

1 CALIFORNIA DEPARTMENT OF INSURANCE
2 LEGAL DIVISION
3 Auto Compliance Bureau
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6 San Francisco, CA 94105
7 Telephone: 415-538-4119
8 Facsimile: 415-904-5490

9 Attorney for The California Department of Insurance

10 **BEFORE THE INSURANCE COMMISSIONER**
11 **OF THE STATE OF CALIFORNIA**

12 In the Matters of

13 NATION MOTOR CLUB, INC.,
14 D.B.A. NATION SAFE DRIVERS,

15 FRANK MENNELLA,

16 MICHAEL MENNELLA,

17 ANDREW SMITH,

18 HOWARD GOLDFARB,

19 AND

20 MICHAEL WIENER,

21 Respondents.

SPECIAL NOTICE OF DEFENSE

File No's: DISP-2007-00860

DISP-2006-00274

DISP-2006-00276

DISP-2007-0097

DISP-2007-0098

DISP-2007-0099

22 Respondents, having fully reviewed the allegations set forth in the Order to Show Cause
23 and Statement of Issues (hereafter, collectively, "Pleading"), and having conferred with their legal
24 counsel, enter into this Special Notice of Defense as a means of resolving the Pleading.

25 Respondents:

26 1. Waive their right to a hearing on the Pleading, and all other due process rights that
may be accorded to it by the California Administrative Procedure Act (Sections 11500-11528 of

1 the Government Code), California Insurance Code, California Constitution, United States
2 Constitution, and every other statute, case and regulation.

3 2. Admit all allegations recited in the Pleading, except as follows:

4 a) Respondent Nation Motor Club denies that it committed any criminal
5 offense with respect to the factual allegations recited in the Pleading, or that its
6 violation of the requirement for any certificate of authority was knowing or
7 willful.

8 b) Each individual respondent denies that he committed any criminal offense
9 with respect to the factual allegations recited in the Pleading, or that his aiding
10 or abetting of a violation of any requirement for a certificate of authority was
11 knowing or willful. Each individual respondent avers that he believed that
12 Nation Motor Club was in compliance with California law because a motor
13 club licensed in California provided the motor club services under the contracts
14 at issue and that he did not intend to aid or abet respondent Nation Motor Club
15 in the illegal transaction of motor club business in California.

16 c) All respondents deny that Nation Motor Club is lacking in management
17 competence, character, integrity, or business honesty, or is a hazard to motor
18 club members.

19 d) All respondents deny that any of the grounds recited in section 1668(b),
20 (e), (i) or (j), or 1668.5(b)(1) or (2), exist, but admit that if any of those
21 grounds were proven to exist, it would be good cause to deny Nation Motor
22 Club's pending license vehicle service contract application.

23 3. Agree that in any future disciplinary action, whether related to a violation that
24 occurred before this settlement, or a violation that occurs after this settlement, the Department of
25 Insurance may refer to this settlement for any purpose, including to enhance a penalty arising
26 from a subsequent disciplinary action.

4. Agree that the offer of this Special Notice of Defense, and the issuance of any
order pursuant to it, shall not be deemed to be a waiver of the right of the Department of

1 Insurance to investigate and prosecute Respondents or any of Nation Motor Club's officers or
2 employees, for a past, pending or future violation of California law, except for the violations
3 specifically alleged in the Pleading.

4 5. Waive all rights of review arising out of this action, including review of this
5 Special Notice of Defense and the Order implementing it, including but not limited to an
6 application to modify or rescind the Order, a petition for rehearing, writ of administrative
7 mandamus, or any other judicial or administrative review or any other right or ability they may
8 have to seek to have this Special Notice of Defense modified or set aside on any grounds
9 whatsoever.

10 6. Acknowledge that this Special Notice of Defense and the Order issued pursuant to
11 it are public records pursuant to Government Code §11517(e), and will be accessible to the public
12 pursuant to the Public Records Act, Government Code §6250 *et seq.* This Special Notice of
13 Defense and the Order adopting it will be posted on the Department's web site as required by
14 California Insurance Code section 12968.

15 7. Agree that this Special Notice of Defense constitutes the entire agreement between
16 the parties with respect to this matter. The terms of this Special Notice of Defense cannot be
17 amended except in writing, signed by all the parties.

18 8. Acknowledge that California Insurance Code section 12921 requires the Insurance
19 Commissioner to approve the final settlement of this matter. Both the settlement terms and
20 conditions contained herein and the acceptance of those terms and conditions are contingent upon
21 the Commissioner's approval.

22 9. Agree that they will inform themselves of and obey all California and Federal law
23 applicable to any contract that is regulated by the Insurance Code or under the jurisdiction of the
24 Commissioner.

25 10. Nation Motor Club agrees to have its application for an unrestricted vehicle
26 service contract provider license denied, and the Commissioner agrees to issue instead and Nation
Motor Club agrees to accept a restricted license pursuant to section 1742. The restricted license
will remain in place subject to the conditions and restrictions set forth below for at least ten years,

1 and until the Commissioner shall, by written order, remove or modify those conditions and
2 restrictions. The conditions and restrictions shall apply to said license and any renewal thereof,
3 whether or not actually endorsed on the license. Ten years from the date the restricted license is
4 issued, upon petition, the restrictions will be removed, unless the Department determines that
5 during that period Nation Motor Club violated any law or regulation, or unless the Department
6 has evidence that Nation Motor Club has, since the imposition of the restricted license, violated a
7 term of this Special Notice of Defense, in which case the Department may extend the restricted
8 license for the time necessary to investigate the violation and conclude an enforcement action.

9 a. As a condition of the restricted license, Nation Motor Club agrees that it will
10 handle claims arising from any vehicle service contract issued to a California resident on
11 which it is the obligor or administrator in a prompt, fair and equitable manner, pursuant to
12 the standard set forth in section 12850 of the California Insurance Code. Nation Motor
13 Club will comply with section 790.03(h) and any regulations that recite section 790.03(h)
14 as reference, including but not limited to 10 C.C.R. § 2695.1 *et seq.* For purposes of such
15 compliance, the term "insurance policy" or "policy" as used in section 790.03(h) and any
16 regulation that recites section 790.03(h) as reference shall include a vehicle service
17 contract.

18 11. Nation Motor Club agrees that if it receives a certificate of authority as a motor
19 club that it will forego its property right therein. It agrees that the Commissioner may with 15
20 days prior notice stating good cause, but without a prior hearing, suspend or revoke the certificate
21 of authority. Ten years from the date of the Order issued pursuant to this Special Notice of
22 Defense, upon petition, if Nation Motor Club has not violated this Special Notice of Defense, its
23 property right in the certificate of authority, and its due process rights with respect thereto, will be
24 reinstated. However, if the Department determines that the Nation Motor Club did violate this
25 Special Notice of Defense, the Department may: 1. Bring an action seeking to suspend or revoke
26 the certificate of authority upon good cause; or 2. Bring an action seeking to extend the provisions
of this paragraph for an additional ten years from the date of a violation other than one which, in
the opinion of the Commissioner, is de minimis.

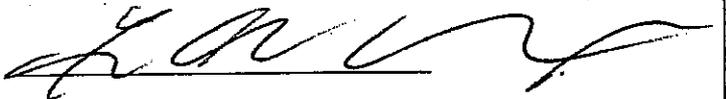
1 12. Respondents agree to pay \$1,000,000 (one million dollars), jointly and severally,
2 as an administrative forfeiture of profits in settlement of this matter, and \$5,000.00 to reimburse
3 the Commissioner for his costs in investigating and prosecuting this matter, pursuant to Insurance
4 Code section 1748, provided that the Commissioner shall not enforce this monetary obligation
5 against the individual respondents if Nation Motor Club defaults. \$250,000 will be paid within
6 30 days of receiving an invoice in 2008, and \$250,000 per year will be paid within 30 days of
7 receiving an invoice in each of the three subsequent years.

8 13. Nation Motor Club agrees that the denial of its application for an unrestricted
9 vehicle service contract provider license shall be considered a denial for cause, and may be
10 referred to as such in any future action by the Commissioner pursuant to California Insurance
11 Code section 1669(c).

12 14. Agree that this Special Notice of Defense resolves and settles all acts alleged in the
13 Pleading up to the date of Special Notice of Defense, including any objection to issuance of a
14 motor club license to Nation Motor Club, Inc. based on such acts.

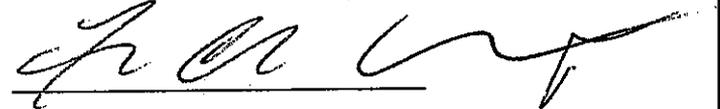
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16 IT IS SO STIPULATED:

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18 Dated: 6-27-08



Nation Motor Club, Inc., by Frank Mennella

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20 Dated: 6-27-08



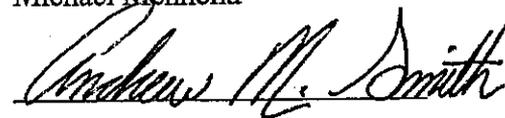
Frank Mennella

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22 Dated: 6-27-08



Michael Mennella

23
24 Dated: 6-27-08



Andrew Smith

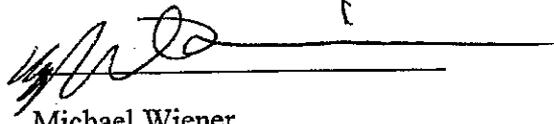
25
26 Dated: 6-27-08



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Howard Goldfarb

Dated: 6/27/08



A handwritten signature in black ink, appearing to read 'Michael Wiener', is written over a horizontal line.

Michael Wiener

Dated: 6/27/08



A large, stylized handwritten signature in black ink, appearing to read 'Jon Tomashoff', is written over a horizontal line.

Department of Insurance, by Jon Tomashoff

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