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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on September 16, 2020, via Zoom and teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 9:07 a.m.

Ms. Doi welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff. The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi
Anne Smith Boland
Inder Dosanjh
Ardashes “Ardy” Kassakhian
Daniel P. Kuhnert
Nanxi Liu
Bismarck Obando

Board Members Not Present: Ramon Alvarez C.

Board Staff Present: Timothy M. Corcoran, Executive Director
Robin P. Parker, Senior Staff Counsel
Danielle R. Phomsopha, Staff Counsel
Dawn Kindel, Assistant Executive Officer
Suzanne Luke, Administrative Services Analyst
Eugene Ohta, IT Tech
Makalla Johnson, Legal Office Assistant
Alejandro Martinez, Office Assistant

Anthony M. Skrocki, Administrative Law Judge

3. **RATIFICATION OF THE NOMINATION OF RAMON ALVAREZ C. AS THE BOARD'S VICE PRESIDENT, BY ALL MEMBERS OF THE BOARD**

The Public and Dealer members of the Board ratified the nomination of Ramon Alvarez C. as the Board's Vice President. Mr. Kassakhian moved to nominate Mr. Alvarez C. as Vice President. Mr. Obando seconded the motion to nominate Mr. Alvarez C. as Vice President. The motion carried unanimously.

4. **APPROVAL OF THE MINUTES FROM THE MARCH 5, 2020, SPECIAL MEETING, MARCH 5, 2020, GENERAL MEETING, AND JULY 10, 2020, SPECIAL MEETING**

Mr. Obando moved to adopt the March 5, 2020, Special Meeting minutes. Mr. Dosanjh seconded the motion. The motion carried unanimously.

Mr. Obando moved to adopt the March 5, 2020, General Meeting minutes. Mr. Kuhnert seconded the motion. The motion carried unanimously.

Mr. Obando moved to adopt the July 10, 2020, Special Meeting minutes. Mr. Kassakhian seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ANTHONY A. BATARSE, JR., FORMER DEALER MEMBER**

Ms. Doi indicated that there was some Board turnover at the beginning of the year and Board Members Anthony Batarse, Victoria Rusnak, and Glenn Stevens rotated off the Board. So, it is the Board's tradition to prepare and present resolutions recognizing the contributions of Board members when they rotate off the Board. Consideration of these Resolutions were taken together.

Ms. Liu moved to present Anthony Batarse, Victoria Rusnak, and Glenn Stevens with Resolutions for their contributions to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of California, as former members of the California New Motor Vehicle Board. Mr. Kassakhian seconded the motion. The motion carried unanimously.

Ms. Doi requested that the Board staff invite these former Board members to the next meeting, whether it is virtual or in-person, so the Resolutions can be presented to them.

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO VICTORIA RUSNAK, FORMER DEALER MEMBER**

See Agenda Item 5.

7. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO GLENN STEVENS, FORMER PUBLIC MEMBER**

See Agenda Item 5.

8. **DISCUSSION AND CONSIDERATION OF THE DEPARTMENT OF MOTOR VEHICLE'S REPORT OF INVESTIGATION REGARDING WHETHER RV'S-4-LESS, INC., DBA RVS 4 LESS' VIOLATED VEHICLE CODE SECTION 11713.23(b) AND (c)(2) AND ECLIPSE RECREATIONAL VEHICLES, INC. VIOLATED VEHICLE CODE SECTIONS 11713.22(a) AND 11713.23(a) AND (c)(1)**

RV'S-4-LESS, INC., dba RVS 4 LESS v. ECLIPSE RECREATIONAL VEHICLES, INC.

Protest No. PR-2569-18

DISCUSSION AND CONSIDERATION OF THE DEPARTMENT OF MOTOR VEHICLE'S REPORT OF INVESTIGATION, BY THE PUBLIC MEMBERS OF THE BOARD

The members were provided with the Department of Motor Vehicles (DMV) Report of Investigation dated May 21, 2020.

Mr. Corcoran made a brief presentation of the DMV's investigative findings. On December 18, 2019, the Board submitted to the DMV a formal request that an investigation of RV's-4-Less, Inc., a dealer, and Eclipse Recreational Vehicles, Inc., a manufacturer, be conducted. Pursuant to this request, DMV's Investigations Division reviewed relevant documentation, evidence, depositions, Board meeting transcripts, and conducted independent interviews and investigation. The investigation concluded resulting in warning letters being issued to RV's-4-Less and Eclipse Recreational Vehicles for violations related to the manufacturer's failure to provide the dealer a signed recreational vehicle franchise agreement, and selling and shipping new recreational vehicles to the dealer without a written franchise, and to the dealer for receiving and selling new recreational vehicles without a written franchise.

No public comments were presented, and the Board took no further action on this matter.

9. **DISCUSSION AND CONSIDERATION OF WHETHER TO CREATE AN "AD HOC ADVISORY COMMITTEE ON EQUITY, JUSTICE AND INCLUSION," BY THE BOARD PRESIDENT**

Ms. Doi indicated that the genesis of this agenda item was that on June 12, 2020, the California State Transportation Agency (CalSTA) Secretary, David S. Kim, issued a statement on racial equity, justice, and inclusion in transportation. The statement reads:

"Transportation systems are about people and improving their quality of life. Unfortunately, those improvements historically have disproportionately benefitted certain segments of the population. Far too often, past transportation decisions quite literally put up barriers, divided communities,

and amplified racial inequalities, particularly in our Black and Brown neighborhoods. The California State Transportation Agency (CalSTA) strongly condemns systemic racism and discrimination in all forms, including those historically entrenched in transportation. Enhancing the lives of all Californians - particularly people of color and disadvantaged communities - by connecting individuals to jobs, healthcare, education, and other opportunities, lies at the heart of what we do and why. To that end, CalSTA firmly embraces racial equity, inclusion, and diversity. These values are foundational to achieving our vision of a cleaner, safer, more accessible and more connected future. We will be part of the solution. We will promote policies and programs that reflect principles of diversity, equity, and inclusion, and will work with stakeholders to identify areas of improvement. Through these and other efforts, transportation systems have the potential to achieve their intended purpose - to provide safe and equitable access to opportunity and truly enhance quality of life."

Ms. Doi commented that Secretary Kim has asked department directors and all of us to consider what actions we can all take to address equity, identify areas for improvement, and to identify policy concepts that advance equity within each of our departments and agencies, and externally to affect the people we serve. The New Motor Vehicle staff, including the ALJs, have met to discuss these issues. It seemed like an area where Board members might also have helpful perspectives to add to the discussion. Under Article 4 of the Board's Parliamentary procedures, the President of the Board may form committees and appoint members thereto for the purpose of performing any duty which is not otherwise prohibited by law.

Ms. Doi indicated that she is considering the creation of an Ad Hoc Advisory Committee on Equity, Justice, and Inclusion. Mr. Obando indicated that he appreciated Ms. Doi bringing this topic up and he is supportive of it both personally and professionally.

Mr. Kassakhian echoed what Mr. Obando said but was concerned about resources and time. Perhaps, instead of having a Board committee, a representative from the Board or staff could participate in a discussion with the DMV, if they have a similar committee. Mr. Kassakhian indicated that if there is nothing to preclude this from a legal standpoint that would be his suggestion and recommendation.

Mr. Corcoran indicated that the Board works with its partners at DMV; however, the Board is being asked to look at this within its specific scope. In the past, the Board held public meetings to discuss minority dealer ownership. This is something the Board may consider, and the Dealer Members' participation and industry contacts would be helpful.

Mr. Dosanjh commented that the role of DMV might be different than the Board's. He remarked on his own experience with General Motors. California, in his opinion, is challenging due to real estate regulation and the failure rate of American dealerships. Mr. Dosanjh proposed that the Board could ask the manufacturers to discuss their dealer development programs and plans.

Mr. Obando inquired about a timeframe or schedule for when CalSTA would like to review the recommendations. Mr. Corcoran responded that the timeframe is both short-term and long-term; something should be done publicly before the end of the year.

Mr. Dosanjh moved to create an Ad Hoc Delegated Committee on Equity, Justice and Inclusion. Mr. Obando seconded the motion. The motion carried unanimously.

10. **APPOINTMENT OF COMMITTEE MEMBERS TO THE AD HOC ADVISORY COMMITTEE ON EQUITY, JUSTICE, AND INCLUSION, BY THE BOARD PRESIDENT**

Ms. Doi made appointments to the newly created Ad Hoc Delegated Committee on Equity, Justice and Inclusion. Mr. Obando was appointed chair with Mr. Dosanjh, Ms. Smith Boland, and Mr. Alvarez as members, subject to Mr. Alvarez’s acceptance of the position of membership on the committee. Mr. Obando and staff are to call the first noticed meeting and follow other proper procedures.

Based on Mr. Corcoran’s question concerning quorum of the new Ad Hoc Committee, Ms. Doi also appointed herself as a member. If Mr. Alvarez declines to participate, then Ms. Doi would also decline and then this would be a three-member committee.

11. **ACKNOWLEDGEMENT OF BOARD STAFF MILESTONES IN YEARS OF SERVICE, BY THE BOARD PRESIDENT**

Mr. Corcoran provided the members with a memo acknowledging Board staff milestones in years of service as indicated below:

Start Date with NMVB	Team Member	Years of Service	Date of Hire with the State
2/5/2018	Timothy Corcoran	19 years	12/1/2000
4/18/1989	Dawn Kindel	31 years	Same as NMVB
7/19/1993	Suzanne Luke	26 years	Same as NMVB
7/9/2019	Alejandro Martinez	1 year	Same as NMVB
3/12/1997	Eugene Ohta	19 years	Same as NMVB
1/4/1993	Robin Parker	27 years	Same as NMVB
10/27/2014	Danielle Phomsopha	5 years	Same as NMVB
11/3/2014	Makalla Turner	6 years	2/28/2014
11/6/2014	Holly Victor	6 years	6/25/2013

Ms. Doi thanked and recognized Alex for his one-year anniversary, which just passed. Ms. Doi also acknowledged other staff anniversaries and expressed her appreciation and thanks. Mr. Obando echoed Ms. Doi’s comments and thanked the staff. Mr. Kassakhian also echoed their comments and added that he thinks the staff have been doing a fantastic job under very difficult circumstances.

There was no Board action as this matter was for information only.

12. **REPORT ON NON-SUBSTANTIVE CHANGES TO THE PROPOSED AMENDMENTS TO SECTION 551.12 (NOTICE OF ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES; PEREMPTORY CHALLENGES) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning non-substantive changes to the proposed amendments to Section 551.12 (Notice of Assignment of Administrative Law Judges; Peremptory Challenges) of Title 13 of the California Code of Regulations. Ms. Parker indicated that the Executive Committee approved non-substantive changes to the Authority Cited so the staff could proceed with the rulemaking. As indicated in the memo, the new changes are highlighted yellow as follows:

Note: Authority cited: Sections 3050, 3066, and 3080 and 3085.2, Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11425.40, Government Code.

There was no Board action as this matter was for information only.

13. **CONSIDERATION OF PERFORMANCE RATING CRITERIA FOR THE BOARD'S EXECUTIVE DIRECTOR POSITION - ADMINISTRATION COMMITTEE**

Miss Kindel provided the members with a revised template for the Performance Rating Criteria for the Executive Director position. Miss Kindel indicated that based on member feedback in March, the rating criteria have been reduced from five to three.

Mr. Kuhnert commented that the members should keep in mind the last six months and the way Mr. Corcoran has responded to COVID-19, since this is an extraordinary situation. Mr. Kassakhian seconded those comments and remarked that the criteria give the members a good platform by which to measure performance that is fair and something future Boards will be able to use. He also appreciated the help and support from staff in crafting this.

Mr. Kassakhian moved to adopt the Performance Rating Criteria. Ms. Liu seconded the motion. The motion carried unanimously.

14. **DISCUSSION OF THE BOARD'S RESPONSE TO THE COVID-19 PANDEMIC - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tim Corcoran concerning the Board's response to the COVID-19 pandemic. Mr. Corcoran reported that he is grateful for the Board and having a staff that has been resilient through countless changes that

are sometimes weekly, daily, and even hourly. Many new processes, electronic filing of pleadings and virtual Board meetings, will likely be permanent fixtures. Ms. Doi remarked that Mr. Corcoran was being too modest because the Board really appreciates his leadership for the members during this time and commended the rest of the staff.

There was no Board action as this matter was for information only.

15. **CONSIDERATION OF A TEAM AWARD FOR THE 2020 SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Tim Corcoran concerning a Team Award for the 2020 Solon C. Soteras Employee Recognition Award as recommended by the Board Development Committee. Mr. Corcoran noted that normally this is an individual award but that it became clear that every employee has been impacted tremendously by COVID-19, both personally and professionally, and all had different roles to play and contributions to make. Rather than naming just one employee, this was an opportunity for the Board to recognize the entire team and have a plaque made listing the names of the team and Board Members to give us something to look back on with more favor.

Ms. Liu agreed with Mr. Corcoran's comments and noted this unique time in history is one where, in order to get things done, it is a group effort, and she believes that the team deserves this award jointly.

Mr. Kassakhian echoed Ms. Liu's comments and added that one of the strongest assets that the staff and this group has is how agile they are to adapting to the various changes and it is remarkable that staff have accomplished everything that they would have being physically in the office, working remotely, and working well together.

Ms. Liu moved to adopt the recommendation of a Team Award for the 2020 Solon C. Soteras Employee Recognition Award that would include the procurement of a plaque to commemorate the occasion with each staff person's name inscribed on it. Mr. Kassakhian seconded the motion. The motion carried unanimously.

16. **STATUS REPORT CONCERNING THE ANNUAL BOARD FEE COLLECTION AND THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Dawn Kindel concerning the Board's collection of its annual fee and those fees collected on behalf of the Arbitration Certification Program (ACP). Miss Kindel indicated that it has been difficult getting information from manufacturers and distributors due to the pandemic. The staff is about a month behind in collecting the Board's annual fee so a report will be presented at the November meeting.

As indicated in the memo, \$1,439,185.32 was requested to fund the ACP for fiscal year 2019/2020. A fee of \$.689 per vehicle was charged to 41 manufacturers and distributors. A total of \$1,439,112.97 had been collected from 39 manufacturers or distributors with two outstanding invoices.

There was no Board action as this matter was for information only.

17. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

- a. Pending Legislation of Special Interest: None
- b. Pending Legislation of General Interest:
 - (1) Assembly Bill 326 (Assembly Member Muratsuchi) pertaining to electric mobility manufacturers.
 - (2) Assembly Bill 2028 (Assembly Member Gonzales) pertaining to public meetings.

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha reported that both bills noted on the agenda failed to pass out of the legislature. Ms. Doi asked whether the bills might be in the next legislative session. Ms. Phomsopha indicated that Assembly Bill 2028 pertaining to public meetings has been resurrected in different formats so she will be monitoring this. With regards to Assembly Bill 326, pertaining to electric mobility manufacturers, she would not be surprised if this will be reintroduced.

Mr. Obando offered some perspective on this legislative session noting that both the Assembly and the Senate experienced very different situations in terms of how management of the flow of bills occurred, and towards the end of session there was a flurry of bills and a lot of bills did not pass. Mr. Obando believes many bills will roll over to the next year. Technical glitches, difficulties, and processes that were experienced this year will probably not happen next year, which means that there will probably be more bills. Mr. Obando foresees these two bills coming back.

There was no Board action as this matter was for information only.

18. **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. Corcoran 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. Corcoran indicated that several items have been and may continue to be postponed, either due to practical restraints that have been brought by various impacts of COVID-19, and the Board's ability to attend or hold in-person events, like the Industry Roundtable. In response to Ms. Doi's question, Mr. Corcoran indicated that he would prefer to see how the end of this calendar year goes, and then regroup and talk about what next year's roundtable might look like.

Mr. Obando commented that manufacturers and dealers sometimes do not participate in the Roundtable or leave right after, so this may present an opportunity for them to attend virtually. Ms. Doi indicated that if it does not look like the Board will be able to hold an in-person Industry Roundtable in 2021, it would be worth considering a virtual conference or roundtable.

With regards to case management, Ms. Parker indicated that 54 protests have been filed this year. Only 19 notices of termination have been received, which is a much lower number compared to 2009 and 2010 during the Great Recession. The 2017 modification protests for FCA will be resolved soon upon the filing of Proposed Stipulated Decisions and Orders. Judge Wong presided over the settlement conference in these cases and recently helped facilitate a settlement in the Santa Monica BMW case. Ms. Parker mentioned that Judge Wong is spearheading training for all the Board's judges with the help of Judge Skrocki, Judge Woodward Hagle, and Judge Pipkin.

Ms. Phomsopha indicated that since the members received this report, there have been nine new protests filed; seven establishment and two performance standard protests. In *Merced Truck and Trailer* (PR-2671-20) and *Bonander Auto* (PR-2673-20), the motions to dismiss were heard and the ruling deferred to see if counsel would like to schedule a Mandatory Settlement Conference.

In response to Ms. Doi's questions, Ms. Parker indicated that she anticipates one to three case management matters for the November 4, 2020, General Meeting. Ms. Parker indicated that a writ of mandate was filed regarding the Board's Decision in *Barber Honda*. In the *R & H Automotive Group* writ, a December 1, 2020 hearing has been set. In the Ford Motor Company writ pertaining to the Board's decision in *Vista Ford*, the opening brief was filed this week.

There was no Board action as this matter was for information only.

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

No additional public comment was presented.

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. 20.

21. **OPEN SESSION**

The Public Members returned to Open Session. No action was taken.

22. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:17 a.m.

Submitted by



TIMOTHY M. CORCORAN
Executive Director

APPROVED:



Kathryn Ellen Doi
President
New Motor Vehicle Board