

1 NEW MOTOR VEHICLE BOARD  
1507 – 21<sup>ST</sup> Street, Suite 330  
2 Sacramento, California 95811  
Telephone: (916) 445-1888

**CERTIFIED MAIL**

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

10  
11 In the Matter of the Protest of  
12 GUARANTEE FORK LIFT, INC., dba GFL, Inc.,  
13 Protestant,  
14 v.  
15 CAPACITY OF TEXAS, INC.,  
16 Respondent.

**Protest No. PR-2361-13**

**BOARD DECISION ISSUED IN  
COMPLIANCE WITH JUDGMENT ON  
WRIT OF MANDATE AFTER  
PEREMPTORY WRIT OF  
MANDAMUS**

17  
18  
19 **DECISION**

20 At its regularly scheduled meeting of January 18, 2017, upon consideration by the Public  
21 Members of the Superior Court's Judgment on Writ of Mandate and Ruling on Submitted Matter  
22 (Attachment 1), the Peremptory Writ of Mandamus (Attachment 2), and the Remittitur (Attachment 3),  
23 the Board acted as commanded and set aside its Decision of April 10, 2014.

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26 ///

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Sent by  
Certified Mail  
Postmarked 10/10/15

DATE  
Rec'd by NMVB 10/20/15 all

7013 1710 0007 7077 3056

1 Timothy R. Brownlee, (Pro Hac Vice)  
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13 Facsimile: 714.754.6611  
14 Email: [msanchez@bakerlaw.com](mailto:msanchez@bakerlaw.com)

15 Attorneys for Petitioner  
16 CAPACITY OF TEXAS, INC.

FILED  
ENDORSED  
SEP - 1 2015  
By FRANK TEMMERMAN  
Deputy Clerk

OCT 20 2015  
NEW MOTOR VEHICLE BOARD

17 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF SACRAMENTO

19 CAPACITY OF TEXAS, INC.,  
20 Petitioner,  
21 v.

22 NEW MOTOR VEHICLE BOARD, a  
23 California State Administrative Agency,  
24 Respondent.

25 GUARANTEED FORKLIFT, INC. DBA  
26 GFL, INC.,  
27 Real Party In Interest.

Case No.: 34-2014-80001848-CU-WM-GDS  
JUDGMENT ON WRIT OF MANDAMUS  
(Costs Posted - OCT - 1 2015)  
Date: May 1, 2015  
Time: 9:00 A.M.  
Dept: 29

28 This matter came regularly before this court on May 1, 2015, for hearing in Department  
Twenty-nine (29) of the Superior Court, the Honorable Timothy M. Frawley presiding. Timothy

JUDGMENT ON WRIT OF MANDAMUS

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ATTACHMENT 1

1 R. Brownlee appeared as attorney for petitioner. Michael Sieving appeared as attorney for the real  
2 party in interest. There were no appearances for the respondent New Motor Vehicle Board. The  
3 record of the administrative proceedings having been received into evidence and examined by the  
4 court, arguments having been presented, and the court having made a statement of decision,  
5 which has been signed and filed,

6  
7 IT IS ORDERED that:

8 1. A peremptory writ of mandamus shall issue from the court, remanding the proceedings to  
9 respondent and commanding respondent to set aside its decision of April 10, 2014, in the  
10 administrative proceedings entitled Guarantee Fork Lift, Inc. dba GFL, Inc., v. Capacity of Texas,  
11 Inc., bearing case number PR-2361-13.

12 2. The writ shall further command respondent to issue a new decision, overruling the protest  
13 of the real party in interest and allowing termination of the franchise agreement between  
14 petitioner and real party in interest as more specifically provided in the Ruling on Submitted  
15 Matter attached hereto as Exhibit A and incorporated herein.  
16

17 3. Petitioner is awarded its costs in the sum of \$ 2,636.<sup>00</sup>, as set out on the verified  
18 memorandum attached hereto as Exhibit B.

19 Date: Sept. 1, 2015

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28  
Hon. Timothy M. Frawley  
California Superior Court Judge  
County of Sacramento



OCT - 1 2015

A. WOODWARD

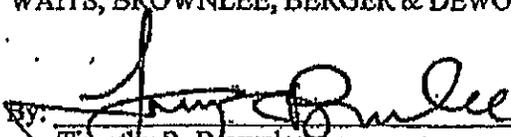
*Memo. of Costs Clerk*

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Submitted By:

Dated: August 13, 2015

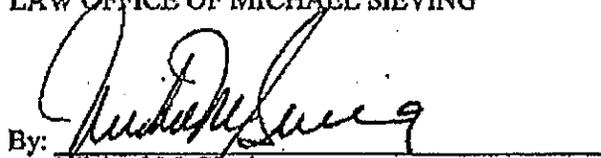
WAITS, BROWNLEE, BERGER & DEWOSKIN

By:   
Timothy R. Brownlee

Attorneys for Petitioner  
CAPACITY OF TEXAS, INC.

Approved as to Form:

LAW OFFICE OF MICHAEL SIEVING

By:   
Michael M. Sieving

Attorney for Real Party in Interest  
GFL, Inc.

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SACRAMENTO**

**CAPACITY OF TEXAS, INC.**

**v.**

**NEW MOTOR VEHICLE BOARD**

**GUARANTEED FORKLIFT, INC., dba  
GFL, INC.**

Case Number: 34-2014-80001848.

**RULING ON SUBMITTED MATTER**

Date: May 1, 2015

Time: 9:00 a.m.

Dept.: 29

Judge: Timothy M. Frawley

Petitioner Capacity of Texas, Inc. challenges a decision of Respondent New Motor Vehicle Board granting an administrative protest of its notice to terminate the franchise of Real Party in Interest GFL, Inc. (GFL). Petitioner seeks a peremptory writ of mandate compelling Respondent to set aside its decision and issue a new decision, overruling the protest and allowing termination of the franchise agreement. The court shall GRANT the petition.

Introduction

Petitioner Capacity is a new motor vehicle manufacturer. Capacity manufactures terminal tractors (also sometimes referred to as "semi-tractors" or "yard trucks") under the trade name "Trailer Jockey." A terminal tractor is a specialty vehicle typically used to move semi-trailers over short distances, such as within a cargo/freight yard, shipping dock, warehouse facility, or distribution center. Although terminal tractors are not typically operated on public streets, two of the "Trailer Jockey" models manufactured by Capacity are available in a "DOT variation" that would allow the vehicles, if properly registered, to be legally operated on public streets in California.

Real Party in Interest GFL was an authorized Capacity dealer, authorized to sell and service the motor vehicles manufactured by Capacity, pursuant to the terms of a "franchise" agreement between Capacity and GFL referred to as the "Authorized Representative Agreement," dated July 17, 1995.

Respondent Board is an administrative agency of the State of California charged with (among other things) the responsibility to adjudicate certain franchise-related disputes between new motor vehicle manufacturers and their retail dealers.

By letter dated February 5, 2013, Capacity notified GFL and the Board of its intention to terminate GFL's franchise because GFL (1) misrepresented the employment status of a former employee who left GFL to work for Capacity's chief competitor, and (2) unlawfully allowed the former employee to continue accessing Capacity's confidential and proprietary "Online Parts Ordering System" while the former employee was working for the competitor.

The California Vehicle Code prohibits involuntary termination of a new motor vehicle franchise without "good cause." (Cal. Veh. Code § 3060.) If a franchisee contends that it has been terminated without good cause, the franchisee may file a protest with the Board. (*Ibid.*) When a protest is filed, the franchisor may not terminate the franchise unless and until the Board finds, after hearing, there is good cause for termination. (*Ibid.*) At the protest hearing, the franchisor has the burden of proof to establish good cause for termination. (Cal. Veh. Code § 3066.)

In determining whether the franchisor has established good cause, the Board is required to consider the "existing circumstances," including, but not limited to, the following seven factors:

- (1) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
- (2) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
- (3) Permanency of the investment.
- (4) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.
- (5) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor

vehicles handled by the franchisee and has been and is rendering adequate services to the public.

- (6) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.
- (7) Extent of franchisee's failure to comply with the terms of the franchise. (Cal. Veh. Code § 3081.)

In this case, GFL filed a timely protest with the Board, and the Board set the matter for hearing in December 2013. However, prior to the hearing, Capacity filed a Motion to Dismiss, arguing that the Board lacked jurisdiction to decide GFL's protest. Capacity argued that under the California Vehicle Code, the Board only has jurisdiction over protests involving franchisees of new motor vehicles subject to registration under the Vehicle Code. Capacity argues that because the vehicles it manufactures are not typically used on public streets, they are not "subject to registration," and therefore the Board lacked jurisdiction to hear GFL's protest.

On August 14, 2013, Administrative Law Judge Anthony M. Skrocki denied Capacity's Motion to Dismiss. The ALJ found that the Board had jurisdiction to hear the protest both because Capacity sells vehicles "subject to registration," and because GFL was given the right to perform authorized warranty repairs and service.

After the ALJ denied the Motion to Dismiss, but before the hearing on the merits, the parties entered into two stipulations of fact, one dated October 11, 2013, and another dated December 2, 2013. Among other things, the parties agreed to stipulate to the following facts concerning the "good cause" factors set forth in Vehicle Code § 3081:

- GFL transacts an adequate amount of business, as compared to the business available to it.
- GFL has made investments and incurred obligations necessary to perform its parts of the franchise.
- GFL's investment in its franchise is permanent.
- GFL has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.
- GFL does not fail to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

The parties also stipulated that they will not present evidence regarding whether it would be injurious or beneficial to the public welfare for GFL's business to be disrupted. The only "good cause" factor to which the parties did not stipulate was the one forming

the basis for Capacity's termination: the "[e]xtent of [the] franchisee's failure to comply with the terms of the franchise," and specifically whether GFL breached the terms of its franchise agreement by allowing its former employee to access Capacity's confidential and proprietary "Online Parts Ordering System" (also known as "COPOS").

On December 11, 2013, a hearing on the merits of the protest was held before ALJ Kymberly Pipkin. In March of 2014, ALJ Pipkin issued a 15-page proposed decision, sustaining the protest and prohibiting termination of the GFL franchise. The ALJ found that GFL's principal, president, and sole shareholder, Denise Rosen-Kendrick, misrepresented the employment status of former employee, Stephen Mehrens, to Capacity, stating that Mr. Mehrens was on medical leave when he actually was no longer employed with GFL. The ALJ also found that Ms. Rosen-Kendrick provided Mr. Mehrens with the password to access COPOS after he was employed by a competitor of Capacity.

Nevertheless, the ALJ concluded that Capacity did not establish that GFL violated any provisions of the franchise agreement or that GFL failed to comply with the terms of the franchise. Thus, the ALJ concluded that Capacity did not meet its burden to establish good cause to terminate GFL's franchise.

The ALJ found that the agreement provisions described in Capacity's notice of termination were not violated because they were not actually contained within the agreement; they were provisions added to subsequent franchise agreements with other franchisees. The ALJ found that the sole clause in GFL's franchise agreement regarding Capacity's ability to terminate provides as follows:

For good cause shown, as defined by Texas statute, Capacity may terminate this Agreement without any liability by providing written notice of termination which shall be effective thirty (30) days after receipt by Authorized Representative [GFL]. Cause shall include but not be limited to the goals and objectives established by the parties hereto.

The ALJ found that this provision was not violated by GFL's conduct.

In April 2014, the Board met and considered the proposed decision. The Board adopted the proposed decision as its final Decision by a 2 to 1 vote. Board member Kathryn Doi wrote a four-page dissent.

By the present action, Capacity seeks a peremptory writ of administrative mandamus ordering the Board to set aside its decision and issue a new decision overruling the

protest. In its Memorandum of Points and Authorities, Capacity challenges the Board's Decision on two grounds. First, Capacity challenges the ALJ's order denying the Motion to Dismiss. Capacity argues that because terminal tractors are not typically "registered," the Board did not have jurisdiction over GFL's protest.

Second, Capacity argues the Board abused its discretion in finding GFL's conduct did not violate the terms of the franchise or otherwise provide "good cause" to terminate the franchise. Capacity argues that, based on the undisputed facts, Capacity had good cause to terminate GFL's franchise due to GFL's breach of the implied covenant of good faith and fair dealing and GFL's violations of state and federal laws prohibiting the unauthorized dissemination of trade secrets.

#### Standard of Review

The inquiry in a case under Civil Procedure Code section 1094.5 shall extend to questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Civ. Proc. Code § 1094.5(b).) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the findings are not supported by substantial evidence. (*Automotive Management Group, Inc. v. New Motor Vehicle Board* (1993) 20 Cal.App.4th 1002, 1009.) However, if the facts are undisputed, the reviewing court may exercise its independent judgment and resolve the matter as a question of law. (See *Paratransit, Inc. v. Unemployment Ins. Appeals Bd.* (2014) 59 Cal.4th 551, 562.)

#### Motion to Augment the Administrative Record

The administrative record originally lodged with the court inadvertently omitted the parties' joint exhibits and the transcript of the hearing. At the hearing on the merits, Capacity moved to augment the record to include the omitted documents. GFL had no objection to augmenting the record to include the joint exhibits and transcript of administrative hearing. Thus, the court granted the motion to augment the record with such records.

#### Discussion

The Board did not abuse its discretion in denying Capacity's Motion to Dismiss. The court finds the ALJ's Order Denying Respondent's Motion to Dismiss and Strike Protest

to be well reasoned and well supported. The court adopts the findings and conclusions of that Order as its own.

However, the Board abused its discretion in concluding that Capacity lacked good cause to terminate GFL's franchise.

As Section 3061 recognizes, good cause is a "relative" term; its existence depends on the circumstances of each particular case. Broadly speaking, a right to terminate "for good cause" means upon reasonable grounds assigned in good faith. (See, e.g., *R. J. Cardinal Co. v. Ritchie* (1963) 218 Cal.App.2d 124, 146.) Where, as here, the facts are undisputed, the existence of good cause for termination is an issue of law, reviewed de novo.<sup>1</sup> (*Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 6; *Moore v. May Dept. Stores Co.* (1990) 222 Cal.App.3d 836, 840.)

Here, the Board found that Ms. Rosen-Kendrick misrepresented the employment status of Mr. Mehrens to Capacity, stating that Mr. Mehrens was on medical leave when, in fact, he was working for a competitor. The Board also found that Ms. Rosen-Kendrick provided Mr. Mehrens with GFL's password to access COPOS after Mr. Mehrens was working for the competitor. Mr. Mehrens proceeded to access the COPOS system no less than thirty-nine times, on nine different days, researching eight different VINs and 13 different parts.

Only authorized dealers are supposed to have access to the COPOS system. By providing Mr. Mehrens with access to the COPOS system, GFL violated the terms and conditions of use of the COPOS system and gave Capacity's chief competitor access to proprietary and confidential trade secret information about Capacity's business. GFL also was dishonest to Capacity about Mr. Mehrens' employment status, which prevented Capacity from suspending his user ID before he could gain access.

These actions violated the terms of the franchise agreement, which requires GFL to "use all reasonable endeavors to achieve maximum sales of [Capacity's] products." By providing trade secret information to Capacity's chief competitor, GFL worked against Capacity and acted inconsistent with its obligations under the franchise agreement. This is "cause" for termination under the express terms of the agreement.

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<sup>1</sup> Because the Board's findings of fact are not disputed, the court accepts them as true. (See *Black v. State Personnel Board* (1955) 136 Cal.App.2d 904, 909 [any finding not specifically attacked is to be accepted as true].) The Board's findings are incorporated herein by reference.

Further, under applicable Texas law,<sup>2</sup> there is a duty of good faith and fair dealing between the parties to a motor vehicle franchise agreement. (See Tex. Occ. Code Ann. § 2301.478<sup>3</sup>; *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Board* (Tex. App. 2005) 179 S.W.3d 589, 615; see also Tex. Bus. & Com. Code § 1.304.) GFL's actions breached this duty of good faith. Thus too supports the conclusion that GFL failed to comply with the terms of the franchise.

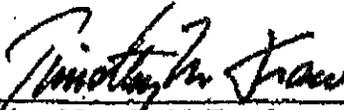
Moreover, a finding of good cause is not required to be based on a violation of franchise "terms." The statute merely requires a showing of "good cause," which can be based on any "existing circumstances." Here, GFL's dissemination of Capacity's valuable trade secrets, and GFL's violation of Capacity's trust and confidentiality, would amount to good cause for termination even if it did not violate the terms of the franchise agreement.

#### Disposition

The Board abused its discretion in concluding that Capacity failed to establish good cause to terminate the franchise agreement. Accordingly, the court shall grant the petition and issue a peremptory writ of mandate compelling Respondent to set aside its decision and issue a new decision, overruling the protest and allowing termination of the franchise agreement.

Counsel for Capacity is directed to prepare a formal judgment (incorporating this ruling as an exhibit) and writ; submit them to opposing counsel for approval as to form; and thereafter submit them to the court for signature and entry of judgment. Capacity shall be entitled to recover its costs upon appropriate application.

Dated: August 3, 2015

  
Hon. Timothy M. Frawley  
California Superior Court Judge  
County of Sacramento



<sup>2</sup> There also is an implied covenant of good faith and fair dealing in every contract under California law. (See *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658.)

<sup>3</sup> Although the franchise agreement was executed before this statute took effect in 2003, the agreement had a one-year term, subject to annual renewal by mutual agreement of the parties. Thus, the agreement was "renewed" after the statute took effect. The duty of good faith imposed by the commercial code predates the franchise agreement. (See *Adolph Coors Co. v. Rodriguez* (Tex. App. 1989) 780 S.W.2d 477, 480-81.)

CASE NUMBER(S): 34-2014-80001848

DEPARTMENT: 29

CASE TITLE(S): Capacity of Texas vs. New Motor Vehicle Bd./Guaranteed Forklift, Inc.

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled RULING in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

**TIMOTHY R. BROWNLEE**  
Waits, Brownlee, Berger & Dewoskin  
401 West 89<sup>th</sup> Street  
Kansas City, MO 64114

**MICHAEL M. SIEVING**  
Attorney at Law  
8865 La Riviera Drive, Unit B  
Sacramento, CA 95826

**MAURICE SANCHEZ**  
Baker & Hostetter, LLP  
800 Anton Blvd., Ste. 900  
Costa Mesa, CA 92626-7221

Superior Court of California,  
County of Sacramento

Dated: August 3, 2015

By: F. Temmerman  
Deputy Clerk, Department 29

COURTESY COPY

MC-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) <b>Timothy R Brownlee</b> Waits, Brownlee, Berger, Hoop & Johnston 401 W. 89th Street Kansas City, MO 64114 TELEPHONE NO: 816-363-5466 FAX NO: 816-333-1205 ATTORNEY FOR (Name): <b>Capacity of Texas, Inc.</b>	FOR COURT USE ONLY 2015 AUG 20 PM 2:57 2015 AUG 20 PM 2:57 2015 AUG 20 PM 2:57
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY <b>Superior Court of California, Sacramento County, Dept. 29</b>	
PLAINTIFF: <b>Capacity of Texas, Inc.</b> DEFENDANT: <b>New Motor Vehicle Board</b>	
<b>MEMORANDUM OF COSTS (SUMMARY)</b>	CASE NUMBER: <b>34-2014-80001848</b>

The following costs are requested:

	TOTALS
1. Filing and motion fees .....	1. \$ <b>435.00</b>
2. Jury fees .....	2. \$
3. Jury food and lodging .....	3. \$
4. Deposition costs .....	4. \$
5. Service of process .....	5. \$ <b>523.30</b>
6. Attachment expenses .....	6. \$
7. Surety bond premiums .....	7. \$
8. Witness fees .....	8. \$
9. Court-ordered transcripts .....	9. \$ <b>988.50</b>
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required) .....	10. \$
11. Models, blowups, and photocopies of exhibits .....	11. \$
12. Court reporter fees as established by statute .....	12. \$ <b>30.00</b>
13. Other .....	13. \$ <b>639.87</b>
<b>TOTAL COSTS</b> .....	<b>\$ 2,636.67</b>

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: 8/18/15

Timothy R Brownlee  
(TYPE OR PRINT NAME)

  
(SIGNATURE)

(Proof of service on (reverse))

SHORT TITLE: <p style="text-align: center;">Capacity v New Motor Vehicle Board</p>	CASE NUMBER: <p style="text-align: center;">34-2014-80001848</p>
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PROOF OF  MAILING  PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and not a party to this legal action.  
 2. My residence or business address is (specify):

**Business:** 401 West 89th Street  
 Kansas City, Missouri 64114

3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (complete either a or b):

- a.  Mail. I am a resident of or employed in the county where the mailing occurred.
- (1) I enclosed a copy in an envelope AND
    - (a)  deposited the sealed envelope with the United States Postal Service with the postage fully prepaid.
    - (b)  placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
  - (2) The envelope was addressed and mailed as follows:
    - (a) Name of person served: Michael M. Sieving, Esq.
    - (b) Address on envelope: Law Office of Michael M. Sieving  
 9865 LaRiviera Drive, Unit B  
 Sacramento, CA 95826
    - (c) Date of mailing: August 18, 2015
    - (d) Place of mailing (city and state): Kansas City, MO

- b.  Personal delivery. I personally delivered a copy as follows:

- (1) Name of person served:
- (2) Address where delivered:
- (3) Date delivered:
- (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 18, 2015

Robin K. Thomas  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF DECLARANT)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER: 34-2014-80001848
<b>MEMORANDUM OF COSTS (WORKSHEET)</b>	

1. Filing and motion fees

	Paper filed	Filing fee
a.	<u>Filing Fee - Initial Filing</u>	\$ <u>435.00</u>
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____
e.	_____	\$ _____
f.	_____	\$ _____
g.	<input type="checkbox"/> Information about additional filing and motion fees is contained in Attachment 1g.	

TOTAL 1. \$ 435

2. Jury fees

	Data	Fee & mileage
a.	_____	\$ _____
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____
e.	<input type="checkbox"/> Information about additional jury fees is contained in Attachment 2e.	

TOTAL 2. \$ \_\_\_\_\_

3. Juror food: \$ \_\_\_\_\_ and lodging: \$ \_\_\_\_\_

TOTAL 3. \$ \_\_\_\_\_

4. Deposition costs

	Name of deponent	Taking	Transcription	Travel	Video-taping	Substantia
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
d.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
e.	<input type="checkbox"/> Information about additional deposition costs is contained in Attachment 4e.					

TOTAL 4. \$ \_\_\_\_\_

(Continued on reverse)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER: 34-2014-B0001848
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5. Service of process

Name of person served	Public officer	Registered process	Publication	Other (specify)
a. <u>New Motor Vehicle Board</u>	\$ _____	\$ <u>158.72</u>	\$ _____	\$ _____
b. <u>Michael J. Flannagan</u>	\$ _____	\$ <u>205.86</u>	\$ _____	\$ _____
c. <u>Callahan, Thompson, She</u>	\$ _____	\$ <u>158.72</u>	\$ _____	\$ _____

d.  Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$ 23.30

6. Attachment expenses (specify): ..... 6. \$ \_\_\_\_\_

7. Surety bond premiums (itemize bonds and amounts): ..... 7. \$ \_\_\_\_\_

8. a. Ordinary witness fees

Name of witness	Daily fee	Mileage	Total
(1) _____	_____ days at _____ \$/day	_____ miles at _____ \$/mile ....	\$ _____
(2) _____	_____ days at _____ \$/day	_____ miles at _____ \$/mile ....	\$ _____
(3) _____	_____ days at _____ \$/day	_____ miles at _____ \$/mile ....	\$ _____
(4) _____	_____ days at _____ \$/day	_____ miles at _____ \$/mile ....	\$ _____
(5) _____	_____ days at _____ \$/day	_____ miles at _____ \$/mile ....	\$ _____

(8)  Information about additional ordinary witness fees is contained in Attachment 8a(8).

SUBTOTAL 8a. \$ \_\_\_\_\_

SHORT TITLE: <b>Capacity v. New Motor Vehicle Board</b>	CASE NUMBER: <b>34-2014-80001848</b>
<b>MEMORANDUM OF COSTS (WORKSHEET) (Continued)</b>	

**b. b. Expert fees (per Code of Civil Procedure section 958)**

Name of witness	Fee			
(1) _____	hours at \$ _____ /hr	...	\$ _____	
(2) _____	hours at \$ _____ /hr	...	\$ _____	
(3) _____	hours at \$ _____ /hr	...	\$ _____	
(4) _____	hours at \$ _____ /hr	...	\$ _____	
(5) <input type="checkbox"/> Information about additional expert witness fees is contained in Attachment 8b(5).				

SUBTOTAL 8b. \$  

**c. Court-ordered expert fees**

Name of witness	Fee			
(1) _____	hours at \$ _____ /hr	...	\$ _____	
(2) _____	hours at \$ _____ /hr	...	\$ _____	
(3) <input type="checkbox"/> Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).				

SUBTOTAL 8c. \$  

TOTAL (8a, 8b, & 8c) \$  

9. Court-ordered transcripts (specify): ..... 9. \$ 988.50  
 Transcript of hearing before Administrative Law Judge

10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required): ..... 10. \$  

11. Models, blowups, and photocopies of exhibits (specify): ..... 11. \$  

**12. Court reporter fees (as established by statute)**

- a. (Name of reporter): \_\_\_\_\_ Fees: \$ 30.00
- b. (Name of reporter): \_\_\_\_\_ Fees: \$
- c.  Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$ 30.00

13. Other (specify): See Attached ..... 13. \$ 659.87

**TOTAL COSTS** ..... \$ 2,636.67

(Additional information may be supplied on the reverse)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER: 34-2014-80001848
MEMORANDUM OF COSTS (WORKSHEET) (Continued)	

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Other expenses:

Copies of administrative record - \$386.47

Record on Appeal - payable to the New Motor Vehicle Board - \$273.40

1 Timothy R. Brownlee, (Pro Hac Vice)  
Bar No. 39704 & KS Bar No. 14453  
2 WAITS, BROWNLEE, BERGER & DEWOSKIN  
3 401 West 89<sup>th</sup> Street  
4 Telephone: 816-363-5466  
5 Facsimile: 816-333-1205  
6 Email: [t.brownlee@wbbdlaw.com](mailto:t.brownlee@wbbdlaw.com)

7 Maurice Sanchez, Bar No. 101317  
8 BAKER & HOSTETLER LLP  
9 600 Anton Boulevard, Suite 900  
10 Costa Mesa, California 92626-7221  
11 Telephone: 714.754.6600  
12 Facsimile: 714.754.6611  
13 Email: [msanchez@bakerlaw.com](mailto:msanchez@bakerlaw.com)

14 Attorneys for Petitioner  
15 CAPACITY OF TEXAS, INC.

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SACRAMENTO

18 CAPACITY OF TEXAS, INC.,  
19 Petitioner,  
20 v.  
21 NEW MOTOR VEHICLE BOARD, a  
22 California State Administrative Agency,  
23 Respondent.

Case No.: 34-2014-80001848-CU-WM-GDS  
PEREMPTORY WRIT OF MANDAMUS

Date: May 1, 2015  
Time: 9:00 A.M.  
Dept: 29

24 GUARANTEE FORKLIFT, INC. DBA GFL,  
25 INC.,  
26 Real Party In Interest.

27 The People of the State of California  
28 To NEW MOTOR VEHICLE BOARD, Respondent:

PEREMPTORY WRIT OF MANDAMUS

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WHEREAS ON SEP - 1 2015, judgment having been entered in this action, ordering that a peremptory writ of mandamus be issued from this court,

YOU ARE HEREBY COMMANDED to set aside your decision of April 10, 2014, in the administrative proceedings entitled Guaranteefork Lift, Inc., DBA GFL, Inc., bearing case number PR-2361-13, which proceedings are hereby remanded to you; to issue a new decision overruling the protest of real party in interest and allowing the termination of the franchise agreement.

YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before *December 15, 2015*, setting forth what you have done to comply.

*1st TIM AINSWORTH, ACTING CEO*  
Clerk

By *Frank Temmerman* Deputy Clerk  
FRANK TEMMERMAN



RECEIVED  
OCT 20 2015

ORIGINAL

MC-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) <b>Timothy R Brownlee</b> Waits, Brownlee, Berger, Hoop & Johnston 401 W. 89th Street Kansas City, MO 64114 TELEPHONE NO: 816-363-5466 FAX NO 816-333-1205		FOR COURT USE ONLY <b>ENDORSED</b> 2015 AUG 20 PM 12:57 COUNTY COURTHOUSE SUPERIOR COURT OF CALIFORNIA SACRAMENTO COUNTY
ATTORNEY FOR (Name): <b>Capacity of Texas, Inc.</b> INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY <b>Superior Court of California, Sacramento County, Dept. 29</b>		
PLAINTIFF: <b>Capacity of Texas, Inc.</b> DEFENDANT: <b>New Motor Vehicle Board</b>		Sent by <b>Certified Mail</b> Postmarked <b>10/16/15</b>
<b>MEMORANDUM OF COSTS (SUMMARY)</b>		CASE NUMBER <b>34-2014-80001848</b> DATE <b>10/20/15</b> Rec'd by NMVB

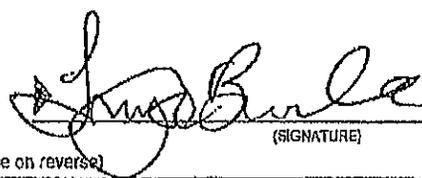
The following costs are requested:

	DATE	TOTALS
1. Filing and motion fees	701317100001 707	1 \$ 435.00
2. Jury fees		2 \$
3. Jury food and lodging		3 \$
4. Deposition costs		4 \$
5. Service of process		5 \$ 523.30
6. Attachment expenses		6 \$
7. Surety bond premiums		7 \$
8. Witness fees		8 \$
9. Court-ordered transcripts		9 \$ 988.50
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)		10 \$
11. Models, blowups, and photocopies of exhibits		11 \$
12. Court reporter fees as established by statute		12 \$ 30.00
13. Other		13 \$ 659.87
<b>TOTAL COSTS</b>		<b>\$ 2,636.67</b>

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: 8/18/15

..... Timothy R Brownlee  
(TYPE OR PRINT NAME)

  
(SIGNATURE)

(Proof of service on reverse)

SHORT TITLE:

Capacity v New Motor Vehicle Board

CASE NUMBER

34-2014-80001848

PROOF OF  MAILING  PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify):  
Business: 401 West 89th Street  
Kansas City, Missouri 64114
3. I mailed or personally delivered a copy of the Memorandum of Costs (Summary) as follows (complete either a or b):
  - a.  Mail. I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope AND
      - (a)  deposited the sealed envelope with the United States Postal Service with the postage fully prepaid.
      - (b)  placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served: Michael M. Sieving, Esq.
      - (b) Address on envelope: Law Office of Michael M. Sieving  
8865 LaRiviera Drive, Unit B  
Sacramento, CA 95826
      - (c) Date of mailing: August 18, 2015
      - (d) Place of mailing (city and state): Kansas City, MO
  - b.  Personal delivery. I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
    - (3) Date delivered:
    - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 18, 2015

Robin K. Thomas

(TYPE OR PRINT NAME)

  
(SIGNATURE OF DECLARANT)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER 34-2014-80001848
<b>MEMORANDUM OF COSTS (WORKSHEET)</b>	

1. Filing and motion fees

	<u>Paper filed</u>	<u>Filing fee</u>
a.	<u>Filing Fee - Initial Filing</u>	\$ <u>435.00</u>
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____
e.	_____	\$ _____
f.	_____	\$ _____

g.  Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$ 435

2. Jury fees

	<u>Date</u>	<u>Fee &amp; mileage</u>
a.	_____	\$ _____
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____

e.  Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$

3. Juror food: \$ \_\_\_\_\_ and lodging: \$ \_\_\_\_\_

TOTAL 3. \$

4. Deposition costs

	<u>Name of deponent</u>	<u>Taking</u>	<u>Transcribing</u>	<u>Travel</u>	<u>Video-taping</u>	<u>Subtotals</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
d.	_____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

e.  Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$

(Continued on reverse)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER 34-2014-80001848
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**5. Service of process**

	Name of person served		Public officer		Registered process		Publication		Other (specify)
a.	<u>New Motor Vehicle Board</u>	\$	_____	\$	<u>158.72</u>	\$	_____	\$	_____
b.	<u>Michael J. Flannagan</u>	\$	_____	\$	<u>205.86</u>	\$	_____	\$	_____
c.	<u>Callahan, Thompson, She</u>	\$	_____	\$	<u>158.72</u>	\$	_____	\$	_____

d.  Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$ 523.30

6. Attachment expenses (specify): ..... 6. \$

7. Surety bond premiums (itemize bonds and amounts): ..... 7. \$

**8. a. Ordinary witness fees**

	Name of witness		Daily fee		Mileage		Total
(1)	_____	_____	days at _____ \$/day	_____	miles at _____ ¢/mile	....	\$ _____
(2)	_____	_____	days at _____ \$/day	_____	miles at _____ ¢/mile	....	\$ _____
(3)	_____	_____	days at _____ \$/day	_____	miles at _____ ¢/mile	....	\$ _____
(4)	_____	_____	days at _____ \$/day	_____	miles at _____ ¢/mile	....	\$ _____
(5)	_____	_____	days at _____ \$/day	_____	miles at _____ ¢/mile	....	\$ _____

(6)  Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER 34-2014-80001848
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**MEMORANDUM OF COSTS (WORKSHEET) (Continued)**

**8. b. Expert fees (per Code of Civil Procedure section 998)**

	Name of witness	Fee			
(1)			hours at \$	/hr	... \$
(2)			hours at \$	/hr	.. \$
(3)			hours at \$	/hr	... \$
(4)			hours at \$	/hr	... \$

(5)  Information about additional expert witness fees is contained in Attachment 8b(5).

SUBTOTAL 8b. \$

**c. Court-ordered expert fees**

	Name of witness	Fee			
(1)			hours at \$	/hr	... \$
(2)			hours at \$	/hr	\$

(3)  Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).

SUBTOTAL 8c \$

TOTAL (8a, 8b, & 8c) 8. \$

9. Court-ordered transcripts (specify): ..... 9. \$ 988.50  
 Transcript of hearing before Administrative Law Judge

10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination, otherwise a noticed motion is required): ..... 10. \$

11. Models, blowups, and photocopies of exhibits (specify): ..... 11. \$

**12. Court reporter fees (as established by statute)**

a. (Name of reporter): \_\_\_\_\_ Fees: \$ 30.00

b. (Name of reporter): \_\_\_\_\_ Fees: \$ \_\_\_\_\_

c.  Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$ 30.00

13. Other (specify): See Attached ..... 13 \$ 659.87

<b>TOTAL COSTS</b> .....	<b>\$ 2,636.67</b>
--------------------------	--------------------

(Additional information may be supplied on the reverse)

SHORT TITLE: Capacity v. New Motor Vehicle Board	CASE NUMBER 34-2014-80001848
MEMORANDUM OF COSTS (WORKSHEET) (Continued)	

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Other expenses:

Copies of administrative record- \$386.47

Record on Appeal - payable to the New Motor Vehicle Board - \$273.40

*Dismissed*

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

CAPACITY OF TEXAS, INC.,  
Plaintiff and Respondent,  
v.  
GUARANTEED FORKLIFT, INC.,  
Real Party in Interest and Appellant.

C080679  
Sacramento County  
No. 34201480001848CUWMGDS

REMITTITUR TO TRIAL COURT CLERK

I, ANDREA K. WALLIN-ROHMANN, Clerk/Administrator of the Court of Appeal of the State of California for the Third Appellate District, do hereby certify that the attached opinion or order, previously provided to the parties, is a true and correct copy of the original opinion or order entered in the above entitled cause that has now become final.

Respondent to recover costs on appeal.

WITNESS my hand and the seal of the Court affixed at my office this 18th day of October 2016.

ANDREA K. WALLIN-ROHMANN  
Clerk/Administrator

*Jenna Swartzendruber*  
By: Jenna Swartzendruber  
Deputy Clerk



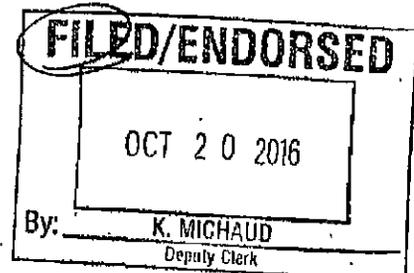
Receipt of the original remittitur in the above case is hereby acknowledged.

Dated: OCT 20 2016

Trial Court Clerk

*[Signature]*  
By: [Signature]  
Deputy Clerk

cc: See Mailing List



IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: Capacity of Texas, Inc. v. Guaranteed Forklift, Inc.  
C080679  
Sacramento County No. 34201480001848CUWMGDS

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

Maurice Sanchez  
Baker & Hostetler LLP  
600 Anton Boulevard, Suite 900  
Costa Mesa, CA 92626-7221

Timothy R Brownlee  
Waits BrownLee Berger Dewaskim  
401 W. 89th Street  
Kansas City, MO 64114

Jonathan A. Michaels  
MLG Automotive Law, APLC  
2801 W Coast Highway, Suite 370  
Newport Beach, CA 92663

✓ Sacramento County Superior Court  
720 Ninth Street  
Sacramento, CA 95814

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

CAPACITY OF TEXAS, INC.,  
Plaintiff and Respondent,  
v.  
NEW MOTOR VEHICLE BOARD,  
Defendant and Appellant;  
GUARANTEED FORKLIFT, INC.,  
Real Party in Interest and Appellant.

C080679  
Sacramento County  
No. 34201480001848CUWMGDS

PARTIAL REMITTITUR TO TRIAL COURT CLERK AS TO THE APPEAL FILED BY  
NEW MOTOR VEHICLE BOARD ONLY

I, ANDREA K. WALLIN-ROHMANN, Clerk/Administrator of the Court of Appeal of the State of California for the Third Appellate District, do hereby certify that the attached opinion or order, concurrently provided to the parties, is a true and correct copy of the original opinion or order entered in the above entitled cause that has now become final.

Respondents to recover costs on appeal.

WITNESS my hand and the seal of the Court affixed at my office this 25th day of August 2016.

ANDREA K. WALLIN-ROHMANN  
Clerk/Administrator



By: Anita Kenner  
Deputy Clerk

---

Receipt of the original remittitur in the above case is hereby acknowledged.

Dated:

Trial Court Clerk

By:  
Deputy Clerk

cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: Capacity of Texas, Inc. v. New Motor Vehicle Board  
C080679  
Sacramento County No. 34201480001848CUWMGDS

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Maurice Sanchez  
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600 Anton Boulevard, Suite 900  
Costa Mesa, CA 92626-7221

Timothy R Brownlee  
Waits BrownLee Berger Dewaskim  
401 W. 89th Street  
Kansas City, MO 64114

Michael D. Gowe  
Office of the State Attorney General  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

✓  
Sacramento County Superior Court  
720 Ninth Street  
Sacramento, CA 95814

IN THE

**Court of Appeal of the State of California**

IN AND FOR THE

**THIRD APPELLATE DISTRICT**

*AKR*

CAPACITY OF TEXAS, INC.,  
Plaintiff and Respondent,  
v.  
NEW MOTOR VEHICLE BOARD,  
Defendant and Appellant;  
GUARANTEED FORKLIFT, INC.,  
Real Party in Interest and Appellant.

C080679  
Sacramento County  
No. 34201480001848CUWMGDS

BY THE COURT:

Pursuant to the appellant New Motor Vehicle Board's written request, the appeal filed on November 13, 2015, is dismissed. It is further ordered that the partial remittitur issue forthwith. (See Cal. Rules of Court, rule 8.244(c)(2).)

*Raye*  
RAYE, P.J.

-----  
cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: Capacity of Texas, Inc. v. New Motor Vehicle Board  
C080679  
Sacramento County No. 34201480001848CUWMGDS

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Maurice Sanchez  
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1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

✓ Sacramento County Superior Court  
720 Ninth Street  
Sacramento, CA 95814

IN THE

**Court of Appeal of the State of California**

IN AND FOR THE

**THIRD APPELLATE DISTRICT**

*CBR*

CAPACITY OF TEXAS, INC.,  
Plaintiff and Respondent,

v.

NEW MOTOR VEHICLE BOARD,  
Defendant and Appellant;  
GUARANTEED FORKLIFT, INC.,  
Real Party in Interest and Appellant.

C080679  
Sacramento County  
No. 34201480001848CUWMGDS

BY THE COURT:

Appellant Guaranteed Forklift, Inc., has been notified pursuant to rule 8.220(a) of the California Rules of Court and has not filed the appellant's opening brief. Therefore, the appeals filed on November 10, 2015, and November 20, 2015, are dismissed.

*Raye*  
RAYE, P.J.

cc: See Mailing List

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

MAILING LIST

Re: Capacity of Texas, Inc. v. New Motor Vehicle Board  
C080679  
Sacramento County No. 34201480001848CUWMGDS

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