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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on March 25, 2015, in Hearing Room #1, at the Board's offices.

2. ROLL CALL

Glenn Stevens, President and Public Member, called the meeting of the Board to order at 2:34 p.m.

Present: Anthony A. Batarse Jr.
Ryan L. Brooks (left 4:05 p.m.)
Kathryn Ellen Doi
Bismarck Obando
Victoria Rusnak
Glenn E. Stevens

William G. Brennan, Executive Director
Robin P. Parker, Senior Staff Counsel
Danielle R. Vare, Staff Counsel

Absent: Ramon Alvarez C.
Rahim Hassanally
David C. Lizárraga

3. PLEDGE OF ALLEGIANCE

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

4. BOARD MEMBER EDUCATION CONCERNING THE DEPARTMENT OF CONSUMER AFFAIRS, ARBITRATION CERTIFICATION PROGRAM BY SHERRIE MOFFET-BELL, BUREAU CHIEF - BOARD DEVELOPMENT COMMITTEE

Mr. Stevens welcomed Sherrie Moffet-Bell, Bureau Chief, Arbitration Certification Program ("ACP"). Mr. Brennan indicated that Ms. Moffet-Bell is also Bureau Chief of the Telephone Medical Advice Services Bureau, and she has held several different positions with the Department of Consumer Affairs. Jose Escobar, Deputy Chief of the ACP was also present. An overview of the ACP and how the Board collects its fees was explained. It is a voluntary program and free for consumers; the decisions are conditionally binding on the

consumer. If the consumer accepts the decision of an arbitrator then the manufacturer is bound by that decision. Vehicle manufacturers fund the ACP through a per vehicle fee whether they participate in the program or not. Annually the Board collects the ACP fee on its behalf. Mr. Obando suggested that the ACP and the Board work together to publicize the Consumer Mediation Program. For 2014, there were about 2,190 applications for arbitration. Of those 1,032 lacked jurisdiction, 451 settled, 576 went to arbitration, and 130 withdrew prior to arbitration. Lastly, Ms. Moffet-Bell explained that as part of the certification of a manufacturer's arbitration program, the manufacturer promises to disclose to customers that it has arbitration available to them at the time of sale, at the time of service, and if the consumer contacts the manufacturer directly.

5. **BOARD MEMBER EDUCATION CONCERNING "ENHANCED INFRASTRUCTURE FINANCING DISTRICTS" (SENATE BILL 628, EFFECTIVE JANUARY 1, 2015) BY DAN CARRIGG, LEGISLATIVE DIRECTOR OF THE LEAGUE OF CALIFORNIA CITIES - BOARD DEVELOPMENT COMMITTEE**

Mr. Stevens welcomed Dan Carrigg, Legislative Director of the League of California Cities. Mr. Obando disclosed that he also works for the League of California Cities and is a colleague of Mr. Carrigg. According to Mr. Carrigg, the loss of redevelopment has been harmful to California cities and the community so a new tool called the "Enhanced Infrastructure Financing Districts" (EIFD) was approved by the Governor and effective January 1. As explained, EIFD is different than redevelopment in that there is no blight requirement, no additional eminent domain authority, and there is more flexibility. However, it is going to take longer to accumulate enough revenue to get anywhere near what there used to be with redevelopment. Since the legislation just took effect, it hasn't been used yet but it is being looked at very seriously by West Sacramento. Mr. Carrigg answered a number of staff and Board member questions.

6. **APPROVAL OF THE MINUTES FROM THE FEBRUARY 11, 2015, GENERAL MEETING, AND FEBRUARY 11, 2015, SPECIAL MEETING**

This matter was postponed until after Agenda Item 15.

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

This matter was postponed until after Agenda Item 15.

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

This matter was postponed until after Agenda Item 15.

9. **DISCUSSION CONCERNING THE BOARD'S USE OF SOCIAL MEDIA TO PROMOTE THE CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

This matter was postponed until after Agenda Item 15.

10. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

This matter was postponed until after Agenda Item 15.

11. **BOARD FINANCIAL CONDITION REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2014-2015 - FISCAL COMMITTEE**

This matter was postponed until after Agenda Item 15.

12. **CONSIDERATION OF THE 2015 EDITION OF THE *NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK* - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until after Agenda Item 15.

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

a. Pending Legislation of Special Interest:

(1) Assembly Bill 287 (Assembly Members Gordon, Eggman and Mark Stone; Principal Coauthor Assembly Member Wilk)
(2) Assembly Bill 759 (Assembly Member Linder)

b. Pending Legislation of General Interest: None

c. Pending Federal Legislation of General Interest:

(1) United States House of Representatives Bill 679 (U.S. Representative Blumenauer) - Road Usage Charge Pilot Program Act of 2015
(2) United States Senate Bill 617 (U.S. Senator Markey) - A bill to ensure that owners of all motor vehicles in use on United States roadways are made aware of, and obtain repairs for, manufacturer-issued safety recalls in a timely manner.

This matter was postponed until after Agenda Item 15.

14. 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.

This matter was postponed until after Agenda Item 15.

15. CONSIDERATION OF TOYOTA MOTOR SALES USA, INC.'S REQUEST FOR EXTENSION OF TIME TO AUDIT PUTNAM MOTORS, INC. DBA PUTNAM LEXUS PURSUANT TO VEHICLE CODE SECTION 3065(f), BY THE PUBLIC MEMBERS OF THE BOARD

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning Toyota Motor Sales USA, Inc., Lexus Division ("Lexus") request for an extension of the time period to audit Putnam Lexus' warranty claims. Ms. Parker reported that counsel for Lexus and Putnam Lexus were both present to address the Board concerning Lexus' request. Steven A. McKelvey, Jr. and Steven B. McFarland, Esq. of Nelson Mullins Riley & Scarborough, LLP represented Lexus. Deborah M. Goldman, Esq., Managing Counsel for Toyota was also present. Michael M. Sieving, Esq. represented Putnam Lexus. Marty Putnam, dealer principal, was also present.

Mr. Stevens indicated that Ms. Goldman is a friend and that they share Dodger's tickets. He asked Mr. Sieving if he or his client had any objection to Mr. Stevens listening, participating or voting in this matter. Mr. Sieving did object not nor did Mr. McKelvey. Mr. Stevens also noted that Joe Putnam was a member of the Board for years and a good friend.

After a lengthy discussion, Mr. Brooks moved to deny Lexus' request to extend the warranty audit beyond nine months. Mr. Obando seconded the motion. The motion carried by a three-to-one vote with Mr. Stevens abstaining. Lexus was informed that it could come back before the Board with a subsequent request. Mr. McKelvey asked if a Board order would be issued; Mr. Stevens indicated there would be.

6. APPROVAL OF THE MINUTES FROM THE FEBRUARY 11, 2015, GENERAL MEETING, AND FEBRUARY 11, 2015, SPECIAL MEETING

Mr. Obando moved to adopt the February 11, 2015, General Meeting minutes, and February 11, 2015, Special Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

7. 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 recommended that the Board continue with the current statements. No Board action was taken as this matter was for informational purposes only.

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

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning training programs attended by the staff since the last report. Miss Kindel reported that most of the training has been at no cost to the Board in light of its current economic situation. Ms. Rusnak commended the staff on its efforts to provide training at virtually no cost to the State.

9. **DISCUSSION CONCERNING THE BOARD'S USE OF SOCIAL MEDIA TO PROMOTE THE CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Jackie Grassinger concerning the use of social media to promote the Consumer Mediation Program. Ms. Grassinger reported that on February 17 the Board started using Twitter and Facebook to promote the mediation program. The staff is prepared to track any additional requests for mediation as a result of the social media posts. To date, no consumers have told the staff that they heard about the Consumer Mediation Program through social media. Lastly, Ms. Grassinger indicated that statistics on the reach of Twitter and Facebook will be incorporated into the staff's annual update on the mediation program and if necessary will be reported in the Executive Directors Report at future General Meetings.

10. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Robin Parker, and Danielle Vare along with summaries of the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act, and Public Records Act. A number of resource materials were also provided. Ms. Vare indicated that with regards to the Political Reform Act, the Fair Political Practices Commission increased the limit on gifts that may be received by a Board Member or staff to $460 from $440. With regards to the Public Records Act, Ms. Vare mentioned that the case noted in the initial Board memo [*Ardon v. City of Los Angeles* (2014) 232 Cal. App. 4th 175] has since been depublished and is under review by the California Supreme Court. Ms. Parker indicated that there were no substantive changes to the Administrative Procedure Act or the Bagley-Keene Open Meeting Act.

11. BOARD FINANCIAL CONDITION REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2014-2015 - 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 2nd quarter of fiscal year 2014-2015. Ms. Luke indicated that the Board expended 42% of its appropriated budget through the second quarter of fiscal year 2014-2015. The current reserve balance is $1,526,770. Mr. Brennan reported that dealer fees continue to increase and there will be a small surplus this fiscal year.

12. CONSIDERATION OF THE 2015 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 changes were minimal this year. As indicated in the memo, the changes for 2015 were:

- The section "New as of 2015" has been updated to reflect Assembly Bill 988, which amends the definition of all-terrain vehicle (Veh. Code § 111) to include recreational off-highway vehicles (ROHVs) as defined in Section 500 and utility terrain vehicles (UTVs) as defined in Section 531. It was also updated to reflect that the decision in *Powerhouse Motorsports Group, Inc., et al.* v. *Yamaha Motor Corporation, U.S.A.* (2013) 221 Cal.App.4th 867 [164 Cal.Rptr.3d 811] was final.

- Footnote 28 was added to Part VI – Ethical Matters on page 75 to reflect a revision to the Code of Judicial Ethics. Canon 2C was amended January 21, 2015, to eliminate an exception to an ethics rule that prohibits judges from holding membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. The prior rule permitted an exception for nonprofit youth organizations. Judges will have until January 21, 2016 to comply with the new rule.

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

13. DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE

a. Pending Legislation of Special Interest:

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(2) United States Senate Bill 617 (U.S. Senator Markey) - A bill to ensure that owners of all motor vehicles in use on United States roadways are made aware of, and obtain repairs for, manufacturer-issued safety recalls in a timely manner.

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning pending legislation. Ms. Vare reported on Assembly Bill 759 which is sponsored by the RVIA and makes a number of amendments to the Vehicle Code that are patterned after provisions already in place for automotive dealers. Next, Ms. Vare reported on Assembly Bill 287, which is sponsored by the CNCDA. It is entitled the "Consumer Automotive Recall Safety Act", and provides comprehensive consumer protections that address the low recall repair completion rate and consumer confusion regarding automotive recalls in California. Lastly, Ms. Vare discussed several federal bills that she is monitoring. Mr. Obando discussed transportation funding and the bills anticipated to be introduced this legislative session.

14. 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 upcoming Industry Roundtable set for March 26 at the DMV's headquarters in Sacramento, and indicated that Ms. Vare has been instrumental in coordinating the speakers and topics.

Ms. Angulo reported since the members received their written report one new establishment protest involving Fiat was filed. There are 27 protests pending. Additionally, a Stipulated Decision and Order was submitted in *Santa Monica Infiniti* and the Public Members have until March 30 to object to it. Lastly, notices of termination in *Glendale Dodge Chrysler Jeep* and *David Ellis Chrysler Jeep* have been withdrawn by Polaris. Therefore, Ms. Angulo indicated that requests for dismissals should be received in those matters.

With regards to judicial matters, Ms. Parker reported that in *Capacity of Texas* briefs are being filed and the hearing is set for May 1. The staff is monitoring this writ even though the Board is not participating in it. With regards to the *Santa Cruz Nissan* writ, the hearing is supposed to be September 4. However, there are two motions presently pending before

the Board. The first motion is Nissan's Notice of Noncompliance, which is set for hearing May 21 before ALJ Woodward Hagle. The second motion is Santa Cruz Nissan's motion to refrain pending the writ hearing in Superior Court. This matter was set for hearing before ALJ Skrocki on April 9 but subsequently changed to April 15. Matt Kubicek, the Board's designated Deputy Attorney General, has been hired by DMV so the Board will be assigned a new Deputy.

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

No additional public comment was presented.

17. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 4:30 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED:

Glenn E. Stevens
President
New Motor Vehicle Board