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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on May 5, 2010, at the Mission Inn Hotel, Santa Barbara Room, 3649 Mission Inn Avenue, Riverside, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 1:33 p.m.

Present: Ramon Alvarez C. William G. Brennan, Executive Director
(Arrived 1:44 p.m.; left 4:00 p.m.) Robin Parker, Senior Staff Counsel
Ryan L. Brooks Jeffrey Schwarzschild, Deputy Attorney General
Robert T. (Tom) Flesh
Peter Hoffman
Glenn E. Stevens
David W. Wilson

Absent: David C. Lizárraga
Haig Papaian
Victoria R. Pearson

Mr. Flesh read Article 5 [debate and voting] of the Board adopted Parliamentary Procedures into the record as follows:

In any order of business before the Board which requires Board action or resolution, the Board shall have the opportunity to debate the matter before taking action thereon. Debate is any spoken comment on the merits of a pending matter, whether or not a motion has been made regarding the issues raised by the agenda item. At any time during the debate on an item, any Board Member may make a motion regarding the matter. The motion must be seconded by another Member of the Board prior to a vote thereon. If a motion is made regarding a particular item, debate on that item shall continue until the motion is seconded. Once the motion is seconded, the matter shall be voted upon, unless any member requests that debate continue. If a dispute arises as to whether debate shall continue, the issue shall be resolved by majority vote.

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE MARCH 23, 2010, GENERAL MEETING, AND MARCH 9, 2010, AND MARCH 24, 2010, SPECIAL MEETINGS**

Mr. Stevens moved to adopt the March 9, 2009, Special Meeting minutes, the March 23, 2009, General Meeting minutes, and the March 24, 2009, Special Meeting minutes. Mr. Hoffman seconded the motion. The motion carried unanimously.

5. **ORAL PRESENTATION BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD**

Given these three case management matters involved recreational vehicles both Public and Dealer Members participated.

Mr. Flesh read the following statement "comments by the parties or by their counsel that are made regarding any proposed decision or proposed order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board." Furthermore, he indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e), members of the public may not comment on such matters.

a. **RV READY v. GULF STREAM COACH, INC.**
Protest Nos. PR-2153-09 and PR-2178-09

Oral comments were presented before the Public and Dealer Members of the Board. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Chandra E. Kiamilev, Esq., of Klinedinst PC represented Respondent.

Protestant sought reimbursement for warranty and franchisor incentive program claims. A merits hearing was held before Administrative Law Judge Jerold A. Prod on December 21 and 22, 2009.

This Proposed Decision would order Respondent Gulf Stream Coach, Inc. to pay Protestant RV Ready Inc. \$20,713.48 for warranty claims and \$6,000 for an incentive on the sale of an RV to the Callaways, for a total of \$26,713.48 to be received by RV Ready no later than 30 days after the decision is final and approved by the Board. The protest would be overruled regarding incentive claims for the October 13-24, 2008 Pomona Show (\$3,500), the May 2008 Las Vegas Show (\$5,000), and interest reimbursement on four RVs from February 29 through December 2008 (\$19,161.63).

- b. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2198-10 and PR-2200-10

Oral comments were presented before the Public and Dealer Members of the Board. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

Protestant filed four 3070 modification protests. Respondent filed "Respondent's Motion to Dismiss Consolidated Protests" and "Respondent's Motion to Dismiss Protest" (PR-2200-10).

A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on March 15, 2010. The Proposed Order dated April 19, 2010, grants Respondent's Consolidated Motion to Dismiss with regards to McMahan's Scotts Valley (PR-2198-10) and grants Respondent's Motion to Dismiss with regards to McMahan's Palm Desert (PR-2200-10). However, after the submission of a declaration from James Hammill, Roadtrek's President, a Supplemental Order was issued on April 29, 2010, denying Respondent's Motion to Dismiss with regards to McMahan's Scotts Valley (PR-2198-10). Therefore, the only matter pending before the Board for consideration was the Proposed Order Granting the Motion to Dismiss with regards to McMahan's Palm Desert (PR-2200-10).

During the course of the comments, counsel for Protestant referenced a recently obtained OL-124 Form for McMahan's Palm Desert signed by Roadtrek. However, since this was outside the administrative record it was not taken into consideration by the Board.

- c. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2207-10 and PR-2210-10

No further comments were submitted by counsel in light of the comments submitted during Agenda Item 5(b). Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

Protestant filed four 3075 warranty claim protests and four 3076 franchisor incentive program reimbursement protests. Respondent filed a motion to dismiss all eight protests.

A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on April 7, 2010. The Proposed Order grants Respondent's Motion to Dismiss with regards to McMahan's Palm Desert (PR-2207-10 and PR-2210-10).

6. **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.

a. **CONSIDERATION OF PROPOSED DECISION**

RV READY v. GULF STREAM COACH, INC.
Protest Nos. PR-2153-09 and PR-2178-09

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

During the closed Executive Session deliberations, the members determined that they needed to review Exhibit 3. After consideration of Agenda Items 6(b) and 6(c), the members returned to Open Session.

b. **CONSIDERATION OF PROPOSED ORDER**

MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2198-10 and PR-2200-10

Consideration of the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Consolidated Protests with Respect to Protest No. PR-2198-10" and "Proposed Order Granting Respondent's Motion to Dismiss Protest" (PR-2200-10), by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest" (PR-2200-10). Mr. Brooks seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF PROPOSED ORDER**

MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2207-10 and PR-2210-10

Consideration of the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest Nos. PR-2207-10 and PR-2210-10", by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest Nos. PR-2207-10 and PR-2210-10". Mr. Brooks seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

The Public and Dealer Members returned to Open Session. With the consent of counsel for Protestant and Respondent in *RV Ready v. Gulf Stream Coach, Inc.*, Protest Nos. PR-2153-09 and PR-2178-09 (Agenda Item 6(a)), the Board was provided with a set of exhibits and in particular referenced Exhibit 3.

Prior to returning to closed Executive Session deliberations, Ms. Parker announced the decisions in Agenda Items 6(b) and 6(c). Mr. Flesh indicated that the dismissals in these cases were without prejudice.

6. **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.

a. **CONSIDERATION OF PROPOSED DECISION**

RV READY v. GULF STREAM COACH, INC.
Protest Nos. PR-2153-09 and PR-2178-09

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

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision with the exception of the Administrative Law Judge's denial of payment of \$3,500 for the sales incentive at the Pomona Show; Respondent shall pay \$3,500 under the terms of the other payments. Mr. Wilson seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

The Public and Dealer Members returned to Open Session. Mr. Flesh indicated that Mr. Alvarez participated and voted on this matter but left prior to the decision being announced. Ms. Parker announced the decision in Agenda Item 6(a).

8. **CONSIDERATION OF ROADTREK MOTORHOMES, INC.'S REQUEST FOR EXTENSION OF TIME TO AUDIT MEGA RV CORP. D/B/A MCMAHON'S RV (COLTON, SCOTTS VALLEY AND IRVINE LOCATIONS) PURSUANT TO VEHICLE CODE SECTION 3076(B)**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning Roadtrek Motorhomes, Inc.'s request for an extension of time to audit Mega RV Corporation doing business as McMahon's RV in Colton, Scotts Valley and Irvine pursuant to Vehicle Code section 3076(b).

At the March 23, 2010, General Meeting, the members considered Roadtrek's request that the Board grant it permission to conduct a sales incentive audit of McMahon's RV for 36 months after the claim was paid or credit was issued. This period is beyond the 18 months provided for in Vehicle Code section 3076 and requires a Board order.

The Board tabled this matter until the May 5 meeting with the understanding that McMahon's was going to cooperate and provide the 26 deal jackets requested by Roadtrek within two weeks from the meeting and Roadtrek was to provide a list of the deal jackets within a week of the meeting. Counsel was to inform the Board staff if Protestant provided all of the information within 30 days. Accordingly, if it had been provided then the matter would come off the May 5 agenda. If the deal jackets had not been provided, then the Board would appoint an administrative law judge to make specific findings as to fraud. Ultimately, the Board decided that the matter would be on the May 5 agenda unless counsel for Respondent requested that the matter be pulled from consideration.

As a result of follow-up initiated by the Board staff on April 7 and again on April 21, 2010, counsel for Roadtrek, Lou Chronowski, indicated in an e-mail as follows:

McMahon's did allow Roadtrek to audit certain files at the offices of its attorneys. We have not been able to resolve the issue of fraud committed by McMahon's that would grant Roadtrek a longer audit period as allowed by California law. Roadtrek still needs the board to allow the longer audit period. I believe the board indicated that it would assign an ALJ to make that determination. Roadtrek still requests that the board order a longer audit period.

Given this involves recreational vehicles both Public and Dealer Members participated. Louis S. Chronowski, Esq. of Seyfarth Shaw LLP represented Roadtrek. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented McMahon's RV.

After a lengthy discussion, Mr. Brooks moved to deny Roadtrek's request for an extension of the time to audit McMahon's RV. Mr. Wilson seconded the motion. The motion carried unanimously.

9. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteras Employee Recognition Award. The staff submitted employee nominations to the Board Development Committee, David C. Lizárraga and Ryan Brooks, who ultimately recommended Nicole Angulo as the Employee Recognition Award recipient. Ms. Angulo is a Legal Assistant in the legal department. Mr. Brooks recognized Nicole for her ability to juggle tasks, her reliability, and willingness to take on new duties. Mr. Flesh indicated that if the DMV does not continue this program in light of the current economic situation, then the Board would revisit this. Mr. Brooks stepped away briefly therefore this vote was postponed. Mr. Brennan indicated that Nicole does an outstanding job and merits the recognition.

10. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's

collection of the Arbitration Certification Programs' Annual Fee. Mr. Brennan reported that the fee collection was completed. The memorandum indicated that the Board collected \$1,042,000 to fund its Program or \$.714 per vehicle. Invoices were sent to 40 manufacturers and distributors in January 2010. Chrysler Group LLC is the only company that has yet to submit payment. Since this fee is based on vehicles sold in 2008 under Chrysler Group, which was dissolved in Chapter 11 bankruptcy, payment from them remains in question, and will be handled by separate counsel representing the Arbitration Certification Program.

11. **SEMI-ANNUAL DISCUSSION AND CONSIDERATION OF THE METHODS FOR DETERMINING BOARD FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the semi-annual discussion and consideration of the methods of determining Board fees. Mr. Brennan indicated that this matter would be postponed to the June meeting.

9. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

Mr. Brooks moved to adopt the Committee's recommendation and name Nicole Angulo the Solon C. Soteris Employee Recognition Award recipient. Mr. Hoffman seconded the motion. The motion carried unanimously.

12. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation of Special Interest - none.
- b. Pending Legislation of General Interest.
 - (1) Assembly Bill 2597 (Assembly Member Berryhill).
 - (2) Senate Bill 980 (Senator Huff).
 - (3) Senate Bill 1208 (Senator Strickland).
 - (4) Senate Bill 1393 (Senator Simitian).
- c. Pending Federal Legislation of General Interest.
 - (1) United States House of Representatives Bill 2743 (U.S. Representative Maffei) - Automobile Dealer Economic Rights Restoration Act of 2009.
 - (2) United States House of Representatives Bill 2796 (U.S. Representative LaTourette) - Automobile Dealer Economic Rights Restoration Act of 2009.
 - (3) United States House of Representatives Bill 3311 (U.S. Representative Blumenauer).
 - (4) United States House of Representatives Bill 3450 (U.S. Representative Jackson-Lee) - Automobile Dealers Fair Competition Act of 2009.
 - (5) United States Senate Bill 209 (U.S. Senator Boxer).
 - (6) United States Senate Bill 247 (U.S. Senator Feinstein) - Accelerated Retirement of Inefficient Vehicles Act of 2009.

- (7) United States Senate Bill 271 (U.S. Senator Cantwell) - Fuel Reduction using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2009.
- (8) United States Senate Bill 1200 (U.S. Senator Feinstein) - Short Term Accelerated Retirement of Inefficient Vehicles Act of 2009.

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning pending legislation. Ms. Parker indicated that there was no pending State legislation that impacts the Board. There are additional Federal bills that may be added to the report in June.

Mr. Brooks inquired about the Board sponsoring legislation to clean up the discrepancies in the RV statutes [Article 5 protests]. Mr. Brennan indicated that he would contact Skip Daum of the CalRVDA and ask him to attend a meeting and discuss the RV industry. Mr. Hoffman requested that the manufacturer association [RVIA] also be invited to address the Board.

13. 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.

Ms. Parker indicated that seven protests had been dismissed since the members received their written report including *Platinum Motors v. Lamborghini*. Additionally, three new protests have been filed for a total of 36 since January. By comparison, in 2009 there were 17 protests during the same time period.

With regards to judicial matters, Mr. Brennan reported that the *Calabasas Euro Auto Group LLC v. New Motor Vehicle Board* writ was dismissed. Furthermore, there had been no dates set in *Volkswagen Group of America, Inc. v. New Motor Vehicle Board (Walter Timmons Enterprises, Inc. dba Timmons Volkswagen)*. Mr. Brennan indicated that on the court's motion the trial setting conference was continued until June 11, 2010 in *Powerhouse Motorsports v. New Motor Vehicle Board (Yamaha Motor Corp., Inc.) Carlsen Subaru v. New Motor Vehicle Board (Subaru of America, Inc.)* was dismissed because Carlsen Subaru's opening brief was not timely filed. Lastly, Mr. Brennan indicated that no dates had been set as of April 22, 2010, in *Serpa Automotive Group v. New Motor Vehicle Board (Volkswagen of America)*.

14. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2010**

The members were provided with a memorandum from Bill Brennan concerning upcoming Board meeting dates. This matter was postponed until the June meeting.

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

Mr. Flesh complimented the staff on the success of the recent Industry/Attorney Roundtable. No additional public comment was presented.

16. **ADJOURNMENT**

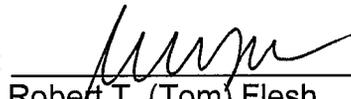
With no further business to discuss, the meeting was adjourned at approximately 4:41 p.m.

Submitted by



WILLIAM G. BRENNAN
Executive Director

APPROVED:



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