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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on February 10, 2016, 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 10:30 a.m.

Present:	Ramon Alvarez C. Anthony A. Batarse Jr. Kathryn Ellen Doi Bismarck Obando Glenn E. Stevens	William G. Brennan, Executive Director Robin P. Parker, Senior Staff Counsel Danielle R. Vare, Staff Counsel
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Absent: Ryan L. Brooks
Rahim Hassanally
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

Ms. Parker led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 12, 2015, GENERAL MEETING**

Mr. Obando moved to adopt the November 10, 2015, General Meeting minutes. Ms. Doi seconded the motion. The motion carried unanimously.

5. **INTRODUCTION AND WELCOME OF BRIAN SOUBLET, CHIEF COUNSEL AND DEPUTY DIRECTOR OF THE LEGAL AFFAIRS DIVISION, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Mr. Stevens welcomed Brian Soublet, Chief Counsel and Deputy Director of the Legal Affairs Division of the Department of Motor Vehicles. Ms. Parker provided the members with his background. Mr. Soublet indicated that there are about 50 employees in the Legal Department and 21 are attorneys. They handle all of the legal work for the DMV including state contracting, employment actions, and regulations. Court litigation is handled by the Attorney General's Office.

DMV Legal is working on regulations to augment previously approved regulations pertaining to AB 60 driver's licenses to undocumented immigrants. Additionally, the second phase of autonomous vehicle (AV) regulations is being drafted, which would allow public operation of vehicles outside of the testing regime of manufacturers. Public workshops were held to solicit comments on draft regulations.

To date, there are 11 permit holders testing AVs including Ford, BMW, Tesla, Mercedes-Benz, Nissan, and some major parts companies like Bosch, Delphi and Continental. Additionally, Cruise Automation is a new entrant trying to design a system that can be added to existing vehicles. So far the regulations require someone in the driver's seat ready to take control of the car. Mr. Soublet indicated that DMV is working closely with NHTSA. All of the current federal motor vehicle safety standards are designed so that a person is in the vehicle. This would need to be changed for a completely driverless vehicle. It is anticipated that these regulations will be approved by the end of this year. There were a number of considerations discussed including technology advances once an AV is on the road, accommodating the disabled community, AV responses to detours or emergency situations, failure of the technology, liability, and on-road driver training.

Mr. Soublet indicated that manufacturers are participating in the development of the regulations. The DMV is getting input and is able to implement suggestions.

6. **DISCUSSION CONCERNING THE STATE OF THE AUTOMOTIVE INDUSTRY IN TERMS OF PROJECTIONS AND LEGISLATION BY CURT AUGUSTINE, DIRECTOR OF POLICY & GOVERNMENT AFFAIRS, ALLIANCE OF AUTOMOBILE MANUFACTURERS, AND BRIAN MAAS, PRESIDENT, CALIFORNIA NEW CAR DEALERS ASSOCIATION (CNCDA) - BOARD DEVELOPMENT COMMITTEE**

Mr. Stevens welcomed Curt Augustine, Director of Policy & Government Affairs, Alliance of Automobile Manufacturers, and Brian Maas, President, California New Car Dealers Association (CNCDA). Robin provided the members with their background.

Mr. Augustine indicated that the outlook for the auto industry looks great. Manufacturers have streamlined the number of cars and employees, the pushing of product has decreased, they try to manufacture closer to demand, and there are fairly decent relations

with labor unions and work groups around the country. Many of the international companies have manufacturing facilities in the U.S. For example, all BMW X5 vehicles are manufactured in South Carolina. Vehicles are made better than they ever have been before. The average age of vehicles is the longest it has ever been in history. Cars are staying on the road longer because they are well made.

According to Mr. Augustine, there are exciting things ahead including the safety aspects of many of the technologies, AVs, and ride sharing. With all the positives, there are some dark clouds including recalls. The Alliance believes the recalls are being addressed but perhaps not as quickly as some would like. Additionally, there is the VW emissions scandal. There are also some practical challenges according to Mr. Augustine. The Zero Emission Vehicle (ZEV) mandate poses practical challenges in that in 9 model years 15% of vehicles need to meet the requirements; currently 3% do. With gas at \$2.00 per gallon, ZEV sales likely decreased from 2014 to 2015. The Alliance is committed to meeting the ZEV mandate but purchasers need to be incentivized with rebates and HOV access stickers.

With regards to AVs, the Alliance is working closely with DMV and likes the flexible approach of the public workshops. The Alliance according to Mr. Augustine is concerned with third-party certification and strict prohibition if a driver isn't in the car.

There are industry concerns with vehicle systems being compromised by hackers. The manufacturers developed a set of privacy principles that were submitted to the FTC in the fall of 2014. Mr. Augustine indicated that they are very proud of the privacy principles.

Mr. Maas discussed the automotive industry from the dealers' perspective. The CNCDA represents 1,200 dealer members so if manufacturers are facing issues then so are the dealers. There are challenges and oftentimes manufacturers and dealers disagree but the CNCDA is working on communicating better with manufacturers before legislation is proposed or enacted to work out differences.

Recently legislation (Assembly Bill 1178; effective January 1, 2016) sponsored by the CNCDA established an association protest of a manufacturer's export policy. Mr. Maas indicated that a protest was filed by the CNCDA against Jaguar under the new provisions (Vehicle Code section 3085) the day prior to the Board meeting.

Mr. Maas discussed what he called "business disrupters" - companies that are being created that are looking at the automobile sales process and saying we can do it in many cases via the internet in ways that are more efficient and provide better service to customers. Recalls and ZEVs were briefly discussed. Lastly, he reminded the members that Dealer Day is March 16. The CNCDA appreciates the Board's attendance every year.

Mr. Brennan thanked both Curt and Brian for their support and responsiveness to requests the Board has for information, guidance and assistance.

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

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 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.

PUTNAM MOTORS, INC., dba PUTNAM LEXUS v. TOYOTA MOTOR SALES, U.S.A., INC.

Protest No. PR-2428-15

Oral comments were presented before the Public Members of the Board. Michael M. Sieving, Esq. of Sieving Law Group, LLP represented Protestant. Marty Putnam, the dealer principal, was also in attendance. Steven McFarland, Esq. of Nelson Mullins Riley & Scarborough, LLP represented Respondent. Chris Price, Toyota in-house counsel, was also present.

8. **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.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED ORDER

PUTNAM MOTORS, INC., dba PUTNAM LEXUS v. TOYOTA MOTOR SALES, U.S.A., INC.

Protest No. PR-2428-15

Consideration of the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss [Second] Amended 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 as amended; the dismissal of the protest is without prejudice. Ms. Doi seconded the

motion. The motion carried unanimously.

9. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced that the Board unanimously moved to adopt the Proposed Order except that the protest is not dismissed with prejudice; it is dismissed without prejudice. Mr. Stevens indicated that Paragraph 17 of the decision is on point; the protest is too narrow and the Board doesn't have jurisdiction in that direction.

10. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION

CAPACITY OF TEXAS, INC. v. NEW MOTOR VEHICLE BOARD, a California State Administrative Agency; GUARANTEED FORKLIFT, INC. DBA GFL, INC.
Sacramento Superior Court No. 34-2014-80001848
California Court of Appeal, Third District Court, Case No. C080679
Protest No. PR-2361-13

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

The Public 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 Michael Gowe, Deputy Attorney General.

11. **OPEN SESSION**

The members returned to open session and Mr. Stevens announced that the Board took advice and discussed the case with the Attorney General in closed session and there was nothing to report.

12. **2016 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Ms. Doi moved to nominate Mr. Stevens as President. Mr. Batarse seconded the motion to nominate Mr. Stevens as President. Mr. Alvarez C. moved to close the nominations, with Mr. Obando seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Stevens as President carried unanimously.

Mr. Obando moved to nominate Ms. Doi as Vice President. Mr. Stevens seconded the motion to nominate Ms. Doi as Vice President. Ms. Doi moved to nominate Mr. Alvarez C. as Vice President. Mr. Batarse seconded the motion to nominate Mr. Alvarez C. as Vice President. Ms. Doi withdrew the nomination of herself as Vice President. Mr. Stevens moved to close the nominations, with Mr. Obando seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Alvarez C. as Vice President carried unanimously.

13. **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, incoming President Stevens in consultation with Vice President Alvarez made the following committee appointments:

- **ADMINISTRATION COMMITTEE**
Bismarck Obando, Chair
Rahim Hassanally, Member
- **BOARD DEVELOPMENT COMMITTEE**
Bismarck Obando, Chair
Kathryn Ellen Doi, Member
- **EXECUTIVE COMMITTEE**
Glenn E. Stevens, President
Ramon Alvarez C., Vice President
- **FISCAL COMMITTEE**
Anthony A. Batarse, Jr., Chair
Victoria Rusnak, Member
- **GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**
Ramon Alvarez C., Chair
Glenn E. Stevens, Member
- **POLICY AND PROCEDURE COMMITTEE**
Kathryn Ellen Doi, Chair
Ryan Brooks, Member

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

This matter was pulled from the agenda since the incoming President is a Public Member and the incoming Vice President is a Dealer Member. If both the incoming President and

Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

15. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. Ms. Parker indicated that a number of changes were made to implement Assembly bills 759 and 1178. Ms. Doi noted that the "a" in "administrative Duties" on page 47 needs to be capitalized. Mr. Batarse moved to adopt the Board delegations. Mr. Obando seconded the motion. The motion carried unanimously.

16. **ANNUAL UPDATE ON 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. Ms. Grassinger indicated that the mediation program received a total of 511 cases and handled 726 telephone calls during fiscal year 2014-2015. Of the 511 cases received, 380 were mediated; 68% were mediated successfully. As indicated in the memo there were 152 more case filed due to the Board's outreach and website modifications, and also its involvement with Social Media such as Facebook and Twitter. Ms. Doi was impressed by the memo and wondered how to let people know about the success of the program. Mr. Brennan indicated that the Board was precluded from advertising this program but the Board continues to work with DMV through Facebook and Twitter. The Board will send the annual inter-agency memo that explains the program to other State agencies. Lastly, Mr. Brennan noted that Danielle Vare is assisting in mediation cases.

17. **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 reviewed. As indicated in the memo, the pertinent changes are:

- The section "New as of 2016" has been updated to reflect recent legislation impacting the Board, and regulations promulgated by the Board.
 - Assembly Bill 759 (Stats. 2015, Ch. 407), co-sponsored by the Recreation Vehicle Industry Association and California Recreational Vehicle Dealers Association, cleans up a number of inconsistencies in the Vehicle Code; deletes all references to Article 5 recreational vehicle protests in Sections

3066 and 3067; and adds parallel provisions to Article 5 (Sections 3080 and 3081).

- o Assembly Bill 1178, (Stats. 2015, Ch. 526) was sponsored by the California New Car Dealers Association. It establishes an export or sale-for-resale prohibition policy protest in Article 6 of the Vehicle Code. An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3.
- o The case management regulations promulgated by the Board add definitions of “proposed stipulated decision and order” and “stipulated decision and order of the board”. Vehicle Code section 3050.7 provides that a Proposed Stipulated Decision and Order will be deemed adopted by the Board unless a member objects to it within 10 days after receipt thereof. In the event a member objects, the procedure for getting this matter before the Board at a noticed meeting has been formalized. The regulation pertaining to subpoenas has been amended to clarify that a Board Administrative Law Judge can issue subpoenas. Additionally, all written requests for the issuance of a Board subpoena need to be “properly served on the opposing party or parties.” The requirement that the original proof of service be filed with the Board following service upon the witness or deponent has been eliminated; a copy is sufficient.
- o The sanctions regulation was amended to clarify that a party requesting sanctions against another party may be awarded its expenses and attorney’s fees in seeking sanctions, and, conversely, that a party from whom sanctions are sought who successfully defends against such a motion may be awarded its expenses and attorney’s fees in opposing the motion for sanctions.

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

18. **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 Danielle Vare 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 166 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. Vare reported that the staff is working on compliance for

2016.

19. **DISCUSSION REGARDING TRANSLATING THE CONSUMER MEDIATION SERVICES PORTION OF THE WEBSITE INTO ADDITIONAL LANGUAGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel regarding translating the Consumer Mediation Services portion of the website into additional languages. Miss Kindel reported that according to the Department's policy on translating materials to the public, documents will be translated if the public contacting the Board is over 5% limited English speaking or non-English speaking. A survey is done every other year to determine this. Miss Kindel indicated that the last survey was done in 2014, and the Board did not meet the 5% minimum to have anything translated into any different languages. In January 2016, the Board staff implemented its own internal survey to track other languages that people speak. If the results meet DMV's threshold then the Board will look into translating the consumer mediation materials into that language. Ms. Doi inquired as to the next most used language after English and Spanish in California, and whether the Board could translate the materials into that language or if it was prohibited. Mr. Brennan indicated that the Board is not prohibited but relies on DMV and is dependent on their policy. Mr. Brennan indicated that the staff will report at the next meeting the next most popular language used in California. Miss Kindel indicated that the DMV provides verbal interpreter services in many languages. If a consumer contacts the Board's staff and is in need of an interpreter, staff conference the appropriate translator into the call in order to fully assist the consumer. The DMV will also translate any written documents that the Board receives. The Board staff makes every effort to insure that all Californians have access to Board services.

20. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2015-2016 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 2015-2016 and the status of the Board's collection of its annual fee. Ms. Luke indicated that the current reserve balance is \$1.6 million, the Board expended 23% of its appropriated budget of \$1.6 million, and the Board completed its collection from 157 manufacturers and distributors with fees totaling \$969,148. Mr. Batarse indicated that the Board is in good fiscal shape. Mr. Brennan echoed that and pointed out that dealer fees for the first quarter were \$195,048.

21. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2016-2017 - 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 2016-2017. Miss Kindel indicated that in the current fiscal year of 2015-2016 all of the Board's out-of-

state trip requests were denied since they were not "mission critical". The Board was not allocated any funds for this type of travel. Staff expects the same to occur in fiscal year 2016-2017. Should that not be the case, staff needs to be prepared to submit travel approval requests on short notice.

Miss Kindel indicated that the Board staff is prepared to submit travel proposals for six trips in fiscal year 2016-2017 as follows:

- Two trip requests are for the Executive Director and one Board member to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in September 2016, in Denver, Colorado.
- Two trip requests are for the Executive Director and one Board member to attend the Recreational Vehicle Industry Association's 54th National Trade Show in December 2016, in Louisville, Kentucky,
- Two trip requests are for the Executive Director and one Board member to attend the National Automobile Dealers Association Convention and Expo in January 2017, in New Orleans, Louisiana.

Ms. Doi moved to approve the six out-of-state trips requested. Mr. Stevens seconded the motion. The motion carried unanimously.

22. **DISCUSSION AND CONSIDERATION OF THE UPCOMING INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the March 17, 2016, Industry Roundtable. Ms. Vare reported that a "save-the-date" went out, and that the topics and speakers are being finalized. The registration form should go out shortly.

23. **CONSIDERATION OF 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 there were no substantive changes from the version previously adopted by the Board but there were some changes to the RV notice to dealer language to correct the Executive Director's title, and occupational licensing updated the OL 124 Form.

Mr. Obando moved to adopt the revised *Informational Guide for Manufacturers and Distributors*. Mr. Batarse seconded the motion. The motion carried unanimously.

24. **CONSIDERATION OF THE EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE (VEHICLE CODE SECTION 3085, ET SEQ.) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and *Export or Sale-for-Resale Prohibition Policy Protest Guide*, which implements Assembly Bill 1178 (Stats. 2015, Ch. 526). For the first time, a protest could be filed by an association as defined in lieu of a franchised dealer so Ms. Parker indicated that it made sense to draft a separate Guide. Additionally, Ms. Parker mentioned that this Guide was patterned after the *Guide to the New Motor Vehicle Board*.

Ms. Doi suggested that the second sentence on page 3 of the Guide under Filing a Protest be deleted as indicated below:

Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a protest involving an export or sale-for-resale prohibition policy protest. ~~Failure to file a protest within a reasonable time, however, could result in the protestant losing the right to a hearing by the Board.~~

Mr. Stevens moved to adopt the *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Mr. Obando seconded the motion. The motion carried unanimously.

25. **CONSIDERATION OF 2016 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with the 2016 Rulemaking Calendar. Ms. Vare indicated that there is one proposed rulemaking packet pertaining to the definitions of "protest" and "protestant" to include the new 3085 protests by associations. Mr. Alvarez C. moved to adopt the 2016 Rulemaking Calendar. Mr. Obando seconded the motion. The motion carried unanimously.

26. **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 2015 pertain to the adoption of updated publications, and reflect that the In-Site will be published bi-annually.

27. **CONSIDERATION OF THE 2016 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. As indicated in the memo, the changes for 2016 were:

- The section “New as of 2016” has been updated to reflect recent legislation impacting the Board, and regulations promulgated by the Board.
 - Assembly Bill 759 (Stats. 2015, Ch. 407), co-sponsored by the Recreation Vehicle Industry Association and California Recreational Vehicle Dealers Association, cleans up a number of inconsistencies in the Vehicle Code; deletes all references to Article 5 recreational vehicle protests in Sections 3066 and 3067; and adds parallel provisions to Article 5 (Sections 3080 and 3081).
 - Assembly Bill 1178, (Stats. 2015, Ch. 526) was sponsored by the California New Car Dealers Association. It establishes an export or sale-for-resale prohibition policy protest in Article 6 of the Vehicle Code. An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3.
 - The case management regulations promulgated by the Board add definitions of “proposed stipulated decision and order” and “stipulated decision and order of the board”. Vehicle Code section 3050.7 provides that a Proposed Stipulated Decision and Order will be deemed adopted by the Board unless a member objects to it within 10 days after receipt thereof. In the event a member objects, the procedure for getting this matter before the Board at a noticed meeting has been formalized. The regulation pertaining to subpoenas has been amended to clarify that a Board Administrative Law Judge can issue subpoenas. Additionally, all written requests for the issuance of a Board subpoena need to be “properly served on the opposing party or parties.” The requirement that the original proof of service be filed with the Board following service upon the witness or deponent has been eliminated; a copy is sufficient.
 - The sanctions regulation was amended to clarify that a party requesting sanctions against another party may be awarded its expenses and attorney’s fees in seeking sanctions, and, conversely, that a party from whom sanctions are sought who successfully defends against such a motion may be awarded its expenses and attorney’s fees in opposing the motion for sanctions.

Mr. Stevens moved to adopt the revised *Administrative Law Judges’ Benchbook*. Ms. Doi seconded the motion. The motion carried unanimously.

28. **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 Danielle Vare concerning the assignment of cases to Board ALJs in 2015. Ms. Vare reported that there were no merits hearings in 2015 as the parties focused on settlement. Additionally, Ms. Vare indicated that given the number of matters that were filed in late 2015, there are likely to be more hearings this year.

29. **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 indicated that given there were no merits hearings in 2015 the Board staff was able to get ahead updating the various guides and also updated internal procedures.

Ms. Parker reported Nissan filed a Supplemental Notice of Non-Compliance in *Santa Cruz Nissan* and a conference call with ALJ Woodward Hagle was set for the next day. She mentioned that there were some cases almost three years old but the staff is closely monitoring all cases to make sure nothing languishes. There were a total of 45 protests filed in 2015. On December 6, 2015, only 22 protests had been filed. The last three weeks of the year were very busy since 23 protests were filed; most were establishment and modification. So far this year, Ms. Parker reported that only one notice of termination and four protests have been filed. Ms. Vare indicated that since the report was printed there have been four protests dismissed. Most cases are working toward settlement and the new cases are setting dates.

With regards to judicial matters, Ms. Parker continues to monitor litigation. The Board is waiting for hearing dates in all of the appeals. A hearing on the writ in *Toyota* is set for April 29, 2016.

30. **SELECTION OF BOARD MEETING DATES FOR 2016**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2016. The members went off the record for this discussion. Mr. Stevens indicated that a meeting has been set for June 28, 2016, but is subject to change depending on whether the Board does any dealer development. He also confirmed the March 16, 2016, General Meeting, and the March 17, 2016, Industry Roundtable.

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

No additional public comment was presented.

32. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:18 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



Glenn E. Stevens
President
New Motor Vehicle Board