MR. ALVARADO: Present.

8 MR. BACARISSE: Member Gillman?

9 MS. GILLMAN: Present.

10 MR. BACARISSE: Member Graham?

11 MR. GRAHAM: Present.

12 MR. BACARISSE: Member Omumu?

13 MS. OMUMU: Present.

14 MR. BACARISSE: Member Prewitt?

15 MR. PREWITT: Present.

16 MR. BACARISSE: Member Scott?

17 MR. SCOTT: Present.

18 MR. BACARISSE: And let the record reflect that

19 I, Charles Bacarisse, am here too. We have a quorum.

20 Let the record also reflect that our vice
21 chair, Tammy McRae, is absent today.

22 Agenda item number 2 is pledges of allegiance
23 to the U.S. and Texas flags, so if you all will stand now,
24 I will turn it over to Member Gillman to lead us in the
25 U.S. pledge.

1 (The U.S. Pledge of Allegiance was recited.)

2 MR. BACARISSE: And now Member Graham will lead
3 us in the Texas pledge.

4 (The Texas Pledge of Allegiance was recited.)

5 MR. BACARISSE: Thank you. Thank you both.

6 Agenda item 3 is the chair report, and Section
7 1001.023 of the Transportation Code sets out the duties of
8 the Board chair and the vice chair. And one of the duties
9 of the Board chair is to report to the governor on the
10 state of affairs of the department, the DMV. This annual
11 report was submitted to the Governor's Office. This
12 report also provides updates on the agency's key
13 accomplishments, revenues, expenditures, performance data,
14 technological improvements, and significant legislation
15 enacted by the 87th Legislature.

16 Once published, the report will be distributed
17 to legislators and Board members electronically. It will
18 also be sent to GovDelivery subscribers, and posted on the
19 agency's external website at www.TxDMV.gov at the bottom
20 of the page located under Reports and Data.

21 Outgoing member Manny Ramirez was planning to
22 be with us today so we could recognize him for his term on
23 our Board and his service. Unfortunately, his pressing
24 duties as commissioner in Tarrant County have kept him
25 home, so we will hold that for a future meeting when we

1 can show him our appreciation.

2 But we'll move on to agenda item number 4,
3 which is the executive director's reports. So I'll turn
4 it over to Daniel Avitia for items 4.A through 4.C.

5 Daniel.

6 MR. AVITIA: Chairman, members, thank you and
7 good morning. For the record, Daniel Avitia, executive
8 director for the Texas Department of Motor Vehicles. I
9 appreciate the opportunity to share a few items with you
10 this morning.

11 Agenda item 4.A is the introduction of our new
12 general counsel, Ms. Laura Moriaty.

13 Chairman, members, this is more for our friends
14 joining us this morning, as you all have had good
15 interaction with Laura, and for those watching online this
16 morning.

17 I'm happy to formally introduce Laura Moriaty
18 as our general counsel. Ms. Moriaty joined the Texas
19 Department of Motor Vehicles on March 6 of this year. In
20 this role, Laura advises the department's executive team
21 and Board on a range of legal matters and manages the work
22 of the Office of General Counsel.

23 Laura has spent the last 12 years of her career
24 specializing in Texas administrative law, representing
25 Texas state agencies. She has served in the general

1 counsel role for the Texas Board of Veterinary Medical
2 Examiners and the State Board for Educator Certification,
3 as well as an administrative law judge for the Texas
4 Education Agency. Prior to entering state service, Laura
5 was a securities litigator for national law firms, to
6 include the Akin Gump and Greenberg Traurig.

7 Laura was born and raised in Austin, so she is
8 a true Austinite. She attended college at Yale University
9 and law school at the University of Virginia.

10 Chairman, members, please join me in formally
11 welcoming Laura Moriaty as our general counsel.

12 (Applause.)

13 MR. AVITIA: Chairman, I will now move on to
14 agenda item 4.B.

15 MR. BACARISSE: Please.

16 MR. AVITIA: This briefing document can be
17 found on page 6 of your Board materials.

18 Deputy Executive director Shelly Mellot, Roland
19 Luna and I, along with several staff from across the
20 department, attended the American Association of Motor
21 Vehicle Administrators, or AAMVA, 2023 Workshop and Law
22 Institute Conference in San Antonio, March 8 through 9.
23 This two-day conference was packed with sessions covering
24 hot topics in the motor vehicle and law enforcement
25 community, including customer communications, insurance

1 verification, and license plate standards. The AAMVA
2 Workshop and Law Institute offered a collaborative
3 environment to network and learn from fellow motor vehicle
4 and law enforcement colleagues from the various
5 jurisdictions, as well as to meet industry
6 representatives.

7 Members, if you're okay with this, I will move
8 on to the next agenda item 4.C.

9 Agenda item 4.C is recognition of years of
10 service. The briefing document can be found on page 7 of
11 your Board materials.

12 At this time, Chairman and members, I would
13 like to recognize our employees who have reached a state
14 service milestone. We celebrate these employees to show
15 our appreciation for their years of service to the
16 citizens of our great state. This morning we have a total
17 of ten.

18 First, we have Mr. David Pyndus with the
19 Vehicle Title and Registration Division, who has reached
20 20 years of state service; we also have John Schrier with
21 the Enforcement Division for 20 years of state service.
22 Claudette Otis-Watkins with the Motor Carrier Division, 25
23 years of state service; Ms. Bennie Brown with the Office
24 of Administrative Hearings, 25 years of state service; Ms.
25 Vanessa Williams with the Motor Carrier Division, 25 years

1 of state service; and last but not least, DuWayne Murdock,
2 Jr., Motor Carrier Division, with a whopping 35 years of
3 state service.

4 Chairman, members, the following individuals
5 have recently retired from the agency: Ms. Judith Baxter
6 with VTR who reached 22 years of state service; Ms. Dawn
7 Burton with the Office of General Counsel, 23 years of
8 state service; Lee Gradney with the Motor Carrier
9 Division, 24 years of state service; and finally, Tracey
10 Stafford with the Enforcement Division, 21 years of state
11 service.

12 Chairman, members, Bennie Brown and Ms. Vanessa
13 Williams are present with us this morning.

14 Ms. Bennie Brown joined the TxDMV -- Bennie, if
15 you can stand so the Board can see where you are and who
16 you are -- Bennie joined the TxDMV November 2022 as the
17 chief administrative hearings officer and the director of
18 the Office of Administrative Hearings. Bennie presides
19 over the Lemon Law hearings and oversees the day-to-day
20 operations of the Office of Administrative Hearings.

21 Prior to joining the DMV, Bennie served as an
22 administrative law judge with the State Office of
23 Administrative Hearings for 12 years. In addition, she
24 also worked with the Texas Department of Public Safety for
25 12 years. Throughout her career, Bennie has presided over

1 thousands of administrative law proceedings.

2 Bennie, congratulations and thank you for your
3 dedication over the last 25 years and certainly also for
4 joining the Texas Department of Motor Vehicles. We're
5 very lucky to have you.

6 (Applause.)

7 MR. AVITIA: Next we have Ms. Vanessa Williams.

8 Vanessa works in the Motor Carrier Division Licensing,
9 Registration and Credentialing. Vanessa was hired with
10 the Motor Carrier Division in 2022. She retired as a
11 credentialing specialist in the Motor Carrier Division in
12 2019, and from what I understand, she missed us so much
13 that she had to come back to the DMV.

14 (General laughter.)

15 MR. AVITIA: Vanessa's heart is and always has
16 been as big as the state of Texas because every customer
17 she touches in her years of service can call her by name
18 and remember her kindness and willingness to support them
19 and their needs. Vanessa prides herself on customer
20 service. She is a true asset to the DMV.

21 Congratulations to both Bennie and Vanessa, and
22 thank you for your 25 years of state service.

23 (Applause.)

24 MR. AVITIA: Now, Chairman and members, if you
25 would join me in the front of the dais so that we can

1 congratulate Vanessa and Bennie.

2 (Pause for presentations and photos.)

3 MR. AVITIA: And, Chairman, members, this
4 concludes the executive director's report under items 4.A,
5 B and C. Thank you.

6 MR. BACARISSE: Thank you, Mr. Avitia.

7 Agenda item number 5 is our proposal for
8 decision, and before we get into that item, let me make a
9 couple of comments. Before we move to the oral
10 presentations from the parties to this contested case,
11 Associate General Counsel Rob Blech will present the
12 procedural history and summary of the case, and then a
13 party that timely submitted a request to make an oral
14 presentation will be allowed up to 15 minutes to make that
15 presentation.

16 My request is that let's let that 15-minute
17 block be uninterrupted from each side so that all the time
18 necessary is given. The time spent by a party responding
19 to any Board questions is not counted against that party's
20 time during that 15 minutes. The timer light will be
21 green for the first 14 minutes, yellow when there's a
22 minute left, and then red when it's time to wrap up and
23 I'll let you close your thought.

24 I would also like to remind the Board members
25 and the parties that the Board's decision must be based

1 solely on the evidence contained within the administrative
2 record from the State Office of Administrative Hearings.
3 If a Board member asks a question about evidence that is
4 not in the SOAH's administrative record for this case, the
5 parties should respond by saying the question is about
6 evidence that's not in the SOAH administrative record.

7 Petitioner, McAllen Jeep, Inc. d/b/a Bert Ogden
8 Subaru, is represented by Mr. Dan Worthington and Mr.
9 James Cousar, who will now make Bert Ogden Subaru's oral
10 presentation on this contested case.

11 Gentlemen, the podium is yours.

12 MR. BLECH: Chairman Bacarisse, do you still
13 want me to do an introduction?

14 MR. BACARISSE: Hold on. Yes.

15 I'm sorry. Laura Moriaty.

16 MS. MORIATY: Sorry. Laura Moriaty, general
17 counsel for DMV.

18 You had mentioned in your introduction that Rob
19 Blech would be summarizing for us.

20 MR. BACARISSE: Yes. I jumped ahead, Mr.
21 Worthington. My apologies.

22 MR. WORTHINGTON: Not at all. Yes, sir.

23 MR. BACARISSE: Mr. Blech needs to lay things
24 out for us and then it will be you.

25 MR. BLECH: Thank you.

1 Rob Blech, associate general counsel, for the
2 record. Good morning, Board members. As Chairman
3 Bacarisse said, I'll be presenting a procedural history
4 and summary of the proposal for decision that is before
5 you today for your consideration.

6 The case before you involves Bert Ogden
7 Subaru's protest of the proposed termination of its
8 franchise by Subaru of America, a distributor. The issue
9 presented to the Board is whether Subaru of America
10 established by a preponderance of evidence good cause for
11 termination of the franchise of Bert Ogden Subaru, as
12 required by Texas Occupations Code 2301.453(g).

13 I'm going to give an abbreviated procedural
14 history of this case. The full in-detail procedural
15 history was provided to you at the February 9, 2023, Board
16 meeting and it's included in the executive summary in your
17 Board materials.

18 Briefly, two administrative law judges, or
19 ALJS, of the State Office of Administrative Hearings,
20 SOAH, conducted a hearing on the merits in this case on
21 the following dates in January of 2022: January 18
22 through 21, January 24 through 28, and January 31. The
23 ALJs issued a proposal for decision, or PFD, on this case
24 on July 29, 2022.

25 The PFD found that Subaru of America met its

1 burden to show good cause for the termination of Bert
2 Ogden's franchise and recommended that the Board deny Bert
3 Ogden's protest of the proposed termination. After
4 considering exceptions from the parties, the ALJs filed an
5 exceptions letter stating they did not recommend making
6 any changes to the PFD and that the PFD was ready for
7 consideration by the Board.

8 As you will recall, this matter was presented
9 to you at the February 9, 2023, Board meeting. At that
10 meeting, both parties made presentations and answered
11 questions from you. No motions were made regarding the
12 adoption of the PFD and the Board approved a motion to
13 postpone action on the agenda item until the next Board
14 meeting, and here we are, you will be taking this matter
15 up again today.

16 Both parties have timely provided notice of
17 their intent to make oral presentations and have submitted
18 written materials which are included in your Board book fo
19 your review.

20 The Board has jurisdiction to consider the
21 proposal for decision in this contested case and enter a
22 final order. In determining whether Subaru established
23 good cause for the termination, Occupations Code 2301.455
24 requires the Board to consider seven specific statutory
25 factors set out in 2301.455, all existing circumstances,

1 and whether the termination is based solely on the desire
2 for market penetration.

3 The ALJs' analysis of the statutory factors
4 under Texas Occupations Code 2301.455 is summarized in the
5 chart in the executive summary of your Board book. I'm
6 just going to briefly summarize the ALJs' findings.

7 The ALJs found that five of the factors in
8 Occupations Code 2301.455 supported termination, one
9 factor was neutral, neither for or against termination,
10 and one factor weighed against termination. The five
11 factors found to support termination are: Factor 1,
12 dealer sales in relation to the market; Factor 3, injury
13 or benefit to the public; Factor 4, adequacy of the
14 dealer's service facilities, equipment, parts and
15 personnel in relation to other dealers of new motor
16 vehicles of the same line make -- in other words, other
17 Subaru dealers; Factor 6, parties' compliance with the
18 franchise, except to the extent the franchise conflicts
19 with Occupations Code 2301; and Factor 7, enforceability
20 of the franchise from a public policy standpoint,
21 including issues of reasonableness of the franchise's
22 terms, oppression, adhesion, and the parties' relative
23 bargaining power.

24 The factor found to be neutral by the ALJs, not
25 favoring either party, was Factor 2, dealer's investments

1 and obligations. The factor found to weigh against
2 termination was Factor 5, whether warranties are being
3 honored by the dealer.

4 As required, the ALJs also addressed the issue
5 of whether the desire for market penetration is the sole
6 basis for termination. The ALJs found that Subaru is not
7 seeking termination solely to increase market penetration.

8 Now I'm going to review the options before you
9 today in regard to the PFD. I've done this before, but
10 we'll just go through it again.

11 First, you may adopt the PFD as written and
12 direct Board staff to draft an order consistent with that
13 adoption.

14 Second, you may amend portions of the PFD,
15 adopt the PFD as amended, and direct Board staff to draft
16 an order consistent with the amended PFD. Any changes to
17 the PFD must comply with Section 2001.058(e) of the Texas
18 Government Code. This section of the Government Code
19 authorizes changes to a finding of fact or conclusion of
20 law if an administrative law judge misapplied or
21 misinterpreted any of the following: applicable law,
22 agency rules, written policies provided to the ALJ by the
23 agency, or prior administrative decisions, or if an ALJ
24 relied on a prior administrative decision that is
25 incorrect or should be changed, or if an ALJ made a

1 technical error in a finding of fact that should be
2 changed.

3 If you are making a motion to change a
4 conclusion of law or finding of fact, your motion should
5 identify the specific change you are requesting, as well
6 as identifying the applicable law that was misapplied or
7 misinterpreted, why that interpretation or application was
8 incorrect, and how the findings of fact support your
9 interpretation.

10 Your third option is to remand a portion of the
11 PFD back to SOAH with a request to clarify a finding of
12 fact or conclusion of law or make findings on an issue
13 that was omitted from the findings of fact or conclusions
14 of law. The Board cannot remand to SOAH to change a
15 finding of fact or conclusion of law or make findings that
16 conflict with the findings the judges already made in the
17 PFD. SOAH is not bound by a remand request, and if it
18 chooses, can simply stand on the PFD as written.

19 One thing to consider when reviewing the PFD
20 today is that the Board has the authority to determine
21 what weight should be placed on the factors that the Board
22 weighs under Texas Occupations Code 2301.455. The
23 application of the factors in 2301.455 to determine if
24 there is good cause to terminate a franchise is not a
25 matter of simple arithmetic where the decision is

1 determined by a greater number of factors in favor of
2 termination than against, or vice versa.

3 You as a board have the authority and
4 discretion to determine the relative weight and
5 significance of the factors in making your ultimate
6 decision in this case. If you are making a motion to
7 amend a conclusion of law or finding of fact to change the
8 way a particular factor weighs either in favor of or
9 against termination, you should describe in the motion why
10 you are attributing a particular weight to the factor and
11 why that application of the weight is consistent with good
12 public policy.

13 The parties will now be making their
14 presentations, first Bert Ogden Subaru and then Subaru of
15 America. I'm going to turn it over to Chairman Bacarisse
16 to introduce the attorneys for both parties, and he's
17 already described the procedure.

18 MR. BACARISSE: I jumped ahead. Thank you.

19 MR. BLECH: Thank you very much for your time.

20 MR. BACARISSE: Thank you, Rob.

21 Mr. Worthington, now I would like to invite you
22 to come to the podium and address this.

23 MR. WORTHINGTON: I appreciate it. I'm going
24 to get my timer out so I can make sure I keep straight
25 here.

1 Board, good morning. By way of brief
2 reintroduction, my name is Dan Worthington, and together
3 with Jim Cousar, Brent Bishop, and Kristen Vela, we
4 represent Bert Ogden Subaru.

5 Joining us this morning on behalf of Bert Ogden
6 Subaru is our CEO, Natasha Del Barrio, one of our owners
7 and our dealer principal, Bob Vackar -- you heard from Bob
8 in February -- and Janet Ogden Vackar, born and raised in
9 the Rio Grande Valley, lifetime resident, our other owner,
10 and most importantly, the voice and face, the brand of
11 Bert Ogden Subaru.

12 If you could turn to page 256 in our written
13 materials, when we began our remarks in February, I
14 described this case about being a result-oriented decision
15 made by SOAH, which after making the decision began a
16 search for reasons it could argue to the ALJ and this
17 Board to justify termination. If you look at page 256 in
18 your written materials, you will see an email dated July
19 20, 2020. It's from Jim Schmidt, the Central Region
20 marketing development manager, to Casey Griffin, the
21 Central Region vice president and the Subaru employee who
22 sent the notice of intent to terminate.

23 This email is dated only a month before the
24 notice of intent to terminate was served. And in the
25 email you'll note that it isn't my description of this

1 process of terminate first and look for reasons later, it
2 is Mr. Schmidt who says we decided to terminate last month
3 in June; we're now looking for data to support
4 termination. This was not a search for the truth with
5 regard to Bert Ogden's performance. It was a search for
6 reasons they could argue supported termination, and that
7 explains, respectfully, a number of the issues that we
8 raised with regard to the evidence, newly created
9 standards, et cetera.

10 Board Member Gillman, you asked us in February
11 whether the record contained evidence to allow us to know
12 whether Bert Ogden could have achieved MSR if it turned at
13 the zone average -- that is sales efficiency average --
14 based on the allocation it received for Subaru and
15 supplemental allocations. If you'll turn to page 259 of
16 your written materials -- that will be two pages
17 forward -- this is a contact report.

18 A contact report is a document created by
19 Subaru after a meeting with the dealer. Subaru writes the
20 report, Subaru reviews the report, Subaru maintains the
21 report, but what Subaru does not do is ever provide it to
22 a dealer. And so the statements attributed to the dealer
23 and Subaru get reviewed by Subaru, indeed, the dealer is
24 never given that opportunity, and in fact, the record
25 established that not only did Bert Ogden Subaru not know

1 the content of these contact reports that were admitted,
2 they didn't know they existed.

3 And you'll see on the first page for date
4 reference it's dated June 20, 2019, written by the
5 district manager, Mr. Yannella. It is reviewed and
6 approved by Mr. Adams, the zone manager, and the first
7 page contains some performance metrics.

8 But I'd like to focus on page 2 and page 3, so
9 if you'll turn to the next page you see a paragraph marked
10 "MSR." I don't have the time to read through it in
11 detail, but there are two take-aways. The first is that
12 Subaru is telling Bert Ogden MSR is a long term goal, but
13 that doesn't fit when you're trying to terminate for
14 breaching MSR, so you don't see that reappear in any of
15 the documents from Subaru once the hearing began.

16 You'll also see that Subaru has computed what
17 amount of vehicles Bert Ogden can sell per month if it
18 turned at the zone average, the very question that Member
19 Gillman asked. It was 40. You'll note that they
20 reference the MSR during this time period was 71.

21 It would have been hundreds and hundreds and
22 hundreds of vehicles short. And indeed, if you look back
23 at page 258 -- for time we can't do it -- it is an excerpt
24 from the notice of intent to terminate that sets out both
25 on a June to June, January to December MSR and sales

1 performance addendum sales requirements. This establishes
2 MSR could not have been met, and for two of the three
3 years sales performance addendum requirements could not
4 have been met.

5 If you turn the page, at the very bottom you'll
6 see wholesale allocation on page 260. If you scan down on
7 page 261, you see that Mr. Yannella is recounting a
8 conversation he had with Mr. Vackar. Mr. Vackar is asking
9 for more inventory. It wasn't provided.

10 He goes on again to re-describe the computation
11 that he made in this document with regard to the number of
12 vehicles Bert Ogden could have sold if it turned at the
13 zone average. Bert Ogden could not have achieved MSR if
14 it turned at the zone average based on what it was given
15 by Subaru.

16 Now if you'll turn to page 262, page 262 and
17 page 263 are a series of excerpts from testimony given in
18 the proceeding. I'd like to talk briefly about OLP. We
19 discussed this first bit of testimony in February.

20 Subaru introduced edited OLP narratives that
21 are the comments that customers give, editing out all the
22 positive and leaving in only the negative. Mr. Poston,
23 who was the zone manager the entire run of Bert Ogden in
24 its store until he left in March of 2019, he said that
25 mischaracterized Bert Ogden and was unfair. The ALJs,

1 nevertheless, admitted it. By the way, Subaru also went
2 online and found Google reviews and edited out everything
3 except the one star reviews and introduced those into
4 evidence over objection.

5 If you look at the third entry, it begins:
6 "Yes, sir. But my question is:" on this document. I'm
7 asking Mr. Poston about this grade on a curve comparative
8 OLP standard that didn't exist.

9 And I said, Mr. Poston, is there anything in
10 the contract that says irrespective of score this grade on
11 a curve scale is a breach? Not that I know of. This is
12 the zone manager at the time this contract was signed.
13 Not that I know of.

14 Now, Board Member McRae -- who is not here this
15 morning -- and Board Member Omumu asked about notice and
16 opportunity to cure in lieu of termination prior to the
17 notice of intent to terminate being sent. Subaru's
18 response was there are tons of letters, tons of written
19 correspondence, and the sales performance addendum. I'm
20 going to set the sales performance addendum aside for just
21 a moment.

22 You'll notice in the written materials provided
23 by Subaru there is no notice or opportunity to cure in
24 lieu of termination. Indeed, there was nothing sent until
25 the notice of intent to terminate. But we reviewed all of

1 the letters, all of the written communications in the
2 record.

3 There were 52 letters, emails and reports sent
4 from Subaru to Bert Ogden Subaru discussing its
5 performance. Twenty-six were critical but 26 were
6 positive -- not only positive, extremely complimentary.
7 And so, of course, because this is a hunt for evidence to
8 terminate, none of the positive correspondence was
9 included in the discussion over the decision to terminate.

10 With regard to the sales performance addendum,
11 it is dated July 1, 2017. The contract that we're under
12 today is dated July 1, 2017. You cannot have a notice and
13 opportunity to cure before you have a breach of the
14 contract.

15 The contract is the same date as the sales
16 performance addendum. Indeed, the sales performance
17 addendum is exactly what it purports to be. It's an
18 addendum to the contract, it is not an opportunity to
19 cure.

20 Board Member Scott, you asked questions about
21 the MSOG that was attached to Exhibit A of the franchise
22 agreement. Your point was very well taken. If you'll
23 look, however, at the second entry on Exhibit 262, I asked
24 Mr. Poston -- we were talking about the very document you
25 were talking about -- and I said, Mr. Poston, regardless

1 of what Bert Ogden had or didn't have, Subaru knew that
2 when it agreed to enter the contract, right? Right.

3 Subaru isn't going to come into court now and
4 say they breached the contract because of this, right?
5 Right. But of course, that's exactly what they did and
6 that's exactly what the ALJs found. Mr. Poston knew that
7 it wasn't a breach, and respectfully, the evidence was
8 ignored.

9 Now if you'll turn to page 267 of your written
10 materials, this is an email from the CEO of Subaru to Bert
11 Ogden. Before the notice of intent to terminate was sent,
12 Mr. Vackar, on behalf of Subaru Loves Learning, made a \$1
13 million pledge for our local university. He paid it both
14 before and after the notice of termination, keeping with
15 his pledge on behalf of Subaru Loves Learning.

16 The ALJs rejected that investment and said, you
17 know, it's good that you like to give but giving on behalf
18 of Subaru, that isn't an investment. That simply,
19 respectfully, is inconsistent with Texas law. Any
20 business person that gives a million dollars on behalf of
21 their manufacturer is obviously making an investment in
22 the brand.

23 And what do we get for that? We got a neutral
24 finding, a neutral finding.

25 And so as I conclude my remarks, I would ask --

1 before Mr. Cousar comes up, I would also invite the Board
2 to look at Exhibit B to our exceptions found at pages 183
3 through 196 of your written materials because they set out
4 a laundry list of evidence that was ignored in this case.

5 And so, Board members, being limited on time, we simply
6 couldn't cover every issue, but we're certainly happy and
7 willing to address any questions once Mr. Cousar completes
8 his remarks.

9 Thank you.

10 MR. BACARISSE: Thank you, Mr. Worthington.

11 Mr. Cousar, good morning.

12 MR. COUSAR: Good morning, Chair.

13 We have about four minutes left?

14 MR. BACARISSE: Is that correct? I don't have
15 a timer up here.

16 MR. COUSAR: That's fine.

17 Board members, as we discussed in February, and
18 as your general counsel just reminded you, the Government
19 Code does allow this agency to change a finding of fact or
20 a conclusion of law if the ALJ misapplied or
21 misinterpreted applicable law or agency rules or
22 administrative decisions. Now, there's some others but
23 we're just relying on those that we mentioned to you
24 before.

25 And because time is limited and we could only

1 submit 15 pages for your review, we have included a short
2 proposed final order. It's on page 268 and 270 of your
3 Board book.

4 That order is based mostly on the comments and
5 questions this Board made in February which zeroed in on
6 many of the most serious legal errors in the PFD. Now let
7 me stress that that draft order is just a template; we
8 would expect, in accordance with what your general counsel
9 says, that a final order would be based on your
10 instructions to the staff as to any errors that you find
11 in the PFD.

12 Now let me recap several of the most
13 significant legal misrepresentations in the PFD that we're
14 asking you to correct. The first is on Factor 1 which is
15 sales relative to sales in the market. The PFD simply
16 ignores that the TDMV has never terminated a dealership
17 with a record of increasing sales comparable to Bert
18 Ogden.

19 There's a chart on page 133 of your Board book
20 and it shows that sales went from 13 million to 22 million
21 in just about four years before termination, and the
22 number of cars sold went from 325 to 500. That is not the
23 record of a failing dealership, and there's no TDMV case
24 cited in the record in this case or any in the entire
25 history of this agency where a dealer with a sales record

1 like that was terminated.

2 The PFD also misapplied applicable law by
3 ignoring Subaru's 43-year record of failure in the Valley
4 before it solicited Mr. Vackar to open a ninth dealership.

5 Page 130 of your Board book has the eight previous
6 dealers. Instead, the PFD just compared Bert Ogden's
7 sales to recent Subaru dealers in markets that could not
8 be more different from the Valley.

9 The 43-year record of failure there shows that
10 this is a uniquely tough area to sell Subarus. Texans
11 know that the Valley is unique in many ways; they're
12 discussed on pages 166 and 167 of your Board book which
13 shows the striking demographic differences between the
14 Valley and the district and the zone.

15 But when the PFD ignored Bert Ogden's improving
16 sales, Subaru's previous record of failure and the unique
17 market characteristics of the Valley, it simply misapplied
18 applicable law. The sales relative factor should be found
19 against termination.

20 Termination Factor 3, injury or benefit to the
21 public, Mr. Worthington has just recapped for you the fact
22 that Subaru went to the internet and garnered only
23 negative comments off places like Google and Facebook and
24 Yahoo, and then they curated their own comments and
25 introduced evidence only of negative comments. That's an

1 error of law that was prejudicial and it should be
2 corrected.

3 The other factors that we would like you to
4 address -- and that was Factor 3, injury or benefit to the
5 public -- are Factors 4 and 6 equally, adequacy of
6 equipment, parts and personnel and compliance with the
7 franchise. There are serious errors there which we have
8 highlighted and outlined in our draft PFD.

9 And the last thing I'd mention, Board members,
10 is the administrative law judges simply ignored un rebutted
11 evidence that it was Subaru who violated the franchise
12 because it ignored the franchise requirement that this
13 dealer be afforded notice and opportunity to cure any
14 breach. That simply did not happen. That led to
15 erroneous findings on Factor 6.

16 So in conclusion, we ask that you address
17 Factors 1, 3, 4, 6 and 7, and we thank you for the
18 opportunity to appear today.

19 MR. BACARISSE: Thank you very much.

20 Respondent, Subaru of America, is represented
21 by Mark Clouatre and Steven McFarland, who will now make
22 oral presentation for Subaru of America on this contested
23 case.

24 Gentlemen.

25 MR. CLOUATRE: Good morning. It's nice to see

1 y'all again. Again, I'm Mark Clouatre, Steve McFarland,
2 both from Nelson Mullins. Along with us -- we have Dave
3 Adams, who is Subaru's DFW Zone manager with us as well.

4 As you know, this is a case about the proposed
5 termination of Bert Ogden Subaru. We understand and
6 appreciate the gravity of the situation and that's why
7 Subaru didn't take this decision lightly. But given the
8 circumstances, Subaru had no choice but to consider what
9 was in the best interests of Texas consumers, and frankly,
10 the Subaru brand and reputation.

11 Let's consider those circumstances at the time
12 it was making the decision. At the time, Bob Vackar, on
13 behalf of the dealership, had signed a performance
14 agreement with Subaru. In it, the dealership had agreed
15 to meet vastly reduced sales requirements, below 50, 60
16 and 70 percent of its contractual sales requirements. The
17 dealership didn't meet any of those.

18 And these weren't the only commitments that
19 hadn't been met. The ALJs made specific findings on
20 substantial evidence that Bert Ogden lacked educated and
21 dedicated staffing, that they had excessive employee
22 turnover; they used the Subaru brand to sell other brands
23 of vehicles; they poorly handled customer leads; they
24 stocked insufficient parts; and they had insufficient
25 service equipment.

1 Now, Subaru tried to assist and help Bert Ogden
2 for years, countless meetings, letters, virtual calls, but
3 Bert Ogden showed no improvement. Bert Ogden remained the
4 worst sales performer out of all DFW Zone dealers, and
5 that covers 44 dealers in seven states. And it remained
6 worst in class in terms of customer service.

7 Those were the circumstances that Subaru was
8 presented with. And because of those failed commitments
9 and continued poor performance, Subaru had to make a
10 decision. Texas consumers deserve a Subaru dealer that is
11 committed to the Subaru brand and that will strive to
12 provide top quality customer service.

13 I'd like to just touch on a few more points
14 about the Board's role in this situation as crafted by the
15 legislature and also by a recent 2019 Court of Appeals
16 decision. That's the Hyundai Motor America v. New World
17 Car decision.

18 That court said that this Board's role is not
19 to re-weigh, it's not to re-analyze the evidence that's
20 submitted. As Mr. Blech stated, there were two ALJs that
21 made this decision and they did that over a ten-day
22 period. They listened to 15 witnesses. They searched the
23 deposition transcripts of six more, and they admitted 213
24 exhibits, which, incidentally, included positive customer
25 service reports that were admitted by Bert Ogden -- three

1 separate exhibits, in fact.

2 If the Board could find additional facts and
3 make determinations of witness credibility, it would be
4 serving as its own fact-finder, delegating the fact-
5 finder -- which, frankly, that delegation of the fact-
6 finder role was made by the legislature to a hearing
7 examiner, and that process would be meaningless. So in
8 other words, there must be substantiations. There must be
9 citations to modify a finding of fact or conclusion of
10 law.

11 The Texas Legislature has implemented a system
12 to terminate dealerships and also for a review of those
13 termination decisions. And any decision by this Board
14 must be pursuant to that process.

15 Now I'd like to turn the discussion over to my
16 colleague, Mr. McFarland, who will touch on some of the
17 issues that were just raised.

18 MR. McFARLAND: Thank you all. Good morning.

19 As Mr. Clouatre just mentioned, I'd like to
20 discuss some of the issues that were raised and some of
21 the issues that were raised during our last meeting.

22 First, I want to tell you this was not a
23 results-oriented decision. This was not the path Subaru
24 wanted to take. It worked with Bert Ogden for a decade, a
25 decade before the notice of termination, four different

1 addenda, OLP addenda, two different sales performance
2 addenda, all of this to try to get improvement here.

3 That email does not state what Mr. Worthington
4 says. Every quarter there is a meeting that the region
5 has with the zone to talk about dealers. And at that
6 meeting the zone said this dealer didn't care, it didn't
7 do what it needed to do, we recommend termination.

8 And the region manager -- as he should have --
9 said, Provide me all the data; you want to make that
10 decision, show me all the data and I can run that out to
11 national and to legal and we can talk about it. That's
12 the process we want manufacturers to put in place. That's
13 not a results-oriented decision.

14 You also asked last time whether this dealer
15 had enough vehicles, had enough inventory to meet the
16 cure. The answer to that question is absolutely yes.
17 There's an exhibit on this very issue in the record in our
18 expert report that goes month by month by the number of
19 vehicles that Bert Ogden had in inventory -- not in
20 pipeline, on the ground compared to the cure. And every
21 single month it had enough vehicles to hit the cure, every
22 one.

23 The very first month of the cure period, Bert
24 Ogden needed to sell 28 vehicles a month to meet the cure.
25 It started that month with 98 on the ground, 98, received

1 another 14, for a total of 112 units on the ground, 84
2 more than it needed to cure. And that's the case every
3 single month during the cure period: the first month 84,
4 next month 70, next month 70, 71, 70, 68, 78, more than
5 the cure every single month. Allocation wasn't the issue,
6 Bert Ogden's failure to turn those vehicles was.

7 And in the interest of time, just one metric
8 I'll give you. We did number of days on lot. It's
9 astounding.

10 Vehicles sat on Bert Ogden's lot on average two
11 to four weeks longer than the zone average -- two to four
12 weeks. That was the issue, not allocation.

13 Counsel also showed you a contact report from
14 Rich Yannella saying that we're giving enough vehicles to
15 sell 40 a month and said that they asked for allocation
16 and Subaru didn't provide them. That's not true. The
17 last page of the document he read you shows that Subaru,
18 in response, gave him additional vehicles that very month.

19 That's in the document that was shown on the
20 screen to you. And by the way, that month of that contact
21 report, Bert Ogden had 103 vehicles on the ground, 60 more
22 than it needed to meet the cure at that time.

23 I want to address the issue of negative
24 customer reviews because I think that's taken a little bit
25 out of context. Subaru did not take out negative reviews

1 on a whim. It does this, and the testimony at trial is in
2 the ordinary course of business and it does that for
3 dealers that are performing poorly.

4 Now, remember from 2019 all the way through the
5 trial, Bert Ogden consistently was in the zero percentile
6 of Subaru dealers in the country. Consumers in South
7 Texas were represented by the dealer with the lowest OLP
8 scores in the nation year-in and year-out. Subaru takes
9 out those negative comments in the ordinary course to help
10 dealers like that identify opportunities, like any
11 business owner would want to do, so they can see the areas
12 where they need to improve for their customers. That's
13 what the testimony was at the hearing and that's why they
14 came in.

15 There's also no evidence in the PFD that the
16 judge ruled based on those negative consumer reviews. In
17 fact, Bert Ogden submitted 113 pages of reviews, including
18 positive ones that were also looked at. The issue, again,
19 on OLP is that this dealer received a higher percentage of
20 bad surveys from customers than any other dealer in the
21 country -- not once, but consistently.

22 I want to address their comments that Subaru
23 didn't provide a notice to cure. And the argument there
24 is that Subaru breached its own dealer agreement, so we
25 have to start with the dealer agreement itself. And what

1 the dealer agreement says, it has a simple provision that
2 says when there's a breach, Subaru will "notify the dealer
3 of the breach, and two, provide the dealer a reasonable
4 opportunity to cure." That is exactly what happened.

5 Subaru provided this dealer six years to cure
6 two separate sales performance addenda. Those addenda,
7 each one of them, told the dealer that it was already in
8 breach of the agreement. And Mr. Vackar signed that. He
9 knew that.

10 Each one told him that they needed to cure that
11 breach; it uses the word "cure". Each one specified a
12 specific cure and a timeline for that cure, and at the end
13 explained that the failure to achieve this cure within the
14 stated time period shall constitute a material breach.
15 That's a cure notice; that absolutely complies with
16 Subaru's agreement.

17 I also want to talk to you about the minimum
18 standards, or MSOGs, that we talked about last time. And
19 I believe that it was Member Scott that raised an issue
20 about whether exclusivity was actually required in the
21 dealer agreement. It absolutely was. The dealer
22 agreement expressly says the minimum standards are
23 important and essential, that the dealer must have
24 personnel in the capacity and numbers set forth in those
25 minimum standards.

1 And there's a footnote in the minimum standards
2 that you raised last time. And what that footnote says is
3 that the dealer is required to provide exclusive touch
4 points in all areas of operation if there's a certain UIO.
5 "All" is the key word.

6 Bert Ogden was not required to provide
7 exclusivity in all areas, but it was absolutely required
8 by the documents sent to it every year to provide an
9 exclusive sales manager, four exclusive sales consultants,
10 an exclusive service manager, and an exclusive service
11 advisor. And it didn't do it. It absolutely failed to do
12 that time and again, time and again.

13 And it failed to have adequate staff under the
14 adequacy prong. It had no dedicated parts manager like
15 other Subaru stores, no dedicated service advisor, no
16 dedicated general manager, no dedicated service manager.
17 It had no dedicated sales manager. The sales manager
18 wasn't even exclusive at the time of the hearing.

19 It had no exclusive sales representatives.
20 Bert Ogden has an open lot policy based on a theme of
21 let's sell the Bert Ogden brand, not the Subaru brand. So
22 even the sales representatives who were working at the
23 Subaru store could sell any brand they want. They could
24 sell Volvo or Mazda that were right next door. They were
25 not focused on this brand.

1 There was also a significant amount of turnover
2 at the dealership. They had one financing manager for all
3 three of the dealerships at this location who would go
4 back and forth, and we received customer surveys about
5 customers taking four hours to go through that process.
6 These things -- the parts deficiency, the equipment
7 deficiency -- all had a significant negative effect on
8 consumers, and that's why we're here.

9 Here's a customer: "The wait time to start
10 financing was unbelievable. I felt we weren't a priority
11 at all. I almost just said forget it."

12 Another one: "Our salesperson seemingly knew
13 nothing about the vehicle we were interested in, totally
14 clueless."

15 Leads -- some of the worst response times in
16 the district, lowest close rates. There were times in
17 mystery shops that Subaru would send information to Bert
18 Ogden saying: Hey, I'm interested in a Subaru. They
19 responded with information on a Mazda or a Volvo.

20 There's a customer safety feature on the
21 vehicle called STARLINK -- it's kind of like OnStar -- and
22 there's a free version of it. That free version was not
23 activated 75 percent of all the vehicles that this dealer
24 sold.

25 At the time of the hearing -- someone asked

1 this question last time -- there was a 9.8 day wait for
2 service at Bert Ogden. These are real issues that are
3 causing problems here, and it's a breach of the dealer
4 agreement.

5 Now, on the charitable donation, one thing I'll
6 say is that's great. And you have the wherewithal to
7 donate that kind of money -- that's fantastic, if you have
8 the wherewithal to donate \$1,000 and you do that, that's
9 amazing, and that's a great thing for Subaru. Mr.
10 Worthington said that was before the notice of
11 termination. That donation was done a month after I took
12 Mr. Vackar's deposition in this case.

13 But beside that point, I want to be clear that
14 there's no evidence that community service will go down if
15 there's a termination here. Bert Ogden owns 20
16 franchises, 19 other than Subaru. He testified at the
17 trial that if he loses this franchise, he's not going to
18 stop that activity. In fact, he said he was going to
19 ratchet it up, that he was going to increase it.

20 Subaru does intend to replace this dealer,
21 intends to replace them very, very quickly. We'll have
22 another Subaru dealer who can come into this market and
23 get involved in the community like the Subaru way, and
24 better serve customers and not be in the zero percentile
25 on customer satisfaction.

1 The last thing I want to mention is increased
2 sales, this argument of increased sales. Let's be candid,
3 this was not a significant increase in sales. In 2016
4 this dealer made 330 sales a year; at the time of the
5 cure, three and a half years later, it made 358, an
6 increase of 28 sales in three and a half years in the
7 biggest growth period of the Subaru brand. That's not
8 substantial, and that after-the-fact improvement does not
9 change its decade of poor performance for customers in
10 Texas.

11 Thank you all.

12 MR. BACARISSE: Thank you, Mr. McFarland.

13 Thank you, Mr. Clouatre, Mr. McFarland, Mr.
14 Worthington, Mr. Cousar, we appreciate your presentations.

15 Are there any questions from Board members at
16 this time for either party?

17 Member Omumu, do you have a question?

18 MS. OMUMU: No question, I'd just like to make
19 a motion if there are no questions.

20 MR. BACARISSE: All right. Hold on a second.
21 Thank you, though. Hold on.

22 Do we have any further questions from Board
23 members for either party?

24 MR. GRAHAM: I have a question.

25 MR. BACARISSE: Member Graham.

1 MR. GRAHAM: So this question could go to
2 either side.

3 MR. BACARISSE: You can present it to both, if
4 you wish.

5 MR. GRAHAM: And I'll start with Mr.
6 Worthington. First of all, I want to make sure that if I
7 ask anything, if it's not in the record, it's not in the
8 record.

9 MR. WORTHINGTON: Yes, sir.

10 MR. GRAHAM: I am trying to understand
11 regarding the adequacy of the service facilities,
12 equipment, parts and personnel.

13 MR. WORTHINGTON: Yes, sir.

14 MR. GRAHAM: Adequacy being a very important
15 word in that sentence.

16 MR. WORTHINGTON: Yes, sir.

17 MR. GRAHAM: Comparison also being a word in
18 that sentence. When I read what the ALJs concluded, I see
19 the comparison; I see no consideration of adequacy. And
20 so I do -- my question is the ALJs made a determination
21 that Bert Ogden had \$5,000 in equipment. Is there
22 anything in the record that could help me understand that
23 better?

24 Because a bicycle shop has more than \$5,000 in
25 equipment. And I see other things in the record that talk

1 about equipment, so I don't really understand how it ended
2 up that way.

3 MR. WORTHINGTON: Great question, Board Member
4 Graham.

5 Bert Ogden had an exhibit, Exhibit 303, which
6 set out all of its shop equipment valued at over \$350,000.

7 There was testimony about the 21-plus service lifts. If
8 you have a dealership or you can imagine service lifts,
9 obviously \$5,000 has nothing to do with 20 service lifts.

10

11 What the ALJs did was they accepted the
12 testimony on that issue -- and I'm going to discuss the
13 one on parts in just a moment -- from one of Subaru's
14 hired experts who said, Well, the balance sheet shows the
15 value is \$5,000, therefore, all you have is \$5,000 worth
16 of equipment. Well, with all due respect, the adequacy of
17 equipment depends on what equipment you actually have, not
18 the value of equipment that an accountant carries on a
19 balance sheet. We actually had all of the service
20 equipment required, we had extraordinarily more lifts than
21 were required, there was no shortage in that regard.

22 With regard to parts, the testimony from
23 Subaru's expert dealt with days of supplier parts. It did
24 not deal with whether Bert Ogden's supply was adequate or
25 inadequate, just that it had less sales opportunities,

1 some sort of profit-driven motion, than other stores. It
2 didn't talk about which parts those were or which parts
3 those weren't, were those high demand parts, low demand
4 parts, et cetera. And so indeed, as we pointed out in our
5 papers, there is no evidence as to the inadequacy of Bert
6 Ogden's parts.

7 There is evidence with regard to the adequacy
8 of our equipment. We had it, we had everything we needed.
9 There is no evidence other than a balance sheet.

10 And I hope that answers your question, but it
11 is absolutely in the record, testimony on the value of the
12 lifts, the exhibit on the value of the service equipment.

13 And there is no evidence on inadequacy of parts,
14 certainly not comparing it to anyone. It simply compared
15 days of supply, not whether our days of supply might have
16 been adequate regardless of the days of supply. So that's
17 the record.

18 MR. GRAHAM: So follow-up question -- Laura,
19 watch me real close here -- so what you're saying is the
20 values of equipment used and considered by the ALJ was a
21 depreciated value on the books.

22 MR. WORTHINGTON: That's it.

23 MR. GRAHAM: And not actual equipment.

24 MR. WORTHINGTON: Yes, sir.

25 MR. GRAHAM: And yes, I would like you to

1 follow up.

2 MR. CLOUATRE: (from audience) I would object
3 to that. That was not in the record. In fact, what the
4 financial statements show is not a depreciated amount. It
5 shows a goose --

6 MR. BACARISSE: We need to get you to the
7 podium, just because we couldn't hear your response. We
8 didn't hear your response, so we want you to get to the
9 podium for the record. Sorry.

10 Thanks. We do want to get all this.

11 MR. CLOUATRE: I would just object on the basis
12 of 43 Texas Administrative Code 206.22(f)(6) that that
13 information was outside the record. What the record did
14 show were the financial statements of Bert Ogden. And
15 those financial statements showed a minimal amount, and
16 that's what the ALJs hit on.

17 It wasn't a depreciated amount; there was
18 simply no amount. The \$5,000 you referred to, that's the
19 amount that was on the financial statement. Our expert
20 witness took those financial statements and that's the
21 evidence he used and the evidence he compared to other
22 financial statements of other dealers in relation to the
23 Subaru brand. And that's what this good cause factor
24 requires.

25 So two parts. One, Bert Ogden did reflect that

1 amount on its financial statement. Who knows where it's
2 reflected.

3 As Steven pointed out earlier, the Bert Ogden
4 organization owns 23 different dealerships. And this
5 dealership is leased; it's actually on a sub-lease from
6 the Mazda store. So perhaps go check the Mazda store's
7 financial statements that probably claims those lifts, but
8 it's not on the Subaru financial statement.

9 MR. WORTHINGTON: And if I may respond? It's
10 absolutely in the record; it's in Ms. Del Barrio's
11 testimony. But the point is you didn't hear Mr. Clouatre
12 say we didn't actually have the equipment, what you heard
13 them quibble about was whether it was carried as the value
14 or depreciated value.

15 Ms. Del Barrio testified about it. The fact
16 is -- the fact is we had adequate equipment, that is in
17 the record. We identified what equipment we had, what it
18 was, how much of it we had, et cetera. There's no
19 question about that.

20 MR. BACARISSE: Thank you.

21 MR. GRAHAM: Thank you.

22 MR. McFARLAND: May I address the issue of
23 parts, the parts portion of your question?

24 MR. GRAHAM: That would be great.

25 MR. BACARISSE: Sure.

1 MR. McFARLAND: The parts portion was not some
2 sort of financial metric. That's just not true. It was
3 the value of their inventory they had at the dealership,
4 their actual parts inventory compared to the number of
5 Subaru units in operation in the market, which is UIO, I
6 may say to be clear.

7 Every single year during the cure period, in
8 fact, every single month -- I'm sorry -- every single
9 month since 2016 Bert Ogden had fewer parts in inventory
10 compared to every other Subaru dealer and substantially
11 fewer. And I want to give you an example.

12 In June of 2020, the last month of the cure
13 period, the dealer reported \$4 in parts inventory per unit
14 in operation, 13 times less than the average dealer in
15 Texas. And a big thing in that is starting in 2018 -- the
16 Subaru brand has been going up for a long time, but
17 starting in 2018 other Subaru dealers started increasing
18 their parts inventory. They saw this coming, they were
19 jumping on that bandwagon.

20 Bert Ogden went down. It decreased its parts
21 inventory from 2018 through the period studied at trial
22 while everyone else was increasing so they could better
23 serve customers. And that's a big deal.

24 So when we talk about customers having to wait
25 9.8 days for service, having 13 times less the parts in

1 inventory is a problem.

2 MR. WORTHINGTON: May I respond? I'll be
3 brief.

4 MR. BACARISSE: Yeah, sure. Thank you.

5 MR. WORTHINGTON: A couple of issues.

6 MR. BACARISSE: Are you responding to the parts
7 question?

8 MR. WORTHINGTON: Both. With regard to the
9 parts question, understand there's no evidence about
10 adequacy. Right? So the value of the parts, which parts
11 is it, what is your inventory.

12 He referenced the date in the summer of 2020.
13 Well, we were in the middle of COVID in 2020. He
14 mentioned a service delay date during COVID. That is
15 true, COVID did cause some extraordinary delays.

16 But there is nothing in the record that our
17 parts supply was inadequate. All they can speak to is you
18 had a dollar value compared to other dollar values and
19 they described it as sales opportunities. There is
20 nothing about adequacy, that is the standard.

21 The standard isn't -- the statutory factor is
22 not how does the value of the parts they maintain compare
23 to the value of other stores. It's adequacy of the parts
24 supply. And there's nothing in the record to suggest our
25 parts supply was inadequate.

1 MR. McFARLAND: I just want to level an
2 objection to the COVID --

3 MR. BACARISSE: Come to the podium, please. We
4 need to get you on mic.

5 MR. McFARLAND: I apologize, I'll do better on
6 that.

7 MR. BACARISSE: No problem.

8 MR. McFARLAND: There's no testimony in the
9 record about COVID. No one raised COVID as an issue on
10 sales or service during the trial. That just wasn't an
11 issue. So I just want to levy that objection to that
12 being outside the evidence.

13 MR. BACARISSE: Thank you.

14 Member Graham, do you have further questions?

15 MR. GRAHAM: I'm probably good for now. We'll
16 potentially have other opportunities after -- I understand
17 we have a motion pending. If we have questions, can we
18 circle back?

19 MR. BACARISSE: I think what might happen once
20 a motion is introduced and seconded, then we're going to
21 be on the motion. So if we have any questions of counsel
22 right now about facts in the record, we should cover those
23 now before we get into the introduction of any motion.

24 MR. GRAHAM: Okay. I'm ready to roll.

25 MR. BACARISSE: And I want to give full time

1 for this.

2 MR. GRAHAM: I'm good.

3 MR. BACARISSE: Okay. Members, any other
4 members with questions for either party in this case?

5 Member Prewitt, you good? You're stirring over
6 there. Just checking. All right, don't move.

7 I'd like to recognize Member Omumu. She had
8 asked to be recognized previously. I recognize Member
9 Omumu.

10 MS. OMUMU: I did have one question about the
11 equipment and the \$5,000 that was reported on the balance
12 sheet of the Subaru financial statement. Since you
13 believed that it was maybe on the Mazda financial
14 statement, did you ever at any point ask Mr. Vackar for a
15 copy of his Mazda financial statement or question if it
16 was being carried -- if that equipment was being carried
17 on his Mazda financial statement?

18 MR. CLOUATRE: Member Omumu, that was not in
19 the record.

20 MR. BACARISSE: Mr. Clouatre, just say your
21 name for the record.

22 MR. CLOUATRE: This is Mark Clouatre. That was
23 not in the record.

24 MS. OMUMU: Thank you.

25 MR. BACARISSE: Any other questions? Member

1 Prewitt.

2 MR. PREWITT: Did the expert witness employed
3 by Subaru of America actually visit the premises to make
4 their assessment of the equipment held by the dealership,
5 or did they rely on information provided by the
6 dealership?

7 MR. BACARISSE: Mr. McFarland.

8 MR. McFARLAND: Thank you. This is Mr.
9 McFarland. I was going to introduce myself, I was going
10 to get it right this time.

11 MR. BACARISSE: Good. Go ahead.

12 MR. McFARLAND: That expert did not visit the
13 dealership for this purpose, but they did use and rely on
14 the information that was reported by Bert Ogden Subaru as
15 equipment that is owned by and carried by the Subaru
16 store.

17 MR. PREWITT: Were any inspections done of the
18 dealership relating to this issue subsequent to the notice
19 given to the dealership of termination by Subaru of
20 America? Were any inspections done, and if so, were those
21 included in the record?

22 MR. McFARLAND: Sure. The word "inspection"?

23 MR. PREWITT: Did you go out there and look at
24 what they had?

25 MR. McFARLAND: So Subaru has a district parts

1 and service manager who went to the dealership every
2 single month.

3 MR. PREWITT: So the parts manager is making
4 that assessment for Subaru of America insofar as the
5 ability for the dealership to survive or continue?

6 MR. McFARLAND: Subaru's expert testified about
7 the amount of equipment. Subaru's district parts and
8 service manager testified at trial about the deficiencies
9 at the dealership and how it was affecting consumers.

10 MR. PREWITT: And did Mr. Adams testify as
11 well?

12 MR. McFARLAND: Mr. Adams did testify at the
13 trial.

14 MR. PREWITT: And his assertion was based upon
15 the inspections of his parts supervisor?

16 MR. McFARLAND: I don't believe Mr. Adams
17 testified about equipment. We left that to the parts and
18 service manager who visits the dealership every month.

19 MR. PREWITT: But he did visit the dealership
20 subsequent to notice?

21 MR. McFARLAND: Mr. Adams visited the
22 dealership multiple times. Whether he went after the
23 notice, I'm not aware of that, but he would meet with Mr.
24 Vackar periodically.

25 MR. PREWITT: Periodically meaning?

1 MR. McFARLAND: He personally met with Mr.
2 Vackar, I think the testimony was twice a year.

3 MR. PREWITT: And Mr. Adams has been in his
4 position how long?

5 MR. McFARLAND: I'm sorry.

6 MR. PREWITT: How long has Mr. Adams held his
7 position?

8 MR. McFARLAND: Mr. Adams took his position a
9 little bit over halfway through the cure period. Mr. Troy
10 Poston was in that position for the first two years. He
11 and Mr. Vackar had a great relationship with and spent
12 some time, a lot of time with Mr. Poston.

13 Mr. Adams was the second in command during that
14 time period and stepped into the lead role about the last
15 year of the cure notice.

16 MR. PREWITT: This is probably extraneous to
17 the discussion, but I'll ask it from intellectual
18 curiosity. Where is Mr. Poston today? Is he still
19 employed by Subaru of America?

20 MR. McFARLAND: He's still employed. He's been
21 promoted and is currently in headquarters in Camden, New
22 Jersey.

23 MR. PREWITT: Thank you.

24 MR. BACARISSE: Mr. Worthington, I see you
25 moving over there.

1 MR. WORTHINGTON: I did, I did.

2 MR. BACARISSE: Step to the podium, please,
3 sir.

4 MR. WORTHINGTON: Dan Worthington.

5 One point, Board Member Prewitt, I would make
6 is the notice of intent to terminate doesn't say anything
7 about any deficiency in equipment. Nothing, there is not
8 a word. This as an after-the-fact look at the papers.
9 And the expert testified he did not visit to inspect the
10 equipment.

11 We had in the record -- in the record we
12 produced a list of equipment we had. They deposed Ms. del
13 Barrio. She told them what equipment they had. And so
14 some notion that there was this ongoing issue with
15 equipment simply isn't so.

16 What the record will show about the notice of
17 intent to terminate and the testimony which is included at
18 the very bottom of page 262, we asked Mr. Griffin: It
19 didn't include anything about equipment, right? Right.
20 In the notice of intent to terminate. Or parts, right?
21 Right. This was an after-the-fact document, only
22 criticism.

23 MR. BACARISSE: Thank you.

24 MR. McFARLAND: This is Mr. McFarland.

25 One thing I want to say about the notice of

1 termination, Texas law has made it abundantly clear that
2 the evidence at a termination hearing is not limited to
3 the four corners of the NOT. The statute says it must
4 consider all existing circumstances, and this Board has
5 held at least three times, so the Board has to go through
6 those factors. It would be an error of law to hold
7 otherwise at this point.

8 I also want to mention the notice of
9 termination absolutely does reference the dealer's
10 operational deficiencies. There's a paragraph in it that
11 talks about management issues, personnel issues, consumer
12 satisfaction issues, and the dealership failing to take
13 the steps necessary to perform. There's also language
14 about Bert Ogden's worst in class OLP, their customer
15 ratings being lower day-in and day-out than other dealers
16 in the region, zone and in the nation.

17 MR. McFARLAND: Members, any other questions?
18 Member Graham, I see you're thinking.

19 MR. GRAHAM: I would like to ask --

20 MR. BACARISSE: Well, you know what, I had
21 given the floor to Member Omumu.

22 MR. GRAHAM: I'm sorry.

23 MR. BACARISSE: So, Member Omumu, would you
24 yield to Member Graham for more questions?

25 MS. OMUMU: Yes.

1 MR. BACARISSE: Okay. She yields so you may
2 proceed.

3 MR. GRAHAM: I have a question for Steven --
4 what is your last name? You've said it ten times and I'm
5 always so intently thinking about something.

6 MR. BACARISSE: Mr. McFarland.

7 MR. McFARLAND: Steven. I've been called so
8 much worse. Steven McFarland.

9 MR. GRAHAM: McFarland. Thank you, Steven.

10 So you just commented regarding the
11 unsatisfactory OLP scores, that this dealer was the worst-
12 ranking dealer in the country. Right?

13 MR. McFARLAND: It was since middle of 2019
14 through the hearing on sales. On service it oscillated,
15 but it was consistently poor in service.

16 MR. GRAHAM: So consistently poor in comparison
17 to other dealers.

18 MR. McFARLAND: That's right.

19 MR. GRAHAM: Is that in and of itself Subaru's
20 barometer for quality of a dealer in OLP scores?

21 MR. McFARLAND: It is. It has been that
22 barometer for Subaru for decades. This isn't a surprise
23 to anyone.

24 That was the barometer when Bert Ogden first
25 became a Subaru dealer in 2009. And it's another reason I

1 wanted to state this earlier, and I did but I was moving
2 quickly in the interest of time. To put that in
3 perspective, being in the zero percentile means it had a
4 higher percentage of poor and bad surveys than almost
5 every Subaru dealer in the zone.

6 Subaru doesn't go through and count up positive
7 and negative comments. That's not how these scores are
8 done. Consumers go in on a scale of zero to 1,000 and
9 they put them at zero or 250, 500, 750 and 1,000. They
10 had a higher percentage of that zero and 250 than other
11 dealers consistently.

12 MR. GRAHAM: And so how do you -- I mean, that
13 is a little conflicting to the ALJs' record that this
14 dealer had OLP scores that ranked between very good and
15 extraordinary. It's like we have two vastly different
16 pictures here, and you know -- go ahead.

17 MR. McFARLAND: Member Graham, that's a good
18 question. That's how this survey is set up; 500, the
19 middle point on this survey, was deemed very good.
20 There's no average. It goes from poor to very good.

21 So customers that even mark in the middle are
22 giving a very good score. But again, it's the higher
23 percentage of those bad comments, those negative
24 comments -- I read you a few and I have a ton of them if
25 we had more time -- over and over and over again. It's

1 the consultations on those issues over and over again and
2 it's being last over and over again, which is a problem.

3 For anyone who runs a business -- my business
4 being a law firm -- if I get rated the worst attorney in
5 my firm time-in and time-out, I've got to make a change.
6 I've got to fix that. So it's something that's been
7 consistent, but also, like I said, those comments and
8 those issues that we saw with turnover in personnel,
9 joined with the lowest sales performance, is clearly
10 customers here need better representation for the brand.

11 MR. GRAHAM: So I guess your position is even
12 though the dealer ranked -- over the four years the dealer
13 ranked around an 8.2 out of 10 or 820 out of 100,
14 considered somewhere between very good and extraordinary,
15 but because they were the lowest performing dealer in
16 comparison to the other dealers, that was cause for
17 concern.

18 MR. McFARLAND: And the consistency of it. And
19 you know, one of the things the statute talks about is
20 replacing a dealer post-termination. So when you talk
21 about replacing a dealer -- and again, to be fair on the
22 sales side that's in the zero percentile -- Subaru comes
23 in and replaces this dealer with another franchise who
24 already owns and operates Subaru. You're essentially
25 guaranteed to have someone come in that's treating

1 customers better, that's not getting this higher
2 percentage of poor results, that's not having all of these
3 negative issues time and time again.

4 MR. BACARISSE: Member Graham, I think Mr.
5 Worthington would like to respond to your questions as
6 well.

7 MR. GRAHAM: That's fine.

8 MR. BACARISSE: Thank you.

9 MR. WORTHINGTON: Board Member Graham, Dan
10 Worthington. Just a couple of follow-ups

11 If you look at the third entry on page 262, we
12 asked Mr. Poston was this grade-on-a-curve scale standard
13 a policy of Subaru's that would result in the breach of
14 the franchise. And he said, Not that I'm aware of.

15 And indeed, as it relates to our particular
16 area of responsibility, there have been eight prior
17 franchises who have failed. We're the only one who has
18 succeeded and whose sales have built year over year.

19 And finally, being less extraordinary than
20 someone else does not, with all due respect, mean you were
21 poor. Under the Subaru argument, there is always going to
22 be some percentage of dealers they can come in and
23 terminate. Because when you compare ten extraordinary
24 stores, there's always going to be someone more
25 extraordinary and someone less.

1 By the same token, if all of the Subaru stores
2 were poor, that is if all customers had scored us poor,
3 there would be some store that was less poor than the
4 others. Does that make them worthy of keeping? Perhaps.

5 But this grade-on-a-curve system simply doesn't
6 exist. Our customers rated us extraordinary year over
7 year over year over year. That is the fact.

8 MR. GRAHAM: Question for counsel, please.

9 MR. BACARISSE: Go right ahead. Sorry. We
10 have a question for counsel. Hold on.

11 MR. GRAHAM: So I don't have anything in my
12 notes, and I'm going back in my mind here and I'm seeming
13 to recall reading something that the OLP scoring program
14 has since been terminated. I don't know if I dreamed
15 that. I don't know if I read that.

16 Could you advise me if I'm accurate in
17 recalling something in the record about whether or not
18 that's still in use?

19 MR. BLECH: My recollection, Member Graham, is
20 that that's a disputed issue.

21 MR. GRAHAM: So leave it alone.

22 MS. MORIATY: Member Graham, we could ask the
23 parties if this is in the record and if they can provide
24 that information. I think that's the most accurate
25 answer.

1 MR. GRAHAM: Okay. Thank you.

2 MR. BACARISSE: Mr. McFarland, do you want to
3 take a whack at answering that question in terms of is
4 this in the record, first?

5 MR. McFARLAND: Yes, absolutely it's in the
6 record.

7 MR. BACARISSE: Can you point to it, please?
8 Is that possible?

9 MR. McFARLAND: Absolutely. The testimony on
10 this -- by the way, OLP wasn't abandoned. That's number
11 one. OLP is not a metric, OLP is a program, Owner Loyalty
12 Program.

13 And at the time of the trial -- without getting
14 into too much weeds for you -- it had three different
15 parts to it. One was key satisfaction indicators, or
16 KSIs: how was your salesperson, how was the facility,
17 that sort of thing. The other was a net promoter score
18 which was one question: How likely are you to recommend
19 this to your friends and family? And the third one, the
20 last question was overall satisfaction, how satisfied are
21 you with the store.

22 The only change to this program was to
23 eliminate the last question, that overall satisfaction
24 question, and they testified they removed it because it
25 was duplicative. If I asked how likely are you to

1 recommend that to a friend versus overall satisfaction,
2 they found those to be highly correlated. So that was the
3 testimony, that one final question came out.

4 But at trial -- if we could put up page 282 of
5 the Board book -- that one, thank you -- testimony was
6 submitted on both the overall satisfaction score, which is
7 on the far right, and the net promoter score, which is on
8 the left, in purchase and service. And you can see the
9 dealer's performance and rankings were similar in both.
10 So that's why it was just an effort done with Subaru's
11 dealer counsel to shorten the survey.

12 MR. GRAHAM: Okay.

13 MR. BACARISSE: You've got Mr. Worthington.

14 MR. GRAHAM: Sure.

15 MR. WORTHINGTON: Board Member Graham, if I can
16 just take one minute, I promise I'll be quick.

17 MR. GRAHAM: Sure. Thank you.

18 MR. WORTHINGTON: They're answers that are true
19 but aren't correct. The single question that was
20 eliminated was the single question upon which dealers were
21 scored. There was a single question satisfaction, that's
22 how you got your score, zero to 1,000.

23 That was eliminated January 1, 2021. We began
24 the hearing later that month. That single question --
25 it's true only one question was eliminated, but it was the

1 question upon which your score was derived.

2 I'm looking here, and that's found in the
3 record, by the way, at page 772, page 827, page 828 and
4 page 829. And there was a screenshot exhibit, I think
5 it's Exhibit 380 -- as much as I'd like to remember all
6 200-and-whatever exhibits, I think it's 380. There's a
7 screenshot that says effective January 1, we'll no longer
8 be using the single score OLP metric in the record.

9 MR. GRAHAM: Thank you.

10 I just think the OLP -- say that again, please.

11 MR. WORTHINGTON: The information I gave is on
12 page 187 of your Board materials.

13 MR. BACARISSE: Page 187 of the Board
14 materials.

15 Mr. McFarland, I sense you have something you'd
16 like to add.

17 MR. MCFARLAND: This is Mr. McFarland.

18 There were a couple of things that were added
19 in argument since we last spoke on this issue that I
20 wanted to address. Mr. Worthington said there's always
21 someone who will be last, but here we have someone who was
22 always last, and that's a little bit different here.

23 He also mentioned the rankings. There is
24 authority for terminating a dealer based on OLP rankings
25 that happened in the Cecil Atkission case; that was a

1 factor that was discussed in that matter.

2 And as far as it being in the dealer agreement,
3 we disagree. We think there's a lot in the dealer
4 agreement that gives the dealer obligations related to
5 OLP. The ALJs agreed with their argument and said that
6 OLP wasn't a breach of the dealer agreement. What they
7 found it under was the public interest factor, whether
8 terminating this dealer would have a positive or negative
9 effect on public interest.

10 And that's what we're talking about. A dealer
11 that's received consistently more poor ratings from
12 consumers in Texas, and if this dealer was terminated and
13 replaced with another Subaru store, improvement for your
14 consumers.

15 The other thing that was mentioned was the
16 prior Subaru dealers in this market. The last Subaru
17 dealer that was here before Bert Ogden was in 2008. Bert
18 Ogden took over in 2009.

19 And the ALJs expressly addressed this issue.
20 They held that Subaru's experience more than 14 years ago
21 carries very little weight because of the explosive growth
22 of both the Subaru brand during that time and the Rio
23 Grande Valley.

24 In fact, there's testimony -- if we could look
25 at Board book page 272, it's the very first page in our

1 materials, there we go -- this is testimony from Troy
2 Poston that Subaru in 2009, 14 years ago, the entire brand
3 made about 7,500 sales in the entire Dallas zone. That's
4 mostly Texas, but includes portions of six other states.

5 And since that time, the brand has grown
6 tremendously, in large part by a huge investment in Texas,
7 something that Subaru made called the Sunbelt Strategy
8 which put extra advertising and maintenance programs in
9 this market. But because of those efforts, Subaru moved
10 from 7,500 sales in 2009 to over 45,000 sales in this area
11 as of this time, and that's six and a half times growth in
12 the brand.

13 And the same with the Rio Grande Valley. Mr.
14 Vackar himself testified that the market was growing by
15 leaps and bounds, that he has a ton of confidence in the
16 Subaru brand, knows it can sell well in the Valley, and
17 that he has so much confidence he would even like to build
18 a second Subaru store in the Valley and thought we could
19 sell a total of 150 a month with a second store.

20 So that's exactly what the proposed decision
21 held on the Subaru brand's performance 14 years ago, and
22 we would submit that that holding was correct.

23 MR. GRAHAM: I have a followup.

24 MR. BACARISSE: Member Graham.

25 MR. GRAHAM: You referenced the Cecil Atkission

1 case just a moment ago. Would you repeat that statement
2 for me?

3 MR. McFARLAND: Yes. One of the bases for
4 termination in the Cecil Atkission case was their ranking
5 in customer satisfaction index.

6 MR. GRAHAM: Correct, yes, which in that
7 dealer's case --

8 MR. McFARLAND: Was not last but close.

9 MR. GRAHAM: But did not have very good scores;
10 they had very poor scores. Right?

11 MR. McFARLAND: I read this last night sitting
12 down at dinner and it was rankings.

13 MR. GRAHAM: Okay. Thank you.

14 MR. BACARISSE: Okay. Members, any other
15 questions of either party in this case? If not, the chair
16 would entertain a motion.

17 Member Omumu.

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

20 MR. BACARISSE: Yes, ma'am.

21 MS. OMUMU: Can you hear me okay?

22 MR. BACARISSE: Yes.

23 MS. OMUMU: I'd move that the Board adopt
24 findings of fact 1 through 63, 68 through 79, 81 through
25 93, and conclusions of law 1 through 9. I further move

1 that the Board modify findings of fact 64 and 80 and
2 create new conclusions of law 10 through 15.

3 Finding of fact 64, SOAH has indicated that it
4 intends to quickly install a new dealer so any
5 inconvenience will be brief. Finding of fact 80, Bert
6 Ogden had inadequate parts, equipment and personnel in
7 relation to other dealers of the same line make.

8 The additional conclusions of law, number 10,
9 the fact that Bert Ogden's OLP scores were relatively
10 lower than other dealers in the DFW Zone does not prove
11 that his dealership was injuring the public. The public
12 would be done a greater injury by not having a stable,
13 consistent Subaru dealer in the Rio Grande Valley able to
14 sell new and certified used Subarus, to perform service
15 work including warranty and recall work. The factor of
16 injury or benefit to the public, therefore, weighs against
17 termination.

18 Number 11, Bert Ogden's adequate facilities as
19 compared to other dealers of the same line make offsets
20 against the findings that its parts, equipment and
21 personnel were inadequate compared to other dealers. The
22 adequacy factor, therefore, does not weigh either in favor
23 or against termination.

24 Number 12, of the seven statutory factors that
25 the Board considers to determine good cause for franchise

1 termination under Texas Occupations Code 2301.455, two
2 factors weigh against termination: injury or benefit to
3 the public and whether the dealer is honoring warranties.

4 These are the factors that most directly impact the
5 public, and therefore weigh most heavily in this case.

6 Number 13, three factors under Texas
7 Occupations Code 2301.455 weigh in favor of termination:
8 Bert Ogden's failure to comply with the terms of the
9 franchise agreement, the enforceability of the franchise
10 agreement, and sales in relation to the market. However,
11 none of these factors have an immediate impact to the
12 public. None of these factors is significant enough to
13 overcome the importance to the public of the factors that
14 weigh heavily against termination.

15 Number 14, SOAH did meet its burden of
16 demonstrating good cause for termination of Bert Ogden's
17 franchise per Texas Occupations Code 2301.453(g).

18 Number 15, Bert Ogden's protest should be
19 granted and the termination of Bert Ogden Subaru's
20 franchise should be denied.

21 These changes are permissible under Texas
22 Government Code 2001.058(e) because the administrative law
23 judge did not properly apply or interpret the factors in
24 Texas Occupations Code 2301.455 that the Board considers
25 in deciding whether to terminate a franchise, and because

1 the Board has the exclusive jurisdiction to determine the
2 issue of good cause, including the weight to be given each
3 statutory factor.

4 Regarding the issue of the adequacy of the
5 dealer's service facilities, equipment, parts, and
6 personnel in relation to other dealers in the same line
7 make under Texas Occupations Code 2301.455(a)(4), the ALJ
8 misinterpreted the weight of the adequacy of the dealer's
9 facility against the inadequacy of the dealer's equipment,
10 parts and personnel, as compared to other dealers. The
11 adequacy of the facilities is very important to the
12 public's experience in the dealership.

13 On the other hand, the inadequacy of the parts
14 inventory in this case carries less significance in the
15 context of the modern motor vehicle industry where there
16 is fast shipping and delivery of parts from manufacturers
17 that allows dealers to get parts as needed.

18 Regarding the adequacy of personnel, the ALJ
19 misinterpreted Texas Occupations Code 2301.455(a)(4) in
20 focusing primarily on exclusive personnel rather than on
21 the total number of Bert Ogden personnel available to
22 assist and service vehicles for its customers because
23 Texas Occupations Code 2301.455(a)(4) does not have an
24 exclusivity requirement.

25 Findings of fact 75 through 79 all focus on

1 Subaru-exclusive personnel, but findings of fact 13
2 through 16 show that Bert Ogden had personnel that were
3 shared amongst its other dealerships, including the two
4 other dealerships that are in the same location as the
5 Subaru dealership. While Bert Ogden did not have as many
6 Subaru-exclusive personnel as the other Subaru dealers,
7 that does not show that its personnel were inadequate to
8 meet its customers' needs since shared personnel served
9 Subaru customers. The inadequacy of Bert Ogden's
10 exclusive personnel is, therefore, not a very significant
11 factor.

12 When the adequacy of the facilities is weighed
13 appropriately against the inadequacy in equipment, parts
14 and exclusive personnel, the facilities offset the less
15 significant factors of equipment, parts and personnel.
16 Therefore, the factor of adequacy as a whole weighs
17 neither in favor nor against termination.

18 Regarding the injury or benefit to the public
19 under Texas Occupations Code 2301.455(a) (3), findings of
20 fact 58 through 61 discuss Bert Ogden's OLP scores
21 relative to other dealers, but Texas Occupations Code
22 2301.455(a) (3) does not ask for a relative comparison of
23 Bert Ogden to other dealers, in notable contrast to other
24 factors, such as Texas Occupations Code 2301.455(a) (4)
25 which requires a comparison of dealers to determine

1 adequacy. By using comparative OLP scores as the basis
2 for finding an injury to the public, the ALJ
3 misinterpreted the Texas Occupations Code 2301.455(a)(3).

4 That Bert Ogden received relatively low scores
5 as compared to dealers in other areas does not prove that
6 Bert Ogden was causing injury to the public in the Pharr
7 area of responsibility because the comparison does not
8 accurately reflect the quality of sales and vehicle
9 service provided by Bert Ogden Subaru to the public it
10 serves. The fact that Bert Ogden's OLP scores were low
11 relative to other dealers thus does not support a finding
12 of injury to the public under Texas Occupations Code
13 2301.455(a)(3).

14 On the other hand, the findings of fact show
15 that Bert Ogden Subaru provided significant public benefit
16 to people in the Pharr AOR. Findings of fact 17 and 18
17 show that Bert Ogden has been a stable, consistent Subaru
18 dealer for the Pharr AOR since 2009. Finding of fact 68
19 shows that Bert Ogden's facilities are as good or better
20 than other Subaru dealers. Finding of fact 81 shows that
21 Bert Ogden is performing warranty work for Subaru owners
22 in the Pharr AOR, including on older, high mileage Subaru.

23 Moreover, the findings of fact also show
24 significant harm that will come from the termination of
25 Bert Ogden's franchise. Findings of fact 62 and 63 state

1 that terminating Bert Ogden's franchise would result in
2 there being no Subaru dealer in the Rio Grande Valley to
3 sell new Subaru vehicles and perform service work,
4 including warranty or recall work.

5 Finding of fact 12 shows that if Bert Ogden's
6 dealership was terminated, people in the Rio Grande Valley
7 would have to drive to at least Corpus Christi or San
8 Antonio to buy a Subaru or to get warranty or recall work
9 completed. The benefit to the public of having a stable
10 Subaru dealer with good facilities performing warranty
11 work in the Pharr AOR is significant.

12 These benefits, combined with the injury to the
13 public from termination of the only franchised dealer in
14 the Rio Grande Valley cause this factor to weigh against
15 termination.

16 SOAH's intention to quickly install a new
17 dealer described in finding of fact 64 is speculative, and
18 therefore deserves little weight. The ALJ misinterpreted
19 Texas Occupations Code 2301.455(a)(3) in finding that the
20 injury to the public would be outweighed by the
21 hypothetical benefit of having a new dealer.

22 It is therefore appropriate for the Board not
23 to adopt findings of fact 65 through 67, to change finding
24 of fact 64 to remove the ALJs' improper legal
25 interpretation, and to make a conclusion of law finding

1 that the factor of injury or benefit to the public weighs
2 strongly against termination.

3 Under the Third Court of Appeals decision in
4 the Austin Chevrolet case, the Board has the exclusive
5 jurisdiction to determine the issue of good cause,
6 including the weight to be given each statutory factor.
7 The ALJ misinterpreted the appropriate weight of the
8 factors under Texas Occupations Code 2301.455.

9 Two of the seven factors under Texas
10 Occupations Code 2301.455 weigh strongly in favor of not
11 revoking Bert Ogden's franchise: injury or benefit to the
12 public and whether the dealer is honoring warranties.
13 Three factors weigh in favor of revocation: compliance
14 with the franchise agreement, enforceability of the
15 franchise agreement, and the dealer's sales in relation to
16 sales in the market. These factors do not significantly
17 impact the public in the Pharr AOR and are not significant
18 enough to overcome the importance and weight of the
19 factors that weigh against revocation. The factors in
20 Texas Occupations Code 2301.455 thus weigh against
21 revoking Bert Ogden's dealer franchise.

22 Bert Ogden's protest should be granted and the
23 termination of Bert Ogden's Subaru franchise should be
24 denied.

25 MS. MORIATY: Mr. Chairman, if I may?

1 MR. BACARISSE: Laura.

2 MS. MORIATY: Laura Moriaty, general counsel,
3 DMV.

4 Ms. Omumu, I just wanted to ask for a point of
5 clarification. On conclusion of law 14, I just want to
6 make sure I heard it right. I think from the rest of your
7 argument that you've said SOAH did not meet its burden of
8 demonstrating good cause for the termination of Bert
9 Ogden's franchise. Is that correct?

10 MS. OMUMU: That's correct. 14, SOAH did not
11 meet its burden of demonstrating good cause for the
12 termination of Bert Ogden's franchise.

13 MS. MORIATY: Thank you, appreciate it.

14 MR. BACARISSE: Thank you, Member Omumu.

15 Is there a second for this motion.

16 MR. SCOTT: Second.

17 MR. BACARISSE: Member Scott is the second.

18 Thank you.

19 Is there any discussion of this motion?

20 (No response.)

21 MR. BACARISSE: Member Omumu, as the maker of
22 this motion, would you be okay with us if there are any
23 discussion from any other members?

24 MS. OMUMU: Yes.

25 MR. BACARISSE: Any other questions for Ms.

1 Omumu on her motion?

2 (No response.)

3 MR. BACARISSE: Seeing none, hearing none, I
4 would ask for a -- the chair is going to call the vote.

5 Are there any public comments on this
6 particular --

7 MS. MORIATY: There are not.

8 MR. BACARISSE: Okay, very good. Thank you.

9 I will call the vote, and let me get over here
10 to this page so I may record it. I will now call the roll
11 for this vote to deny -- well, on Member Omumu's vote, I
12 don't want to misstate it.

13 So Member Alvarado?

14 MR. ALVARADO: Nay.

15 MR. BACARISSE: Member Gillman? You're voting
16 either for the motion or against the motion that was made
17 by Member Omumu.

18 MS. GILLMAN: Voting for her motion.

19 MR. BACARISSE: Yes, you're going to vote for
20 her motion or against her motion, and her motion was to
21 affirm --

22 MS. GILLMAN: If I agree, I vote aye.

23 MR. BACARISSE: Right. If you agree with her
24 motion, you vote aye.

25 MS. GILLMAN: I vote aye.

1 MR. BACARISSE: Yeah.

2 MS. GILLMAN: I vote aye.

3 MR. BACARISSE: Member Graham?

4 MR. GRAHAM: Aye.

5 MR. BACARISSE: Member Omumu?

6 MS. OMUMU: Aye.

7 MR. BACARISSE: Member Prewitt?

8 MR. PREWITT: Aye.

9 MR. BACARISSE: Member Scott?

10 MR. SCOTT: Aye.

11 MR. BACARISSE: And I, Charles Bacarisse, vote
12 aye as well.

13 Let the record reflect there are seven votes in
14 favor and one vote against. This motion passes. Thank
15 you.

16 MS. GILLMAN: Can I make one comment?

17 MR. BACARISSE: Member Gillman.

18 MS. GILLMAN: I just wanted to make a comment
19 that really is a request to whoever is the executive
20 director of SOAH to review this particular contested case,
21 because I felt like the PFD, the findings of fact were so
22 incredibly incomplete. The exhibits on both sides from
23 Subaru and from Bert Ogden's attorneys were extremely
24 important and so very relevant in this case, and so much
25 was left out of the record and was not able to be

1 referenced for us.

2 I understand that we are not supposed to retry
3 the case, that ALJs, their job is the fact-finding, and to
4 include in the findings of fact just that. I was
5 disappointed at their lack of bringing forth those
6 exhibits and I just wanted to say for the record for in
7 the future to encourage ALJs to do their job, and that is
8 put the facts in the findings of fact for the Board so
9 that we can make good decisions like this in the future.

10 MR. BACARISSE: Okay. Thank you.

11 I would like to at this time -- Mr. Blech, I'm
12 sorry, did I see your hand up?

13 MS. MORIATY: Chairman, if I may? I'm sorry.

14 MR. BACARISSE: Laura.

15 MS. MORIATY: Laura Moriatty, general counsel of
16 the DMV.

17 I wrote down that you said there were seven
18 votes in favor and one against, but I believe it's six
19 votes in favor because Member McRae is not here. So I
20 think our total count is seven, so it was six and one. Is
21 that accurate?

22 MR. BACARISSE: Yes, that's right. Sorry.
23 Yes, six to one. Thank you.

24 MS. MORIATY: Thank you, I appreciate it.

25 MR. BACARISSE: Yes, that's correct.

1 At this point I would like to just take a brief
2 break, if we may, in the meeting, give both parties time
3 to depart if they wish, and they've got a lot of documents
4 and everything to carry. So thank you all.

5 We're going to take about a ten-minute recess.

6 (Whereupon, a brief recess was taken.)

7 MR. BACARISSE: It is now 11:03, and I'm
8 bringing the open meeting back into session, and we are at
9 item number 6, but before we get started with that, Member
10 Scott, did you need the floor for a moment?

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

12 I just want to take a minute to acknowledge the
13 great work that I feel like our Office of General Counsel
14 did for us. We had a number of conversations over
15 extended time, and your professionalism and your
16 preparation, and in some cases, extreme patience, so I
17 want to acknowledge that and thank you very much. You
18 guys did a great job for us.

19 I know a lot of us felt like this was a very
20 important situation, a very important decision that needed
21 to be reached. At the same time, you know, we needed to
22 phrase the decision that we came to in such a way that
23 would have the best opportunity for the decision to be
24 upheld. And so just an expression of gratitude and
25 acknowledgment of your professionalism.

1 MR. GRAHAM: Second.

2 MS. GILLMAN: Second.

3 (Applause.)

4 MR. BACARISSE: I will just pile on and say
5 that I told Laura many times, hey, don't worry, this is an
6 easy case, just wait till some of the harder ones come
7 along.

8 (General laughter.)

9 MR. BACARISSE: But seriously, members, I want
10 to thank each of you for your diligence, your work and
11 your study and the way in which you take everything we do
12 here seriously. But this is a great testament to an
13 engaged board, so thank you -- engaged in the right way, I
14 might say.

15 If I may, I'd like to take us out of order and
16 go to item number 12 which is public comment. I believe
17 we have a member of the public here who wishes to address
18 us briefly. So if I may do that now, that would be great.

19 Do we have the individual's name?

20 MS. MORIATY: Yes, Chairman. It is Brian
21 Walters, and he is representing himself.

22 MR. BACARISSE: Great. Mr. Walters, welcome
23 and we're glad you're here.

24 MR. WALTERS: Thank you, Mr. Chairman, members
25 of the Board. My name is Brian Walters. I'm here to ask

1 for your help in relation to protecting service members'
2 vehicles from foreclosure.

3 As you all may or may not be aware, the City of
4 El Paso was recently sued for foreclosing on 176 service
5 members' vehicles. These vehicles were towed by the
6 police impound rotation. They were impounded for being
7 abandoned, involved in an accident or other such things.
8 They were taken to the vehicle storage facilities and
9 eventually when they were stored long enough, they were
10 sold.

11 The problem with this is that the notices that
12 are sent out are based on the motor vehicles reports
13 obtained from DMV. Those motor vehicle reports lack
14 something essential for doing a Service Members Civil
15 Relief Act search, the date of birth. So when these
16 vehicles are impounded and the notices go out, the
17 foreclosure is processed in accordance with the
18 Occupations Code Chapter 2303, but it ignores the
19 requirements of the Service Members Civil Relief Act
20 protections.

21 There's not a vehicle storage facility in Texas
22 that I'm aware of that wants to foreclose on a service
23 member's vehicle, but right now there is no designation on
24 the motor vehicle report that these vehicles belong to
25 service members, so there is no notice.

1 My request and my public comment is that you
2 all perhaps amend the amount of information provided on
3 the motor vehicle report, have a check box for a service
4 member designation. This will not fix the entire problem,
5 but it would be a great step forward.

6 And I appreciate your time and since I'm not on
7 an agenda item, I think I get to dodge questions.

8 (General laughter.)

9 MR. BACARISSE: Well, thank you.

10 MR. WALTERS: Thank you very much.

11 MR. BACARISSE: You bring up a very important
12 issue, and I think Executive Director Avitia has already
13 kind of jumped into this issue. Right?

14 MR. AVITIA: Yes, Chairman.

15 For the record, Daniel Avitia, executive
16 director.

17 I have had the pleasure of visiting with Mr.
18 Walters, as did Deputy Executive Director Luna. I believe
19 we have a solution or a path forward that we're going to
20 work toward and look forward to further discussion with
21 Mr. Walters.

22 MR. BACARISSE: Good. We'll do it quickly, as
23 well, as quickly as we can.

24 MR. WALTERS: Thank you very much. I
25 appreciate your time.

1 MR. BACARISSE: Thank you for coming in.

2 We'll now move to agenda item number 6 which is
3 rule adoption, and I want to turn it over to David
4 Richards to lay that out for us.

5 David.

6 MR. RICHARDS: Good morning, Chairman
7 Bacarisse, members, Executive Director Avitia. My name is
8 David Richards. I'm assistant general counsel in the
9 Office of General Counsel.

10 I'm bringing to you today agenda item 6, which
11 is an action item. We're seeking your approval of
12 amendments and a repeal to Chapter 206. As we discussed
13 back in the February 9 meeting, it's a really simple fix
14 in that we're attempting, number one, amendments to extend
15 the dates of expiration for four of the advisory
16 committees and we're repealing one. That is essentially
17 what we're looking at.

18 The Customer Service Advisory Committee that's
19 being repealed will be combined -- or its scope of work
20 will be combined with the Consumer Protection Advisory
21 Committee. And it's going to be renamed the Customer
22 Service and Protection Advisory Committee, so you'll have
23 the scope of both CPAC and the former CSAC advisory
24 committees that will be combined in the new advisory
25 committee. So going forward we will have four.

1 We hope, provided you approve the amendments
2 and the repeal today, to publish in the April 28 edition
3 of the *Texas Register*. And I believe May 4 of this year
4 the changes will become effective, so it's a 20-day filing
5 period.

6 One thing I did want to say for the record
7 regarding the Customer Service Advisory Committee is to
8 thank and congratulate John Ames, who is the Dallas County
9 Tax Assessor-Collector, who was the presiding officer of
10 that advisory committee. Through Mr. Ames's leadership,
11 that committee did a lot of great things for and
12 recommendations for the Board. Mr. Ames, I'm glad to
13 report, has expressed an interest of serving on the new
14 CSPAC advisory committee, along with several -- I think
15 there are six or seven members currently that have
16 expressed an interest to serve on the newly formed
17 advisory committee as well.

18 So again, I'm seeking your approval for the
19 amendments and the repeal. We had no public comments, as
20 you might well expect, on this particular agenda item.
21 I'll be happy to entertain any questions you have.

22 MR. BACARISSE: Thank you.

23 Members, any questions for Mr. Richards?

24 (No response.)

25 MR. BACARISSE: I would now entertain a motion

1 on agenda item 6.

2 MS. GILLMAN: Mr. Chairman, I have a motion.

3 MR. BACARISSE: Yes, Member Gillman.

4 MS. GILLMAN: I move that the Board approve the
5 adoption of amendments to Section 206.94 through 206.97
6 and repeal Section 206.98 concerning advisory committees,
7 as recommended by staff. I also move that the Board grant
8 the department the ability to make changes to the adopted
9 sections based on non-substantive corrections made by the
10 *Texas Register*.

11 MR. BACARISSE: Thank you.

12 Is there a second for Ms. Gillman's motion?

13 MR. SCOTT: Second.

14 MR. BACARISSE: Member Scott, thank you.

15 Any further discussion, members?

16 (No response.)

17 MR. BACARISSE: And no public comments on this
18 point, Laura, I'm sure?

19 MS. MORIATY: No public comments.

20 MR. BACARISSE: Great. At this point I will
21 call for the vote on this agenda item.

22 Member Alvarado?

23 MR. ALVARADO: Aye.

24 MR. BACARISSE: Member Gillman?

25 MS. GILLMAN: Aye.

1 MR. BACARISSE: Member Graham?

2 MR. GRAHAM: Aye.

3 MR. BACARISSE: Member Omumu?

4 MS. OMUMU: Aye.

5 MR. BACARISSE: Member Prewitt?

6 MR. PREWITT: Aye.

7 MR. BACARISSE: Member Scott?

8 MR. SCOTT: Aye.

9 MR. BACARISSE: And I, Chairman Bacarisse, vote
10 aye as well. Thank you. It's unanimous.

11 Thank you, Mr. Richards.

12 MR. RICHARDS: Thank you.

13 MR. BACARISSE: We now would like to move to
14 agenda item number 7 which is our specialty plate design.

15 And the Bearkats have sneaked up on us here, so Annette
16 Quintero is going to lay that out for us.

17 Annette, good morning. Is it still morning?

18 Yes, it is.

19 MS. QUINTERO: I did the same thing.

20 Good morning, Chairman Bacarisse, members,
21 Executive Director Avitia. My name is Annette Quintero.
22 I am the director of the Vehicle Titles and Registration
23 Division.

24 This is agenda item 7, which can be found on
25 page 294 of your Board book. The action item before you

1 is a request for Board approval or denial of a specialty
2 plate design in accordance with the Board's statutory
3 authority.

4 The following proposed plate design is from My
5 Plates, the state's specialty license plate marketing
6 vendor, and was posted for public comment in February
7 2023. Sam Houston State University, a crossover plate
8 design, is proposed under Transportation Code 504.851 and
9 504.6011. Four seventy-eight people liked this design and
10 220 did not.

11 This concludes my presentation on this action
12 item. I'm available to take any questions you may have.

13 MR. BACARISSE: Members, any questions on the
14 plate?

15 MR. GRAHAM: How many did not like it?

16 MS. QUINTERO: Two hundred twenty.

17 MR. GRAHAM: And how many liked it?

18 MS. QUINTERO: Four hundred seventy-eight.

19 MR. GRAHAM: I can support that.

20 MR. BACARISSE: Any other questions, members?

21 (No response.)

22 MR. BACARISSE: All right. Thank you, Ms.
23 Quintero, appreciate it.

24 We need a motion on agenda item 7, please.
25 Member Prewitt.

1 MR. PREWITT: Mr. Chairman, I'd move that the
2 Board approve the Sam Houston State University specialty
3 plate design, as presented by staff.

4 MR. BACARISSE: Great. And is there a second
5 to this motion?

6 MS. OMUMU: Second.

7 MR. BACARISSE: Member Omumu, thank you.
8 Any further discussion on that?

9 (No response.)

10 MR. BACARISSE: If not, I will certainly call
11 the roll at this point.

12 Member Alvarado?

13 MR. ALVARADO: Aye.

14 MR. BACARISSE: Member Gillman?

15 MS. GILLMAN: Aye.

16 MR. BACARISSE: Member Graham?

17 MR. GRAHAM: Aye.

18 MR. BACARISSE: Member Omumu?

19 MS. OMUMU: Aye.

20 MR. BACARISSE: Member Prewitt?

21 MR. PREWITT: Aye.

22 MR. BACARISSE: Member Scott?

23 MR. SCOTT: Aye.

24 MR. BACARISSE: And I, Chairman Bacarisse, vote
25 aye as well. It's unanimous. Thank you.

1 All right. Go Kats. It's hard for me to say.
2 They used to be in our conference.

3 We now would like to have an update on the 88th
4 Legislative Session, and Keith is here to do that for us.
5 Mr. Yawn.

6 Members, I would just like to say, because I
7 have popped off in meetings with the executive director
8 and others and Keith, and opined on my opinion on
9 legislation in the recent past, and I think it's wise for
10 us to receive an update today and be in listening mode.
11 And just a reminder that the legislature makes the law and
12 then we implement it. So whatever our feelings may be,
13 they're moot. They don't count.

14 (General laughter.)

15 MR. BACARISSE: And with that said, Mr. Yawn,
16 please brief us.

17 MR. YAWN: Thank you, Mr. Chairman.

18 Good morning, Chairman, Board members. My name
19 is Keith Yawn. I am the director of the department's
20 Government and Strategic Communications Division.

21 Agenda item 8 is a briefing on the status of
22 notable developments during the current legislative
23 session.

24 It has been an active and eventful session so
25 far and I'm happy to report that there are 46 days

1 remaining in this session. As many of you probably know,
2 this is when the majority of the activity on legislation
3 actually now occurs.

4 I'll begin with the status of funding levels
5 provided in the General Appropriations Act, and this is
6 really good news for the department. House Bill 1
7 contains state agency appropriations for the upcoming
8 2024-25 biennium. The introduced version of the budget
9 fully funded baseline operations and increased funding for
10 the Motor Vehicle Crime Prevention Authority funding to
11 achieve the statutorily dedicated amount of 20 percent of
12 insurance collections.

13 The Senate Finance Committee and the House
14 Committee on Appropriations deliberated budget items from
15 late January through the latter part of March and made the
16 following recommendations to their chambers related to
17 additional department funding requests. Both committees
18 adopted the full funding request for the Phase 1 of the
19 Registration and Title System replacement project which
20 was \$6.75 million. They both approved creation of
21 additional regional service center offices in the Dallas
22 and Houston areas to improve customer service which was
23 \$3.5 million and eight additional FTEs. And they approved
24 additional staff positions throughout the department to
25 address ongoing workload needs; this is \$3.7 million and

1 38 new FTEs.

2 The Senate adopted the full funding request for
3 the construction and financing of the Camp Hubbard Campus
4 renewal project. The House has not yet approved this
5 request.

6 Both committees approved additional funding to
7 address per-unit cost increases and available inventory
8 levels of license plate production. The House Committee
9 approved the department's full funding request of \$5.2
10 million, while the Senate approved half the requested
11 amount, \$2.6 million, and appropriated the funding
12 directly to the Texas Department of Criminal Justice.

13 In addition to these appropriations, the Senate
14 also added a new reporting requirement requiring the
15 department, in consultation with the Texas Facilities
16 Commission, to conduct a ten-year facility needs
17 assessment of regional service center offices. The
18 assessment would evaluate the use of existing state
19 property or the acquisition or construction of department-
20 owned facilities as options for the expansion or
21 relocation of RSCs.

22 The House passed House Bill 1 on April 6
23 without changing department funding levels approved by the
24 committee. The bill is now being considered on the Senate
25 side, and then a conference committee will be set to

1 finalize the differences between the bills. The
2 differences that the conference committee will take up
3 related to the department are the Camp Hubbard Campus
4 renewal project funding, the additional funding for
5 license plate production to reconcile the different ways
6 that was appropriated, and the facilities study
7 requirement that the Senate put in for RSC locations.

8 The House has also passed Senate Bill 30. This
9 is the Supplemental Appropriations Bill. The bill
10 contains several items for the department, including:
11 increased funding authority to cover the use of the
12 state's Data Center services program at \$1.6 million;
13 authorization to extend the use of funding previously
14 provided for the accounts receivable project into the next
15 biennium; and funding to replace three department
16 vehicles, and this item is \$158,000.

17 Of course, in addition to the budget the
18 legislature has been considering many policy-related
19 bills. To support the work of the legislature, department
20 staff have completed analysis of 223 pieces of legislation
21 and submitted fiscal impact estimates for, as of last
22 night at 6:00 p.m., 106 bills.

23 We have also worked with numerous legislative
24 offices to provide expert resource assistance on bill
25 language development and explained current department

1 operations and legal structures to both individual offices
2 and to committees as requested.

3 I would like to take a moment to express our
4 appreciation for the hard work of employees throughout the
5 agency. This demanding work is conducted in addition to
6 meeting the daily customer service needs of the
7 department's core programs and no additional staff
8 resources are added to meet the increased session
9 workloads.

10 There are several specific pieces of
11 legislation I would like to highlight for the Board's
12 awareness, starting with bills that include the Board's
13 recommendations adopted last fall. And as a reminder,
14 bills are continuing through the development process and
15 can change rapidly at this point. But as of now, this is
16 the status of these bills.

17 Senate Bill 247 repeals the Honorary Consul
18 specialty license plate. As you will recall, this was a
19 request made by the United States Department of State that
20 was being made to multiple states. Senate Bill 247 has
21 passed out of the Senate and is now awaiting action by the
22 House.

23 Senate Bill 1182 contains the full set of Board
24 recommendations related to registration and license plate
25 programs. This bill was voted out of committee and is set

1 to be considered by the full Senate as early as today.

2 And then finally, House Bill 5269 contains the
3 full set of Board recommendations related to Title Act
4 cleanup. This bill is awaiting a public hearing by the
5 House Committee on Transportation.

6 Several bills would also require significant
7 department effort to implement that have already moved
8 swiftly through initial steps in the legislative process.

9 These bills still have many phases left to go in the
10 process, but they have moved fairly far as bills are
11 moving right now.

12 The first of these is Senate Bill 5050, which
13 does have an identical House Companion, that creates a
14 \$200 per year additional registration fee for electric
15 vehicles. This bill was passed by the full Senate and the
16 House Transportation Committee has already also approved
17 the House version of the bill.

18 Senate Bill 224 seeks to address catalytic
19 converter related crimes. Among other changes, the bill
20 increases an insurance fee assessed on auto policies from
21 \$4 to \$5, with the additional dollar intended to be used
22 for the detection and prevention of catalytic converter
23 thefts. Senate Bill 224 has passed out of the Senate and
24 the House version of the bill has already been heard in
25 the companion committee. Contingency rider language to

1 appropriate the new funds to MVCPA has been prepared for
2 potential inclusion in the General Appropriations Act, if
3 the bill continues to move forward.

4 And just for note, the estimates currently for
5 the revenue that would be generated by that legislation in
6 the first year is \$24.4 million in the first year and
7 \$30.1 million in the second year.

8 Finally, House Bill 718 as introduced replaced
9 temporary buyers tags with the issuance of permanent metal
10 license plates by dealers. The version of the bill voted
11 out of the House Transportation Committee also ends the
12 use of dealer and converter temporary tags and eliminates
13 various temporary permits, including the 72-hour and
14 144-hour permits, one-trip permits, 30-day permits, and
15 certain agricultural permits.

16 There are, of course, dozens of other bills
17 moving through the process that could end up being
18 implemented by the department, including a number of new
19 specialty plates, as typical, but most of these are
20 expected to have much more limited implementation needs by
21 the department.

22 Mr. Chairman, this concludes my presentation,
23 unless there are any questions from the Board.

24 MR. BACARISSE: Members, any questions? Member
25 Gillman.

1 MS. GILLMAN: Yes. Can you tell me a little
2 bit about the bill introduced proposing to go from paper
3 to metal. You said it has been passed by the House?

4 MR. YAWN: It has been passed by the House
5 Committee on Transportation.

6 MS. GILLMAN: Oh, okay.

7 MR. YAWN: I guess the appropriate way to say
8 that is that it has been voted out of committee.

9 MS. GILLMAN: Oh, okay. Thank you.

10 My next question is what role do you play in
11 that process of that bill? I want to understand, I guess,
12 does either that committee ask your testimony with respect
13 to the great, wonderful, amazing improvements we've made
14 in catching bad guys on the paper plates, and did they ask
15 you specifically -- did they ask the position of the
16 agency whether we think a change needs to be made at all?

17 MR. YAWN: Sure. So with that bill, or with
18 any piece of legislation moving through the legislature,
19 the answer would be the same. The department, myself and
20 my staff, serve as resources, along with all of the
21 subject matter experts within the agency, to legislative
22 offices and the committees that are hearing the
23 legislation.

24 And so we provide education on the current
25 processes in place, how our regulatory processes work, how

1 we work with our stakeholders in the various areas of the
2 processes, and of course, information, data points on the
3 quantity of different activities that occur, the revenue
4 impacts of changes, and current operations.

5 The legislature has been, of course, very
6 engaged in this topic for some time now, beginning with
7 interim hearing committees that the department testified
8 on and had sent resources to testify on. The House
9 Transportation, specifically, at the beginning of session
10 asked the department to present to the committee
11 information on the activities of the department over the
12 last several years to implement solutions and prevention
13 efforts in the temp tag area. And Executive Director
14 Avitia and Deputy Executive Director Luna attended that
15 hearing and represented the department and provided expert
16 testimony in that area, as invited.

17 We have been working, of course, with
18 legislative offices, including the author's office, on the
19 issues and on the education efforts to make them aware of
20 the operational considerations involved in the bill, as
21 well as the committee staff in those areas. And we'll
22 continue to do so as the bill continues to move through
23 the process.

24 MR. BACARISSE: If I may interject, it is the
25 appropriate posture of all state agencies to act as expert

1 presenters of fact but not opinion about whether the
2 agency, any agency feels a bill should pass or not pass,
3 or what-have-you. So we're resource witnesses. And you
4 know, it's a delicate dance.

5 Sometimes members, various members are eager to
6 receive our information and other times they are less
7 eager or don't ask for it at all, so we give it where it's
8 asked. And we do serve the legislative leadership and the
9 members and their staffs in giving them facts as we know
10 them, both financially and operationally, all those areas.

11 MS. GILLMAN: One last question.

12 MR. BACARISSE: Sure.

13 MS. GILLMAN: Has there been an assessment of
14 how much -- a cost analysis of how much it would cost to
15 go to metal plates, and is there across the nation any
16 other state that has seen that does it work or do bad guys
17 figure out how to manipulate metal plates as well? I'm
18 asking, have we been asked to do the research on this, and
19 if the answer is no, not yet, then I'll take it.

20 But if they're passing legislation to change
21 things, these are some of the things that I would assume
22 have been asked of the agency.

23 MR. YAWN: Absolutely. So for the first part
24 of that question, yes, there have been cost estimates and
25 fiscal analysis conducted on the legislation. The

1 introduced version of the bill carries a published fiscal
2 impact of approximately \$53 million to implement. I do
3 want to be clear that that is the state cost, not the cost
4 to all potential involved stakeholders, including tax
5 assessor-collectors and counties. That's the part we
6 provide and the state is responsible for receiving on that
7 as part of the process.

8 As far as the second part of your question
9 there, absolutely those questions have come up. The
10 department has been asked those questions in multiple ways
11 by multiple parties. Our subject matter experts,
12 specifically in VTR, had conducted during the interim
13 research into that area and continues to conduct research
14 into that area so that we can continue to serve as an
15 appropriate resource in that area.

16 We don't have information on all states as of
17 yet, but we do have a lot of information on what's out
18 there in states. There are a small number of states that
19 uses processes like this.

20 To your point of potential ongoing fraud, that
21 has been a part of the discussion and has been
22 acknowledged by many parties that criminals are very
23 sophisticated at times in some of these activities and can
24 find new and innovative ways to get around regulatory
25 processes and law enforcement processes. So we continue

1 to work with our law enforcement partners to help identify
2 where we can provide additional assistance on that and
3 where we can provide information in the debate on these
4 pieces of legislation.

5 MR. BACARISSE: Members, any other questions
6 for Mr. Yawn?

7 (No response.)

8 MR. BACARISSE: Keith, thank you. Hang in
9 there.

10 MR. YAWN: Thank you.

11 MR. BACARISSE: At this point we'd like to take
12 up agenda item 9.A, which is our semiannual financial
13 report. So we'll have Glenna Bowman and John Ralston come
14 and brief us on these points.

15 MR. RALSTON: Good morning, Chairman Bacarisse
16 and members. For the record, my name is John Ralston, and
17 I'm the budget and forecasting director for the Finance
18 and Administrative Services Division.

19 In your Board materials starting on page 298 is
20 item 9.A, and this is a briefing item. And this is our
21 semiannual FY23 financial report. This report provides
22 financial information for the period from September 1,
23 2022 through February 28, 2023, which is the first six
24 months of our fiscal year.

25 This report contains information on projected

1 and actual revenues, as well as budgeted and actual
2 expenditures for the fiscal year. It also includes a
3 stand-alone report for our TxDMV Fund 10 and information
4 on selected statistics that may have an impact on
5 revenues.

6 The key highlights from the report that I bring
7 to your attention -- and this will cover three years --
8 the first is on revenues. TxDMV collected \$954.3 million
9 in revenue in all of our funds as of February 28, 2023,
10 and this is a 2.5 percent increase over collections from
11 February of 2022. The increase is attributable to growth
12 in most categories, with only motor carrier credentialing
13 and motor vehicle business licenses showing slight
14 decreases year over year. The increase in all fund
15 collections is also slightly higher than what we had
16 projected at this point in time.

17 If we narrow our focus within the all funds
18 total, our TxDMV Fund 10 revenue collections total \$88.6
19 million, which is a 7.1 percent increase compared to the
20 same time period for FY 2022. The TxDMV Fund 10 is the
21 fund that covers all the TxDMV operations, with the
22 exception of Motor Vehicle Crime Prevention Authority.

23 Our TxDMV Fund 10 revenue growth reflects
24 stronger than expected vendor plate sales, an increase in
25 motor carrier oversize/overweight permits, and higher than

1 expected collections of motor vehicle dealer civil
2 penalties, and also higher than expected interest
3 earnings.

4 Secondary is our expenditures. Total
5 expenditures as of February 28 were \$75.7 million in all
6 funds, and of that total, \$74.9 million is within the
7 TxDMV Fund 10, with the remaining expenditures being
8 related to the Motor Vehicle Crime Prevention Authority.

9 The major drivers for our expenditure
10 categories are pretty consistent: it is payroll, license
11 plate production, postage and charges for Data Center
12 services. Overall, in the first six months of FY 2023,
13 the department collected sufficient revenue to support its
14 year-to-date actual expenditures and we anticipate that
15 that growth will continue for the second six months of FY
16 2023 and will cover our anticipated expenditures.

17 The third and final section is My Plates. The
18 current specialty plates marketing contract began on
19 November 19, 2019, and runs through December 31, 2025. As
20 of February 28, deposits to the General Revenue Fund
21 related to the current My Plates contract totaled \$68.5
22 million. Of the \$68.5 million, \$31.5 million counts
23 toward the \$25 million contract guarantee, which has now
24 been met.

25 Overall, our department continues its strong

1 financial position and we anticipate that we will collect
2 sufficient revenues to cover our expenses by the year-end.

3 This concludes my formal remarks and I'm happy
4 to answer any questions.

5 MR. BACARISSE: Members, any questions for Mr.
6 Ralston?

7 MS. GILLMAN: I do.

8 MR. BACARISSE: Member Gillman.

9 MS. GILLMAN: When I was first on this Board I
10 was on the Finance Committee, and at that time the
11 legislature approved an accounts receivable software
12 program. And just for my knowledge, has it all been
13 implemented?

14 MS. BOWMAN: Good morning. Member Gillman,
15 thank you for your question. For the record, I'm Glenna
16 Bowman, chief financial officer.

17 We are actually making good progress on the
18 system. We have a statement of work that's out on the
19 street right now and we are hoping in the next several
20 weeks that we will get bids from vendors so that we can
21 actually implement.

22 You may have heard when Keith was giving his
23 presentation that we actually have in the Supplemental
24 Appropriations Bill authority to move unexpended balances
25 forward from the end of this year into the next biennium

1 for the accounts receivable system, but that's just to
2 make sure that we get everything done properly. It took a
3 little longer to get started a year and a half ago when we
4 were first looking at this project, but we are in very
5 good shape.

6 We've already identified the software that we
7 want to use and we've purchased that. And now we're just
8 trying to get a vendor to implement the system. So we're
9 well on our way.

10 MS. GILLMAN: By the end of the year?

11 MS. BOWMAN: We are hoping by the end of the
12 year. There are 17 different processes and systems in
13 this agency and in the process of doing the statement of
14 work, we identified the tens of thousands of customers
15 that we're trying to track through all of those disparate
16 systems that need to be converted to this new system.

17 So we want to make sure that we've given
18 ourselves enough time to do it correctly. Our goal is
19 definitely to have it done by the end of the year, but
20 we'd rather do it right and need another month or two than
21 get it finished and it not do what we need for it to do.
22 But yes, we are working toward August 31 of this year.

23 MR. BACARISSE: Time taken on the front-end
24 mapping processes and workloads and everything, that's
25 always the booger.

1 MS. BOWMAN: It is.

2 MS. GILLMAN: Well, I'm still your cheerleader.
3 I'll ask again in December.

4 MS. BOWMAN: Yes, ma'am. I knew you were going
5 to ask today and I thank you for your question.

6 MR. BACARISSE: When we say the end of the
7 year, do we mean the end of the calendar year or the
8 fiscal year?

9 MS. BOWMAN: No. End of the fiscal year is the
10 goal and that's what we're working towards.

11 MR. BACARISSE: So that's August. Right?

12 MS. BOWMAN: It is.

13 MS. GILLMAN: Oh, okay.

14 MS. BOWMAN: I will tell you the last I checked
15 I am not sure how many vendors, so we are still working on
16 that. But we've put together a good statement of work and
17 we're going to be able to get it implemented.

18 MR. BACARISSE: Members, any other questions?

19 (No response.)

20 MR. BACARISSE: Thank you all very much.
21 Thanks for this report.

22 Now we're going to move to agenda item 9.B
23 which is a report from our Internal Audit Division, status
24 update from Salem Chuah.

25 Salem, good morning.

1 MR. CHUAH: Good morning, Chairman Bacarisse,
2 Board members, Executive Director Avitia. For the record,
3 my name is Salem Chuah. I am the director of the Internal
4 Audit Division for the department.

5 Item 9.B is a briefing item to provide you with
6 an update on the Internal Audit Division's activities
7 pertaining to internal and external engagements. On page
8 313 of your Board materials, there is a graphic showing
9 the status of all engagements.

10 For internal engagements, we are conducting two
11 audits right now and both are in the planning phase. This
12 is the phase where we're gathering criteria, we're
13 learning about the programs that we're auditing, and we're
14 understanding processes. The first one is the hiring
15 process audit, and that objective is to determine the
16 effectiveness and efficiency of the hiring process and
17 whether policies and procedures are followed consistently.

18 And so there's three parts to this objective:
19 the compliance piece where we're going to be determining
20 if certain functions, like reference checks are completed,
21 background checks; there's the effectiveness piece where
22 we're going to be determining if the hiring steps are
23 logical, if there are steps that could or should be
24 performed by HR that's currently handled by the hiring
25 managers; and then the third part is the efficiency

1 aspect, how well is the HR department meeting current KPI
2 metrics and do the KPIs tell us enterprise-wide
3 information.

4 Now, the steps that we've completed in this
5 audit so far include creating a process flow chart of the
6 current as-is hiring process. We've interviewed the Human
7 Resources Division team, and we've obtained a listing of
8 new hires from our scope of this audit which is September
9 1 of 2021 through December 31 of 2022. This listing is
10 used to select samples that we're going to be testing.
11 And we're actually moving into field work tomorrow where
12 we're going to be testing some of the compliance pieces
13 from the samples that we've selected.

14 We appreciate the HR Division, all of their
15 team in helping us through this process and getting us all
16 the documentation. This audit is planned to be completed
17 in late July.

18 The second audit is of selected regional
19 service centers, also known as RSCs. Our audit objective
20 is to assess the culture at the selected RSCs, determine
21 opportunities for RSCs to better serve its customers, and
22 determine whether RSCs process transactions uniformly. We
23 intend to select four or five RSCs to audit, and
24 preliminarily that looks like two large RSCs mixed in with
25 small and medium RSCs. We're finalizing that in the

1 coming weeks.

2 Now, this audit also has three parts: we have
3 that compliance piece in determining if transactions are
4 processed the same at the RSCs that we select; the
5 customer satisfaction piece where we're wanting to hear
6 from the customers what are they saying about the services
7 that we provide, what are opportunities that we can
8 enhance that experience; and then we have the culture
9 piece where we're trying to use a survey to determine what
10 the current culture is versus what the preferred culture
11 is, because narrowing that gap between current and
12 preferred culture could improve employee and
13 organizational performance.

14 Steps that we've completed in this audit
15 include reviewing the survey of employee engagement
16 results from 2022, interviewing the Vehicle Titles and
17 Registration management, and researching survey tools to
18 use. This audit is expected to move into field work in
19 June and the planned completion is in October.

20 And thanks to the VTR team as well, and their
21 transparency in providing us information thus far.

22 In regards to external engagements, we have one
23 that remains in progress; that's the dual employment desk
24 audit by the Comptroller of Public Accounts. There are
25 two that were recently completed. This includes the audit

1 by the State Auditor's Office on the Motor Vehicle Crime
2 Prevention Authority and the department's temporary tags.

3 The audit made three recommendations and the report was
4 published publicly on the State Auditor's website on March
5 3.

6 Secondly, we had a virtual review that was
7 completed by the Federal Motor Carrier Safety
8 Administration. The review's objective was to verify
9 compliance with the requirements from the Performance and
10 Registration Information Systems Management Program, or
11 PRISM for short. This program aims to identify motor
12 carriers with poor safety records in order to hold them
13 accountable and responsible.

14 The review found that the Motor Carrier
15 Division was in full compliance with the enhanced
16 participation level. And for background, there's four
17 participation levels, and in order it goes from no
18 participation to full participation to enhanced
19 participation -- which is what we are at -- and then
20 finally, expanded participation. So we're at that second
21 to highest tier.

22 And just for the record, there's only one state
23 out there that's operating at the expanded, the highest
24 level, and that's Washington State. All in all, the
25 Federal Motor Carrier Administration congratulated the

1 efforts and dedication of the Motor Carrier Division for
2 earning re-certification at the enhanced PRISM level, so
3 great work to the MCD team.

4 This concludes my updates today and I'm happy
5 to answer any questions that you have.

6 MR. BACARISSE: Any questions, members, for Mr.
7 Chuah? Member Gillman.

8 MS. GILLMAN: Well, can you tell me on the
9 RSCs, you said you were going to ask about customer
10 satisfaction and to ask customers. Who are the customers?

11 MR. CHUAH: The ones that we have in scope
12 right now, Member Gillman, are the public that go into the
13 RSCs to be serviced by our RSC team members.

14 MS. GILLMAN: Do dealers use the RSCs?

15 MR. CHUAH: We can look into that, but right
16 now preliminarily we are trying to scope down our audit to
17 just a specific set, and at this time we have not
18 considered other stakeholders other than the general
19 public who would actually physically go into the RSCs.

20 MS. GILLMAN: I would encourage you to expand
21 that and include dealers.

22 MR. CHUAH: Yes, we can most certainly do that,
23 Member Gillman.

24 MR. BACARISSE: Moving on to Member Graham and
25 then we'll come back to you.

1 MR. GRAHAM: No. Go ahead to John.

2 MR. BACARISSE: Go ahead, Member Prewitt.

3 MR. PREWITT: Salem, in regards to the cultural
4 audit, on the preferred culture, is that the culture that
5 exists here at the headquarters that you're trying to
6 measure against?

7 MR. CHUAH: So, Member Prewitt, we are going to
8 be using -- right now, based on our research, we're
9 wanting to use a tool called the Organizational Culture
10 Assessment Instrument, and it's OCAI for short. This
11 instrument will map what the current culture is. And
12 there are four different types of culture -- I don't have
13 that off the top of my head, and I can send you some
14 information after this meeting, Member Prewitt -- but it's
15 going to say whether it's a clan culture, market culture,
16 hierarchical culture, et cetera.

17 And it's going to map what the current culture
18 is versus what the preferred culture of the employees are.

19 And so this is a research tool that is used at over
20 10,000 organizations, and it's something that we have been
21 looking into.

22 So to answer your question, though, Member
23 Prewitt, it's not necessarily mapping it to what the
24 culture is at the headquarters; it's simply saying what is
25 the current culture versus what is the preferred culture.

1 MR. PREWITT: So have we done that measurement
2 at the headquarters here?

3 MR. CHUAH: We have not done this survey tool
4 at headquarters, no.

5 MR. PREWITT: Thank you.

6 MR. CHUAH: You're welcome.

7 MR. BACARISSE: Member Graham.

8 MR. GRAHAM: I just would like to thank Salem.
9 He has been very short-handed. Hiring has been a
10 challenge for the audit department. Apparently auditors
11 are in pretty high demand and they're very hard to hire.

12 And Salem and his team, a very small team, have
13 been doing pretty exceptional work with very limited
14 resources, and thank you for that. Just wanted to
15 acknowledge that.

16 MR. CHUAH: Thank you, Member Graham, I
17 appreciate that. And I appreciate the team, the small and
18 mighty team that I have.

19 MR. BACARISSE: Good. Any other questions,
20 members, for Mr. Chuah?

21 (No response.)

22 MR. BACARISSE: Fantastic. Thank you, Salem.
23 I echo the comments made earlier. Thanks for all your
24 great work. Thank you.

25 MR. CHUAH: Thank you, Chairman. Thank you,

1 Board members.

2 MR. BACARISSE: All right. Is there any other
3 public comment, Laura?

4 MS. MORIATY: No, Chairman, no further public
5 comment.

6 MR. BACARISSE: Okay, great.

7 At this point I would like to take up agenda
8 item number 10 which is closed session. We're going to go
9 into closed session and it is now 11:46 a.m. on April 13,
10 2023. We'll go into closed session under Texas Government
11 Code Sections 551.071, 551.074, 551.076, and 551.089.

12 For those of you in the audience, I anticipate
13 being in closed session for approximately two hours, and
14 we'll reconvene in open session after that.

15 With that, we are now recessed from the public
16 meeting and we're going into closed session.

17 (Whereupon, at 11:46 a.m., the meeting was
18 recessed, to reconvene this same day, Thursday, April 13,
19 2023, following conclusion of the closed session.)

20 MR. BACARISSE: It is now 1:13 p.m., and the
21 Board of the Texas DMV is now back in open session.

22 The Board will now take up agenda item 11,
23 action items from closed session, and I would entertain a
24 motion regarding agenda item 11.

25 MR. GRAHAM: Mr. Chairman.

1 MR. BACARISSE: Member Graham.

2 MR. GRAHAM: Mr. Chairman, I have a motion.

3 MR. BACARISSE: Yes, sir.

4 MR. GRAHAM: I move that the Board approve the
5 combined evaluation for the internal auditor from our
6 executive session. I also move that the Board increase
7 the salary of the internal auditor by 6.8 percent,
8 effective on the first day of the month. In addition, I
9 move the Board to authorize the department staff to take
10 the necessary steps to implement the actions authorized by
11 this motion.

12 MR. BACARISSE: Is there a second for this
13 motion?

14 MS. GILLMAN: Second.

15 MR. BACARISSE: Member Gillman, thank you.

16 Any further discussion?

17 (No response.)

18 MR. BACARISSE: Laura, there's no public
19 comment. Right?

20 MS. MORIATY: No public comment, Chairman.

21 MR. BACARISSE: Thank you.

22 We'll now call for the vote on this item on
23 this motion.

24 Member Alvarado?

25 MR. ALVARADO: Aye.

1 MR. BACARISSE: Member Gillman?

2 MS. GILLMAN: Aye.

3 MR. BACARISSE: Member Graham?

4 MR. GRAHAM: Aye.

5 MR. BACARISSE: Member Omumu?

6 MS. OMUMU: Aye.

7 MR. BACARISSE: Member Prewitt?

8 MR. PREWITT: Aye.

9 MR. BACARISSE: Member Scott?

10 MR. SCOTT: Aye.

11 MR. BACARISSE: And I, Chairman Bacarisse, vote
12 aye as well, so it is unanimous. Thank you, members.

13 Mr. Chuah, would you wish to address the Board?

14 MR. CHUAH: Mr. Chairman, thank you.

15 Chairman, Executive Director Avitia, Board
16 members, I would just like to express my gratitude for the
17 confidence that you have in me in leading the Internal
18 Audit Division.

19 It's been rewarding to be in this position, and
20 while the path has not always been straight along this
21 journey, I'm grateful for your support as well as the
22 support from the entire executive team, my small but
23 mighty team, and also department staff as we go through
24 audits and providing services.

25 Your recognition of the Internal Audit

1 Division's hard work and dedication means a lot to me, and
2 I'm committed to maintaining a high level of performance
3 and continuing contributing to the department's collective
4 success.

5 So thank you all.

6 MR. BACARISSE: Thank you, we appreciate it.

7 Members, we'll now take up agenda item 13,
8 which is adjournment. Is there a motion to adjourn?

9 MR. PREWITT: So moved.

10 MR. BACARISSE: Is there a second?

11 MS. GILLMAN: I second.

12 MR. BACARISSE: Okay. And we'll vote on that.
13 Member Alvarado?

14 MR. ALVARADO: Aye.

15 MR. BACARISSE: Member Gillman?

16 MS. GILLMAN: Aye.

17 MR. BACARISSE: Member Graham?

18 MR. GRAHAM: Aye.

19 MR. BACARISSE: Member Omumu?

20 MS. OMUMU: Aye.

21 MR. BACARISSE: Member Prewitt?

22 MR. PREWITT: Aye.

23 MR. BACARISSE: Member Scott?

24 MR. SCOTT: Aye.

25 MR. BACARISSE: And I, Chairman Bacarisse, vote

1 aye as well, it's unanimous.

2 We are adjourned at 1:16. Thank you.

3 (Whereupon, at 1:16 p.m., the meeting was
4 adjourned.)

C E R T I F I C A T E

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MEETING OF: TxDMV Board
LOCATION: Austin, Texas
DATE: April 13, 2023

I do hereby certify that the foregoing pages,
numbers 1 through 118, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Department of Motor Vehicles.

DATE: April 26, 2023

/s/ Nancy H. King
(Transcriber)

On the Record Reporting
7703 N. Lamar Blvd., #515
Austin, Texas 78752