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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on June 28, 2016, at Momentum Chevrolet, 3640 Stevens Creek Blvd., San Jose, California 95117.

2. **ROLL CALL**

Glenn Stevens, President and Public Member, called the meeting of the Board to order at 11:00 a.m.

Present: Ramon Alvarez C. Robin P. Parker, Senior Staff Counsel
Anthony A. Batarse Jr. Danielle R. Vare, Staff Counsel
Ryan L. Brooks
Rahim Hassanally (arrived 11:01 a.m.)
David C. Lizárraga
Glenn E. Stevens

Absent: Kathryn Ellen Doi
Bismarck Obando
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MARCH 16, 2016, GENERAL MEETING**

Mr. Alvarez C. moved to adopt the March 16, 2016, General Meeting minutes. Mr. Lizárraga seconded the motion. The motion carried unanimously.

5. **APPOINTMENT OF DAVID C. LIZÁRRAGA TO A COMMITTEE BY THE BOARD PRESIDENT**

Mr. Stevens appointed Mr. Lizárraga as Chair of the Board Development Committee replacing Bismarck Obando. Kathryn Doi remains a member of the Committee.

6. **DISCUSSION OF STAFF RESPONSES TO CASE MANAGEMENT INQUIRIES AND SUGGESTIONS AS A RESULT OF THE INDUSTRY ROUNDTABLE - EXECUTIVE COMMITTEE**

- a. 15-day and 60-day notices of termination issued by the same franchisor.
- b. Board jurisdiction to hear and consider motions for summary judgment.
- c. Law and motion hearings without briefing.
- d. All new protests on the Board's website.
- e. Decisions on dispositive motions on the Board's website.

The members were provided with a memorandum from Bill Brennan and Robin Parker regarding staff responses to case management inquiries and suggestions as a result of the Industry Roundtable. In addition to the information contained in the memo, Ms. Parker reported that the staff is making sure that all law and motion matters get an opportunity at informal resolution prior to setting a briefing schedule with the exception of motions to dismiss since a record needs to be made. Additionally, Ms. Parker mentioned that after the Roundtable an attendee requested that the Board post Decisions on dispositive motions on the website. All such Decisions since 2000 are now on the website. Ms. Parker reported that the staff responded to all of the questions and suggestions, and after the Board meeting would e-mail the responses to the Roundtable attendees.

7. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1ST HALF OF FISCAL YEAR 2016-2017 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 1st half of fiscal year 2016-2017. As indicated in the memo, at the February 10, 2016, General Board meeting, the Board members approved the following out-of-state travel plans for the first half of fiscal year 2016-2017.

- Executive Director and one Board member to attend the National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Workshop in September 2016, in Denver, Colorado.
- Executive Director and one Board member to attend the Recreational Vehicle Industry Association's (RVIA) 54th National Trade Show in December 2016, in Louisville, Kentucky,

The staff recommended that Mr. Brennan and a Board Member attend the NAMVBC Workshop and RVIA trade show.

Mr. Stevens moved to approve the Executive Director's attendance at the proposed out-of-state trips. Mr. Brooks 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, Bismarck Obando and Kathryn Doi, who ultimately recommended Holly Victor as the Employee Recognition Award recipient. Holly is an Office Assistant in the Legal Division. Ms. Parker indicated that Holly has been doing a very good job since starting on the legal division. She is a reliable employee, personable, and willing to perform any tasks. Mr. Alvarez C. moved to adopt the Committee's recommendation. Mr. Lizárraga seconded the motion. Mr. Brooks was not present for the vote on this 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 annual discussion and consideration of the methods of determining Board fees. Ms. Parker indicated that the fees collected are sufficient to fully fund the Board's operations, are not a tax, and the staff will continue to review this every year but at this time there is no reason to change the Board's fee structure.

10. **BOARD FINANCIAL CONDITION REPORT FOR THE 3RD QUARTER OF FISCAL YEAR 2015-2016 - 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 2015-2016. Ms. Parker indicated that the Board expended 62% of its appropriated budget through the third quarter and there is \$1.48 million in reserves. The Board is still fiscally conservative and spends only when necessary. Mr. Batarse commented that the Board's finances are in good shape. Mr. Brooks wanted to make certain that the Board is not collecting too much in terms of fees and inquired as to whether it was time to think about reducing fees. Ms. Parker commented that the Board's fees are still sufficient so a fee increase or reduction is not necessary at this time but the staff would continue to monitor this.

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. Ms. Parker indicated that the Board collected \$1.2 million from 39 manufacturers and distributors. The fee collection is completed and the Board received \$3,000 for providing this service.

12. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2016-2017 - 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 2016-7 Ms. Parker reported that the Board's proposed budget for the upcoming fiscal year is \$1.7 million. Mr. Alvarez C. moved to adopt the proposed budget. Mr. Hassanally seconded the motion. The motion carried unanimously.

13. **REPORT ON THE 13TH 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 13th Industry Roundtable. Surveys were provided to the attendees in order to solicit feedback on the topics presented. Ms. Vare indicated that there were 70 participants at the Roundtable, and the feedback has been good. For 2017, Ms. Vare indicated that the staff decided to hold the Roundtable in mid-May with a Board meeting either the day before or day after. It will not be held in conjunction with the CNCDA Dealer Day event. Mr. Stevens and Mr. Brooks inquired about the change in timing. Ms. Parker indicated that the members would still attend Dealer Day and currently there is a need for a March and May meeting to consider case management. Furthermore, Ms. Parker commented that Roundtable attendees were polled a number of years ago to see if they attend the Roundtable because of Dealer Day. There didn't appear to be any overlap. Ms. Parker mentioned that the Roundtable is outgrowing DMV's facilities so the staff is working on getting a bigger auditorium with more choices for lunch and social interaction with the attendees. There may even be a reception the night before the Roundtable.

14. **CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF MANDATORY SETTLEMENT CONFERENCES TO BOARD ADMINISTRATIVE LAW JUDGES WHEREIN MERILYN WONG WOULD FUNCTION AS THE DESIGNATED SETTLEMENT JUDGE ON AN INTERIM BASIS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker regarding proposed revisions to the assignment of Mandatory Settlement Conferences to Board Administrative Law Judges wherein Marilyn Wong would function as the designated Settlement ALJ on an interim basis. Ms. Parker indicated that there were no hearings in 2015 but this year it has been a challenge to figure out what judge is going to preside over what case. ALJ Pipkin is off the assignment log due to personal reasons which leaves only two judges. The ALJ that presides over the settlement conference is precluded from presiding over the merits hearing so Ms. Parker indicated that it is necessary to pull ALJs

Woodward Hagle and Ryerson out of doing settlement conferences so the Board isn't limited to only one merits judge. Judge Wong, who normally presides over settlement conferences, is helping by presiding over a merits hearing in late fall or the beginning of the year. Ms. Parker indicated that the Board has faced similar situations in the past. The Board is looking to hire additional ALJs but it will take about a year for a new judge to be hired and trained. Mr. Stevens asked what the downside was to the staff's recommendation. Ms. Parker indicated that there was no downside, other than the parties are dependent on ALJ Wong's schedule for a settlement conference date. Mr. Stevens commented that the Board could unwind this revision after six months. Ms. Parker remarked that the intent is to unwind it and allow all of the judges to get an opportunity to preside over a settlement conference. Mr. Brooks moved to adopt the staff recommendation. Mr. Alvarez C. seconded the motion. The motion carried unanimously.

15. **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; Coauthors: Assembly Members Dabahneh, Jones, and Lackey)
- b. Pending Legislation of General Interest: none
- 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 1181 (U.S. Representative Schakowsky) - Vehicle Safety Improvement Act of 2015
 - (3) United States Senate Bill 304 (U.S. Senator Thune) - Motor Vehicle Safety Whistleblower Act
 - (4) 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 indicated that Assembly Bill 287, which was tabled, is now active and has been updated. The staff will continue to monitor this bill and provide updates. Additionally, Ms. Vare mentioned that Congress passed the FAST Act, which prohibits rental car companies with greater than 35 vehicles in their fleet to rent vehicles that are unrepaired due to a recall.

16. **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. Ms. Parker indicated that the staff is already gearing up for the January meeting with all of the publication, guide, and website updates, and already starting to work on the next Industry Roundtable.

Ms. Parker reported *Santa Cruz Nissan* settled and a buy-sell was consummated. Additionally, *Hayward Nissan* was dismissed. Twenty-four cases were closed since the last meeting and 11 new protests were filed.

With regards to court matters, Ms. Parker reported that oral arguments were heard in the *Mega RV* appeal and the matter was submitted for decision. Lastly, the Board's opening brief in *Capacity of Texas* is due July 22.

Ms. Vare indicated that two protests were filed since the members received the Executive Director's Report; one motorcycle and one automobile. Mr. Stevens wanted to know the status of the *Rusnak* protest. Ms. Parker indicated that it has been dismissed.

17. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2016**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for the remainder of 2016. The members went off the record for this discussion. Mr. Stevens indicated that the following meetings were set:

- September 13, 2016, General Meeting at 10:30 a.m. in Sacramento
- January 18, 2017, General Meeting at 9:00 a.m. in Sacramento
- March 15, 2017, General Meeting at 2:30 p.m. in Sacramento

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

The members of the audience introduced themselves and discussed their role in Momentum Auto Group. George Athan, Chief Operating Officer, indicated that they decided to bring on a "C suite" within the organization so there is a COO, CFO, vice-president of sales, vice-president of fixed operations, and vice-president of finance and insurance. They have developed a structure for not only Momentum's existing operations but for future growth. He indicated that Momentum believes in the entrepreneurial drive and spirit, and wants employees to be very engaged in their operation and accountable for what

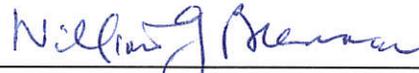
they do. Paris Ramirez, Vice President of Finance and Insurance, indicated that her role is to create consistency between the stores, audit frequently, and make sure they are doing business with the right people and selling with integrity. Chris Scali, founder of the Scali Law Firm, helped with the addition of the "C suite", and with business, legal, and compliance issues. John Thomas, General Manager of Momentum Chevrolet, is excited to work at the dealership and grow the business.

Mr. Stevens thanked Mr. Hassanally for opening the dealership to the Board and hosting the meeting.

19. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:50 a.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



Glenn E. Stevens
President
New Motor Vehicle Board