

1507 - 21st Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888
Contact Person: Kathy Tomono
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on February 11, 2008, at the Holiday Inn Hotel, San Francisco – Fisherman’s Wharf, Sonoma Room, San Francisco, California

2. **ROLL CALL**

Alan J. Skobin, President of the Board, called the meeting of the Board to order at 11:00 a.m.

Present:	Ramon Alvarez C.	William G. Brennan, Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg, General Counsel
	Sossi Keuylian	Robin Parker, Senior Staff Counsel
	Alan J. Skobin	Polly Riggerbach, Staff Counsel
	Glenn E. Stevens	Dawn Kindel, Manager

Absent: Ryan L. Brooks
Haig Papaian
David W. Wilson

Mr. Brennan announced that there was a quorum of Board Members for the General Meeting but not for Public Member activities concerning case management.

Mr. Skobin held over the matter (Agenda items 9-11) that required a Public Member quorum.

3. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED DEALER BOARD MEMBER, SOSSI KEUYLIAN**

The members welcomed Sossi Keuylian, an Orange County Lamborghini Dealer and newly appointed Dealer Board member.

4. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 15, 2007, GENERAL MEETING, AND DECEMBER 13, 2007, SPECIAL MEETING**

Mr. Stevens moved to adopt the November 15, 2007, General meeting minutes, and December 13, 2007, Special meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ROBERT BRANZUELA, FORMER DEALER BOARD MEMBER**

Mr. Alvarez C. moved to present a Resolution to Robert Branzuela, former Dealer Board member, in recognition of his contribution to the New Motor Vehicle Board. Mr. Flesh seconded the motion. The motion carried unanimously. (The Resolution will be scheduled to be presented at a future General meeting, in Southern California.)

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO DAVID LIZÁRRAGA, FORMER PUBLIC BOARD MEMBER**

Mr. Alvarez C. moved to present a Resolution to David Lizárraga, former Public Board member, in recognition of his contribution to the New Motor Vehicle Board. Mr. Stevens seconded the motion. The motion carried unanimously. (The Resolution will be scheduled to be presented at a future General meeting, in Southern California.)

7. **2008 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

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

Mr. Stevens moved to nominate Tom Flesh as Vice President. Mr. Alvarez C. seconded the motion to nominate Tom Flesh as Vice President. Ms. Keuylian moved to close the nominations, with Mr. Stevens seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Tom Flesh as Vice President carried unanimously.

8. **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 off the record, President Skobin made the following committee appointments:

- Executive Committee
 - Alan Skobin, President
 - Tom Flesh, Vice President

Administration Committee

- Haig Papaian, Chair
- Ramon Alvarez C., Member

Board Development Committee

- Ryan L. Brooks, Chair
- Sossi Keuylian, Member

Fiscal Committee

- Ramon Alvarez C., Chair
- Ryan L. Brooks, Member

Government and Industry Affairs Committee

- Tom Flesh, Chair
- David Wilson, Member

Policy and Procedure Committee

- Glenn Stevens, Chair
- David Wilson, Member

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

Agenda items 9-11 were taken off calendar because the Board lacked a Public Member quorum.

WALKER MANAGEMENT, INC., dba GOOD TIMES KAWASAKI SUZUKI DUCATI
v. DUCATI NORTH AMERICA, INC.
Protest No. PR-2048-07

10. **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 convenes in closed Executive Session to deliberate the decisions 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.

CONSIDERATION OF PROPOSED DECISION

WALKER MANAGEMENT, INC., dba GOOD TIMES KAWASAKI SUZUKI DUCATI
v. DUCATI NORTH AMERICA, INC.
Protest No. PR-2048-07

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

11. **OPEN SESSION**

The members remained in Open Session having never gone into closed Executive Session.

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

The members were provided with a memorandum from Bill Brennan and Heather Collins. Mr. Brennan reported that the Consumer Mediation Program continues to be successful with 522 cases and 1,520 telephone calls in fiscal year 2006-2007. Out of the 522 cases, 399 cases were mediated with over 67% of those cases being successfully mediated. Mr. Brennan noted that this is a successful program and there was a 20% increase in the number of cases received over the previous fiscal year.

Mr. Skobin requested that the staff provide the members with a set of the letters that are used in the mediation program. Mr. Brennan indicated that this matter will be placed on the May agenda and the members will be provided with a copy of the templates that are sent out. As a result of inquiries raised by Mr. Flesh, Mr. Skobin directed that the staff report on the branding and titling of vehicles as a result of a Lemon Law buyback versus a goodwill buyback. Mr. Brennan indicated that a staff report will also be provided at the May meeting on this topic.

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

To allow the newly constituted Administration Committee to provide feedback on the revised Guide, this matter is being held over to the May meeting.

14. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE OF VENGEANCE MOTORCYCLE COMPANY (ALSO KNOWN AS AMERICAN HOT ROD MANUFACTURING, LLC) FOR FAILURE TO PAY THE ANNUAL BOARD FEE (13 CCR § 553) - ADMINISTRATION COMMITTEE**

Mr. Brennan reported that the Board had previously taken action against American Hot Rod Manufacturing for failure to pay the annual Board fee. However, the staff recently learned that the proper entity is Vengeance and they have since filed bankruptcy. Given the bankruptcy, there was no Board action required.

15. **ANNUAL REPORT CONCERNING OUT-OF-STATE TRAVEL PLANS FOR THE 2008-2009 FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning out-of-state travel plans for fiscal year 2008-2009. Miss Kindel reported that the staff was prepared to submit travel proposals for 17 trips. Five of the trip requests are for three members of the Board, the Executive Director and the Staff Manager to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Seattle, Washington in September 2008. Two of the trips are for one Board Member and the Executive Director to attend the Recreation Vehicle Industry Association's 46th Annual National RV Trade Show in Louisville, Kentucky in December 2008. Seven of the trip requests are for the public members of the Board, the Executive Director, and a staff member to attend the National Automobile Dealers Association Annual Convention and Expo and the National Association of Motor Vehicle Boards and Commissions Winter Workshop in New Orleans, Louisiana in February 2009. The remaining three trips are for the Staff Counsel III and the Board's newest ALJ Linda Waits to attend courses at the National Judicial College in Reno, Nevada. The dates of these courses are pending. The total cost of these trips is about \$20,000. Mr. Brennan indicated that the out-of-state travel blanket is consistent with the last two fiscal years.

Mr. Alvarez C. moved to adopt the out-of-state travel blanket for fiscal year 2008-2009 with the Executive Committee authorizing who will go on the actual trips. Ms. Keuylian seconded the motion. The motion carried unanimously.

16. **CONSIDERATION OF 2008 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. The title page was updated to reflect Dale Bonner as the Business, Transportation & Housing Agency Secretary, the expiration of Messrs. Branzuela and Lizárraga's terms, and the Board Member appointments of Ramon Alvarez C., Sossi Keuylian, and Haig Papaian. The OL 124 Form on pages 9-10 was updated to reflect the September 2007 version. The section entitled "Who is authorized to sign an OL 124" on page 11 was changed from "officer" to "owner" to be consistent with the revised OL 124 form. In light of the recent Board policy concerning manufacturer compliance with statutorily required notices (Veh. Code §§ 3064, 3065, 3074, 3075), the sections entitled "What is a Delivery and Preparation Obligations Compensation Schedule" and "What is a Warranty Reimbursement Schedule or Formula" on pages 13-14, were amended. Lastly, footnote 7 on page 16 was amended to reflect the Board's policy concerning Dealer Board Member participation in Article 5 RV protests. Mr. Flesh moved to adopt the revised Guide with the following change to footnote 7: "...Dealer members participate in Article 5 recreational

vehicle protests unless the dealer board member also owns and/or has a financial interest in a recreational vehicle dealership...” Mr. Stevens seconded the motion. The motion carried unanimously.

17. **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 2007 are as follows:

- Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the dealer member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.
- On an interim six-month basis, Judges Wong and Riggerbach will preside over all Mandatory Settlement Conferences while the Board attempts to hire additional ALJs.
- The Board will exercise its discretion to collect or not collect the Arbitration Certification Program fees, when the amount to be collected is nominal, and to provide the Department of Consumer Affairs, Arbitration Certification Program with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion.
- The Fiscal Committee will meet each May to review the Board’s proposed budget. Consideration of the budget will be agendized each June. This enables the Board to take a more active role in the budget process.
- The Board established a policy to address manufacturers and distributors who are not in compliance with the filings required by Vehicle Code sections 3064/3074 (current delivery and preparation obligations (PDI) and PDI schedule of compensation) and 3065/3075 (warranty reimbursement schedule or formula). The policy is similar to that used for collecting the Annual Board Fee and the Arbitration Certification Program Fee. Prior to being placed on an agenda for noncompliance, the licensees will be sent three (3) written notices requesting compliance with the applicable statutes. At the noticed Board Meeting, the members will determine whether to request that the DMV withhold the renewal and/or suspend the existing occupational license of the manufacturer for failure to comply with the pertinent Vehicle Code sections. If the Board decides to seek licensing action, the Board’s General Counsel will coordinate with the Department’s Chief Counsel to have the

Department take disciplinary actions against the licensee.

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

- a. Definitions (13 CCR § 550);
- b. Subpoenas; Motion to Quash (13 CCR § 551.2);
- c. Settlement Conference (13 CCR § 551.11);
- d. Notice of Assignment of Administrative Law Judges; Peremptory Challenges (13 CCR § 551.12);
- e. Intervention; Grant of Motion; Conditions (13 CCR § 551.13);
- f. Amicus Curiae Briefs (13 CCR § 551.18);
- g. Motions; Form, Briefing, and Hearings (13 CCR § 551.19);
- h. Conduct of Hearing; Protective Orders (13 CCR § 551.20);
- i. Sanctions (13 CCR § 551.21);
- j. Request for Security (13 CCR § 551.22);
- k. Interpreters and Accommodation (13 CCR § 551.23);
- l. Service; Proof of Service (13 CCR § 551.24);
- m. Substitution and Withdrawal of Counsel (13 CCR § 551.25);
- n. Service of Petition upon Respondent(s) (13 CCR § 555.1);
- o. Form of Appeal (13 CCR § 567);
- p. Form; Separate Protests (13 CCR § 583);
- q. Service of Protest upon Franchisor (13 CCR § 584);
- r. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code sections 3064, 3065, 3065.1, 3074, 3075, and 3076 (13 CCR § 586);
- s. Notice of Hearing of Protest (13 CCR § 591);
- t. Papers Defined - Approved Forms (13 CCR § 593);
- u. Notices (13 CCR § 593.1);
- v. Size of Paper, Pagination, Etc. (13 CCR § 594);
- w. Format of First Page; Format and Filing of Papers (13 CCR § 595);
- x. Last Page; Signature (13 CCR § 597);
- y. Article 7. New Motor Vehicle Board – Conflict of Interest Code.

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning proposed regulations. Ms. Parker reported that the staff worked extensively with the Policy and Procedure Committee on the proposed regulatory changes that formalize and refine the Board's case management processes, and clean up and clarify existing regulations. Ms. Parker also reported that the staff received feedback from the

Board administrative law judges, and some of the Attorney Roundtable attendees.

Public comments were presented concerning the proposed regulation pertaining to sanctions (13 CCR § 551.21) by Jonathan Morrison, Esq., California Motor Car Dealers Association, and Michael J. Flanagan, Esq., Law Offices of Michael J. Flanagan. Mr. Flanagan also commented on Settlement Conferences (13 CCR § 551.11).

Mr. Skobin created an Ad Hoc Committee consisting of Glenn Stevens and himself to address the proposed regulations. The proposed regulations will be referred to the Ad Hoc Committee and considered at a future Board meeting.

19. **CONSIDERATION OF THE 2008 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

Mr. Skobin withdrew this Agenda item.

20. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. 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 provided the members with a copy of correspondence from Nader Eghtesad that was addressed to the Board Members. However, no Board action was required given this matter is pending in Superior Court.

Ms. Riggerbach reported that since the materials were mailed to the members, 16 cases have been dismissed. Also, Judge Skrocki ordered counsel for Protestant Bisa Enterprises, Inc. dba Suzuki of El Cajon to pay American Suzuki Motor Corporation \$11,076.81 in attorneys' fee and costs.

Mr. Weinberg reported that the two *Nader* cases have been petitioned in the Sacramento County Superior Court for writs of administrative mandamus. Additionally, Mr. Weinberg reported that these cases also requested ex parte stays that were denied; the writ hearings in these consolidated matters are scheduled for March 7, 2008. Mr. Weinberg also reported the status of the *Forty-Niner Subaru* writ in which the ex parte stay request was denied; there are no other dates set. In the warranty case involving *Forty-Niner Subaru* that is pending before the Third District Court of Appeal, the matter was deemed fully

briefed on December 14, 2007. Lastly, Mr. Weinberg reported that no dates have been set in *Serpa Automotive Group* or the two *Fladeboe* matters.

21. **SELECTION OF BOARD MEETING DATES FOR 2008**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Skobin went on the record and Mr. Brennan announced the following meeting dates:

- March 18, 2008, Special Meeting in Los Angeles;
- May 1, 2008, General Meeting in Indian Wells;
- May 2, 2008, Special Meeting in Riverside at Alvarez Lincoln Mercury Jaguar; and
- June 26, 2008, General Meeting in Orange County or Los Angeles.

22. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(e)(2)(C)(i), the Board shall convene in a closed Executive Session.

DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING WHETHER TO INITIATE LITIGATION

Discussion and advice from the Board's legal counsel concerning whether to initiate litigation, by the Public and Dealer Members of the Board.

The Public and Dealer Members convened in closed Executive Session to discuss and obtain advice from Howard Weinberg, General Counsel, concerning whether to initiate litigation. Mr. Skobin reported that the matter was referred to the Executive Committee of the Board for guidance to the staff, and agenda'd as a closed session item, if legally applicable, for the next meeting, so it can be discussed with all Board Members more fully.

23. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

24. **ADJOURNMENT**

Ms. Keuylian moved to adjourn the meeting. Mr. Stevens seconded the motion. With no further business to discuss, the meeting was adjourned at approximately 1:51 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Alan J. Skobin
President
New Motor Vehicle Board