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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on November 13, 2013, in Hearing Room #1, at the Board’s offices.

2. **ROLL CALL**

Bismarck Obando, President and Public Member, called the meeting of the Board to order at 9:30 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
 Anthony A. Batarse Jr. Robin P. Parker, Senior Staff Counsel
 Kathryn Ellen Doi Matthew W. Kubicek, Deputy Attorney General III
 Rahim Hassanally Dawn Kindel, Chief of Staff
 Bismarck Obando
 Victoria Rusnak
 Glenn E. Stevens

Absent: Ryan L. Brooks
 David C. Lizárraga

3. **PLEDGE OF ALLEGIANCE**

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

4. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER BOARD MEMBERS, ANTHONY A. BATARSE JR. AND RAHIM HASSANALLY, AND PUBLIC MEMBER KATHRYN ELLEN DOI, ESQ.**

Mr. Obando congratulated Victoria Rusnak and Glenn Stevens on their recent reappointments to the Board by the Governor. He also welcomed Mr. Batarse, Ms. Doi, and Mr. Hassanally, who were recently appointed by the Governor.

5. **BOARD MEMBER EDUCATION CONCERNING THE DEPARTMENT OF MOTOR VEHICLES BY JEAN SHIOMOTO, ACTING DIRECTOR, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Mr. Obando welcomed Jean Shiomoto who was just appointed as the Director of DMV; previously she was the Acting Director. Mr. Brennan indicated that Director Shiomoto has been particularly helpful to the Board and is familiar with the Board having previously served as its budget director. Director Shiomoto indicated that the DMV provides the Board with a lot of staff support fiscally with regards to its budget, and programmatically provides support in terms of registration and occupational licensing aspects. The members were provided with updates on Assembly Bill 1215 which requires new car dealers to enroll in the DMV's Business Partners Automation Program, the Electronic Lien and Titling Program that is requiring licensed financial institutions to participate in electronic transactions in lieu of paper ones, the sale of HOV decals by dealers so their customers can immediately get the stickers, and the autonomous vehicle regulations that need to be in place by January 2015.

6. **BOARD MEMBER EDUCATION BY BRIAN MAAS, PRESIDENT, AND HAO NGUYEN, STAFF COUNSEL, CALIFORNIA NEW CAR DEALERS ASSOCIATION - BOARD DEVELOPMENT COMMITTEE**

Mr. Obando welcomed Brian Maas, President of the California New Car Dealers Association (CNCDA) and Hao Nguyen, Staff Counsel. Mr. Maas discussed Senate Bill 155, which takes effect January 1, 2014, and the number of technical changes the association made on the Board's behalf. The CNCDA has a close working relationship with both the Board and DMV. According to Mr. Maas, it is a compliance organization first in that it seeks to educate dealers on the rules and regulations that govern their behavior as dealers. It is also an advocacy organization on behalf of their dealers, i.e., a trade association for dealers. Mr. Brennan thanked the association and Jonathan Morrison for their assistance in drafting the legislation that solved many of the Board's technical problems. The members asked a number of questions and met the newly appointed Staff Counsel, Hao Nguyen.

7. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ROBERT T. (TOM) FLESH, FORMER PUBLIC BOARD MEMBER, BOARD PRESIDENT, AND VICE PRESIDENT**

8. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO PETER HOFFMAN, FORMER DEALER BOARD MEMBER AND BOARD VICE PRESIDENT**

9. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO DAVID W. WILSON, FORMER DEALER BOARD MEMBER, BOARD PRESIDENT, AND VICE PRESIDENT**

Agenda items 7-9 were taken together. Mr. Alvarez moved to present a Resolution to Tom

Flesh, Peter Hoffman, and David Wilson, in recognition of their respective contributions to the New Motor Vehicle Board. Ms. Doi seconded the motion. Mr. Stevens requested that copies of all three resolutions be put in the record. The motion carried unanimously.

10. **APPROVAL OF THE MINUTES FROM THE JUNE 26, 2013, GENERAL MEETING, AND JULY 25, 2013, SPECIAL MEETING**

Mr. Stevens moved to adopt the June 26, 2013, General Meeting minutes and the July 25, 2013, Special Meeting minutes. Mr. Alvarez seconded the motion. The motion carried unanimously.

11. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(e)(1), all members of the Board shall convene in a closed Executive Session.

DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION

TERRY DOE, Petitioner vs. DEPARTMENT OF MOTOR VEHICLES, NEW MOTOR VEHICLE BOARD, and DOES 1 to 50, inclusive, Respondents
Sacramento County Superior Court No. 34-2013-80001488

Discussion and advice from the Board's legal counsel concerning pending litigation, by all members of the Board.

The Public Members and Dealer Members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Robin Parker, Senior Staff Counsel was provided to the members to justify the closed Executive Session. The members participated in a discussion of this matter with Mathew W. Kubicek, Deputy Attorney General III.

12. **OPEN SESSION**

The members returned to open session and Mr. Obando announced that no Board action was taken.

13. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

DISCUSSION OF A PERSONNEL MATTER - EXECUTIVE COMMITTEE

The Public members of the Board convened in closed Executive Session to discuss a personnel matter.

14. **OPEN SESSION**

The members returned to open session and Mr. Obando announced that no Board action was taken.

15. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Kathy Tomono updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. As indicated in the memo, of the 190 manufacturers/distributors which fall within the Board's jurisdiction that are required to file schedules and formulas pursuant to Vehicle Code sections 3064/3074 and 3065/3075, there is 100% compliance. Ms. Tomono reported that this excludes the filing by Capacity of Texas because it was recently determined that they are within the Board's jurisdiction so their filing is not yet reflected in the numbers.

16. **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 2014 focuses on implementing Senate Bill 155 and educating the members, administrative law judges, and litigants on its application to the Board at the ALJ and Attorney Roundtables.

17. **BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Suzanne Luke concerning fiscal year 2012-2013. Ms. Luke indicated that the Board expended 87% of its appropriated budget of \$1.5 million through the end of fiscal year 2012-2013. Mr. Brennan reported the amount of the dealer fee collected by DMV is variable and can increase and decrease by \$100,000 or more a year; this is due to the dealer license being a two-year license instead of a one-year license. For the benefit of the new members, Mr. Brennan provided a historical overview of the Board's fee collection.

18. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2013-2014 AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 1st quarter of fiscal year 2013-2014 and the status of the Board's collection of its annual fee. Ms. Luke indicated

that the Board was on pace with its \$1.6 million appropriated budget having expended 24%. As indicated in the memo, \$848,037.90 has been collected from 134 of the 158 manufacturers and distributors. When the collection is complete, this matter will be agendized again. Ms. Rusnak requested that Mr. Brennan provide an overview of the Board's payroll expenses and how those expenses are distributed.

19. **DISCUSSION CONCERNING PENDING AND ENACTED LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Legislation of Special Interest:
Senate Bill 155 (Senator Padilla, Chaptered October 3, 2013)
- b. Pending Legislation of Special Interest:
Assembly Bill 988 (Assembly Member Jones)
- c. Pending Legislation of General Interest:
 - (1) Assembly Bill 225 (Assembly Member Nestande)
 - (2) Senate Bill 686 (Senator Jackson)
- d. Pending Federal Legislation of General Interest: None

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. Ms. Parker reported that Senate Bill 155 is going to take a tremendous amount of time to implement. Additionally, Assembly Bill 988, which is a 2-year bill, would put recreational off-highway vehicles within the Board's jurisdiction; it is not anticipated that this would increase the Board's workload.

20. **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 Car Buyers Protection Act, sponsored by the Consumers for Auto Reliability and Safety ("CARS"), which seeks to limit dealers and manufacturers appeal rights after the DMV issues an adverse decision that impacts their occupational license. Additionally, Mr. Brennan informed the members that he was participating in the Western Automotive Conference, Connected Car Expo, and Los Angeles Auto Show.

Ms. Parker reported that 22 protests are pending, and since the members received their written report four protests were dismissed. Additionally, there have been 23 notices of termination issued (15, 60-day notices and 8, 15-day notices).

With regards to judicial matters, Ms. Parker reported that a tentative decision denying all six writs in *Mega RV* had been issued. It was anticipated that the Second Appellate District Court should be issuing its decision anytime in *Powerhouse v. Yamaha*.

21. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, FISCAL COMMITTEE, AND GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, BY THE BOARD PRESIDENT**

In light of the recent appointments to the Board, Mr. Obando appointed Glenn Stevens, as chair, and Ramon Alvarez, as member, to the Government and Industry Affairs Committee. The assignments to other committees will be addressed at the February Board meeting.

22. **SELECTION OF BOARD MEETING DATES FOR 2014**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2014. The members went off the record for this discussion. Mr. Obando announced that the following meetings were scheduled for 2014:

- February 4, 2014, General Meeting in Sacramento
- April 9, 2014, General Meeting in Sacramento
- April 9, 2014, CNCDA Dealer Day, Sheraton Grand Hotel, Sacramento
- April 10, 2014, Industry Roundtable, DMV Headquarters, Sacramento
- July 15, 2014, General Meeting in San Francisco or Los Angeles

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

No additional public comment was presented.

24. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:00 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Bismarck Obando
President
New Motor Vehicle Board