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July 2, 1981

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of )  
TOYOTA OF VISALIA, INC., )  
Appellant, )  
vs. )  
DEPARTMENT OF MOTOR VEHICLES )  
OF THE STATE OF CALIFORNIA, )  
Respondent. )

Appeal No. A-93-80

FILED: December 23, 1980

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Time and Place of Hearing:

June 25, 1981, 9:30 a.m.  
Holiday Inn, LAX  
Papagayo Room  
Los Angeles, California

For Appellant:

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& Spain  
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For Respondent:

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Staff Counsel, Legal Office  
Department of Motor Vehicles  
Post Office Box 11828  
Sacramento, California 95813

FINAL ORDER

1. On January 25, 1980, the Department of Motor Vehicles, (Department), filed a formal accusation against Toyota of Visalia for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing was held, and on November 13, 1980, an Administrative Law Judge submitted a proposed decision which would revoke the license of Toyota of Visalia. This decision was adopted by the Department on November 26, 1980.

2. On November 26, 1980, Toyota of Visalia filed with the Department a petition for reconsideration. On December 24, 1980, the Director of the Department issued an order denying Appellant's petition.

3. The present appeal before the Board was filed on December 23, 1980.

Listed below are each of the findings of the Department which resulted in license discipline of the Appellant together with this Board's action.

Department's Finding IV

4. In Finding IV of the Department's decision, Appellant was found to have failed to mail or deliver the reports of sale of certain vehicles, together with other documents required to transfer the registration of the said vehicles within 40 days from the date of sale. The Department imposed a license suspension of 15 days for this conduct.

5. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board reduces the penalty from a 15-day license suspension to a probation period of two years.

#### Department's Finding V

6. In Finding V of the Department's decision, Appellant was found to have included as an added cost to the selling price of certain vehicles, licensing or transfer fees in excess of the fees due and paid to the State. The Department imposed a license suspension of 15 days for this conduct.

7. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of a 15-day license suspension imposed by the Department.

#### Department's Finding VI

8. In Finding VI of the Department's decision, the Appellant was found to have advertised vehicles for sale at a stated total price and then sold the advertised vehicles, while the advertised price was still effective, at a higher total price than advertised, causing the purchasers to suffer loss. The Department imposed a license revocation for this conduct.

9. The Board examined the language of the statutes and regulations in effect at the time of the alleged violation. The statute in effect at the time made it unlawful for a

dealer "to refuse to sell a vehicle to any person at the advertised total price . . .". The regulation in effect at the time provided, "Advertised vehicles must be sold at or below the advertised price irrespective of whether or not the advertised price has been communicated to the purchaser." The Board also noted that the above statute has been changed to read that it is unlawful for a dealer "to fail to sell a vehicle to any person at the advertised total price. . .".

10. The Board determines that the Department proceeded in a manner contrary to the law with regard to this finding. The Board therefore reverses the finding and penalty of the Department and finds no violation.

#### Department's Finding VII

11. In Finding VII of the Department's decision, Appellant was found to have advertised it would give free merchandise with the purchase of any new or used vehicle, and then failed to give the advertised merchandise free of charge. The Department imposed a license revocation for this conduct.

12. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding IX

13. In Finding IX of the Department's decision, Appellant was found to have advertised that it would lease two new vehicles for a price of \$99.00 down and \$99.00 per month, with no intention to sell or lease these vehicles at the advertised terms. The Department imposed a license revocation for this conduct.

14. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding X

15. In Finding X of the Department's decision, Appellant was found to have employed or delegated the duties of a vehicle salesperson to five individuals who had not been licensed pursuant to Vehicle Code Section 11800, et seq. The Department imposed a license suspension of 60 days for this conduct.

16. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board modifies the penalty from a 60-day license suspension to a 30-day license suspension.

Department's Finding XI

17. In Finding XI of the Department's decision, Appellant was found to have failed to give written notice

to the Department before the end of the fifth calendar day after the transfer of certain vehicles. The Department imposed a license suspension of 30 days for this conduct.

18. The Board determines that the penalty as provided in the Department's decision was not supported by the findings. Based on this determination, the Board modifies the penalty from a 30-day license suspension to a 5-day license suspension.

#### Department's Finding XII

19. In Finding XII of the Department's decision, Appellant was found to have advertised vehicles for sale at a stated total price and then sold those vehicles while the advertised price was still effective, at a greater total price than advertised, exclusive of sales tax, vehicle registration fees and finance charges, causing each purchaser to suffer loss. The Department imposed a license suspension of 60 days for this conduct.

20. Inasmuch as this finding is the same as Finding VI of the Department's decision, the Board takes the same action, reverses the decision of the Department on this finding and finds no violation.

#### Department's Finding XIII

21. In Finding XIII of the Department's decision, Appellant was found to have advertised vehicles for sale more than 48 hours after the vehicle had been sold. The Department imposed a license revocation for this conduct.

22. The Board determines that the finding was supported by the evidence and that the penalty as provided in the decision of the Department is commensurate with the findings. Based on this determination, the Board affirms the penalty of license revocation imposed by the Department.

Department's Finding XIV

23. In Finding XIV of the Department's decision, Appellant was found to have placed "PAC" stickers on vehicles which gave information about accessories, delivery, and freight charges, that differed from the federal window sticker information of these vehicles. The Department imposed a license suspension of 60 days for this conduct.

24. The Board determines that the finding was supported by the evidence, however, the penalty as provided in the decision of the Department is not commensurate with the finding. Based on this determination, the Board modifies the penalty from a license suspension of 60 days to a license revocation.

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25. The Board has found grounds for revocation of the license of Appellant. A review of all of the evidence submitted by the Department supports the conclusion that Appellant knowingly and fraudulently misled the consuming public. The Board believes such conduct should be critically reviewed if Appellant should seek a license from the Department in the future.

The decision of the Director is affirmed as modified.

This order shall become effective August 1, 1981.

Dated: *July 14, 1981*

NEW MOTOR VEHICLE BOARD

BY *Kathleen O. Turner*  
KATHLEEN O. TURNER  
President