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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on November 4, 2004, at the Hyatt Regency San Francisco Airport, Regency B Room, 1333 Bayshore Highway, Burlingame, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 8:14 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	David C. Lizárraga	Howard Weinberg
	Haig Papaian	General Counsel
	Andy Robles	Robin Parker
	Alan J. Skobin	Senior Staff Counsel
	Glenn E. Stevens	
	David W. Wilson	

Absent: Sushil K. Sharma

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 30, 2004, GENERAL MEETING, AND SEPTEMBER 30, 2004, SPECIAL MEETING**

Mr. Flesh moved to adopt the September 30, 2004, General Board meeting minutes. Mr. Robles seconded the motion. The motion carried unanimously.

Mr. Lizárraga moved to adopt the September 30, 2004, Special Board meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

4. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

FOX HILLS AUTO, INC., doing business as AIRPORT MARINA FORD v. FORD MOTOR COMPANY
Protest No. PR-1869-03

WALKER MOTOR CO., d/b/a BUERGE FORD v. FORD MOTOR COMPANY
Protest No. PR-1870-03

CRENSHAW MOTORS, INC., d/b/a CRENSHAW FORD v. FORD MOTOR COMPANY
Protest No. PR-1871-03

FORD OF SANTA MONICA, INC., d/b/a SANTA MONICA FORD v. FORD MOTOR COMPANY
Protest No. PR-1872-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Mr. Stevens recused himself from consideration of this Proposed Decision and asked Mr. Flesh to preside over this portion of the meeting.

Oral arguments were presented before the Public members of the Board. Norris J. Bishton, Esq., and Jeffrey S. Gubernick of Bishton Gubernick, represented Protestants. Cranston J. Williams, Esq. of Baker & Hostetler LLP represented Respondent.

Mr. Bishton indicated that he had a personal relationship with Glenn Stevens and Andy Robles, was David Wilson's attorney, and had contacts with Alan Skobin over the years.

Peter Welch, President of the California Motor Vehicle Dealers Association presented comments on the legislative history of branch locations and satellite warranty facilities.

The Public members of the Board deliberated in closed Executive Session at the conclusion of Agenda item 4(d). Mr. Flesh presided over the closed Executive Session deliberations with Mr. Stevens recused. Mr. Lizárraga moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Papaian seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED RULING**

RAYS RVS INC. v. ATTITUDE/ECLIPSE
Protest No. PR-1921-04

Consideration of the Administrative Law Judge's Proposed Ruling, by the Public members of the Board.

Mr. Stevens presided over the remainder of the meeting.

Oral arguments were presented before the Public members of the Board. Protestant did not make an appearance. Michael S. Leboff, Esq., of Hodel Briggs Winter LLP represented Respondent.

The Public members of the Board deliberated in closed Executive Session at the conclusion of Agenda item 4(d). Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Ruling. Mr. Papaian seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF PROPOSED RULING**

RAYS RVS INC. v. ATTITUDE/ECLIPSE
Protest No. PR-1922-04

Consideration of the Administrative Law Judge's Proposed Ruling, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Protestant did not make an appearance. Michael S. Leboff, Esq., of Hodel Briggs Winter LLP represented Respondent.

The Public members of the Board deliberated in closed Executive Session at the conclusion of Agenda item 4(d). Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Ruling. Mr. Papaian seconded the motion. The motion carried unanimously.

d. **CONSIDERATION OF RECOMMENDATION**

AUTO STIEGLER, INC. v. MERCEDES-BENZ USA, LLC
Protest No. PR-1898-04

Consideration of Recommendation that the Executive Director seek direction from the New Motor Vehicle Board that Mercedes-Benz USA, LLC, recover attorneys' fees and costs from Auto Stiegler, Inc. and its attorney for failure to comply with authorized discovery without substantial justification for that failure (Veh. Code § 3050.2(b)), by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Protestant did not make an appearance but sought to provide written comments. Gwen J. Young, Esq., of Wheeler Trigg & Kennedy, LLP, represented Respondent.

The Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Recommendation. Mr. Lizárraga seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

The Public members returned to Open Session. Mr. Flesh announced that the Public members adopted the Proposed Decision in *Airport Marina Ford* [Agenda item 4(a)].

Mr. Stevens announced that the Public members adopted the Proposed Rulings in Protest Nos. PR-1921-04 and PR-1922-04 [Agenda items 4(b) and 4(c)]. Mr. Stevens announced that the Public members adopted the Administrative Law Judge's Recommendation in Protest No. PR-1898-04 [Agenda item 4(d)]. Protestant and its attorney were required to pay Respondent \$6,611.25 in attorneys' fees and costs.

6. **CONSIDERATION OF FORD MOTOR COMPANY'S REQUEST FOR RE-EXTENSION OF TIME TO OWN AND OPERATE SUNNYVALE LINCOLN MERCURY SALES, INC., IN PREPARATION FOR A SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE IN COMPLIANCE WITH VEHICLE CODE SECTION 11713.3(O)(2)(A), BY THE DEALER AND PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens indicated that this matter was taken off the agenda based on a representation from Respondent's counsel, Cranston Williams, that Sunnyvale Lincoln-Mercury Sales, Inc., was sold to an independent franchisee.

7. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Consumer Mediation Program. Mr. Novi reported that nearly 40% of the formal mediation complaints are resolved to the satisfaction of the consumer. Furthermore, if those complaints in which the Board lacks jurisdiction, or are without merit, or are abandoned by the consumer, are subtracted from the above calculation, 61% of the complaints are resolved to the satisfaction of the consumer. Mr. Branzuela requested that the staff look at the types of calls received and report back to the Board.

8. **SEMI-ANNUAL UPDATE ON STAFF TRAINING PROGRAMS IMPLEMENTED FOR SUPPORT PERSONNEL, STAFF COUNSEL, AND ADMINISTRATIVE LAW JUDGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel updating the staff training programs implemented for support personnel, staff counsel, and administrative law judges. Mr. Flesh indicated that it would be beneficial for the staff to attend recreational vehicle gatherings in an effort to enhance training in this regard. Additionally, the training programs offered by the Department of Motor Vehicles might be beneficial for the staff to attend. Mr. Novi indicated that he would look into this.

9. **REPORT ON ENHANCEMENTS MADE TO IMPROVE THE BOARD'S WEB SITE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg reporting on enhancements made to the Board's website. Mr. Branzuela

requested that the staff look into whether the Board could offer a Spanish language translation on its website. Mr. Weinberg indicated that the staff would look into this.

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

The members were provided with a memorandum from Tom Novi and Kathy Tomono reporting on the Board Development Program. Mr. Novi highlighted the planned schedule of Board meetings and educational presentations for 2005. Mr. Skobin requested that additional out-of-state trip authorizations be sought so that the Public members could attend the NADA Convention in New Orleans in January 2005. Mr. Novi indicated that the staff was working on the additional trip authorizations and would report back to the Board concerning this.

11. **LEGISLATIVE REPORT CONCERNING ASSEMBLY BILL 2848 [CHAPTERED SEPTEMBER 28, 2004] THAT ADDS ALL-TERRAIN VEHICLES TO THE LIST OF NEW MOTOR VEHICLES WITHIN THE BOARD'S JURISDICTION - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning Assembly Bill 2848. John Paliwoda, Executive Director of the California Motorcycle Dealers Association, carried the legislation and was available to answer member questions.

Mr. Stevens acknowledged in the audience Marie Brooks, former Dealer member, and numerous people from the Department of Motor Vehicles.

12. **SELECTION OF BOARD MEETING DATES FOR 2005**

This Agenda item was postponed.

13. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Novi indicated that the Board should be able to accept credit card payments by the first of the year. Mr. Flesh requested that Mr. Novi look into the process for checks clearing electronically ("check 21").

The members were also provided with a copy of the Executive Director's Report. Ms. Parker indicated that four new protests were filed and five matters were resolved since the written report was prepared. Mr. Weinberg provided an update on the judicial matters.

12. **SELECTION OF BOARD MEETING DATES FOR 2005**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Stevens went on the record to announce the following schedule:

- January 27, 2005, Los Angeles – General meeting
- March 8, 2005, Sacramento – General meeting and CMCD A Dealer Day
- April 20, 2005, Indian Wells - Special Meeting (4th Annual Industry Roundtable) and CMCD A State Convention
- April 21, 2005, Indian Wells - General Meeting and CMCD A State Convention

The remainder of the schedule would be addressed at the December 16, 2004, Special meeting.

Mr. Flesh requested that Mr. Novi look into scheduling a Board development topic in conjunction with the Los Angeles Auto Show.

14. **A PRESENTATION AND DISCUSSION CONCERNING HOW DMV IS REFORMING ITS PROCEDURES TO EMPHASIZE INTERNET BASED SERVICES (E-DMV) BY CHON GUTIERREZ, DIRECTOR, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Chon Gutierrez, then Department of Motor Vehicles (“DMV”) Director, made a presentation to the Board and audience (which consisted of senior management and DMV staff from the San Francisco area) concerning their accomplishments over the past year. Director Gutierrez indicated that field office wait times were decreased from up to five hours to 14 minutes at the four largest offices in California. The car tax was rolled back in a matter of days rather than weeks.

Director Gutierrez also discussed how DMV was reforming its procedures to emphasize Internet based services – e-DMV. DMV was offering several new services including renewal by mail, phone, and the Internet. There were also new pilot projects that allowed salvage companies to input their own data and self-renewal of vehicle registration through a self-service kiosk. In the next few months, DMV will start accepting ATM cards. Director Gutierrez also made a PowerPoint presentation concerning the DMV.

The members thanked Director Gutierrez for his informative presentation.

15. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 12:18 p.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____

Glenn E. Stevens
President
New Motor Vehicle Board