

1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888
Contact Person: Nicole Angulo
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on August 22, 2012, at the Mission Inn Hotel, San Diego Room, 3649 Mission Inn Avenue, Riverside, California.

2. **ROLL CALL**

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 1:03 p.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
Ryan L. Brooks (left 3:22 p.m.) Robin Parker, Senior Staff Counsel
Peter Hoffman
David C. Lizárraga
Bismarck Obando
Victoria Rusnak (arrived 3:20 p.m.)
Glenn E. Stevens
David W. Wilson

Absent: Robert T. (Tom) Flesh

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MAY 22, 2012, GENERAL MEETING,
AND JULY 16, 2012, SPECIAL MEETING**

Mr. Hoffman moved to adopt the May 22, 2012, General Meeting minutes, and July 16, 2012, Special Meeting minutes. Mr. Obando seconded the motion. The motion carried unanimously.

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

Given this matter involves a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Bismarck Obando, Public Member and Vice President.

Mr. Obando read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision, proposed order, or proposed ruling 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 since this is an adjudicative matter as described in Government Code section 11125.7(e), therefore members of the public may not comment on such matters.

Bill Brennan announced that Glenn Stevens, a Public Member, would not participate during the consideration of the Proposed Decision in *Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company*. (Respondent had not authorized his participation in light of the Government Code provisions noted in Agenda Item 5.b. below.) However, at the beginning of oral comments, Mr. Ebe indicated that Harley-Davidson has no objection to Glenn Stevens’ participation; Mr. Stevens participated in this matter.

- a. RIVERSIDE MOTORCYCLE, INC. dba SKIP FORDYCE HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY, a Corporation
Protest No. PR-2310-11

Oral comments were presented before the Public Members of the Board. Halbert B. Rasmussen, Esq. and Franjo Dolenac, Esq. of Manning, Leaver, Bruder & Berberich, represented Protestant. Robert L. Ebe, Esq. and Scott McLeod, Esq. of Cooper, White & Cooper LLP, represented Respondent. Cassie McCauley, on behalf of Harley-Davidson, was also present. Respondent had the burden of proof and presented its oral comments first.

- b. WEST COVINA MOTORS, INC. dba CLIPPINGER CHEVROLET v. GENERAL MOTORS, LLC
Protest No. PR-2213-10

Mr. Obando read the following statement into the record:

As you may know, the one-year grace period for three of our members (Victoria Rusnak, Glenn Stevens, and David Wilson) expired on January 15, 2012. In accordance with Government Code section 1782 the Board is required to notify the “appropriate appointing authority” that vacancies exists for the three Board positions, one of which is a public member and two are dealer members. Section 1782 provides that “Notwithstanding any other provision of the law...Except as provided in Section 1774 [relating to appointments subject to Senate confirmation], the person occupying the vacated...seat on the board...shall continue to serve until notified by the appropriate appointing authority.” These appointments are not subject to

confirmation by the Senate. In light of these provisions, the Board has been in contact with Business, Transportation and Housing Agency as well as the Governor's Appointments Office. Members Rusnak, Stevens and Wilson are continuing to serve on the Board until either reappointed or notified by the Governor that their respective terms have expired.

Mr. Obando indicated that counsel for the parties in *Clippinger* have been apprised of these provisions and do not object to Member Stevens participation in this matter.

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Ziad Alhassen, on behalf of Protestant, was also present. Gregory R. Oxford, Esq. of Isaacs, Clouse, Crose & Oxford, LLP, represented Respondent. Phil Walters and Michael Navari, on behalf of General Motors, were also present. Respondent had the burden of proof and presented its oral comments first.

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**

RIVERSIDE MOTORCYCLE, INC. dba SKIP FORDYCE HARLEY-DAVIDSON v. HARLEY-DAVIDSON MOTOR COMPANY, a Corporation
Protest No. PR-2310-11

Consideration of the Administrative Law Judge's Proposed Decision, 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 Decision. Mr. Lizárraga seconded the motion. The motion carried by a three-to-one vote with Mr. Obando opposed.

b. **CONSIDERATION OF PROPOSED DECISION**

WEST COVINA MOTORS, INC. dba CLIPPINGER CHEVROLET v. GENERAL MOTORS, LLC
Protest No. PR-2213-10

Consideration of the Administrative Law Judge's Proposed Decision, 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 Decision. 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) and 6(b).

Mr. Alvarez C. presided over the remainder of the meeting.

8. **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 the proposed education for 2013 was nearly identical to 2012. Given the number of case management matters, the focus was not on Board development. Once again representatives from CalRVDA and the Recreation Vehicle Industry Association are being asked to attend the January or February meeting to discuss the legislative irregularities with Article 5 of the Vehicle Code pertaining to RV protests. The staff will also try to schedule an electric car tour in the summer or fall of 2013.

9. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2012-2013 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the Board's proposed budget for the next fiscal year. Mr. Brennan indicated that the Board's proposed budget of \$1.529 million is \$39,000 less than the 2011-2012 Budget and is \$20-\$30,000 less than the DMV allocations. The Board continues to work with DMV to realign its allocations. Ms. Rusnak indicated that the team is doing a great job of reducing expenditures. A pro rata statewide expense imposed by the Department of Finance increased from \$88,000 in 2011-2012 to \$131,000. Mr. Brennan indicated the Board has no flexibility with these administrative expenses or payroll expenditures only with operating expenditures. Ms. Rusnak moved to adopt the proposed budget. Mr. Stevens seconded the motion. Mr. Hoffman had not returned from closed Executive Session so he did not vote on this matter. The motion carried unanimously.

10. **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. He indicated that they were still looking for Linda Lighter's replacement. Furthermore, the two student positions occupied by Tony Vela and Taquita Lugo were being eliminated at the end of the month.

Ms. Parker reported that the volume of cases was low and would be reduced once the case management matters from the meeting were closed. There had only been 16 notices of termination filed this year which was significantly lower than in years past.

With regards to judicial matters, Ms. Parker reported that in the writ of mandamus filed by Santa Monica Infiniti, the Board was not participating as there was no State interest.

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

No additional public comment was presented.

12. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:41 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Ramon Alvarez C.
President
New Motor Vehicle Board