

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

BOB LEWIS VOLKSWAGEN dba BOB LEWIS
SUZUKI,

Protestant,

v.

AMERICAN SUZUKI MOTOR CORP.,

Respondent.

Protest No. PR-2042-07

DECISION

At its regularly scheduled meeting of October 29, 2010, the Public Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 29th DAY OF OCTOBER 2010.



ROBERT T. (TOM) FLESH
President
New Motor Vehicle Board

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9 NEW MOTOR VEHICLE BOARD
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12 BOB LEWIS VOLKSWAGEN dba BOB LEWIS
SUZUKI,

13 Protestant,

14 v.

15 AMERICAN SUZUKI MOTOR CORP.,

16 Respondent.
17

Protest No. PR-2042-07

PROPOSED DECISION

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1 **I**

2 **STATEMENT OF THE CASE**

3 1. Protestant, Bob Lewis Volkswagen dba Bob Lewis Suzuki ("BLS" or "Protestant"),
4 brought this action against Respondent American Suzuki Motor Corporation ("ASMC" or "Suzuki")
5 pursuant to California Vehicle Code¹ Section 3065.1², by filing a protest with the New Motor Vehicle
6 Board ("Board") on February 20, 2007.

7 2. Protestant is represented by Gary S. Vandeweghe, Esq., 96 North Third Street, Suite 500,
8 San Jose, California.

9 3. Respondent is represented by James M. Mulcahy, Esq. and Sherry S. Hamilton, Esq. of
10 Mulcahy LLP, 1 Park Plaza, Suite 225, Irvine, California.

11 4. This matter on the merits of the protest was heard before Administrative Law Judge
12 ("ALJ") Linda S. Waits on June 21-22, 2010. This matter was deemed submitted on September 7, 2010,
13 upon receipt by the Board of all post-hearing briefs.

14 **II**

15 **FACTUAL BACKGROUND**

16 5. BLS was a Suzuki dealer from prior to 2001 until 2008 as Dealer No. 404578. The
17 dealership was located at 911 W. Capitol Expressway, San Jose, California. (Stipulated Facts, paragraph
18

19 ¹ All statutory references are to the California Vehicle Code unless indicated otherwise.

20 ² California Vehicle Code Section 3065.1 provides as follows:

21 (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be
22 either approved or disapproved within 30 days after receipt by the franchisor. When any claim is disapproved,
23 the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each
24 notice shall state the specific grounds upon which the disapproval is based. Any claim not specifically
25 disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the
26 disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to
27 appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under
28 this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified
time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute
a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a
period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation
shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program,
lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation
shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with
the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if
the franchisor obtains an order from the board.

1) 1

2 6. ASMC is located at 3251 East Imperial Highway, Brea, California. (Protest, p. 1)

3 7. In 2001, 2002 and 2003, ASMC had an Advertising Association Program ("Program"),
4 which was covered by Program Rules and Guidelines for each year. (Stipulated Facts, paragraph 2)

5 8. The Program required a dealer association to establish an independent non-profit
6 corporation for the sole purpose of advertising Suzuki vehicles in a local market area. (Stipulated Facts,
7 paragraph 3)

8 9. The Silicon Valley Suzuki Advertising Association ("SVSAA") was a participant under
9 this Program. (Stipulated Facts, paragraph 4)

10 10. On December 18, 2003, ASMC announced a new advertising plan under which ASMC
11 would no longer contribute money to associations like the SVSAA as it had in 2001-2003. (Stipulated
12 Facts, paragraph 5)

13 11. During 2004 and 2005, the SVSAA submitted and ASMC received reimbursement claims
14 as follows:

<u>Quarter</u>	<u>Advertising</u>	<u>50% Reimbursement Claim</u>
15 1 st	\$23,605.53	\$11,802.77
17 2 nd	\$52,261.09	\$26,130.55
18 3 rd	\$31,218.00	\$15,609.00
19 4 th	\$90,533.54	\$45,266.77
20	Total:	<u>\$98,809.09</u>

21 (Stipulated Facts, paragraph 6)

22 12. On December 15, 2004, by Check No. 00538717, ASMC paid the SVSAA c/o BLS
23 \$15,609.00. This check bore the reference "SECOND QUARTER-04." (Stipulated Facts, paragraph 7)

24 13. The amount of \$15,609.00 matches the amount of the 50% reimbursement claim for the 3rd
25 quarter 2004. (Stipulated Facts, paragraph 8)

26 14. On February 20, 2007, BLS filed a protest (PR-2042-07) with the New Motor Vehicle
27 Board ("Board") "under the provisions of California Vehicle Code section 3065.1" pertaining to the
28 alleged failure of BLS to receive reimbursement for advertising expenses under the Program for 2004.

1 December 18, 2003, letter referenced in paragraph 10 above. Nothing was received from counsel for
2 Protestant.

3 20. On June 26, 2007, ALJ Skrocki issued an "Order Denying Respondent's Motion to
4 Dismiss Protest as to...Bob Lewis Suzuki" and concluded that "[t]here are questions of law and fact as to
5 what rights if any Bob Lewis Suzuki may have as to the right to reimbursement under the Program or
6 outside the Program." ALJ Skrocki indicated that "...the terms of the program cannot be ascertained
7 based upon the pleadings and documents as submitted."

8 21. On June 26, 2007, ALJ Skrocki also issued a "Proposed Order Granting Respondent's
9 Motion to Dismiss as to the Claims of the...SVSAA" and concluded that "[t]he SVSAA is not a
10 franchisee of American Suzuki. The Board has no jurisdiction to address a dispute between the SVSAA
11 and American Suzuki." This order was adopted by the Public Members of the Board at its September 7,
12 2007, General Meeting.

13 WITNESSES³

14 22. At the June 21-22, 2010 merits hearing, Protestant presented the testimony of the following
15 witnesses: (a) Ken Nishida, former Regional General Manager for the Western Region, ASMC; (b) Brian
16 Raboy, former District Sales Manager for Northern California, ASMC; (c) Steve Lewis, President and
17 49% owner of Bob Lewis Volkswagen Suzuki and Hyundai; and (d) Robert ("Bob") Lewis, co-owner of
18 Bob Lewis Volkswagen Suzuki and Hyundai.

19 23. Respondent presented at the merits hearing the testimony of Chris White, Senior Dealer
20 Development Manager, ASMC.

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28 ³ The Reporter's Transcript ("RT") is identified by volume ("RT I" for the first day of hearing, and "RT II" for the second).
Protestant's exhibits are identified by number P1- P22. Respondent's exhibits are identified by number R1-R54.

1 IV

2 ISSUES PRESENTED

3 24. Protestant is seeking reimbursement from ASMC of 50% of the cost of BLS advertising
4 for Suzuki vehicles for the 1st, 2nd, and 4th quarters of 2004, totaling \$83,200.09.⁴ (Protest, p. 2, line 28)

5 In order to ascertain the merits of this claim, the following preliminary issues must be determined:

6 a. Whether the Program is a “franchisor incentive program” as defined in Section 3065.1 such
7 that the Board has jurisdiction to rule on this dispute,

8 b. Whether BLS is authorized to assert this claim, given that SVSAA (and not BLS) was the
9 claimant under the terms of the Program,

10 c. Assuming jurisdiction and authorization exist, whether misstatements by employees of
11 ASMC which inferred the continued existence of the incentive program into 2004, notwithstanding the
12 official notice of termination of the incentive program, are binding on ASMC such that payment is due,

13 d. Whether Protestant met its burden of proof (Veh. Code § 3066(c)).

14 V

15 FINDINGS OF FACT⁵

16 25. ASMC initiated a Program in early 2001 to make advertising dollars available to certain
17 legal entities formed for the purpose of promoting the Suzuki brand. The only eligible participants for the
18 Program were “eligible advertising associations”, and specific rules and guidelines were issued to define
19 Program participation. (Exhs. R1 and R2)

20 26. BLS was a Suzuki dealer in the San Jose, California area at the time the Program was
21 initiated. (RT II, p. 43, lines 24-44)

22 27. The Program required the formation of an independent legal entity, the sole purpose of
23 which was to advertise Suzuki vehicles in the local market area. (Exhs. R1 and R2)

24 28. Steve Lewis, co-owner of BLS, formed the SVSAA for the purpose of participating in the
25 Program. (RT II, p. 7, lines 11-14)

26
27 ⁴ The amount Protestant requested for reimbursement in the protest is \$83,173.09; this is clearly a math error as the total of
claims for the 1st, 2nd, and 4th quarters in paragraph 11 above is \$83, 200.09.

28 ⁵ The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to
reach a finding, and are not intended to be all-inclusive

1 29. BLS and SVSAA were separate and distinct entities as recognized by the California
2 Secretary of State filings. (Exhs. R5 and R6)

3 30. The SVSAA was formed as a nonprofit mutual benefit corporation organized under the
4 California Nonprofit Mutual Benefit Corporation Law (California Corporations Code Section 7110 et
5 seq.), for the specific purpose of acting as an advertising association for the Silicon Valley Suzuki motor
6 vehicle dealers. (Exh. R3, p. 1)

7 31. At the time of formation and at all points thereafter, there existed only one member of the
8 SVSAA, which was BLS. (RT II, p.7, lines 20-24)

9 32. The SVSAA maintained a bank account separate from BLS. (RT II p. 52, lines 1-8)

10 33. Under the terms of the Program, ASMC assessed BLS \$300 per vehicle. (RT II, pp. 55-
11 56)

12 34. ASMC periodically wired the \$300 per car assessment back into the bank account of the
13 SVSAA. (RT I, p. 57, lines 14-19)

14 35. Under the terms of the Program, ASMC would also issue payments to the advertising
15 association in amounts equivalent to 50% of approved advertising expenditures. (Exhs. R1 and R2)

16 36. Each time a request for reimbursement was submitted, it was submitted in the name of
17 "Silicon Ad Association", and each time reimbursement was made it was payable to "Silicon Valley Auto
18 Advertising Assoc." (See e.g., Exhs. R14 and R16)

19 37. During calendar years 2001, 2002 and 2003, the SVSAA participated in the Program and
20 received regular reimbursements. (Protest, p. 2, lines 15-16; RT II, p.12, lines 5-8)

21 38. Protestant does not assert as a part of this protest that any monies are due for the time
22 period prior to January 1, 2004, only that monies are due for the time period after January 1, 2004.
23 (Protest, p.2)

24 39. By a letter of December 18, 2003 ("Notification Letter"), ASMC terminated the Program
25 effective January 1, 2004 except for a 90 day carryover period for dealers to use funds in association
26 accounts as of December 31, 2003. (Exhs. P4 and R18)

27 40. The Notification Letter stated that the Program would be superseded by a new program,
28 and "[u]nder this new program, local dealer associations will be allowed to continue to develop and

1 purchase advertising on their own, but ASMC will no longer contribute money to those efforts."

2 (Emphasis added; Exhs. P4 and R18) The Notification Letter further indicated "ASMC will however
3 honor its commitments to match those funds in association accounts as of December 31, 2003 if they are
4 utilized with approved advertising by March 31, 2004." (Exhs. P4 and R18)

5 41. On January 5, 2004, Brian Raboy, ASMC's district sales manager for the territory in
6 which BLS resided, sent a follow-up email to Steve Lewis indicating "[t]he ad association is being
7 disbanded in San Jose. [ASMC] will no longer match funds in this account in 2004." (Exh. P5)

8 42. Brian Raboy's January 5, 2004 email indicated that BSL could "voluntarily elect to have
9 Suzuki take funds out on [its] behalf as [it is] doing now on [BLS'] invoices but...when these funds are
10 spent they will not be matched." If BLS chose this assessment it would be a fund solely for BLS' use
11 and control. (Exh. P5)

12 43. ASMC regularly and routinely reimbursed SVSAA under the Program through the end of
13 2003. (Protest, p. 2)

14 44. During 2004, SVSAA submitted requests for reimbursement under the Program for the
15 first, second, third and fourth quarters. (Protest, p. 2)

16 45. In December 2004, ASMC issued a payment to SVSAA for \$15,609.00; the amount
17 equivalent to the third quarter request. SVSAA submitted requests for reimbursement for the first,
18 second, and third quarter of 2004, without receiving any payments from ASMC. (Protest, p. 2)

19 46. On November 16, 2004, Steve Lewis requested to know "how much money is in the
20 Silicon Valley Ad Association account that Suzuki ended contributions last year." (Exh. P6)

21 47. In response to Steve Lewis' November 16, 2004 request, Brian Raboy requested the
22 information from other individuals at ASMC and then informed Steve Lewis that "the amount for 2003 is
23 \$126,526.96." (Exhs. P7 and P 8)

24 48. Mr. Raboy provided Steve Lewis with the "assessed figure" because that is what he
25 believed Steve Lewis requested. (RT I, p. 154, line 7 – p. 155, line 5; p. 172, lines 4-21)

26 49. Steve Lewis acknowledged that Mr. Raboy provided him with a figure in the amount of
27 \$126,526.96 in response to his request, and that that information resulted in "confusion" about what was
28 meant by the amount stated in the emails. (RT II, p. 38, lines 1-20).

1 facts as presented.

2 58. Section 3065.1 as referenced above pertains to "...claims made by a franchisee for
3 payment under the terms of a franchisor incentive program..."

4 59. Section 331.1 defines franchisee as follows:

5 A "franchisee" is any person who, pursuant to a franchise, receives new motor vehicles
6 subject to registration under this code, new off-highway motorcycles, as defined in Section
7 436, new all-terrain vehicles, as defined in Section 111, ... from the franchisor and who
8 offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to
9 perform authorized warranty repairs and service, or the right to perform any combination of
10 these activities.

11 60. Section 331.2 defines a "franchisor" as follows:

12 A "franchisor" is any person who manufactures, assembles, or distributes new motor
13 vehicles subject to registration under this code, new off-highway motorcycles, as defined in
14 Section 436, new all-terrain vehicles, as defined in Section 111, or new trailers subject to
15 identification pursuant to Section 5014.1 and who grants a franchise.

16 61. In order for the Board to exercise jurisdiction over the instant protest, the participants in
17 the franchisor incentive program, by statute, must be a franchisee and franchisor. In the instant program,
18 the "reward offered" was to a third party (an advertising association), not a "franchisee" as defined in
19 Section 331.1. This appears to place the Program of ASMC squarely outside of the parameters of a
20 dispute properly heard by this Board under Section 3065.1. Case law clearly limits the powers of the
21 Board with regard to the nature of the disputes it may hear.

22 62. Section 3050(d) empowers the Board to "Hear and decide, within the limitations and in
23 accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060,
24 3062, 3064, 3065 or 3065.1." (Emphasis added.)

25 63. As the Third Appellate District Court stated in 1992, "[t]he Board is a quasi-judicial
26 administrative agency of limited jurisdiction...[i]t does not have plenary authority to resolve any and all
27 disputes which may arise between a franchisor and a franchisee." (*Hardin Oldsmobile v. New Motor*
28 *Vehicle Bd.* (1997) 52 Cal.App.4th 585, 590-591 ("Hardin"), citing *Ri-Joyce, Inc. v. New Motor Vehicle*
Bd. (1992) 2 Cal.App.4th 445, 455)

64. In California, "[t]he judicial power of the State is vested in the [courts]." (*Hardin, supra*,
52 Cal. App.4th at p. 589; Cal. Const., art. VI, § 1) "An administrative agency may constitutionally hold

1 hearings, determine facts, apply the law to those facts, and order relief--including certain types of
2 monetary relief--so long as (i) such activities are authorized by statute or legislation and are *reasonably*
3 *necessary* to effectuate the administrative agency's *primary, legitimate regulatory purposes*, and (ii) the
4 *'essential' judicial power* (i.e., the power to make enforceable, binding judgments) *remains ultimately in*
5 *the courts, through review of agency determinations.*" (Underline added, italics in original; *Hardin, supra*,
6 52 Cal.App.4th at p. 589, citing *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 372)

7 65. The Board's statutory jurisdiction under Vehicle Code section 3050(c) extends over any
8 person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer
9 branch, distributor, distributor branch, or representative. In the past, the courts construed this jurisdiction
10 as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the
11 franchise relationship before the Board prior to seeking judicial relief. (*Yamaha Motor Company v.*
12 *Superior Court* (1986) 185 Cal. App. 3d 1232; *Yamaha Motor Company v. Superior Court* (1987) 195
13 Cal. App. 3d 652; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal. App.
14 4th 51; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal. App. 4th 288)
15 However, subsequent court decisions have held otherwise. (*Miller v. Superior Court* (1996) 50 Cal. App.
16 4th 1665; *Hardin, supra*, 52 Cal. App. 4th 585; *Tovas v. American Honda Motor Company, Inc.* (1997) 57
17 Cal.App.4th 506; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 CalApp.4th 1527) As a
18 consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the
19 Legislature in 1997 and became effective in 1998. It provides that the courts have jurisdiction over all
20 common law and statutory claims originally cognizable in the courts. For those claims, a party may
21 initiate an action directly in any court of competent jurisdiction.

22 66. This matter arises from an alleged non-payment of funds by ASMC to the SVSAA. As
23 indicated in paragraph 30, the SVSAA was formed as a nonprofit mutual benefit corporation. As such, it
24 is a legal entity separate and apart from any persons or entities that hold a membership interest or the
25 party that served as its incorporator. In this situation, there is only one member of the corporation, BLS,
26 the Protestant, and the incorporator was Steven R. Lewis, then-president of BLS. (RT II, p.6, lines 24-25)
27 Despite the fact that there is only one member of the corporation and that it was formed by the president
28 of that one member, the legal separation that the corporate structure creates is complete.

1 67. Under the terms of the Program that is at issue, only participating advertising associations,
2 e.g., SVSAA, were eligible to receive reimbursements from Suzuki for approved advertising, subject to
3 certain requirements being met. The motor vehicle dealers associated with those advertising associations,
4 e.g., BLS, were not eligible for, and did not receive, reimbursement from ASMC under the Program.

5 (Exh. RI)

6 68. All claims for reimbursement for advertising expenditures, including those for 2004, were
7 submitted by SVSAA on claim forms to ASMC. (RT II, p. 58, line 11) Upon approval of such claims,
8 ASMC made payments to the SVSAA, and SVSAA then paid BLS. (RT II, p. 58, lines 13-14)

9 69. SVSAA and BLS are unquestionably separate and distinct entities; the mere fact that the
10 sole member of SVSAA was a motor vehicle dealer does not conflate SVSAA and BLS into one entity -
11 they are separate and independent corporations, as clearly evidenced by the California Secretary of State
12 Business Entity Detail printouts contained in Respondent's Exhibits 5 and 6, and as acknowledged by
13 then-BLS President Steve Lewis. (RT II, p. 6, lines 23-25; p. 49, line 25 – p. 50, line 10)

14 70. BLS was not a participant in the Program. (RT 2, p. 48, lines 13-18) Rather, BLS'
15 requests for reimbursement under the Program for the first, second and fourth quarters of 2004, were on
16 behalf of the SVSAA. (RT II, p. 189, line 20 – p. 190, line 4) BLS has no legal right to reimbursement of
17 SVSAA's advertising expenditures under the Program.

18 71. The Program was created and incentivized to reimburse advertising associations for
19 approved advertising. Therefore, any alleged dispute about reimbursements under the Program would be
20 between ASMC and SVSAA, the advertising association, and not BLS, the dealer.

21 72. A corporation itself must bring an action for an injury to the corporation. (*Sutter v.*
22 *General Petroleum Corp.* (1946) 28 Cal.2d 525, 529-530) "Generally, a stockholder may not maintain an
23 action in his own behalf for a wrong done by a third person to the corporation..., for such an action would
24 authorize multitudinous litigation and ignore the corporate entity." (*Id.* at p. 530) "Under proper
25 circumstances a stockholder may bring a representative action or derivative action on behalf of the
26 corporation. [Citations.]...The action is derivative, i.e., in the corporate right, if the gravamen of the
27 complaint is injury to the corporation, or to the whole body of its stock or property without any severance
28 or distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent

1 the dissipation of its assets.” (*Id.* at p. 530)

2 73. It is fundamental that a “corporation is a distinct legal entity separate from its stockholders
3 and from its officers.” (*Merco Constr. Engineers, Inc v. Municipal Court* (1978) 21 C. 3d 724, 729 citing
4 *Maxwell Cafe v. Dept. Alcoholic Control* (1956) 142 Cal.App.2d 73, 78) “The authority to manage the
5 business and affairs of a corporation is vested in its board of directors, not in its shareholders.” (*Grosset*
6 *v. Wenaas* (2008) 42 Cal.4th 1100, 1108 citing *Granite Gold Mining Co. v. Maginness* (1897) 118 Cal.
7 131, 138; Corporations Code section 300(a))

8 74. Because a corporation exists as a separate legal entity the shareholders have no direct cause
9 of action or right of recovery against those who have harmed it. When a corporation has suffered an
10 injury to its property the corporation is the party that possesses the right to sue for redress. (*Gagnon Co. v.*
11 *Nevada Desert Inn, Inc.* (1955) 45 Cal.2d 448, 453)

12 75. A corporation “is as distinct from the persons composing it, as an incorporated city is from
13 an inhabitant of that city.” (*Merco Constr. Engineers, Inc. v. Municipal Court, supra*, 21 Cal. 3d at pp.
14 729-730)

15 76. This is undoubtedly a dispute between the legal entity SVSAA and ASMC. The Program
16 was limited only to advertising associations. No dealer, including BLS, was eligible or permitted to
17 participate. The cause of action for the alleged non-payment of Program funds rests with SVSAA.

18 77. However, SVSAA is not a party authorized under the Vehicle Code to seek redress by the
19 Board. In fact, as indicated in paragraph 21, this very matter has previously been determined by ALJ
20 Skrocki in his June 26, 2007, “Proposed Order Granting Respondent’s Motion to Dismiss as to the Claims
21 of the...SVSAA” that was adopted by the Board as its decision on September 7, 2007. The claims of the
22 SVSAA as against ASMC were dismissed.

23 78. Similarly, BLS lacks standing to assert the claims of SVSAA in this forum, due to the
24 separation of identity that corporate formation bestows.

25 79. Jurisdiction to hear this dispute does not rest with the Board, but rather in the courts
26 between SVSAA and ASMC. BLS has failed to make a claim for which relief can be entered under
27 California Vehicle Code 3065.1.

28 80. Because the Board lacks jurisdiction to hear this dispute the subsequent issues for

1 determination will not be addressed.

2 **PROPOSED DECISION**

3 Based on the evidence presented and the findings and determinations herein, **IT IS HEREBY**
4 **ORDERED THAT** the protest is **OVERRULED**.

5
6 I hereby submit the foregoing which constitutes my
7 Proposed Decision in the above-entitled matter, as
8 the result of a hearing before me, and I recommend
9 this Proposed Decision be adopted as the decision of
10 the New Motor Vehicle Board.

11 DATED: October 7, 2010

12 *Linda Waits*
13 By: _____
14 LINDA S. WAITS
15 Administrative Law Judge

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26 George Valverde, Director, DMV
27 Mary Garcia, Branch Chief,
28 Occupational Licensing, DMV