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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on January 22, 2013, 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 10:48 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
Robert T. (Tom) Flesh Robin Parker, Senior Staff Counsel
Peter Hoffman
Victoria Rusnak
Glenn E. Stevens

Absent: Ryan L. Brooks
David C. Lizárraga
Bismarck Obando
David W. Wilson

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE AUGUST 22, 2012, GENERAL MEETING, AND AUGUST 23, 2012, AND OCTOBER 17, 2012, SPECIAL MEETINGS**

Mr. Flesh moved to adopt the August 22, 2012, General Meeting minutes. Mr. Hoffman seconded the motion. The motion carried unanimously.

Mr. Flesh moved to adopt the August 23, 2012, Special Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

Mr. Stevens moved to adopt the October 17, 2012, Special Meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO GEORGE VALVERDE, FORMER DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

Mr. Flesh moved to present George Valverde, former DMV Director with a resolution. Mr. Hoffman seconded the motion. The motion carried unanimously. The resolution will be presented to Mr. Valverde at the March meeting in Sacramento.

CONSIDERATION OF PRESENTATION OF RESOLUTION TO PETER WELCH, FORMER PRESIDENT OF THE CALIFORNIA NEW CAR DEALERS ASSOCIATION

Mr. Flesh moved to present Peter Welch, former President of the California New Car Dealers Association with a resolution. Ms. Rusnak seconded the motion. Mr. Hoffman amended the motion to add that the Board looks forward to Mr. Welch's continuing service to the industry in his new role. Mr. Stevens seconded the motion. The motion carried unanimously.

6. **2013 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

This item was moved to the end of the agenda.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

This item was moved to the end of the agenda.

8. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS", BY BOARD PRESIDENT**

This item was moved to the end of the agenda.

9. **STATUS REPORT ON THE DEPARTMENT OF MOTOR VEHICLES' INVESTIGATION OF ROADTREK MOTORHOMES, INC. FOR VIOLATING VEHICLE CODE SECTION 3070(B) IN PROTEST NOS. PR-2199-10 AND PR-2201-10, BY THE PUBLIC MEMBERS OF THE BOARD**

The members were provided with letter from David Harris, Chief Counsel for DMV which indicated that "DMV continues to investigate the matter and will report the status and results of the investigation to the Board as appropriate." A status report will continue to be

provided to the Board at each meeting until a report is prepared by DMV.

10. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Jackie Grassinger concerning the annual update on the Board Consumer Mediation Program. Mr. Brennan reported that not as many phone calls or cases were received compared to prior years but it remains a good program. As indicated in the memo, the program received a total of 309 cases and handled 640 telephone calls during fiscal year 2011-2012. Mr. Brennan indicated that in mediated cases involving a consumer and dealer there was an 81% success rate with a 67% success rate for consumer and manufacturer cases. Recently, the Board started asking consumers “Where did you learn about us?” Interestingly, referrals come from the Attorney General’s Office, the Board’s website, DMV Investigations, the Arbitration Certification Program, Bureau of Automotive Repair, and the Better Business Bureau, which reflect a broad variety of referral sources. Mr. Flesh inquired whether a fee is charged for this program and would like to address this when the Board discusses its Annual Board Fee.

11. **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. Mr. Brennan reported that a few changes and additions were made since previously reported in December 2011.

- The Overview of Consumer Mediation now includes a translated version entirely in Spanish, eliminating the pamphlet “Folleto en Espanol”, and provides more in depth information for Spanish consumers.
- A check box was added to the Mediation Request Form so consumers could choose “Where did you hear about us?”
- A Mediation link was added to the rotating banner on DMV’s website.
- The Industry Roundtable registration was available online and the presentations were available to view following the meeting in 2012.

Mr. Brennan reported that the website was compromised in September by an unknown source. DMV added extra security to the site, which took several months.

As indicated in the memo, the chart below reflects the top 10 pages that were viewed during fiscal year 2011-2012:

	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

12. **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. Mr. Brennan reported that of the 193 manufacturers/distributors there is 100% compliance. Furthermore, there are about 40 fewer manufacturers and distributors than in the past two years.

13. **CONSIDERATION OF THE REVISED *GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES* - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Bill Brennan and Robin Parker. Ms. Parker reported that the Guide was thoroughly reviewed with minimal changes as indicated below:

- The heading, “New as of 2013”, has been added. There were no legislative changes effective January 1, 2013, that impact the Board’s jurisdiction. Given the significance of the changes effective January 1, 2012, they were retained and will be deleted next version.
- A Footnote was added to clarify that a franchisor may want to issue a modification notice even though it may think it is not necessary to avoid a claim that the franchisor has violated the Vehicle Code.
- In the section on recreational vehicle line-make, the reference to a written franchise agreement is to Section 331. A sentence was added that “effective January 1, 2009, the proper reference should be Section 331.3. This is yet another example of the inconsistencies in the recreational vehicle statutes that require clean-up legislation.

- The discovery section was updated to reflect legislative changes effective January 1, 2013, pertaining to sections of the Civil Discovery Act relating to electronically stored information.
- The revised policy concerning the allocation of court reporter appearance and transcript fees was added.

Mr. Stevens moved to adopt the revised *Guide to the New Motor Vehicle Board*. Mr. Flesh seconded the motion. The motion carried unanimously.

14. **DISCUSSION AND CONSIDERATION OF DEALER/MANUFACTURER BOARD FEE ADJUSTMENTS - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning whether it is necessary for the Board to increase the annual Board fee paid by dealers and manufacturers/distributors. Mr. Brennan indicated that the Board's reserve is being depleted quicker than expected due to the downturn in the industry. As indicated in the memo, the Board could run into a deficit by fiscal year 2015-2016.

Given the length of the regulatory cycle, Mr. Brennan indicated it is necessary for the Board to be proactive and take action now. Mr. Brennan went over a number of projections and fee scenarios. The staff recommended a unit fee of \$0.62, with a tiered charge for manufacturers/distributors and a \$400 fee for dealers. Mr. Hoffman indicated that the vehicles sales numbers used in the projections may be low so the Board staff will re-evaluate its projections. Ms. Rusnak indicated that the tiered fee for manufacturers is somewhat arbitrary and could be construed in a way that is not equitable; any fee increase should be across the board for manufacturers. After a lengthy discussion from the members suggesting alternative revenue sources, this matter was postponed to the March 13 meeting.

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

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning fiscal year 2011-2012. Mr. Brennan indicated that the Board used about \$473,000 of its reserve balance to cover costs. This is approximately twice what was expected. Because of the continued downturn in new vehicle sales dealers are now paying more to fund the Board than manufacturers/distributors.

16. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2012-2013 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 Suzanne Luke concerning the Board's financial condition for the 1st quarter of fiscal year 2012-2013 and the status of the Board's collection of its annual fee. Mr. Brennan indicated

that the Board was on pace with its appropriated budget having expended 26%. Furthermore, \$641,988 was collected from 166 manufacturers for 1.357 million vehicles sold in 2011.

17. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2013-2014 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the out-of-state travel plans for fiscal year 2013-2014. Mr. Brennan indicated that he does not anticipate the Board being allocated any funds for out-of-state travel in fiscal year 2013-2014. However, if that is not the case, the Board needs to be ready to submit its requests on short notice. Mr. Brennan is seeking Board approval for the following five trips:

- Three trip requests are for the Executive Director, Chief of Staff, and one public Board member to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop, in Baltimore, Maryland.
- One trip request is for the Executive Director to attend the Recreational Vehicle Industry Association's 51st National Trade Show in November 2013, in Louisville, Kentucky.
- One trip request is for the Executive Director to attend the National Automobile Dealers Association Convention and Expo in February 2014, in New Orleans, Louisiana.

As indicated in the memo, if the travel restrictions are eased for 2013-2014, staff will submit these requests to the Department of Motor Vehicles, the Business, Transportation and Housing Agency, the Department of Finance and the Governor's office for final approval. Once final administration approval is received, the Executive Committee will authorize which individuals will actually attend these trips. This final approval will be agendized for the 1st and 2nd half of the fiscal year at regularly scheduled Board meetings.

Mr. Stevens moved to approve the five out-of-state trips requested. Mr. Hoffman seconded the motion. The motion carried unanimously.

18. **DISCUSSION AND CONSIDERATION OF THE UPCOMING INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The upcoming Industry Roundtable is set for Thursday, March 14, 2013, in Sacramento at DMV's headquarters. Mr. Brennan reported that he is working on the topics and presenters; he welcomes suggestions from the members. The following topics were suggested by the members: autonomous vehicles and the DMV regulations that are pending; connectivity and the universality of technology; the potential effect on technology of "smart roads" and "smart cars"; and electric batteries and cars. A "save the date" card will be going out shortly.

19. **CONSIDERATION OF PROPOSED REGULATION INCREASING THE ANNUAL BOARD FEE (13 CCR § 553) - POLICY AND PROCEDURE COMMITTEE**

This agenda item was pulled because the Board did not amend its annual fee regulations; it will be considered at the March meeting.

20. **CONSIDERATION OF 2013 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

This agenda item was pulled because the Board does not have any approved regulatory changes to report at this time.

21. **CONSIDERATION OF 2013 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors* from Bill Brennan and Robin Parker. Ms. Parker reported that the Guide was minimally revised. As indicated in the memo, a footnote was added to clarify that a franchisor may want to issue a modification notice even though it may think it is not necessary to avoid a claim that the franchisor has violated the Vehicle Code. Additionally, a sentence was added throughout the Guide to remind the franchisor that the statutory time to file a protest does not commence until receipt of the notice by both the dealer and the Board. Lastly, the samples all now contain a disclaimer.

Mr. Stevens moved to adopt the revised Guide. Mr. Hoffman seconded the motion. The motion carried unanimously.

22. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the new policies that were approved in 2012 are as follows:

- For all merits hearings and dispositive motions, court reporting costs will be allocated as follows:
 - For the first hearing day, the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.

- For each subsequent day, the Board will arrange reporting services and will order the parties, on an equal basis, to reimburse the Board for reporter appearance fees, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.
- In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of reporter appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

These revisions apply to each protest that begins the first day of a merits hearing after March 31, 2012.

- The Vision Statement was amended to reflect the cost reduction to California taxpayers by having new motor vehicle industry disputes resolved by the Board.

23. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dana Winterrowd concerning the assignment of cases to Board ALJs in 2012. Ms. Parker reported two of the recently hired ALJs have now presided over merits hearings. As indicated in the memo, there were three merits hearings and three mandatory settlement conferences, four discovery hearings, and five law and motion hearings in 2012.

24. **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 Board is performing its work with fewer people and it seems to be working well. Furthermore, his focus is on the upcoming Industry Roundtable.

Ms. Parker reported that since the members received their written report, there had been no new protests filed and two protests dismissed for a total of 19 protests currently

pending.

With regards to judicial matters, Ms. Parker reported that a number of writs had been filed which had been very time consuming. Ms. Parker indicated that the *Powerhouse* matter was now fully briefed, the hearing in the *Volkswagen* writ (Shayco) was in early December and the matter was submitted, and a hearing was set in the *Harley-Davidson* writ pertaining to Laidlaw's Harley-Davidson. With regards to *Mega RV* and *Roadtrek*, there is a case management conference in March.

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

Mr. Brennan reported that Kathy Tomono and Eugene Ohta co-chaired the campaign this year and did a terrific job. The Board raised a total of \$4,375 this year through generous donations made by Board Members, Administrative Law Judges and staff, and through the fundraising events.

26. **SELECTION OF BOARD MEETING DATES FOR 2013**

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. Ms. Parker announced that the following meetings were scheduled for 2013:

- March 13, 2013, CNCDA Dealer Day, Sacramento
- March 13, 2013, General Meeting, Sacramento
- March 14, 2013, Industry Roundtable, Sacramento
- June 11, 2013, General Meeting, Los Angeles or Riverside

This matter will be agendized for the upcoming meeting in March.

6. **2013 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Alvarez read the following statement into the record prior to considering nominations for officers:

The election of officers shall be a specific item of business on the agenda for the first General Meeting of each calendar year. At the time the matter is considered, any member may nominate any other member for the office of President and/or Vice-President. There are no restrictions on the number of members who may be nominated for either position during this process. At any time after at least one Board Member is nominated for each office, any member may move that the nomination of officers be closed. If the motion is

seconded and carried by majority vote, the nominating process shall be deemed concluded. After the nominating process is concluded, the Members of the Board shall cast their vote for a nominated Member for each office. No Board Member may vote for more than one nominated Member for each office. The voting shall be done by oral poll. Any Board Member may abstain from voting for a nominated Member for either office.

Mr. Stevens moved to nominate Mr. Obando as President. Mr. Flesh seconded the motion to nominate Mr. Obando as President. Ms. Rusnak moved to nominate Mr. Hoffman as President. This motion was not seconded. The motion to nominate Mr. Obando as President carried by a four-to-one vote with Ms. Rusnak abstaining.

Mr. Flesh moved to nominate Mr. Hoffman as Vice President. Mr. Stevens seconded the motion to nominate Mr. Hoffman as Vice President. The motion to nominate Mr. Hoffman as Vice President carried unanimously.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

This matter was postponed until the March meeting.

8. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS", BY BOARD PRESIDENT**

This matter was pulled from the agenda since the incoming President is a Public Member and the incoming Vice President is a Dealer Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

27. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE

The members convened in Closed Executive Session to discuss Agenda Item No. 27.

28. **OPEN SESSION**

The Public Members returned to Open Session. Mr. Alvarez announced that the members were very supportive and appreciative of Mr. Brennan.

29. **PUBLIC COMMENT (Gov. Code § 11125.7).**

No additional public comment was presented.

30. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:26 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Bismarck Obando
President
New Motor Vehicle Board