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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on September 27, 2011, at the Hilton Los Angeles Airport, Newport B Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 10:31 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director  
Ryan L. Brooks (arrived 10:50 a.m.) Robin Parker, Senior Staff Counsel  
Robert T. (Tom) Flesh  
Peter Hoffman  
David C. Lizárraga  
Bismarck Obando  
Glenn E. Stevens

Absent: Victoria R. Pearson  
David W. Wilson

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MAY 26, 2011, GENERAL MEETING**

Mr. Obando moved to adopt the May 26, 2011, General Meeting minutes. Mr. Stevens seconded the motion. Mr. Flesh did not vote since he did not attend the meeting. The motion carried unanimously.

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

Given these matters involve a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Glenn Stevens, Public Member and Vice President.

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 this is an adjudicative matter as described in Government Code section 11125.7(e), and therefore members of the public may not comment on such matters.

- a. SHAYCO, INC., dba ONTARIO VOLKSWAGEN v. VOLKSWAGEN OF AMERICA, INC.  
Protest No. PR-2265-10

Oral comments were presented before the Public Members of the Board. Michael J. Flanagan, Esq. and Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Allen Resnick, Esq. and Ryan S. Mauck, Esq. of Jeffer, Mangels, Butler & Mitchell LLP represented Respondent.

- b. SANTA MONICA GROUP, INC. v. GENERAL MOTORS LLC  
Protest Nos. PR-2263-10 and PR-2264-10

Oral comments were presented before the Public Members of the Board. Michael M Sieving, Esq. of Callahan Thompson Sherman & Caudill LLP represented Protestant. Mr. and Mrs. Naimi, the owners of Protestant, were also present. Mr. Kayvan Naimi presented comments on behalf of Protestant. Gregory R. Oxford, Esq. of Isaacs Clouse Crose & Oxford LLP represented Respondent.

- c. LEEHAN INC. HANLEES HILLTOP NISSAN v. NISSAN NORTH AMERICA, INC.  
Protest No. PR-2307-11

Oral comments were presented before the Public Members of the Board. Michael S. Sieving, Esq. of Callahan Thompson Sherman & Caudill LLP represented Protestant. Ronnie McMahon, Esq. of Nelson Mullins Riley & Scarborough, LLP represented Respondent.

6. **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.

a. **CONSIDERATION OF PROPOSED DECISION FOLLOWING REMAND**

SHAYCO, INC., dba ONTARIO VOLKSWAGEN v. VOLKSWAGEN OF AMERICA, INC.

Protest No. PR-2265-10

Consideration of the Administrative Law Judge's Proposed Decision Following Remand, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Flesh moved to reject the Administrative Law Judge's Proposed Decision with regards to the good cause factor in Vehicle Code section 3063(b), sustain the protest, and the Board in consultation with the staff will draft its own decision which will be considered at the December 7, 2011, General Meeting (this date was subsequently changed to December 13). Mr. Obando seconded the motion. The motion carried by a four-to-one vote with Mr. Brooks abstaining since he missed some of the presentation.

b. **CONSIDERATION OF PROPOSED DECISION RE: CROSS MOTIONS BY PROTESTANT AND RESPONDENT**

SANTA MONICA GROUP, INC. v. GENERAL MOTORS LLC

Protest Nos. PR-2263-10 and PR-2264-10

Consideration of the Administrative Law Judge's "Proposed Decision Re: Cross Motions by Protestant and Respondent", by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's "Proposed Decision Re: Cross Motions by Protestant and Respondent". Mr. Stevens seconded the motion. The motion carried by a four-to-one vote with Mr. Lizárraga opposed.

c. **CONSIDERATION OF PROPOSED ORDER**

LEEHAN INC. HANLEES HILLTOP NISSAN v. NISSAN NORTH AMERICA, INC.

Protest No. PR-2307-11

Consideration of the Administrative Law Judge's "Amended Proposed Order Granting Respondent's Motion to Dismiss Second Protest", by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Order. Mr.

Brooks seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Agenda Items 6(a), 6(b), and 6(c). Mr. Alvarez C. presided over the remainder of the meeting. The members and staff took a 20 minute break.

8. **DISCUSSION AND CONSIDERATION OF THE DEPARTMENT OF MOTOR VEHICLE'S INVESTIGATION IN CALIFORNIA NEW CAR DEALERS ASSOCIATION V. CHRYSLER GROUP, A LIMITED LIABILITY COMPANY, PETITION NO. P-458-11, BY THE PUBLIC AND DEALER MEMBERS OF THE BOARD**

Prior to accepting comments of counsel and members of the public, Mr. Alvarez C. read the following statement:

Given this is now an adjudicatory matter before the Department of Motor Vehicles which will ultimately be heard by the Office of Administrative Hearings, the Board's role at the meeting is limited to reviewing the Accusation and taking public comment, if any. The Board could ultimately end up reviewing this matter after the DMV makes its final decision on the Accusation, if Chrysler Group, LLC files an Appeal of that decision with the Board.

On September 14, 2011, the DMV filed an Accusation against: Chrysler LLC (Old Chrysler), Chrysler Group LLC (New Chrysler), La Brea Avenue Motors, Inc., dba Motor Village LA, and Alhambra Chrysler Jeep Dodge, Inc., dba Alhambra Chrysler Jeep Dodge. The Accusation alleged a number of Vehicle Code violations for illegal competition (Veh. Code § 11713.3(o), notice violations (Veh. Code §§ 11713.3(o)(3)(A), 11713.3(o)(3)(B), and 11704(c)), and making false statements to DMV (Veh. Code § 20).

Oral comments were presented before the Public and Dealer Members of the Board because this petition does not involve a franchisee and franchisor. Peter K. Welch, Esq., President of the California New Car Dealers Association represented Petitioner. Gwen J. Young, Esq. and Mark T. Clouatre, Esq. of Wheeler Trigg O'Donnell LLP represented Respondent. Public comment was presented by David Ellis of Glendale Dodge, LLC.

No action was taken by the Board in light of the Accusation filed by the DMV.

15. **DISCUSSION AND CONSIDERATION OF PUBLIC COMMENTS RECEIVED SO FAR ON THE BOARD'S PROPOSED RULEMAKING FOR SECTION 553 (ANNUAL BOARD FEE) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

This matter was taken out of order to accommodate Mr. Welch's schedule. The members

were provided with a memorandum from Bill Brennan and Robin Parker concerning the public comments received so far on the Board's proposed rulemaking to reinstate the annual Board fee from \$225 per year to \$300 per year for new motor vehicle dealers and from \$.338 per vehicle to \$.45 per vehicle for new motor vehicle manufacturers and distributors, with a minimum of \$300.

As indicated in the memo, industry support of the fee reinstatement was sought from the vehicle, motorcycle and recreational vehicle industries. Any comments submitted in support of or in opposition to the proposed regulation are brought before the Board for its consideration at a noticed meeting. Ms. Parker reported that the California Recreation Vehicle Dealers Association submitted public comments that supported the Board's fee reinstatement.

Peter Welch, President of the California New Car Dealers Association, presented oral comments in support of the Board's proposed fee reinstatement. Mr. Welch indicated that the Board plays an "important role in our industry and we're proud to support [it]. So thank you very much."

Ms. Parker reported that given the current time frame, these comments were being brought before the Board prior to the close of the public comment period in the event there are no additional public comments. As indicated in the memo, if additional comments are timely submitted they will be agendaized for Board consideration as well. The public comment period will close around October 31.

Mr. Brooks moved to accept these public comments that are in support of the Board's proposed rulemaking. Mr. Obando seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF OUT-OF-STATE TRIPS FOR FISCAL YEAR 2011/2012 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 1<sup>st</sup> half of fiscal year 2011-2012. As indicated in the memo, at the February 4, 2011, General Board meeting, the Board members approved out-of-state travel plans for fiscal year 2011-2012. Mr. Brennan reported that Executive Order B-06-11 bans travel both in-state and out-of-state unless it is mission critical or there is no cost to the state. All but one of the Board's trip requests was denied. The only out-of-state trip approved for this fiscal year is one trip to the National Association of Motor Vehicle Boards and Commissions meeting.

Mr. Hoffman moved to approve Bill Brennan attending the meeting. Mr. Lizárraga seconded the motion. The motion carried by a six-to-one vote with Mr. Obando opposed.

10. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Bill Brennan and Robin Parker. Ms. Parker reported that two versions of the *Guide* were provided given the number of substantive changes. There was a version that indicated the changes in strikeout and italic/underline font and a "clean version" that made it easier to read for content. The *Guide* incorporated the regulatory changes that were effective in March 2011.

Mr. Stevens moved to adopt the revised *Guide to the New Motor Vehicle Board*. Mr. Hoffman seconded the motion. The motion carried unanimously.

The members requested that Peter Welch be contacted to mention the revised *Guide* in the California New Car Dealers Association newsletter.

The members addressed providing the meeting materials electronically or posting the materials on the website that were password protected. This matter will be addressed by the staff.

After the discussion of this item, Mr. Flesh wanted to ensure that the Board was in compliance with the Governor's Executive Order concerning travel to make sure the proposed trip in Agenda Item 9 fit within an exemption and that there was a written record of the approval. Mr. Brennan indicated that there was a chain of e-mails from Business, Transportation & Housing Agency and the Governor's representative, Jacob Appelsmith.

11. **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 reported that representatives from CalRVDA and the Recreation Vehicle Industry Association are planning to attend the January or February meeting to discuss the legislative irregularities with Article 5 of the Vehicle Code pertaining to RV protests. Ms. Parker indicated that Bill Brennan is working with Tesla and Nissan to schedule a tour of their facilities or to have them bring cars to a meeting so that the Board Members could test drive them. Mr. Flesh indicated that he wanted a topic pertaining to alternative fuel vehicles including the infrastructure and that the Board invite any and all electric car companies to the event. Mr. Obando suggested a futurist from a bank or an administration to talk about the overall economy and where the economy is going. Mr. Brooks expanded Mr. Flesh's suggestion to include inviting all renewable energy car makers.

12. **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 concerning the Board's collection of the Arbitration Certification Programs' ("ACP") Annual Fee. As indicated in the memo, the Board collected \$1,097,000 to fund the ACP. Mr. Brennan indicated that the Board has fully collected the fees required.

13. **DISCUSSION AND CONSIDERATION OF 2012 INDUSTRY/ATTORNEY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with draft topics that were generated by the staff. Mr. Brennan went through the draft topics and indicated they were a working document and that he wanted to solicit recommendations from the members. There was a lengthy discussion on potential topics. Mr. Lizárraga suggested a topic pertaining to the impact on minority dealers given the economy. Mr. Flesh proposed separating the Industry Roundtable from the Attorney Roundtable. The staff will continue to work with the Committee on proposed topics.

14. **DISCUSSION AND CONSIDERATION OF MODIFYING THE BOARD'S PARLIAMENTARY PROCEDURES CONCERNING DEBATE AND VOTING - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised Parliamentary Procedures. Ms. Parker passed out a corrected page 3 of the revised Parliamentary Procedures. Ms. Parker reported that at Messrs. Hoffman's and Flesh's requests, the Parliamentary Procedures concerning debate and voting were being amended to more accurately reflect the Board's practice as follows:

In any order of business before the Board which requires Board action or resolution, the Board shall have the opportunity to debate the matter before taking action thereon. Debate is any spoken comment on the merits of a pending matter, whether or not a motion has been made regarding the issues raised by the agenda item. At any time during the debate on an item, any Board Member may make a motion regarding the matter. If a motion is made regarding a particular item, the President or presiding officer shall ask for a second. If there is no second, the motion dies and the Board may continue its debate. If there is a second, the President or presiding officer shall ask if there is any further discussion. If there is no further discussion, then the matter shall be voted upon. If a dispute arises as to whether debate shall continue, the issue shall be resolved by majority vote, unless there is a motion "to order the previous question," in which case an immediate vote must be taken requiring a two-thirds majority.

Mr. Flesh moved to adopt the revised Parliamentary Procedures. Mr. Hoffman seconded the motion. The motion carried unanimously.

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

- a. Legislation of Special Interest.
  - (1) Senate Bill 642 (Senator Padilla).
  - (2) Assembly Bill 656 (Assembly Member Huber).
- b. Legislation of General Interest.
  - (1) Assembly Bill 1215 (Assembly Member Blumenfield).
- 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. Mr. Hoffman reported that Senate Bill 642 and Assembly Bill 1215 were both signed by the Governor. Ms. Parker reported that Senate Bill 656 which provided for a sunset review of the Board was amended to take the Board out of review for the time being. This was due to the lobbying efforts of the California New Car Dealers Association. Mr. Brennan indicated that the Board will eventually be subject to a sunset review. The members requested that Peter Welch be consulted to provide statistical information concerning the industry to help them respond to a future sunset review. Ms. Parker reported that there had been no activity on the federal legislation.

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 reported that Jeff Schwarzschild, Deputy Attorney General, has left the AG's office. Mr. Brennan has requested another Deputy be assigned to represent the Board. Mr. Brennan reported that ALJ Archibald has resigned and that in the next agenda item the members will consider three ALJ candidates. Lastly, he reminded the members that the

LA Auto Show was November 16 and 17.

Ms. Parker reported that since the members received their written report, there had been one new modification protest filed and two protests dismissed. A total of 36 matters were currently pending. There had only been 32 notices of termination this year. Also, the number of protests filed was down from last year; there have been 34 year-to-date compared to 85 protests last calendar year. Lastly, Ms. Parker reported that the merits hearing in *Mega RV* had commenced and was proceeding for a number of days. Another protest was set for a 10-day merits hearing beginning in October.

18. **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 THE ADMINISTRATIVE LAW JUDGE APPLICANTS, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The members of the Board convened in closed Executive Session to discuss this agenda item.

19. **OPEN SESSION**

The members returned from Open Session and Bill Brennan announced that the Board hired the three ALJ candidates: Lonnie Carlson, Kymberly M. Pipkin and Victor D. Ryerson.

20. **SELECTION OF BOARD MEETING DATES FOR 2012**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2012. The members went off the record for this discussion. The members decided to postpone this discussion to the December 7 meeting (subsequently changed to December 13).

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

No additional public comment was presented.

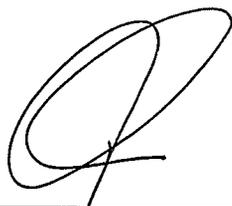
22. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 3:15 p.m.

Submitted by

  
\_\_\_\_\_  
WILLIAM G. BRENNAN  
Executive Director

APPROVED:



\_\_\_\_\_  
Ramon Alvarez C.  
President  
New Motor Vehicle Board