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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on March 20, 2012, 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 2:17 p.m.

Present: Ramon Alvarez C.
Ryan L. Brooks
Peter Hoffman
Bismarck Obando
Victoria Rusnak (formerly Pearson)
Glenn E. Stevens
David W. Wilson

William G. Brennan, Executive Director
Robin Parker, Senior Staff Counsel
Dana F. Winterrowd, Staff Counsel
Dawn Kindel, Office Manager

Absent: Robert T. (Tom) Flesh
David C. Lizárraga

3. PLEDGE OF ALLEGIANCE

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

4. APPROVAL OF THE MINUTES FROM THE DECEMBER 13, 2011, GENERAL MEETING

Mr. Stevens moved to adopt the December 13, 2011, General Meeting minutes. Mr. Obando seconded the motion. The motion carried unanimously.

5. 2012 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE

Mr. Stevens moved to nominate Mr. Alvarez C. as President. Mr. Brooks seconded the motion. The motion to nominate Mr. Alvarez C. as President carried unanimously.

Given the uncertainly of the terms of Ms. Rusnak, and Messrs. Stevens and Wilson, Mr. Brennan recommended that they not be considered for the office of Vice President.

Mr. Hoffman moved to nominate Mr. Obando as Vice President. Mr. Wilson seconded the motion. The motion to nominate Mr. Obando as Vice President carried unanimously.

6. APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT

After a brief discussion off the record, President Alvarez C. made the following committee appointments:

- ADMINISTRATION COMMITTEE
  Peter Hoffman, Chair
  Ryan Brooks, Member

- BOARD DEVELOPMENT COMMITTEE
  Ryan Brooks, Chair
  Bismarck Obando, Member

- EXECUTIVE COMMITTEE
  Ramon Alvarez C., President
  Bismarck Obando, Vice President

- FISCAL COMMITTEE
  Victoria Pearson, Chair
  Tom Flesh, Member

- GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE
  Tom Flesh, Chair
  David Wilson, Member

- POLICY AND PROCEDURE COMMITTEE
  David Wilson, Chair
  Glenn Stevens, Member

7. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS", BY BOARD PRESIDENT**

The members were provided with a memorandum from Bill Brennan and Robin Parker. Ms. Parker indicated that since a Dealer Member is President and a Public Member is Vice President, this matter is no longer necessary. A designee needs to be appointed when Dealer Members make up the Executive Committee. This matter was taken off the agenda.

8. **DISCUSSION AND CONSIDERATION OF THE PENDING SUNSET REVIEW OF THE NEW MOTOR VEHICLE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum and Self-Evaluation Report from Bill Brennan. They were also provided with a copy of the Sunset Review Committee staff report. Mr. Brennan indicated the Committee report was complimentary towards the Board, the Board is within its budget, doing what it is supposed to by statute, and has industry respect and support. During the Committee hearing on March 14, a representative from a public agency that is supported by the San Diego School of Law (Ed Howard) made public comments. These comments were concerned that costs paid by the industry to support the Board are being passed on to the consumer. Peter Welch of the California New Car Dealers Association made comments favorable to the Board. Skip Daum of the California Recreation Vehicle Dealers Association (CalRVDA) and John Paliwoda of the California Motorcycle Dealers Association (CMDA) also presented public comments in support of the Board. There were no manufacturer speakers but through conversations with Mr. Brennan, they were not opposing the Board. Mr. Brennan indicated that the members of the Committee found his comments concerning the composition of the Board offensive; they would like the composition to diversify. Lastly, Mr. Brennan indicated that he provided oral and written comments in response to the Committee report. Ms. Parker indicated that John Sims, a professor of McGeorge School of Law, presented comments on behalf of Consumers for Auto Reliability and Safety (CARS). Mr. Brennan stated that further Committee action is anticipated and that he will keep the Board informed.

9. **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. Mr. Brennan indicated that these statements have been in place since June 5, 2009. Mr. Brennan recommended that the Board continue with the current statements. Mr. Brooks indicated that he would like to see the statements amended to reflect the reduction on the burden to taxpayers by having the Board provide these services. The staff will work with the Executive Committee on a revision. This matter will be on the May 22, 2012, agenda for Board consideration.

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

The members were provided with a memorandum from Bill Brennan and Jackie Grassinger concerning the annual update on the Board Consumer Mediation Program. Mr. Brennan reported that the time it takes to mediate a complaint has been reduced and electronic complaint forms have helped in this regard. The staff has sent the inter-agency letters approved by the Board and the Board's website assists consumers as well. As indicated in the memo the program received a total of 347 cases and handled 736 telephone calls during fiscal year 2010-2011. Of the 347 cases received, 280 were mediated; 70% were mediated successfully. Mr. Brennan reported that this is a successful program. Ms. Rusnak indicated that this was a good, effective program. Mr. Brooks would like to see this program advertised and disagrees with the Audit because the Board is governed by statute. Mr. Brooks inquired as to whether information on the mediation program could be put in the DMV materials that are sent with licenses. The Board staff will look into this.

11. 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 the Guide was thoroughly revised and adopted at the September 27, 2011, General Meeting. There were necessary changes for 2012 that are limited to the title page and the section entitled "New as of 2012." The page references on the table of contents have been updated accordingly.

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

12. DISCUSSION AND CONSIDERATION OF THE ALLOCATION OF COURT REPORTER FEES IN LIGHT OF SECTION 551.7 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - ADMINISTRATION COMMITTEE

The members were provided with a memorandum from Bill Brennan and Dana Winterrowd concerning the allocation of court reporter fees in light of Section 551.7 of Title 13 of the California Code of Regulations. Mr. Winterrowd reported that the court reporter fees have been exceptionally high given the number of merits hearings this fiscal year. A modification of the Board's policy in this regard would allow the Board to assign the costs of reporting hearings and dispositive motions that take more than one day to complete to the parties equally; they would bear the costs of reporting those proceedings during those extra days. Mr. Winterrowd indicated that it costs the Board about $1,400 per day to report a hearing. The *Mega RV* hearing that lasted 35 days cost $48,000 to report. Lastly, electronic reporting was an alternative considered. However, Mr. Winterrowd indicated that it is about the same costs as a stenographer.

As indicated in the memo, through February 1, 2012, in the current fiscal year (July 1, 2011, through February 1, 2012), the Board incurred $67,792.46 in total reporting costs for northern California. The amount budget for reporting costs in northern California for three years ending February 28, 2013, is $54,374.40. For comparison, Mr. Brennan indicated that during fiscal year 2008-2009, the Board incurred $18,000 in reporting costs, in 2009-2010, it incurred $30,000, and in 2010-2011, it incurred $5,000.

Board staff recommended that the Board adopt the following amended policy concerning allocation of reporting costs:

For all merits hearings and dispositive motions, reporting costs will be allocated as follows:

- For the first hearing day, the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.

- For each subsequent day, the Board will arrange reporting services and will order the parties, on an equal basis, to reimburse the Board for reporter appearance fees, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

- In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of reporter appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

After a brief discussion, Mr. Brooks moved that after the first day of hearing, the parties share the court reporter costs. Ms. Rusnak seconded the motion. Mr. Brooks amended his motion to adopt the memo as a whole. Ms. Rusnak seconded the motion. The motion carried unanimously.

The chart in the memo summarizes the policy adopted by the Board:

Circumstances	Reporter Appearance Fees, Delivery Fees and Any Other Costs	Transcript Fees
Hearings on the merits and dispositive motions – First Day	Board	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions – After First Day	Participating parties	Participating parties
Other motions (Venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

13. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2012-2013 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the out-of-state travel plans for fiscal year 2012-2013. Proposals for five trips were requested including the following:

- Three trip requests are for the Executive Director, Chief of Staff, and one public Board member to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop, September 19-22, in Alexandria, Virginia.

- One trip request is for the Executive Director to attend the Recreational Vehicle Industry Association's 50th National Trade Show in November 2012, in Louisville, Kentucky.

- One trip request is for the Executive Director to attend the National Automobile Dealers Association Convention and Expo in February 2013, in Orlando, Florida.

Dawn Kindel indicated that once these requests have been approved by the Board, they will go to the Department of Motor Vehicles. Once final administration approval is received, the Executive Committee will authorize which individuals will actually attend these trips.

Mr. Hoffman moved to approve the five out-of-state trips requested by the Executive Director. Mr. Stevens seconded the motion. The motion carried unanimously.

14. **CONSIDERATION OF 2012 REVISIONS TO THE *INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS*, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors* from Bill Brennan and Robin Parker. Ms. Parker reported that the Guide was minimally revised. As indicated in the memo, the title page added Dana Winterrowd. The contact for Occupational Licensing was also updated to reflect a new contact and phone number. The following changes were also added:

- Page 2 was updated to reflect the recent promulgation of Section 593.1 of Title 13 of the California Code of Regulations. It clarifies that notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. Furthermore, notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

- Footnote 4 on page 5 was updated to reflect Buick as an example instead of Pontiac.

- Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius of a privately owned dealership of the same line-make. There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The factory notices filed with the Board have been amended and those changes are reflected on pages 14 and 16.

Mr. Wilson moved to adopt the revised Guide. Mr. Obando seconded the motion. The motion carried unanimously.

15. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2011 are as follows:

- The Board amended its Parliamentary Procedures with regards debate and voting 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.

- To reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program an inter-agency memo will be sent to agencies the Board refers to and those that refer to the Board

- The Board appointed three Administrative Law Judges: Lonnie M. Carlson, Kymberly M. Pipkin and Victor D. Ryerson. Once these judges are trained they will added to the assignment logs.

- Judge Marybelle Archibald resigned.

- The annual report on the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation and Housing Agency, and the resultant Corrective Action Plan has been made an exception report.

- The annual review of Board delegations in compliance with the 1996 Performance Audit conducted by Business, Transportation and Housing Agency has been made an exception report.

No Board action was taken as this was for information only.

16. **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 Dana Winterrowd concerning the assignment of cases to Board ALJs in 2011. Mr. Winterrowd reported that Judge Archibald resigned and the Board recently hired three new Administrative Law Judges. Mr. Brennan indicated that Judge Ryerson handled his first merits hearing.

17. **CONSIDERATION OF THE 2012 EDITION OF THE *NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK* - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Administrative Law Judges'*

Benchbook from Bill Brennan and Robin Parker. Ms. Parker reported that the Benchbook was thoroughly revised and adopted at the December 13, 2011, General Meeting. The changes for 2012 are limited to the title page and the section entitled "New as of 2012."

Mr. Stevens moved to adopt the revised *Administrative Law Judges' Benchbook*. Mr. Wilson seconded the motion. The motion carried unanimously.

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

a. Legislation of Special Interest.

(1) Assembly Bill 1992 (Assembly Member Huber).

b. Legislation of General Interest.

(1) Assembly Bill 1447 (Assembly Member Feuer)
(2) Senate Bill 103 (Senator Liu)
(3) Senate Bill 956 (Senator Lieu)
(4) Senate Bill 990 (Senator Vargas)

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 Dana Winterrowd concerning pending legislation. Mr. Winterrowd reported that Assembly Bill 1992 has been referred to the Transportation Committee and the Committee on Business, Professions and Consumer Protection. A hearing is set for April 11 on Senate Bill 956 before the Senate Committee on Banking and Financial Institutions and a hearing is set for March 27 on Senate Bill 990 before the Senate Transportation and Housing Committee.

19. **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 discussed the 9th Industry Roundtable which is scheduled for March 21. He indicated the Roundtable has a full program with good speakers and expects about 90 attendees.

Mr. Winterrowd reported that since the members received their written report, there had been no new protest filed. A total of 28 protests were currently pending.

Ms. Parker indicated that the Proposed Decision in *Laidlaw's v. Harley Davidson* would be heard by the Board at the May 22 meeting. Furthermore, there needs to be a late August meeting to accommodate five Proposed Decisions and a dispositive motion in *Mega RV v. Roadtrek*. Additionally, the Proposed Decision in *Riverside v. Harley-Davidson* will be considered in late August. The *Mega RV* matters involve both Public and Dealer Members.

With regards to judicial matters, Mr. Winterrowd reported that in *Volkswagen Group of America (Shayco)* there is no hearing date yet so there is no briefing schedule set. The writ was denied in both *Leehan* writs and we are waiting for the judgment from the Superior Court. In *Powerhouse*, briefing is set between April 4 and June 23. Lastly, the *Serpa* case was dismissed.

20. **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 convened in Closed Executive Session to discuss Agenda Item No. 23.

21. **OPEN SESSION**

The Public Members returned to Open Session. Mr. Alvarez announced that Mr. Brennan was doing a great job for the Board and each member indicated as such during the closed session. The members are grateful to have Mr. Brennan as the Executive Director.

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

No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:40 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

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