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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on June 16, 2006, at the Fairmont Newport Beach, Sequoia Ballroom, 4500 MacArthur Boulevard, Newport Beach, California.

2. **ROLL CALL**

David W. Wilson, President of the Board, called the General meeting to order at 9:09 a.m.

Present:	Robert V. Branzuela	William G. Brennan, Executive Director
	Ryan L. Brooks	Howard Weinberg, General Counsel
	Robert T. (Tom) Flesh	Robin P. Parker, Senior Staff Counsel
	David C. Lizárraga	Dawn K. Kindel, Staff Manager
	Haig Papaian	
	Alan J. Skobin	
	Glenn E. Stevens	
	David W. Wilson	

Absent: Andy Robles

3. **APPROVAL OF THE MINUTES FROM THE MARCH 8, 2006, GENERAL MEETING, MARCH 8, 2006, SPECIAL MEETING, APRIL 4, 2006, SPECIAL ROUNDTABLE MEETING, AND APRIL 5, 2006, SPECIAL MEETING**

Mr. Lizárraga moved to adopt the March 8, 2006, General Board meeting minutes. Mr. Skobin seconded the motion. The motion carried unanimously. Messrs. Brooks, Papaian, and Stevens did not vote because they were not present at the meeting.

Mr. Skobin moved to adopt the March 8, 2006, Special Board meeting minutes. Mr. Wilson seconded the motion. The motion carried unanimously. Messrs. Brooks, Papaian, and Stevens did not vote because they were not present at the meeting.

Mr. Stevens moved to adopt the April 4, 2006, Special Roundtable meeting minutes. Mr. Branzuela seconded the motion. The motion carried unanimously.

Mr. Stevens moved to adopt the April 5, 2006, Special Board meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

4. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO SUSHIL SHARMA, FORMER PUBLIC BOARD MEMBER**

Mr. Brooks moved to present a Resolution to Sushil Sharma, former Public Board member, in recognition of his contribution to the New Motor Vehicle Board. Mr. Skobin seconded the motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the November 17, 2006, General meeting, in San Francisco.)

5. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda items 5-7. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

- a. PH AUTOMOTIVE HOLDING CORPORATION dba PACIFIC HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1945-05

TIPTON ENTERPRISES, INC., dba TIPTON HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1947-05

BALL AUTOMOTIVE GROUP dba BALL HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1948-05

Oral arguments were presented before the Public members of the Board. Michael J. Flanagan, Esq., of the Law Offices of Michael J. Flanagan, and Jonathan A. Michaels, Esq., of Burkhalter, Michaels, Kessler & George LLP, represented Protestants. Wallace (Tad) M. Allan, Esq., of O'Melveny & Myers LLP represented Respondent.

- b. THOMPSON'S AUTO & TRUCK CENTER, INC., dba THOMPSON'S CHRYSLER-JEEP v. DAIMLERCHRYSLER MOTORS COMPANY, LLC
Protest No. PR-1965-05

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Mark F. Kennedy, Esq., of Wheeler Trigg Kennedy LLP, represented Respondent.

6. **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.

a. **CONSIDERATION OF PROPOSED DECISION AFTER REMAND**

PH AUTOMOTIVE HOLDING CORPORATION dba PACIFIC HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1945-05

TIPTON ENTERPRISES, INC., dba TIPTON HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1947-05

BALL AUTOMOTIVE GROUP dba BALL HONDA v. AMERICAN HONDA MOTOR CO., INC.
Protest No. PR-1948-05

Consideration of the Administrative Law Judge's Proposed Decision After Remand, 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 Decision After Remand. Mr. Brooks seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED DECISION**

THOMPSON'S AUTO & TRUCK CENTER, INC., dba THOMPSON'S CHRYSLER-JEEP v. DAIMLERCHRYSLER MOTORS COMPANY, LLC
Protest No. PR-1965-05

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

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

7. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decisions in Agenda items 6(a) and 6(b).

8. **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 Bill Brennan 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.

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

At the July 18, 2000, 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 staff submitted employee nominations to the Board Development Committee, Haig Papaian, who ultimately recommended Robin Parker as the Employee Recognition Award recipient. Ms. Parker is Senior Staff Counsel. Mr. Stevens moved to adopt the Committee's recommendation. Mr. Flesh seconded the motion. The motion carried unanimously.

10. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 3RD QUARTER OF FISCAL YEAR 2005-2006 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 3rd quarter of fiscal year 2005-2006. Miss Kindel reported that the Board has expended 61% of its appropriated budget for fiscal year 2005-2006.

11. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2006-2007 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the out-of-state travel for fiscal year 2006-2007. Miss Kindel reported that staff submitted out-of-state travel proposals for thirteen trips for fiscal year 2006-2007 to the Department of Motor Vehicles ("Department") for approval. The Department has approved these requests, and approval from Business, Transportation and Housing Agency, the Department of Finance, and the Governor's office is pending [these approvals were subsequently received]. Five of the trip requests are for the Board's five Public members to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Park City, Utah in September 2006. It is planned that the Board's Executive Director and Staff Manager would also attend. An additional five trip requests are for the Board's five public members to attend the National Automobile Dealer's Association Annual Convention and Exposition in Las Vegas, Nevada in February 2007. It is planned that the Board's Executive Director would also attend. The estimated expenses for these trips are approximately \$15,000. Mr. Lizárraga moved to adopt the out-of-state travel plans for fiscal year 2006-2007. Mr. Brooks seconded the motion. The motion carried unanimously.

12. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the Board's collection of the Arbitration Certification Programs' (Program) Annual Fee. Miss Kindel reported that \$870,000 was collected (\$.41 per vehicle). The Board is reimbursed \$5,000 for its expenses associated with the collection. Miss Kindel indicated that Western Golf Car Manufacturing, Inc. failed to pay its fee of \$11.00. Mr. Brennan added that the Board has requested cooperation from the Program to waive any fees that are less than \$25.00.

13. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S 5TH ANNUAL INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the evaluation of the 5th Annual Industry Roundtable. Ms. Parker reported that the feedback received from attendees and participants was favorable, and a number of good topics were suggested for next year. Ms. Parker also noted that the tentative date for the 6th Annual Industry Roundtable was March 27, 2007. Mr. Flesh requested that the staff agendaize for discussion at the September meeting the room set-up and topics for the next Roundtable along with the amount of registration fees collected in 2006.

14. **CONSIDERATION OF REVISED GUIDELINES FOR ACCESS TO PUBLIC RECORDS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning proposed revised Guidelines for Access to Public Records. Mr. Weinberg reported that the revisions were undertaken in response to Governor Schwarzenegger's Executive Order S-03-06. The revisions clarify that the Board may charge a fee reasonably necessary to offset direct costs incurred by the Board in duplicating as opposed to retrieving requested information. Mr. Stevens moved to adopt the revised Guidelines. Mr. Lizárraga seconded the motion. The motion carried unanimously.

15. **CONSIDERATION OF THE FAIR POLITICAL PRACTICES COMMISSION INFORMAL LETTER THAT PERMITS THE BOARD TO USE LITIGANTS' OFFICE SPACE FOR SETTLEMENT CONFERENCES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning a Fair Political Practices Commission ("FPPC") informal letter. Ms. Parker reported that the parties occasionally stipulate to change the venue from Sacramento to Los Angeles or San Francisco for Mandatory Settlement Conferences. The difficulty with changing the venue comes from securing a hotel room. The Board staff requested an informal opinion letter from the FPPC. The question posed was if the settlement "conferences are held,

pursuant to stipulation of all the parties, in the facilities of one of the parties to the dispute (either at the offices or meeting rooms of a party or those of its attorneys), would such an arrangement constitute a violation of the Political Reform Act, or a violation of any other ethical or conflict of interest law or regulation?" The FPPC concluded, "if the requirements of regulation 18944.2 [Title 2 of the California Code of Regulations] are met, the board may accept these offers and no individual board member will be considered to have received a gift. The gift will be considered made to the agency and not its members." The Committee recommended that the Board permit the legal staff to accept, subject to stipulation of the parties, the offer to use litigants' conference rooms or offices for purposes of conducting a Mandatory Settlement Conference as long as the requirements of regulation 18944.2 are met. The Executive Director would be designated the authorized representative to receive and control the use of litigants' conference rooms or offices. The Senior Staff Counsel would be responsible for maintaining the written public record that memorializes receipt of the gift and satisfies the requirements of the regulation. Mr. Brooks moved to adopt the Committee recommendation. Mr. Stevens seconded the motion. The motion carried unanimously.

16. **REPORT ON NONSUBSTANTIVE CHANGES TO THE TEXT OF SECTIONS 550.20 (SERVICE BY CERTIFIED MAIL IN LIEU OF REGISTERED MAIL), 551.11 (SETTLEMENT CONFERENCE: SEPARATION OF POWERS), AND 551.12 (NOTICE OF ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES; PEREMPTORY CHALLENGES) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning nonsubstantive regulation changes to Sections 550.20, 551.11, and 551.12 of Title 13 of the California Code of Regulations. Mr. Weinberg reported that the changes were minimal.

This change was approved by the Executive Committee and was reported to the full Board in compliance with the Board's policy.

17. **CONSIDERATION OF DRAFT WAIVER OF BOARD POLICY THAT DEALER BOARD MEMBERS VOLUNTARY RECUSE THEMSELVES FROM ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning a draft waiver of Board policy that Dealer Board members voluntarily recuse themselves from Article 5 recreational vehicle protests (Vehicle Code sections 3070, 3072, 3074, 3075, and 3076). Mr. Weinberg reported that the waiver would have allowed Dealer members to participate in recreational vehicle protests upon stipulation of the parties. The members requested that the staff and the Policy and Procedure Committee review the Board's policy concerning this and agendize this matter for the September meeting.

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

- a. Pending Legislation that impacts the Board.
- b. Pending Legislation of general interest.
 - (1) Assembly Bill 1561 (Assembly Member Umberg)
 - (2) Assembly Bill 1854 (Assembly Member Oropeza)
 - (3) Assembly Bill 2291 (Assembly Member Evans)
 - (4) Assembly Bill 2303 (Committee on Judiciary)
 - (5) Assembly Bill 2322 (Assembly Member Parra)
 - (6) Assembly Bill 2643 (Assembly Member Keene)
 - (7) Assembly Bill 2794 (Assembly Member Levine)
 - (8) Senate Bill 1542 (Senator Migden)
 - (9) Senate Bill 1559 (Senator Lowenthal)
 - (10) Senate Bill 1739 (Senator Alarcon)

The members were provided with a memorandum updating them on legislation. Ms. Parker indicated there are no bills that directly impact the Board. There is legislation of general interest that staff will track and report back to the Board at future meetings.

19. **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 congratulated Mr. Lizárraga on receiving a Doctor of Humane Letters from California State University of Los Angeles.

Mr. Brennan said that due to ongoing computer problems, the Board's information technology services were being transferred to the Department of Motor Vehicles. Additionally, Mr. Brennan reported that the Board had entered into a lease agreement for the Board's office space. The lease goes through July 2014. Consistent with the lease, the kitchen counter in the break room was modified to meet Americans with Disabilities Act specifications and new carpet was being installed in early July. The Board's offices were to be closed June 30 and July 3, 2006.

Ms. Parker reported on case management. She indicated that there were a number of matters scheduled for hearing between July and November 2006. Typically there are 3-5 hearings per calendar year. For 2006, there have already been three (3) merits hearings for a

total of 14 days. There is a 10-day hearing set for July 10th, and currently there are 10 more hearings set for a total of an additional 58 days of hearing. As of June 28, 2006, out of 19 new protests for calendar year 2006, 12 were establishment cases.

To accommodate consideration of a potential Proposed Decision, the members changed the September Board meeting from September 13 to September 28, 2006, in Los Angeles. The November 15 meeting was changed to November 17, 2006, in San Francisco.

Mr. Weinberg reported on judicial matters in which the Board is a named party. He reported that the Sacramento County Superior Court denied the writ in *Forty-Niner Sierra Resources, Inc. v. New Motor Vehicle Board; Subaru of America, real Party in Interest*. Mr. Weinberg also reported that the *Camarilla* case, in which the Board was ordered to pay costs of \$343.00 to Jeffrey Willis, counsel for Camarilla, was closed. Lastly, the Board complied with the Superior Court's writ after withdrawing its appeal in *Kia Motors America, Inc. v. New Motor Vehicle Board; S&C Motors, Inc., Real Party in Interest*, therefore this case is also closed.

20. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE BOARD PRESIDENT**

The members went off the record to discuss committee assignments. Mr. Wilson appointed Ryan Brooks to the Board Development Committee. The member position in the Government and Industry Affairs Committee was left vacant at Mr. Flesh's request.

21. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:50 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
David W. Wilson
President
New Motor Vehicle Board