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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on November 16, 2005, at the Grand Hyatt San Francisco, Belvedere Room, 345 Stockton Street, San Francisco, California.

2. **ROLL CALL**

David W. Wilson, President of the Board, called the General meeting to order at 9:01 a.m.

Present:	Robert T. (Tom) Flesh	William G. Brennan
	David C. Lizárraga	Executive Director
	Haig Papaian	Howard Weinberg
	Andy Robles	General Counsel
	Sushil K. Sharma	Robin Parker
	Alan J. Skobin	Senior Staff Counsel
	Glenn E. Stevens	
	David W. Wilson	

Absent: Robert V. Branzuela

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 21, 2005, GENERAL MEETING**

Mr. Flesh moved to adopt the September 21, 2005, General Board meeting minutes. Mr. Mr. Lizárraga seconded the motion. The motion carried unanimously.

4. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO JOAN BORUCKI, FORMER DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

This matter was postponed pending Agenda items 6 through 11.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO TOM NOVI, RETIRED BOARD EXECUTIVE DIRECTOR**

This matter was postponed pending Agenda items 6 through 11.

6. **ORAL ARGUMENTS**

SOUTAR'S NISSAN, a California corporation v. NISSAN NORTH AMERICA, INC.
Protest No. PR-1825-02

Mr. Stevens, Board Attorney Member, presided over Agenda items 6-11. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

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. Marjorie E. Lewis, Esq., of Gibson, Dunn & Crutcher, LLP represented Respondent.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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 ORDER

SOUTAR'S NISSAN, a California corporation v. NISSAN NORTH AMERICA, INC.
Protest No. PR-1825-02

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public members of the Board.

This matter was postponed pending Agenda item 9.

8. **OPEN SESSION**

This matter was postponed pending Agenda item 9.

9. **CONSIDERATION OF PETITION REQUESTING THAT THE BOARD ORDER DMV TO CONDUCT AN INVESTIGATION OF THE ALLEGATIONS CONTAINED THEREIN AND TO EXERCISE ITS AUTHORITY OVER RESPONDENT'S OCCUPATIONAL LICENSE**

FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU, and RICHARD E. WILMSHURST v. SUBARU OF AMERICA
Petition No. P-452-05

Consideration of Petition requesting that the Board order DMV to conduct an

investigation of the allegations contained therein and to exercise its authority over Respondent's occupational license, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Richard E. Wilmshurst represented himself and Forty-Niner Sierra Resources, Inc., dba Forty-Niner Subaru. Maurice Sanchez, Esq. of Baker & Hostetler, LLP represented Respondent.

The Public members of the Board deliberated in Open Session. Mr. Flesh moved to deny the relief requested by Petitioner. Mr. Sharma seconded the motion. The motion carried unanimously.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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 ORDER

SOUTAR'S NISSAN, a California corporation v. NISSAN NORTH AMERICA, INC.
Protest No. PR-1825-02

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Papaian moved to adopt the Administrative Law Judge's Proposed Order as modified: Protest No. PR-1825-02 is dismissed without prejudice. Mr. Sharma seconded the motion. The motion carried unanimously.

8. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decision in Agenda item 7.

10. **CONSIDERATION OF WHETHER TO FILE A NOTICE OF APPEAL**

KIA MOTORS AMERICA, INC., Petitioner v. NEW MOTOR VEHICLE BOARD,
Respondent; S & C MOTORS, INC., Real Party in Interest
Sacramento County Superior Court No.05CS00283

Consideration of whether to file a Notice of Appeal in the above-referenced matter in light of the Sacramento County Superior Court's Judgment granting Kia Motors

America, Inc.'s Petition for Writ of Administrative Mandate, by the Public members of the Board.

Maurice Sanchez, Esq., of Baker & Hostetler, LLP represented Kia Motors America, Inc. and was available to answer member questions.

After a lengthy discussion, the members instructed the Board staff to research the issues of whether the Board could hold a Special meeting to discuss this matter by teleconference and whether such discussion could be in closed Executive Session. The Board staff was instructed to discuss these matters with Glenn Stevens.

Mr. Stevens moved to instruct the Office of the Attorney General to file a Notice of Appeal on behalf of the Board at the end of December 2005. Mr. Papaian seconded the motion. The motion carried unanimously.

11. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT GRANTING KIA MOTORS AMERICA, INC.'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE OR OTHER APPROPRIATE RELIEF**

S & C MOTORS, INC., dba S & C KIA v. KIA MOTORS AMERICA, INC.
Protest No. PR-1894-04

Consideration of the Decision in light of the Sacramento County Superior Court's Judgment Granting Kia Motors America, Inc.'s Petition for Writ of Administrative Mandate or Other Appropriate Relief, wherein the Board was ordered to set aside its January 26, 2005 Decision sustaining the protest and dismiss the above-entitled protest, by the Public members of the Board.

This matter was taken off the Agenda in light of the decision in Agenda item 10.

4. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO JOAN BORUCKI, FORMER DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

Mr. Wilson presided over the remainder of the Agenda. Mr. Flesh moved to present a Resolution to Joan Borucki, former Director, Department of Motor Vehicles, in recognition for her contribution to the New Motor Vehicle Board, to the motor vehicle industry and to the people of the State of California. Mr. Robles seconded the motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the March 8, 2006, General meeting, in Sacramento.)

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO TOM NOVI, RETIRED BOARD EXECUTIVE DIRECTOR**

Mr. Lizárraga moved to present a Resolution to Tom Novi, retired Board Executive Director, in recognition for his contribution to the New Motor Vehicle Board, to the motor vehicle industry and to the people of the State of California. Mr. Sharma seconded the

motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the March 8, 2006, General meeting, in Sacramento.)

12. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Kathy Tomono reporting on the Board Development Program. Mr. Brennan highlighted the planned schedule of Board meetings and educational presentations for 2006.

13. **CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the assignment of cases to Board administrative law judges. Ms. Parker reported that given the shortage and availability of ALJs, the staff recommended that the interim system of assigning ALJs based upon a Merits and MSC Judge Assignment Log be adopted by the Board. All of the ALJs (Archibald, Lopez, Prod) would be assigned to the respective logs. Judge Wong would be utilized in the event the other ALJs were unavailable. If Judge Wong desired to be added to the log, this would be reported on at the future meeting. Ms. Parker further indicated that updates concerning the effectiveness of this system would be provided at the March 2006, General meeting. Mr. Robles moved to adopt the staff recommendation. Mr. Lizárraga seconded the motion. The motion carried unanimously.

14. **REPORT ON REVISIONS TO THE BOARD'S PRACTICE OF USING CITED AND UNCITED PROPOSED DECISIONS AND PROPOSED ORDERS/RULINGS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning revisions to the Board's practice of using cited and uncited Proposed Decisions and Proposed Orders/Rulings. Mr. Weinberg reported that the Board staff has been preparing two versions of proposed decisions. One version contains what has been referred to as "citations to the record" and the other version does not. The cited version is used internally by staff in reviewing and editing an Administrative Law Judge's draft proposed decision prior to the final proposed decision being forwarded to the Board members for consideration. Both versions are retained in the Board's files in the regular course of business.

Mr. Weinberg indicated that the preferred process would be to produce a working paper containing citations, and at the end of the drafting process when a proposed decision is completed for Board consideration, the working paper and all electronic files of the paper should be destroyed. In this way the benefits to the ALJ of a cited version would be retained, as would conformity with the implicit limitations to a single proposed decision found in both the Administrative Procedure Act and the Board's statutes.

After a lengthy discussion, the members requested that this matter be agendized for consideration at its next meeting.

15. **SELECTION OF BOARD MEETING DATES FOR 2006**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Wilson went on the record to announce the following schedule:

- January 26, 2006, Los Angeles - General Meeting
- March 8, 2006, Sacramento - General Meeting
- March 8, 2006, Roseville - Special Meeting, Tour of Village RV
- April 4, 2006, Sacramento - Special Meeting (5th Annual Industry Roundtable) and CMCD A Event
- June 21, 2006, San Francisco - General Meeting
- September 13, 2006, Los Angeles - General Meeting
- November 15, 2006, San Francisco - General Meeting
- December 13, 2006, Sacramento - Special Meeting

16. **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. Brennan provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that all pending projects were on schedule.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker reported that several new protests had been filed since the report was drafted. Mr. Weinberg reported on the status of the pending court cases.

17. **ADJOURNMENT**

Mr. Stevens moved to adjourn the meeting. Mr. Robles seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 11:32 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

David W. Wilson
President
New Motor Vehicle Board