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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on February 16, 2021, via Zoom and teleconference. Kathryn Doi, President and Public Member, called the meeting of the Board to order at 9:31 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 at (916) 445-1888 or nmvb@nmvb.ca.gov. The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi
Ramon Alvarez C.
Anne Smith Boland
Inder Dosanjh
Ardashes “Ardy” Kassakhian (left at 10:32 a.m.)
Daniel P. Kuhnert
Nanxi Liu
Bismarck Obando

Board Staff Present: Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Robin P. Parker, Chief Counsel
Danielle R. Phomsopha, Senior Staff Counsel
Suzanne Luke, Administrative Services Analyst

Anthony M. Skrocki, Administrative Law Judge
Stephen J. Smith, Administrative Law Judge

3. **APPROVAL OF THE MINUTES FROM THE OCTOBER 27, 2020, AND JANUARY 19, 2021, MEETINGS OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, NOVEMBER 4, 2020, GENERAL MEETING, AND NOVEMBER 13, 2020, SPECIAL MEETING**

Mr. Alvarez moved to adopt the October 27, 2020, minutes from the meeting of the Ad Hoc Committee on Equity, Justice and Inclusion. Ms. Smith Boland seconded the motion. The motion carried unanimously.

Mr. Obando moved to adopt the January 19, 2021, minutes from the meeting of the Ad Hoc Committee on Equity, Justice and Inclusion. Ms. Liu seconded the motion. The motion carried unanimously.

Ms. Liu moved to adopt the November 4, 2020, General Meeting minutes. Mr. Alvarez seconded the motion. The motion carried unanimously.

Mr. Kuhnert moved to adopt the November 13, 2020, Special Meeting minutes. Ms. Liu seconded the motion. Mr. Obando abstained from voting since he was not in attendance. The motion carried unanimously.

4. **2021 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Ms. Doi read the following statement from the Board adopted Parliamentary Procedures:

The election of officers shall be a specific item of business on the agenda for the first General Meeting of each calendar year. At the time the matter is considered, any member may nominate any other member for the office of President and/or Vice-President. There are no restrictions on the number of members who may be nominated for either position during this process. At any time after at least one Board Member is nominated for each office, any member may move that the nomination of officers be closed. If the motion is seconded and carried by majority vote, the nominating process shall be deemed concluded. After the nominating process is concluded, the Members of the Board shall cast their vote for a nominated Member for each office. No Board Member may vote for more than one nominated Member for each office. The voting shall be done by oral poll. Any Board Member may abstain from voting for a nominated Member for either office.

Ms. Doi remarked that it was an honor and privilege to serve as the Board President for the past two years. She noted it had been a time of change with a number of new members and a time of challenge adapting to the new COVID restrictions. Ms. Doi indicated that all of this was seamless thanks to the steady leadership of Mr. Corcoran, Miss Kindel, Ms. Parker, Administrative Law Judge (ALJ) Skrocki, and the rest of the dedicated ALJs and staff of the New Motor Vehicle Board.

Additionally, Ms. Doi noted that historically, Board Presidents have not served longer than two years in succession, and this seems like a good benchmark to allow for others to assume the leadership role.

Ms. Doi moved to nominate Mr. Obando as President. Mr. Obando accepted this nomination. No other nominations for President were made. Mr. Kassakhian moved to close the nominations, with Mr. Alvarez seconding the motion. This motion to close the nominations carried unanimously. Mr. Kuhnert seconded the motion to nominate Mr. Obando as President. The motion to nominate Mr. Obando as President carried unanimously.

Ms. Doi noted that Mr. Obando's term as President will start at the next meeting of the Board.

Ms. Liu moved to nominate Mr. Kassakhian as Vice President. Mr. Kassakhian accepted this nomination. No other nominations for Vice President were made. Ms. Liu moved to close the nominations, with Mr. Kuhnert seconding the motion. This motion to close the nominations carried unanimously. Mr. Alvarez seconded the motion to nominate Mr. Kassakhian as Vice President. The motion to nominate Mr. Kassakhian as Vice President carried unanimously.

5. **ANNUAL REVIEW AND APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEE (IF APPLICABLE), BY THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, Mr. Obando made the following committee appointments:

ADMINISTRATION COMMITTEE

Ardy Kassakhian, Chair
Daniel Kuhnert, Member

BOARD DEVELOPMENT COMMITTEE

Nanxi Liu, Chair
Kathryn Ellen Doi, Member

EXECUTIVE COMMITTEE

Bismarck Obando, President
Ardy Kassakhian, Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair
Nanxi Liu, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Ramon Alvarez C., Chair
Anne Smith Boland, Member
Kathryn Ellen Doi, Member

LEGISLATIVE COMMITTEE

Bismarck Obando, Chair
Ardy Kassakhian, Vice President

POLICY AND PROCEDURE COMMITTEE

Daniel Kuhnert, Chair
Inder Dosanjh, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Bismarck Obando, Chair
Ramon Alvarez C., Member
Anne Smith Boland, Member
Kathryn Ellen Doi, Member
Inder Dosanjh, Member

6. **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 Public Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

7. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO PETER WELCH, RETIRED PRESIDENT AND CEO OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION (NADA)**

Prior to considering the Resolution, Ms. Doi allowed the Board Members, staff, and public to say a few words. Ms. Parker indicated that she has known Peter practically since she started with the Board. Peter has always been a good friend to the Board and supportive with assistance on legislation and the Board's 2012 Sunset Review. Additionally, Peter has a tremendous wealth of knowledge not just of the automotive industry but also the history of the Board. Ms. Parker remarked that she is thankful for all of Peter's contributions and help he has given to the Board over the decades.

Mr. Alvarez noted that Peter is a pillar in the automotive industry, led the NADA admirably, and is not only a personal friend but a very good friend of the California New Motor Vehicle Board. Mr. Alvarez is personally grateful for Peter's leadership.

Anthony Bento of the California New Car Dealers Association thanked the Board for considering Mr. Welch for this tremendous honor and seconded the prior comments. Mr. Bento noted that Peter has been a tremendous asset to dealers but also the industry as a whole.

Mr. Kassakhian remarked that the Resolution is a well-deserved recognition for Peter who has dedicated so much of his career by enlightening, educating and informing individuals and being an advocate for his industry.

Mr. Obando moved to present Peter Welch with a Resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of California. Mr. Alvarez seconded the motion. The motion carried unanimously.

8. **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 Tim Corcoran 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.

As indicated in the memo, the revised delegations pertain to Assembly Bill 179 (Stats 2019, Ch. 796; effective January 1, 2020), which re-lettered Section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests, and made many conforming changes. In the "Delegation of Administrative Duties" on page 50, references to Staff Services Manager I have been amended to reflect Dawn Kindel's promotion to Staff Services Manager II. Ms. Parker noted an additional amendment to footnote 5 on page 51 to reflect her recent promotion to Chief Counsel from Senior Staff Counsel.

Mr. Kuhnert moved to adopt the Board delegations as amended. Mr. Kassakhian seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION'S DRAFT MISSION STATEMENT - AD HOC COMMITTEE**

The members were provided with a memorandum from Bismarck Obando and Tim Corcoran concerning the Ad Hoc Committee on Equity, Justice and Inclusion's draft mission statement.

Mr. Obando commented that at the January 19, 2021, Ad Hoc Committee Meeting, there was a robust conversation that resulted in formulating the draft mission statement that could be supported by the full Board before the Ad Hoc Committee developed a work

plan.

Mr. Obando noted that Mr. Corcoran, Miss Kindel and Ms. Doi briefed California State Transportation Agency (CalSTA) concerning the Committee's draft mission statement and noted that the Committee was heading in the right direction.

Mr. Obando read the draft mission statement and sought member feedback and edits:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues relating to the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Ms. Doi commented that there are other potential issues to review by the Committee such as zero emission vehicles and access to those vehicles by underrepresented groups, so she offered an amendment to broaden the mission statement as follows:

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues, relating to the including but not limited to, the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of under-represented groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of under-represented groups to be considered for exempt executive level positions within CalSTA and its departments.

Mr. Obando moved to adopt the draft mission statement with the amendments suggested by Ms. Doi. Ms. Liu seconded the motion. The motion carried unanimously.

10. **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 Tim Corcoran and Robin Parker.

As indicated in the memo, the table of contents and all page references were updated. The section entitled “New as of 2021” on page 3 was updated to reflect no new legislation, court opinions, or regulations impacting the Board’s jurisdiction. In the “Separate Protests” section on page 8, the analogy was updated to reflect “Chrysler, Dodge, Jeep, and RAM” instead of “Chrysler, Jeep and Dodge.” Parallel citations to court opinions were removed throughout to make it easier to read.

Additional amendments noted in the memo included the following:

- Due to the current situation, the Board’s preference is to receive protests by email. Alternatively, protests can be mailed to the Board’s P.O. Box. The reference to in-person filings is being deleted because the office is not routinely staffed. This amendment is reflected on page 8.
- Effective April 1, 2020, an intervenor is precluded from filing a peremptory challenge. This was reflected in the 2020 version of the *Guide* under “New as of 2020.” Now, the “Challenge to Presiding Officer” section for protests and petitions on pages 9 and 71 is being updated to reflect this.
- In a “Maintenance of the Codes” bill, subdivision (d)(4) of Section 3065.2 was amended as follows: “...If the franchisee fails to provide the supplemental repair orders, all time ~~period~~ periods under this section shall be suspended until the supplemental repair orders are provided.” This amendment was effective January 1, 2021 and is noted on page 41. (Assembly Bill 1371 (Stats. 2020, Ch. 370, Sec. 265).)

Ms. Parker noted one additional amendment that reflects Ms. Phomsopha’s recent promotion to Senior Staff Counsel and Ms. Parker’s promotion to Chief Counsel.

Mr. Alvarez moved to adopt the revised *Guide to the New Motor Vehicle Board* with the amendment to the title page. Ms. Liu seconded the motion. The motion carried unanimously.

11. **DISCUSSION AND CONSIDERATION OF THE BOARD’S POLICY CONCERNING ITS PERIODIC NEWSLETTER, THE IN-SITE - ADMINISTRATION COMMITTEE**

Mr. Corcoran discussed the history and evolution of the Board’s periodic newsletter, the In-Site. Mr. Corcoran noted that for several reasons, The In-Site has not been published

since April 2018. He reviewed the purpose of The In-Site, which was to educate interested parties, publish Board decisions, and share industry news with the Board; all of this is now accomplished through online means and is more effective and timelier. Even though The In-Site has not been published for three years, the staff received no inquiries regarding it. Mr. Corcoran asked for discussion and consideration of retiring the Board adopted policy that requires periodic publication of The In-Site.

Mr. Obando indicated that he thought it was time to retire this policy. Mr. Kuhnert, as a member of the Administration Committee, echoed this.

Prior to the vote, Mr. Kassakhian had to leave the meeting. Mr. Kuhnert moved to eliminate the Board policy requiring the periodic publication of The In-Site. Mr. Obando seconded the motion. The motion carried unanimously.

12. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition and related fiscal matters. Ms. Luke indicated that for the first quarter of 2020-2021, the Board started with an appropriation of \$1.76 million, ending with the current reserve balance of \$2.76 million. Ms. Luke reported that the Board expended 21% of its appropriated budget for the first quarter. Furthermore, there is no need for an adjustment to the fee structure at this time with the current reserve balance. With regards to the Board's annual fee collection, Ms. Luke noted that it should be completed soon with only 14 payments outstanding of the 138 manufacturers and distributors invoiced. Regarding the Board's office space, Ms. Luke indicated that there are currently no cost figures for the lease extension so this will be shared at a future meeting.

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

13. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2021-2022 - FISCAL COMMITTEE**

The members were provided with a memorandum from Dawn Kindel concerning the out-of-state travel plans for fiscal year 2021-2022. Miss Kindel indicated that the Board's only planned trip is the National Automobile Dealers Association Annual Show in Las Vegas in March 2022. Currently, there is no information on the National Association of Motor Vehicle Boards and Commissions' Fall Conference.

Miss Kindel indicated that if COVID-related travel restrictions were still in place, Mr. Corcoran, as the Board's Executive Director, would not be able to attend this trip. Currently, the Administration is asking staff to not travel more than 120 miles away from their homes; otherwise, a quarantine would be in place.

For planning purposes, Miss Kindel remarked that the staff needs to go forward and submit its out-of-state travel requests to DMV so the Department of Finance and the Governor's Office can review it.

In response to Ms. Doi's question, Miss Kindel indicated that Board staff and members have also been sent to the NADA Annual Show and no staff have expressed their desire to attend. The thought was the Executive Director would represent all staff and Board Members. The process is complicated with regards to having a blanket request for several people to attend this trip since the specific person attending needs to be designated and approved by the Administration.

Mr. Obando noted that in his experience, the show is a good networking opportunity to meet dealers, lobbyists, and manufacturers and understand the industry. Mr. Kuhnert commented that he has attended these shows and they are educational. He is a proponent of having a Board Member attend that never has.

In response to Mr. Obando's questions, Miss Kindel remarked that sending a staff person and a Board member would not raise any red flags since Nevada is a neighboring state and there are no budgetary constraints with sending 2-3 people.

There was a discussion concerning the Public Members that have not attended this show be given an opportunity to do so. Historically, the Dealer Members attend this event. Ms. Liu is the only Public Member that has not attended.

Ms. Smith Boland moved to approve the proposed out-of-state trip for the Executive Director and Public Member Liu to attend the event. Mr. Obando seconded the motion. The motion carried unanimously.

14. **DISCUSSION REGARDING THE 2021 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the 2021 Industry Roundtable. Ms. Phomsopha noted staff prepared an outline of interesting topics focusing on the Governor's recent Executive Order regarding Zero Emission Vehicles (ZEV). As indicated in the memo, the topic/speaker suggestions are as follows:

- Manufacturer perspective on future alternative fuel vehicles
- Trends in ZEVs from DMV's perspective
- Infrastructure plans and solutions
- Updates from franchisees who are moving forward with ZEV developments at their dealerships
- Update on the Road Charge Program and discussing the gas tax reduction
- Electrification/alternative fuel research and development
- Other CA State Agencies' clean energy/transportation programs, including

regulations and programs implementing the Governor's plans

With regards to "infrastructure plans and solutions," Mr. Kuhnert indicated that what is missing is what are the plan from an infrastructure point of view for the present-day car dealer? How is his life going to change with this, whether it's from a capital investment point of view, inventory point of view, and all of the things that go with it? Mr. Kuhnert thinks it is very important as far as 15 years from now, what a dealership looks like compared to today as far as having to deal with quite a bit of electric vehicles but also used carbon-based vehicles.

Ms. Smith Boland remarked that there are a lot of dealership requirements in the pipeline even just 1-2 years out. Mr. Dosanjh provided his experience with electric vehicles, the impacts on his dealership to charging these vehicles, and its positive effect on his service department. Mr. Alvarez agreed with Ms. Dosanjh that he too believes service business with electric vehicles will increase not decrease. Mr. Dosanjh offered to host a meeting at his Cadillac dealership in Dublin.

The Dealer Members had a number of suggestions for speakers including GM (Cadillac), BMW, Ford and Tekion.

After a robust discussion of dates, the members ultimately selected September 9, 2021. (Subsequently modified to Wednesday, September 8 and Thursday, September 9, 2021 from 10:00 a.m.-12:00 p.m.) This will be a virtual event. Ms. Liu remarked that she thinks that will potentially increase the opportunity for the Board to get more speakers and attendance.

15. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the new policies that were approved in 2020 pertain to:

- The Parliamentary Procedures were amended to delete appeals, which were repealed January 1, 2020.
- The adjusted annual gift limit was increased from \$500 to \$520 from January 1, 2021, through December 31, 2022.
- The Board ratified the hiring of ALJ Stephen Smith.
- The *Guide to the New Motor Vehicle Board, Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- Performance appraisal criteria were adopted for the Executive Director position.

Ms. Parker noted two additional changes to reflect the recent promotions in footnote 1 on page 1 and on page 6 in “Appointment of Hearing Officers.”

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

16. **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 revised *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported the changes from the version adopted in March 2020 reflect: (1) The Board’s Post Office Box for mailings; (2) The preference for email filings instead of in-person filings considering the current situation; and, (3) That an intervenor is precluded from filing a peremptory challenge as the result of regulatory changes effective April 1, 2020.

Ms. Parker noted an additional amendment that reflects Ms. Phomsopha’s recent promotion to Senior Staff Counsel and Ms. Parker’s promotion to Chief Counsel.

Mr. Obando moved to adopt the 2021 *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

17. **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 memo and revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. As indicated in the memo, the changes from the prior version adopted in March 2020 are as follows:

- Due to the current situation, the Board’s preference is to receive notices by email. Alternatively, notices can be mailed to the Board’s P.O. Box. This amendment is reflected in footnotes on pages 4, 5, 7, and 11. An additional amendment pertaining to email notices is on page 17.
- References to the Pomona Show have been changed to the California RV Show on pages 6, 8 and 23.
- “What is a Warranty Reimbursement Schedule or Formula” on pages 13-14 has been revised to clarify the duties for Vehicle Code section 3065 franchisors (cars, trucks, motorcycles) and Article 5 recreational vehicle franchisors.

- A footnote on page 17 was added to note that Board meetings are being held by Zoom and teleconference.

Ms. Parker noted an additional amendment that reflects Ms. Phomsopha's recent promotion to Senior Staff Counsel and Ms. Parker's promotion to Chief Counsel.

Mr. Obando moved to adopt the 2021 *Informational Guide for Manufactures and Distributors* as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF 2021 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2021 Rulemaking Calendar from Tim Corcoran and Danielle Phomsopha. Ms. Phomsopha reported that the Rulemaking Calendar has already been approved by California State Transportation Agency. Ms. Phomsopha indicated that if the calendar is approved by the Board, it will be submitted to the Office of Administrative Law for publication in the California Regulatory Notice Register.

In response to Ms. Doi's questions, Ms. Phomsopha indicated that the rulemaking noted on the calendar pertains to substantive changes that were approved previously for the Assembly Bill 179 amendments, as well as the protest and petition changes the Board approved at a subsequent meeting regarding new Vehicle Code section 3065.3 and providing more detail to declarations or other evidence in relation to petitions.

Mr. Alvarez moved to adopt the 2021 Rulemaking Calendar. Ms. Liu seconded the motion. The motion carried unanimously.

19. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the assignment of cases to Board ALJs in 2020. As indicated in the memo, there were nine law and motion hearings, seven discovery hearings (rulings on objections) and seven mandatory settlement conferences. Ms. Phomsopha reported there was a 2-day merits hearing in 2020 (pre-pandemic) and all settlement conferences have been held via Zoom. In response to Ms. Doi's question, Ms. Phomsopha indicated that Judge Nelsen will preside over a hearing in February, Judge Hagle will potentially preside over a hearing in late March, and the stipulated decision or order dispute is assigned to Judge Matteucci.

Ms. Doi was wondering how these matters are assigned to the different ALJs because a lot of them did not have assignments and it looked like most matters were heard by Judge Skrocki. Ms. Phomsopha noted that per Board policy, Judge Skrocki hears all law and motion so that is why he gets the bulk of the work. Judge Wong handles the settlement

conferences. Ms. Parker added that when a judge gets assigned to preside over a merits hearing, no other assignments will be made until the hearing is completed and the Proposed Decision drafted. The law and motion hearings Judge Skrocki presides over a take about an hour. By way of example, Ms. Parker commented that when Judge Nelson presides over the February hearing, until the Board gets his draft proposed decision, he will not be assigned any new cases. Same goes for Judge Woodward Hagle's potential hearing in March. Mr. Corcoran added that the Board is limited in the number of hours that can be assigned to the retired annuitant or permanent intermittent judges so that is an additional consideration.

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

20. **CONSIDERATION OF PROPOSED REGULATION AMENDING THE BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Robin Parker, and Danielle Phomsopha concerning a proposed amendment to Section 599 of Title 13 of the California Code of Regulations pertaining to the Board's Conflict of Interest Code. Ms. Parker indicated that every other year the Board reviews its Conflict of Interest Code and noted Dawn's promotion needs to be reflected. Ms. Doi questioned the need to designate a level for the Staff Services Manager and why nonlegal positions are under the title "Legal Division." After a brief discussion, Ms. Doi suggested the following changes: move Staff Services Manager (all levels) to the Executive Division and create an Administrative Services Division heading for Staff Services Analyst, Associate Governmental Program Analyst, and Consultant/New Position.

Mr. Obando moved to adopt the proposed regulation as amended. Ms. Smith Boland seconded the motion. The motion carried unanimously.

Ms. Doi read the following statement into the record:

Given the Board's decision to go forward with the proposed regulation, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulation, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulation. Furthermore, if the staff

decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

The revised text is:

Designated Positions	Disclosure Category
<u>EXECUTIVE DIVISION</u>	
Board Member	1
Executive Director	1
Staff Services Manager + <u>(all levels)</u>	1
<u>ADMINISTRATIVE SERVICES DIVISION</u> (new heading)	
Staff Services Analyst	1
Associate Governmental Program Analyst	1
Consultant/New Position	*
<u>LEGAL DIVISION</u>	
Administrative Law Judge (all levels)	1
Attorney (all levels)	1

21. **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 written report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Corcoran provided a detailed overview of the Board's accomplishments over that past year as follows: (1) The Board staff pivoted to telework and a virtual office with the support of DMV in securing laptops, which made this possible; (2) Zoom has been used for public Board Meetings, staff meetings, and ALJ training. Zoom will also be used for merits hearings; (3) The staff is exploring options to transition to electronic case management ; (4) All legal processes were modified to assure the work continued; (5) The Legal Division staff engaged a number of participants, stakeholders, and counsel that appear before the Board along with the ALJs to prepare for Zoom hearings; (6) The workload in the Legal Division was the second highest in a 17-year

period; and (7) Board Executive staff worked with DMV through a partnership with CalSTA, a number of industry stakeholders, and associations, to formalize a written policy that made it clear that conducting a large portion of the sales transaction online is permissible.

Mr. Corcoran received an "Industry Achievement Award" in appreciation of his outstanding service and dedication to the auto industry by IADAC (Independent Automobile Dealers Association of California). The award was presented by Larry Laskowksi, who recently retired from IADAC.

With regards to employee retention and succession planning, Mr. Corcoran reported that Miss Kindel was promoted from Staff Services Manager I to Staff Services Manager II with a title change from "Chief of Staff" to "Assistant Executive Officer," which is a title that is more fitting of the role as the second in command in leading the Board staff. This title is recognized at other boards and commissions. Ms. Parker was promoted to Chief Counsel and Ms. Phomsopha was promoted to Senior Staff Counsel. Mr. Corcoran commented that these are all key moves for not only retention but future succession planning.

On a personal note, Mr. Corcoran reported that Baby Teddy, Ms. Phomsopha's son, joined the New Motor Vehicle Board family. Eugene Ohta retired. Alex Martinez was married and so was Makalla (Turner) Johnson.

Lastly, Mr. Corcoran remarked on what a pleasure it has been to work with Ms. Doi for the past two years under her leadership as Board President. Mr. Corcoran thanked Ms. Doi for her leadership, guidance, mentorship and everything else she has done personally for Mr. Corcoran and for the Board.

Ms. Doi expressed her appreciation of Mr. Corcoran's leadership, and his foresight and vision in terms of moving the Board forward.

Ms. Phomsopha reported that since the Executive Director's Report was published, two new protests were filed (warranty and franchisor incentive). As previously mentioned, Judge Nelsen will preside over the Board's first Zoom merits hearing in *Subaru of Sonora*. Lastly, two bills were introduced that pertain to the Bagley Keene Open Meeting Act so staff will work to review and analyze those bills. The full Board will be apprised at the next General Meeting and staff will work with the Legislative Committee on those analyses.

Ms. Parker provided a detailed update on three court matters in which decisions were recently issued. In *R & H Automotive*, the judge upheld the Board's decision. In *Ford Motor Company v. New Motor Vehicle Board*, the Court upheld Judge Pipkin's decision in *Vista Ford* that precluded Ford from relocating one of its dealers. In *General Motors v. New Motor Vehicle Board*, pertaining Folsom Chevrolet's termination protest, the Court found that the Board did not incorrectly apply the legal standard set forth in Vehicle Code section 11713.13(g)(1)(A) when analyzing the good cause factors, but that the Board did

not have jurisdiction to make a determination that General Motors violated that particular provision.

Ms. Doi thanked the ALJs, Ms. Parker and Michael Gowe, the Attorney General who represents the Board in these appeal hearings before the Superior Court.

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

Mr. Alvarez thanked Ms. Doi for her service as President the past two years, for her dedication to the Board and for her passionate thoroughness in everything she did for the Board. Ms. Doi did a great job leading the Board. Mr. Alvarez also welcomed the new officers, Mr. Obando and Mr. Kassakhian, who will take over as President and Vice President. Lastly, Mr. Alvarez thanked Miss Kindel, Ms. Parker and Ms. Phomsopha for the great job they did in very challenging times all led by the Board's Executive Director, Mr. Corcoran.

No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:54 a.m.

Submitted by



TIMOTHY M. CORCORAN
Executive Director

APPROVED:



Bismarck Obando
President
New Motor Vehicle Board