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

The New Motor Vehicle Board ("Board") held a General meeting on June 15, 2010, at the Hilton Los Angeles Airport, San Lorenzo D Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 10:13 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director  
Ryan L. Brooks Robin Parker, Senior Staff Counsel  
Robert T. (Tom) Flesh  
Peter Hoffman  
Victoria R. Pearson  
Glenn E. Stevens (arrived 10:14 a.m.)  
David W. Wilson

Absent: David C. Lizárraga  
Haig Papaian

3. **PLEDGE OF ALLEGIANCE**

Mr. Brooks led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE MAY 5, 2010, GENERAL MEETING**

Mr. Alvarez C. moved to adopt the May 5, 2010, General Meeting minutes. Mr. Hoffman seconded the motion. The motion carried unanimously.

5. **FIRST CONSIDERATION OF PETITION PURSUANT TO SECTION 557 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

MEGA RV CORP. dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.  
Petition No. P-456-10

First consideration by the Public Members of the Board pursuant to Title 13, California Code of Regulations, section 554, et seq.

Oral comments were presented before the Public Members of the Board for Agenda items 5 and 6. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

The Public Members of the Board considered the above-entitled petition upon First Consideration under Section 557 of Title 13 of the California Code of Regulations. After such consideration, Mr. Stevens moved to reject the petition upon first consideration and dismissed the portion of the petition that sought adjudication of the dispute pursuant to Vehicle Code section 3050(c)(2). The authority for this rejection is *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451, 1457, which states that “[w]here the Board’s activities exceed its authorization, the Board violates the judicial powers clause of the California Constitution.” Mr. Brooks seconded the motion. The motion carried unanimously.

6. **CONSIDERATION OF PETITION REQUESTING THAT THE BOARD DIRECT DMV TO CONDUCT AN INVESTIGATION OF THE ALLEGATIONS CONTAINED THEREIN AND TO ORDER DMV TO EXERCISE ANY AND ALL AUTHORITY OVER RESPONDENT’S OCCUPATIONAL LICENSE PURSUANT TO VEHICLE CODE SECTION 3050(c)(1) AND (3)**

MEGA RV CORP. dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.  
Petition No. P-456-10

Consideration of Petition requesting that the Board direct DMV to conduct an investigation of the allegations contained therein and to order DMV to exercise any and all authority over Respondent’s Occupational License, by the Public Members of the Board.

Oral comments were presented before the Public Members of the Board for Agenda items 5 and 6. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

The Public members of the Board deliberated in Open Session. Mr. Stevens moved to deny the relief requested by Petitioner that the Board direct DMV to conduct an investigation of the allegations contained in the petition and order DMV to exercise any and all authority over Respondent’s Occupational License. Mr. Flesh seconded the motion. The motion carried unanimously.

7. **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 indicated that the Board was in compliance with the Audit Findings and Corrective

Action Plan and that there was nothing significant to report.

8. **ANNUAL REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN 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 delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. The delegations were thoroughly reviewed and revised at the November 20, 2008, General Meeting. Ms. Parker reported that there were no proposed revisions to the delegations that were most recently revised and adopted at the September 10, 2009, General Meeting. The only change in the delegations is to the introductory paragraph on page 1; the staff proposed no additional changes.

Mr. Hoffman moved to adopt the Board delegations. Mr. Stevens seconded the motion. The motion carried unanimously.

9. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1<sup>ST</sup> HALF OF FISCAL YEAR 2010/2011 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 1<sup>st</sup> half of fiscal year 2010-2011. As indicated in the memo, at the February 4, 2010, General Board Meeting, the Board Members approved and ratified out-of-state travel plans for fiscal year 2010-2011. It was decided at the meeting that the Executive Committee would authorize individuals to attend. The staff proposed the following schedule:

- Travel to the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Biloxi, Mississippi (the location changed from Madison, Wisconsin) for one public Board member, Executive Director Bill Brennan and Chief of Staff Dawn Kindel. The workshop will be held October 9 – 13, 2010.
- Travel to the Recreational Vehicle Industry Association 48<sup>th</sup> National Trade Show in Louisville, Kentucky for one public Board member and Executive Director Bill Brennan. This event will be held November 30 – December 2, 2010.

Mr. Brennan reported that new out-of-state travel guidelines issued require that the Board provide the Department with individual trip requests at least 30 days prior to travel. All out-of-state requests will go to the Governor's office for final approval.

Mr. Brooks moved to approve the proposed attendees for the out-of-state trips for the first half of the 2010-2011 fiscal year. Mr. Hoffman seconded the motion. The motion carried unanimously.

10. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan showing the changes that

have occurred to the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act and Public Records Act. Mr. Brennan indicated that this report was primarily prepared by Howard Weinberg, former General Counsel, and changes that may be of importance to the Board and its members were highlighted in the memo. Furthermore, Mr. Brennan indicated that there were really no significant changes that impacted the Board.

11. **BOARD FINANCIAL CONDITION REPORT FOR THE 3<sup>RD</sup> QUARTER OF FISCAL YEAR 2009-2010 - 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 3<sup>rd</sup> quarter of fiscal year 2009-2010. The Board has expended 75% of its appropriated budget for fiscal year 2009-2010. Mr. Brennan reported that the Board is on target to meet its budget and pointed out that revenues are down for the Board's fee collection.

12. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2010-2011 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's proposed budget for the next fiscal year. Mr. Brennan pointed out that one of the largest expenses was the Board's payroll. After a brief discussion, Mr. Flesh requested that the issue of the Board's lease and potential alternative locations be agendized for the next meeting. Mr. Alvarez C. moved to adopt the proposed budget. Mr. Wilson seconded the motion. The motion carried unanimously.

13. **SEMI-ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the semi-annual discussion and consideration of the methods of determining Board fees. Mr. Brennan indicated that the Board's fees are reasonable and not a tax. Furthermore, he indicated that there were sufficient reserves to maintain the present fee schedule but that this matter would be closely monitored.

14. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S 7<sup>TH</sup> INDUSTRY/ATTORNEY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning participant and audience responses to the Board's Industry/Attorney Roundtable. Ms. Parker reported that the feedback received from attendees and participants was favorable, and a number of good topics were suggested for the next event. Ms. Parker indicated who attended the event as follows: three different associations; 12 outside dealer law firms; 11 outside manufacturer law firms; 11 manufacturers/distributors; and four governmental entities. Mr. Flesh requested that this matter be agendized for the next meeting to discuss a future roundtable and topics.

15. **CONSIDERATION OF THE 2010 EDITION OF THE NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning proposed edits to the 2010 edition of the *New Motor Vehicle Board Administrative Law Judge's Benchbook*. Mr. Brennan summarized the proposed changes and indicated that this document was primarily updated by Howard Weinberg, former General Counsel. Additionally, Mr. Brennan indicated that Mr. Hoffman had mentioned that his middle initial is "C" and therefore on the title page it should be "Peter C. Hoffman." Furthermore, Ms. Parker indicated that once the proposed rulemaking is approved, the ALJ Benchbook would be thoroughly revised for 2011.

Mr. Stevens moved to adopt the 2010 Benchbook. Mr. Hoffman seconded the motion. The motion carried unanimously. Mr. Stevens requested that the Benchbook be sent electronically to the Committee next year.

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

- a. Pending Legislation of Special Interest - none.
- b. Pending Legislation of General Interest.
  - (1) Assembly Bill 2597 (Assembly Member Berryhill).
  - (2) Senate Bill 980 (Senator Huff).
  - (3) Senate Bill 1208 (Senator Strickland).
  - (4) Senate Bill 1393 (Senator Simitian).
- c. Pending Federal Legislation of General Interest.
  - (1) United States House of Representatives Bill 2743 (U.S. Representative Maffei) - Automobile Dealer Economic Rights Restoration Act of 2009.
  - (2) United States House of Representatives Bill 2796 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
  - (3) United States House of Representatives Bill 3311 (U.S. Representative Blumenauer).
  - (4) United States House of Representatives Bill 3450 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2009.
  - (5) United States House of Representatives Bill 4897 (U.S. Representative Richardson) - Drivers Accelerated Interest Deductibility Act of 2010 or the Drivers AID Act.
  - (6) United States House of Representatives Bill 5345 (U.S. Representative Speier) - Consumer Auto Safety Enhancement Act of 2010.
  - (7) United States Senate Bill 209 (U.S. Senator Boxer).
  - (8) United States Senate Bill 247 (U.S. Senator Feinstein) - Accelerated Retirement of Inefficient Vehicles Act of 2009.
  - (9) United States Senate Bill 271 (U.S. Senator Cantwell) - Fuel Reduction using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2009.

- (10) United States Senate Bill 1200 (U.S. Senator Feinstein) - Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009.

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. An updated memo along with comments to AB 2597 from Kathy Van Kleeck, Sr. Vice President, Government Affairs, Motorcycle Industry Council/Specialty Vehicle Institute of America was handed to the members. Ms. Parker reminded the members that the Board does not take a formal position on legislation. Furthermore, Ms. Parker reported that all of the other State bills had "died" because they did not pass out of their house of origin by the deadline (Senate Bills 980, 1208, and 1393). Additionally, she reported that there had been no activity on the pending federal legislation.

#### 17. 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 case management has been very busy this year. Since the members received their written report, there had been one new protest filed. A total of 47 protests were currently pending with a merits hearing scheduled in *Bob Lewis Suzuki* next week. Additionally, Ms. Parker indicated that there have been 43 protests filed this year in comparison to 54 in 2009. Furthermore, Ms. Parker indicated that Ford issued 77 notices of termination for its Mercury line. In total there had been 115 involuntary notices of termination submitted.

Mr. Brennan informed the members that Polly Riggerbach was working part-time from home handling the case management matters. With regards to judicial matters, Mr. Brennan reported that *Calabasas*, *Platinum Motors* and *Carlson Subaru* were deleted from the report. In *Timmons Volkswagen* a briefing schedule was established and an August 16 trial date. Additionally, Mr. Brennan reported that in *Powerhouse Motorsports* the hearing on the writ was continued to June 11 and in *Serpa Automotive* no dates had been set.

#### 18. SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2010

The members were provided with a memorandum from Bill Brennan concerning upcoming Board meeting dates. The members went off the record for this discussion. Ms. Parker announced that the following meetings were scheduled for the 2<sup>nd</sup> half of 2010:

- August 24, 2010, Special Meeting, Los Angeles in the event there are case management matters;
- October 8, 2010, General Meeting, Los Angeles; and
- December 10, 2010, General Meeting, Sacramento.

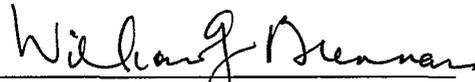
19. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

20. **ADJOURNMENT**

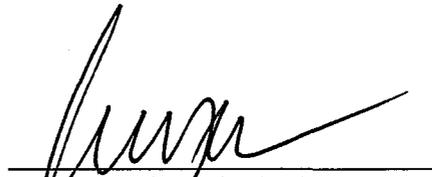
With no further business to discuss, the meeting was adjourned at approximately 12:00 p.m.

Submitted by



WILLIAM G. BRENNAN  
Executive Director

APPROVED:



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Robert T. (Tom) Flesh  
President  
New Motor Vehicle Board