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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on November 15, 2007, at the Hilton Los Angeles Airport, Carmel Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Alan J. Skobin, President of the Board, called the meeting of the Board to order at 9:20 a.m.

Present: Robert V. Branzuela William G. Brennan, Executive Director  
Ryan L. Brooks Howard Weinberg, General Counsel  
Robert T. (Tom) Flesh Robin Parker, Senior Staff Counsel  
Haig Papaian  
Alan J. Skobin  
Glenn E. Stevens  
David W. Wilson (arrived 9:38 a.m.)

Absent: Ramon Alvarez C.  
David C. Lizárraga

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 7, 2007, GENERAL MEETING**

Mr. Stevens moved to adopt the September 7, 2007, General meeting minutes. Mr. Papaian seconded the motion. The motion carried unanimously.

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

Mr. Flesh, Vice President, presided over Agenda items 4-6. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

- a. **NADER AUTOMOTIVE GROUP, LLC, AND NADER EGHTEHAD v. VOLKSWAGEN OF AMERICA, INC.**

Protest No. PR-2045-07

Oral arguments were presented before the Public members of the Board. Michael M. Sieving of the Law Offices of Michael M. Sieving represented Protestant. Allen Resnick of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

- b. NADER AUTOMOTIVE GROUP, LLC, AND NADER EGHTEASAD v. AUDI OF AMERICA, INC.

Protest No. PR-2046-07

Oral arguments were presented before the Public members of the Board. Michael M. Sieving of the Law Offices of Michael M. Sieving represented Protestant. Allen Resnick of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

- c. BISA ENTERPRISES, INC. dba SUZUKI OF EL CAJON v. AMERICAN SUZUKI MOTOR CORPORATION

Protest No. PR-2031-06

Oral arguments were presented before the Public members of the Board. Kasra Sadr of Sadr & Barrera, APLC represented Protestant. James Mulcahy of Mulcahy Reeves LLP represented Respondent.

Prior to closed Executive Session deliberations, Bill Brennan reported that on Tuesday, November 14, 2007, the Board received a letter addressed to Alan Skobin as Board Chairman, from Richard Wilmshurst, Pro Per for Forty-Niner Sierra Resources, Inc., dba Forty-Niner Subaru. The letter as requested was forwarded to Mr. Skobin. Mr. Skobin declined to participate in this matter because he is a Dealer Board Member and the matter concerned dealer activity. Mr. Wilmshurst in the letter requested an additional 100 days for the Board to consider the Proposed Decision after Remand under Government Code section 11517. As reported by Mr. Brennan, Howard Weinberg as the Board's counsel concluded that the remand was under Government Code section 11517(d) and section 11517(e) would be the appropriate provision that would allow an additional 100 days. The Board declined to consider Mr. Wilmshurst's request.

5. **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 convenes in closed Executive Session to deliberate the decisions 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 ORDER**

NADER AUTOMOTIVE GROUP, LLC, AND NADER EGHTEASAD v.

VOLKSWAGEN OF AMERICA, INC.

Protest No. PR-2045-07

Consideration of the Administrative Law Judge's Recommendation that Respondent's Motion to Dismiss Protest Be Granted; and Proposed Order Granting Respondent's Motion to Dismiss, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's findings and the Executive Director was directed to dismiss the Protest with prejudice. Mr. Papaian seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

NADER AUTOMOTIVE GROUP, LLC, AND NADER EGHTEASAD v. AUDI OF AMERICA, INC.

Protest No. PR-2046-07

Consideration of the Administrative Law Judge's Recommendation that Respondent's Motion to Dismiss Protest Be Granted; and Proposed Order Granting Respondent's Motion to Dismiss, 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 findings and the Executive Director was directed to dismiss the Protest with prejudice. Mr. Brooks seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF PROPOSED ORDER**

BISA ENTERPRISES, INC. dba SUZUKI OF EL CAJON v. AMERICAN SUZUKI MOTOR CORPORATION

Protest No. PR-2031-06

Consideration of the Administrative Law Judge's Proposed Order Denying "Motion of Protestant Bisa Enterprise's Request to Withdraw its Dismissal", by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to reject the Administrative Law Judge's Proposed Order and granted Protestant's motion to request withdraw of its dismissal under the following conditions: (1) the manufacturer, American Suzuki is to submit a declaration as to fees and costs within 10 calendar days; (2) the Administrative Law Judge ("ALJ") is to expeditiously set a schedule and hearing on the declaration; (3) depending on the Judge's determination, the fees and costs are to be paid by Protestant's counsel within 10 days; (4) the ALJ is to set a telephonic hearing on American Suzuki's motion to compel that was previously filed and briefed; and (5) the ALJ is to set a merits hearing date and schedule whatever outstanding discovery needs to be

completed as expeditiously as possible. Mr. Brooks seconded the motion. The motion carried unanimously.

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

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 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. Stevens seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decisions in Agenda Items 5(a) through 5(d).

7. **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**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning the Recreation Vehicle Industry Association's request that the Board reconsider its policy permitting Dealer Board Member participation in Article 5 Recreational Vehicle protests. Mr. Weinberg reported that the Board received correspondence from both the manufacturer and dealer side of this issue. Mr. Brooks moved to allow the Board Members to consider Agenda item 8. Mr. Flesh seconded the motion. The motion carried unanimously.

8. **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**

Mr. Skobin voluntarily recused himself from discussion and consideration of this matter. Mr. Flesh presided over Agenda item 8. Public comments were presented by the following people: Maurice Sanchez, representing the Recreation Vehicle Industry Association ("RVIA"); Michael Sieving, representing the California Recreation Vehicle Dealers Association (CalRVDA); Darrel Friesen, All Seasons RV and President, CalRVDA; Peter Kravitz, Vice President and General Counsel, Giant RV; Skip Daum, Executive Director,

CalRVDA; and Kevin Colton, representing the RVIA. Mr. Stevens moved to take no action on this matter. Mr. Papaian seconded the motion. The motion carried with Mr. Flesh abstaining and the three Dealer Board Members recusing themselves.

9. **DISCUSSION AND ANALYSIS CONCERNING WHO IS MARKETING “SMART CAR OF AMERICA” VEHICLES IN THE UNITED STATES AND WHETHER ALL OF THE CALIFORNIA LICENSING REQUIREMENTS HAVE BEEN SATISFIED; DISCUSSION AND ANALYSIS CONCERNING THE MARKETING OF TESLA MOTORS VEHICLES - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning the marketing of Smart Cars of America and Tesla Motors, Inc. Mr. Weinberg reported that these two types of vehicles were being marketed through the Internet. According to a conversation with Mary Garcia, Branch Chief, Occupational Licensing, Department of Motor Vehicles, they received a manufacturer’s license application from Smart Cars USA, LLC that is currently being reviewed. Mr. Weinberg reported that Diarmuid O’Connell, Strategic Affairs, Tesla Motors, was in attendance earlier at today’s meeting and indicated that Tesla currently holds a manufacturer and dealer’s license in California. Occupational Licensing sent letters to both manufacturers this week concerning two Vehicle Code provisions pertaining to advertising and deposits. Mr. Brennan added that the Board’s action expedited the DMV’s involvement in this issue and the DMV is bringing both Tesla and Smart Cars in compliance as a result of the Board’s action.

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

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning updated business cards that reflect the new logo. At the September 7, 2007, General Meeting, the members posed three questions that they requested the staff investigate. First, is there a State policy requiring whatever logo is used on the website be used on the business cards, stationary, and elsewhere? Mr. Brennan indicated the answer was “no” and that it was up to each State agency to decide for itself. Second, is there a prohibition against using the State seal on Board Member’s business cards? Again, Mr. Brennan indicated that the answer was “no” and it is up to each State agency to decide. Third, can both the State seal and the Board logo be used on business cards? Mr. Brennan reported that the answer is “yes.” Mr. Wilson moved to retain the current business cards. Mr. Papaian seconded the motion. The motion carried unanimously.

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

The members were provided with a memorandum from Bill Brennan and Robin Parker reporting on the Board Development Program. Ms. Parker requested Board Member feedback for purposes of planning educational presentations for 2008.

12. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2006-2007 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2006-2007. Mr. Brennan reported that the Board expended 92% of its appropriated budget for the fiscal year, and that the Board's reserve balance was \$2,104,350. Mr. Brennan reported that considerable amounts of money were saved in the Board's operating and equipment expenses. Only 54% was spent of what was allocated. Money was saved in terms of travel, outside services, court reporters, and Administrative Law Judge expenses.

13. **REPORT ON THE BOARD'S ATTORNEY ROUNDTABLE HELD SEPTEMBER 28, 2007, ALONG WITH PARTICIPANT RESPONSES TO THE EVALUATION FORM CONCERNING THE EVENT - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the Board's Attorney Roundtable held on September 28, 2007. Ms. Parker reported that the Attorney Roundtable was a very successful event with 38 people registered to attend the event (30 people actually attended). The staff was able to secure MCLE approval and recently sent out the Certificates of Attendance. The members made several suggestions for future Attorney Roundtables including offering a video or audiotape of the event, associating with other associations to attract a wider net of attorneys that may not practice before the Board, offer the event in Southern California, and charge a fee to recoup the Board's costs.

14. **DISCUSSION AND CONSIDERATION OF OPTIONS FOR THE BOARD'S 7<sup>th</sup> ANNUAL INDUSTRY ROUNDTABLE IN TERMS OF FREQUENCY, LOCATION, AND OTHER INDUSTRY EVENTS - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Bill Brennan provided the members with a memorandum concerning options for the Board's 7<sup>th</sup> Annual Industry Roundtable in terms of frequency, location, and other industry events. Mr. Brennan presented four options: (1) schedule the meeting to coincide with the California Motor Car Dealers Association ("CMCDA") meeting in May 2008 in Indian Wells, California; (2) reschedule the Industry Roundtable to be a biannual event in conjunction with the CMCDA Gala event (March 2009); (3) postpone the Industry Roundtable to the fall of 2008 and hold it in conjunction with the CalRVDA annual meeting in Palm Desert, California; or (4) schedule a stand-alone event in Southern California this spring.

The members decided to host an RV industry focused Roundtable in November 2008 and the Board's Industry Roundtable in March 2009. The staff will provide a report concerning these proposed Roundtables at the December 13, 2007, Special Meeting.

15. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- (1) Assembly Bill 305 (Assembly Member Ma) [Chaptered 9/21/07]
- (2) Assembly Bill 1092 (Assembly Member Emmerson) [Chaptered 10/10/07]
- (3) Senate Bill 729 (Senator Padilla) [Chaptered 10/10/07]

The members were provided with a memorandum from Bill Brennan and Robin Parker updating them on pending legislation. Ms. Parker indicated that there were no bills that directly impact the Board but three bills of general interest to the industry were chaptered. In 2008, the staff will begin tracking the two-year bills and federal legislation. Mr. Weinberg will take over the legislative reports next year.

16. **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. Mr. Brennan indicated that the staff will report on the success of the California State Employees Charitable Campaign next meeting, and thanked the members for their donations. Mr. Brennan also indicated that the draft regulations were being reviewed by the Board's Administrative Law Judges, and the Board will consider the regulations in January. Additionally, Mr. Brennan indicated that the staff was getting positive feedback from a case management survey and the staff will report on the results in March or April. Lastly, Mr. Brennan indicated that the staff would report on the website at the December meeting.

Ms. Parker reported that three new protests had been filed and two protests were dismissed since the Executive Director's Report was sent. Additionally she reported that 58 cases had been filed year-to-date, and this was up from 49 for 2006. More than a third of the protests are establishments followed by terminations.

Mr. Weinberg reported that the *Frontier Infiniti* writ for attorney's fees in the amount of \$11,000 was upheld and not appealed. Mr. Weinberg also reported that in the *Forty-Niner Sierra Resources* appeal before the Third District Court of Appeal, reply briefs were due on November 13, 2007.

17. **SELECTION OF BOARD MEETING DATES FOR 2008**

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. Skobin went on the record and Robin Parker announced the following schedule:

- February 8 or 11, 2008, San Francisco - General Meeting
- March 25, 2008, Sacramento - General Meeting in conjunction with the California Motor Car Dealers Association Dealer Day

The remaining calendar for 2008 will be discussed at the December 13, 2007, Special Meeting.

18. **CLOSED EXECUTIVE SESSION**

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

**CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

The members of the Board convened in closed Executive Session to discuss this agenda item.

19. **OPEN SESSION**

Mr. Skobin reported that the members discussed the performance of their Executive Director and no action was taken.

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

No additional public comment was presented.

21. **ADJOURNMENT**

Mr. Wilson moved to adjourn the meeting. Mr. Papaian seconded the motion. With no further business to discuss, the meeting was adjourned at approximately 1:53 p.m.

Submitted by

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WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_  
Alan J. Skobin  
President  
New Motor Vehicle Board