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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on April 28, 2023, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 11:36 a.m. The meeting was delayed due flight delays.

2. **ROLL CALL**

Board Members Present: Anne Smith Boland
Kathryn Ellen Doi
Ryan Fitzpatrick
Ardashes “Ardy” Kassakhian
Jacob Stevens

Board Members Not Present: Bismarck Obando
Brady Schmidt

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

Mr. Corcoran indicated that a quorum was established for case management and general business.

4. **APPROVAL OF THE MINUTES FROM THE JANUARY 25, 2023, GENERAL MEETING**

Member Doi requested clarification on the third paragraph of Agenda Item 23 in the January 25, 2023, General Meeting minutes. It appears the word “date” was missing so it was added as indicated below:

Member Doi inquired whether any merits hearing are scheduled for 2023. Ms. Parker indicated that a hearing that has been assigned to Judge Smith is going forward on February 6 (the hearing was subsequently taken off

20. **CLOSED EXECUTIVE SESSION**

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

a. **DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS - ADMINISTRATION COMMITTEE**

Discussion and consideration of personnel matters, by all members of the Board.

b. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

Consideration of annual performance review for Executive Director, by all members of the Board.

c. **ORAL INTERVIEW OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES VIA ZOOM - ADMINISTRATION COMMITTEE**

Oral interview of the Administrative Law Judge candidates via Zoom, by all members of the Board.

d. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEE - ADMINISTRATION COMMITTEE**

Consideration of the Administrative Law Judge nominee, by all members of the Board.

Agenda Item 20(b) was pulled from the agenda. The remaining items were postponed until after Agenda Item 25.

21. **OPEN SESSION**

The members remained in Open Session.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

- (1) Protest No. PR-2418-15 *Adrenaline Powersports v. Polaris Industries, Inc.*
- (2) Protest No. PR-2534-17 (consolidated) *Porter Auto Group, L.P. v. FCA US LLC*
- (3) Protest No. PR-2605-19 *R&H Automotive Group, Inc. v. American Honda Motor Co., Inc., Acura Automotive Division*
- (4) Protest No. PR-2180-09 *Jackson Ford-Mercury, Inc., dba The New Jackson Ford-Mercury v. Ford Motor Company*

This item was postponed until after Agenda Item 8.

Member Stevens moved to adopt the proposed regulatory amendments. Member Fitzpatrick seconded the motion. The motion carried unanimously. Prior to reading the formal statement on the action taken by the Board, the members discussed and considered Agenda Item 16.

16. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS - POLICY AND PROCEDURE COMMITTEE**

- A. Challenge (13 CCR § 551.1)
- B. Testimony by Deposition (13 CCR § 551.6)
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)
- D. Request for Informal Mediation (13 CCR § 551.14)
- E. Informal Mediation Process (13 CCR § 551.16)
- F. Sanctions (13 CCR § 551.21)
- G. Interpreters and Accommodation (13 CCR § 551.23)
- H. Transmittal of Fees by Mail (13 CCR § 553.72)
- I. Contents (13 CCR § 555)
- J. Procedure at Hearings (13 CCR § 580)
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

The members were provided with a memo from Tim Corcoran and Robin Parker regarding a number of proposed regulatory amendments to eliminate references to residence addresses, update the Board's address, and make language gender neutral.

In response to Member Doi's question, Ms. Parker indicated that the staff is planning to submit the proposed regulations to the Office of Administrative Law as non-substantive changes but in the event OAL disapproves, these will proceed through formal rulemaking as substantive changes.

Member Fitzpatrick moved to adopt the proposed new regulation. Member Doi seconded the motion. The motion carried unanimously.

President Kassakhian read the following statement into the record for the proposed regulatory changes in Agenda Items 15 and 16:

Given the Board's decision to go forward with the proposed regulation[s], 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[s], 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[s]. 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.

8. **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 memo and revised *Guide to the New Motor Vehicle Board* from Tim Corcoran and Robin Parker.

As indicated in the memo, the “New as of 2023” section was updated to reflect regulations that were effective October 1, 2022, and legislative changes that deleted obsolete provisions relating to appeals and made technical changes.

In addition, the following amendments were made:

- With the relocation to the Department of Motor Vehicles, the Board does not have a landline or fax machine. In the event a party would like to file a protest via facsimile, the Board would accommodate this request. Footnote 5 on page 8 was added to request a franchisee seeking to file a protest via facsimile contact the Board’s legal staff in advance at (916) 445-1888 or nmvb@nmvb.ca.gov.
- The addition of online credit card payments was added on page 9.
- Footnote 6 was added on page 9 to reflect that at the January 25, 2023, General Meeting, the Board approved adding the Office of Administrative Hearings to the “Merit Hearings Judge Assignment Log.”
- New footnote 6 is referenced in footnote 25 on page 63.
- References to Vehicle Code section “3050(b)(2)” were changed to “3050(b)(2)(A)” on pages 67, 70, and 71 and in the sample petition form in the Appendix.
- Gender specific language was replaced with gender neutral language in the sample forms in the Appendix.

Member Stevens moved to adopt the revised *Guide to the New Motor Vehicle Board*. Member Fitzpatrick seconded the motion. The motion carried unanimously.

22. **DISCUSSION AND CONSIDERATION OF WHETHER TO DESIGNATE THE FOLLOWING BOARD DECISIONS AS PRECEDENT DECISIONS PURSUANT TO GOVERNMENT CODE SECTION 11425.60, BY THE PUBLIC MEMBERS:**

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The Public Members were provided with a memo from Tim Corcoran and Robin Parker regarding whether to designate four Board Decisions as precedent decisions pursuant to Government Code section 11425.60.

Mr. Corcoran indicated that there was insufficient time to fully consider this matter but he wanted to get the Public Members' perspective in general and provide an opportunity for questions.

Member Doi indicated that this matter will require a longer discussion. She summarized the process as agencies like the Board can designate some of its decisions as binding precedent under the Administrative Procedure Act. However, this is unusual because the Board does not have to go through a formal notice and comment period like with rulemaking. And these determinations are not subject to judicial review. So, if somebody doesn't like what the Board does, it cannot be appealed to the court. Only decisions that are of significant legal or policy determination of general application and only decisions where the issue is likely to recur are to be designated as precedent. Member Doi commented that she thinks precedent decision can be helpful but it should not be done hastily. Member Doi thought it would be helpful to have the significant legal or policy determinations of general application spelled out more clearly and open the discussion for public comment.

In light of Member Doi's comments, President Kassakhian indicated that this discussion would be held at a future meeting.

19. **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. First, Mr. Corcoran and Dawn Kindel participated in the California State Transportation Agency's ("CalSTA") summit early this year. This provided the Board with an opportunity to identify ways that we can become more strategically aligned with CalSTA's goals and their Core-Fore objectives of climate, safety, economic prosperity, and equity. Second, the Ad Hoc Committee on Equity, Justice and Inclusion's first meeting of the year is May 23rd. This will be the first opportunity to align the Board's goals

and objectives strategically with those of the Core-Four under CalSTA. Third, Danielle Phomsopha (former Senior Staff Counsel) was attending the DMV Leadership Development Academy, which is an intense program. It's the executive level program that Mr. Corcoran attended when he was a chief at DMV. UC Davis puts on this program.

Miss Kindel updated the members on recent staff changes in the Consumer Mediation Program. Fortunately, two new analysts were hired and are being trained.

Member Doi inquired about the Board's new facility. Miss Kindel reported that it is unlikely the staff will be able to move into the new facility until 2024.

Ms. Parker reported that two new termination protests were filed against Lotus in response to 15-day notices of termination. Updates on the judicial matters were also provided (*Barber Honda* and *Subaru*). In the petition filed by *Courtesy Subaru of Chico v. Subaru*, after the formal request for investigation was provided to DMV, Subaru filed a motion for reconsideration that was rejected as it did not comply with the Board's regulations.

Ms. Phomsopha indicated that the *Putnam Ford* protest was assigned to OAH for hearing. Additional updates were provided for *Audi Fresno*.

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

No additional public comment was presented.

27. **ADJOURNMENT**

Member Stevens moved to adjourn the meeting. Member Fitzpatrick seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:43 p.m.

Submitted by

Timothy M. Corcoran

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____

JStevens

Jacob Stevens
Vice President
New Motor Vehicle Board