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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on July 15, 2014, at the Milton Marks Conference Center, Lower Level – San Diego A/B/C Room, San Francisco, California.

2. **ROLL CALL**

Glenn Stevens, President and Public Member, called the meeting of the Board to order at 10:07 a.m.

Present:	Anthony A. Batarse Jr.	William G. Brennan, Executive Director
	Ryan L. Brooks	Robin P. Parker, Senior Staff Counsel
	Kathryn Ellen Doi	Dawn Kindel, Chief of Staff
	Rahim Hassanally	
	David C. Lizárraga	
	Bismarck Obando	
	Victoria Rusnak (arrived 10:10 a.m.)	
	Glenn E. Stevens	

Absent: Ramon Alvarez C.

3. **PLEDGE OF ALLEGIANCE**

Ms. Doi led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE APRIL 9, 2014, SPECIAL MEETING, AND APRIL 9, 2014, GENERAL MEETING**

Mr. Obando moved to adopt the April 9, 2014, Special Meeting minutes and April 9, 2014, General Meeting minutes. Ms. Doi seconded the motion. The motion carried unanimously with Mr. Brooks abstaining.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO MARY GARCIA, RETIRING BRANCH CHIEF, OCCUPATIONAL LICENSING, DEPARTMENT OF MOTOR VEHICLES**

Mr. Brooks moved to present a Resolution to Mary Garcia, former Branch Chief, Occupational Licensing, Department of Motor Vehicles, in recognition of her contribution to the New Motor Vehicle Board. Mr. Hassanally seconded the motion. The motion carried unanimously. Mr. Brennan commented that the Resolution is too short for all of the things that Mary has done for the New Motor Vehicle Board and for the DMV; she is going to be missed. Mr. Stevens added that Mary has been very helpful to the staff and the industry.

6. **UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the corrective action taken for each audit finding and a matrix providing the chronology for each. Ms. Parker indicated that the Board was in compliance with the Audit Findings and Corrective Action Plan and that there was nothing significant to report other than the Board continues to promote the Consumer Mediation Program.

7. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. As indicated in the memo, the delegations were thoroughly reviewed and revised at the November 20, 2008, General Meeting. From 2008 through 2011, the Board delegations were reviewed annually by the Board. At the May 26, 2011, General Meeting, the members made this an exception report. Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014) made a number of non-substantive and substantive changes, so the delegations were revised to reflect this.

As indicated in the memo, the proposed changes to the delegations are as follows:

- Sections 3006, 3008, 3050, 3050.7, 3052, 3056, 3057, 3062, 3063, 3064, 3066, and 3067 were minimally revised to reflect changes as the result of Senate Bill 155.
- Sections 3065 and 3065.1 were completely revised to reflect the new protests that are available for warranty claims and franchisor incentive program claims.
- The following paragraph was added to clarify the role of the staff and the Board members in Sections 3064, 3065, 3065.1, 3074, 3075, and 3076:

The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

- Minor changes were made to the Board delegation of administrative duties.

Mr. Obando moved to adopt the Board delegations. Mr. Hassanally seconded the motion. The motion carried unanimously.

8. **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 David Lizárraga, who ultimately recommended Eugene Ohta as the Employee Recognition Award recipient. Ms. Doi moved to adopt the Committee's recommendation. Mr. Lizárraga seconded the motion. The motion carried unanimously.

9. **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 semi-annual discussion and consideration of the methods of determining Board fees. Mr. Brennan indicated that the fees collected are reasonable and consistent with the needs of the Board. These fees are an appropriate reflection of the needs of the Board. As indicated in the memo, the fees are not a tax.

10. **BOARD FINANCIAL CONDITION REPORT FOR THE 3RD QUARTER OF FISCAL YEAR 2013-2014 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning the Board financial condition report for the 3rd quarter of fiscal year 2013-2014. Mr. Brennan indicated that the Board expended 63% of its appropriated budget through the third quarter. The Board expended only 39% of its budget for operating expenses. Mr. Brennan indicated that dealer fees for this fiscal year compared to 2013-2014 will be lower by about \$25,000 to \$30,000. However, manufacturer fees are up by about \$210,000. Due to Dana Winterrowd's resignation, the Board experienced a payroll savings. There was a lengthy discussion on the pro rata fee that is paid to the general fund. This fee is \$186,517 for the current fiscal year; \$50,000 higher than the previous fiscal year. Mr. Brooks suggested a formal request be made to the Governor's Office concerning how the pro rata fee is calculated. Ms. Rusnak agreed. Mr. Obando suggested that this be handled informally and discretely with the Department of Finance. Mr. Stevens

agreed to follow this recommendation. Miss Kindel indicated that the pro rata fee is based on a percentage of expenditures, and the authority is in Government Code section 11010. The Fiscal Committee and staff will continue to work on the pro rata fee and report back to the Board.

11. **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 and Jackie Grassinger concerning the Board's collection of the Arbitration Certification Programs' annual fee. Mr. Brennan indicated that \$1.18 million was collected from 45 manufacturers and distributors. The fee collection was undertaken without incident and the Board received \$5,000 for providing this service. The collection was completed in May 2014. Ms. Doi requested that the Arbitration Certification Program make an educational presentation to the Board at its next meeting. Mr. Brennan reminded the members that the Board only collects the fees for this program and follows the statutory mandate to do so.

12. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2014-2015 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning the Board's proposed budget for fiscal year 2014-2015. Mr. Brennan reported that the Board's proposed budget for the upcoming fiscal year is \$1.7 million. Mr. Brennan indicated that the Board is seeking an increase of \$75,000 in the budget over the previous fiscal year to cover a \$75,000 increase in the pro rata fee. Generally, the Board expends less than its appropriated budget. The Fiscal Committee and Board staff went over in detail the proposed budget and concluded that it is a reasonable and fair budget. Ms. Rusnak commended Mr. Brennan for carefully managing expenses. Mr. Brennan indicated that additional staff will be hired to fill vacant positions. Mr. Stevens requested that the Executive Committee be involved in this process. Ms. Rusnak moved to adopt the proposed budget. Mr. Batarse seconded the motion. The motion carried unanimously.

13. **REPORT ON THE 11TH NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's 11th Industry Roundtable. Surveys were provided to the attendees in order to solicit feedback on the topics presented. Mr. Brennan indicated that about 50 people from the industry along with Board members and staff attended the Roundtable. Positive feedback from attendees at the event and in the surveys was received.

14. **CONSIDERATION OF THE 2014 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 there were a number of changes as a result of Senate Bill 155. As indicated in the memo, the changes for were:

- "New as of 2014" on pages 6-10.
- Footnote 9 on page 11 was revised to reflect the new Board policy on the allocation of court reporter fees and costs.
- Footnote 19 on page 37 was amended to reflect that the burden of proof on most 3065 warranty protests and all franchisor incentive program protests is now on the franchisor.
- The analysis of good cause in Section 3062 was updated on page 44 and footnote 20 was added.
- The analysis in Section 3064, 3065, 3065.1, 3074, 3075, and 3076 protests on pages 45-48 was updated consistent with legislative changes.
- The section on stipulated decisions on pages 68-69 was updated to reflect correct statutory references and to incorporate Article 5 RV protests.
- The conflict of interest section on page 80 was updated to reflect the Board's current conflict of interest code.

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

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

- a. Pending Legislation of Special Interest:
 - Assembly Bill 988 (Assembly Member Jones)
- b. Pending Legislation of General Interest:
 - (1) Assembly Bill 1732 (Assembly Member Stone)
 - (2) Senate Bill 686 (Senator Jackson)
- c. Pending Federal Legislation of General Interest: None

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. Ms. Parker reported that the staff and DMV worked to address some concerns with AB 988. There was a lengthy discussion on the Board adopted policy not to take a position on pending legislation, and on the categories of licensees excluded from being Dealer Board Members (motorcycle and RV dealers).

16. **CONSIDERATION OF REVISIONS TO PROPOSED REGULATORY AMENDMENTS TO SECTION 551.21 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (SANCTIONS - BAD FAITH ACTIONS) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning revisions to proposed regulatory amendments to Section 551.21 of Title 13 of the California Code of Regulations pertaining to sanctions – bad faith actions. Ms. Doi requested this matter be postponed to allow more time for the Board to consider the proposed amendments. This matter will be considered at the next General Meeting.

17. **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 need to hire behind Kathy Tomono, an Analyst in the Consumer Mediation Program, who will be retiring after 29 years of service.

Ms. Parker reported that 19 protests are pending, and since the members received their written report three new protests have been filed. Additionally, only 21 notices of termination have been filed. The non-substantive regulations that were approved by the Board in February were approved by the Office of Administrative Law and effective June 26, 2014. Ms. Parker indicated the DMV promulgated regulations pertaining to autonomous vehicles that are effective September 16, 2014. The members requested that the DMV make a presentation to the Board on these regulations at the next general meeting. Mr. Brennan invited the members to attend the NAMVBC meeting in San Diego from September 17-21, 2014. As part of this meeting, DMV will give a detailed report on the autonomous vehicle regulations.

With regards to judicial matters, Ms. Parker reported that the Mega RV/Roadtrek appeals are being briefed and the Capacity of Texas writ has not been briefed.

18. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2014**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2014. The members went off the record for this discussion. At this time, the Board will not have a December General Meeting. The following meetings are planned for 2015:

- January 22, 2015, General Meeting, San Francisco;

- March 25, 2015, General Meeting, Sacramento;
- March 26, 2015, Industry Roundtable, Sacramento.

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

No additional public comment was presented. Mr. Stevens indicated that this concluded the administrative portion of the meeting.

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

SANTA CRUZ NISSAN, INC., dba SANTA CRUZ NISSAN v. NISSAN NORTH AMERICA, INC.
Protest No. PR-2358-13

Mr. Stevens read the following statement "comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order 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. Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan represented Protestant along with Michael J. Flanagan, Esq. and Danielle R. Vare, Esq. Also present were James Courtright and Ernest Courtright. Maurice Sanchez, Esq. of Baker & Hostetler LLP represented Respondent along with Cecil Davis, in-house counsel for Nissan. Chad Filiault, Area General Manager for Nissan, was also present.

21. **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 DECISION

SANTA CRUZ NISSAN, INC., dba SANTA CRUZ NISSAN v. NISSAN NORTH AMERICA, INC.

Protest No. PR-2358-13

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. Stevens moved to conditionally sustain the protest and remand the matter to the Administrative Law Judge to impose conditions and a time frame for completion. Furthermore, the parties were encouraged to set a Mandatory Settlement Conference with one of the Board's Administrative Law Judges. Mr. Brooks seconded the motion. The motion carried by a three-to-one vote with Ms. Doi concurring because she wanted the Administrative Law Judge to address whether Vehicle Code section 11713.13(g)(1)(B) was applied even though it was not effective until January 1, 2014. Mr. Lizárraga opposed the motion.

22. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Santa Cruz Nissan.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:08 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



Glenn E. Stevens
President
New Motor Vehicle Board