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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a Special meeting on July 10, 2020, via Zoom and Teleconference.

Kathryn Doi, President and Public Member, called the meeting of the Board to order at 9:13 a.m.

Ms. Doi welcomed everyone to the first virtual meeting of the Board since COVID-19. She acknowledged the Board staff’s extraordinary efforts to continue the smooth operation of the Board during this time. Ms. Doi stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff.

The Board’s Executive Director, Timothy Corcoran, set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Kathryn Ellen Doi
Ramon Alvarez C. (Dealer Member did not participate)
Anne Smith Boland (Dealer Member did not participate)
Inder Dosanjh (Dealer Member did not participate)
Ardashes “Ardy” Kassakhian
Daniel P. Kuhnert
Nanxi Liu
Bismarck Obando

Board Staff Present: Timothy M. Corcoran, Executive Director
Danielle R. Phomsopha, Staff Counsel
Dawn Kindel, Chief of Staff
Suzanne Luke, Administrative Services Analyst
Eugene Ohta, IT Tech
Alejandro Martinez, Office Assistant

Mr. Corcoran indicated that all Public Board Members are in attendance and the Dealer Board Members are in attendance for observation only.

3. **9:05 - 11:05 a.m.**

a. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

BARBER GROUP, INC., a California corporation doing business as BARBER HONDA v. AMERICAN HONDA MOTOR CO., INC., a California corporation; GALPINSFIELD AUTOMOTIVE, LLC, Intervenor
Protest No. PR-2539-17

Ms. Doi reminded the Dealer Members that they may not participate, hear, comment or advise other members upon or decide this matter. Ms. Doi read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. In addition, these are adjudicative matters as described in Government Code section 11125.7(e) and therefore members of the public may not comment on such matters.”

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq., along with Robert Mayville, Esq., of the Law Offices of Gavin M. Hughes, represented Protestant. Also present for Protestant were Steve Ekegren and Jonathan Ekegren. S. Keith Hutto, Esq. represented Respondent, along with Steven McFarland, Esq. and Patrick Quinn, Esq. of Nelson Mullins Riley & Scarborough LLP. Also present for Respondent were Frank Beniche of Honda’s national office and Eric Van Olst of Honda’s California zone relevant to this Protest. Alan Skobin, Esq. of Galpinsfield Automotive, LLC, represented Intervenor. Also present for Intervenor was Beau Boeckmann, owner of Galpinsfield Automotive, LLC and Chief Executive Officer and part-owner of all other Galpin dealerships.

All parties received a copy of the Proposed Decision and stipulated to the recording of these proceedings without a court reporter.

b. **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.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED DECISION

BARBER GROUP, INC., a California corporation doing business as BARBER HONDA v. AMERICAN HONDA MOTOR CO., INC., a California corporation; GALPINSFIELD AUTOMOTIVE, LLC, Intervenor
Protest No. PR-2539-17

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. Kassakhian moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Kuhnert seconded the motion. The motion carried by a 4:1 vote with Mr. Obando opposed.

c. OPEN SESSION

The Public Members returned to Open Session. Ms. Doi announced the decision in Agenda Item 3.

4. 11:05 a.m. - 11:15 a.m. Break

The morning break was skipped to allow the meeting to remain on schedule.

5. 11:15 a.m. - 12:00 p.m.

a. ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD

FAIRFIELD IMPORTS, LLC, a California Limited Liability Company v. TOYOTA MOTOR SALES, USA, INC., a California Corporation
Protest Nos. PR-2579-18 and PR-2580-18

Ms. Doi reminded the Dealer Members that they may not participate, hear, comment or advise other members upon or decide this matter. Ms. Doi read the following statement "comments by the parties or their counsel must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. It's an adjudicative matter as described in Government Code section 11125.7(e) and members of the public may not comment as well."

Oral comments were presented before the Public Members of the Board. Ms. Phomsopha confirmed counsel for Protestant did not intend to be present. Ronnie McMahan, Esq. of Nelson Mullins Riley & Scarborough LLP, represented Respondent. Mr. McMahan confirmed he received a copy of the Proposed Order.

b. **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.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED ORDER

FAIRFIELD IMPORTS, LLC, a California Limited Liability Company v.
TOYOTA MOTOR SALES, U.S.A., INC., a California Corporation
Protest Nos. PR-2579-18 and PR-2580-18

Consideration of the Administrative Law Judge's Proposed Order Granting "Respondent Toyota Motor Sales, U.S.A., Inc.'s Motion to Dismiss Protests," by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Obando moved to adopt the Administrative Law Judge's Proposed Order. Ms. Liu seconded the motion. The motion carried unanimously.

c. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Doi announced the decision in Agenda Item 5.

After a brief lunch break from 12:08 p.m. to 12:35 p.m., Mr. Corcoran again set forth the parameters for the meeting. Ms. Doi requested Mr. Corcoran take roll to ensure a quorum. Mr. Corcoran indicated that all Public Board Members are in attendance and Dealer Members Alvarez and Smith Boland are in attendance as observers.

6. **12:30 p.m. - 2:30 p.m.**

PRESENTATION OF THE DEPARTMENT OF MOTOR VEHICLE'S REPORT OF INVESTIGATION BY INVESTIGATOR GARY CONSTANTINO REGARDING WHETHER THE CARE BY VOLVO SUBSCRIPTION PROGRAM VIOLATES VEHICLE CODE SECTIONS 11713.3(o)(1), 3060(b), 11713.3(u) and/or 11713.19.

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. VOLVO GROUP NORTH AMERICA LLC aka VOLVO CAR USA, LLC
Petition No. P-460-19

Discussion of the Department of Motor Vehicle's Report of Investigation, by the Public Members of the Board.

Ms. Doi reminded the Board Members that there is no authority to go into Closed Executive Session with respect to this Petition and the only action the Board can take is public comments since this is not an action item.

Ms. Phomsopha provided a brief summary of the April 2019 Dealer Members recusal. She stated "Dealer Members are precluded from participating in this matter including but not limited to considering, hearing, commenting on, advising other Board Members on or deciding the issues raised in the Petition."

Mr. Corcoran made a brief presentation of the Department of Motor Vehicle's investigative findings.

Colm Moran, Esq., of Shook, Hardy & Bacon L.L.P. represented Respondent, Volvo Group North America LLC aka Volvo Car USA LLC ("Volvo"). Mr. Moran stated that Volvo does not agree with the factual or legal conclusions reached in the report and Volvo has stopped running the Care by Volvo program in California. Mr. Moran believes no further action by the Board is necessary in regard to this matter.

Peter Wexler, head of Care by Volvo at Volvo, commented that working with innovation in the automotive industry is not easy but it is an ongoing process to identify issues and make program changes to address those issues. Volvo is waiting to introduce the second version of Care by Volvo ("Care by Volvo 2.0") in California. It will revise the program in light of DMV's Investigative Report and restart the program in California at a later date. Volvo will be in direct consultation with the DMV in regard to all program changes prior to restarting the program.

Brett Osborn of the Volvo Retailer Advisory Board commented that the relationship that Volvo retailers have with Volvo Cars USA is above and beyond any other relationship they have with other manufacturers. Mr. Osborn feels that Volvo really supports its retailers.

Jason Church, who is part of a dealership group that participated in the first version of Care by Volvo and is currently participating in Care by Volvo 2.0 in another state, commented that their dealership has had success with the program and he believes the subscription program works because it benefits both the retailer and consumer.

Michael Cypers, Esq., of Glaser Weil Fink Howard Avchen & Shapiro LLP, represented the Petitioner California New Car Dealers Association ("CNCDA"). Mr. Cypers commented that this is the first time he's heard that Volvo affirmatively stopped the Care by Volvo program in California. CNCDA continues to try to work with Volvo in regard to Care by Volvo 2.0 and ensuring it complies with California law. Petitioner wants the Board to accept the findings in the Investigative Report and agendaize this item for further briefing to send the matter back to DMV for licensing action against Volvo and to receive representations from Volvo in writing with regard to the current status of Care by Volvo.

Mr. Moran commented in response to Mr. Cypers that there is no statutory procedure for the Board to adopt and accept DMV's Investigative Report. Further, the licensing action Mr. Cypers is requesting can only be the suspension or revocation of Volvo's license, which would put Volvo retailers in California out of business.

Ms. Doi commented that there is also the possibility for the filing of an additional petition requesting further investigation into the issues Mr. Cypers raised.

Mr. Cypers commented that there are other forms of license-related relief that the DMV could issue, including putting conditions on Volvo's license or fines against Volvo, as part of the relief requested in CNCDA's original Petition.

Mr. Moran stated that the Investigative Report does not make "findings" because there was not a due process hearing. Volvo was never adjudicated to have violated any law. To make such findings an administrative law judge would need to be assigned after the filing of an accusation against Volvo by the DMV. The DMV has already expressed that it does not want to file such an accusation.

Public Members Kassakhian, Kuhnert, Liu and Obando stated they do not need to hear further on this matter at the next meeting. Ms. Doi did not necessarily agree but out of respect for the majority, she does not see the need to agendize the matter for further action.

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

No additional public comment was presented.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:42 p.m.

Submitted by



TIMOTHY M. CORCORAN
Executive Director

APPROVED:



Kathryn Ellen Doi
President
New Motor Vehicle Board