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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on May 22, 2012, at the Hilton Los Angeles Airport, Newport B Room, 5711 West Century Boulevard, 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 (arrived 11:30 a.m.) Robin Parker, Senior Staff Counsel  
Robert T. (Tom) Flesh  
Peter Hoffman  
Bismarck Obando  
Victoria Rusnak  
David W. Wilson

Absent: David C. Lizárraga  
Glenn E. Stevens

Mr. Brennan indicated that the Board had a quorum for general business but did not have a quorum for case management as Ryan Brooks' plane was delayed.

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MARCH 20, 2012, GENERAL MEETING**

Mr. Obando moved to adopt the March 20, 2012, General Meeting minutes. Mr. Hoffman seconded the motion. Mr. Flesh abstained from voting because he was not at the meeting.

The motion carried unanimously.

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

- a. LAIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW'S HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY  
Protest No. PR-2299-11
- b. DEPOT GARAGE, INC. v. GENERAL MOTORS  
Protest No. PR-2315-11

These matters were postponed pending Mr. Brooks arrival.

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**

LAIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW'S HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY  
Protest No. PR-2299-11

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

b. **CONSIDERATION OF PROPOSED ORDER**

DEPOT GARAGE, INC. v. GENERAL MOTORS  
Protest No. PR-2315-11

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction, by the Public members of the Board.

These matters were postponed pending Mr. Brooks arrival.

7. **OPEN SESSION**

This matter was postponed pending Mr. Brooks arrival.

8. **DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF YAMAHA MOTOR CORP., U.S.A.'S ARGUMENTS REGARDING THE JURISDICTION OF THE BOARD, BEFORE THE SECOND DISTRICT COURT OF APPEAL IN VENTURA**

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.

Protest No. PR-2122-08; SLO County Superior Court No. CV098090; and Court of Appeal No. B236705

This matter was postponed pending Mr. Brooks arrival.

9. **DISCUSSION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2012/2013 - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the out-of-state travel plans for fiscal year 2012-2013. Mr. Brennan reported that all of the trips were denied by the Governor because they were not "mission-critical." According to Mr. Brennan, the Board does not have any approved out-of-state travel for the next fiscal year and there is no reason to move these projects forward. The allocated funds for these trips was about \$15,000, thereby resulting in a savings.

10. **CONSIDERATION OF REVISED VISION STATEMENT TO REFLECT THE COST SAVINGS TO TAX PAYERS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan revising the Vision Statement to reflect the cost savings to taxpayers. Mr. Brennan reported that at the March meeting, Mr. Brooks requested that the Vision Statement be revised to reflect that by reducing the need for costly litigation, the Board reduces the burden on taxpayers. Mr. Obando moved to adopt the revised Vision Statement. Mr. Flesh seconded the motion. The motion carried unanimously.

The Vision Statement was revised as follows:

Safeguard for the Board's constituency, a fair, expeditious, and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves industry relations and reduces the need for costly litigation, and thereby further reducing the burden on California taxpayers. Assist consumers in mediating concerns with dealers, manufacturers, and distributors licensed by the California Department of Motor Vehicles.

Develop methods that further improve the delivery of Board services in a timely and cost-effective manner. Educate Board members concerning industry matters, which further improve the Board's ability to equitably resolve industry disputes.

11. **REPORT ON NON-SUBSTANTIVE CHANGES TO THE PROPOSED REGULATORY TEXT OF SECTIONS 553, 553.10, 553.20, 553.30, 553.50 AND 553.70 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning non-substantive changes to the proposed regulatory text of Sections 553, 553.10, 553.20, 553.30, 553.50 and 553.70 of Title 13 of the California Code of Regulations. As indicated in the memo, these changes were the result of suggestions by the staff at the Office of Administrative Law as well as changes Board staff noted. In compliance with the Board policy, the Executive Committee approved these changes. The revised regulations were effective May 10, 2012.

As indicated in the memo, the changes were as follows:

Section 553: Annual Board Fee.

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection.

Section 553.10: Statement of Number of Vehicles Distributed.

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection. The correct reference, Vehicle Code section 3016, was added.

Section 553.20. Determination of Annual Board Fee.

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection. The correct reference, Vehicle Code sections 3016 and 3050(a) were added.

Section 553.30. Noncompliance.

The word "section" was made singular.

Section 553.50. Obligation to Comply.

The subsection references to Business and Professions Code section 472.5 were eliminated to avoid the problem of the accuracy of Reference Citations being dependent on subsections listed by just listing the statute and not any particular subsections of it.

Section 553.70. Payment of Fees.

The Board sought to provide invoices via e-mail or regular mail for the fee collection done on behalf of the Department of Consumer Affairs, Arbitration Certification Program. However, absent legislation, the Board cannot make this change through rulemaking. Therefore, the language in Section 553.70 has been restored in this regard.

12. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning training programs attended by the staff since the last report. Mr. Brennan reported that the ALJs have attended a number of classes via webcasts that are sponsored by the National Judicial College. Furthermore, there has been extensive training for the staff as well. Most of the training has been at no cost to the Board.

13. **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. Ms. Parker indicated that there were no substantive changes.

14. **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 Kathy Tomono as the Employee Recognition Award recipient. Kathy works in the mediation department and is being recognized for her extraordinary work, she is available for any project, and is well-versed in the Board's operations. Kathy worked on the Roundtable this year which was a successful event. Mr. Flesh moved to adopt the Committee's recommendation. Ms. Pearson seconded the motion. The motion carried unanimously.

15. **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 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 effective March 30, 2012, the fees were reinstated. The fees are not a tax.

16. **BOARD FINANCIAL CONDITION REPORT FOR THE 3<sup>RD</sup> QUARTER OF FISCAL YEAR 2011-2012 - 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 2011-2012. Mr. Brennan indicated that the Board expended 66% of its appropriated budget through the third quarter. The Board expended only 68% of its budget for operating expenses. It should expend about 90% of its budget for the fiscal year. Mr. Brennan commented that the Board is still operating at the same expenditure level as it has for the past several years. Mr. Brennan indicated that the fees collected have been significantly reduced and the Board's reserve has been reduced which is why the fees were reinstated.

17. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's collection of the Arbitration Certification Programs' ("ACP") annual fee. Mr. Brennan indicated that the ACP requested that the Board collect \$1,106,000 to fund its program. This figure was divided by 1.1 million which was the number of vehicles distributed in 2010 that were under the ACP's jurisdiction; \$5,000 is added in to cover the Board's costs for administering the collection. This resulted in a fee of \$.989 per vehicle. Mr. Brennan reported that the fee collection was completed with 100% compliance.

18. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE SURVEY CONCERNING THE BOARD'S INDUSTRY 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 Roundtable. Ms. Parker reported that the surveys were provided in the packet of materials. However, only a couple of surveys were returned. After the event, attendees were e-mailed the survey. The Board received 23 surveys; one was received after the Board memo was drafted. Ms. Parker reported that the event was well-received.

Ms. Parker reported that there were 86 attendees as follows: 14 Dealer Counsel; 5 Dealers; 17 manufacturers; 16 manufacturer counsel along with associations, government, Board members and staff.

Mr. Brennan indicated that it was the first time the Roundtable was held at the new facility at the DMV headquarters. The event went very well and was at no cost to the Board. He proposed that the Board use that facility again next year.

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

- a. Legislation of Special Interest.
  - (1) Assembly Bill 1992 (Assembly Member Huber).
- b. Legislation of General Interest.
  - (1) Assembly Bill 1447 (Assembly Member Feuer).
  - (2) Assembly Bill 2502 (Assembly Member Blumenfield).
  - (3) Senate Bill 103 (Senator Liu).
  - (4) Senate Bill 956 (Senator Lieu).
  - (5) Senate Bill 990 (Senator Vargas).
- 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 Dana Winterrowd concerning pending legislation. Ms. Parker reported that Assembly Bill 1992, the bill to sunset the Board, did not pass and there has been no activity.

Mr. Brennan acknowledged in the audience John Paliwoda, Executive Director of the California Motorcycle Dealers Association, who appeared on the Board's behalf at the Sunset Review Committee hearing.

20. **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 discussed the status of the Sunset Review Committee hearing and the upcoming June 7 hearing (subsequently postponed to June 20 and ultimately the Board was taken off their agenda). Mr. Brennan reported that Linda Lighter is retiring at the end of June; she has worked for the Board for more than 20 years. The Board is still looking for Linda's replacement. Lastly, Mr. Brennan announced that on May 24 the Board is hosting its ALJ Roundtable.

Ms. Parker reported that since the members received their written report, six protests had

been dismissed. Judge Carlson presided over a one-day hearing concerning a Proposed Stipulated Decision and Order dispute in *Clippinger Chevrolet v. General Motors*. Ms. Parker indicated that this will likely be considered by the Board in August along with the *Mega RV* proposed decisions. Counsel in *Mega RV* stipulated to allow Judge Hagle a total of 90 days to draft her proposed decisions from the date the matter was deemed submitted.

With regards to judicial matters, Ms. Parker reported that the court cases are still proceeding.

The members took a recess pending Mr. Brooks' arrival.

Mr. Alvarez C. indicated that Agenda items 8 and 21 would be heard next followed by Agenda items 5-7.

8. **DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF YAMAHA MOTOR CORP., U.S.A.'S ARGUMENTS REGARDING THE JURISDICTION OF THE BOARD, BEFORE THE SECOND DISTRICT COURT OF APPEAL IN VENTURA**

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.

Protest No. PR-2122-08; SLO County Superior Court No. CV098090; and Court of Appeal No. B236705

The members were provided with a memorandum concerning Yamaha's request that the Board file an amicus curiae brief in support of its arguments regarding the jurisdiction of the Board in the court of appeal.

Ms. Parker reported that the Board received a request from Yamaha that it file an amicus brief in the appellate matter that is now pending. Last year the Board filed an amicus letter with the California Supreme Court. The letter was filed prior to the jury trial in which Robin testified by providing statistical information on case management and explained the difference between a protest and a petition.

In keeping with the Business, Transportation and Housing Agency audit and the Board policy, if time permits, any request for filing an amicus curiae brief is submitted to the full Board for its consideration.

Dennis Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsport and Tim Pilg presented public comments. Mr. Flesh indicated that he has used Mr. Law's firm in the past in an unrelated matter. Mr. Law indicated that he had no issue with Mr. Flesh's participation. A copy of the jury verdict was provided to the members. Yamaha is attempting to overturn a \$1.6 million award. Mr. Law questioned why the Board would want to get involved in what is clearly a matter between two civil litigants – what is the justification. The members were also provided with a portion of the June 5, 2009, General

Meeting transcript in which the Proposed Order in the underlying protest was considered by the Board along with the amicus curiae letter dated March 8, 2011.

After a lengthy discussion, Mr. Hoffman moved to deny Yamaha's request. Mr. Wilson seconded the motion. The motion carried unanimously.

21. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2012**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for the remainder of 2012. The members went off the record for this discussion. The following meetings were scheduled for 2012:

- July 16, 2012, tentative Special Meeting, in Los Angeles for Public Members only.
- August 23, 2012, General Meeting, in Riverside at the Mission Inn.
- December 12, 2012, General Meeting, in Sacramento.

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

Given this matter involves a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Bismarck Obando, Public Member and Vice President.

Mr. Obando 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. LAIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LAIDLAW'S HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY  
Protest No. PR-2299-11

Oral comments were presented before the Public Members of the Board. Halbert B. Rasmussen, Esq. and Crystal Yagoobian, Esq. of Manning, Leaver, Bruder & Berberich, represented Protestant. Robert L. Ebe, Esq. and Brett Waxdeck, Esq. of Cooper, White & Cooper LLP, represented Respondent.

- b. DEPOT GARAGE, INC. v. GENERAL MOTORS  
Protest No. PR-2315-11

There were no oral comments presented.

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**

LIDLAW'S HARLEY-DAVIDSON SALES, INC. dba LIDLAW'S HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY  
Protest No. PR-2299-11

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 adopt the Administrative Law Judge's Proposed Decision except it is conditionally sustained. Mr. Flesh seconded the motion. The motion carried unanimously.

On May 24, 2012, the Board issued its final Decision in this matter conditionally sustaining Laidlaw's Harley-Davidson's protest as follows:

1. Protestant shall continue with a program of obtaining training for compliance with Respondent's Non-Retail Sales Policy ("NRSP") and Fleet Sales Policy ("FSP") for an additional three years from the date of this decision (through May 24, 2015). These training and compliance services shall be performed on a regular basis and may be provided by the current vendor ("Vendor") or other similar third-party provider of such services.
2. Protestant shall ensure that Vendor provides Protestant a training and compliance report ("Report") within a reasonable time after each training session and compliance review.
3. Protestant shall provide Respondent with a copy of the Report within 10 business days of receipt thereof from Vendor. The Report shall be sent by Protestant to Respondent via Certified Mail, Return Receipt Requested, and e-mail. Within 10 business days of receipt of this Decision, counsel for the parties shall stipulate as to the identity and address of the agent of Respondent to whom the reports shall be directed.
4. Any recurring violations of the NRSP or the FSP as shown in the Reports may be subject to the sanctions provided for if warranted in accordance with

Respondent's policies. However, any future decision of Respondent to terminate the franchise of Protestant is subject to the provisions of the Vehicle Code.

5. Respondent shall provide Protestant with an accounting of any internal and external audit and legal expenses associated with the audit. However, "legal expenses associated with the audit" does not include legal expenses associated with the termination proceedings before the Board. Within 30 days of receipt of this accounting, Protestant shall fully reimburse Respondent.

Except as indicated above, the Proposed Decision dated May 9, 2012, was adopted in its entirety.

b. **CONSIDERATION OF PROPOSED ORDER**

DEPOT GARAGE, INC. v. GENERAL MOTORS  
Protest No. PR-2315-11

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction, 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. Flesh 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). With regards to issuing the conditions being imposed in *Laidlaw's Harley-Davidson v. Harley-Davidson Motor Company*, the Board will issue a written statement of decision with those conditions within 10 business days from the Board meeting.

Mr. Alvarez C. presided over the remainder of the meeting.

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

Mr. Brooks apologized to counsel and the audience for his plane being delayed. No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:48 p.m.

Submitted by

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

APPROVED: \_\_\_\_\_  
Ramon Alvarez C.  
President  
New Motor Vehicle Board