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

The New Motor Vehicle Board ("Board") held a General meeting on January 26, 2006 at the Hilton Los Angeles Airport Hotel, Newport C Room, 5711 West Century Boulevard Los Angeles, California.

2. **ROLL CALL**

Alan J. Skobin, Vice President of the Board, called the General meeting to order at 9:30 a.m.

Present:	Robert V. Branzuela (departed 11:00 a.m.)	William G. Brennan
	Robert T. (Tom) Flesh	Executive Director
	Haig Papaian	Howard Weinberg
	Sushil K. Sharma	General Counsel
	Alan J. Skobin	Robin Parker
	Glenn E. Stevens	Senior Staff Counsel

Absent: David C. Lizárraga  
Andy Robles  
David W. Wilson

3. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 16, 2005, GENERAL MEETING**

Mr. Flesh moved to adopt the November 16, 2005, General Board meeting minutes. Mr. Sharma seconded the motion. Mr. Branzuela did not vote because he was unable to attend the meeting. The motion carried unanimously.

4. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda items 4-8. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

a. **PH AUTOMOTIVE HOLDING CORPORATION dba PACIFIC HONDA v. AMERICAN HONDA MOTOR CO., INC.**  
Protest No. PR-1945-05

CUSH AUTOMOTIVE GROUP dba CUSH HONDA SAN DIEGO v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1946-05

TIPTON ENTERPRISES, INC., dba TIPTON HONDA v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1947-05

BALL AUTOMOTIVE GROUP dba BALL HONDA v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1948-05

Oral arguments were presented before the Public members of the Board. Michael J. Flanagan, Esq., of the Law Offices of Michael J. Flanagan, and Jonathan A. Michaels, Esq., of Burkhalter, Michaels, Kessler & George LLP, represented Protestants. Wallace (Tad) M. Allan, Esq. and Eric K. Kizirian, Esq. of O'Melveny & Myers LLP represented Respondent.

- b. FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU, and RICHARD E. WILMSHURST v. SUBARU OF AMERICA  
Protest No. PR-1973-05

Oral arguments were presented before the Public members of the Board. Richard E. Wilmshurst represented himself and Forty-Niner Sierra Resources, Inc., dba Forty-Niner Subaru. Amy Toboco Kun, Esq. of Baker & Hostetler, LLP represented Respondent.

- c. SIX LEASING, INC. dba WABASH NATIONAL WEST, a California corporation v. WABASH NATIONAL CORPORATION, a corporation  
Protest No. PR-1967-05

Oral arguments were presented before the Public members of the Board. No appearance was made on behalf of Protestant. Amy Toboco Kun, Esq. of Baker & Hostetler, LLP represented Respondent.

## 5. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

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**

PH AUTOMOTIVE HOLDING CORPORATION dba PACIFIC HONDA v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1945-05

CUSH AUTOMOTIVE GROUP dba CUSH HONDA SAN DIEGO v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1946-05

TIPTON ENTERPRISES, INC., dba TIPTON HONDA v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1947-05

BALL AUTOMOTIVE GROUP dba BALL HONDA v. AMERICAN HONDA MOTOR CO., INC.  
Protest No. PR-1948-05

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

The Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to remand the matter to the administrative law judge to make additional findings concerning the effect on the retail motor vehicle business and on the consuming public's welfare within the relevant market area (Veh. Code § 3063(b) solely as it may relate to the financial impact on Tipton Honda, and whether the establishment of the additional franchise in Lemon Grove would increase competition and therefore be in the public interest (Veh. Code § 3063(e)), or would the increased competition be detrimental or ruinous to the financial welfare of Tipton Honda. Mr. Papaian seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU, and RICHARD E. WILMSHURST v. SUBARU OF AMERICA  
Protest No. PR-1973-05

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Sharma moved to adopt the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss. Mr. Papaian seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF PROPOSED ORDER**

SIX LEASING, INC. dba WABASH NATIONAL WEST, a California corporation v. WABASH NATIONAL CORPORATION, a corporation  
Protest No. PR-1967-05

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Papaian moved to adopt the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss. Mr. Stevens seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decisions in Agenda items 5(a) through 5(c).

7. **FIRST CONSIDERATION OF PETITIONS PURSUANT TO SECTION 557 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

- a. FORTY-NINER SIERRA RESOURCES, INC., dba FORTY-NINER SUBARU, and RICHARD E. WILMSHURST v. SUBARU OF AMERICA  
Petition No. P-454-05

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

Oral arguments were presented before the Public members of the Board. Richard E. Wilmshurst represented himself and Forty-Niner Sierra Resources, Inc., dba Forty-Niner Subaru. Amy Toboco Kun, Esq. of Baker & Hostetler, LLP represented Respondent.

The Public members of the Board considered the above-entitled petition upon First Consideration under Section 554 et seq. of Title 13 of the California Code of Regulations. After such consideration, Mr. Flesh moved that the petition be dismissed without prejudice to the filing of another petition that seeks relief under Vehicle Code section 3050(c)(1) or (3). Mr. Papaian seconded the motion. The motion carried unanimously.

- b. SERPA AUTOMOTIVE GROUP, INC., a California Corporation v. VOLKSWAGEN OF AMERICA, INC.  
Petition No. P-455-05

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

Oral arguments were presented before the Public members of the Board. Philip C. Bourdette, Esq. of Bourdette and Partners represented Petitioner. Frank Serpa of Serpa Automotive Group presented oral arguments as well. Allen S. Resnick, Esq., of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

The Public members of the Board considered the above-entitled petition upon First Consideration under Section 554 et seq. of Title 13 of the California Code of Regulations. After such consideration, Mr. Papaian moved that the petition be dismissed without prejudice to the filing of another petition that seeks relief under Vehicle Code section 3050(c)(1) or (3). Mr. Sharma seconded the motion. The motion carried unanimously.

8. **CONSIDERATION OF REQUEST THAT THE BOARD REQUEST THE DMV ISSUE PETITIONER AN OCCUPATIONAL LICENSE FOR THE SALE OF VOLKSWAGENS AT THE 815 S. BEN MADDOX PROPERTY**

- SERPA AUTOMOTIVE GROUP, INC., a California Corporation v. VOLKSWAGEN OF AMERICA, INC.  
Petition No. P-455-05

Consideration of Petitioner's request that the Board request the DMV issue Petitioner an occupational license for the sale of Volkswagens at the 815 S. Ben Maddox property, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Philip C. Bourdette, Esq. of Bourdette and Partners represented Petitioner. Frank Serpa of Serpa Automotive Group presented oral arguments as well. Allen S. Resnick, Esq., of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

The Public members of the Board deliberated in Open Session. Mr. Sharma moved to deny the relief requested by Petitioner. Mr. Papaian seconded the motion. The motion carried unanimously.

Peter Welch, President of the California Motor Car Dealers Association, provided brief comments on the OL 124 form [Certificate of Proposed Franchise].

27. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(e)(1), the Board shall convene in a closed Executive Session.

These matters were taken out of order to accommodate members of the audience that sought to make public comments. Mr. Stevens, Board Attorney Member, presided over Agenda items 27-29. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

a. **DISCUSSION AND ADVICE FROM GENERAL COUNSEL CONCERNING PENDING LITIGATION**

KIA MOTORS AMERICA, INC., Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; S & C MOTORS, INC., Real Party in Interest  
Sacramento County Superior Court No.05CS00283

Discussion and advice from the Board's General Counsel concerning pending litigation, by the Public members of the Board.

The Public members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Howard Weinberg, General Counsel, was provided to the members to justify the closed Executive Session. The members decided that they would not proceed with the appeal that was previously filed. This matter would be agendaized for consideration at the March 8, 2006, General meeting to comply with the writ.

b. **DISCUSSION AND ADVICE FROM GENERAL COUNSEL CONCERNING PENDING LITIGATION**

CAMARILLA, INC., dba V.I.P. AUTO UPHOLSTERY; JEFFREY L. WILLIS, an individual, Petitioners v. EXECUTIVE DIRECTOR of the NEW MOTOR VEHICLE BOARD, Respondent; MERCEDES-BENZ USA, LLC, Real Party in Interest  
Los Angeles County Superior Court No. BSO93346.

Discussion and advice from the Board's General Counsel concerning pending litigation and consideration of whether to file a Notice of Appeal in the above-referenced matter in light of the Los Angeles County Superior Court's Judgment

granting Petitioners' Peremptory Writ of Mandamus, by the Public members of the Board.

The Public members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Howard Weinberg, General Counsel, was provided to the members to justify the closed Executive Session. The members decided that an appeal would not be filed on the Board's behalf.

28. **OPEN SESSION**

Mr. Stevens announced the decisions in Agenda items 27(a) and 27(b).

29. **CONSIDERATION OF RECOMMENDATION IN LIGHT OF JUDGMENT GRANTING CAMARILLA INC., D/B/A/ V.I.P. UPHOLSTERY AND JEFFREY WILLIS' PEREMPTORY WRIT OF MANDAMUS**

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

Consideration of the Recommendation in light of the Los Angeles County Superior Court's Judgment Granting Camarilla Inc., d/b/a V.I.P. Upholstery and Jeffrey Willis' Peremptory Writ of Mandamus, wherein the Board was ordered to set aside its September 30, 2004, adoption of the "Recommendation that the Executive Director seek direction from the New Motor Vehicle Board that Mercedes-Benz USA, LLC, recover attorneys' fees and costs from Camarilla, Inc., d/b/a V.I.P. Auto Upholstery 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. Mark F. Kennedy, Esq. of Wheeler Trigg Kennedy LLP represented Mercedes-Benz USA, and commented that there appeared to be a "hole" in the Board's process if both parties and nonparties take the position that Board issued subpoenas can be ignored. Mr. Sharma moved to aside the Board's September 30, 2004, adoption of the Recommendation that the Executive Director seek direction from the New Motor Vehicle Board that Mercedes-Benz USA, LLC, recover attorneys' fees and costs from Camarilla, Inc., d/b/a V.I.P. Auto Upholstery and its attorney for failure to comply with authorized discovery without substantial justification for that failure (Veh. Code § 3050.2(b)), in light of the Court's Judgment. Mr. Papaian seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

a. **CONSIDERATION OF PROPOSED REGULATION THAT DEFINES "FRANCHISOR INCENTIVE PROGRAM" (13 CCR § 550(I))**

b. **CONSIDERATION OF PROPOSED REGULATION THAT MAKES THE MAILING OF NOTICES OR OTHER COMMUNICATIONS BY CERTIFIED MAIL SUFFICIENT COMPLIANCE WITH THE VEHICLE CODE REQUIREMENTS OF REGISTERED MAIL (13 CCR § 550.20)**

- c. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATION THAT REFLECTS MANDATORY SETTLEMENT CONFERENCE STATEMENTS ARE REQUIRED TO BE SERVED ON OPPOSING COUNSEL AND MUST BE ACCOMPANIED BY A PROOF OF SERVICE (13 CCR § 551.11)**
- d. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATION THAT CLARIFIES THE PEREMPTORY CHALLENGE PROVISION AND NOTES THE ASSIGNED ADMINISTRATIVE LAW JUDGE IN THE ORDER OF TIME AND PLACE OF HEARING (13 CCR § 551.12)**

This matter was taken out of order to accommodate members of the audience that sought to make public comments. The members were provided with a memorandum from Bill Brennan, Howard Weinberg, and Robin Parker concerning proposed regulatory amendments. Mr. Weinberg reported that the proposed amendments, with the exception of Section 550(l), implement minor changes that cleanup and clarify existing regulations. As outlined in the memorandum, those changes are as follows:

- Section 550(l) is being added to define “franchisor incentive program.” There is no definition of franchisor incentive program in the Vehicle Code or Board regulations.
- Section 550.20 is being added to clarify that the Vehicle Code requirement of sending specified notices or other communications by registered mail is deemed to be in compliance with the code if mailed by certified mail. Currently, the Board sends all such documents via certified mail. The amendment is being proposed to formalize this practice in a regulation.
- Section 551.11 is being amended to clarify that Mandatory Settlement Conference statements are to be served on opposing parties and filed along with a proof of service. The amendment is being proposed to formalize this practice in a regulation.
- Section 551.12 is being amended to reflect changes suggested by Anthony Skrocki, Administrative Law Judge, to clarify the assignment of administrative law judges (ALJ) and peremptory challenges. The assigned ALJ in a protest or petition proceeding is noted on the order of time and place of hearing. This amendment is being proposed to formalize this practice in a regulation. The proposed amendments concerning peremptory challenges simplify this process and clarify the timing thereof.

Mr. Weinberg indicated that the text of Section 550(l) concerning the definition of franchisor incentive program had been sent to the California Motor Car Dealers Association to solicit input. Several other manufacturer attorneys had expressed an interest prior to the meeting. Peter Welch, President of the California Motor Car Dealers Association, offered several comments concerning the proposed text. Mr. Flesh moved to go forward with the proposed rulemaking in Agenda items 18(b), (c), and (d). No action is being taken on Agenda item 18(a) pending an industry mailing soliciting additional input. Mr. Stevens seconded the motion. The motion carried unanimously.

9. **LUNCH BREAK**

The members took a lunch break from approximately 1:00 p.m. to 2:10 p.m.

10. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE OF WESTERN GOLF CAR MANUFACTURING, INCORPORATED FOR FAILURE TO PAY THE ANNUAL BOARD FEE (13 CCR § 553) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning whether to request the Department of Motor Vehicles to withhold renewal and/or suspend the existing occupational license of Western Golf Car Manufacturing, Incorporated (“Western”) for failure to pay the annual Board fee. Ms. Parker reported that attempts to communicate with Western went unanswered. Mr. Skobin recused himself from consideration of this matter. Mr. Flesh moved to exercise the Board’s authority under Vehicle Code section 3050(c)(3), to request the Department of Motor Vehicles to withhold the renewal of Western’s license and suspend its existing license until the fee has been paid. Mr. Stevens seconded the motion. The motion carried unanimously.

11. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised Guide to the New Motor Vehicle Board from Howard Weinberg. Mr. Weinberg summarized the changes to the Guide and updated the codes to reflect statutory changes effective January 1, 2006. Mr. Flesh moved to adopt the Guide. Mr. Papaian seconded the motion. The motion carried unanimously.

12. **STATUS REPORT ON IMPLEMENTATION OF THE REVISED TRANSCRIPT POLICY THAT ALLOWS LITIGANTS TO PURCHASE HEARING OR MEETING TRANSCRIPTS DIRECTLY FROM THE COURT REPORTER - ADMINISTRATION COMMITTEE**

Mr. Brennan provided a verbal update concerning the Board’s revised transcript policy. The revised procedure allows litigants to purchase transcripts directly from the court reporter. Mr. Brennan reported no problems with this revision and would like to make this an exception report thereby only reporting on it if there is a problem.

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

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Heather Collins. Mr. Brennan reported that the program continues to be successful with over 3,300 telephone calls resulting in more than 400 cases. The staff is trying to expedite the process by allowing requests for mediation to be filed on-line. Mr. Skobin requested that each member be sent a copy of the consumer mediation letters to ensure that the letters are neutral. Mr. Brennan indicated that this would be done. Mr. Brennan also reported that the time for manufacturers to respond has been reduced from 14 to 10 days.

14. **DISCUSSION AND CONSIDERATION OF ANNUALLY AWARDING THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD INSTEAD OF SEMI-ANNUALLY - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning giving the Solon C. Soteris Employee Recognition Award annually instead of semiannually. Ms. Parker reported that due to the relatively small size of the Board staff, the value of the award was diminishing by offering it so frequently. After a lengthy discussion, Mr. Sharma moved to make the award discretionary and not on a set timeframe; it was to be based on merit, and forward by the Executive Director to the Board Development Committee. Mr. Papaian seconded the motion. Mr. Weinberg indicated that this matter should be reagendaized for consideration at the March 8, 2006, meeting given the direction the Board was taking in light of the language in the agenda.

15. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>ST</sup> QUARTER OF FISCAL YEAR 2005-2006 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 1st quarter of fiscal year 2005-2006. Mr. Brennan reported that the Board has expended 25% of its appropriated budget through the 1st quarter of fiscal year 2005-2006. Mr. Brennan indicated that the Board staff met with the DMV budget staff and are in the process of a complete review of the budget process. Mr. Flesch commented that he was concerned about the Board's reserves building too high. [The budget reserve is scheduled for review at the March 8, 2006, General meeting.]

16. **ANNUAL STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF ITS ANNUAL FEE (13 CCR § 553.10) - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the status of the Board's collection of its annual fee. The report indicated that out of 175 invoices only one manufacturer, Western Golf Car Manufacturing, Incorporated failed to pay the required fee. [See Agenda item10].

17. **REPORT ON NONSUBSTANTIVE CHANGES TO THE TEXT OF SECTION 550 (DEFINITIONS), SECTION 551.11 (SETTLEMENT CONFERENCE; SEPARATION OF POWERS), AND SECTION 551.12 (PEREMPTORY CHALLENGE) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning nonsubstantive regulatory changes. Consistent with the Board's policy when nonsubstantive changes are suggested, these are forwarded to the Executive Committee for their approval and ultimately reported at the next General meeting. Mr. Weinberg provided an overview of the nonsubstantive changes.

18. **CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

- a. **CONSIDERATION OF PROPOSED REGULATION THAT DEFINES “FRANCHISOR INCENTIVE PROGRAM” (13 CCR § 550(L))**
- b. **CONSIDERATION OF PROPOSED REGULATION THAT MAKES THE MAILING OF NOTICES OR OTHER COMMUNICATIONS BY CERTIFIED MAIL SUFFICIENT COMPLIANCE WITH THE VEHICLE CODE REQUIREMENTS OF REGISTERED MAIL (13 CCR § 550.20)**
- c. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATION THAT REFLECTS MANDATORY SETTLEMENT CONFERENCE STATEMENTS ARE REQUIRED TO BE SERVED ON OPPOSING COUNSEL AND MUST BE ACCOMPANIED BY A PROOF OF SERVICE (13 CCR § 551.11)**
- d. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATION THAT CLARIFIES THE PEREMPTORY CHALLENGE PROVISION AND NOTES THE ASSIGNED ADMINISTRATIVE LAW JUDGE IN THE ORDER OF TIME AND PLACE OF HEARING (13 CCR § 551.12)**

This matter was previously taken out of order and was considered after Agenda item 29, which was also taken out of order. Given the Board’s decision to go forward with the rulemaking, Mr. Skobin then read a statement into the record concerning the delegation to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. This completed this Agenda item.

19. **CONSIDERATION OF 2006 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors*. Ms. Parker reported that the Guide was minimally revised. A new sample “establishment or relocation of a satellite warranty facility notice” was added. Mr. Papaian moved to adopt the revised Guide. Mr. Sharma seconded the motion. The motion carried unanimously.

20. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2005 are as follows:

- Given Cara Peralta’s extended medical leave, her appointment as a hearing officer for purposes of conducting Mandatory Settlement Conferences (“MSC”) and other nonsubstantive procedural matters has been rescinded.

- The Board appointed new Administrative Law Judges: Richard J. Lopez; Jerold A. Prod; Norman Gregory (Greg) Taylor; and Marybelle Archibald.
- On an interim basis, ALJs will be assigned based upon a Merits and MSC Judge Assignment Log. All of the ALJs (Archibald, Lopez, Prod) were assigned to the respective logs. Judge Wong will be utilized in the event the other ALJs are unavailable.
- An obsolete policy concerning the assignment of ALJs was deleted.
- The Board will allow the acceptance of credit card payments for all Board fees and costs.
- The Annual Board fee of \$225.00 for dealers and \$0.338 per vehicle sold in California, with a minimum of \$225.00, for manufacturers and distributors will remain unchanged in light of the Department of Motor Vehicles two-year Occupational License renewal.
- The Mission and Vision statements were revised to ensure that they accurately reflect the Board's current responsibilities.
- The Board will "publish" the Consumer Mediation portion of the website in Spanish.

The Board requested that the format for the policies be changed in the future to reflect additional information. The members also requested that an update be provided on the portion of the Consumer Mediation website that is in Spanish. [This report is agendized for information at the March 8, 2006, General meeting.]

21. **CONSIDERATION OF THE 2006 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2006 Rulemaking Calendar from Bill Brennan and Robin Parker. Ms. Parker reported that Business, Transportation & Housing Agency had already approved a draft of the rulemaking calendar. Once approved by the Board, the rulemaking calendar is forwarded to the Office of Administrative Law and published in the California Regulatory Notice Register. Mr. Flesh moved to adopt the 2006 Rulemaking Calendar. Mr. Stevens seconded the motion. The motion carried unanimously.

22. **CONSIDERATION OF PROPOSED REVISIONS TO THE BOARD'S PRACTICE OF PREPARING AND RETAINING TWO VERSIONS (CITED AND UNCITED) OF PROPOSED DECISIONS/ ORDERS/RULINGS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning revisions to the Board's practice of using cited and uncited Proposed Decisions and Proposed Orders/Rulings. Mr. Weinberg reported that the Board staff has been preparing two versions of proposed decisions. One version contains what has been referred to as "citations to the record" and the other version does not. The cited version is used internally by staff in reviewing and editing an Administrative Law Judge's draft proposed

decision prior to the final proposed decision being forwarded to the Board members for consideration. Both versions are retained in the Board's files in the regular course of business.

This matter was originally reported on at the November 16, 2005, General meeting. At that meeting it was suggested that the inclusion of a note in all Board Proposed Decisions be included as follows: "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." Mr. Stevens moved to adopt the revised policy that Board Proposed Decisions and Rulings would contain citations to the record. Mr. Sharma seconded the motion. The motion carried unanimously.

23. **ANNUAL REPORT OF STAFF PARTICIPATION IN THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)**

The members were provided with a memorandum from Bill Brennan and Heather Collins concerning the 2005 California State Employees Charitable Campaign. Mr. Brennan reported that the Board achieved 100% employee participation and received \$1,260 in cash donations.

24. **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. Brennan provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that the Roundtable was moving forward and topic suggestions and speakers were needed. Mr. Flesh provided several suggested topics that Mr. Brennan indicated the staff would look into. It was suggested that the General Counsel for each manufacturer be added to the Roundtable mailing list.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker reported that two new protests had been filed, and two protests had been dismissed since the report was drafted. Mr. Weinberg reported on the status of the pending court cases and informed the members that in the *Camarilla* case a memorandum of costs for \$343 was filed against the Board.

25. **2006 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Flesh moved to nominate David Wilson as President. Mr. Flesh moved to close the nominations, with Mr. Papaian seconding the motion. This motion carried unanimously. Mr. Stevens seconded the motion to nominate David Wilson as President. The motion carried unanimously.

Mr. Flesh moved to nominate Alan Skobin as Vice President. Mr. Stevens moved to close the nominations, with Mr. Sharma seconding the motion. This motion carried unanimously. Mr. Papaian seconded the motion to nominate Alan Skobin as Vice President. The motion carried unanimously.

26. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

After a brief discussion concerning Board member participation on committees, the members postponed this matter until the March 8, 2006, General meeting.

30. **ADJOURNMENT**

Mr. Papaian moved to adjourn the meeting. Mr. Flesh seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 3:24 p.m.

Submitted by

\_\_\_\_\_  
WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_

David W. Wilson  
President  
New Motor Vehicle Board