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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF VEHICLE MANUFACTURERS,
DEALERS, AND SALESPERSONS**

TIME: 10:32 A.M.

Held at
PENNSYLVANIA DEPARTMENT OF STATE
2601 North Third Street
One Penn Center, Board Room C
Harrisburg, Pennsylvania 17110

as well as

VIA MICROSOFT TEAMS

August 23, 2022

1 State Board of Vehicle Manufacturers,
2 Dealers, and Salespersons
3 August 23, 2022
4
5

6 BOARD MEMBERS:
7

8 Kirk A. Davis, Chairman
9 Randall Derr, Secretary, Professional Member
10 Arion R. Claggett, Acting Commissioner, Bureau of
11 Professional and Occupational Affairs
12 Mark Wolfe, Attorney General Representative
13 Steve T. Fretz, Professional Member
14 Angel Layton, Department of Transportation
15 Representative
16 Dale J. Yingst, Professional Member
17 Mark Baer, Professional Member - Absent
18 Irving Stein, Professional Member
19 Joseph Bizzarro, Professional Member - Absent
20
21

22 BUREAU PERSONNEL:
23

24 Carolyn DeLaurentis, Deputy Chief Counsel, Prosecution
25 Division
26 C. William Fritz II, Esquire, Board Counsel
27 Dean F. Picarella, Esquire, Senior Board Counsel
28 Peter D. Kovach, Esquire, Board Prosecution Liaison
29 Timothy J. Henderson, Esquire, Board Prosecutor
30 Kayla R. Bolan, Esquire, Board Prosecutor
31 Paul J. Jarabeck, Esquire, Board Prosecutor
32 Amber Lee Czerniakowski, Board Prosecutor
33 Gregory Liero, Esquire, Board Prosecutor
34 Janice Cline, Board Administrator
35 Andrew LaFratte, MPA, Executive Policy Specialist,
36 Department of State
37 Danie Bendesky, Director of Intergovernmental Affairs,
38 Department of State
39
40

41 ALSO PRESENT:
42

43 Kim Pizzingrilli, Esquire, Buchanan Ingersoll &
44 Rooney PC
45 Kyle Meyer, Esquire, Buchanan Ingersoll & Rooney PC
46 Robert Shuster, Esquire, Buchanan Ingersoll &
47 Rooney PC
48 Mark Stine, Executive Vice President, Legislative &
49 Public Affairs, Pennsylvania Automotive Association

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State Board of Vehicle Manufacturers,
Dealers, and Salespersons
August 23, 2022

ALSO PRESENT: (cont.)

- Chad Marsar, Esquire, General Counsel, Pennsylvania
Automotive Association
- Billy M. Donley, Esquire, Partner, BakerHostetler LLP
- Erin Hass, Manager, Lucid Motors/State Government
Affairs
- Daniel Witt, Head of State and Local Public Policy,
Lucid Motors
- Catherine Sakach, Esquire, Managing Counsel, Lucid
Motors
- Michele Ann McGinnis

1 ***

2 State Board of Vehicle Manufacturers,
3 Dealers, and Salespersons

4 August 23, 2022

5 ***

6 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
7 9:00 a.m. the Board entered into Executive Session
8 with C. William Fritz II, Esquire, Board Counsel, for
9 the purpose of conducting quasi-judicial
10 deliberations. The Board returned to open session at
11 10:30 a.m.]

12 ***

13 [C. William Fritz II, Esquire, Board Counsel, noted
14 the Board met in Executive Session prior to open
15 session and conducted quasi-judicial deliberations.

16 Mr. Fritz also noted the meeting was being
17 recorded, and voluntary participation in the meeting
18 constituted consent to be recorded.]

19 ***

20 The regularly scheduled meeting of the State
21 Board of Vehicle Manufacturers, Dealers, and
22 Salespersons was held on Tuesday, August 23, 2022.
23 Kirk A. Davis, Chairman, Professional Member, called
24 the meeting to order at 10:32 a.m.

25 ***

1 Roll Call/Introduction of Attendees

2 [Chairman Davis requested a roll call of Board members
3 and introduction of attendees.]

4 ***

5 Report of Prosecutorial Division

6 [Kayla R. Bolan, Esquire, Board Prosecutor, presented
7 the Consent Agreement for Case No. 19-60-016636.
8 Consent Agreement Case No. 20-60-003877 was withdrawn
9 by Prosecution.]

10 ***

11 Report of Prosecutorial Division - Consent Agreements

12 MR. FRITZ:

13 The Board would entertain a motion to
14 approve the Consent Agreement at Case
15 No. 19-60-016636.

16 MR. STEIN:

17 I make the motion.

18 MR. DERR:

19 Second.

20 CHAIRMAN DAVIS:

21 Roll call.

22

23 Wolfe, aye; Stein, aye; Derr, aye;

24 Yingst, aye; Fretz, aye; Layton, aye;

25 Davis, aye; Claggett, aye.

1 [The motion carried unanimously. The Respondent's
2 name is Samuel A. Crish.]

3 ***

4 Approval of minutes of the July 12, 2022 meeting

5 CHAIRMAN DAVIS:

6 For the minutes from last month's
7 meeting, could I have a motion to
8 approve those?

9 MR. STEIN:

10 Approve.

11 MR. DERR:

12 Second.

13 CHAIRMAN DAVIS:

14 Roll call.

15

16 Wolfe, aye; Stein, aye; Derr, aye;

17 Yingst, aye; Fretz, aye; Layton, aye;

18 Davis, aye; Claggett, abstain.

19 [The motion carried. Arion Claggett abstained from
20 voting on the motion.]

21 ***

22 Report of Board Counsel - Formal Hearings/Arguments

23 [C. William Fritz II, Esquire, Board Counsel, noted
24 two hearings are scheduled for 11 a.m. and
25 12 p.m.]

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Discussion

[C. William Fritz II, Esquire, Board Counsel, asked whether anyone from Lucid Group USA, Inc., would like to present to the Board in support of the dealership application.

Billy M. Donley, Esquire, Partner, BakerHostetler LLP, Lucid has an application pending to be a dealer and sell and service its new Lucid electrical vehicles (EVs) in the state of Pennsylvania from a physical location but must have a dealer license. He stated the Board is allowed to issue that license because there is already an EV manufacturer in the state that is licensed and selling direct and Lucid also wants to sell them direct.

Mr. Donley noted that it would be inappropriate to allow an EV manufacturer in the state and not allow Lucid. He mentioned that the state Act governs a traditional manufacture like Ford or General Motors, which historically had dealers in the state and nation through dealer agreements or franchise agreements.

Mr. Donley referred to a case in 2019, General Motors, LLC v. the Bureau of Professional and Occupational Affairs, noting the Pennsylvania Supreme Court recognized exactly what the Act in Pennsylvania

1 does in that case, where the Act embodies remedial
2 legislation designed to protect Pennsylvania dealers
3 from unfair practices on the part of vehicle
4 manufacturers, amidst business relationships with
5 perceived bargaining disparities.

6 Mr. Donley stated the Act was created after
7 manufacturers already had relationships with dealers,
8 so the Act was created to regulate those
9 relationships, not to stop someone like Lucid from
10 coming into the state, obtaining a dealer's license,
11 and selling direct.

12 Mr. Donley also referred to a case in 2003, the
13 United States Court of Appeals for the Third Circuit
14 in Rosado v. Ford Motor Co., again construing that
15 Pennsylvania said that it is a "comprehensive state or
16 statute governing the relationship between automobile
17 manufacturers and their franchise dealers," so the
18 Federal Court construing the Pennsylvania Act just
19 like the Pennsylvania Supreme Court did, where it
20 governs that relationship between manufacturers with
21 dealers.

22 Mr. Donley commented that it is not Lucid's
23 intent to do any harm to franchises but simply wants
24 the ability to sell its vehicles direct in the
25 Commonwealth of Pennsylvania.

1 Mr. Donley referred to another case in 2000,
2 United States Court of Appeals for the Third Circuit
3 in Crivelli v. General Motors Corporation, where the
4 Third Circuit said the Act is "one of many enacted in
5 various states regulating some aspects of the
6 relationship between motor vehicle manufacturers and
7 their franchised dealers," which is not companies like
8 Lucid, who want to sell direct without any dealers and
9 those like Ford that had dealers.

10 Mr. Donley mentioned that after Tesla received
11 its license in 2013 under the very Act being
12 discussed, the Pennsylvania Office of General Counsel
13 investigated Tesla's actions under that license in
14 September 2013. He noted that while investigating
15 those actions of Tesla, the law that currently exists,
16 the Office of General Counsel found that Tesla was not
17 operating unlawfully, where Tesla could have a
18 dealer's license and sell direct.

19 Mr. Donley stated the law had not changed since
20 2013, and if Tesla could get a license and sell
21 direct, then the same holds true for Lucid in 2022 and
22 should be allowed to obtain a license to sell direct.

23 Mr. Donley, this Board has the authority to do
24 this under the Pennsylvania Statute § 818.302(a),
25 where a Board has the authority and a duty to issue a

1 license to qualified applicants. He noted Lucid could
2 meet all of the qualifications under the application
3 in order to obtain a dealer's license and referred to
4 § 818.321(a.1), where upon receipt of a complete and
5 accurate application, the board must issue a new
6 vehicle dealer license immediately.

7 Mr. Donley commented that the Board has the
8 authority to do that, and Lucid applied for a dealer's
9 license and obtaining one would not be violating any
10 aspects of the Pennsylvania statutory scheme. He
11 again noted Lucid would do harm to existing dealers or
12 their relationships with manufactures but simply
13 wanted the right to be able to sell direct in the
14 Commonwealth of Pennsylvania.

15 Mr. Stein requested information regarding how
16 Lucid would handle trade-ins and used cars. He also
17 asked how Lucid would handle Pennsylvania state
18 inspections for their vehicles.

19 Mr. Donley explained that trade-ins and used cars
20 would be handled like any other dealer may handle
21 those, either as a wholesale or a retail transaction.
22 He stated Lucid's whole goal is to be fully compliant
23 with the law in Pennsylvania and was not trying to get
24 around or fail to comply with anything required of
25 Lucid.

1 Mr. Stein asked whether Lucid was in any other
2 states.

3 Mr. Donley believed Lucid currently has a license
4 in Illinois and Arizona and one on the way in
5 Virginia. He mentioned that would expand over time as
6 Lucid continues to expand its operations.

7 Chairman Davis addressed management structure and
8 asked Mr. Donley who would direct the overall
9 judiciary responsibility for the location.

10 Dr. Donley believed it would be the staff at the
11 dealership and whatever Pennsylvania would require of
12 Lucid to make sure it is compliant with all aspects of
13 the Commonwealth of Pennsylvania.

14 Mr. Fritz informed Mr. Donley that the Board
15 would discuss the matter in Executive Session and
16 provide a decision later in the meeting.]

17 ***

18 Report of Board Counsel - Status of Cases

19 [C. William Fritz II, Esquire, Board Counsel, provided
20 a Status of Cases Report as of August 11, 2022, for
21 the Board's review. He reported 61 open files and
22 about 5 or 6 open protest cases and would inform the
23 Board of any responses from manufactures or dealers.]

24 ***

25 Report of Board Counsel - Adjudications and Orders for

1 Approval

2 MR. FRITZ:

3 Based on discussions held with the Board
4 at the last previously scheduled Board
5 meeting.

6 If the Board is okay with the
7 Adjudications as they're written, would
8 the Board entertain a motion to approve
9 the following Adjudications and Orders
10 of Joshua Dowell Miller, Case No. 19-60-
11 017231; Francis Geiger, Case No. 19-60-
12 004934; James Morris, Case No. 21-60-
13 000108; Julia Whittaker, Case No. 19-60-
14 015909; and Antoine Wright, Case No. 19-
15 60-008951?

16 MR. STEIN:

17 I make the motion that the prelisted
18 read cases be approved.

19 MR. DERR:

20 Second.

21 CHAIRMAN DAVIS:

22 Roll call.

23

24 Wolfe, aye; Stein, aye; Derr, aye;

25 Yingst, aye; Fretz, aye; Layton, aye;

1 Davis, aye; Claggett, aye.

2 [The motion carried unanimously.]

3 ***

4 Report of Board Counsel - Proposed Adjudication and
5 Order for Approval

6 MR. FRITZ:

7 Next on the agenda, we have one Proposed
8 Adjudication and Order. The Board would
9 entertain a motion to direct Board
10 counsel to draft an Adjudication and
11 Order in the matter of Commonwealth v.
12 Holly Kabiru & Exclusive Preowned Motors
13 LLC, Case Nos. 19-60-013685 & 19-60-
14 008587.

15 MR. STEIN:

16 I make the motion.

17 MR. DERR:

18 Second.

19 CHAIRMAN DAVIS:

20 Roll call.

21

22 Wolfe, aye; Stein, aye; Derr, aye;

23 Yingst, aye; Fretz, aye; Layton, aye;

24 Davis, aye; Claggett, aye.

25 [The motion carried unanimously.]

1 ***

2 Report of Board Counsel - Motions to Deem Facts
3 Admitted (MDFA)

4 MR. FRITZ:

5 The Board would entertain a motion to
6 grant the following Motions to Deem
7 Facts Admitted and direct Board counsel
8 to draft an Adjudication and Order in
9 the matters of the Commonwealth v.
10 Christopher Cleary, Case No. 20-60-
11 000779; Commonwealth v. Martino Motors,
12 Case No. 20-60-008846, and Commonwealth
13 v. Donald Martino Jr., Case No. 20-60-
14 006169.

15 MR. STEIN:

16 I make the motion to approve the MDFAs
17 as previously read.

18 MR. DERR:

19 Second.

20 CHAIRMAN DAVIS:

21 Roll call.

22
23 Wolfe, aye; Stein, aye; Derr, aye;
24 Yingst, aye; Fretz, aye; Layton, aye;
25 Davis, aye; Claggett, aye.

1 [The motion carried unanimously.]

2 ***

3 Regulation

4 [C. William Fritz II, Esquire, Board Counsel, referred
5 to 16A-6015 regarding fee increases, specifically the
6 eight renewal fee increases and eight application fee
7 increases. He informed Board members that the final
8 regulation requires a Board vote for it to move
9 forward. He noted submitting the final annex for the
10 Board's review, which had not changed since the
11 proposed regulations the Board voted on to approve.]

12 MR. FRITZ:

13 The Board would entertain a motion to
14 approve the language for the Final
15 Regulation at 16A-6015 Fee Increase.

16 MR. STEIN:

17 I make the motion to approve the
18 previously discussed.

19 MR. DERR:

20 Second.

21 CHAIRMAN DAVIS:

22 Roll call.

23

24 Wolfe, aye; Stein, aye; Derr, aye;

25 Yingst, aye; Fretz, aye; Layton, aye;

1 Davis, aye; Claggett, aye.

2 [The motion carried unanimously.]

3 ***

4 Application Review - Criminal Conviction

5 Applicants - Informal Hearings

6 MR. FRITZ:

7 The Board would entertain a motion to
8 approve the Application of Antonio Owens
9 subject to a period of 18 months'
10 probation.

11 MR. STEIN:

12 I make the motion to approve.

13 MR. DERR:

14 Second.

15 CHAIRMAN DAVIS:

16 Roll call.

17

18 Wolfe, aye; Stein, aye; Derr, aye;

19 Yingst, aye; Fretz, aye; Layton, aye;

20 Davis, aye; Claggett, aye.

21 [The motion carried unanimously.]

22 ***

23 MR. FRITZ:

24 Regarding the Application filed by John
25 Calixto, the Board would entertain a

1 motion granting that Application subject
2 to a period of two years' probation.

3 MR. STEIN:

4 I make the motion to approve with the
5 stipulations stated.

6 MR. DERR:

7 Second.

8 CHAIRMAN DAVIS:

9 Roll call.

10

11 Wolfe, aye; Stein, aye; Derr, aye;
12 Yingst, aye; Fretz, aye; Layton, aye;
13 Davis, aye; Claggett, aye.

14 [The motion carried unanimously.]

15

16 MR. FRITZ:

17 Regarding the rest of the Applications
18 submitted to the Board, the Board would
19 entertain a motion to approve the
20 following Applications without
21 restriction for Jesse Robert Giovengo,
22 Geovanni Jimenez, Branigan Long, Adriana
23 Tonkonow, and Matthew Williams.

24 MR. STEIN:

25 I make the motion to approve those

1 previously read.

2 MR. DERR:

3 Second.

4 CHAIRMAN DAVIS:

5 Roll call.

6

7 Wolfe, aye; Stein, aye; Derr, aye;

8 Yingst, aye; Fretz, aye; Layton, aye;

9 Davis, aye; Claggett, aye.

10 [The motion carried unanimously.]

11 ***

12 [A Formal Hearing was held from 11:00 a.m. until

13 12:20 p.m. in the Matter of the Commonwealth of

14 Pennsylvania Bureau of Professional and Occupational

15 Affairs v. Clear Choice Auto Sales, Case No. 20-60-

16 001607.]

17 ***

18 [The Board recessed from 12:20 p.m. until 12:28 p.m.]

19 ***

20 [A Formal Hearing was held from 12:28 p.m. until

21 1:12 p.m. in the Matter of the Petition for

22 Reinstatement of Kevin Drake, Case No. 20-60-007313.]

23 ***

24 [Pursuant to Section 708(a)(5) of the Sunshine Act, at

25 1:12 p.m. the Board entered into Executive Session

1 with C. William Fritz II, Esquire, Board Counsel, for
2 the purpose of conducting quasi-judicial
3 deliberations. The Board returned to open session at
4 1:46 p.m.]

5

6 MOTIONS

7 MR. FRITZ:

8 Regarding the two hearings held this
9 afternoon, the Board would entertain a
10 motion directing Board counsel to draft
11 an Adjudication and Order in the
12 following matters: Commonwealth v.
13 Clear Choice Auto Sales, Case No. 20-60-
14 001607; Commonwealth v. Kevin Drake,
15 Case No. 22-60-007313.

16 MR. STEIN:

17 I make the motion to send a letter as
18 approved.

19 MR. DERR:

20 Second.

21 CHAIRMAN DAVIS:

22 Roll call.

23

24 Wolfe, aye; Stein, aye; Derr, aye;

25 Yingst, aye; Layton, aye; Davis, aye;

1 Claggett, aye.

2 [The motion carried unanimously.]

3 ***

4 MR. FRITZ:

5 The Board would entertain a motion to
6 provisionally deny the Dealership
7 License Application submitted by Lucid
8 USA, Inc.

9 MR. STEIN:

10 I make the motion.

11 MR. DERR:

12 Second.

13 CHAIRMAN DAVIS:

14 Roll call.

15

16 Wolfe, abstain; Stein, aye; Derr, aye;

17 Yingst, aye; Layton, aye; Davis, aye;

18 Claggett, no.

19 [The motion carried. Mark Wolfe abstained from voting
20 on the motion. Arion Claggett opposed the motion.]

21 ***

22 Report of Board Chairman - No Report

23 ***

24 Report of Acting Commissioner

25 [Arion R. Claggett, Acting Commissioner, Bureau of

1 Professional and Occupational Affairs, notified
2 everyone of in-person Board member training on October
3 24, 2022, from 8 a.m. to 4 p.m. in Harrisburg. He
4 noted the training is required for public members but
5 also encouraged professional members to attend. He
6 also mentioned everyone should have received an
7 email.]

8 ***

9 Report of Board Administrator - No Report

10 ***

11 [Kirk A. Davis, Chairman, Professional Member, noted
12 the next scheduled Board meeting date is October 4,
13 2022, and encouraged Board members to notify Ms. Cline
14 of any conflicts for the 2023 dates as soon as
15 possible.]

16 ***

17 Adjournment

18 CHAIRMAN DAVIS:

19 Do we have a motion for adjournment?

20 MR. STEIN:

21 Motion.

22 MR. DERR:

23 Second.

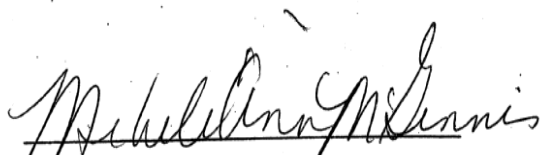
24 CHAIRMAN DAVIS:

25 We're adjourned.

[The State Board of Vehicle Manufacturers, Dealers,
and Salespersons Meeting adjourned at 1:49 p.m.]

CERTIFICATE

I hereby certify that the foregoing summary
minutes of the State Board of Vehicle Manufacturers,
Dealers and Salespersons meeting, was reduced to
writing by me or under my supervision, and that the
minutes accurately summarize the substance of the
State Board of Vehicle Manufacturers, Dealers and
Salespersons meeting.



Michele Ann McGinnis,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF VEHICLE MANUFACTURERS,
DEALERS, AND SALESPERSONS
REFERENCE INDEX

August 23, 2022

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13	10:32	Official Call to Order
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15	10:32	Roll Call/Introduction of Attendees
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17	10:36	Report of Prosecutorial Division
18		
19	10:38	Approval of Minutes
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21	10:39	Discussion
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23	10:50	Report of Board Counsel
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25	10:56	Application Review
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27	11:00	Formal Hearing - Clear Choice Auto Sales
28	12:20	
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30	12:20	Recess
31	12:28	Return to Open Session
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36	1:12	Executive Session
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39	1:46	Motions
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41	1:48	Report of Acting Commissioner
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