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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on June 17, 2015, in Hearing Room #1, at the Board's offices.

2. **ROLL CALL**

Bismarck Obando, Public Member, called the meeting of the Board to order at 10:32 a.m. Mr. Obando presided until Board President Stevens, whose flight was delayed, arrived.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
 Anthony A. Batarse Jr. Robin P. Parker, Senior Staff Counsel
 Kathryn Ellen Doi Danielle R. Vare, Staff Counsel
 David C. Lizárraga
 Bismarck Obando
 Glenn E. Stevens (arrived 11:06 a.m.)

Absent: Ryan L. Brooks
 Rahim Hassanally
 Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MARCH 25, 2015, GENERAL MEETING**

Mr. Batarse moved to adopt the March 25, 2015, General Meeting minutes. Ms. Doi seconded the motion. The motion carried unanimously.

5. **INTRODUCTION OF WILLIAM "SONNY" DOWNER, DEPUTY ATTORNEY GENERAL, ASSIGNED TO THE BOARD - BOARD DEVELOPMENT COMMITTEE**

Mr. Obando welcomed William "Sonny" Downer, Deputy Attorney General. Bill provided the members with his background and indicated that Sonny was designated as the Board's

liaison with the Attorney General's Office. Sonny indicated that he is honored to get a chance to work with the Board, that he understands that the services provided by the Board are extremely important to California, and that he looks forward to being of assistance to the members.

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

a. WEST COVINA MOTORS, INC., dba, CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
Protest No. PR-2348-12

WEST COVINA MOTORS, INC., dba, CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
Protest No. PR-2213-10

b. ADRENALINE POWERSPORTS v. POLARIS INDUSTRIES, INC.
Protest No. PR-2418-15

This item was postponed pending Mr. Stevens arrival.

7. **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, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

a. **CONSIDERATION OF PROPOSED ORDERS**

WEST COVINA MOTORS, INC., dba, CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
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Consideration of the Administrative Law Judge's: Proposed Order Granting Respondent's "Motion to Dismiss Protest for Lack of Jurisdiction" (PR-2348-12); Proposed Order Denying "Protestant's Request that the Board Exercise Its

Continuing Jurisdiction Over the Confidential Stipulated Decision of the Board Resolving Protest” (PR-2213-10); Proposed Order Granting Respondent’s “Motion to Dismiss for Lack of Jurisdiction Protestant’s Request that the Board Exercise Its Continuing Jurisdiction Over the Confidential Stipulated Decision of the Board Resolving Protest” (PR-2213-10); and Status of Franchise and Dismissal of Protest No. PR-2213-10, by the Public Members of the Board.

b. **CONSIDERATION OF PROPOSED ORDER**

ADRENALINE POWERSPORTS v. POLARIS INDUSTRIES, INC.
Protest No. PR-2418-15

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

This item was postponed pending Mr. Stevens arrival.

8. **OPEN SESSION**

The members remained in open session.

9. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1ST HALF OF FISCAL YEAR 2015-2016 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the first half of fiscal year 2015-2016. As indicated in the memo, at the December 11, 2014, General Board meeting, the Board members approved the following out-of-state travel plans for the first half of fiscal year 2015-2016.

- Two trip requests are for the Executive Director and one Board member to attend the National Association of Motor Vehicle Boards and Commissions (“NAMVBC”) Fall Workshop in September 2015.
- Two trip requests are for the Executive Director and one Board member to attend the Recreational Vehicle Industry Association’s (“RVIA”) 53rd National Trade Show in December 2015, in Louisville, Kentucky.

The staff recommended that Mr. Brennan, Miss Kindel, and a Board Member attend the NAMVBC Workshop. Additionally, if the Board adopts this recommendation, it is further requested that one of the trip requests previously approved for the RVIA be deleted to accommodate the increase in attendees at the NAMVBC workshop.

Mr. Lizárraga moved to approve the proposed attendees for the out-of-state trips for the first half of the 2015-2016 fiscal year. Mr. Alvarez seconded the motion. Mr. Brennan

indicated that he will poll the members independently concerning their interest in attending the NAMVBC; any Board member could attend on their own. The motion carried unanimously.

10. **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, David Lizárraga and Ramon Alvarez C., who ultimately recommended Jackie Grassinger as the Employee Recognition Award recipient. Jackie is the lead Mediator in the Consumer Mediation Program. She is responsible for satisfactorily resolving a number of mediation cases, collects the data for the Arbitration Certification Program fees and Annual Board Fees for manufacturers and distributors, and has recently been training two new clerical employees. Jackie is a valuable employee who does an excellent job. Mr. Alvarez moved to adopt the Committee's recommendation. Mr. Lizárraga seconded the motion. The motion carried unanimously.

11. **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. The fees don't need to be changed.

12. **BOARD FINANCIAL CONDITION REPORT FOR THE 3RD QUARTER OF FISCAL YEAR 2014-2015 - 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 2014-2015. Ms. Luke indicated that the Board expended 61% of its appropriated budget of nearly \$1.7 million through the third quarter; expenditures were \$1 million, revenues were \$ 1.5 million, and the current reserve balance is \$1.4 million. Mr. Brennan indicated that dealer fees would likely be \$71,000 more than the previous fiscal year, and there will be additional reserves because the Board won't expend its total budget. The Board is doing an excellent job managing its money.

13. **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. Ms. Grassinger indicated \$1,206,660 was collected. As indicated in the memo, the fees were collected from 42 manufacturers and distributors. The fee collection was undertaken without incident and the Board received \$3,000 for providing this service.

14. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2015-2016 - 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 2015-2016. Mr. Brennan reported that the Board's proposed budget for the upcoming fiscal year is estimated at \$1,696,638. It is an estimate because the Board is still waiting for the DMV to provide it with expenditure allowances for operating expenses and payroll for the upcoming fiscal year. Mr. Obando requested that once the DMV numbers are provided that the Board members review the budget. Mr. Alvarez moved to adopt the proposed budget. Ms. Doi seconded the motion. The motion carried unanimously.

15. **REPORT ON THE 12TH NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the Board's 12th Industry Roundtable. Ms. Vare indicated that the Roundtable was a good, informative event, and a lot of good feedback was provided from participants. There was consensus that a 45 minute lunch was adequate. The Roundtable should begin around about 9:00-10:00 a.m. and conclude about 3:00-4:00 p.m. Lastly, Ms. Vare mentioned that there were 59 attendees not including the Board members and staff, and DMV staff.

Mr. Stevens arrived and presided over the remainder of the meeting.

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

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.

b. WEST COVINA MOTORS, INC., dba, CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
Protest No. PR-2348-12

WEST COVINA MOTORS, INC., dba, CLIPPINGER CHEVROLET v. GENERAL MOTORS LLC
Protest No. PR-2213-10

Oral comments were presented before the Public Members of the Board. Michael J. Flanagan, Esq. and Torin M. Heenan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Ziad Alhassen was also present. Gregory R. Oxford, Esq. of Isaacs Clouse Crose & Oxford LLP represented Respondent.

- b. ADRENALINE POWERSPORTS v. POLARIS INDUSTRIES, INC.
Protest No. PR-2418-15

Oral comments were presented before the Public Members of the Board. Michael M. Sieving, Esq. represented Protestant. Gregory R. Oxford, Esq. of Isaacs Clouse Crose & Oxford LLP represented Respondent.

7. **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.

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The Public Members of the Board deliberated in closed Executive Session. Mr. Obando moved to adopt the Administrative Law Judge's Proposed Orders. Mr. Stevens seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

ADRENALINE POWERSPORTS v. POLARIS INDUSTRIES, INC.
Protest No. PR-2418-15

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

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

8. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Clippinger Chevrolet and Adrenaline Powersports.

16. **CONSIDERATION OF REVISED TEXT TO PROPOSED RULEMAKING CONCERNING SANCTIONS (13 CCR § 551.21) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker regarding revised text to proposed rulemaking concerning sanctions. Ms. Parker indicated that the staff proceeded with the initial rulemaking packet and the notice was published in February. ALJ Skrocki reviewed the proposed text and had further suggestions. If the Board adopts the proposed revisions, a 15-day notice modifying the proposed text will be issued to allow public comment until July 2, 2015. If there are no comments, then the Department of Finance will review the packet.

Mr. Obando moved to adopt the revised text to proposed rulemaking concerning sanctions. Mr. Lizárraga 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 both 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 regulation, 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.

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

a. Pending Legislation of Special Interest:

- (1) Assembly Bill 287 (Assembly Members Gordon, Eggman and Mark Stone; Principal Coauthor Assembly Member Wilk)
- (2) Assembly Bill 759 (Assembly Member Linder)

b. Pending Legislation of General Interest:

- (1) Assembly Bill 1178 (Assembly Member Achadjian)

c. Pending Federal Legislation of General Interest:

- (1) United States House of Representatives Bill 679 (U.S. Representative Blumenauer) - Road Usage Charge Pilot Program Act of 2015
- (2) United States House of Representatives Bill 910 (U.S. Representative Miller) - Vehicle-to-Infrastructure Safety Technology Investment Flexibility Act of 2015
- (3) United States House of Representatives Bill 1181 (U.S. Representative Schakowsky) - Vehicle Safety Improvement Act of 2015
- (4) United States Senate Bill 304 (U.S. Senator Thune) - Motor Vehicle Safety Whistleblower Act
- (5) United States Senate Bill 617 (U.S. Senator Markey) - Repairing Every Car to Avoid Lost Lives Act (RECALL Act).

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning pending legislation. Ms. Vare reported that the last day to pass bills out of the House of Origin was June 5, 2015. Senate Bill 16, which is not on the written report, was

suggested by Mr. Obando. It pertains to a \$.10 per gallon tax increase and increase in vehicle license and vehicle registration fees in order to raise money to fix California's roads until a road user fee comes into effect. Ms. Vare also indicated that she is monitoring the pilot program for this bill. Mr. Obando commented that the Governor was issuing an Executive Order and having an extraordinary session on transportation funding. He remarked that there is going to be a lot of discussion in terms of transportation funding for state highways and local roads by the end of this legislative session.

Mr. Brennan indicated that he has a meeting with DMV, the Office of Traffic Safety and NHTSA to discuss Assembly Bill 287, the Consumer Automotive Recall Safety Act, and will update the members with an e-mail.

18. **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 asked the members to think about whether they still wanted the meeting materials electronically or whether they preferred a hard copy; he will poll them individually. Since the In-Site newsletter contains information readily available on the Board's website, Mr. Brennan discussed publishing it bi-annually instead of quarterly.

Mr. Brennan also elaborated on the Road Charge Pilot Program, which is under California State Transportation Agency. The problem is that infrastructure is not keeping up with the demands of road repair and the gas tax isn't sufficient to fund the repairs. With more fuel efficient vehicles that use less gas fewer funds are available for repairs.

Mr. Brennan mentioned that even though the number of consumer mediation complaints has increased it is not directly attributed to the Board's social media.

Lastly, the members went off the record to discuss upcoming meeting dates. The October 14 meeting is now tentatively set for November 10, 2015, in Sacramento. The December 16 meeting is now tentatively set for December 7, 2015, in Riverside. These dates are dependent on whether there is any case management on the agenda.

Ms. Parker reported that 19 matters are pending. Since the members received their written report, one new consumer petition was filed and two protests were dismissed. Ms. Parker reported that eight 60-day notices of termination have been filed for cars and motorcycles and 30 for Mega RV.

With regards to judicial matters, Ms. Parker reported that Toyota filed a writ against the

Board pertaining to the request for extension of time to audit Putnam Lexus. In *Santa Cruz Nissan*, the Board staff will work the Deputy Attorney General on the Board's brief and the hearing is September 4, 2015. In *Capacity of Texas*, supplemental briefs were filed after oral arguments and the matter has been submitted.

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

No additional public comment was presented.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:20 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



Glenn E. Stevens
President
New Motor Vehicle Board