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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on April 22, 2004, at the Renaissance Esmeralda Resort, Crystal Ballroom H & I, 44-400 Indian Wells Lane, Indian Wells, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 10:31 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	David C. Lizárraga	Howard Weinberg
	Haig Papaian	General Counsel
	Andy Robles	Robin Parker
	Sushil K. Sharma (arrived 10:33 a.m.)	Senior Staff Counsel
	Alan J. Skobin	
	Glenn E. Stevens	
	David W. Wilson	

3. **APPROVAL OF THE MINUTES FROM THE MARCH 9, 2004, GENERAL MEETING**

Mr. Flesh moved to adopt the March 9, 2004, General meeting minutes. Mr. Lizárraga seconded the motion. The motion carried unanimously.

4. **BOARD MEMBER EDUCATION CONCERNING THE INTRODUCTION OF THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION INCOMING CHAIRMAN, HENRY HANSEL – BOARD DEVELOPMENT COMMITTEE**

Henry Hansel, incoming Chairman of the California Motor Car Dealers Association, was introduced to the members and presented with a letter and lapel pin. Mr. Hansel highlighted their goals for the year that included the Section 17200 ballot initiative, moving

the majority of their employees to new offices in Sacramento, and enhanced communications with its members.

7. **CONSIDERATION OF GENERAL MOTORS CORPORATION'S REQUEST FOR EXTENSION OF TIME TO OWN AND OPERATE GATEWAY CHEVROLET MOTOR COMPANY, INC., DBA GATEWAY CHEVROLET, IN PREPARATION FOR A SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE IN COMPLIANCE WITH VEHICLE CODE SECTION 11713.3(O)(2)(A), BY THE PUBLIC MEMBERS OF THE BOARD**

This matter was taken out of order to accommodate the members of the audience present to offer public comments.

Mr. Flesh disclosed that he knew Mike Padilla (former dealer-operator of Gateway Chevrolet) and was aware of the dealership point being available as a dealer development store.

Oral comments were presented before the Public members of the Board. Gregory R. Oxford, Esq., O'Melveny & Myers LLP, and Lawrence S. Buonomo, Esq., General Motors Corporation presented oral comments on behalf of Gateway Chevrolet Motor Company, Inc. and General Motors Corporation. Ann Blakney, Regional Director, Dealer Network Planning and Investments for the Western Region, General Motors Corporation, was also present.

Alton Burkhalter, Esq., of Burkhalter, Michaels, Kessler & George LLP presented oral comments on behalf of Sherwood Automotive Group, Inc., dba Anaheim Chevrolet. Jonathan A. Michaels, Esq., also with the Burkhalter firm, and Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving were also present on behalf of Sherwood Automotive Group, Inc., dba Anaheim Chevrolet.

Tim Mullahey, dealer principal of Mullahey Chevrolet, and Gina and Woody Oklehas, principals of Sherwood Automotive Group, Inc., dba Anaheim Chevrolet, presented oral comments in support of denying General Motors Corporation's request for extension of time.

Peter Welch, President, California Motor Car Dealers Association, presented comments on the legislation that resulted in the current statutory requirements for dealer development stores. He did not support one side or the other.

The Board members discussed the request and deliberated in open session. Mr. Flesh moved to deny General Motors Corporation's request for an extension of time to own and operate Gateway Chevrolet. Mr. Sharma seconded the motion. The motion carried by a four-to-one vote, with Mr. Lizárraga opposed.

5. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CONSIDERATION OF PROPOSED DECISION

FREMONT AUTOMOBILE DEALERSHIP, LLC dba FREMONT TOYOTA v. TOYOTA MOTOR SALES, U.S.A., INC.
Protest No. PR-1844-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Michael J. Flanagan, Esq., of the Law Offices of Michael J. Flanagan represented Protestant. Robert L. Ebe, Esq., of Bingham McCutchen LLP represented Respondent. Also present for Protestant were Hank Torian, the dealer principal of Fremont Toyota, Dennis C. Birkhimer, Esq., of the Law Offices of Dennis C. Birkhimer, and Jorge Haimovich, General Manager, Fremont Toyota. Present for the Respondent were Todd A. Williams, Esq., of Bingham McCutchen LLP, William Piercey, dealer principal of Piercey Toyota, Clyde Dyson, Jr., Assistant General Manager, Toyota Motor Sales, U.S.A., Inc., San Francisco Region, and Deborah Goldman, Managing Counsel, Toyota Motor Sales, U.S.A., Inc.

The Public members of the Board deliberated in closed Executive Session. Mr. Papaian moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Flesh seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public members returned to Open Session. Mr. Stevens announced the decision on Agenda item 5.

8. **CONSIDERATION OF REVISED NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi concerning revisions to the Board's mission and vision statements. At the March 9, 2004, General meeting, the members requested that the mission and vision statements be revised to ensure that they accurately reflect the Board's current responsibilities. Mr. Skobin moved to adopt the revised mission and vision statements. Mr. Robles seconded the motion. The motion carried unanimously.

The revised statements are as follows:

MISSION STATEMENT

It is the mission of the New Motor Vehicle Board to enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.

VISION STATEMENT

Safeguard for the Board's constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves industry relations and reduces the need for costly litigation. Assist consumers in mediating concerns with dealers and manufacturers. Develop methods that further improve the delivery of Board services in a timely and cost-effective manner. Educate Board members concerning industry matters which further improve the Board's ability to equitably resolve industry disputes.

9. **ANNUAL UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker updating the corrective action taken for each audit finding, and a matrix providing the chronology for each. Ms. Parker provided an overview of the Board's compliance with the Audit Findings and Corrective Action Plan. She indicated that the Board was in full compliance and there were no outstanding issues. Mr. Flesh requested that future reports be scheduled for the June meeting.

10. **CONSIDERATION OF VEHICLE CODE SECTION 3078(A) AS IT RELATES TO THE BOARD'S CONSUMER MEDIATION SERVICES PROGRAM - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning the impact of the RV legislation as it relates to the Board Consumer Mediation Services Program. Mr. Weinberg reported that at the March 9, 2004, meeting, the members requested that this matter be postponed while the staff sought input from the industry. Furthermore, Mr. Weinberg reported that Dawn Kindel, Manager, Consumer Mediation Services Program, created a Mediation Checklist for Recreational Vehicle Jurisdiction to ensure that the staff is merely providing information and not giving legal advice. Mr. Skobin indicated that the checklist resolves the issues that were addressed at the March 9, 2004, meeting. Mr. Flesh moved to adopt Committees' recommendation of using the Mediation Checklist when dealing with complaints from the public regarding recreational vehicles. Mr. Lizárraga seconded the motion. The motion carried unanimously.

11. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
 - (1) Assembly Bill 1968 (Assembly Member Dutra)
 - (2) Assembly Bill 2848 (Assembly Member Keene)
 - (3) Senate Bill 1711 (Senator Bowen)

- b. Pending Legislation of general interest.
 - (1) Assembly Bill 1839 (Assembly Member Montanez)
 - (2) Assembly Bill 2363 (Assembly Member Correa)
 - (3) Assembly Bill 2369 (Assembly Member Correa)
 - (4) Assembly Bill 2656 (Assembly Member Jackson)
 - (5) Senate Bill 584 (Senator Alarcon)
 - (6) Senate Bill 1721 (Senator Bowen)

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and pending legislation of general interest. The summary analyzes the current law, the legislation, and the impact on the Board.

Brian Maas, Government and Legal Affairs Counsel, California Motor Car Dealers Association, offered comments concerning the legislation. He also indicated that the hearing scheduled in Assembly Bill 1968 had been canceled and the bill dropped by the author.

12. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Novi 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.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker indicated that four new protests had been filed since Cara Peralta, Staff Counsel, prepared the report. Also, she indicated that two recreational vehicle protests were filed.

Mr. Weinberg reported on the status of the court cases.

13. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 1:20 p.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____

Glenn E. Stevens
President
New Motor Vehicle Board