

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

10:05 a.m.
Thursday,
July 8, 2010

Capital Extension Room
Hearing Room E1.028
Austin, Texas

BOARD MEMBERS:

Victor Vandergriff, Chair
Cliff Butler
Jim Campbell
Ramsay Gillman
Cheryl E. Johnson
Janet Marzett
Victor Rodriguez
Marvin Rush
Johnny Walker

STAFF MEMBERS:

Ed Serna, Executive Director
Brett Bray, General Counsel

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. CALL TO ORDER	
A. Roll Call and Establishment of Quorum	4
B. Public Comment (none)	5
2. BRIEFINGS	
A. ADMINISTRATIVE UPDATES	
1. Chair Reports	6
2. Fiscal Update	7
3. Board Committee Reports (none)	
4. Advisory Committees (deferred)	9
5. Executive Director Report	10
6. Approval of 2011 meeting schedule	17
3. EXECUTIVE SESSION	44
Section 551.071 - Consultation with and advice from legal counsel regarding:	
A. pending or contemplated litigation, a settlement offer, or	
B. any item on this agenda.	
Section 551.074 - Personnel matters. Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel	
4. CONSENT AGENDA	19
A. CONSIDERATION OF ENFORCEMENT AGREED ORDERS UNDER OCCUPATIONS CODE, CHAPTER 2301	
B. CONSIDERATION OF ENFORCEMENT NOTICE OF VIOLATION CITATION AGREED ORDERS UNDER OCCUPATIONS CODE, CHAPTER 2301	
C. CONSIDERATION OF SETTLEMENT AND DISMISSAL ORDERS UNDER OCCUPATIONS CODE, CHAPTER §2301.204	

5.	RESOLUTIONS FOR INDIVIDUAL CONSIDERATION	
A.	PROPOSED RULES UNDER TITLE 43, TEXAS ADMINISTRATIVE CODE	
1.	Chapter 217 - Vehicle Titles and Registration Subchapter B. Motor Vehicle Registration - Amendments §217.28, Speciality License Plates, Symbols, Tabs and Other Devices	35
B.	CONSIDERATION OF FRANCHISE PROPOSAL FOR DECISION UNDER OCCUPATIONS CODE CHAPTER 2301	38
	10-0013 LIC - Walkabout RV, LLC, Complainant v. Forest River, Inc., Respondent	
C.	CONSIDERATION OF WARRANTY PERFORMANCE PROPOSALS FOR DECISION UNDER OCCUPATIONS CODE CHAPTER 2301	19
	10-0135 CAF - Cletus Smith v. Lexus a Division of Toyota Motor Sales, Inc.	
D.	CONSIDERATION OF ENFORCEMENT MOTIONS FOR DISPOSITION BASED ON DEFAULT UNDER OCCUPATIONS CODE CHAPTER 2301	41
1.	01-0240 ENF - Ballard's Freedom RV LLC., Ballard's Freedom RV	
2.	10-0630 ENF - Republic Enterprises, Inc., DBA Republic Enterprises, Inc. (Settled)	
3.	10-0709 ENF - Glen James Parker, DBA Rocking P. Auto Sales	
6.	ADJOURNMENT	45

P R O C E E D I N G S

1
2 MR. VANDERGRIFF: Good morning. My name is
3 Victor Vandergriff, and I'm pleased to welcome you here
4 today to the meeting of the Board of the Department of
5 Motor Vehicles. I'm now calling the meeting of July 8,
6 2010, of the Board of the Texas Department of Motor
7 Vehicles to order, and I want to note for the record that
8 the public notice of this meeting, containing all items on
9 the agenda, was filed with the Office of Secretary of
10 State on June 28, 2010.

11 Before we begin today's meeting, please place
12 all cell phones and other communication devices in the
13 silent mode. And if you wish to address the board during
14 today's meeting, please complete a speaker's card at the
15 reception table in the lobby. To comment on an agenda
16 item, please complete a yellow card and identify the
17 agenda item. If it is not an agenda item, we will take
18 your comments during the public comment portion of the
19 meeting.

20 And now I'd like to have a roll call, please,
21 of the board members.

22 Board Member Butler?

23 MR. BUTLER: Here.

24 MR. VANDERGRIFF: Board Member Campbell?

25 MR. CAMPBELL: Here.

1 MR. VANDERGRIFF: Board Member Gillman is not
2 present. Vice Chair Johnson?

3 MS. JOHNSON: Here.

4 MR. VANDERGRIFF: Board Member Rodriguez?

5 MR. RODRIGUEZ: Present.

6 MR. VANDERGRIFF: Board Member Rush?

7 MR. RUSH: Here.

8 MR. VANDERGRIFF: Board Member Walker?

9 MR. WALKER: Here.

10 MR. VANDERGRIFF: And Board Member Marzett is
11 also not here today, and let the record reflect that I,
12 Victor Vandergriff, am here as well. We do have a quorum.

13 With that, I would ask if there's anyone in the
14 audience who has an item that they would like to speak on
15 in the public comment section that is not related to a
16 specific item on our agenda. If they do, this is the time
17 to do that. I do not see anybody.

18 I'm going to go out of order in the interest of
19 the other commitments of one of the parties here today.
20 If you would refer to, board members, agenda item 5.C,
21 which is the consideration of the warranty performance
22 proposals, it's Cletus Smith v. Lexus a Division of Toyota
23 Motor Sales. I believe the parties are aware that we
24 would call that one up first. Are the parties here?

25 MR. ST. ARMAND: I do not see them. I'm the

1 representative for the manufacturer, but I don't see the
2 complainant.

3 MR. VANDERGRIFF: Okay. Well, thank you. I
4 think Ms. Smith was the one who wanted to, but because of
5 her schedule, she's not here. So we'll go back to our
6 regular agenda. Thank you, and we'll call you in just a
7 second.

8 With that, we're back on to the first page of
9 the agenda and the briefings and administrative updates.
10 I'll start off with really to my knowledge, we did not
11 have any major stakeholder meetings or industry meetings
12 that I attended, however, if some of the board members
13 did, if they would like to address that and inform the
14 public.

15 MS. JOHNSON: We did address the conference in
16 Galveston?

17 MR. VANDERGRIFF: Yes.

18 MS. JOHNSON: Okay, excellent. Thank you.

19 MR. VANDERGRIFF: Apologize for that. Anybody
20 else, any of the board members have anything they attended
21 they'd like to make record or note of?

22 (No response.)

23 MR. VANDERGRIFF: Do not. We do have a
24 quarterly report that's pending to the governor and we'll
25 send that out to the board here shortly. With that, I'd

1 like to move to the fiscal update and Linda Flores.

2 MS. FLORES: For the record, my name is Linda
3 Flores. I'm the chief financial officer for the
4 Department of Motor Vehicles.

5 And in your notebook it's towards the very
6 back, it's the last tab, you've got a new monthly report
7 for expenditures for the month ending June 2010. The
8 material in front of you is slightly different based on
9 input that I received from the committee members a couple
10 of months ago. I provided what you're used to seeing, the
11 FY '10 expenditures overview snapshot which includes all
12 of the agency's dedicated pots of money for Vision 21,
13 Texas Sure Program, and it also includes the Meyers
14 Settlement which is really the reason why you see a major
15 expenditure spike in the month of November. With all of
16 our expenditures through June, we've spent \$87.8 million.

17 If you flip to the next page, and I apologize,
18 I'm not really sure if you have that. It should be a
19 double-sided right behind there. We had some difficulties
20 yesterday. Your's is single-sided?

21 MR. SERNA: Yes.

22 MR. VANDERGRIFF: Well, I apologize. I had
23 also provided a snapshot of expenditures without those
24 dedicated pots of money.

25 MR. VANDERGRIFF: I think that's here, it's

1 just a few more pages in.

2 MS. FLORES: The next page then should be your
3 Schedule A where I've outlined specific detail for
4 contracted services and I've identified all of the other
5 operating expenses that board members had questions, so
6 I've detailed that other operating expenditures by
7 division, and I've included footnotes so that you can see
8 where those major expenditures are occurring and what
9 they've specifically been identified for, and you'll see
10 that on a continuous basis.

11 A couple of sheets after that, you'll see the
12 snapshot without those major dedicated pots of money for
13 Texas Sure, Meyers, or the insurance verification. Year
14 to date on those expenditures are \$62.9 million for the
15 agency. And then I've also included a couple of graphs to
16 kind of show you with and without those expenditures and
17 it kind of smooths out the agency, the very last graph
18 kind of shows you those recurring expenditures that we
19 will incur from month to month, our operating expenses.

20 Back on the major overview, you'll see that we
21 had a budget of \$180.8 million, and through the month of
22 June we've spent \$87.9 million, so even with the next
23 couple of months still left to go, we're not going to
24 spend a lot of that money, and as I reported back, a lot
25 of that has to do with the Vision 21 project. We had an

1 appropriation of approximately \$30 million, year to date
2 we've spent about \$500,000. Mr. Serna has taken that
3 project on and has a more aggressive plan for next year,
4 and we have the ability to move that money forward into FY
5 '11, so we are planning do that. That will leave us with
6 a budget for that program for FY '11 of over \$60 million,
7 so it will take a major aggressive plan to expend that
8 amount of money in one fiscal year.

9 And that concludes my presentation on
10 expenditures.

11 MR. VANDERGRIFF: Do any members have questions
12 of Ms. Flores?

13 MR. RUSH: I liked the presentation myself.

14 MR. VANDERGRIFF: Thank you very much.

15 MS. FLORES: Thank you.

16 MR. VANDERGRIFF: On the advisory committees,
17 I'm going to speak up just for a second is that I think
18 we'll come back to you, Ed will come back in the August
19 meeting, we're kind of rethinking that and just reaching
20 out to a couple of the stakeholders about how to do this,
21 and so with Ed's permission, we'll pass this one until our
22 next meeting. And with that, I will move to the executive
23 director report.

24 MR. SERNA: Good morning, Mr Chairman, board
25 members. For the record, my name is Ed Serna. I'm the

1 executive director for the Texas Department of Motor
2 Vehicles.

3 A couple of things to report. The agency has
4 been providing information to the news media on a couple
5 of issues. First of all, we had some information
6 requested by the Dallas Morning News concerning state
7 official plates. There was an issue concerning a
8 representative. There was a request, because of the
9 nature of the request and the fact that a lot of the
10 information associated with a motorist's license plates is
11 protected by the Driver Privacy Protection Act, we did
12 submit a request to the Attorney General on what
13 information we could release or not release. We will also
14 notify all the holders of state official plates, as is
15 required in statute, that we've submitted a request to the
16 Attorney General's Office for a decision on what
17 information we can release or not release.

18 What we basically asked for was a list of all
19 the holders of state official plates, second, a list of
20 correspondence between the department and a particular
21 member, and then third, a list of correspondence from the
22 member and the department. So we're simply asking for
23 clarification on releasing that. We have provided
24 whatever information we could provide.

25 In addition, yesterday we got some information

1 requests from the Dallas Morning News concerning the
2 content of a press release by My Plates, the specialty
3 plates vendor. There was some question concerning the
4 validity of some information that the My Plates vendor had
5 included in some press releases concerning the auction
6 plates in the Dallas-Fort Worth area, so we're providing
7 information again to the Dallas Morning News there as
8 well. We'll continue to keep you abreast of any other
9 requests that we get.

10 A couple of other items that I want to point
11 out, actually three more items so it shouldn't take too
12 much longer, Mr. Chairman. Two board members, Member
13 Walker and Member Johnson, participated with staff, we
14 convened a motor carrier safety work group to discuss the
15 issues around the license plates on motor carrier
16 trailers, semi trailers, trying to come to some resolution
17 that would be beneficial to the carriers and to the state
18 with regard to ensuring getting those registered and
19 keeping those registered in Texas.

20 I think staff got some very good feedback from
21 the work group and from our two board members that
22 participated. The direction that we're taking, and either
23 Ms. Johnson or Mr. Walker can add to this, but the
24 direction that we're taking is to consider creation of
25 essentially a plate that the motor carriers don't have to

1 go around annually to place a sticker on, that they could
2 still renew annually, the equivalent of a permanent plate
3 but we're not going to call it a permanent plate because
4 eventually the plate may need to be replaced.

5 We believe that the solution -- which, by the
6 way, the work group included representatives from DPS,
7 TxDOT's Traffic Operations, of course our own staff, Motor
8 Carrier Division and the federal motor carrier
9 representatives, the regulatory agency there -- we believe
10 that the solution will enable and encourage more of our
11 trucking companies to register their trailers here, take
12 some of the bureaucracy out of them having to chase those
13 trailers down with a sticker, and still ensure that the
14 trailers that are on the road are registered and safe, so
15 we're really comfortable with that.

16 And I don't, Mr. Walker, if you wanted to add
17 anything else, or Ms. Johnson.

18 MS. JOHNSON: It's my understanding that rules
19 will be prepared and brought to the board shortly
20 regarding those recommended changes.

21 MR. SERNA: Yes, ma'am, because it will require
22 rule changes.

23 MS. JOHNSON: Thank you.

24 MR. SERNA: And that, of course, will allow for
25 public comment, et cetera.

1 The other thing I wanted to point out is -- I'm
2 sorry, Mr. Walker, go ahead.

3 MR. WALKER: I think we are going to call those
4 a permanent tag because what we decided we could do, Ed,
5 was that we have the ability today to use the same --
6 there was concern about the reflectivity of the license
7 plate after seven years, so we have to change the license
8 plate at seven years, but today with the ability we have,
9 if a truck trailer has a tag that's number 100 on it, we
10 can take and still use that same number on that vehicle
11 again because we have the ability to print the same number
12 continually always for the same vehicle. So even though
13 there's a transition period which we would like to give
14 about a 90-day window to swap out those plates from the
15 time we send them out to the time of that, the number will
16 stay the same so all we're doing is just swapping plates
17 every seven years but the same number, so it will be a
18 permanent number affixed to that.

19 MR. SERNA: Sort of a permanent number on a
20 non-permanent plate.

21 MR. WALKER: For seven years.

22 MR. SERNA: I understand.

23 (General laughter.)

24 MR. WALKER: And the other thing that I think
25 we brought up in there was that in the rulemaking we want

1 to also do away with the five-year plates because there
2 will be no reason to have a five-year plate anymore, I
3 think Mr. Craig said, so we want of kind of clean up the
4 records on that.

5 And the other thing was that we want to make
6 sure that we can do an annual billing on these plates
7 instead of a five-year or whatever billing that we've been
8 doing, so they just continually pay the same amount as you
9 register them on a single billing.

10 MR. SERNA: Right. The last two items I want
11 to mention, one of the things that we're preparing to do
12 is change our window sticker. We've had some complaints
13 concerning -- we're not changing the window sticker very
14 much and there's copies that we can distribute to the
15 board members -- but we're basically changing the window
16 sticker so that the backing on it won't be solid blue
17 anymore. The intent of this is that a motorist will be
18 able to actually see from inside the vehicle that his
19 registration is expired or getting ready to expire versus
20 only being able to see it from outside.

21 We did check, and I asked staff to test it for
22 visibility coming towards because of my concerns and law
23 enforcement that there would be diminished ability for law
24 enforcement to be able to drive and see that a sticker is
25 expiring or has expired, and we did test it for that and

1 it is still very visible from outside the vehicle as
2 you're driving towards it, and then now it's visible from
3 inside the vehicle as well, it's translucent. So we are
4 making that change. We, of course, as usual, will work
5 through our current inventory and we'll put this in place
6 when we get to the new inventory.

7 MS. JOHNSON: I have a question, please.

8 MR. SERNA: Yes, ma'am.

9 MS. JOHNSON: Has this been tested for the
10 crinkle effect, because several years ago in 2005 the
11 sticker that we had was extremely difficult to peel off
12 without it having to be reapplied with packing tape, and
13 that's when we had the change. And so we won't have that
14 problem?

15 MR. SERNA: No, ma'am.

16 MS. JOHNSON: Okay, wonderful.

17 MR. SERNA: It's, in essence, the same sticker
18 just with that center color taken off. I was one of the
19 people that complained about that as well, you couldn't
20 get it off the paper to put it on your window.

21 MS. JOHNSON: Right, yes.

22 MR. SERNA: So we didn't change that formula,
23 it's just that center color. We wanted to benefit our
24 motorists.

25 MS. JOHNSON: Excellent. Thank you.

1 MR. SERNA: And then the last thing I have to
2 report is on our hirings. All of our vacancies have
3 closed for Vehicle Titles and Registration Division
4 director, the Motor Carrier Division director, the
5 Enforcement Division director, the Motor Vehicle Division
6 director, and Consumer Relations Division director, and
7 the Human Resource manger. We're in the process of
8 screening the applicant pools down. For the Vehicle
9 Titles and Registration position we received 74
10 applications total; I'm not saying there are 74 that are
11 all qualified but 75 total. I'm actually screening those.
12 Motor Carrier, we got 59 total. Enforcement, Motor
13 Vehicle and Consumer Relations, I had posted internal to
14 the department only. We had three for Enforcement, five
15 for Motor Vehicle, and ten for Consumer Relations. And
16 then for HR, Dawn, how many did we get on HR, roughly?

17 MS. HEIKKILA: (Speaking from audience.) I
18 don't know.

19 MR. SERNA: That posting did close, we don't
20 have a number yet on that. Once we get the HR manager
21 onboard, then we'll be able to hire the HR staff. We're
22 getting ready to work on postings for some finance
23 positions for our internal auditor, and we'll want the
24 board, through the Finance and Audit Committee, engaged on
25 that posting since that position reports directly to the

1 board. And then we'll be looking to post for our head of
2 Technology, so as soon as we get these filled, we'll
3 continue to move forward to do that.

4 With that, Mr. Chairman, that's all I have to
5 report.

6 MR. VANDERGRIFF: Okay, great. Thank you.
7 Anybody have any questions of Mr. Serna?

8 (No response.)

9 MR. VANDERGRIFF: Seeing none, I would note we
10 have down here approval of the proposed meeting schedule.

11 I'd ask that you look at that. It's keeping the same
12 schedule in terms of the second Thursday of a month for
13 our board meeting, and absent any questions by the board
14 members, this will just serve as notice so you have these
15 on your calendar. Because of the renovations in the Greer
16 Building on the conference room there, our meeting place
17 is to be determined so our road show continues. We'll see
18 where the next location is, but we may end up just
19 deciding to stay at the Riverside location. It has its
20 disadvantages in terms of the ability to stream it over
21 the internet, but we will cross that bridge when we come
22 to it. Here shortly we'll be getting back to you about
23 where our next meeting will be.

24 Any questions on this meeting schedule?

25 MR. BRAY: Yes, sir.

1 MR. VANDERGRIFF: Go ahead.

2 MR. BRAY: I just think we might want to point
3 out that that doesn't limit the board, the publication of
4 this is just kind of a guideline as notices of what the
5 board meetings are projected to be for the year, but you
6 might have more, you might even have less, and you might
7 have different dates. Of course, they'd all be posted
8 properly, but just to point out that this doesn't lock the
9 board in to a particular date.

10 MR. VANDERGRIFF: Thank you. Duly noted, and
11 hopefully the board members were aware of that, that this
12 is just to make sure that you've got this on your schedule
13 and that this would be our typical meeting dates.

14 We do not need an executive session at this
15 time, we will come back at the end of our meeting with an
16 executive session to go over a few items which we'll
17 certainly note at the point in time we do that. But I
18 think we can now move into the regular session and I would
19 like to go ahead and suggest we take up the consent agenda
20 first and then we will move to the case we originally had
21 moved up. I think the parties are here and so we'll take
22 that one next after the consent agenda.

23 MR. RODRIGUEZ: I move approval on the Consent
24 Agenda, Mr. Chairman.

25 MR. VANDERGRIFF: Carol Kent is here in case

1 anyone has any questions or needs any information.

2 MR. CAMPBELL: Second.

3 MR. VANDERGRIFF: All right. We have a motion
4 and a second on the Consent Agenda. So may I have your
5 right hand signifying approval, raise your right hand.

6 (A show of hands.)

7 MR. VANDERGRIFF: The motion carries
8 unanimously of all present. And I do want the record to
9 reflect that at 10:08 a.m., Board Member Ramsay Gillman
10 joined us. I'm sure he had some weather issues getting
11 here from South Texas. Thank you very much.

12 We have moved all the way to agenda item 5.A,
13 and as I said, we're going to skip down here and instead
14 of going to A and B, we'll go to 5.C, consideration of
15 warranty performance proposals which was the Cletus Smith
16 v. Lexus a Division of Toyota Motor Sales. I believe the
17 parties are here, and Mr. Bray is going to give us an
18 introduction to this matter.

19 MR. BRAY: Mr. Chairman, members. This agenda
20 item involves a contested case concerning a warranty
21 repair matter. It was heard by the State Office of
22 Administrative Hearings and the administrative law judge
23 proposed a decision that is now before you to issue a
24 final order. The parties are here to present oral
25 argument. We recommend to you and expressed to them a

1 staff position that ten minutes per side would be
2 appropriate. Of course, that's up to the Chair's
3 discretion.

4 If you decide that you agree with the SOAH
5 judge's proposal for decision, you should know that under
6 the law -- I'm sorry, if you should disagree, as I
7 counseled you before, you can only change a proposal's
8 findings and conclusions for very specific reasons: that
9 the ALJ did not properly interpret applicable law or
10 rules, that a prior administrative decision that he relied
11 on is incorrect, or that there's a technical error. In
12 addition, you must state in writing the specific reasons
13 and legal basis for any changes that you might make.

14 Given that the proposal actually went against
15 the Smiths, the appropriate order probably is for the
16 Smiths to be able to open and to close.

17 MR. VANDERGRIFF: I'd agree. And are the
18 parties all right with the ten-minute limitation at this
19 point? That's certainly the preference of the Chair to do
20 that.

21 MR. SMITH: My name is Kenneth Smith.

22 MR. VANDERGRIFF: You don't have to stand if
23 you do not wish to.

24 MR. SMITH: Okay. My name is Kenneth Smith;
25 I'm Cletus Smith's husband, and I'll be presenting the

1 argument.

2 In 2007 we bought a Lexus RX400H hybrid,
3 thinking that we were going to get great gas mileage and
4 that sort of thing, but the problem is that the cruise
5 control, when you set it and then you go up and down
6 hills, it accelerates or decelerates anywhere from five to
7 seven miles an hour, depending on the steepness of the
8 hill. If you have someone right behind you and you start
9 down the hill, they become agitated, they pull you and
10 then they pull back in front, and then as we're coming up
11 the hill, it accelerates and I've got to put on the brake
12 or disengage the unit.

13 The administrative judge in Fort Worth said he
14 did not make any decisions, he had no recommendations --
15 that's part of his record, the recording that he made --
16 but when we got the letter that indicated that he wanted
17 it dismissed, then we had 15 days to write a synopsis of
18 what we thought should be. We decided that we'd just back
19 away and forget it.

20 Then we found out we could come before you
21 folks and plead our case again, and it's just very
22 hazardous, and I've talked to three or four other Lexus
23 owners of the hybrid 2007, they have no problem with them
24 whatsoever.

25 And I can also take the -- when I activate the

1 cruise control and it starts the acceleration and
2 deceleration, then I can disengage and then put it into
3 set, resume, set, and eight out of ten times I can get the
4 cruise control to operate properly. So to me, that is a
5 mechanical issue. They keep telling us that it's a hybrid
6 thing; all other Lexus that we've driven for loaners, they
7 have no problem, but it's just the hybrid that's the
8 problem. It's some kind of planetary transmission they
9 say and it won't accept it. And that's my case.

10 MR. VANDERGRIFF: Are there any questions from
11 the board members?

12 MR. CAMPBELL: In the materials it indicates
13 there's about a 2-1/2 mile an hour variance and says that
14 it's basically the same with other models. But you
15 disagree with that.

16 MR. SMITH: Yes, sir.

17 MR. CAMPBELL: Were you involved when they did
18 the test?

19 MR. SMITH: Yes, sir.

20 MR. CAMPBELL: And you came up with a different
21 amount than they did?

22 MR. SMITH: Yes, sir. That's why I asked the
23 administrative judge to please go ahead and send it down
24 to Austin and let you folks make the decision. But then
25 when he came back and said to dismiss it, we just kind of

1 gave up.

2 MR. CAMPBELL: Okay, thank you.

3 MR. VANDERGRIFF: Ms. Johnson.

4 MS. JOHNSON: Did you say it was a planetary
5 defect?

6 MR. SMITH: No, ma'am. The transmission is an
7 interplanetary transmission, that's what they told us, and
8 it was just a hybrid thing.

9 MRS. SMITH: Every time we took it to Lexus, it
10 was always well, there's nothing we can do, it's just a
11 hybrid thing, and they'd give us a loaner, and of course,
12 they wouldn't give us a hybrid car to loan, they'd give us
13 a regular one, and we'd put it on 60-65 and it stayed on
14 60-65. And we're not talking about real high hills or low
15 hills; it's just like between Granbury and Fort Worth we
16 have a few little ups and downs, and I mean, we're not in
17 mountains or anything like that, but it's very dangerous.

18 MS. JOHNSON: Were you aware when you purchased
19 the hybrid -- because I've not heard this and will
20 definitely ask the manufacturer -- that it might have this
21 issue?

22 MRS. SMITH: No.

23 MS. JOHNSON: Okay, thank you.

24 MR. VANDERGRIFF: Any other questions, board
25 members?

1 MR. WALKER: What is it you're looking for us
2 to do for you?

3 MR. SMITH: Well, I'd like for them to
4 repurchase the vehicle.

5 MR. WALKER: So you just want them to re-buy
6 the car from you?

7 MR. SMITH: Yes, sir.

8 MRS. SMITH: Or exchange it or do something.

9 MR. SMITH: Okay, we need to talk about that.
10 Yes, we've been open for anything.

11 MRS. SMITH: It's just frustrating because I
12 don't want to get killed in it.

13 MR. VANDERGRIFF: Any further questions from
14 the board?

15 MR. GILLMAN: Mr. Chair.

16 MR. VANDERGRIFF: Mr. Gillman.

17 MR. GILLMAN: How many miles on the vehicle
18 now?

19 MR. SMITH: 46,000 and change.

20 MR. GILLMAN: And it's a 2007?

21 MR. SMITH: Yes, sir. This started at 4,000,
22 the first time we took it in, and then we've had it in
23 four other times up to the 24-month cutoff. And they had
24 a technician, full-blown engineer, supposedly, and he took
25 it and they kept it two days and they were able to get it

1 to, and this deceleration and acceleration is rapid, it's
2 not a gentle thing, it slows down and picks up like you're
3 in a passing gear almost.

4 MR. BUTLER: May I ask a question?

5 MR. VANDERGRIFF: Yes, Mr. Butler.

6 MR. BUTLER: So you've been putting up with
7 this by just turning it off. Is that correct?

8 MR. SMITH: Well, part of the time, but part of
9 the time I can manipulate that the cruise control lever
10 and eight out ten times it works.

11 MR. BUTLER: So when it accelerates going up
12 the hill then the passing gear is kicked in, I'm sure.

13 MR. SMITH: It's like a passing gear, it's not
14 quite, though. That kilowatt meter on the thing, it will
15 jump way up and you can hear the engine.

16 MRS. SMITH: I can be sitting over on the
17 passenger side and I'll say, What are you doing? And
18 he'll say, I didn't touch it.

19 But one of my biggest concerns, of course, that
20 has nothing to do with the speeding and not speeding, but
21 we had an issue right after we got it where the hybrid
22 radiator blew and they said a little pebble went through
23 it and it was not covered under the Lexus warranty because
24 they said it was a road hazard and said it's like a rock
25 hitting your windshield. Well, I can understand that but

1 when a rock hits my windshield, it doesn't stop the car,
2 and it was in the wintertime and we were between Fort
3 Worth and New Mexico and they said you'll have to be towed
4 to one or the other. But that was another big issue and I
5 addressed that with Lexus, but that only happened the one
6 time. But I don't think it's a safe car.

7 MR. VANDERGRIFF: Any further questions, board
8 members? Thank you.

9 MR. ST. AMAND: By way of introduction, my name
10 is Leonard St. Amand. I'm the field technical specialist
11 for the Lexus Southern Area which includes 13 southern
12 states. I'm working on my 22nd year with Lexus, I've been
13 trained in Japan on each vehicle, and the buck kind of
14 stops with me on all technical issues. So I sit before
15 you here today as a representative of the manufacturer,
16 and would like you to consider the ALJ's recommendation.

17 We did confirm with the Smiths during the
18 hearing that a like vehicle which we brought to the
19 hearing demonstrated exactly the same amount of movement
20 one way or the other from the set speed which is about 2-
21 1/2 miles above, 2-1/2 miles an hour below, give or take
22 half a mile an hour, both vehicles were the same. And
23 it's really the function of the vehicle not knowing that
24 there's a hill coming so it cannot anticipate, it has to
25 wait until the vehicle speed drops and then accelerate to

1 go up the hill, and then after the hill is finished, the
2 vehicle does not know that the hill is finished, so then
3 the vehicle has to see an decrease in speed over the set
4 speed in order to back down the cruise control because it
5 doesn't know that you just finished up going up a hill.

6 So in the hill country there will be a small
7 variance of 2 to 2-1/2 miles an hour above or below the
8 set speed, and in the owner's manual it specifically
9 states that the cruise control is not recommended for
10 hilly areas or corners, areas with corners and so forth,
11 or sharp bends and that idea.

12 This vehicle has never had a repair attempt on
13 it because there was never anything wrong with the
14 vehicle; there are zero repair attempts. The only
15 inconvenience is from the customers' insisting that
16 there's a concern and repeatedly bringing it back to the
17 dealer for that concern. There has been no inconvenience
18 from the dealer's standpoint for this concern at all.

19 And I would like to also point out that the
20 proposal for decision on page 3, third paragraph, or I
21 guess we've got a half a paragraph and then two
22 paragraphs -- let's see if I've got the right page here;
23 I'm sorry I may have the wrong page. Okay, I'm sorry.
24 Page 4, my mistake, page 4, second paragraph. Mr. St.
25 Amand which is myself, and then I also had a

1 representative from the dealership conducted a test drive
2 with their vehicle with Mr. Smith present and against a
3 same vehicle, another RX400H, over the very same terrain
4 which we used for both vehicles. In fact, we went from
5 the same exit starting to the same exit ending, turned
6 around, came back the other direction, and made our notes
7 during that process.

8 And toward the end of that paragraph that's
9 where it says, Mr. St. Amand reported that Complainant's
10 vehicle had a variance of plus or minus 2-1/2 mile an hour
11 from the set speed, 63 to 68, the comparison vehicle had a
12 variance of plus or minus 2-1/2, 61 to 66. I then made
13 the conclusion that there was no discernible difference
14 between the two vehicles, and the last sentence, of
15 course, is that Mr. Smith did not dispute the observations
16 at that point, and we were all in the vehicle together
17 during that test drive and confirmed that the vehicle is
18 operating as designed.

19 So based on that, we, as the manufacturer,
20 maintain that the vehicle is operating as designed and the
21 vehicle does not have predictive capabilities to know
22 whether you're finished with a hill or just starting a
23 hill, and so there will be variances based on the terrain
24 as the cruise control catches up in each direction. And
25 for that reason, we'd like to have the panel agree with

1 the administrative judge that the vehicle repurchase
2 request be denied.

3 MR. VANDERGRIFF: Any questions of Mr. St.
4 Amand? Go ahead, sir.

5 MR. WALKER: I have two questions for you. You
6 said that the Smiths were in the car with you and you told
7 them that it's 2-1/2 miles difference and they observed
8 this?

9 MR. ST. AMAND: I expressed to them that I felt
10 that both vehicles would operate exactly the same way on
11 the hills.

12 MR. WALKER: Well, my question is were they in
13 the car with you when you tested the car and showed them
14 that there was a 2-1/2 mile variance.

15 MR. ST. AMAND: Yes, we were in both cars. We
16 took a drive in one car and then did that exact same drive
17 in the next vehicle, back and forth on the same terrain.

18 MR. WALKER: I'm sure the Lexus engines are as
19 sophisticated as the engines in my trucks today and do you
20 have any of the downloads of the programs? We can
21 download our engine diagnostics today and it will show
22 exactly the speeds that our trucks go. Can you do that on
23 a Lexus?

24 MR. ST. AMAND: We can make a recording of that
25 above and below with what we call a Tech Stream analysis,

1 but our observations that day were based on observing the
2 speedometer itself which at the end of the test drive we
3 agreed that both vehicles were the same.

4 MR. WALKER: But we didn't download any of the
5 hard diagnostic data?

6 MR. ST. AMAND: Well, when the dealership had
7 the vehicle, they confirmed that the vehicle was operating
8 correctly and that there were no diagnostic trouble codes
9 in the system which the cruise control and engine control
10 system would both detect if there were any concerns in
11 that respect.

12 MR. WALKER: Thank you.

13 MR. VANDERGRIFF: Ms. Johnson, do you have a
14 question?

15 MS. JOHNSON: Yes, I do. You said that in the
16 owner's manual it says the cruise control is not
17 recommended for hills and turns, and I have two questions:
18 did anybody bring the owner's manual that shows that, and
19 is that disclosed at purchase, especially in the sales
20 area, and I know that that would likely be the automobile
21 dealership that sold this car, but is that disclosed,
22 particularly for hill country drivers.

23 MR. ST. AMAND: I don't know whether it is; I
24 honestly don't, because I wasn't at the dealership and I
25 don't know generally whether they do or not. Page 135, if

1 I may approach -- this is the repair manual, this was also
2 used during the hearing.

3 MS. JOHNSON: My question would be for the
4 Smiths then. Was it disclosed to you not to use the
5 cruise control in hill country?

6 MRS. SMITH: No. We've always used cruise
7 control in any part of the country that we drive. I mean,
8 they're not real steep hills; I don't think Granbury is
9 really considered hill country.

10 MS. JOHNSON: Thank you.

11 MR. VANDERGRIFF: Mr. Rodriguez.

12 MR. RODRIGUEZ: Mr. Chairman, the question
13 before us is whether or not to concur with the
14 administrative law judge in this particular matter. Is
15 that correct?

16 MR. VANDERGRIFF: That's correct. There's
17 limitations on what we can do.

18 MR. RODRIGUEZ: Right, and that's what I'm
19 trying to do is narrow this down to the question before
20 us. I move that we approve the ALJ's recommendation.

21 MR. RUSH: Second.

22 MR. VANDERGRIFF: We have a motion and we have
23 a second from Member Rush. I would ask if any of the
24 board members have any further questions of the parties,
25 we didn't eliminate that.

1 (No response.)

2 MR. VANDERGRIFF: Seeing none, then I thank you
3 very much for attending.

4 MRS. SMITH: Thank you for your time.

5 MR. VANDERGRIFF: I do have a motion and a
6 second for confirming the ALJ's opinion. Any discussion
7 on it?

8 MR. BRAY: I guess I just have to point out
9 that the staff has proposed an order for you that does
10 adopt the SOAH judge's PFD but references a couple of
11 changes because the SOAH judge miscited the law and was
12 relying on the Lemon Law as opposed to a different section
13 because, as Mr. Gillman points out, this vehicle doesn't
14 qualify for repurchase/replacement. If the SOAH judge had
15 found something wrong, it would have qualified for repair
16 only which is a different section of the Code, and we have
17 prepared an order that would make those changes for you.

18 MR. RODRIGUEZ: Then I so modify my motion.

19 MR. VANDERGRIFF: And Mr. Rush, do you second
20 that motion?

21 MR. RUSH: Yes, I do.

22 MR. VANDERGRIFF: We have a motion and a
23 second. Any discussion on it?

24 MS. JOHNSON: Mr. Bray, are you telling us that
25 the administrative judge made a technical error?

1 MR. BRAY: That's my assessment, yes, ma'am.

2 MS. JOHNSON: Which would mean that we should
3 vote against this motion if it is a technical error by the
4 administrative judge?

5 MR. BRAY: No, ma'am, not necessarily. It
6 gives you some flexibility but the motion, I can't tell
7 you how to vote, that's kind of up to you.

8 MS. JOHNSON: But I'm trying to determine
9 because you gave us very limited items on which we can
10 overturn this, and one of those that I made a note of is a
11 technical error, and if I'm hearing thee's a technical
12 error, then it seems appropriate to overturn this
13 decision.

14 MR. BRAY: Well, but when it's a technical
15 error, it's not overturned, you've got to be careful with
16 your phraseology, it's change, modify or replace a finding
17 of fact or a conclusion of law, and when it's a technical
18 error, though I don't believe there's necessarily case law
19 on it, the presumption is that what you would be doing
20 would be fixing the technicality, not completely changing
21 the decision.

22 MS. JOHNSON: Thank you.

23 MR. BUTLER: I have some discussion.

24 MR. VANDERGRIFF: Yes, Mr. Butler.

25 MR. BUTLER: The fact that it wasn't disclosed

1 by the dealer, it wasn't documented that it was disclosed
2 by the dealer that this was a problem, isn't that
3 something we should consider here. There's nothing in
4 writing that this was disclosed to the customer, and if it
5 wasn't disclosed to the customer, it's not fair that we
6 saddle them with this car.

7 MR. VANDERGRIFF: I'll let Mr. Bray answer
8 that.

9 MR. BRAY: Those are things you have to take
10 into account. The two problems are: one, as Member
11 Johnson just pointed out, you are kind of restricted in
12 what you can now do because the case has been heard,
13 evidence has been taken and they've had their day in
14 court, if you will, and you're left with making a final
15 decision, number one; and number two, and I think maybe to
16 speak on a totally different level to your question, the
17 party here faced with the obligation, possibly, of having
18 to repurchase a vehicle or repair a vehicle is the
19 manufacturer, who delivers the car to you obviously is a
20 dealer, so this concern about what the dealer told the
21 buyer at the time of the purchase is a little different
22 than what's in the manufacturer's operator's manual.

23 MR. BUTLER: But the dealer is an agent of the
24 manufacturer.

25 MR. BRAY: To an extent, yes, sir, that's

1 correct.

2 MR. VANDERGRIFF: Any further discussion?

3 (No response.)

4 MR. VANDERGRIFF: Seeing none, I'd call for
5 your vote. Raising your right hand for this is a motion
6 that would be affirming the final order as presented and
7 it's the first couple of pages in your book of the
8 administrative changes. So with that, I'd ask for you to
9 raise your right hand if you're in support of the motion.

10 (A show of hands.)

11 MR. VANDERGRIFF: The motion carries six to
12 two.

13 MR. BUTLER: I'd like the record to reflect
14 that I voted against it, please.

15 MR. VANDERGRIFF: Members Butler and Johnson
16 voted against it.

17 With that, we'll go to 5A, which is proposed
18 rules under Title 43.

19 MR. SMITH: Thank you very much.

20 MR. VANDERGRIFF: Thank you very much.

21 (General talking and laughter.)

22 MR. CRAIG: Good morning. I'm Mike Craig,
23 interim director for the Vehicle Titles and Registration
24 Division of Texas Department of Motor Vehicles.

25 We're coming today to actually revisit and

1 issue that was brought up in the April board meeting
2 concerning adding a new symbol to our personalization on
3 plates; the symbol itself was the heart symbol.

4 We were asked at that point to go back and do a
5 little more research on issues this might cause for law
6 enforcement or for toll cameras. We've done that, and
7 we've provided a report on that to the board, and we're
8 back today -- based on the findings that we had in that
9 report, we're back today to propose an amendment to the
10 existing rules, which is Section 217.28, and in that we're
11 asking that it will add to the ability of the department
12 to use the character of a heart symbol in conjunction with
13 the license plate number.

14 Adding the symbol will expand the number of
15 plate designs, and it is anticipated that reading this
16 symbol will not create a problem for the automatic readers
17 used by the various state and local agencies for license
18 plates, as there have not been any problems with any
19 similar symbols that we currently have such as the state
20 silhouette, a dash, a period, those types of things.

21 Also, I want to clarify for the agenda that it
22 shows on the agenda that we have three items; in fact,
23 this is the only item that we're referring to to amend at
24 this particular board meeting.

25 MR. RODRIGUEZ: Mike, that's 217.28.

1 MR. CRAIG: It is Section 217.28.

2 MR. RODRIGUEZ: Mr. Chairman, may I move on
3 this?

4 MR. VANDERGRIFF: Please.

5 MR. RODRIGUEZ: I was, I think, principally the
6 one that had the question on this, and I'm happy with your
7 report, I'm comfortable with your report on this. Just
8 again for my clarity, the heart is going to be as if it
9 were like a dash -- right? -- as opposed to some other
10 translation on a license plate?

11 MR. CRAIG: Correct. It's not going to be part
12 of the actual number that will clear against our
13 database; it's just a cosmetic feature.

14 MR. RODRIGUEZ: I'm comfortable with this, Mr.
15 Chairman, whenever you're ready.

16 MR. VANDERGRIFF: Are you moving for approval?

17 MR. RODRIGUEZ: Yes, sir, I move for approval.

18 MR. RUSH: Second.

19 MR. VANDERGRIFF: You second that, Mr. Rush.
20 All right, we have a motion from Board Member Rodriguez
21 and a second from Board Member Rush. Do we have any
22 discussion?

23 (No response.)

24 MR. VANDERGRIFF: With that, I would ask you to
25 raise your right hand in support of the motion.

1 (A show of hands.)

2 MR. VANDERGRIFF: Motion carries unanimously by
3 all members present. I do want to note that, again, Board
4 Member Marzett is still absent and therefore will not be
5 voting on any of these.

6 The next is item 5.B., which is consideration
7 of franchise proposal for decision under the Occupations
8 Code; it's Walkabout RV v. Forest River.

9 Mr. Bray.

10 MR. BRAY: Mr. Chairman and members. This
11 agenda item is a contested case involving a dealer's claim
12 for repurchase of its inventory after termination of the
13 franchise.

14 The case was heard by the SOAH administrative
15 law judge and the proposal for decision is now before you
16 to issue a final order. We've gone over the notion about
17 if you disagree with it, what the possibilities are or the
18 reasons are that you can disagree with a SOAH order and
19 change the findings and conclusions, so I won't belabor
20 that.

21 The DMV staff attorneys have reviewed this
22 proposal for decision and they found some technical
23 errors. The proposed final order that's in your packets
24 contains corrections that we believe are necessary and
25 they are explained in the executive summary that was

1 provided to you. There are no parties here today, as far
2 as I know, to argue the case, and so I submit it to you on
3 the record.

4 MR. VANDERGRIFF: And I do want to note, and
5 you may want to elaborate further just to make sure the
6 board is aware that the technical errors you're speaking
7 of are just making sure that the name is replaced, Texas
8 Department of Transportation versus what it needs to be
9 which is the Texas Department of Motor Vehicles, citing
10 the correct jurisdiction and the correct law in terms of
11 the length of time the complaining dealer has to file a
12 complaint. They're things like that, they don't go to the
13 substantive matter of the issue. Correct?

14 MR. BRAY: Almost complete, yes, sir, you
15 stated it pretty well. Now, the finding of fact 16 where
16 we're discussing concepts of net cost and net discount
17 value, those you might consider substantive. We're not
18 proposing that you alter the outcome so it's still sort of
19 a miscite to the law, if you will, or a miscite to how the
20 law is applied, we're not proposing any change in the
21 outcome, just cleanup, if you will. So I guess the answer
22 to your question should have been yes.

23 MR. VANDERGRIFF: All right. And with that, do
24 we have any discussion by the board members on this
25 particular case? I don't believe we have anyone here

1 presenting on this.

2 MR. WALKER: I'd like to make a motion that we
3 accept the SOAH's ruling on this.

4 MR. VANDERGRIFF: We have a motion from Board
5 Member Walker to accept it. Do we have a second?

6 MR. RUSH: I'll second.

7 MR. VANDERGRIFF: Second from Board Member
8 Rush. Do we have any discussion?

9 Mr. Bray.

10 MR. BRAY: Just for clarification for the
11 staff, does that mean accept the SOAH?

12 MR. VANDERGRIFF: With the changes suggested in
13 the final order.

14 MR. WALKER: With the changes suggested.

15 MR. VANDERGRIFF: Thank you for pointing that
16 out. Motion and a second. Any discussion on it?

17 (No response.)

18 MR. VANDERGRIFF: Please raise your right hand
19 in support.

20 (A show of hands.)

21 MR. VANDERGRIFF: The motion carries
22 unanimously. And with that, I would come to item 5.D on
23 our agenda.

24 MR. RODRIGUEZ: There are three items under
25 5.D, Mr. Chairman. Can we take them all three?

1 MR. VANDERGRIFF: Well, one of them passed, D.2
2 has passed and we're really speaking of items D.1 and D.3.

3 And Mr. Bray, can we take those up in one motion, or
4 would you like those to be in separate motions?

5 MR. BRAY: You can take them up all at once if
6 you like.

7 MR. VANDERGRIFF: Mr. Rodriguez, were you about
8 to make a motion?

9 MR. RODRIGUEZ: Yes, sir. I move that we
10 approve the default motions outlined in D.1 and D.3.

11 MR. BUTLER: I second the motion, Mr. Chairman.

12 MR. VANDERGRIFF: Second by Board Member
13 Butler. Do we have any discussion on them?

14 (No response.)

15 MR. VANDERGRIFF: Seeing none, I would ask you
16 to raise your right hand in support of the motion.

17 (A show of hands.)

18 MR. VANDERGRIFF: The motion carries
19 unanimately by all members present.

20 And with that, we have come to the end of our
21 regular agenda. We do, I believe, probably need a brief
22 executive session which I'll do the formal notification
23 here in just a second.

24 I did want to note -- not trying to steal the
25 thunder of Vice Chairman Johnson, but I believe she would

1 probably be calling a meeting of her committee in August.

2 I want to make note while the industry members are here
3 in the audience to really get you feedback on any cleanup
4 that we might need to do to either what we refer to as the
5 Vision 21 bill or to House Bill 3970 that might be items
6 that you would suggest from your perspective and vantage
7 point out there in the industry.

8 So she will be in touch through the agency to
9 make sure you're aware of the specific date for that.

10 MS. JOHNSON: I'm looking right now at the week
11 of August 22. I do believe there's a possibility that our
12 August meeting may change, and should it change, the
13 Secretary of State will be having a conference that week
14 with tax assessor-collectors and county clerks.

15 And since we'll have that group of stakeholders
16 already in town, I think it would be appreciated by them
17 if I'd go ahead and have this public hearing while they
18 are in town. So sometime during the week of August 22,
19 whether it's the Tuesday or the Wednesday before, we will
20 have that meeting and we'll try and schedule it in a
21 location where we can have plenty of room for everybody to
22 come give their input.

23 MR. VANDERGRIFF: And in that regard, as
24 followup, because of the Legislative Appropriations
25 Request that we'll need to consider at our August meeting

1 before the filing deadline at the end of August, there is
2 a great likelihood that we'll move that board meeting to
3 allow the staff additional time to get everything
4 prepared.

5 We had a nice long committee meeting on it
6 yesterday, but that will be it looks like the date we're
7 targeting at the moment where we get the most people here
8 would be August 25, so we'll give you further notice of
9 that going forward. There's no perfect date, and we'll
10 decide between that and holding it at our regularly
11 scheduled board meeting day, so we'll give you notice
12 quickly.

13 MR. RODRIGUEZ: Just one question. Ms. Johnson
14 said she's having a public hearing?

15 MR. VANDERGRIFF: It's a committee meeting, not
16 a hearing. Thank you for that correction.

17 MS. JOHNSON: Yes, thank you for that
18 clarification. It will be a Legislative Committee meeting
19 on which we will be trying to receive input from all the
20 stakeholders and industries. Thank you.

21 MR. GILLMAN: And it will be the day before?

22 MS. JOHNSON: That's my hope, yes, sir.

23 MR. VANDERGRIFF: Do any of the board members
24 have anything further they wish to ask or add at this
25 point?

1 (No response.)

2 MR. VANDERGRIFF: At this point we will go into
3 a short executive session, and I'll make sure that I read
4 the appropriate language to get us there. We're not even
5 going to take a break at this point, we're just going to
6 go directly into executive session. It is now 10:55 a.m.
7 on July 8, 2010 and we will go under the following
8 sections of the Texas Government Code: Section 551.071 to
9 obtain the advice of legal counsel regarding general
10 matters of pending or contemplated litigation, and Section
11 551.074 to discuss personnel matters under agenda item
12 2.A.5. And I guess, by the way, the same would apply in
13 terms of legal counsel, it would also be item 2.A.5
14 matters coming out of the executive director's report.

15 For those of you in the audience, I anticipate
16 being in executive session for probably no more than 30
17 minutes and we will then reconvene in open session after
18 that, but please be advised that we've concluded all but
19 any matters that might come out of executive session in
20 open session, so therefore, the agenda is pretty much
21 finished. And with that, we are adjourned from the public
22 meeting and we are into executive session.

23 (Whereupon, at 10:55 a.m., the meeting was
24 recessed, to reconvene this same day, Thursday, July 8,
25 2010, following conclusion of the executive session.)

1 MR. VANDERGRIFF: Let the record reflect it's
2 approximately ten after 12:00 p.m. on July 8, 2010, and
3 the Board of the Texas Department of Motor Vehicles is now
4 in open session. We want to note that no action was taken
5 in closed session. As I noted before we went into
6 executive session, there were no further action items on
7 our agenda. Does any board member have any item they wish
8 to bring up?

9 (No response.)

10 MR. VANDERGRIFF: Seeing none, I'd be pleased
11 to entertain a motion for adjournment.

12 MR. RUSH: So moved.

13 MR. BUTLER: Second.

14 MR. VANDERGRIFF: All those in favor, please
15 raise your right hand in support.

16 (A show of hands.)

17 MR. VANDERGRIFF: We are adjourned. Thank you
18 for your attendance today.

19 (Whereupon, at 12:11 p.m., the meeting was
20 concluded.)

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MEETING OF: Texas Dept. of Motor Vehicles Board

LOCATION: Austin, Texas

DATE: July 8, 2010

I do hereby certify that the foregoing pages, numbers 1 through 46, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Department of Motor Vehicles.

(Transcriber) 07/12/2010
(Date)

On the Record Reporting
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