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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on January 25, 2023, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 9:38 a.m.

President Obando 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 nmvp@nmvp.ca.gov. President Obando also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Anne Smith Boland
Kathryn Ellen Doi
Ryan Fitzpatrick (left at 11:25 a.m.)
Ardashes “Ardy” Kassakhian (arrived at 10:02 a.m.)
Bismarck Obando
Brady Schmidt
Jacob Stevens

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
Holly Victor, Mediation Analyst
Lee Moore, Mediation Analyst

3. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER BOARD MEMBER BRADY SCHMIDT**

President Obando welcomed newly appointed Dealer Member Brady Schmidt. Before introducing Member Schmidt, President Obando invited former Dealer Member Ramon Alvarez to make comments.

Former Member Alvarez thanked Board staff and former colleagues for their work throughout his years on the Board. Former Member Alvarez welcomed new Member

Schmidt to the Board.

President Obando introduced Member Schmidt who was appointed by Governor Newsom in January.

Member Schmidt indicated it is a pleasure to be appointed to the Board and he looks forward to contributing to the Board's work. Member Schmidt thanked former Member Alvarez for his mentorship throughout the years.

Member Schmidt provided his background: he is a new car dealer in California and Hawaii. He has worked in the car business for 33 years, primarily at a brokerage company selling new car dealerships, negotiating buy-sells, and working with manufacturers to affect change of ownership of new car dealerships.

4. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 28-29, 2022, SPECIAL MEETING/INDUSTRY ROUNDTABLE AND NOVEMBER 7, 2022, GENERAL MEETING**

Member Doi moved to adopt the September 28-29, 2022, Special Meeting/Industry Roundtable minutes and the November 7, 2022, General Meeting minutes. Member Fitzpatrick seconded the motion. The motion carried unanimously.

5. **2023 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT**

This item was postponed until after agenda item 13.

6. **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**

This item was postponed until after agenda item 13.

7. **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 item was postponed until after agenda item 13.

8. **DISCUSSION AND CONSIDERATION OF THE REVISED NEW MOTOR VEHICLE BOARD LOGO**

The members were provided a memorandum regarding the consideration of a revised New Motor Vehicle Board logo from Dawn Kindel, Lee Moore, and Holly Victor. Ms. Kindel provided an update that a few minor edits have been made to the logo at the direction of the Board Members at the November 7, 2022, General Meeting. Mr. Corcoran indicated that California State Transportation Agency communications team reviewed and supports the new logo design.

Member Stevens thanked staff for working to address the Board Members' concerns from the previous Board Meeting.

Member Doi raised a concern that the lines appear blurry. Mr. Corcoran clarified that the conversion of the logo from its original format to the PDF provided in this memorandum likely blurred the lines. Staff will ensure that blurry lines do not remain in the final product.



Member Stevens moved to adopt option one from the memorandum as displayed above. Member Smith Boland seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF AMENDED BOARD ADOPTED POLICY CONCERNING THE BOARD'S DOCUMENT REQUEST POLICY, WAIVER REQUEST POLICY, AND FACSIMILE REQUEST POLICY TO REFLECT THE REORGANIZATION OF THE CALIFORNIA PUBLIC RECORDS ACT**

The members were provided a memorandum from Tim Corcoran and Robin Parker regarding the consideration of amended Board adopted policy in light of the reorganization and recodification of the California Public Records Act. As indicated in the memorandum and attached policies, staff are updating the legal authority in the Board's document request policy, waiver request policy, and facsimile request policy. There are no substantive changes being made to the policies.

Member Fitzpatrick moved to adopt the amendments as proposed in the memorandum. Member Smith Boland seconded the motion. The motion carried unanimously.

10. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS

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

This item was postponed until after agenda item 13.

11. **OPEN SESSION**

This item was postponed until after agenda item 13.

12. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The Board Development Committee recommended this year's Solon C. Soteris Employee Recognition Award be awarded to Senior Staff Counsel, Danielle Phomsopha, in recognition of her leadership in developing and coordinating the "virtual" 2021 and 2022 *New Motor Vehicle Board Industry Roundtable* events.

Mr. Corcoran commented that although roundtable preparations are a team effort, it is important to have staff that takes ownership and makes sure deadlines are met and everyone does what they need to do. A stellar group of participants were recruited for the past two virtual roundtables. Ms. Phomsopha thought outside the box to put on unique events, with the first virtual roundtable having record level attendance. Mr. Corcoran indicated Ms. Doi nominated Ms. Phomsopha for this award as a member of the Board Development committee.

Ms. Doi indicated that it has been a pleasure to watch Ms. Phomsopha grow into her role as staff counsel and is glad the Board can recognize Ms. Phomsopha for her work over the past few years.

President Obando thanked Ms. Phomsopha and congratulated her as well.

Ms. Phomsopha thanked her colleagues and the staff for all their input and work done behind the scenes. When events occur smoothly, she feels it is rewarding to put in work behind the scenes and have the event be a success. Ms. Phomsopha appreciated the recognition and thanked the Board.

A motion on this item was made after item 13.

13. **DISCUSSION CONCERNING BOARD DEVELOPMENT ACTIVITIES**

The members were provided a memorandum from Tim Corcoran and Danielle Phomsopha concerning Board development activities. Ms. Phomsopha reported that previous Board development activities have included Board Meetings and tours held at automobile dealerships and factories. Staff are suggesting a dealership and/or factory tour be scheduled for 2024, given that the locations for the 2023 Board Meetings have been chosen.

Board staff are also suggesting that short education presentations be made at each Board Meeting on common topics of interest regarding the Board's procedures. Topics were suggested in the memorandum and staff are interested in additional topics of interest to Board Members.

Member Doi recognized former Member Alvarez who was also on the Board Development committee and worked with Member Doi, Mr. Corcoran and Ms. Phomsopha to create a list of potential topics for education. Member Doi encouraged other Board Members to suggest any topics or ideas that might be of interest.

Member Fitzpatrick suggested that AC Transit in the Bay Area has done extensive research on renewable energy as related to transportation. AC Transit also recently retrofitted all its buses to hydrogen fuel. Member Fitzpatrick has a connection with the President of the Board of AC Transit and believes this would be a great opportunity for AC Transit to make a formal presentation to the Board.

Member Kassakhian joined the Board Meeting at 10:02 a.m.

President Obando inquired whether the Board Development committee considered continuing education virtually in an effort to recruit or engage stakeholders outside of California. Member Doi agreed with this suggestion.

Mr. Corcoran mentioned that new Board Member Schmidt has extensive experience with buy-sells and believes this would also be an interesting topic for Board education. Member Schmidt agreed that a presentation on buy-sells may be helpful and of interest to the Board. He previously made a related presentation 10 or 15 years prior and would be willing to make another presentation.

12. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

Member Doi moved to adopt the Committee's recommendation. Member Kassakhian seconded the motion. The motion carried unanimously.

5. **2023 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT**

At the inquiry of President Obando and Mr. Corcoran, Ms. Parker confirmed it was not necessary to take roll after Member Kassakhian joined the meeting because a quorum has already been established.

Ms. Parker explained the parliamentary procedures regarding motions for nominating a President and Vice President, moving to close the nominations, and then voting on such nominations.

Member Doi moved to nominate Member Kassakhian for President. Member Kassakhian accepted this nomination. No other nominations for President were made. Member Doi moved to close the nominations, with Member Stevens seconding the motion. This motion to close the nominations carried unanimously. Member Smith Boland seconded the motion to nominate Member Kassakhian for President. The motion to nominate Member Kassakhian for President carried unanimously.

President Obando noted that Member Kassakhian's term as President will start at the next meeting of the Board.

Member Kassakhian moved to nominate Member Stevens for Vice President. No other nominations for Vice President were made. Member Doi moved to close the nominations with Member Fitzpatrick seconding the motion. The motion to close the nominations carried unanimously. Member Doi seconded the motion to nominate Member Stevens as Vice President. The motion to nominate Member Stevens as Vice President carried unanimously.

Mr. Corcoran thanked President Obando for his leadership as Board President and congratulated him on his recent reappointment to the Board by the Governor. President Obando thanked Member Doi for taking the lead in instances as President during the pandemic. He also indicated his eagerness to continue working on the Board, in particular on the equity task force.

6. **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, President Obando announced the following committee appointments:

ADMINISTRATION COMMITTEE

Ryan Fitzpatrick, Chair
Bismack Obando, Member

BOARD DEVELOPMENT COMMITTEE

Kathryn Ellen Doi, Chair
Brady Schmidt, Member

EXECUTIVE COMMITTEE

Ardy Kassakhian, President
Jake Stevens, Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair
Bismarck Obando, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Anne Smith Boland, Chair
Ryan Fitzpatrick, Member

LEGISLATIVE COMMITTEE

Ardy Kassakhian, Chair
Jake Stevens, Member

POLICY AND PROCEDURE COMMITTEE

Jake Stevens, Chair
Kathryn Ellen Doi, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Anne Smith Boland, Chair
Kathryn Ellen Doi, Member
Bismarck Obando, Member
Jake Stevens, Member

7. **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.

10. **CLOSED EXECUTIVE SESSION**

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

DISCUSSION AND CONSIDERATION OF PERSONNEL MATTERS

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

The Public and Dealer Members convened in Closed Executive Session to discuss personnel matters. No action was taken.

Member Fitzpatrick left at 11:25 a.m. during closed executive session.

11. **OPEN SESSION**

The Board Members returned to Open Session. President Obando announced there was no Board action to report in regard to Agenda Item 10.

14. **DISCUSSION AND CONSIDERATION OF AMENDED BOARD ADOPTED POLICY CONCERNING THE BOARD'S LEGISLATIVE POLICY TO REFLECT THE REORGANIZATION OF THE CALIFORNIA PUBLIC RECORDS ACT**

The members were provided a memorandum from Tim Corcoran and Robin Parker regarding the consideration of amended Board adopted legislative policy in light of the reorganization and recodification of the California Public Records Act. Ms. Parker explained that similar to the prior memorandum regarding document requests, the amendments to the legislative policy are also non-substantive and only related to the new numbering of the California Public Records Act.

Member Doi moved to adopt the amendments as proposed in the memorandum. Member Stevens seconded the motion. The motion carried unanimously.

15. **DISCUSSION AND CONSIDERATION OF AMENDED BOARD ADOPTED POLICY CONCERNING CONFIDENTIAL PROPOSED STIPULATED DECISIONS AND ORDERS PURSUANT TO VEHICLE CODE SECTION 3050.7 TO REFLECT THE REORGANIZATION OF THE CALIFORNIA PUBLIC RECORDS ACT**

The members were provided a memorandum from Tim Corcoran and Robin Parker regarding the consideration of amended Board adopted policy concerning proposed Stipulated Decisions and Orders in light of the reorganization and recodification of the California Public Records Act. Ms. Parker reported that these amendments are similar to those reported on the two previous related memos.

Member Doi did not have any objections to these amendments but mentioned that she has general questions regarding the confidential Stipulated Decision process as raised by the petition matter on the agenda.

Member Kassakhian moved to adopt the amendments as proposed in the memorandum. Member Smith Boland seconded the motion. The motion carried unanimously.

16. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2022-2023**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke. As indicated in the memorandum, the Board began the first quarter of fiscal year 2022-2023 with a budget appropriation of \$1.98 million and ending with a reserve balance of \$2.6 million. The Board has expended 20% of its appropriated budget for the first quarter. Staff do not see a need for a fee adjustment at this time given the current reserve balance.

The Board's Annual Fee collection is complete. Staff collected \$881,919 from manufacturers and distributors in the Board's jurisdiction.

In order to provide more timely information, staff will expand on the budget information provided in the Administrative Matters Report.

Mr. Corcoran acknowledged that vehicle sales may be uncertain for the near future, but staff are mindful of the number of vehicles distributed in the state even though the Board gets those numbers in arrears. Vehicle sales account for approximately half the Board's revenue. Mr. Corcoran also reminded the Board that because it has more than 12 months in reserve, there would be ample time to address any need for change in fee structure.

President Obando also mentioned as background information that a fee increase is approximately a year-long process, so staff and the Board monitor the Board's fiscal health with that timeframe in mind.

Member Doi inquired as to whether any other salaries in addition to the Administrative Law Judges are included in the part-time salaries under payroll expenditures. Ms. Kindel confirmed that part-time salaries include the Administrative Law Judges as well as Board Member per diem pay.

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

17. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2023-2024**

The members were provided with a memorandum from Suzanne Luke concerning the out-of-state travel plans for fiscal year 2023-2024. Ms. Luke indicated that the Board staff are proposing attendance at the following events:

- Recreation Vehicle Industry Association (RVIA) Show 2023
Washington, D.C.
June 4-8, 2023
- National Association of Motor Vehicle Boards and Commissions (NAMVBC) 2023
Fall Conference
Madison, Wisconsin
September 26-29, 2023

Staff proposed sending the Executive Director to represent the Board and any Board member that may want to attend these events for educational purposes. Once the Board approves the travel requests and they are formally submitted, they cannot be changed. President Obando inquired as to whether Wisconsin is on a list of banned states that California state employees cannot travel to. Mr. Corcoran confirmed Wisconsin is not a banned state.

Mr. Corcoran also indicated that there is not a limit to the number of Board Members that staff can request for travel to an event. There are several new Board Members that have not yet attended the NAMVBC conference and Mr. Corcoran suggested that the Board open the travel request to any Board Member who has not previously attended the NAMVBC conference.

Ms. Kindel stated that she is no longer an officer with NAMVBC but still involved with the association. She indicated that this year's NAMVBC conference will hold a joint session with the American Association of Motor Vehicle Administrators (AAMVA) group, which is approximately four or five times larger than NAMVBC. The joint session will relate to vehicle titling, registrations, and investigations, as well as the manufacturer and dealership side of the industry.

Ms. Kindel clarified that travel requests will need to be submitted to the Department of Motor Vehicles by April. The requests will also need to be approved by the California State Transportation Agency and ultimately the Governor's Office. Therefore, Board Members should advise staff of the out-of-state trips they wish to attend by March 15 to allow time for approval.

Member Kassakhian moved to approve the requests for out-of-state travel with the condition that Board Members who are interested in attending events advise Mr. Corcoran and Ms. Kindel by March 15. Member Doi seconded the motion. The motion carried unanimously.

18. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. Ms. Parker highlighted the following changes from 2022:

- The adjusted annual gift limit was increased from \$520 to \$590 from January 1, 2023, through December 31, 2024.
- For “Acceptance of Credit Card Payments,” it was noted that in 2022 the Board began allowing online credit card payments.

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

19. **CONSIDERATION OF 2023 RULEMAKING CALENDAR**

The members were provided with a memorandum and 2023 Rulemaking Calendar from Tim Corcoran and Danielle Phomsopha. Ms. Phomsopha reported that the Rulemaking Calendar has been sent to the California State Transportation Agency for approval. 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.

Member Stevens moved to adopt the 2023 Rulemaking Calendar. Member Smith Boland seconded the motion. The motion carried unanimously.

20. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the assignment of cases to Board Administrative Law Judges in 2022. Ms. Phomsopha reported that there were five law and motion hearings, six discovery hearings (rulings on objections) and five mandatory settlement conferences. There were no merits hearings held in 2022.

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

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

The members were provided with a memorandum and *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported that there were no substantive changes to the Guide this year. Once the 2023 Guide is approved, it will be posted on the website and made available.

Member Smith Boland moved to adopt the 2023 *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Member Schmidt seconded the motion. The motion carried unanimously.

22. **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**

The members were provided with a memorandum and a revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. Ms. Parker indicated that the changes from the prior version adopted in March 2022 are as follows:

- The reference to contacting the local Department of Motor Vehicles Occupational Licensing Inspections office was removed at the request of Ailene Short, Branch Chief, Occupational Licensing.
- The citations to the California Public Records Act were changed to reflect the new numbering.

Member Stevens moved to adopt the 2023 *Informational Guide for Manufactures and Distributors* as amended. Member Kassakhian seconded the motion. The motion carried unanimously.

23. **DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES BY ADDING THE OFFICE OF ADMINISTRATIVE HEARINGS TO THE MERITS JUDGE ASSIGNMENT LOG IN LIGHT OF CALPERS PROPOSED REGULATION 574.1 (CAL. CODE REGS., TIT. 2, § 574.1)**

The members were provided with a memorandum from Tim Corcoran and Robin Parker regarding proposed revisions to the assignment of cases to Board Administrative Law Judges (ALJs) by adding the Office of Administrative Hearings (OAH) to the Merits Judge Assignment Log in light of CalPERS proposed regulation 574.1 of Title 2 of the California Code of Regulations. Ms. Parker provided a historical background of the Board's use of ALJs and OAH. As indicated in the memorandum, CalPERS is proposing a new regulation that would define a "limited duration employee." In the event the definition has an impact on the Board's use of its Retired Annuitant ALJs, staff thought it would be prudent to add OAH to the merits hearing assignment log.

If OAH were added to the log, the next merits hearing that has not been assigned to a judge would be assigned to OAH. The Board will then be able to evaluate the process involving OAH should the Board not be able to utilize its own judges. This will also allow for any changes to the Board's regulations or statutes to be addressed.

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 calendar) and a subsequent tentative hearing has also been assigned to a Board ALJ. Board staff will determine if that case will proceed to a merits hearing on March 6 (this hearing date was subsequently amended).

Ms. Parker further explained that merits hearings are assigned to an ALJ approximately 45 to 60 days before the tentative hearing date because there are several pre-hearing

matters, including conference calls, which need to occur. There are many additional tentative merits hearings already on calendar.

Member Doi moved to add OAH to the “Merit Hearings Judge Assignment Log,” so OAH is the next in line to preside over a protest hearing. Member Schmidt seconded the motion. The motion carried unanimously.

24. **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 explained for the newest Board Members that the Executive Director’s Report identifies all pending projects Board leadership and staff are working on. Mr. Corcoran indicated that he is interested in getting back to meeting with each Board Member individually in person since such meetings were temporarily stopped the previous three years due to COVID restrictions. Upcoming in-person meetings will be done annually in order to address the personal goals and interests of each Board Member in their service on the Board. This will also allow for the Board Members to discuss worthy projects in furtherance of the Board’s mission.

Ms. Parker reported that the merits hearing scheduled for February 6 will be the first hearing pertaining to Section 3065.4 protests regarding retail labor rates. In regard to judicial matters, the court made the following rulings in *Subaru of America v. New Motor Vehicle Board* with Courtesy Automotive Group, Courtesy Subaru of Chico as the interested party:

- The court denied Subaru’s motion to compel the Board’s staff summary prepared with the proposed Stipulated Decision and Order.
- The court sustained with leave to amend Courtesy’s demurrer to the writ. Subaru has until February 3 to file its first amended petition.
- The court granted Subaru’s request for official notice and both parties’ requests to seal a portion of the record.

Member Doi commended Board staff for protecting the attorney-client privilege enjoyed by the Board with its counsel in regard to the motion to compel.

Ms. Parker also indicated that staff continue to monitor the litigation mentioned at the November Board Meeting filed by the attorney and judges’ union (CASE) against the Department of Human Resources (CalHR) regarding the use of retired annuitants by several state agencies. CalHR filed a demurrer on January 20, and it will be heard on March 28. The next update will be provided to the Board at the April 28 Board Meeting.

At Member Doi’s request, Ms. Parker summarized the lawsuit as follows: CASE is seeking to end, “the unlawful employment of retired annuitants,” as to the attorneys and judges. CASE also contends that their employment takes away civil servant positions and reduces union membership by those retired annuitants not belonging to the union.

In regard to case management, Ms. Phomsopha indicated that there were 13 consolidated protests dismissed since the publication of the Executive Director's Report. Those included four termination protests, four incentive program protests and five warranty reimbursement protests. In addition, there were two establishment protests that were also dismissed. Ms. Phomsopha also shared that the first protest of the year was filed January 24. It was a termination protest. In response to Member Doi's inquiry, Ms. Phomsopha confirmed that the protests that were dismissed were because the parties resolved their cases.

Member Doi requested an update in regard to the Board's move to the Department of Motor Vehicles. Ms. Kindel shared that the Board's actual move date is February 10, which is when the lease terminates. The staff will be in hoteling or flex spaces until the renovated suite is ready later this year. Board staff will have adequate space and access to daily files and the photocopier in the interim.

Mr. Corcoran commended Ms. Kindel and the team for all the work in packing and moving the office on time. Ms. Kindel indicated the Board has been at the 21st street location for approximately 30 years.

There was no Board action as this matter was for information only. A lunch break was subsequently taken until 12:30 p.m.

25. **CONSIDERATION OF THE FOLLOWING BY THE PUBLIC MEMBERS OF THE BOARD IN:**

COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO v. SUBARU OF AMERICA, INC.

Petition No. P-463-22

a. **CONSIDERATION OF RESPONDENT'S MOTION TO CONSIDER THE SUPPLEMENTAL DECLARATION OF RAYMOND SMIT AND SIGN SPECIFICATIONS REQUESTED BY PETITIONER IN SUPPORT OF OPPOSITION TO PETITION AND DECLARATION OF LISA M. GIBSON IN SUPPORT THEREOF**

Consideration of Respondent's Motion to consider the Supplemental Declaration of Raymond Smit and sign specifications requested by Petitioner in Support of Opposition to Petition and Declaration of Lisa M. Gibson in support thereof.

b. **CONSIDERATION OF PROTESTANT'S MOTION TO CONSIDER THE DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY PAJOUH) IN SUPPORT OF PETITION**

Consideration of Protestant's Motion to consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition.

c. **DIRECT THE DEPARTMENT OF MOTOR VEHICLES (DMV) TO CONDUCT AN INVESTIGATION OF THE MATTERS CONTAINED THEREIN AND/OR MAKE A DETERMINATION TO ORDER DMV TO TAKE ACTION AGAINST RESPONDENT'S OCCUPATIONAL LICENSE PURSUANT TO VEHICLE CODE SECTION 3050(b)(1) AND (3)**

Consideration of Petition requesting that the Board direct DMV to conduct an investigation of the matters contained therein and/or make a determination to order DMV to take action against Respondent's Occupational License pursuant to Vehicle Code section 3050(b)(1) and (3), by the Public Members of the Board.

President Obando reminded the Dealer Members in attendance that they cannot participate in or engage in any conversations associated with this matter. Further, given the overlapping facts in both motions to consider the declarations and the petition, President Obando asked counsel to address all three matters in their presentations. Lastly, even though these matters pertain to the Board adopted Stipulated Decision and ALJ Matteucci's Confidential Decision, both filed under Board seal, all discussions and deliberations will be held in open session, as there is no authority authorizing a closed session discussion.

Roll call was taken to establish a quorum of the Public Members. All Public Members were present.

President Obando indicated that parties would have 30 minutes to make their presentations addressing the two motions and the petition. Parties would have another five minutes for rebuttal. Both parties stated their agreement to the timing. Ms. Parker also indicated that if the parties requested additional time, the Board President could grant more time in his discretion.

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Petitioner. Lisa M. Gibson, Esq. and Amy Toboco, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent.

No public comment was presented.

Member Doi moved to grant the motion and accept the Declaration of Raymond Smit. Member Kassakhian seconded the motion. The motion carried unanimously.

Member Doi moved to grant the motion and accept the Declaration of Jerry Pajouh. Member Stevens seconded the motion. The motion carried unanimously.

In response to President Obando's inquiry as to the treatment of the confidential, sealed documents should the petition be referred to the Department of Motor Vehicles for investigation, Ms. Parker stated that the same procedure will be followed as all other petitions involving licensees that resulted in the Board asking the Department of Motor Vehicles to do an investigation.

Ms. Parker explained that the Department of Motor Vehicles would be provided with all documents in the administrative record, including unsealed documents. It will need all unsealed documents in the administrative record to do its investigation, just as the Board Members needed all unsealed documents to make a determination as to the petition.

Ms. Parker emphasized that the Board controls its own administrative record. The confidentiality of the documents will be ensured, and a mechanism will be in place so that only those persons who need access to the unsealed documents will have access.

Neither party made any comment or objection to the information provided in response to President Obando's inquiry.

Member Stevens moved to send the petition to the Department of Motor Vehicles to conduct an investigation of the matters contained therein and make a determination for Vehicle Code section 3050(b)(1) and (3). After some discussion, Member Stevens amended his motion to grant Petitioner's request for relief that the Board direct the Department of Motor Vehicles conduct an investigation pursuant to subdivision (b)(1) of Vehicle Code section 3050 and issue a written report on the results of the investigation within 180 days or a reasonable time as requested by the Department. Member Kassakhian seconded the motion. The motion carried unanimously.

26. Public Comment. (Gov. Code § 11125.7)


No additional public comment was presented.

27. Adjournment.

With no further business to discuss, the meeting was adjourned at approximately 1:57 p.m.

Submitted by

Timothy M. Corcoran
TIMOTHY M. CORCORAN
Executive Director

APPROVED: 
Ardy Kassakhian
President
New Motor Vehicle Board