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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on May 26, 2011, at the Hilton Los Angeles Airport, Newport B Room, Los Angeles, California.

2. **ROLL CALL**

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 10:31 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director  
Ryan L. Brooks (left 3:22 p.m.) Robin Parker, Senior Staff Counsel  
Peter Hoffman Dana Winterrowd, Staff Counsel  
David C. Lizárraga Jeffrey Schwarzschild, Deputy Attorney General  
Bismarck Obando  
Victoria R. Pearson  
Glenn E. Stevens

Absent: Robert T. (Tom) Flesh  
David W. Wilson

3. **PLEDGE OF ALLEGIANCE**

Ms. Pearson led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE MARCH 29, 2011, GENERAL MEETING,  
AND MARCH 30, 2011, SPECIAL MEETING**

Mr. Brooks moved to adopt the March 29, 2011, General Meeting, and March 30, 2011, Special Meeting minutes. Mr. Hoffman seconded the motion. Mr. Lizárraga did not vote on the minutes since he was not in attendance. The motion carried unanimously.

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

Given these matters involve a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Glenn Stevens, Public Member and Vice President.

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

- a. SHAYCO, INC., dba ONTARIO VOLKSWAGEN v. VOLKSWAGEN OF AMERICA, INC.  
Protest No. PR-2265-10

Oral comments were presented before the Public Members of the Board. Michael J. Flanagan, Esq. and Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Allen Resnick, Esq. and Ryan Mauck, Esq., of Jeffer, Mangels, Butler & Mitchell LLP represented Respondent.

- b. HANLEES HILLTOP NISSAN v. NISSAN NORTH AMERICA, INC.  
Protest No. PR-2291-11

Oral comments were presented before the Public Members of the Board. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Ronnie McMahan, Esq. of Nelson Mullins Riley & Scarborough, LLP.

6. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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

- a. **CONSIDERATION OF PROPOSED DECISION**

SHAYCO, INC., dba ONTARIO VOLKSWAGEN v. VOLKSWAGEN OF AMERICA, INC.  
Protest No. PR-2265-10

Consideration of the Administrative Law Judge's Proposed Decision, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Brooks moved to remand this matter to Administrative Law Judge Marybelle Archibald to either take additional evidence or briefing on the good cause factor at Vehicle Code section

3063(b), which is the effect on the retail motor vehicle business and the consuming public in the relevant market area; specifically, the 19.4% of sales that Ontario Volkswagen is making in the Montclair RMA. Mr. Obando seconded the motion. The motion carried by a 3:1 vote with Mr. Stevens opposed.

b. **CONSIDERATION OF PROPOSED ORDER**

HANLEES HILLTOP NISSAN v. NISSAN NORTH AMERICA, INC.  
Protest No. PR-2291-11

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest as Untimely, by the Public members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Brooks moved to adopt the Administrative Law Judge's Proposed Order. Mr. Lizárraga seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Agenda Items 6(a) and 6(b).

Mr. Brooks indicated to the audience that Section 3065.1 was unclear; there needs to be clarity on the term "notice" and at what time the one year period begins.

Mr. Alvarez C. presided over the remainder of the meeting after a 20 minute break.

8. **CONSIDERATION OF PETITION REQUESTING THAT THE BOARD DIRECT DMV TO CONDUCT AN INVESTIGATION OF THE MATTERS CONTAINED THEREIN AND/OR ORDER DMV TO EXERCISE ITS AUTHORITY AND POWER TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST RESPONDENT'S OCCUPATIONAL LICENSE PURSUANT TO VEHICLE CODE SECTION 3050(C)(1) AND (3)**

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. CHRYSLER GROUP, a limited liability company  
Petition No. P-458-11

Consideration of Petition requesting that the Board direct DMV to conduct an investigation of the matters contained therein and/or order DMV to exercise its authority and power to initiate disciplinary proceedings against Respondent's Occupational License, by the Public and Dealer Members of the Board.

Mr. Hoffman disclosed that he is on the Board of the California New Car Dealers Association ("CNCDA") and when the topic of filing this petition came up, he left the meeting. Also, Mr. Hoffman has spoken to Chrysler about a Fiat franchise. However, he indicated that he can judge the matter fairly and be reasonable, and has no financial interests. Ms. Pearson made the same disclosure about being a CNCDA Board Member but missed the meeting when the petition was discussed. Also, Ms. Pearson indicated that Maurice Claff recently took a

position in her organization. Ms. Pearson indicated that she can be impartial. Neither the CNCDA nor Chrysler objected to Mr. Hoffman's or Ms. Pearson's participation.

Oral comments were presented before the Public and Dealer Members of the Board because this petition does not involve a franchisee and franchisor. Peter K. Welch, Esq. and Jonathan Morrison, Esq. represented Petitioner. Gwen J. Young, Esq. of Wheeler Trigg O'Donnell LLP represented Respondent.

Public comment was presented by the following Chrysler dealers: David Ellis of Glendale Dodge and James Buerge, a Ford Mercury Chrysler/Jeep dealer. Girard Quinn, Market Investment Program and Minority Dealer Program, Chrysler, and John Tangeman, National Dealer Placement Manager, Chrysler, presented public comments as well.

The Public and Dealer members of the Board deliberated in Open Session. Mr. Stevens moved to grant the relief requested by Petitioner that the Board direct DMV to conduct an investigation of the allegations contained in the petition and order DMV to exercise any and all authority over Respondent's Occupational License and report back to the Board at the next meeting or at least provide a status report. Mr. Obando seconded the motion. The motion was not voted on.

Mr. Stevens moved to grant the relief requested by Petitioner and that this matter be ordered or referred to DMV for an investigation and the investigation be completed with the DMV reporting back to this Board by the next scheduled Board meeting. Mr. Hoffman seconded the motion.

Mr. Welch tried to amend the CNCDA's prayer for relief to limit it to the DMV investigation [Veh. Code § 3050(c)(1)]. Mr. Stevens declined to allow Mr. Welch to amend the prayer.

After further discussion, Mr. Alvarez C. called for a vote. The motion carried unanimously.

9. **ANNUAL UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the corrective action taken for each audit finding and a matrix providing the chronology for each. Ms. Parker indicated that the Board was in compliance with the Audit Findings and Corrective Action Plan and that there was nothing significant to report. Mr. Hoffman requested that this topic be made an exception report. Staff will continue to review the Board's compliance with the audit on an annual basis but only report to the Board if there is something of interest; a copy of the audit will be provided to new members.

10. **ANNUAL REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the

1996 Performance Audit conducted by Business, Transportation & Housing Agency. The delegations were thoroughly reviewed and revised at the November 20, 2008, General Meeting. Ms. Parker reported that there were no proposed revisions to the delegations that were most recently revised and adopted at the June 15, 2010, General Meeting. The only change in the delegations is to the introductory paragraph on page 1; the staff proposed no additional changes. In light of agenda item 9, this topic was also made an exception report; the staff will continue its annual review but only report suggested changes to the Board.

Mr. Stevens moved to adopt the Board delegations. Ms. Pearson seconded the motion. The motion carried unanimously.

Mr. Hoffman requested that the Board adopted Parliamentary Procedures be amended to reflect the Board's practice concerning how motions are made, seconded, and voted on. This will be on the September agenda.

11. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1<sup>ST</sup> HALF OF FISCAL YEAR 2011/2012 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 1<sup>st</sup> half of fiscal year 2011-2012. As indicated in the memo, at the February 4, 2011, General Board Meeting, the Board Members approved the out-of-state travel plans for fiscal year 2011-2012. It was decided at the meeting that the Executive Committee would authorize individuals to attend. Mr. Brennan indicated that a new Executive Order limits travel and in light of that he suggested that the Board not attend the RVIA convention as it is not mission critical. Mr. Brennan proposed travel to the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Reno, Nevada for two public Board members, Chief of Staff Dawn Kindel, and himself. The workshop will be held October 12 – 16, 2011.

Mr. Brooks moved to approve the proposed attendees for the out-of-state trips for the first half of the 2011-2012 fiscal year. Ms. Pearson seconded the motion. The motion carried unanimously.

12. **DISCUSSION AND CONSIDERATION OF WHETHER THE BOARD CAN "ADVERTISE" ITS CONSUMER MEDIATION PROGRAM AND THE IMPLICATIONS THEREIN ON THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Jackie Grassinger concerning whether the Board can "advertise" its Consumer Mediation Program and the implications therein on the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. Mr. Brennan indicated that the Board cannot "advertise" this program. However, there is a great opportunity for the Board to be more proactive with the different agencies within State government that the Board interacts with such as the Department of Consumer Affairs, the Department of Motor Vehicles, the California Highway Patrol, and the Arbitration Certification Program, and have a link to the Board on their websites.

Mr. Hoffman moved to adopt the staff recommendation. Mr. Brooks seconded the motion. The motion carried unanimously.

13. **DISCUSSION OF THE BOARD'S LEASE ON ITS CURRENT FACILITY AND POTENTIAL ALTERNATIVE LOCATIONS - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the Board's lease on its current facility and potential alternative locations. At the July 15, 2010, meeting, the Board asked staff to prepare a report on the current lease of office space and potential alternative locations for the Board's offices. The Board reviewed the report in December 2010 and asked for further information. In March 2011, John Hansen, Chief of Facilities at the DMV provided the Board with additional information on the Board's lease, the DMV's Master Plan, as well as information on the State's capital outlay process.

As indicated in the memo, the members of the Board asked Mr. Hansen to provide additional information to include State property available in downtown Sacramento, expiring State leases in downtown Sacramento, and the location that would be most convenient for staff.

Due to the recent Executive Order on travel, Mr. Hansen was unable to attend the meeting; however, he did provide information which he received from the Department of General Services Real Estate Division. Mr. Brennan reported that Mr. Hansen concluded that at this time there was not anything that met the Board's needs within its price range. Mr. Hansen will continue to monitor available properties and report back to the Board.

Mr. Brooks inquired about the proximity of the employees to the Board's offices. Mr. Brennan indicated that the staff preferred to stay in the midtown area.

14. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Robin Parker, and Dana Winterrowd along with summaries of the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act and Public Records Act. A number of resource materials and the various acts were also provided on a CD. Ms. Parker indicated that there were no substantive changes. Mr. Winterrowd encouraged the members to review the Fair Political Practices Commission pamphlet in the CD of materials.

15. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The staff submitted employee nominations to the Board Development Committee, Ryan Brooks and Bismarck Obando, who ultimately recommended Robin Parker as the Employee Recognition Award recipient. Ms. Parker is Senior Staff Counsel in the legal department. Mr. Brooks moved to adopt the Committee's

recommendation. Mr. Hoffman seconded the motion. The motion carried unanimously.

16. **SEMI-ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the semi-annual discussion and consideration of the methods of determining Board fees. Mr. Brennan indicated that there is a methodology for the current fee schedule and back in February the Board recognized the need to reinstate the fees. The fees are not a tax. This is typically a semi-annual report; however, Mr. Hoffman indicated that an annual report is sufficient. In the future, if the Board recently acted on the fees then it is not necessary to repeat that discussion with this annual report.

17. **BOARD FINANCIAL CONDITION REPORT FOR THE 3<sup>RD</sup> QUARTER OF FISCAL YEAR 2010-2011 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 3<sup>rd</sup> quarter of fiscal year 2010-2011. Mr. Brennan indicated that the Board expended 54% of its appropriated budget through the third quarter. The Board expended only 34% of its budget for operating expenses. Mr. Brennan commented that the Board is being very frugal and conscientious. Lastly, Mr. Brennan indicated that the dealer fees are increasing for this fiscal year.

18. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2011-2012 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's proposed budget for the next fiscal year. Mr. Brennan indicated that the Board's proposed budget of \$1.6 million is comparable to the budget in 2005/2006. Mr. Hoffman moved to adopt the proposed budget. Mr. Stevens seconded the motion. The motion carried unanimously.

19. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S INDUSTRY/ATTORNEY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning participant and audience responses to the Board's Industry/Attorney Roundtable. Ms. Parker reported that the feedback received from attendees and participants was favorable, and a number of good topics were suggested for the next event. The negative comments dealt with the room and that the PowerPoint presentations were difficult to read. Ms. Parker indicated who attended the event as follows: nine outside dealer law firms; 11 outside manufacturer law firms; and 10 manufacturers/distributors in addition to governmental entities, associations and speakers. Additional comments addressed separating the Attorney Roundtable from the Industry Roundtable. Ms. Parker indicated that the staff proposal for 2012 would be on the next agenda along with the bureaucratic steps that need to be taken.

20. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Legislation of Special Interest - none.
- b. Legislation of General Interest.
  - (1) Assembly Bill 1215 (Assembly Member Blumenfield).
  - (2) Senate Bill 642 (Senator Padilla).
- c. Pending Federal Legislation of General Interest.
  - (1) United States House of Representatives Bill 75 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2011.

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. Ms. Parker reported that there were no bills pending that directly affect the Board's enabling statute. However, there were three bills of general interest. Ms. Parker indicated that Assembly Bill 1215 was on the appropriations suspense file but that should be coming off soon and Senate Bill 642 passed the Senate. There has been no activity on the federal legislation.

21. **EXECUTIVE DIRECTOR'S REPORT**

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

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that he is involved in identifying and recruiting additional administrative law judges in light of ALJ Archibald's resignation.

Ms. Parker reported that since the members received their written report, there had been five new protest filed; two termination protests and three modification protests. She reported that the number of notices of termination are down considerably. In 2010, there were 164 notices; so far year-to-date there have been 15 notices. There have been 22 protests filed to date.

With regards to judicial matters, Ms. Parker reported that in the *Powerhouse* matter, she has been subpoenaed to testify on behalf of Yamaha.

22. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2011**

The members were provided with a memorandum from Bill Brennan concerning upcoming Board meeting dates. The members went off the record for this discussion. Ms. Parker announced that the following meetings were scheduled for the 2<sup>nd</sup> half of 2011:

- September 29, 2011, General Meeting, in Los Angeles (this date was subsequently changed to September 27);
- December 7, 2011, General Meeting, Sacramento.

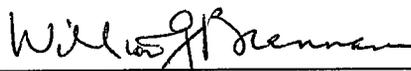
23. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

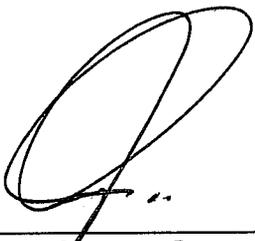
24. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:50 p.m.

Submitted by



\_\_\_\_\_  
WILLIAM G. BRENNAN  
Executive Director



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

Ramon Alvarez C.  
President  
New Motor Vehicle Board