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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a Special meeting on July 25, 2013, at the Hilton Los Angeles Airport, San Lorenzo E Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Bismarck Obando, President and Public Member, called the meeting of the Board to order at 10:30 a.m.

Present: Bismarck Obando
Robert T. (Tom) Flesh
David C. Lizárraga
William G. Brennan, Executive Director
Robin Parker, Senior Staff Counsel

Absent: Ryan Brooks
Glenn E. Stevens

3. **PLEDGE OF ALLEGIANCE**

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

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

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. BURBANK KAWASAKI, INC. v. KAWASAKI MOTORS CORP., U.S.A., a Corporation
Protest Nos. PR-2328-12 and PR-2333-12

Oral comments were presented before the Public Members of the Board. Michael M. Sieving, Esq. of Callahan Thompson Sherman & Caudill, LLP represented Protestant. Leon Bellissimo, the owner of Burbank Kawasaki, was also present. Maurice Sanchez, Esq. Baker & Hostetler LLP represented Respondent. Michael Norton, Esq., Associate General Counsel for Kawasaki was also present.

(On June 28, 2013, pursuant to Vehicle Code section 3067 and Government Code section 11517, counsel for the parties stipulated to allow the Board to consider the Proposed Decision 63 days from the date the ALJ submitted the Proposed Decision to the Board.)

- b. D&A AUTOMOTIVE GROUP, O.C. GENUINE SCOOTERS OF SANTA ANA
v. GENUINE SCOOTERS
Protest No. PR-2355-12

D&A AUTOMOTIVE GROUP, O.C. GENUINE SCOOTERS OF TUSTIN v.
GENUINE SCOOTERS
Protest No. PR-2356-12

Oral comments were presented before the Public Members of the Board. Terry Tuchman in Pro Per represented the Protestants. Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan, Esq. represented Respondent.

5. 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.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision/proposed order, make technical or other minor changes, reject the proposed decision/proposed order and remand the case, or reject the proposed decision/proposed order and decide the case upon the record.

- a. CONSIDERATION OF PROPOSED DECISION

BURBANK KAWASAKI, INC. v. KAWASAKI MOTORS CORP., U.S.A., a
Corporation
Protest Nos. PR-2328-12 and PR-2333-12

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. Flesh moved to remand the matter to the Administrative Law Judge (“ALJ”). The Board historically seeks to avoid forfeiture and is sympathetic to the dealer’s position regarding the flooring; however, it is mindful of Kawasaki’s interest in the distribution of their products. Within 30 days after the date of the Board’s Order of Remand, the parties are ordered to participate in a mandatory settlement conference to resolve the flooring issues. If the matter does not settle, then the matter will be remanded to the ALJ to take additional evidence and/or conduct an additional hearing in the ALJ’s discretion regarding a reasonable amount of flooring and a reasonable time frame to secure the flooring and address other conditions such as stocking a complete line of Kawasaki products, and Burbank Kawasaki’s sales penetration into the SEA (Statistical Evaluation Area). Time is of the essence in this matter and the Board anticipates that it will be heard and resolved by the Board’s November 12, 2013, meeting in Sacramento. Furthermore, nothing outside the administrative record was considered by the Board in making this determination. Mr. Lizárraga seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

D&A AUTOMOTIVE GROUP, O.C. GENUINE SCOOTERS OF SANTA ANA
v. GENUINE SCOOTERS
Protest No. PR-2355-12

D&A AUTOMOTIVE GROUP, O.C. GENUINE SCOOTERS OF TUSTIN v.
GENUINE SCOOTERS
Protest No. PR-2356-12

Consideration of the Administrative Law Judge’s Recommendation that Respondent’s Motion to Dismiss Be Granted; and Proposed Order Granting Respondent’s Motion to Dismiss, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Obando moved that there has been a failure of Protestants to comply with authorized discovery without substantial justification for that failure. The findings of the Administrative Law Judge are adopted and the Executive Director is directed to dismiss the protests with prejudice. Mr. Flesh seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Agenda Items 5(a) and 5(b).

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:51 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Bismarck Obando
President
New Motor Vehicle Board