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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on September 7, 2007, at the Grand Hyatt San Francisco, San Francisco A & B Room, San Francisco, California.

2. **ROLL CALL**

Alan J. Skobin, President of the Board, called the meeting of the Board to order at 8:47 a.m.

Present: Ramon Alvarez C. (arrived 8:50 a.m.) William G. Brennan, Executive Director
Robert V. Branzuela Howard Weinberg, General Counsel
Ryan L. Brooks Robin Parker, Senior Staff Counsel
Robert T. (Tom) Flesh
Haig Papaian
Alan J. Skobin
Glenn E. Stevens
David W. Wilson

Absent: David C. Lizárraga

3. **APPROVAL OF THE MINUTES FROM THE MARCH 28, 2007, AND JUNE 6, 2007, GENERAL MEETINGS, AND JUNE 6, 2007, SPECIAL MEETING**

Mr. Brooks moved to adopt the March 28, 2007, General meeting minutes. Mr. Stevens seconded the motion. Messrs. Alvarez, Papaian, and Wilson did not vote. The motion carried unanimously.

Mr. Stevens moved to adopt the June 6, 2007, General meeting minutes. Mr. Flesh seconded the motion. Mr. Papaian did not vote. The motion carried unanimously.

Mr. Brooks moved to adopt the June 6, 2007, Special meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO HAIG PAPAIAN, FORMER PUBLIC BOARD MEMBER**

At the January 31, 2007, General meeting, the members unanimously moved to present Haig

Papaian with a resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California, during his first appointment to the Board as a Public Member. Mr. Skobin presented the Resolution to Mr. Papaian on behalf of the members and staff.

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

Mr. Flesh, Vice President, 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. FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU
v. SUBARU OF AMERICA
Protest No. PR-1972-05

Oral arguments were presented before the Public members of the Board. Richard E. Wilmshurst, in Pro Per, represented Protestant. Maurice Sanchez, Esq. of Baker & Hostetler LLP represented Respondent.

- b. BOB LEWIS VOLKSWAGEN dba BOB LEWIS SUZUKI v. AMERICAN SUZUKI MOTOR CORP.
Protest No. PR-2042-07

No appearance was made on behalf of Protestant or 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**

FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU
v. SUBARU OF AMERICA
Protest No. PR-1972-05

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. Stevens' motion remanded Administrative Law Judge Prod's Proposed Decision to re-open the record to file Protestant's Post-Hearing Reply Brief dated July 27, 2007 and attached exhibits. ALJ Prod was directed to consider the brief and make any appropriate changes to the Proposed Decision. No additional filings or hearings

were permitted. Mr. Papaian seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

BOB LEWIS VOLKSWAGEN dba BOB LEWIS SUZUKI v. AMERICAN SUZUKI MOTOR CORP.
Protest No. PR-2042-07

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss as to the Claims of the Silicon Valley Suzuki Advertising Association, 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 Order. Mr. Stevens seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

The Public Members returned to Open Session. Mr. Flesh announced the decision in Agenda Item 6(b). Ms. Parker announced the decision in Agenda Item 6(a).

8. **UPDATE CONCERNING THE BOARD'S CONTINUED COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

9. **DISCUSSION AND REPORT CONCERNING WHO IS MARKETING "SMART CAR OF AMERICA" VEHICLES IN THE UNITED STATES AND WHETHER ALL OF THE CALIFORNIA LICENSING REQUIREMENTS HAVE BEEN SATISFIED - EXECUTIVE COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

10. **CONSIDERATION OF UPDATED BUSINESS CARDS THAT REFLECT THE NEW LOGO - ADMINISTRATION COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

11. **ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

12. **DISCUSSION AND CONSIDERATION OF THE BUDGET PROCESS, THE STATE-IMPOSED DEADLINES, AND THE BOARD'S BUDGET - FISCAL COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

13. **DISCUSSION AND CONSIDERATION OF MEMORANDUM DETERMINING THAT FUNDS COLLECTED BY THE BOARD ARE PROPERLY CLASSIFIED AS FEES AND THE METHOD FOR DETERMINING FEE SCHEDULE IS FAIR AND REASONABLE - FISCAL COMMITTEE**

This matter was postponed while the members considered Agenda items 14-15.

14. **CONSIDERATION OF THE RECREATION VEHICLE INDUSTRY ASSOCIATION'S (RVIA) REQUEST THAT THE BOARD RECONSIDER ITS POLICY CONCERNING DEALER BOARD MEMBER PARTICIPATION IN ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

At the March 28, 2007, General Meeting, the Recreation Vehicle Industry Association orally requested that the Board reconsider its policy concerning Dealer Board Member participation in Article 5 recreational vehicle protests. A written request dated July 30, 2007, that was supplemented on August 16, 2007, was sent to the Board and provided to the members. Maurice Sanchez, Esq., Baker & Hostetler LLP, counsel for the RVIA, Michael P. Norton, Esq., Assistant General Counsel, National RV Holdings, Inc., and Skip Daum, Executive Director, California Recreation Vehicle Dealers Association (CalRVDA) were present at the meeting. The CalRVDA requested additional time to respond to the RVIA request and will file a response with the Board by the end of October. This matter was postponed to allow interested parties the opportunity to provide comments to the Board.

Mr. Skobin indicated that with regards to the two pending RV protests that will have Proposed Decisions on the December agenda, Ms. Parker is to contact the parties, discuss the issue raised by the RVIA, and inquire as to whether the parties want Public Member consideration only. If so, the Dealer Members would voluntarily recuse themselves. If the parties stipulate to Dealer Board Member participation, then the full Board would consider the Proposed Decisions in December.

15. **CONSIDERATION OF THE BOARD POLICY CONCERNING DEALER BOARD MEMBER PARTICIPATION IN ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until the next Board meeting.

8. **UPDATE CONCERNING THE BOARD'S CONTINUED COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the Board's continued compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. Ms. Parker reported that the Board was still in compliance with the items noted in the Audit.

9. **DISCUSSION AND REPORT CONCERNING WHO IS MARKETING "SMART CAR OF AMERICA" VEHICLES IN THE UNITED STATES AND WHETHER ALL OF THE CALIFORNIA LICENSING REQUIREMENTS HAVE BEEN SATISFIED - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who is marketing "Smart Fortwo" vehicles in the United States. Mr. Brennan reported that Penske is the distributor of Smart Vehicles in the U.S. and is accepting internet reservations for these vehicles. According to Occupational Licensing at the Department of Motor Vehicles ("DMV"), an occupational license is not required for this reservation activity. Mr. Skobin requested a legal analysis of this issue be prepared by Howard Weinberg in conjunction with the DMV Legal Department for the next Board meeting. Mr. Flesh requested that the legality of a new manufacturer, Tesla, also be analyzed. Their business model is to sell expensive sports cars directly from the factory to the consumer.

10. **CONSIDERATION OF UPDATED BUSINESS CARDS THAT REFLECT THE NEW LOGO - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning updated business cards that reflect the new Board logo. Mr. Brennan reported that the Governor wants a standardized look for all State websites that follows a universal, general format. The DMV, who maintains the Board's website, recommended that the Board's logo be changed which was done by staff. Future Board logo changes will be brought to the members of the Board for their consideration. Mr. Skobin referred this matter to the Executive Committee to work with staff on answering the following questions: (1) Is there a State policy requiring whatever logo that is used on the Board's website be used on business cards, stationery, and elsewhere? (2) Is there any prohibition against having the State Seal on Board Member business cards? (3) Can both the State Seal and Board logo be on business cards? This matter will be considered at the next Board meeting.

11. **ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel updating the Board's website. Mr. Brennan reported that the Board's website averages 1,500 to 2,500 hits per day, and the website remains popular. Mr. Skobin requested that the top 20 pages that people go to on the Board's website would be of interest. This would be useful to get a sense of what is of interest to people who go to the Board's website. A number of questions were posed by the members concerning the Board's website: (1)

Who updates the website, DMV or the Board staff? (2) What types of things does the staff envision having online access to or to transact business with, so that there is less office visits and phone calls? (3) Can the Board accept electronic payment of filing fees and document request fees? (4) How can the Board gain more control over website updates? These questions will be addressed at the next Board meeting.

12. **DISCUSSION AND CONSIDERATION OF THE BUDGET PROCESS, THE STATE-IMPOSED DEADLINES, AND THE BOARD'S BUDGET - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the budget process, the State-imposed deadlines, and the Board's budget. Mr. Brennan explained that for the past two years he has worked to refine the Board's operational expenses and make them more reflective of what the Board's true costs and true expenditures are. Additionally, Mr. Brennan reported that the Board's surplus was trending down and there was no need at this time to adjust the Annual Board Fees. Mr. Brennan proposed that the Fiscal Committee become more engaged in the budget process and meet each May with the staff to discuss the Board's budget. Once approved, the Fiscal Committee would then bring the budget before the full Board at the next regularly scheduled meeting for full Board Member approval.

13. **DISCUSSION AND CONSIDERATION OF MEMORANDUM DETERMINING THAT FUNDS COLLECTED BY THE BOARD ARE PROPERLY CLASSIFIED AS FEES AND THE METHOD FOR DETERMINING FEE SCHEDULE IS FAIR AND REASONABLE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg determining that the funds collected by the Board are properly classified as fees and the method for determining the fee schedule is fair and reasonable. Mr. Weinberg reported that each of the fees collected by the Board (annual Board fees, filing fees, and those collected for the Arbitration Certification Program) directly support a targeted activity.

16. **CONSIDERATION OF PROPOSED REVISION TO THE ASSIGNMENT OF BOARD ADMINISTRATIVE LAW JUDGES TO MANDATORY SETTLEMENT CONFERENCES WHEREIN MERILYN WONG AND POLLY RIGGENBACH WOULD FUNCTION AS THE SETTLEMENT ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning a proposed revision to the assignment of Board Administrative Law Judges to Mandatory Settlement Conferences. Ms. Parker reported that the staff was requesting Board permission to make Polly Rigggenbach and Merilyn Wong its settlement judges for an interim six-month period due to the number of matters scheduled for merits hearings. The Board is seeking to hire additional judges or contract with Judges Lopez and Taylor who recently resigned due to work-related conflicts. Mr. Brooks moved to authorize Judges Rigggenbach and Wong to preside over all Mandatory Settlement Conferences for an interim six-month period. Mr. Papaian seconded the motion. The motion carried unanimously.

17. **REPORT CONCERNING THE NUMBER OF MANUFACTURERS AND**

DISTRIBUTORS FILING THE STATUTORILY REQUIRED NOTICES IN COMPLIANCE WITH VEHICLE CODE SECTIONS 11713.3(O)(3)(A) [FACTORY OWNERSHIP OF DEALERSHIP WITHIN RELEVANT MARKET AREA OF SAME LINE-MAKE DEALERSHIP(S)] AND 11713.3(O)(3)(B) [DEALER DEVELOPMENT STORES] - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the number of manufacturers and distributors filing the statutorily required notices in compliance with Vehicle Code sections 11713.3(o)(3)(A) and 11713.3(O)(3)(B). Ms. Parker reported that notices pertain to a manufacturer owning or operating a dealership for a temporary period of time and owning an interest in a dealer as part of a bona fide dealer development program.

18. **REPORT THAT RICHARD LOPEZ RESIGNED AS A BOARD ADMINISTRATIVE LAW JUDGE AND HAS BEEN TAKEN OFF THE MERITS AND MANDATORY SETTLEMENT CONFERENCE ASSIGNMENT LOGS EFFECTIVE JUNE 30, 2007 - POLICY AND PROCEDURE COMMITTEE**

Ms. Parker reported that Administrative Law Judge Richard Lopez resigned effective June 30, 2007. Judge Lopez has been taken off the Merits and Mandatory Settlement Conference Assignment Logs. Judge Lopez resigned because he contracted with the Office of Administrative Hearings and therefore he can no longer be employed by the Board.

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

- a. Pending Legislation that impacts the Board.
- b. Pending Legislation of general interest.
 - (1) Assembly Bill 305 (Assembly Member Ma)
 - (2) Assembly Bill 1092 (Assembly Member Emmerson)
 - (3) Assembly Bill 1135 (Assembly Member Strickland)
 - (4) Senate Bill 60 (Senator Cedillo)
 - (5) Senate Bill 234 (Senator Corbett) [Chaptered July 27, 2007]
 - (6) Senate Bill 729 (Senator Padilla)
 - (7) U.S. House of Representatives Bill 1015 (U.S. Representative Capuano)
 - (8) U.S. House of Representatives Bill 1029 (U.S. Representative Stearns) – “Damaged Vehicle Information Act”
 - (9) U.S. House of Representatives Bill 1920 (U.S. Representative Inslee) – “Health Care for Hybrids Act”
 - (10) U.S. Senate Bill 545 (U.S. Senator Lott) – “Passenger Vehicle Loss Disclosure Act”
 - (11) U.S. Senate Bill 767 (U.S. Senator Obama) – “Fuel Economy Reform Act”
 - (12) U.S. Senate Bill 1055 (U.S. Senator Biden) – “American Automobile

- Industry Promotion Act of 2007”
- (13) U.S. Senate Bill 1151 (U.S. Senator Obama) – “Health Care for Hybrids Act”

The members were provided with a memorandum from Bill Brennan and Robin Parker updating them on pending legislation. Ms. Parker indicated that there are no bills that directly impact the Board but a number of bills of general interest are being tracked. Ms. Parker reported that the legislative process was coming to a close for this year and a full report concerning bills signed into law by the Governor would be presented at the next meeting.

20. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. 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. Ms. Parker reported that the Board legal staff worked closely with Occupational Licensing Branch to revise the OL-124 Form. This form has information beneficial to both the DMV and the Board.

Mr. Brennan reported that the legal staff is working on draft regulations to streamline and clarify Board procedures and practices. Mr. Skobin requested that the staff consult with the Chair of the Policy and Procedures Committee, Glenn Stevens, prior to expending more time on this project. Additionally, Mr. Brennan reported that the Board was hosting an Attorney Roundtable later this month in Sacramento; so far 25 attorneys were registered to attend. Given that three of the current Board members are in their one-year grace period, Mr. Brennan indicated that he was meeting with John Cruz, the Governor’s newly appointed Appointments Secretary. In August the Board sent out invoices for its annual fee collection with nearly 85% of the fees already collected. Mr. Brennan reported concerning employee retention and promotion; he asked DMV to evaluate the clerical positions to make sure that employees are working in class and to see if other positions would be elevated. Jackie Grassinger was the only employee that could be promoted to an elevated position. Lastly, Mr. Brennan reported on whether the Board should be proactive and solicit a performance audit. The California Highway Patrol does have an audit division that would be able to look at the Board’s performance in the first or second quarter of 2008. However, Mr. Brennan indicated the since the Board is in compliance with the audit, perhaps this issue should be revisited in a year or so.

The members were also provided with a summary of case management. Ms. Parker

reported that since the case management summary was prepared there were three new protests filed. She also reported that the Board's oldest case, *South Shore Motors*, was going to be resolved as the parties recently filed a Stipulated Decision and Order. Furthermore, Ms. Parker reported that all of the protests were on track and no cases were languishing.

Mr. Weinberg reported on the status of the pending court cases as follows: the *Bosch Kia* case was dismissed; *Frontier Infiniti* was set for hearing next week; there had been no dates set in *Serpa Automotive*; briefs are being filed in *Forty-Niner Sierra Resources* in the 3rd District court of Appeal; and no dates have been set in the *Fladeboe* matters.

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

Mr. Brooks commented that he liked the CD prepared for the members that contained the Board Meeting materials; it was user friendly, follows the agenda, and lighter than the binder.

22. **ADJOURNMENT**

Mr. Flesh moved to adjourn the meeting. Mr. Brooks seconded the motion. With no further business to discuss, the meeting was adjourned at approximately 12:15 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Alan J. Skobin
President
New Motor Vehicle Board