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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on November 20, 2008, at the Hilton Los Angeles Airport, Catalina C Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Alan J. Skobin, President of the Board, called the meeting of the Board to order at 9:25 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
Robert T. (Tom) Flesh Howard Weinberg, General Counsel
Alan J. Skobin Robin Parker, Senior Staff Counsel
Glenn E. Stevens
David W. Wilson

Absent: Ryan L. Brooks
Sossi Keuylian
David C. Lizárraga
Haig Papaian

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE JUNE 26, 2008, GENERAL MEETING**

Mr. Stevens moved to adopt the June 26, 2008, General Meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

5. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 2ND HALF OF FISCAL YEAR 2008-2009 THAT WERE PREVIOUSLY APPROVED BY THE BOARD AT THE FEBRUARY 11, 2008, GENERAL MEETING - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 2nd half of fiscal year 2008-2009. Mr. Brennan reported that at the February 11, 2008, General Board meeting, the Board Members approved out-of-state travel plans for fiscal year 2008-2009. It was decided at the meeting that the

Executive Committee would authorize individuals to attend. The staff initially proposed the following schedule:

- ❖ Seven trips to the National Automobile Dealers Association (“NADA”) Convention and Expo in New Orleans, Louisiana, January 24-27, 2009, as well as the National Association of Motor Vehicle Boards and Commissions (“NAMVBC”) annual Winter Workshop which will also be held in New Orleans. Requests are for five Board members and two staff (the Executive Director and Staff Manager) to attend.

Mr. Brennan reported that in light of the current fiscal situation, he revised the proposed schedule to have only one staff member attend and no one from the Board participate unless they do so on their own accord. Mr. Flesh endorsed the revised proposal but recommended Public Members not attend even on their own accord because of an appearance problem. Mr. Skobin thought that it was acceptable for Public Members to attend; however, the State should pay their registration fee but the members would be responsible for their own travel and lodging expenses.

Mr. Wilson moved to approve the following revised recommendation: Bill Brennan’s expenses and registration fee would be paid for by the Board; if any Public Member wants to attend, the Board would pay their registration fee; and if any Dealer Member wants to attend, the Board would pay for none of their expenses or registration fee. Mr. Stevens seconded the motion. The motion carried unanimously.

6. **CONSIDERATION OF RECOMMENDATION TO DESIGNATE GENERAL COUNSEL HOWARD WEINBERG AS THE BOARD’S AUDIT COMPLIANCE OFFICER - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning a recommendation to designate the General Counsel, Howard Weinberg, as the Board’s Audit Compliance Officer. Mr. Brennan reported that at the June 26, 2008, General Meeting, Mr. Flesh recommended the appointment of an Audit Compliance Officer who would report annually on the 1996 Performance Audit. Mr. Wilson moved to appoint the General Counsel as the Audit Compliance Officer. Mr. Alvarez seconded the motion. The motion carried unanimously.

7. **DISCUSSION AND CONSIDERATION OF UPDATED 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. Ms. Parker reported that the delegations were updated to reflect the current statutory language but none of the actual delegations were modified. Ms. Parker suggested that the role of the Fiscal Committee in the administrative delegations be modified by the Board to an advisory role wherein the full Board at a noticed meeting makes the ultimate determination. This pertained to limitations on procurement authority. Mr. Stevens moved to adopt the delegations and amend the limitations on procurement authority to reflect that the Fiscal Committee would make a recommendation that would ultimately be approved by the full

Board at a noticed meeting. Mr. Wilson seconded the motion. The motion carried unanimously. Ms. Parker indicated that a revised version of the delegations without the bold and strikeout font would be sent to all of the members.

8. **ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Kathy Tomono updating the development and use of the Board's website. Mr. Brennan reported that the website has been updated and is consistent with State guidelines. Mr. Weinberg reported that the Board appeals and published cases are on the website and that the staff is working to add Board decisions in protests. Ms. Parker reported that the top 10 hits on the website were as follows: (1) the home page; (2) Business, Transportation & Housing Agency; (3) the published decisions; (4) the Board Member bios; (5) the home page; (6) the *Guide to the New Motor Vehicle Board*; (7) frequently asked questions; (8) the Consumer Mediation Program; (9) the *Guide to the New Motor Vehicle Board*; and (10) the mediation complaint form.

9. **DISCUSSION AND CONSIDERATION OF REVISED FORM LETTERS USED IN THE MEDIATION SERVICES PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning revised form letters used in the Mediation Services Program. Mr. Brennan reported that the members requested at the June 26, 2008, General Meeting that five form letters be revised in order to clarify the fact that participating in mediation is voluntary. Mr. Flesh requested that the letters be consistent in their reference to business days and the number of days the recipient has to respond. Mr. Flesh moved to adopt the revised letters as amended. All of the letters should consistently refer to business days and the recipient has a specified number of business days to respond to the letter from the date of the letter. Mr. Wilson seconded the motion. The motion carried unanimously.

10. **DISCUSSION CONCERNING THE HIRING PROCESS OF BOARD ADMINISTRATIVE LAW JUDGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Linda Lighter concerning the hiring process of Board Administrative Law Judges ("ALJs"). At the May 2, 2008, General Meeting, the members requested that the hiring process for Board ALJs be presented at a future meeting. Mr. Brennan explained that the Board utilizes two sources for hiring its ALJs: (1) retired annuitants; and (2) competitive exam process. Mr. Brennan indicated that he would like the main source of the Board's ALJs remain retired annuitants.

11. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE OF MOTOMAN DISTRIBUTING FOR FAILURE TO PAY THE ANNUAL BOARD FEE (13 CCR § 553) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning whether to request the Department of Motor Vehicles ("DMV") to withhold renewal and/or suspend the existing occupational license of Motoman Distributing for

failure to pay the Annual Board Fee. Ms. Parker reported that the Board staff has collected the assessed fees from 192 manufacturers and distributors. Motoman Distributing was the only licensee that failed to pay after three written invoices and contact via telephone. Additionally, as of November 19, 2008, Ms. Parker reported that Motoman had not responded to any of the Board's inquiries and was still licensed by Occupational Licensing at DMV. Mr. Flesh moved to request the DMV to withhold renewal and to take action to suspend the occupational license of Motoman Distributing for failure to pay their annual fee. Mr. Stevens seconded the motion. The motion carried unanimously.

12. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker reporting on the Board Development Program. Ms. Parker requested Board Member feedback for purposes of planning educational presentations for 2009 and indicated that Kathryn Door, Deputy Director, Investigations Division, was scheduled to discuss trends at DMV at the January 2009, General Meeting.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2007-2008 - FISCAL COMMITTEE**

This matter was postponed until after agenda item 15.

14. **ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

This matter was postponed until after agenda item 15.

15. **DISCUSSION OF THE BOARD'S 7TH INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum and potential topics from Bill Brennan and Robin Parker concerning the Board's 7th Industry Roundtable on March 25, 2009, in Sacramento. In light of the current economic environment, the members requested that past attendees be polled concerning their anticipated attendance. Ms. Parker indicated that she would send the members a memorandum summarizing the feedback.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2007-2008 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2007-2008. Mr. Brennan reported that the Board expended 91% of its appropriated budget for the fiscal year. The Board expended 93% of its budgeted expenditures on payroll. With regards to general operating expenses, the Board spent 62% of its budgeted amount. Furthermore, he indicated that two of the Board's clerical staff have been working at DMV on a part-time basis. Mr. Brennan is working with the DMV Director to be reimbursed for this. Mr. Flesh requested that Mr. Brennan look at the costs of having the Board Meetings at alternative locations.

14. **ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR**

DETERMINING BOARD FEES - FISCAL COMMITTEE

The members were provided with a memorandum from Bill Brennan and Howard Weinberg discussing the methods for determining Board fees. Mr. Weinberg reported that Mr. Brooks requested the staff determine on an annual basis that the funds collected by the Board are fees rather than taxes.

16. **DISCUSSION CONCERNING THE FAIR POLITICAL PRACTICES COMMISSION INFORMAL LETTER DATED SEPTEMBER 2, 2008, THAT ADVISES RECENTLY READOPTED SECTION 18944.2 OF TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS DOES NOT APPLY TO THE BOARD'S USE OF A CONFERENCE ROOM PROVIDED BY A PARTY TO A PENDING ACTION FOR MANDATORY SETTLEMENT CONFERENCES OR OTHER PROCEEDINGS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning a Fair Political Practices Commission informal letter dated September 2, 2008, that advises recently adopted section 18944.2 of Title 2 of the California Code of Regulations does not apply to the Board's use of a conference room provided by a party to a pending action for a settlement conference or other proceedings.

At the June 16, 2006, General Meeting, the members authorized the legal staff to accept, subject to stipulation of the parties, the offer to use litigants' conference rooms or offices for purposes of conducting a Mandatory Settlement Conference ("MSC") so long as all of the requirements of now repealed Section 18944.2 of Title 2 of the California Code of Regulations were met.

The analysis section of the informal letter indicated as follows:

Under the facts you have presented, there is nothing to indicate that a "personal benefit" will be received by any Board official in his or her use of the conference room. The benefit, it appears, is being provided to the agency in that by receiving use of the room the agency will not have to search to obtain similar space in another building and may even avoid the cost of renting space at some other facility. The officials who participate in each proceeding, we assume, will always be provided with a room in which to perform their duties. The fact that their participation will take place in a room provided by an outside source rather than a room acquired from state resources or with state funds does not provide a personal benefit to them. Our advice is limited to the actual use of the conference room itself and does not include any items that may be tangential to its use, such as food or beverages, which clearly do provide a personal benefit and would be considered gifts.

Ms. Parker reported that in light of this letter, the Board policy adopted on June 16, 2006, is moot. The Board will still require the parties to stipulate in writing to the use of a conference room provided by one of the parties before the Board will agree to use it and will log the stipulations.

17. **REPORT ON CASE MANAGEMENT SURVEY RESULTS - POLICY AND**

PROCEDURE COMMITTEE

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the case management survey results. Ms. Parker reported that surveys were disseminated when a protest was closed August 1, 2007, through July 31, 2008. During this time period, there were 75 individual protests for a total of 53 consolidated matters closed. There were 37 surveys returned for 32 protests (only 34 were completely filled out). Ms. Parker summarized the results of the surveys as follows:

- Counsel for the parties found the Board's case management processes effective and efficient in resolving the protest dispute.
- Most attorneys do not reference the Board's website. However, those that did reference the website found it informative. This may be due to the small number of attorneys that regularly appear before the Board.
- The Board staff attorneys managing the protests are knowledgeable and assist in the expeditious resolution of the protest.
- About half of those that responded participated in Mandatory Settlement Conferences and found them for the most part useful in the resolution of protests.
- More than half of those that responded participated in telephonic hearings.
- A small percentage of protests actually proceed to a merits hearing with an average of 4-7 hearing days.

18. **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 Polly Riggerbach reporting on the assignment of cases to Board ALJs. Ms. Parker summarized the number of hearings and settlement conferences assigned to the Board ALJs in 2008.

19. **DISCUSSION AND CONSIDERATION OF ADDING ROBIN PARKER TO THE "ALTERNATE LAW AND MOTION ALJ ASSIGNMENT LOG" - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning adding Robin Parker to the "Alternate Law and Motion ALJ Assignment Log." Mr. Brennan reported that this was a cautionary request on the Board's part in light of the recent hiring freeze and the discharge of all of its ALJs. Mr. Brennan indicated that given the current fiscal situation, this may occur again and recommended that Robin Parker be added to this log. Mr. Stevens suggested that Ms. Parker preside over law and motion only when no other ALJ is available within a reasonable time frame and that the parties so stipulate. Mr. Wilson moved to add Robin Parker to the "Alternate Law and Motion ALJ Assignment Log" and be authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate. Mr. Flesh seconded the motion. The motion carried unanimously.

20. **DISCUSSION AND CONSIDERATION OF REVISING POLLY RIGGENBACH'S**

ADMINISTRATIVE LAW JUDGE APPOINTMENT TO ENCOMPASS NON-SUBSTANTIVE PROCEDURAL FUNCTIONS - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum from Bill Brennan and Polly Riggensch concerning revising Ms. Riggensch's ALJ appointment to encompass non-substantive procedural functions. Mr. Brennan reported that in light of the current fiscal situation, he recommended that Judge Riggensch's authority be expanded. After a brief discussion, Mr. Flesh moved to expand ALJ Riggensch's authority to include non-substantive procedural matters such as ordering discovery dates, briefing schedules and hearing dates for a 12-month period. This authority will be reviewed in six-months to see if the Board wants to continue the authorization or adjust the authority. Mr. Wilson seconded the motion. The motion carried unanimously.

21. **DISCUSSION AND CONSIDERATION OF AN ADDITIONAL EXTENSION OF TIME FOR ADMINISTRATIVE LAW JUDGES RIGGENBACH AND WONG TO PRESIDE OVER ALL MANDATORY SETTLEMENT CONFERENCES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Polly Riggensch concerning an additional 6-month extension of time for ALJs Riggensch and Wong to preside over all Mandatory Settlement Conferences. Mr. Brennan suggested that this time frame could be reduced to 3-months. Mr. Flesh moved to authorize ALJs Riggensch and Wong to continue to preside over all Mandatory Settlement Conferences for an additional 6 months. Mr. Wilson seconded the motion. The motion carried unanimously.

22. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Legislation that impacts the Board.
 - (1) Assembly Bill 2272 (Assembly Member Fuentes) [*Chapter 672, Statutes of 2008*]
- b. Legislation of general interest.
 - (1) Assembly Bill 2241 (Assembly Member Saldana) [*Chapter 451, Statutes of 2008*]
 - (2) Assembly Bill 2436 (Assembly Member Emmerson) [*Chapter 743, Statutes of 2008*]
- c. Pending Federal Legislation of general interest.
 - (1) U.S. House of Representatives Hill 5312 (U.S. Representative Sanchez) – "Automobile Arbitration Fairness Act of 2008"

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating them on legislation. Mr. Weinberg highlighted the legislation that was chaptered and indicated that the impact on the Board, if any, was minimal.

23. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- 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 in October the NAMVBC held its conference in Seattle. Mr. Brennan will provide the members with a written report on the topics discussed. The CalRVDA held its 15th Annual Conference on November 12, 2008, in Indian Wells. The legal staff made presentations that were very well received. He noted that the staff was working on Roundtable topics and speakers. Additionally, Mr. Brennan reminded the members that the December Special Meeting was canceled.

Mr. Flesh requested information concerning the number of dealers closing at the next meeting. Mr. Brennan indicated that he would request this information from DMV.

Ms. Parker reported that since the materials were mailed to the members, one new termination protest was filed and noted the following interesting trends on cases filed calendar year-to-date in 2008 in comparison to 2007:

- In 2007, there were 65 protests. Through November 18, 2008, there have been 38 protests.
- There were 18 termination protests in both 2007 and 2008.
- The number of establishment and relocation protests filed in 2008 year-to-date are down 50% and 40%, respectively.

Mr. Weinberg reported on judicial matters and indicated in the two *Nader Automotive Group* cases the Superior Court upheld the Board's decision. In *Forty-Niner Sierra Resources*, the court declared Mr. Wilmshurst (the dealer principal) and Forty-Niner Sierra Resources as vexatious litigants. The required \$50,000 bond was not filed.

24. **SELECTION OF BOARD MEETING DATES FOR 2009**

The members were provided with a memorandum from Bill Brennan concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Skobin went on the record and Ms. Parker announced the following meeting dates: February 5, 2009, General Meeting in Southern California; March 24, 2009, General Meeting in Sacramento; March 25, 2009, Industry Roundtable (Special Meeting) in Sacramento; and June 5, 2009, General Meeting in Riverside.

The remaining calendar for 2009 will be discussed at the February 5, 2009, General Meeting.

25. **APPOINTMENT OF DAVID C. LIZÁRRAGA TO A BOARD COMMITTEE, BY ALAN SKOBIN, BOARD PRESIDENT**

This matter was postponed until the February 2009, General Meeting.

26. **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 of the Board convened in closed Executive Session to discuss this agenda item. Mr. Skobin reported that the members discussed the performance of their Executive Director and no action was taken.

27. **OPEN SESSION**

No action was taken.

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

No additional public comment was presented.

29. **ADJOURNMENT**

Mr. Wilson moved to adjourn the meeting. Mr. Stevens seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at approximately 11:45 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Alan J. Skobin
President
New Motor Vehicle Board