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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on February 4, 2014, in Hearing Room #1, at the Board's offices.

2. ROLL CALL

Glenn Stevens, Presiding Public Member, called the meeting of the Board to order at 9:35 a.m.

Present: Ramon Alvarez C.
Anthony A. Batarse Jr.
Ryan L. Brooks (arrived 9:37 a.m.)
Kathryn Ellen Doi
Rahim Hassanally
David C. Lizárraga
Victoria Rusnak (arrived 10:11 a.m.)
Glenn E. Stevens

William G. Brennan, Executive Director
Robin P. Parker, Senior Staff Counsel
Dawn Kindel, Chief of Staff

Absent: Bismarck Obando

3. PLEDGE OF ALLEGIANCE

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

4. APPROVAL OF THE MINUTES FROM THE NOVEMBER 12, 2013, SPECIAL MEETING, AND NOVEMBER 13, 2013, GENERAL MEETING

This matter was postponed until after consideration of Agenda Items 9-11.

5. 2014 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE

This matter was postponed until after Agenda Item 8, which was taken out of order.

6. **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 after Agenda Item 8, which was taken out of order.

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

This matter was postponed until after Agenda Item 8, which was taken out of order.

8. **DISCUSSION CONCERNING IMPACT OF SENATE BILL 155, BY JONATHAN MORRISON, DIRECTOR OF LEGAL & REGULATORY AFFAIRS, CNCDA, AND ROBIN PARKER, SENIOR STAFF COUNSEL, NEW MOTOR VEHICLE BOARD**

This matter was postponed until after Agenda Item 4, which was taken out of order.

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

STOCKTON AUTOMOTIVE DEVELOPMENT LLC dba STOCKTON NISSAN
v. NISSAN NORTH AMERICA, INC.
Protest No. PR-2351-12

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.

Oral comments were presented before the Public Members of the Board. Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Maurice Sanchez, Esq. of Baker & Hostetler LLP represented Respondent.

10. **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.

CONSIDERATION OF PROPOSED ORDER

STOCKTON AUTOMOTIVE DEVELOPMENT LLC dba STOCKTON NISSAN v. NISSAN NORTH AMERICA, INC.
Protest No. PR-2351-12

Consideration of the Administrative Law Judge's Proposed Order Dismissing the Protest for Lack of Jurisdiction, by the Public Members of the Board.

The Public Members never convened in closed Executive Session and held their deliberations in Open Session.

11. **OPEN SESSION**

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

4. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 12, 2013, SPECIAL MEETING, AND NOVEMBER 13, 2013, GENERAL MEETING**

Mr. Alvarez moved to adopt the November 12, Special Meeting minutes and the November 13, 2013, General Meeting minutes. Ms. Doi seconded the motion. Mr. Brooks abstained. The motion carried unanimously.

8. **DISCUSSION CONCERNING IMPACT OF SENATE BILL 155, BY JONATHAN MORRISON, DIRECTOR OF LEGAL & REGULATORY AFFAIRS, CNCDA, AND ROBIN PARKER, SENIOR STAFF COUNSEL, NEW MOTOR VEHICLE BOARD**

Mr. Stevens welcomed Jonathan Morrison, former Director of Legal & Regulatory Affairs for the California New Car Dealers Association (CNCDA). The CNCDA, according to Mr. Morrison, is a non-profit trade association representing the interests of California new car dealers. It participates before regulatory agencies, the legislature, and the courts to promote the interests of the industry. In 2013, Senate Bill 155 made non-controversial changes that cleaned-up a number of statutes. It also made substantive changes to warranty and franchisor incentive program protests. Several changes were made to the Unlawful Acts section of the Vehicle Code (Sections 11713.3 and 11713.13). Mr. Morrison provided the members and audience with a detailed PowerPoint on Senate Bill 155 and its impact on the industry.

(Mr. Brennan indicated during the Industry Roundtable discussion that the Alliance of

Automobile Manufacturers was also invited to make a presentation to the Board regarding Senate Bill 155.)

Ms. Parker provided the programmatic impact of the changes and highlighted the new protests that can be filed for warranty and franchisor incentive programs. Ms. Parker did not anticipate that the Board's caseload would increase. The legal staff is working to educate the industry and hosted an Attorney Roundtable in January. There were 43 attendees from various manufacturers, dealers, and associations. At least 12 different manufacturers and distributors were represented. The event was well-received. Ms. Parker indicated that given the size of the Board's staff, it was going to take several more months to update the Board's website and publications.

5. 2014 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE

Ms. Doi moved to nominate Mr. Stevens as President. Mr. Hassanally seconded the motion to nominate Mr. Stevens as President. Mr. Lizárraga moved to close the nominations, with Mr. Brooks seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Stevens as President carried unanimously with Mr. Stevens abstaining.

Mr. Stevens moved to nominate Ms. Rusnak as Vice President. Mr. Lizárraga seconded the motion to nominate Ms. Rusnak as Vice President. Ms. Doi moved to close the nominations, with Mr. Brooks seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Ms. Rusnak as Vice President carried unanimously.

6. 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

After a brief discussion off the record, Mr. Stevens, incoming President, made the following committee appointments:

- ADMINISTRATION COMMITTEE
  Ryan Brooks, Chair
  Rahim Hassanally, Member

- BOARD DEVELOPMENT COMMITTEE
  Ramon Alvarez C., Chair
  David C. Lizárraga, Member

- EXECUTIVE COMMITTEE
  Glenn E. Stevens, President
  Victoria Rusnak, Vice President

- FISCAL COMMITTEE
  Anthony A. Batarse, Jr., Chair
  Victoria Rusnak, Member

- GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE
  Ramon Alvarez C., Chair
  Glenn E. Stevens, Member

- POLICY AND PROCEDURE COMMITTEE
  Kathryn Ellen Doi, Chair
  Bismarck Obando, Member

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

12. **DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE LETTER IN SUPPORT OF YAMAHA MOTOR CORP., U.S.A.'S PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT OF THE NOVEMBER 26, 2013 PUBLISHED COURT OF APPEAL DECISION UPHOLDING IN ALL RESPECTS A VERDICT ADVERSE TO YAMAHA**

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.
Protest No. PR-2122-08; San Luis Obispo County Superior Court No. CV098090; Second Appellate District Court of Appeal No. B236705; and California Supreme Court No. S215677

This matter was postponed until after Agenda item 18.

13. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION

TERRY DOE, Petitioner vs. DEPARTMENT OF MOTOR VEHICLES, NEW MOTOR VEHICLE BOARD, and DOES 1 to 50, inclusive, Respondents
Sacramento County Superior Court No. 34-2013-80001488

Discussion and advice from the Board's legal counsel concerning pending litigation, by all members of the Board.

This matter was postponed until after Agenda item 18.

14. **OPEN SESSION**

This matter was postponed until after Agenda item 18.

15. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION OF A PERSONNEL MATTER - EXECUTIVE COMMITTEE

This matter was postponed until after Agenda item 32.

16. **OPEN SESSION**

The members remained in Open Session.

17. **DISCUSSION CONCERNING THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION CONVENTION BY GLENN STEVENS, PUBLIC MEMBER - BOARD DEVELOPMENT COMMITTEE**

Glenn Stevens attend the National Automobile Dealers Association Convention in New Orleans January 24-27, 2014. Mr. Stevens noted that the economy directly affects the car industry more than any other industry. There were 22,000 attendees at the convention from all over the world. Mr. Stevens encouraged all of the members to attend the convention next year since it will be in San Francisco.

18. **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. As indicated in the memo the program received a total of 269 cases and handled 709 telephone calls during fiscal year 2012-2013. Of the 269 cases received, 222 were mediated; 66% were mediated successfully. Mr. Brennan reported that this is a successful program that is supported by both manufacturers and dealers, and provided the new members with an overview. After a lengthy discussion, it was determined that the staff and the Policy and Procedure Committee will consider whether to promote and expand this program.

12. **DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE LETTER IN SUPPORT OF YAMAHA MOTOR CORP., U.S.A.'S PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT OF THE NOVEMBER 26, 2013 PUBLISHED COURT OF APPEAL DECISION UPHOLDING IN ALL RESPECTS A VERDICT ADVERSE TO YAMAHA**

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.
Protest No. PR-2122-08; San Luis Obispo County Superior Court No. CV098090; Second Appellate District Court of Appeal No. B236705; and California Supreme Court No. S215677

The members were provided with a memorandum concerning Yamaha's request that the Board file an amicus curiae letter in support of its petition for review to the California Supreme Court of the November 26, 2013, published Court of Appeal Decision upholding in all respects a verdict adverse to Yamaha.

On January 23, 2014, the Board received Yamaha's letter requesting to be heard at the February 4, 2014, General Meeting and urging the Board to file an amicus letter in support of Yamaha's Petition for Review of the Court of Appeal's decision.

On January 28, 2014, the Board received an opposition to Yamaha's request for amicus brief submitted on behalf of Powerhouse Motorsports Group, Inc. and Jerry Namba, successor in interest to Timothy L. Pilg and Chapter 7 Bankruptcy Trustee for the bankruptcy estate of Timothy Pilg and his wife Frances Pilg (collectively "Powerhouse").

As indicated in the memo, Yamaha "...believes that the Board has a substantial interest in having the Supreme Court grant review in this case, as the decision upends the Vehicle Code's termination protest mechanism by holding that a franchisor must continue to treat a franchisee who fails to file a timely protest to a Notice of Termination as having an active franchise. Moreover, by effectively holding that the filing of a timely protest to a statutorily compliant Notice of Termination is optional, the decision threatens a significant portion of the Board's jurisdiction – its jurisdiction over franchise terminations." Yamaha contends that the decision is contrary to Section 3060, cannot be reconciled with *Sonoma Subaru*, and "effectively holds that the failure to file a protest within the statutory deadline has no legal significance, despite the plain text of Section 3060."

As indicated in the memo, Powerhouse contends that its claims are damage claims, which are required to be filed in court, "based on Yamaha's violation of section 11713.3 and related common law tort theories." It "does not contend or suggest that this Board lacks jurisdiction to hear protests." Furthermore, the Board "retains full jurisdiction to hear protests, and it has the authority to determine whether a protest is timely or untimely, just as it did in this case. But a party who has a statutory or common law damage claim cognizable in the courts is not precluded from pursuing that remedy simply because a protest was filed late, or not at all." Lastly, Powerhouse contends that "[a]n amicus brief will alter the balance of the playing field, and it is unnecessary because the issues are factual

in nature and unique to this case."

Marjorie E. Lewis, Esq. of Gibson, Dunn & Crutcher LLP and Maurice Sanchez, Esq. of Baker & Hostetler LLP on behalf of Yamaha presented public comments. Dennis D. Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsports Group, Inc. and Tim Pilg presented public comments.

Mr. Brooks abstained from consideration of this matter because Gibson, Dunn & Crutcher represents his company. After a lengthy discussion, Ms. Rusnak moved to deny Yamaha's request. Mr. Hassanally seconded the motion. The motion carried unanimously with Mr. Brooks abstaining.

13. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION

TERRY DOE, Petitioner vs. DEPARTMENT OF MOTOR VEHICLES, NEW MOTOR VEHICLE BOARD, and DOES 1 to 50, inclusive, Respondents
Sacramento County Superior Court No. 34-2013-80001488
Discussion and advice from the Board's legal counsel concerning pending litigation, by all members of the Board.

The members did not convene in closed Executive Session because Mr. Winterrowd on behalf of Petitioner Terry Doe filed a request for dismissal without prejudice on January 13. The Board was not served with a copy of the dismissal. The Sacramento Superior Court entered the dismissal without prejudice on January 17.

14. **OPEN SESSION**

The members remained in Open Session as there was no longer a justification for closed Executive Session.

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

This matter was taken calendar and will be on the April 9, 2014, General Meeting agenda.

20. **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 Eugene Ohta

updating the development and use of the Board's website. Mr. Ohta reported that the Board's Web-Master (Melvin Bailey) and the transition to a new Web-Master has been smooth.

As indicated in the memo, the chart below reflects the top 10 pages that were viewed during fiscal year 2012-2013:

	Pages
1	Home Page
2	Mediation
3	Agenda/Materials
4	Forms
5	Board Members
6	Protest
7	Regulations
8	Statutes
9	FAQ
10	Site Map

21. CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2014-2015 - 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 2014-2015.

As indicated in the memo, in the current fiscal year of 2013-2014, all of the Board's out-of-state trip requests were denied since they were not "mission critical". The Board was not allocated any funds for this type of travel. Miss Kindel expects the same to occur in fiscal year 2014-2015. Should that not be the case, staff needs to be prepared to submit travel approval requests on short notice. In order to do that, Board approval must be secured now. Miss Kindel indicated that if the travel restrictions are eased for 2014-2015, the staff will submit these requests to the Department of Motor Vehicles, the California State Transportation Agency, the Department of Finance and the Governor's office for final approval.

Miss Kindel noted that proposals for three trips were requested for the Executive Director and two Public Members to attend the Recreational Vehicle Industry Association's 52nd National Trade Show December 2-4, 2014, in Louisville, Kentucky. As indicated in the memo, the estimated expense will be approximately $5,300.

Miss Kindel pointed out that trip requests are typically made for the National Automobile Dealers Association ("NADA") Convention and Expo, and the National Association of Motor Vehicle Boards and Commissions ("NAMVBC") Fall Workshop. However, both events will be held in California.

Ms. Doi moved to approve the out-of-state trips requested. Mr. Brooks seconded the motion. The motion carried unanimously.

Mr. Brennan indicated that the next NAMVBC meeting is September 17-21, 2014, in San Diego, and NADA is January 22-25, 2015, in San Francisco. All of the members were encouraged to attend both events since they are in California.

22. STATUS REPORT ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE

The members were provided with a memorandum from Bill Brennan, Suzanne Luke, and Jackie Grassinger concerning the Board's collection of its annual fees. Mr. Brennan reported that the Board's annual manufacturer and distributor fee collection is complete. As indicated in the memo, $859,840.95 collected from 154 licensees for the 1,854,826 vehicles sold in calendar year 2012. Mr. Brennan indicated that the Board originally forecast 1.62 million vehicles so actual sales were considerably higher. Mr. Brennan indicated that the proposed rulemaking increasing the annual Board fee was approved by Agency but the Department of Finance did not like the proposed tier system for manufacturer fees and thought the numbers used for the projections were understated. Therefore, the fee structure will be reviewed at a future meeting.

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

The members were provided with a memorandum from Bill Brennan and Dana Winterrowd concerning the April 10, 2014, Industry Roundtable. Mr. Brennan requested topic suggestions from the members. Mr. Stevens indicated that anything to do with technology or that automates the entire process of either purchasing a car or registering a car would be appropriate. Mr. Alvarez as echoed by Mr. Hassanally suggested the CNCDA's presentation on Senate Bill 155 would be a good topic.

24. CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE

a. Definitions (13 CCR § 550);
b. Application of Subchapter (13 CCR § 550.10);
c. Authority (13 CCR § 551);
d. Challenge (13 CCR § 551.1);
e. Subpoenas; Motion to Quash (13 CCR § 551.2);
f. Testimony by Deposition (13 CCR § 551.6);
g. Notice of Assignment of Administrative Law Judges; Peremptory Challenges (13 CCR § 551.12);
h. Sanctions - Bad Faith Actions (13 CCR § 551.21);
i. Adoption and Objection to Proposed Stipulated Decision and Order (13 CCR § 551.22);
j. Filing Fees (13 CCR § 553.40);

k. Form; Separate Protests (13 CCR § 583); and,
l. Acceptance of Filing (13 CCR § 598).

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning proposed regulations to improve and clarify case management. Ms. Parker indicated that the attendees of the Attorney Roundtable were provided with the proposed regulations and given an opportunity to comment.

The proposed substantive changes were summarized in the memo as follows:

Proposed Stipulated Decision and Order (13 CCR § 550(u) and (z), and (13 § 551.22)

For Article 4 and most recently Article 5 protests or petitions, the parties can enter into a written settlement agreement that the parties agree to submit to the Board for it to become adopted by the Board as a "Stipulated Decision and Order of the Board." If adopted by the Board, the "Stipulated Decision and Order" will have the same effect as if the decision and order flowed from a hearing.

Upon receipt of a proposed stipulated decision from the parties, the legal staff reviews the document and prepares a summary that is transmitted to the Public Members of the Board unless the parties stipulate to Dealer Board Member Participation.

The Proposed Stipulated Decision and Order is deemed to be adopted by the Board unless a member notifies the Executive Director of an objection within 10 days of the Board Member's receipt of the Proposed Stipulated Decision and Order.

In practice, if a Board Member objects to the Proposed Stipulated Decision and Order, the matter is put on the agenda for consideration at the next regularly scheduled Board meeting. However, there are no definitions in the regulations pertaining to stipulated decisions and orders, nor is there a mechanism in the event that the Board objects to one. Proposed regulations have been drafted that parallel the treatment of petitions upon first consideration (13 CCR § 557).

Subpoenas - Motion to Quash (13 CCR § 551.2)

The proposed amendments also authorize an ALJ to issue subpoenas and eliminate the requirement that the original proof of service be filed with the Board following service upon the witness or deponent; a copy is sufficient.

Peremptory Challenges (13 CCR § 551.12)

It was never the Board's intention to have peremptory challenges apply to law and motion hearings but only to merits hearings so amendments are being proposed to clarify that.

Sanctions - Bad Faith Actions (13 CCR § 551.21)

The proposed amendment specifies that sanctions could also be ordered by the Board in addition to the ALJ.

The non-substantive changes clean-up all references to "subchapter"; the proper reference is "chapter" (13 CCR §§ 550.10 and 598) and make changes to more accurately reflect the authority and reference (13 CCR §§ 551, 551.1, 551.6, 553.40 and 583).

Ms. Doi suggested that the text in Section 551.2 be clarified so that either an original or copy of the executed proof of service can be filed with the Board and also suggested correcting the spelling of "duces". Mr. Brooks moved to adopt the proposed regulation with the modifications suggested by Ms. Doi. Ms. Rusnak seconded the motion. The motion carried unanimously.

Mr. Stevens read the following statement into the record:

> Given the Board's decision to go forward with the proposed regulations, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.
>
> By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

25. CONSIDERATION OF 2014 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE

The members were provided with the 2014 Rulemaking Calendar. Mr. Brennan reported that if the calendar is approved by the Board, it is then submitted to California State Transportation Agency for their approval, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law.

Mr. Stevens moved to adopt the 2014 Rulemaking Calendar. Ms. Doi seconded the motion. The motion carried unanimously.

26. **CONSIDERATION OF 2014 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**

This matter was taken calendar and will be on the April 9, 2014, General Meeting agenda.

27. **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. Ms. Parker reported that the new policies approved in 2013 pertain to annual updates of the Board's publications, the resignation of Judge Prod, and improvements to the Transcript Policy to pattern it more closely to the courts. There were no substantive changes. At the members' request, a footnote will be added to reflect the change from Business, Transportation & Housing Agency to the California State Transportation Agency.

28. **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 Robin Parker concerning the assignment of cases to Board ALJs in 2013. Ms. Parker reported that there were four merits hearings, one remand hearing, 12 mandatory settlement conferences, nine discovery hearings, and 15 law and motion hearings.

29. **DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning proposed revisions to the assignment of cases to Board Administrative Law Judges (ALJs). The staff proposed the following amendments to the assignment of cases:

- ALJs are assigned to merits hearings 30 days prior thereto at the Hearing Readiness Conference. In general, matters are not assigned to an ALJ and the order of time and place of hearing is not issued if there is any indication that the matter may settle. Nevertheless, there have been instances in which the next ALJ in order on the assignment log was assigned to preside over a matter and the case settled shortly before the hearing was to commence. ALJs can sometimes wait a year to preside over a merits hearing. The staff is proposing that if an ALJ's case

resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ would be inserted first in the rotation so that he or she would be the next ALJ to receive the first opportunity to preside over a merits hearing. This would ensure that ALJs are receiving a balanced number of merits hearings.

- Also, if an ALJ must decline presiding over a merits hearing because he or she was the Mandatory Settlement Conference ALJ, then the staff is proposing that the ALJ be inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing.

- The staff is proposing that an Alternative Merits Judge Assignment Log be established and Merilyn Wong be added to this log. Judge Wong has a tremendous amount of experience and expertise. Even though she is retired and generally presides over settlement conferences, in 2011 she presided over the merits hearing in *Laidlaw's* v. *Harley Davidson* (Protest No. PR-2299-11). This allows the staff the flexibility to assign Judge Wong to a merits hearing in the event the other ALJs are unavailable.

Ms. Doi moved to adopt the proposed revisions. Mr. Alvarez seconded the motion. The motion carried unanimously.

30. DISCUSSION CONCERNING THE CAR BUYERS PROTECTION ACT AND ITS IMPACT ON THE BOARD AND THE VEHICLE INDUSTRY - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum from Bill Brennan and Dana Winterrowd concerning the Car Buyers Protection Act sponsored by Consumers for Auto Reliability and Safety (CARS). Mr. Brennan reported on the status of the ballot initiatives and indicated that one version proposes to limit the Board's ability to hear appeals from decisions made by the DMV Director. From the staff's perspective, appeals serve a deterrent to the DMV to treat people fairly and avoid coming to the Board on an appeal by working with the industry to resolve disputes. Mr. Brennan indicated that future reports will be provided at upcoming meetings.

31. 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 annual Board fee rulemaking that will be revised to more accurately reflect industry projections.

Ms. Parker reported that 18 protests are pending, and since the members received their written report no new protest have been filed or dismissed. She indicated that only one termination notice had been filed and no new protests had been filed this year.

With regards to judicial matters, Ms. Parker reported that an appeal was filed by Roadtrek in *Mega RV* pertaining to the Board's modification decisions. Additionally, a writ was filed by Kawasaki in the *Burbank Kawasaki* matter as a placeholder but the Board had not been served. Furthermore, the RVIA and Board staff has been discussing clean-up legislation to the Article 5 RV protest provisions. Mr. Brennan mentioned that Skip Dawn was no longer the Executive Director of the CalRVDA. Mr. Stevens requested that his successor be invited to attend a meeting and make a presentation.

32. **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. Mr. Ohta indicated that the Board raised a total of $3,691 for the 2013 campaign through generous donations made by Board Members, Administrative Law Judges and staff, and through the fundraising events. Donations were also provided by former employees, Linda Lighter, and Board members, Tom Flesh and David Wilson.

15. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION OF A PERSONNEL MATTER - EXECUTIVE COMMITTEE

The members of the Board convened in closed Executive Session to discuss a personnel matter.

33. **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 Mr. Brennan's performance review.

34. **OPEN SESSION**

The members returned to Open Session. No Board action was taken during closed Executive Session.

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

No additional public comment was presented.

36. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:12 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED:

Glenn E. Stevens
President
New Motor Vehicle Board