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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on March 29, 2011, in Hearing Room #1, at the Board's offices.

2. **ROLL CALL**

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 2:28 p.m.

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|----------|-----------------------|------------------------------------|
| Present: | Ramon Alvarez C. | Robin Parker, Senior Staff Counsel |
| | Ryan L. Brooks | Dana Winterrowd, Staff Counsel |
| | Robert T. (Tom) Flesh | Dawn Kindel, Office Manager |
| | Peter Hoffman | |
| | Bismarck Obando | |
| | Victoria R. Pearson | |
| | Glenn E. Stevens | |
| | David W. Wilson | |

Absent: David C. Lizárraga

Mr. Alvarez C. indicated what a pleasure it was to serve as the Board's President.

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE FEBRUARY 4, 2011, GENERAL MEETING**

Mr. Flesh moved to adopt the February 4, 2011, General Meeting minutes, with the corrected signature page reflecting Mr. Alvarez C. as President. Mr. Obando seconded the motion. The motion carried unanimously.

After the discussion of the minutes, Mr. Flesh left the meeting to attend to other business and returned during agenda item 8.

5. **DISCUSSION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW FILED IN THE CALIFORNIA SUPREME COURT BY YAMAHA MOTOR CORPORATION, U.S.A**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the Board's request for consent to file an amicus curiae letter in support of Yamaha's petition for review. As indicated in the memo, the Superior Court in *Powerhouse Motorsports Group, Inc. and Timothy L. Pilg v. Yamaha Motor Corp, Inc.; Powerhouse Motorsports, Petitioner v. New Motor Vehicle Board, Respondent; Yamaha Motor Corp, Inc., Real Party in Interest*, issued an order denying Yamaha's motion for summary judgment. The ruling contained statements indicating that the Board lacked protest jurisdiction. Yamaha filed a petition for writ of mandate, prohibition, and request for stay in the Second Appellate District Court. In consultation with Glenn Stevens, Jeff Schwarzschild, Deputy Attorney General, and Augustin Jimenez, General Counsel, Business, Transportation & Housing Agency ("Agency"), the Board filed a declaration in conjunction with Yamaha's writ that contained statistical information concerning the types of matters that are filed with the Board, i.e., protests, petitions and appeals, and the numbers of each. The Appellate Court denied Yamaha's petition for writ of mandate, prohibition, and request for stay.

As indicated in the memo, on Monday, February 28, 2011, Yamaha filed in the California Supreme Court a petition for review of the court of appeal's denial of their writ petition. Yamaha asked the Board to submit an amicus letter to the California Supreme Court. The necessary approvals from Glenn Stevens, the Public Members (since this matter involves a dispute between a franchisee and franchisor), Agency, and the Governor's Office have been received. The amicus curiae letter in support of Yamaha's petition for review was filed on March 9, 2011. The jurisdictional issue presented is whether final Board decisions are binding with regard to other legal proceedings when the underlying writ concerning the final Board decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action.

Ms. Parker noted that the Public Members per the Board adopted policy provided the staff permission to file the amicus curiae letter. Per that policy, the staff reported the action taken to the full Board.

6. **ANNUAL REVIEW OF THE BOARD'S MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with the Board's current Mission and Vision Statements. Ms. Parker indicated that these statements have been in place since June 5, 2009. The Executive Committee reviewed these statements and decided not to make any changes. No changes were suggested by any other members of the Board.

7. **REPORT ON NON-SUBSTANTIVE CHANGES TO THE PROPOSED REGULATORY TEXT OF SECTIONS 550, 551.12, 551.21, 551.23, 567, 583, 591, 594, AND 597 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning non-substantive changes to the proposed regulatory amendments that were adopted by the Board in February 2010. Ms. Parker reported that the Board delegates to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Non-substantive changes suggested by the Office of Administrative Law or Board staff are submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting. As indicated in the memo, during the final review by the Office of Administrative Law, a number of non-substantive changes were suggested and approved by the Executive Committee as follows:

Section 550: Definitions.

The reference section was clarified to encompass all protests for vehicles and RVs by specific Vehicle Code section instead of a general reference to Sections 3050-3079.

Section 551.12: Notice of Assignment of Administrative Law Judges; Peremptory Challenges.

Language originally proposed to be deleted was maintained for clarity. The peremptory challenge should be filed within the time specified from the date of the order of time and place of hearing identifying the administrative law judge.

Section 551.21: Sanctions – Bad Faith Actions.

In subdivision (e), “members” was changed to “members”. In the reference, Vehicle Code section 3050.2 was added and *Nader Automotive Group, LLC, et al. v. New Motor Vehicle Board* was deleted because OAL discourages the use of cases in the reference section.

Section 551.23: Interpreters and Accommodation.

In subdivision (d), the Government Code section was changed from “11435.20” to “11435.30”.

Section 567: Form of Appeal and Section 583: Form; Separate Protests.

The reference to *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* was deleted because OAL discourages the use of cases in the reference section.

Section 591: Notice of Hearing of Protest.

There were minor, grammatical changes.

Section 594: Size of Paper, Pagination, Etc.

The reference in Section 594(h) to “page numbers” was deleted to eliminate the inconsistency about the location of the page number and to clarify that the Board is not mandating that page numbers be contained in the footer.

Section 597: Last Page; Signature.

In Section 597(d), the "or" was changed to "and" to clarify that the Board may accept for filing papers, documents, *and* exhibits that bear a copy of a signature.

Ms. Parker indicated that all of the proposed regulatory changes have gone through the rulemaking process and are effective.

8. **DISCUSSION AND CONSIDERATION OF THE BOARD'S LEASE ON ITS CURRENT FACILITY, POTENTIAL ALTERNATIVE LOCATIONS, AND THE PROCESS FOR ACQUISITION OF A BUILDING INCLUDING THE COSTS AND PROS/CONS BY JOHN HANSEN, CHIEF, DMV FACILITIES OPERATIONS BRANCH - ADMINISTRATION COMMITTEE**

John Hansen provided detailed information on the Board's current lease, the cost and availability of moving in the midtown area, available State buildings and the cost, and the timeframe and cost of buying or constructing a building. Mr. Hansen also discussed the facility improvements that DMV is currently embarking on at its headquarters in Sacramento in addition to its long-term plan to construct new facilities on the site formerly occupied by CHP. Mr. Hansen indicated that there was room for the Board in this master plan.

A number of questions requiring follow-up were posed to Mr. Hansen and Miss Kindel by the members including, but not limited to, the following: Whether the State has any space downtown that would work for the Board? Whether a survey has been done of where the Board's employees are located to make sure they are not being displaced? What would the cost be if the Board moved to the DMV Headquarters Master Plan? What other "Class A" type of buildings are for sale in the area? What are the challenges with bond financing? What other State leases might be coming up so that the Board could combine its buying power with another agency? The members requested that Mr. Hansen come back to the Board to answer the questions posed. This matter will be agendized for the next meeting.

9. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

Bill Brennan and Dawn Kindel provided the Board with a memorandum concerning the annual update on training attended by staff. Miss Kindel reported that the Board continues to use the National Judicial College and their webcasts as a way to train the staff and ALJs.

10. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Jackie Grassinger updating the Board Consumer Mediation Program. Ms. Grassinger indicated that the number of phone calls and cases received were slightly less than reported in the previous year. Additionally, she reported that the Consumer Mediation Services Program continues to be successful with 391 cases and 795 telephone calls in fiscal year 2009-2010. Out of the 391 cases, 286 cases were mediated with over 69% of those cases being successfully

mediated. In response to a question from Ms. Pearson, Ms. Grassinger indicated that only 22 manufacturers have consumer arbitration available and 169 manufacturers do not offer arbitration.

Ms. Pearson raised the issue of the Board promoting the Consumer Mediation Program. There was a lengthy discussion by the members including the feasibility of advertising the Consumer Mediation Program in light of the 1996 Performance Audit; the potential increases in workload, costs, and staffing; and other State agencies that would need to be consulted including the Department of Consumer Affairs, Agency, and the DMV along with the Brown Administration. This matter will be on the next agenda.

11. **BOARD FINANCIAL CONDITION REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2010-2011 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition for the 2nd quarter of 2010-2011. Miss Kindel reported that the Board expended 36% of its appropriated budget through the second quarter of the current fiscal year and there was nothing out of the ordinary to report. Miss Kindel indicated that the staff closely monitors dealer license revenues because they fluctuate each month.

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

- a. Legislation of Special Interest - none.
- b. Legislation of General Interest.
 - (1) Senate Bill 642 (Senator Padilla).
- c. Pending Federal Legislation of General Interest.
 - (1) United States House of Representatives Bill 75 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2011.

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. Ms. Parker reported that there were no bills pending that directly affect the Board's enabling statute. However, there were two bills of general interest - Senate Bill 642 and House of Representatives Bill 75. She indicated that not much has happened with legislation so far this year but that a number of bills are being monitored. The members requested that Assembly Bill 1215 be added to the report for the next meeting.

13. 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.

Ms. Parker reported that case management is busy in that 22 protests were resolved since January 1, 2011, and 12 new protests were filed. Since the members received their written report, 3 protests were dismissed. Mega RV is going to a merits hearing in May and no cases are languishing other than those in bankruptcy. Ms. Parker indicated that the California New Car Dealers Association ("CNCDA") filed a petition against Chrysler which will be on the next meeting agenda. Mr. Hoffman stated that both Victoria Pearson and he are Board of Directors for the CNCDA. During a meeting with the CNCDA when the discussion of the petition came up, Mr. Hoffman and Ms. Pearson recused themselves. Mr. Hoffman wanted to make sure that they were okay participating in the overall decision in the petition. Ms. Parker indicated that the staff would look into this issue.

With regards to Administrative Matters, Ms. Parker reported that rulemaking will begin in the next month or so. Additionally, she indicated that Administrative Law Judge Marybelle Archibald resigned effective after the proposed decision in *Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.* (Protest No. PR-2265-10) is completed. The members moved the June 7, 2011, meeting to May 26 at 10:30 a.m., in Los Angeles.

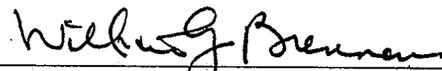
14. PUBLIC COMMENT. (GOV. CODE § 11125.7)

No additional public comment was presented.

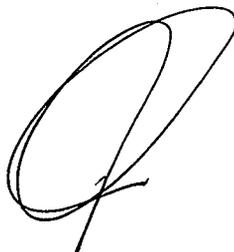
15. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 3:44 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director



APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board