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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held its 7th Industry/Attorney Roundtable which was treated as a Special Meeting on March 24, 2010, at the Ziggurat Building, Auditorium, 707 3rd Street, West Sacramento, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 8:30 a.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
 Robert T. (Tom) Flesh Robin Parker, Senior Staff Counsel
 Peter Hoffman
 Victoria R. Pearson
 Glenn E. Stevens
 David W. Wilson

Absent: Ryan L. Brooks
 David C. Lizárraga
 Haig Papaian

3. **PLEDGE OF ALLEGIANCE**

Mr. Stevens led the members, staff, and audience in the Pledge of Allegiance.

4. **INDUSTRY/ATTORNEY ROUNDTABLE DISCUSSION TO EDUCATE:**

- The Board members on industry-related issues and to provide them with an opportunity to interface with dealer and factory personnel.
 - Attorneys that regularly appear before the Board, or who would like to appear before the Board, on procedures and laws relating to the Board.
 - Manufacturer and distributor counsel or employees who prepare or review statutorily required notices sent to the Board and the impacted dealers.
- Government and Industry Affairs Committee.

Mr. Flesh welcomed and thanked everyone for their attendance. The meeting was turned over to David Wilson, Chair of the Government and Industry Affairs Committee. Mr. Wilson also welcomed the speakers and attendees and reminded the audience that under the Bagley-Keene Open Meeting Act, public comments can be made regarding any topic. Mr. Wilson asked Bill Brennan, the Board's Executive Director, to address the following matters in an effort to engage in an open dialogue:

(1) The audience and participants were asked not to comment or ask questions about any contested matters currently before the Board. Such statements may be inappropriate ex parte communications, and improper as being presented to the Board outside of the formal case management process.

(2) The audience and participants were asked not to make any comments, pose questions, or raise any issues concerning pricing, trade secret, or other proprietary information that could arguably be construed as, or give the appearance of, being collusive or in furtherance of unfair trade or monopolistic business practices.

(3) The discussion was not transcribed by a court reporter. Minutes concerning topic discussion in general will be prepared in the ordinary course.

Mr. Wilson functioned as the moderator of the event. Prior to getting started, Mr. Wilson asked the Board Members, staff and participants to introduce themselves.

The following specific topics were discussed:

Topic 1:

BANKRUPTCY FILINGS IN THE VEHICLE INDUSTRY; PROTEST FILINGS BEFORE THE BOARD

Donald Cram, Esq., Severson & Werson, P.C.

Michael J. Flanagan, Esq., Law Offices of Michael J. Flanagan

Bert Rasmussen, Esq., Manning, Leaver, Bruder & Berberich

Allen Resnick, Esq., Jeffer, Mangels, Butler & Marmaro LLP

- Impact of bankruptcy filings on the vehicle industry.
- How does the Board handle protest filings in which bankruptcy protection is being sought by either the franchisee or franchisor?

PANEL DISCUSSION ON THE EFFECT OF BANKRUPTCY FILINGS ON THE CAR, MOTORCYCLE, AND RECREATIONAL VEHICLE INDUSTRIES

Jon Corn, Esq., Axelson Corn

Peter Kravitz, Esq., on behalf of California Recreation Vehicle Dealers Association

Paul C. Vitrano, Esq., General Counsel, Motorcycle Industry Council

Peter K. Welch, President, California New Car Dealers Association

- How are franchisor bankruptcy filings impacting the car, recreational vehicle, and motorcycle industries?
- What is the effect of these bankruptcy filings on the public perception of the vehicle industry?

- How does the changed credit environment impact rights and obligations for both franchisees and franchisors?

Topic 2:

PANEL DISCUSSION CONCERNING THE AUTOMOTIVE INDUSTRY'S RESPONSE TO THE CHANGING ECONOMIC TIMES AND WHAT MANUFACTURERS/DISTRIBUTORS ARE DOING TO ASSIST DEALERS DURING THIS CHALLENGING ECONOMIC CLIMATE AND THE IMPACT OF SO MANY DEALERSHIP CLOSURES FROM THE FRANCHISOR'S PERSPECTIVE

Deborah Goldman, Esq., Managing Counsel, Toyota Motor Sales, U.S.A., Inc.

Debra Kingsbury, Esq., Assistant General Counsel, Sales & Marketing, Volkswagen of America, Inc.

- What are manufacturers/distributors doing to be responsive to the changing economic times?
 - With regards to facility improvements (remodels or new facilities)?
 - With regards to financial assistance for facility improvements?
 - With regards to assisting dealers in securing and maintaining flooring?
- What has been the impact of so many new motor vehicle dealership closures in 2008 and 2009?
- Are any measures being taken to retain existing dealers?
- Anticipated impact, if any, from recently amended Vehicle Code sections 11713.1 and 11713.13 (effective July 2, 2009)?

Topic 3:

DISCUSSION CONCERNING THE DEPARTMENT OF MOTOR VEHICLES' EFFORTS TO BE MORE INDUSTRY ACCESSIBLE BY MARY GARCIA, BRANCH CHIEF, OCCUPATIONAL LICENSING AND ANDREW CONWAY, CHIEF, REGISTRATION POLICY AND AUTOMATION BRANCH, DEPARTMENT OF MOTOR VEHICLES

Mary Garcia, Branch Chief, Occupational Licensing

Andrew Conway, Chief, Registration Policy and Automation Branch

Topic 4:

UPDATE CONCERNING ALTERNATIVE FUELS AND ADVANCED PROPULSION SYSTEMS AVAILABLE TO THE AUTOMOTIVE INDUSTRY BY TIM OLSON, 2ND ADVISOR TO COMMISSIONER BOYD, CALIFORNIA ENERGY COMMISSION

Tim Olson, Advisor to Commissioner Boyd

Topic 5:

DISCUSSION CONCERNING THE TRENDS IN CASE MANAGEMENT

Robin Parker, Senior Staff Counsel, New Motor Vehicle Board

- Introduction and overview of the New Motor Vehicle Board.
- Discussion concerning trends in case management including:
 - Types and number of notices of termination being filed;

- Types of protests being filed;
- Number of cases going to a merits hearing; and
- The number being resolved prior to hearing.

Topic 6:

STATUTORILY REQUIRED NOTICES

Robin Parker, Senior Staff Counsel, New Motor Vehicle Board

- What are the statutorily required notices?
- What procedural requirements a manufacturer or distributor must meet to ensure that a statutorily required notice is properly issued and effective?
- Who is responsible for the content of the notice?
- What is the best method for transmission of a notice? Are there any special circumstances that would require special handling?
- What does the Franchise Agreement provide regarding notices? Is there a difference between the franchise terms and the statutory requirements as to notice?
- What are the common mistakes encountered by the Board's legal staff?

Topic 7:

LAW AND MOTION PRACTICE BEFORE THE NEW MOTOR VEHICLE BOARD

Robin Parker, Senior Staff Counsel, New Motor Vehicle Board

- Motion to dismiss (dispositive motion).
- Motion to compel, quash, or continue hearing (not dispositive of the protest).
- Who is a "franchisee", a "dealer principal" and a "dealer"? What is the significance of the differences?
- What is a typical briefing schedule on a motion?
- When does a Proposed Order on a motion go to the Board for its consideration?
- What are common mistakes the legal staff encounters in law and motion?

The following attended and participated in the Industry/Attorney Roundtable:

- Ramon Alvarez C., Vice President/Dealer Member, New Motor Vehicle Board
- Janice Alwin, Esq., Attorney, Barack Ferrazzano Kirschbaum & Nagelberg
- La Stanja Baker, State Government Affairs Manager, Toyota Motor Sales, U.S.A., Inc.
- Sarah Bernstein, Esq., Attorney, Barack Ferrazzano Kirschbaum & Nagelberg
- William G. (Bill) Brennan, Executive Director, New Motor Vehicle Board
- Alton Burkhalter, Esq., Partner, Burkhalter Kessler Goodman & George LLP
- Carrie Catherine, Franchise Development Manager, Jaguar Land Rover North America

- Andrew Conway, Chief, Registration Policy and Automation Branch, Department of

Motor Vehicles

- Jon Corn, Esq., Partner, Axelson Corn
- Donald H. Cram, Esq., Attorney, Severson & Werson, P.C.
- Victor Danhi, Esq., Attorney, Arent Fox LLP,
- Skip Daum, Executive Director, California Recreation Vehicle Dealers Association
- Robert E. Davies, Esq., Partner, Caulfield, Davies and Donahue LLP
- Robert L. Ebe, Esq., Partner, Nixon Peabody LLP
- Jose Escobar, Certification Program Analyst, Department of Consumer Affairs, Arbitration Certification Program
- Robert T. (Tom) Flesh, President/Public Member, New Motor Vehicle Board
- Michael J. Flanagan, Esq., Attorney, Law Offices of Michael J. Flanagan
- Mary Garcia, Branch Chief, Occupational Licensing, Department of Motor Vehicles
- Deborah Goldman, Esq., Managing Counsel, Toyota Motor Sales, U.S.A., Inc.
- Diana Woodward-Hagle, Administrative Law Judge, New Motor Vehicle Board
- Brad Hakala, Esq., Associate, Baker & Hostetler LLP
- Kevin Healy, Esq., Corporate Counsel, BMW of North America, LLC
- Peter Hoffman, Dealer Member, New Motor Vehicle Board
- Tina Hopper, Esq., Attorney, Law Offices of Michael M. Sieving
- Gavin M. Hughes, Esq., Attorney, Law Offices of Michael J. Flanagan
- Bruce L. Ishimatsu, Esq., Partner, Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg
- Chandra Kiamilev, Esq., Associate, Klinedinst P.C.
- Dawn Kindel, Staff Manager, New Motor Vehicle Board
- Debra Kingsbury, Esq., Assistant General Counsel, Sales & Marketing Volkswagen of America, Inc.
- Peter S. Kravitz, Esq., Vice President of Business Affairs, Giant RV
- Don Licker, Esq., Attorney
- Joe Lines, Esq., Attorney, General Motors LLC
- Jackson Long, Esq., General Counsel, ZAP
- Bernard Lu, Esq., Senior Staff Counsel, DMV Legal Office
- Jonathan Morrison, Esq., Staff Counsel, California New Car Dealers Association
- Delbert L. Miller, Vice President, KZRV, LP
- Brian Maas, Esq., Director of Government Affairs, California New Car Dealers Association
- Steven A. McKelvey, Jr., Esq., Partner, Nelson Mullins Riley & Scarborough
- Elizabeth McNellie, Esq., Partner, Baker & Hostetler LLP
- James Meyers, Retail Development Director, Kia Motors America
- Ken Murphy, Esq., Counsel, Arent Fox LLP
- Darren Nakano, Assistant General Counsel, Network Operations, Sales & Advertising, Mazda North American Operations
- Mark Nys, Esq., Shareholder, Klinedinst P.C.
- Tim Olson, 2nd Advisor to Commissioner Boyd, California Energy Commission
- Greg Oxford, Esq., Partner, Isaacs Clouse Crose & Oxford LLP
- Robin Parker, Esq., Senior Staff Counsel, New Motor Vehicle Board
- Kendra L. Pavkovic, Esq., Attorney, King & Spalding LLP
- Victoria R. Pearson, Dealer Member, New Motor Vehicle Board
- Jerold A. Prod, Administrative Law Judge, New Motor Vehicle Board
- Alexis Ramirez, Certification Program Analyst, Department of Consumer Affairs,

Arbitration Certification Program

- Bert Rasmussen, Esq., Partner, Manning, Leaver, Bruder & Berberich
- Allen Resnick, Esq., Partner, Jeffer, Mangels, Butler & Marmaro LLP
- Kelly Russo, Franchise Manager, Mercedes-Benz USA
- Maurice Sanchez, Esq., Partner, Baker & Hostetler LLP
- Jeffrey Schwarzschild, Esq., Deputy Attorney General, Office of the Attorney General
- Christopher W. Sheron, Esq., Managing Partner, Ackeret-Sheron LLP
- Michael M. Sieving, Esq., Attorney, Law Offices of Michael M. Sieving
- Glenn E. Stevens, Public Member, New Motor Vehicle Board
- Erin K. Tenner, Esq., Attorney, Tenner Johnson LLP
- Kathy Tomono, Analyst, New Motor Vehicle Board
- Houston N. Tuel, Jr., Esq., Owner, Law Offices of Houston Tuel
- Michael D. Vanlochem, Esq., Partner, Vanlochem & Chesney LLP
- Paul C. Vitrano, General Counsel, Motorcycle Industry Council
- Peter K. Welch, President, California New Car Dealers Association
- Mark Wexler, Regional Manager – Northern California, Ford Motor Company
- Robert Wheatley, Esq., Attorney, Wheatley Sopp LLP
- James Williams, Jr., Certification Program Analyst, Department of Consumer Affairs, Arbitration Certification Program
- David Wilson, Dealer Member, New Motor Vehicle Board
- Marilyn Wong, Administrative Law Judge, New Motor Vehicle Board

5. **ADJOURNMENT**

With no further business to discuss, Mr. Stevens moved to adjourn the meeting. Mr. Hoffman seconded the motion. The motion carried unanimously. The meeting was adjourned at approximately 3:35 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Robert T. (Tom) Flesh
President
New Motor Vehicle Board