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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on December 13, 2011, in Hearing Room #1, at the Board's offices.

2. ROLL CALL

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 9:48 a.m.

Present:
Ramon Alvarez C.
Robert T. (Tom) Flesh
Bismarck Obando
Victoria R. Pearson
Glenn E. Stevens
David W. Wilson

William G. Brennan, Executive Director
Robin P. Parker, Senior Staff Counsel
Dana F. Winterrowd, Staff Counsel
Julie Harlan, Deputy Attorney General

Absent:
Ryan L. Brooks
Peter Hoffman
David C. Lizárraga

3. PLEDGE OF ALLEGIANCE

Mr. Wilson led the members and staff in the Pledge of Allegiance.

4. INTRODUCTION OF RECENTLY HIRED BOARD ADMINISTRATIVE LAW JUDGE VICTOR D. RYERSON - BOARD DEVELOPMENT COMMITTEE

The Board recently hired three new Administrative Law Judges ("ALJs"): Lonnie M. Carlson, Kym Pipkin, and Victor Ryerson. The members had the privilege of meeting ALJ Ryerson. ALJ Ryerson indicated that he was delighted to be at the meeting today, has completed his formal training, and looks forward to a long and successful relationship with the Board.

5. **INTRODUCTION OF JULIE L. HARLAN, DEPUTY ATTORNEY GENERAL, ASSIGNED TO THE BOARD - BOARD DEVELOPMENT COMMITTEE**

The members were introduced to Julie L. Harlan, Deputy Attorney General, assigned to assist the Board. Ms. Harlan indicated that she looked forward to working with the Board.

6. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 27, 2011, GENERAL MEETING**

Mr. Flesh moved to adopt the September 27, 2011, General Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

7. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD PURSUANT TO GOVERNMENT CODE SECTION 11517(c)(2)(E)(II)**

Given this matter involves 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 reminded the Dealer Members that they "may not participate in, hear, comment, advise other members upon, or decide" Agenda items 7 through 8.

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.

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

Oral arguments 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. Gary Sherwood, dealer principal, and Earl Reed, the vice president and Chief Operating Officer were also present but did not make any comments. Allen Resnick of Jeffer, Mangels, Butler & Mitchell LLP represented Respondent. Anthony Ray of Volkswagen of America, Inc. was present but did not make any comments.

8. **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.

CONSIDERATION OF "ORDER CONFIRMING DECISION TO SUSTAIN PROTEST"

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

Consideration of the Board's "Order Confirming Decision to Sustain Protest", by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Obando moved to adopt the "Order Confirming Decision to Sustain Protest." Mr. Flesh seconded the motion. The motion carried unanimously.

9. **OPEN SESSION**

The Public Members returned to Open Session. Mr. Stevens announced the decision in Agenda Item 8 and clarified that the Board's decision is not precedential and only applies to the facts that were presented in this case.

10. **ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Kathy Tomono updating the development and use of the Board's website. Ms. Tomono reported that a few substantial changes were made since previously reported:

- The completion and addition of the "Email Alert" subscription, which is located on the Home page.
- The ability to do simple editing by the Board staff is now possible.
- Mobile web access has been created to display the Board's website on a mobile device, and can be browsed by any smart phone or tablet.
- Board meeting materials are now available online ten days prior to the meeting.

As indicated in the memo, the chart below reflects the top 10 pages that were viewed during visits to the website during fiscal year 2010/2011. The number of page views was 1.1 million.

	Pages
1	Appeal decisions search
2	Protest final decisions
3	Home page
4	RSS publication feed
5	Petition/petition decisions
6	Consumer program
7	Board members
8	Search page
9	Forms
10	Agenda/Meetings

Mr. Obando indicated that he like receiving the meeting materials electronically as it was easier for him and saved paper.

11. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Kathy Tomono updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Tomono reported that each year the collection of this data gets easier as the manufacturers and distributors know what to provide. As indicated in the memo, of the 222 manufacturers/distributors which fall within the Board's jurisdiction that are required to file schedules and formulas pursuant to Vehicle Code sections 3064/3074 and 3065/3075, there is 100% compliance. Mr. Brennan pointed out that several years ago there was less than 20% compliance. Mr. Brennan and the members congratulated Kathy for all of her hard work.

12. **BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2010-2011. Miss Kindel reported that the Board expended 73% of its appropriated budget through the end of the fiscal year, and used $300,000 of its reserves. As indicated in the memo, the Board's reserve balance is $1,206,517. Mr. Brennan pointed out that the Board's payroll expense is 77% of its appropriated budget which is down approximately $200,000 since 2008-2009. Also, the Board's operating expenses are 49% of its appropriated budget.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2011-2012 AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and

Linda Lighter concerning the Board financial condition for the 1st quarter of 2011-2012. Miss Kindel reported that the Board expended 22% of its appropriated budget through the first quarter of the current fiscal year. As indicated in the memo, the Board's annual manufacturer/distributor fee collection has been completed for this year; $436,180 was collected from 169 manufacturers and distributors, for the 1,222,540 vehicles sold in calendar year 2010. Mr. Brennan indicated that the total revenue anticipated to be collected will not meet anticipated expenditures.

14. CONSIDERATION OF THE 2011 EDITION OF THE *NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK* - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum and revised *Administrative Law Judges' Benchbook* from Bill Brennan and Robin Parker. Ms. Parker reported that two versions of the *Benchbook* were provided given the number of substantive changes. There was a version that indicated the changes in strikeout and italic/underline font and a "clean version" that made it easier to read for content. The *Benchbook* incorporated the regulatory changes that were effective in March 2011.

Mr. Flesh moved to adopt the revised *Administrative Law Judges' Benchbook*. Mr. Obando seconded the motion. The motion carried unanimously.

15. CONSIDERATION OF 2012 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memo and revised 2012 Rulemaking Calendar. Ms. Parker indicated that there was a typo on the original rulemaking calendar. She reported that if the calendar is approved by the Board, it is then submitted to Business, Transportation & Housing Agency for their approval, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law.

Mr. Flesh moved to adopt the 2012 Rulemaking Calendar as presented today and marked as the 2012 Rulemaking Calendar. Ms. Pearson seconded the motion. The motion carried unanimously.

16. 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 the staff of the Joint Sunset Review Committee was

in the audience today. He suggested that this matter be assigned to the Administrative Committee or Executive Committee, and requested that he be designated the Board's Sunset Review Liaison. A detailed questionnaire is due on January 20, 2012, and the hearing is set for March 6. The staff has completed about half of the questionnaire that should be reviewed with the assigned committee prior to January 20. Mr. Stevens suggested an ad hoc committee be formed with members Flesh and Brooks. Mr. Wilson suggested this matter be assigned to the Executive Committee. Mr. Obando moved to assign this matter to the Executive Committee. Mr. Flesh seconded the motion. The motion carried unanimously.

Sara Weaver of the Sunset Review Committee addressed the Board and indicated that this was a collaborative process in which the Committee performs its own investigation and prepares a public report. Mr. Flesh mentioned to Ms. Weaver the success of the Board hosted Industry Roundtable and the important role it plays in the vehicle industry.

Mr. Brennan indicated that the Governor is demanding that all state agencies present a balanced budget. Since the Board has been reducing its surplus this is not possible. Therefore the Board had to give up two hearing officer positions. Mr. Brennan reported that this will not affect staffing.

Lastly, Mr. Brennan reported that due to the volume of hearings and length thereof the Board has incurred unanticipated court reporter expenditures. There had been 51 days of merits hearing this year compared to two days in 2010. Section 551.7 of Title 13 of the Board's regulations allows the Board discretion to assign these costs which are about $1,000-$1,200 per day. Mr. Brennan requested that a committee be assigned to review the Board's policy and assign these costs. Mr. Stevens moved that the Administration Committee be assigned the task of how to pass on or deflect the court reporter costs. Mr. Flesh seconded the motion. Before the vote, Mr. Stevens suggested that if a hearing goes beyond one day then the parties split the costs of the court reporter. The motion carried unanimously.

Mr. Winterrowd reported that since the members received their written report, there had been two new protest filed. A total of 37 protests were currently pending. Furthermore, there had not been much activity with the court cases as the Board is not participating in any of them. Mr. Stevens indicated that this was a good report; he requested that the legend be at the top of each page as a header. Ms. Pearson inquired about the number of notices for Mercedes-Benz. Ms. Parker indicated that four franchise agreements were being modified therefore 108 notices were issued.

17. ANNUAL REPORT OF STAFF PARTICIPATION IN THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)

Mr. Ohta, a Co-Chair of the campaign reported that the Board raised a total of $3053.00 this year through generous donations made by Board Members, Administrative Law Judges and staff, and through fundraising events.

18. SELECTION OF BOARD MEETING DATES FOR 2012

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2012. The members went off the record for this discussion. Mr. Alvarez C. announced that the following meetings were scheduled for 2012:

- January 12, 2012, Special Meeting in Los Angeles, if needed. Bill Brennan indicated that he would let the members know by December 27 if this meeting was necessary.
- February 8, 2012 (location to be determined)
- March 20, 2012, General Board Meeting
- March 20, 2012, CNCDA Dealer Day, Sacramento
- March 21, 2012, Industry/Attorney Roundtable, West Sacramento
- May 22, 2012, General Meeting (location to be determined)

19. PUBLIC COMMENT. (GOV. CODE § 11125.7)

No additional public comment was presented.

20. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 11:30 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board