

1 LAW OFFICES OF MICHAEL J. FLANAGAN
2 MICHAEL J. FLANAGAN State Bar #093772
3 GAVIN M. HUGHES State Bar #242119
4 DANIELLE R. VARE State Bar #277844
5 ERIN R. HEGEDUS McINTOSH State Bar #266849
6 2277 Fair Oaks Boulevard, Suite 450
7 Sacramento, California 95825
8 Telephone: (916) 646-9100
9 Facsimile: (916) 646-9138
10 Email: lawmjf@msn.com

11 ATTORNEYS FOR PROTESTANT

12
13 STATE OF CALIFORNIA
14
15 NEW MOTOR VEHICLE BOARD

16 In the Matter of the Protest of:

17 MEGA RV CORP dba
18 MCMAHON'S RV,

19 Protestant,

20 v.

21 ROADTREK MOTORHOMES, INC.,

22 Respondent.

23 **Protest Nos: 2199-10, 2201-01, 2205-10,**
24 **2206-10, 2208-10, 2209-10, 2211-10,**
25 **2212-10, 2233-10, 2244-10 and 2245-10.**

26 **PROTESTANT'S POST-HEARING**
27 **OPENING BRIEF**

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NEW MOTOR VEHICLE BOARD DECISIONS

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1 **INTRODUCTION**

2 These proceedings before the Board involve twelve Protests filed by Protestant, Mega
3 RV Corp., dba McMahon's RV ("Mega" or "Protestant") against Respondent, Roadtrek
4 Motorhomes, Inc. ("Roadtrek" or "Respondent"). The parties to these Protests are also parties
5 to an action for money damages currently pending in United States District Court in the Central
6 District of California, Case No. CV 09-09466 SJO¹.

7 These Protests were filed in response to Roadtrek's commission of a series of unlawful
8 acts designed to terminate Protestant's ability to sell and service Roadtrek vehicles from its
9 locations in Colton, Scotts Valley, and Irvine, California. Beginning in 2001, Protestant and
10 Respondent enjoyed a successful and mutually beneficial relationship. However, once the
11 economy and the parties' relationship began to deteriorate, Roadtrek began to take a series of
12 actions that contradicted California law, the parties' franchise agreements and the parties'
13 previous course of conduct. In 2007, Roadtrek began experiencing severe financial difficulties,
14 which, as will be illustrated herein, contributed to the deterioration of its relationship with
15 Protestant. In October 2009, Roadtrek repossessed all of Protestant's units without notice and
16 effectively terminated its Roadtrek franchises. Roadtrek then established another Roadtrek
17 franchise without notice within both Protestant's relevant market area under the California
18 Vehicle Code and within Protestant's exclusive territory under the franchise agreements.
19 Roadtrek did not pay Protestant for certain incentive and warranty claims or give specific
20 reasons for such nonpayment within the required time set forth in the California Vehicle Code.²

21 Roadtrek's actions in this case violate several sections of the California Vehicle Code,
22 including Section 3072 for establishing an additional Roadtrek franchise within Protestant's
23 relevant market area without notice, Section 3070 for the modification of Protestant's franchise
24 agreement without notice and for the termination of Protestant's Roadtrek franchises without
25 good cause and Sections 3075 and 3076 regarding lack of payment or adequate denial of

26
27 ¹ The determination of damages in the federal action requires the interpretation of, and conclusions regarding,
28 several California Vehicle Code sections over which the Board has primary jurisdiction and superior knowledge. The court ordered the federal proceeding be stayed until such time as the Board has issued a final decision regarding the California Vehicle Code issues raised in these Protests. The federal court is expected to give great weight to the Board's determinations of law under the California Vehicle Code.

² The California Vehicle Code will be cited hereafter as "Cal. Veh. Code §"

1 franchise and warranty claims. On August 3, 2011, ALJ Skrocki issued an order (“Skrocki’s
2 Order”) granting in part and denying in part Protestant’s Motions in Limine. Pursuant to the
3 findings made in Skrocki’s Order, Protestant will prove in this brief that Respondent has
4 violated all of the aforementioned Vehicle Code Sections and these filed Protests should be
5 upheld.

6 **STATEMENT OF FACTS**

7 Protestant has been a Roadtrek franchisee since 2001, having acquired its first franchise
8 in Irvine, California. (McMahon, R.T. 8/9/11, 105:1-2.)³ Subsequently, Protestant established
9 additional Roadtrek franchises in Colton, CA, Stanton, CA, Scotts Valley, CA, San Diego, CA
10 and Palm Desert, CA. (McMahon, R.T. 8/9/11, 106:22-110:1.) As illustrated by the timeline
11 attached hereto as Appendix 1, the parties’ relationship continued for almost a decade and, for at
12 least the first 7 years, was extremely productive and “mutually beneficial.” (McMahon, R.T.
13 8/15/11, 124:17-25; Hammill, R.T. 11/14/11, 158:20-159:9.)

14 After becoming a Roadtrek franchisee, Mega quickly established itself as Roadtrek’s top
15 dealer in the United States and firmly established Roadtrek as a top retailer of Class B motor
16 homes in the California market. Within two to three years of the start of the parties’
17 relationship, Mega shattered every unit sales record Roadtrek ever had, selling 78 units in 2002
18 and 85 units in 2003. (McMahon, R.T. 8/9/11, 106:4-5, 113:8-11; Ex. 709.) In fact, Mega has
19 been the number one dealer from a multiple-location standpoint since 2005, when it sold 54
20 units in a year. (Hammill, R.T. 11/9/11, 52:14-23, 194:8-11; McMahon, R.T. 8/9/11, 106:5-6;
21 Ex. 68; Ex. 709.) In subsequent years Mega more than doubled, then tripled, those sales, selling
22 117 Roadtrek units in 2006 and 161 Roadtrek units in 2007. (Ex. 709.)⁴ In fact, Mega was
23 selling close to 30% of Roadtrek’s manufactured inventory. (Schilperoort, R.T. 8/16/11, 193:23-
24 194:2.)

25 Roadtrek took multiple actions to commemorate Mega’s success as the number one
26 Roadtrek dealer. For example, Roadtrek had custom made, lithograph photos of Roadtrek units

27 ³ Hereafter citations to the hearing transcripts will be in the following format, with the italicized portions being
28 filled in with the appropriate information: (*Witness last name, R.T. Date, Page:Line number.*)

⁴ The principal reason these levels were not maintained in later years was the market crash and subsequent industry
decline from 2008 onward.

1 made and presented to Mega in the form of 3x2 foot (approx.) plaques. (See Ex. 68 for photos of
2 some examples.) In addition, when Roadtrek produced its 20,000th unit, it held a ceremony to
3 present the keys to the unit to Mr. Brent McMahon. (Ex. 601.) Roadtrek decided that Mega
4 would be the dealer to receive that honor because of its Roadtrek sales, “commitment to the
5 product,” and the personal friendship between Mr. James Hammill and Mr. McMahon.
6 (Hammill, R.T. 11/9/11, 172:21-173:5.)

7 Mega’s owner, Mr. McMahon, has always been passionate about the Roadtrek franchise
8 and his knowledge has always led the dealership to serve the public in the best way possible.
9 (*Id.* at 172:21-173:5.) Over the years, Mega made a significant investment in its advertising of
10 the Roadtrek product. Mega has infomercials advertising itself and its products, has had contract
11 negotiations with all the major radio and television stations, and is generally more aggressive in
12 its advertising strategies than other RV dealers. (McMahon, R.T. 8/10/11, 48:19-51:1, 53:1-25.)
13 Mega’s aggressive techniques and commitment to the Roadtrek product led to many productive
14 years for Roadtrek.

15 However, by 2007, Roadtrek, as well as many other manufacturers of recreational
16 vehicles, began experiencing extreme financial difficulties that would not abate for many years
17 to come. (Ex. 606; Hanemaayer, R.T. 11/14/12, 165:18-173:12.)⁵ Roadtrek’s precarious
18 financial situation caused it to search for various means by which to limit its existing debts and
19 liabilities, including those due Mega. In March 2008, at Roadtrek’s invitation, the parties met in
20 Kitchener, Ontario, Canada (“the Kitchener meeting”). (See Ex. 609.) At the Kitchener meeting,
21 Mega met with Roadtrek representatives who explained Roadtrek’s financial difficulties to Mr.
22 McMahon and proceeded to request that he forgive the approximately \$166,000 holdback owed
23 to him. (Hanemaayer, R.T. 11/14/11, 44:1-23.) According to the holdback program agreed to
24 between Mega and Roadtrek, Roadtrek owed Mr. McMahon \$1,000 per Roadtrek unit that was
25 delivered to Mega within a given year. (Schilperoort, R.T. 8/18/11, 191:6-20.) While Mr.
26 McMahon sympathized with Roadtrek’s position, the economic downturn had affected his

27 //

28 ⁵ In fact, in 2011 these extreme financial difficulties forced Roadtrek to sell 65% of the company to an outside investor. (Hammill, R.T. 9/22/11, 77:13-78:8.)

1 dealership business as well and he was in no position to relieve Roadtrek of its financial
2 obligations. (McMahon, R.T. 8/10/11, 36: 7-16, 64:7-23.)

3 As a result of this economic downturn and the difficulties in getting approvals from
4 customers' banks, Mega had been paying late for Roadtrek units. (McMahon, R.T. 8/10/11,
5 202:11-23.) However, Mega always made the payments eventually. (*Id.*) Interestingly, when
6 Mr. McMahon requested Roadtrek meet its financial obligation to him and pay the \$166,000
7 holdback he had earned, Roadtrek made no mention of amounts owing between the parties or
8 Mega's late payments as reasons for not paying the holdback due to Mega. From this moment
9 forward, however, the relationship between the parties began to deteriorate.

10 Prior to the Kitchener meeting, Roadtrek had provided interest-free units to Mega
11 through a very informal "on-the-arm" program under which Roadtrek would select and ship to
12 Mega the inventory Roadtrek chose and Mega would provide payment to Roadtrek after the
13 units were sold. (McMahon, R.T. 8/10/11, 57:4-9; Schilperoort, R.T. 8/16/11, 185:16-21.) This
14 program was "experimental" and allowed Roadtrek to be established as a top seller of Class B
15 motor homes in the California market. (Hammill, R.T. 9/22/11, 152:23-153:7; McMahon, R.T.
16 8/10/11, 46:2-13; Ex. 608.) However, at the Kitchener meeting, after Mr. McMahon refused to
17 forgive the \$166,000 holdback owed, Roadtrek advised Mega it would immediately begin
18 charging Mega interest on units shipped. (Schilperoort, R.T. 8/16/11, 189:5-25.) In addition,
19 Roadtrek wanted immediate payment of 'past interest' that had never previously been discussed,
20 agreed upon, or billed between the parties. (McMahon, R.T. 8/10/11, 58:23-60:6; Schilperoort,
21 R.T. 8/16/11, 181:12-21, 182:22-183:16; Ex. 608.) Taken aback by this demand, after
22 Roadtrek's surprising attempt to refuse to pay the holdback Mr. McMahon had earned, Mega
23 agreed to make two \$35,000 payments for the alleged 'past interest' in an effort to keep the
24 relationship moving forward amicably. (McMahon, R.T. 8/10/11, 147:24-148:13; Schilperoort,
25 R.T. 8/16/11, 192:4-7; Ex. 612.)

26 However, after making the first \$35,000 payment, Mega began to question the
27 soundness of continuing to pay for interest that had never previously been due. (Schilperoort,
28 R.T. 8/19/11, 64:20-65:7.) This feeling that interest should not be owed to Roadtrek was

1 legitimized by discussions Mega had with Mr. Hammill, Roadtrek's President and CEO, who
2 continually stated Mega did not need to "worry about interest." (Schilperoort, R.T. 9/21/11,
3 105:11-14; Fosdick, R.T. 1/9/12, 185:4-25.) Even when Roadtrek told Mega it needed to sign a
4 "Security Agreement and Power of Attorney" ("the Security Agreement"),⁶ which detailed
5 interest Mega would owe on units floored by Roadtrek, Mr. Hammill insisted the Security
6 Agreement's "only purpose was for his bank" and Mega would still not need to "worry about
7 interest." (Schilperoort, R.T. 9/21/11, 105:7-14.) Based upon these assertions by Roadtrek's
8 President and CEO, Mega signed the Security Agreement with the belief it would not owe
9 Roadtrek any payments for interest in the future or for the past. (Schilperoort, R.T. 9/21/11,
10 176:17-24, 177:10-15, 181:5-183:7; Ex. 614; Fosdick, R.T. 1/9/12, 185:4-186:6.)

11 Since the beginning of the parties' relationship, Roadtrek would always ship Mega the
12 number and composition of units Roadtrek desired on a regular basis. (McMahon, R.T. 8/11/11,
13 159:2-20.) (*See also* Ex. 699.) These shipments were always made without obtaining prior
14 approval from Mega, let alone getting actual *orders* from Mega. (*See* Ex. 699.) This method was
15 mutually acceptable to the parties at the beginning of their relationship because Roadtrek was
16 experimenting with providing flooring, and no interest was being charged to Mega to keep the
17 product.

18 However, this oversaturation of product became beneficial only to Roadtrek when it
19 stopped flooring units to Mega, claiming it was owed interest on such shipments. (McMahon,
20 R.T. 8/11/11, 10:8-18.) Despite these alterations to the prior course of conduct between the
21 parties, Roadtrek continued to ship a large volume of inventory to Mega at will. (*Id.* at 10:8-24.)
22 These shipments consisted of models not ordered or chosen by Mega,⁷ but selected solely by
23 Roadtrek. (*Id.* at 10:8-24.) Mega continually communicated to Roadtrek this was unacceptable
24 and that it wanted to be consulted prior to units being shipped. (*Id.* at 9:9-13:4.) (*See also* Ex.
25 632.) However, Roadtrek "continued to do what they wanted to do." (McMahon, R.T. 8/11/11,
26 11:13-14.)

27 ⁶ *See* Ex. 614 for the Security Agreement executed in April 2008.

28 ⁷ There were a few exceptions to this when Mega would find a certain model desirable and would request that model, specifically, also be included in the shipments Roadtrek was already sending. (McMahon, R.T. 8/11/11, 11:21-12:1.) There were also a few custom orders for customers. (*Id.* at 160:1-21.)

1 Because of Roadtrek's precarious financial position, as revealed during the Kitchener
2 meeting, Mega was concerned Roadtrek might soon be unable to make payments for incentives,
3 customer warranty reimbursement, and other amounts owed. (*Id.* at 138:3-16; Ex. 658.) During
4 this same time period, several RV manufacturers had already filed for bankruptcy and it was
5 widely reported that Chrysler and General Motors would soon file for bankruptcy as well.⁸
6 Mega had already suffered significant financial losses when other line-makes, for which
7 Protestant was a franchisee, either filed for bankruptcy or went out of business. (McMahon,
8 R.T. 8/11/11, 135:19-138:2; Ex. 658.) As a result of these facts, Mega was rightfully concerned
9 this scenario was about to repeat itself with Roadtrek. Mr. McMahon sought advice regarding
10 how best to limit his potential losses in the event of a Roadtrek bankruptcy and was informed by
11 his advisors and lenders he should always leave a running balance owed to Roadtrek
12 approximately equivalent to the amount Roadtrek owed Mega. (McMahon, R.T. 8/11/11, 138:3-
13 140:7; Schilperoort, R.T. 8/19/11, 91:19-92:19; Ex. 658.) Mr. McMahon believed this to be his
14 only option to ensure any debts owed by Roadtrek would not be discharged in bankruptcy,
15 resulting in a substantial loss to Mega. (*Id.*)

16 In implementing this practice of leaving a small running balance, Mega continued to
17 receive Roadtrek product and it continued to make payments for vehicles sold. However, Mega
18 continuously withheld payment for the most recent three (3) to four (4) vehicles sold.
19 (Schilperoort, R.T. 8/19/11, 91:19-92:19.) This provided Mega with a certain amount of
20 protection against a potential Roadtrek bankruptcy. At no time did Protestant ever cease any
21 and all payment to Roadtrek. (McMahon, R.T. 8/11/11, 67:19-21; McMahon, R.T. 8/10/11,
22 202:22-23; Schilperoort, R.T. 8/19/11, 118:13-23.)

23 Roadtrek was not pleased with Mega's decision to take the protective measures it did
24 and embarked upon a campaign to terminate its relationship with Protestant through a series of
25 unlawful acts under the Vehicle Code. First, Roadtrek began paying for warranty claims late.
26 (Ex. 774.) Next, Roadtrek began withholding payment to Mega for incentives and customer
27 warranty work reimbursement altogether. (Ex. 639; Ex. 645.) (*See also* Ex. 5; Ex. 774;
28

⁸ Roadtrek units are constructed on General Motors and Chrysler manufactured chassis.

1 Schilperoort, R.T. 8/17/11, 133:23-12; Schilperoort, R.T. 9/21/11, 128:6-14.) The last check
2 Mega received from Roadtrek was in July or August of 2008. (Schilperoort, R.T. 8/19/11,
3 65:20-65:8.) Roadtrek alleges it offset payments for warranty claims and incentives. (Hammill,
4 R.T. 9/23/11, 169:22-170:2.) However, there is insufficient evidence showing payments through
5 offset for approved claims, suggesting this “payment” defense was thought up only after
6 litigation became imminent between the parties. At the time of the alleged offsetting, Mega was
7 never made aware of the practice. (Schilperoort, R.T. 8/19/11, 88:22-89:3; Schilperoort, R.T.
8 9/21/11, 132:16-133:4.) When Mega’s other franchisors pay Mega for warranty or parts through
9 offsetting, Mega receives a statement to that effect so it is able to clear such claims from its
10 records as having been paid. (Fresh, R.T. 1/9/12, 47:2-49:17.) However, Roadtrek never sent
11 such offsetting accountings to Mega. (*Id.* at 44:7-9, 115:4-16; Schilperoort, R.T. 9/21/11,
12 130:18-133:9.)

13 For those claims that were disapproved, Mega did not consistently receive specific
14 written notice of the grounds for disapproval. (*See* Ex. 517; Ex. 517A.) For those claims that
15 were approved, written approval often came late. (*See* Ex. 774.) Roadtrek claims no approval or
16 disapproval of many incentive claims was required because such claims were often made to
17 Roadtrek orally. However, oral requests and approval had always been the course of conduct
18 between the parties. It was common practice for Mega to contact Roadtrek and ask for price
19 support in order to make a sale. (Hammill, R.T. 11/9/11, 92:2-11.) This would occur sometimes
20 telephonically, by email, or in person. (*Id.* at 92:10-11; Hammill, R.T. 9/23/11, 77:11-20;
21 Cassidy, R.T. 1/18/12, 158:5-159:13.) When these “informal requests” (Hammill, R.T. 9/23/11,
22 77:19) were made by a dealer, Roadtrek claimed it would make an assessment as to approval or
23 disapproval of that request “at the time of the request.” (*Id.* at 78:5-10.) Thus, these informal
24 deals and the process of approval or disapproval surrounding them were often not documented
25 nor, at the time, did Roadtrek insist on such documentation. (Hammill, R.T. 11/9/11, 102:18-24;
26 McMahon, R.T. 8/9/11, 149:18-150:13.) When Mega did document such deals, it was often for
27 its own protection, rather than due to any purported requirement by Roadtrek. (McMahon, R.T.
28 8/9/11, 150:14-153:19.) Contrary to its current arguments, Roadtrek did not practice the strict,

1 black-and-white requirement it now asserts regarding getting deals in writing before approving
2 incentive claims.

3 Roadtrek also stopped selling warranty parts to Mega.⁹ (Schilperoort, R.T. 9/21/11,
4 133:24-134:9.) As a result, Mega was prevented from fulfilling its obligations as a Roadtrek
5 franchisee. From that point forward Mega could not do warranty work on Roadtreks because it
6 lacked the necessary parts. (*Id.* at 134:10-20.) Mega tried to take care of the customers as best as
7 it could, sometimes even resorting to pulling a part off a Roadtrek stock unit so the service
8 department could conduct repairs. (*Id.* at 134:10-20, 135:1-7.) Mega found itself funding its
9 own warranty work for Roadtrek, which became financially draining for Mega. (*Id.* at 136:17-
10 21.)

11 This action against Mega had a substantial impact on Mega's reputation and finances.
12 (*Id.* at 134:21-136:16, 136:1-4.) Soon, Mega had no choice but to tell Roadtrek customers to go
13 elsewhere to get their repairs done, even if a customer had just bought a unit from Mega. (*Id.* at
14 135:10-12.) Not surprisingly, the customer satisfaction level dropped and customers began
15 assuming Mega was not a Roadtrek dealer because it could not do warranty work on customers'
16 vehicles. (*Id.* at 135:8-12, 136:8-16, 137:8-11.)

17 As the parties moved forward with their relationship, Mega continued to receive
18 assurances from Mr. Hammill that interest was not due. In May 2009, Mega met with Mr.
19 Hammill in Mega's Millhouse meeting room to discuss the money owed between both parties
20 and the difficulties Roadtrek's actions were causing Mega. (Hammill, R.T. 9/23/11, 169:22-
21 170:5; Schilperoort, R.T. 9/21/11, 92:4-10.) During that meeting, each of the parties wrote down
22 the amounts they felt were owed between the parties on a large grease board mounted on the
23 wall. (Schilperoort, R.T. 9/21/11, 92:10-17.) After both parties wrote their figures, Mr. Hammill
24 went up to the board and erased figures on both sides, illustrating the amounts owed between
25 the parties were "pretty much a wash" and the parties could resolve the amounts owed by
26 essentially writing check-for-check. (*Id.* at 92:18-93:2; 97:12-22.) The very first thing Mr.
27

28 ⁹ Two exceptions to this are found in Exhibit 76 at RMI 2018 and RMI 2356-2357. However, these were very
specific exceptions regarding Mega having to beg Roadtrek to provide parts for two specific customers.
(Schilperoort, R.T. 9/22/11, 55:11-57:16.)

1 Hammill erased from the board was interest. (*Id.* at 105:5-7.) As with every other time interest
2 was brought up during one-on-one conversations between Mr. Hammill and Mega, Mr.
3 Hammill stated, “don’t worry about interest. Interest isn’t something that we’re concerned
4 with.” (*Id.* at 105:11-14.)

5 In the months that followed, Mega waited for Roadtrek to hold up its end of the bargain
6 and exchange check-for-check as the parties had agreed during the Millhouse meeting. But,
7 Roadtrek never sent a check. Instead, Roadtrek began contemplating ways to effectively
8 terminate Mega as a Roadtrek franchisee without having to follow the rules outlined in the
9 California Vehicle Code. In the months preceding the October 2009 Pomona RVIA Show (“the
10 2009 Pomona Show”), a manufacturer show for which Mega provided its own units for display
11 as Roadtrek’s official Roadtrek dealer, Roadtrek had discussions among its management
12 employees and its counsel regarding plans to abscond with Mega’s units at the 2009 Pomona
13 Show. (Hammill, R.T. 127:20-128:12.) In preparation for the planned repossession, in the
14 weeks preceding the 2009 Pomona Show, Roadtrek representatives made every effort to see that
15 Mega delivered the entirety of its inventory to the 2009 Pomona Show as well as all
16 documentation concerning such inventory. (McMahon, R.T. 8/11/11, 144:18-21.) During the
17 two-week event, Mega sold a record number of units, which would ordinarily be considered
18 very successful. (*Id.* at 113:22-114:9.) Nonetheless, without prior notice, at the close of the
19 show Roadtrek informed Mega it would be taking possession of the unsold units and delivering
20 them to Quality Drive Away to be stored. (Schilperoort, R.T. 11/7/11, 140:25-141:2; McMahon,
21 R.T. 8/11/11, 58:20-59:4, 145:18-146:12.) This action by Roadtrek effectively terminated Mega
22 as a Roadtrek franchisee, rather than just depriving it of resources, as it had done previously.

23 At that point, Mega’s ability to continue functioning as a Roadtrek franchisee was not
24 only severely hindered, it was completely obliterated. After the 2009 Pomona Show, in
25 complete disregard of the prior course of conduct between the parties, Roadtrek ceased unit
26 shipments to Mega. (McMahon, R.T. 8/11/11, 160:1-161:2.) Further, it refused to accept
27 Mega’s orders for new units or parts, in addition to continuing to refuse to reimburse Mega for
28 warranty work. (McMahon, R.T. 8/11/11, 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20.)

1 However, none of these actions revealed Roadtrek's true motivation to effectively terminate
2 Mega as a franchisee more than Roadtrek's endeavor to find a replacement dealer for Mega.

3 Although Roadtrek claimed to have absconded with the units at Pomona to protect its
4 financial interests pursuant to the Security Agreement, Roadtrek's discussions with other
5 dealers about establishing an additional franchise within the exclusive territories already
6 assigned Mega reveals this was a mere pretense. Mr. Phil Martinelli, a prior employee of Mike
7 Thompson's RV ("MTRV"), recalls Roadtrek soliciting MTRV as a potential dealer to replace
8 Mega as early as August or September of 2009. (Martinelli, R.T. 1/19/12, 24:22-25:1.) In fact,
9 Mr. Martinelli clearly recalls Roadtrek brought one of its units to MTRV to educate MTRV on
10 the product during that time period. (*Id.* at 24:22-25:8, stating he "chuckled because [he] saw a
11 McMahon RV license plate frame on the van.") At the 2009 Pomona Show, Roadtrek took
12 additional action to find a new dealer to replace Mega and began speaking to Giant RV in
13 addition to MTRV about the possibility. (*Id.* at 22:4-23:4, 23:22-24:18, 25:12-21, 28:1-5.)
14 However, after the 2009 Pomona Show, from October 2009 to January 2010, Roadtrek's
15 discussions with MTRV went from merely speculative solicitations to true negotiations. (*Id.* at
16 41:5-10.) Despite these plans to steal Mega's franchises, Roadtrek continued to maintain the
17 pretense that it still wanted "to work things out" (Hammill, R.T. 11/10/11, 187:13-16) with
18 Mega.

19 On December 1, 2009, Mega made a final attempt to resolve the parties' differences and
20 set up a dinner meeting in Louisville, Kentucky during a trade show both parties were attending.
21 (Hammill, R.T. 11/14/11, 76:12-17) At that dinner, the parties reached a verbal agreement
22 settling the monetary issues between the parties. (Hammill, R.T. 11/14/11, 76:12-17.) Over the
23 next couple weeks, Mega worked diligently with Mr. Jeff Hanemaayer, Roadtrek's Vice
24 President, to complete a written document that would embody the oral agreement reached at the
25 dinner. (*See* Ex. 27.) Roadtrek, however, abruptly pulled out of the negotiations before the
26 negotiated agreement was executed. In direct contradiction to Roadtrek's claims that
27 Protestant's franchises were still active after October 2009, Mr. Hanemaayer spoke with Mr.
28 Mike Lankford, Mega's Vice President of Sales, on or about December 14, 2009, after lengthy

1 attempts at settlement, and said it was “too late,” he was “gonna go play with someone else.”
2 (Ex. 26; Lankford, R.T. 11/17/11, 110:1-10.) Roadtrek communicated to Mega that it no longer
3 wanted to do business with Mega. (Lankford, R.T. 11/17/11, 112:7-116:15.)

4 While it was not immediately clear to Mega why Roadtrek would suddenly refuse to
5 enter into a written settlement agreement, it was later discovered Roadtrek found a dealer to
6 replace Mega, despite the fact that, under the Cal. Veh. Code, Mega remained a Roadtrek
7 franchisee. On January 29, 2010, shortly after Roadtrek backed away from the unexecuted
8 settlement agreement with Mega, Roadtrek entered into franchise agreements with MTRV at
9 several California locations, without providing Mega or the New Motor Vehicle Board any prior
10 notice. (Ex. 685.) (*See also* Ex. 699, stating no notice had previously been provided.) These
11 franchises included, among others, locations in Colton and Fountain Valley, within territories
12 exclusively assigned to Mega. (*See* Ex. 685; Ex. 600; Ex. 604; Ex. 63.) In fact, the Colton
13 location is directly across the street from Mega. (McMahon, R.T. 8/11/11, 157:4-8.) These were
14 yet additional unlawful acts by Roadtrek in its deliberate and systematic termination of Mega’s
15 Roadtrek franchises.

16 In fact, Roadtrek and Mr. Frank DeGelas, the owner of MTRV, were well aware their
17 actions violated the laws set forth in the Cal. Veh. Code. Roadtrek had previously been made
18 aware by the New Motor Vehicle Board itself of the notice procedures required under the Cal.
19 Veh. Code before terminating a dealer. Manteca Trailer and Camper Inc. dba RVs of
20 Sacramento v. Home and Park Motorhomes Roadtrek (PR-2036-07) and Manteca Trailer and
21 Camper, Inc., dba Brawley’s RV v. Home and Park Motorhomes Roadtrek (PR-2074-07),
22 decided 11/30/07. (*See also* the order of the ALJ taking official notice of the Manteca case, R.T.
23 9/21/11, 7:9-14.) “Not only was respondent aware of the proper procedure for terminating
24 franchises while the events of late 2009 and early 2010 unfolded, it was aware of the notice and
25 hearing requirements as early as 2006.” (*Id.* at 7:15-18.)

26 Mr. DeGelas was also aware there would likely be legal repercussions resulting from his
27 actions. According to Mr. Hammill, Mr. DeGelas specifically negotiated Section 802 titled
28 “Indemnification” in the dealer agreement because “he was worried about getting sued by

1 McMahon's RV" (Hammill, R.T. 11/10/11, 124:8-13) and Mr. DeGelas would not sign a dealer
2 agreement with Roadtrek without an indemnity clause specifically shielding MTRV from legal
3 action, including the filing of a protest, by McMahon's RV. (Hammill, R.T. 11/7/11, 213:15-
4 20.) (See also Martinelli, R.T. 1/19/12, 46:6-11, stating "Frank was concerned about the legal
5 dispute between McMahon RV [sic] and Roadtrek. Frank did not want to be involved or drawn
6 into any kind of liability. So he negotiated that Roadtrek would indemnify MTRV if MTRV's
7 taking on Roadtrek resulted in future litigation.") In fact, the indemnification clause in Section
8 802 specifically outlines Mr. DeGelas' worry, stating, "[Roadtrek] will use its best efforts to
9 defend any actions, *protests* or other legal claims by or on behalf of *McMahon's RV Superstore,*
10 Inc. or any of its shareholders or affiliates regarding or relating to the franchise granted to
11 [MTRV] herein." (Ex. 685 ¶ 802.) (emphasis added)

12 On the same day Roadtrek enfranchised MTRV, Mega filed its first two of many
13 protests in this case, stating it was informed and believed Roadtrek intended to establish an
14 additional Roadtrek dealer within Mega's exclusive territory in violation of the Dealer
15 Agreements ("DA") between the parties. (See Protests PR-2199-10 and PR-2201-10.) Mega
16 continued to file its additional protests over the next seven months. (See Protests 2205-10, 2206-
17 10, 2208-10, 2209-10, 2211-10, 2212-10, 2233-10, 2244-10 and 2245-10.) However, it wasn't
18 until June 14, 2010, that Roadtrek sent Mega the required Notices of Termination under the Cal.
19 Veh. Code. (Ex. 702.)

20 After the parties commenced litigation, it became apparent just how desperate
21 Roadtrek's financial situation had become. Due to Roadtrek's precarious financial condition, it
22 was compelled to seek the investment of a private equity company in order to sustain enough
23 capital to reduce its debt load and continue to grow the company. (Hammill, R.T. 9/22/11,
24 77:13-78:8.) The private equity firm, Industrial Opportunity Partners, bought approximately
25 65% of Roadtrek in March of 2011. (*Id.* at 77:22-25.) Despite Roadtrek itself going through
26 tough economic times and losing its financing from banks, Roadtrek did not take any of this into
27 consideration before effectively terminating Protestant. In fact, it is clear from the evidence that
28 once Roadtrek replaced Mega with MTRV in January 2010, Roadtrek's financial situation only

1 deteriorated and did not improve. Therefore, it is perhaps likely that it would have been in
2 Roadtrek's best interest to retain Mega as a Roadtrek dealer.

3 **ARGUMENT**

4 **I. RESPONDENT DID NOT GIVE NOTICE TO PROTESTANT BEFORE**
5 **ESTABLISHING A ROADTREK FRANCHISE AT MTRV WITHIN THE**
6 **RELEVANT MARKET AREA OF PROTESTANT'S COLTON, CA ROADTREK**
7 **DEALERSHIP AS REQUIRED UNDER CAL. VEH. CODE SECTION 3072(A)**
8 **[PR-2233-10] AND THEREFORE THE ESTABLISHMENT OF MIKE**
9 **THOMPSON'S RV FRANCHISE IS ILLEGAL AND VOID.**

10 Pursuant to Cal. Veh. Code § 3072(a), "if a franchisor seeks to enter into a franchise
11 establishing an additional motor vehicle dealership within a relevant market area *where the*
12 *same recreational vehicle line-make is then represented...*the franchisor shall, in writing, first
13 notify the board and each franchisee in that recreational vehicle line-make in the relevant
14 market area of the franchisor's intention to establish an additional dealership...within that
15 market area." (emphasis added) Cal. Veh. Code § Section 507 defines "relevant market area" as
16 "any area within a radius of 10 miles from the site of a potential new dealership." Once notice is
17 given to the Board and to the dealer with the existing same line-make franchise, the dealer can
18 file a protest and utilize the rights granted to it under the Vehicle Code. In this case, neither
19 Protestant nor the Board were given the required notice of Roadtrek's intent to establish MTRV
20 as a Roadtrek franchisee in Colton, and Protestant was not able to exercise the rights granted to
21 it under the Vehicle Code before Roadtrek established that franchise within Protestant's relevant
22 market area and, in fact, within several hundred feet of Mega's Colton franchise.

23 **A. Cal. Veh. Code Section 3072(b)(5) Is Not Applicable To The Establishment**
24 **Of MTRV's Roadtrek Franchise Within Protestant's Relevant Market Area**
25 **Because The Franchise Subject To The Protest, Roadtrek At MTRV, Was**
26 **Not Established On Or Before January 1, 2004, As Required By The**
27 **Statute.**

28 Respondent has argued an exception to Protestant's protest rights under Cal. Veh. Code
§ 3072(b)(5) applies to Respondent because the MTRV dealership location was established
before January 1, 2004. This is not an accurate understanding of the exception and the exception
does not apply to Respondent in this matter. When interpreting a statute, the most fundamental
rule is that a statute must be interpreted so as to "effectuate legislative intent." Mannheim v.

1 Super. Ct., 3 Cal. 3d 678, 686 (1970). The phrase specifically used in Cal. Veh. Code §
2 3072(a)(1) requires notice when a franchisor is “establishing an additional motor vehicle
3 dealership within a relevant market area *where the same recreational vehicle line-make is then*
4 *represented...*” (emphasis added) However, the phrase used in the so-called exception applies to
5 a “dealership protesting the location of another dealership *with the same recreational vehicle*
6 *line-make within its relevant market area, if the dealership location subject to the protest* was
7 established on or before January 1, 2004.” Cal. Veh. Code § 3072(b)(5) (emphasis added). The
8 protest right pertains to the establishment of a new dealership for the same line-make within the
9 relevant market area. Therefore the so-called exception doesn’t apply to the MTRV dealership
10 that existed before it was enfranchised by Roadtrek. If the statute is read any other way, it would
11 not “effectuate legislative intent.”

12 In this case, the MTRV *dealership not including RT* was the only MTRV dealership
13 established before January 1, 2004. In fact, although Frank DeGelas has been the President of
14 MTRV stores since December of 1979 (DeGelas, R.T. 1/13/12, 7:15-21), the Roadtrek franchise
15 was not established at MTRV until January of 2010. Since MTRV’s Roadtrek franchise was
16 established after the date set forth in the exception to the Vehicle Code, the exception does not
17 apply in this case. If the exception is to be read as Respondent contends, Respondent is
18 essentially contending that, for example, had it wished to establish a Roadtrek franchise
19 simultaneously at every other dealership site in Traveland that did not have a Roadtrek
20 franchise, Mega’s Irvine location would have no right to protest any of those establishments, so
21 long as the existing dealerships, not including Roadtrek, were established before January 1,
22 2004. This reading of the statute is absurd and certainly does not effectuate the statute’s
23 purpose.

24 In fact, when both Roadtrek and Frank DeGelas entered into a dealer agreement on
25 January 29, 2010 (Ex. 685), both parties knew there would likely be legal repercussions to their
26 actions, including a protest by Mega. According to Roadtrek’s President, Mr. Hammill, Mr.
27 DeGelas specifically negotiated Section 802 titled “Indemnification” in the dealer agreement
28 because “he was worried about getting sued by McMahon’s RV” (Hammill, R.T. 11/10/11,

1 124:8-13) and Mr. DeGelas would not sign a dealer agreement with Roadtrek without an
2 indemnity clause specifically shielding MTRV from legal action, including a protest by
3 McMahon's RV. (Hammill, R.T. 11/7/11, 213:15-20; Ex. 685, Section 802.) Despite Mr.
4 DeGelas' claimed lack of knowledge or concern for Protestant's rights under the Vehicle Code
5 (DeGelas, R.T. 1/13/12, 24:6-20, 26:13-19, 27:2-10, 28:24-29:10), Mr. Lankford testified Mr.
6 DeGelas "was business first, he was very savvy. He knows the laws." (Lankford, R.T. 11/18/11,
7 63:7-8.) In fact, Mr. DeGelas himself testified he specifically and personally negotiated the
8 provisions of the dealer agreement with Mr. Hammill. (Hammill, R.T. 1/13/12, 20:10-23, 73:8-
9 10.)

10 Mr. Martinelli, the current Finance Manager for Protestant, who was employed at
11 MTRV as General Sales Manager during the time Frank DeGelas negotiated a franchise
12 agreement with Roadtrek, stated Mr. DeGelas was "proud of the dealer agreement that he was
13 able to put together, because he had concerns." (Martinelli, R.T. 1/19/12, 44:15-18.) In addition,
14 Mr. Martinelli was also aware Mr. DeGelas was specifically concerned with any possible
15 involvement in litigation with Protestant. Mr. Martinelli testified, "Frank was concerned about
16 the legal dispute between McMahon RV [sic] and Roadtrek. Frank did not want to be involved
17 or drawn into any kind of liability. So he negotiated that Roadtrek would indemnify Mike
18 Thompson RV if Mike Thompson's taking on Roadtrek resulted in future litigation." (Martinelli
19 R.T. 1/19/12, 46:6-11.)

20 This testimony clearly evidences Mr. DeGelas and Roadtrek's knowledge, prior to
21 signing a dealer agreement, that there would be adverse legal implications to their actions. Mr.
22 DeGelas purposely negotiated the indemnification clause in his dealer agreement to protect him
23 against any litigation specifically from *McMahon's RV*, including, but not limited to, a protest
24 before the New Motor Vehicle Board.

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1 **B. Pursuant To Judge Skrocki's Order, The Board Should Not Be Asked To**
2 **Administer The Provisions Of Cal. Veh. Code § 3073 And Review The Good**
3 **Cause Factors In Regard To The Establishment Of The MTRV Franchise If**
4 **the Establishment Is Barred Due To Lack Of Compliance With Section**
5 **3072.**

6 Protestant filed its Motions in Limine and Requests for Conclusions of Law and Other
7 Relief ("Motions in Limine") on July 7, 2011. On August 3, 2011, ALJ Skrocki issued an order
8 ("Skrocki's Order") granting in part and denying in part Protestant's Motions in Limine.
9 Pursuant to paragraph 21 of Skrocki's Order, "[t]he Board should not be asked to administer the
10 provisions of Section 3073 to prevent what the law already precludes by the provisions of
11 Section 3072." In addition, Judge Skrocki stated the Board should not "be asked to administer
12 the provisions of Section 3073 to allow the establishment of the additional franchise if the
13 establishment is barred due to the lack of compliance with Section 3072." Thus, regardless of
14 the outcome of whether Cal. Veh. Code § 3072(b)(5) is applicable, there is no need for an
15 evidentiary hearing pursuant to Cal. Veh. Code § 3073 regarding the establishment of the
16 additional franchise in Colton, CA. (Skrocki's Order ¶ 13.)

17 As a result of Judge Skrocki's analysis, if the notice exception in Cal. Veh. Code §
18 3072(b)(5) is applicable then there was no notice required under Cal. Veh. Code § 3072(a). If
19 the notice exception in Cal. Veh. Code § 3072(b)(5) is not applicable and no notice was given
20 pursuant to Cal. Veh. Code § 3072(a), the establishment of the additional franchise is illegal and
21 void. (Skrocki's Order ¶ 17.) Regardless of the outcome, neither requires analysis of the
22 establishment of the Colton franchise under the good cause factors of Cal. Veh. Code § 3073.

23 It is clear as set forth in Section (A) above that the exception to the notice requirement
24 found in Cal. Veh. Code § 3072(b)(5) does not apply in this case. Additionally, Roadtrek
25 acknowledges it did not give notice to Protestant before it established the MTRV Roadtrek
26 franchise across the street, within the relevant market area of Protestant. (Hammill, R.T.
27 11/8/11, 24:20-25:3.) Therefore, it is clear from the evidence and testimony in this case, as well
28 as Judge Skrocki's analysis in his Order on Protestant's Motions in Limine, that the
 establishment of a Roadtrek franchise at MTRV in Colton, CA, is illegal and void as a matter of
 law.

1 **C. Protestant Requests The Board Refer The Unlawful Establishment Of**
2 **MTRV To The California Department Of Motor Vehicles For Investigation**
3 **And Appropriate Action Regarding Roadtrek's Distributor's License And**
4 **The License Of The Unlawfully Established Dealership, Pursuant to**
5 **California Code of Regulations § 593.3.**

6 Cal. Veh. Code § 3050 enumerates the powers and duties of the Board, which include
7 hearing "any matter concerning the activities or practices of any person applying for or holding
8 a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor,
9 distributor branch, or representative..." Cal. Veh. Code § 3050(c). After the Board has
10 considered such matters, it is also empowered to "order the department [of motor vehicles] to
11 exercise any and all authority or power that the department may have with respect to the
12 issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor
13 vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or
14 representative..." Cal. Veh. Code § 3050(c)(3).

15 In addition, Chapter 13 of the California Code of Regulations § 593.3 states that,
16 "[f]ailure to file or timely file the statutorily required notices, schedules, or formulas required by
17 the Vehicle Code" may result in the Board ordering the Department of Motor Vehicles
18 ("DMV") to exercise the authority mentioned in the paragraph above.

19 In Skrocki's Order, he deferred ruling on Motion No. 2, requesting the Board refer the
20 unlawful establishment of MTRV to the California DMV, and left the decision to
21 Administrative Law Judge Woodward Hagle. Skrocki's Order states Judge Hagle may
22 recommend "to the Board that any violations found to have occurred or found likely to have
23 occurred be referred to the Department of Motor Vehicles for appropriate action." (Skrocki's
24 Order ¶ 23). It is clear from the evidence presented in this case that MTRV's Roadtrek franchise
25 was unlawfully established within 10 miles of Protestant's Roadtrek franchise because Roadtrek
26 failed to give the Board and Protestant notice and an opportunity to protest before establishing
27 the franchise .2 miles from Protestant's dealership. Since Roadtrek's actions were unlawful and
28 contrary to Cal. Veh. Code § 3072, the Board should refer this matter for review and action by
29 the DMV.

30 //

1 **II. RESPONDENT DID NOT GIVE NOTICE TO PROTESTANT BEFORE**
2 **MAKING MODIFICATIONS TO PROTESTANT'S FRANCHISES BY**
3 **ESTABLISHING ROADTREK FRANCHISES IN PROTESTANT'S**
4 **EXCLUSIVE TERRITORY [PR-2199-10 AND PR-2201-10] AS REQUIRED**
5 **UNDER CAL. VEH. CODE § 3070(B)(1) AND THEREFORE THE**
6 **MODIFICATIONS ARE INEFFECTIVE AND VOID AS A MATTER OF LAW.**

7 Pursuant to Cal. Veh. Code § 3070(b)(1), "[n]otwithstanding...the terms of any
8 franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise
9 with a succeeding franchise if the modification or replacement would substantially affect the
10 franchisee's sales or service obligations or investment, unless the franchisor has first given the
11 board and each affected franchisee written notice thereof at least 60 days in advance of the
12 modification or replacement."

13 **A. The Establishment Of Additional Roadtrek Franchises Within The**
14 **Exclusive Territories Of Protestant Substantially Affect Protestant's Sales**
15 **And Service Obligations And Investment, Therefore Requiring Notice**
16 **Under Cal. Veh. Code § 3070(b)(1).**

17 In order for Roadtrek to be required to give notice of the modification of a franchise
18 agreement to the Board and its franchisee, the modification must substantially affect the sales
19 and service obligation and investment of the franchisee. Cal. Veh. Code § 3070(b)(1). In this
20 case, the modification of Protestant's Colton and Irvine Dealer Agreement ("DA") (Ex. 600),
21 namely Roadtrek's establishment of another franchise, Roadtrek at MTRV, within Protestant's
22 exclusive territory, as well as Respondent's refusal to provide Protestant with any units or parts,
23 substantially affects Protestant's ability to meet the sales and service obligations set forth under
24 the DA and undermines its investment in the Roadtrek franchise.

25 Paragraph 107 of the DA states the "[d]ealer shall have the exclusive right to purchase,
26 display, and resell Roadtreks, parts and accessories in the Territory (*See* ¶ 108 defining this as
27 60 mile radii of Irvine and Colton, California and 50 mile radius for Scotts Valley, California)
28 as mutually agreed to by Dealer and Home & Park [Roadtrek], including lease & fleet sales, but
excluding factory sales to rental companies and at national and state/provincial shows."
Roadtrek also promises to not locate another dealer within the Territory so long as Protestant is
in "good standing."¹⁰ (Ex. 600, ¶ 108; Ex. 604, ¶ 108) Paragraph 111 of the DA, titled "Dealer

¹⁰ See Section II (B) below for discussion of the inapplicability of the "good standing" clause.

1 Commitment,” requires Protestant to “...purchase for retail sale a minimum of one hundred
2 (100) new and demonstrator Roadtreks per calendar year.” Obviously, it is impossible for
3 Protestant to purchase any Roadtrek units, parts or accessories and have the exclusive right to
4 do so within its Territory when Respondent will not provide to Protestant any units, parts or
5 accessories and instead provides them to another dealer within Protestant’s exclusive territory.

6 Paragraph 112, titled “Dealer Effectiveness,” also explains “[d]ealer’s effectiveness will
7 be reviewed annually on the basis of Dealer’s retail sales and/or registrations, market share
8 (where available), stocking of Roadtreks and Roadtrek parts, sales and service personnel and
9 facilities, customer satisfaction, and warranty and service performance. Dealer must meet or
10 exceed minimum levels of effectiveness as defined by Home & Park.” First, Roadtrek [Home
11 & Park] has never defined the minimum levels of effectiveness Mega is required to meet.
12 Obviously, it is not feasible for Protestant to meet a standard that has never been set. In
13 addition, it is impossible for Protestant to achieve any level of effectiveness if it has no product,
14 stock or parts to sell. Once Roadtrek confiscated Mega’s inventory, refused to sell it parts, and
15 refused to reimburse it for warranty work, Roadtrek effectively eliminated Mega as a Roadtrek
16 dealer.

17 The evidence and testimony in this case make it clear the establishment of a Roadtrek
18 franchise at MTRV, within Protestant’s exclusive territory as defined in the DA, substantially
19 affects Protestant’s sales and service obligations and investment. As explained by Mega’s
20 owner, Mr. McMahon, a dealer would not take on a franchise if the manufacturer of that
21 franchise would not guarantee an exclusive territory. (McMahon, R.T. 8/9/11, 130:6-14.) A
22 dealer must be able to have a territory in which it is able to sell vehicles without a same line-
23 make dealership on every corner. (*Id.* at 133:1-5.) Not only does a lack of exclusive territory
24 affect a dealer’s sales ability, it also affects its parts and service business. (*Id.* at 133:13-19.) In
25 addition, in order to meet its sales and service obligations under a DA, the dealer must make
26 certain investments in its franchise. For example, Protestant has spent money and time repairing
27 its service facility in Mesa, CA. (*Id.* at 133:24-134:3.) Protestant must hire technicians, stock
28 adequate parts, ensure the facility has the right equipment, and be generally responsible for the

1 entire infrastructure. (*Id.* at 134:3-9.) Roadtrek's establishment of a franchise at the MTRV
2 dealership across the street from Mega completely undermines the investment Protestant made
3 in its Roadtrek franchise.

4 Consequently, the modifications to Protestant's DA with Roadtrek substantially affect
5 Protestant's sales and service obligations, as well as its investment in the Roadtrek franchise.
6 Therefore, Roadtrek was required to give notice to Protestant of such modification under Cal.
7 Veh. Code § 3070(b)(1), which it did not. Since Respondent did not give Protestant notice
8 before modifying its franchise, the modification should be deemed void, and MTRV's Roadtrek
9 franchise should be required to cease operations.

10 **B. Respondent's Assertion That There Were No Modifications To Protestant's**
11 **Franchises Because It Was No Longer In "Good Standing" Under The**
12 **Dealer Agreements Is Irrelevant Because Cal. Veh. Code § 3070(b)(1)**
Requires Notice, "Notwithstanding...The Terms Of Any Franchise..."

13 Pursuant to Cal. Veh. Code § 3070(b)(1), a franchisor cannot modify a franchise if the
14 modification would substantially affect the franchisee's sales or service obligations or
15 investment, unless the franchisor has first given the Board and each affected franchisee written
16 notice thereof at least 60 days in advance of the modification. The franchisee must then be
17 allowed to file a protest and ask the Board to determine whether there is good cause to make
18 such modification. Cal. Veh. Code § 3070(b)(1). All of this is required under the Vehicle Code
19 and *cannot be waived* by the parties in the terms of a franchise agreement. This issue is
20 specifically addressed by the language requiring notice under the applicable statute
21 "notwithstanding...the terms of any franchise..." *Id.* Therefore, notice is always required,
22 regardless of the terms of the franchise agreement between the parties.

23 Respondent has argued Protestant was not in "good standing" under its dealer
24 agreements for various (unfounded) reasons. However, under the relevant statute, Cal. Veh.
25 Code § 3070(b)(1), Respondent's argument has no merit. The notice requirement under the
26 statute is in place to protect the rights of the dealers against unfair practices of manufacturers.
27 (Cal. Veh. Code § 3070) In this case, the unfair practice of Roadtrek was to place another dealer
28 //

1 within Protestant's exclusive territory, thereby modifying its Roadtrek franchise without the
2 required notice.

3 In addition to the statutory requirement of notice by a manufacturer to a dealer before
4 modifying its DA, the parties agreed by contract that Roadtrek was required to give notice to
5 Protestant before substantially changing the material terms of the DA. (*See* Ex. 600 ¶ 520.)
6 Pursuant to paragraph 520 of Exhibit 600, titled "Home & Park Termination," Roadtrek [Home
7 & Park] was required to give Protestant *at least 365 days prior written notice* before making
8 any substantial modification, such as adding a Roadtrek dealer within Protestant's exclusive
9 territory. Pursuant to paragraph 520 of Exhibit 604, titled "Roadtrek Termination," Roadtrek
10 was required to give Protestant *at least 180 days prior written notice* before making any
11 substantial modification, such as adding a Roadtrek dealer within Protestant's exclusive
12 territory. Roadtrek did not give Protestant such notices.

13 The DA between the parties also contemplates compliance with all applicable laws. (*See*
14 Ex. 600 ¶ 375; Ex. 604 ¶ 375) In paragraph 375, titled "Compliance with Laws, Rules and
15 Regulations," the parties agreed to "comply with all applicable federal, state, provincial and
16 local laws, rules and regulations..." In this case, Respondent did not adhere to its promise of
17 notice under the DA or its promise to comply with all applicable laws. In addition to
18 Respondent's complete disregard for the terms of the DA, Protestant is requesting this Board
19 find that Respondent was in violation of Cal. Veh. Code § 3070(b)(1), "notwithstanding...the
20 terms of any franchise."

21 **C. Pursuant To Skrocki's Order, The Board Should Not Be Required To**
22 **Administer The Provisions Of Cal. Veh. Code § 3071 And Review The Good**
23 **Cause Factors In Regard To The Modification Of Protestant's Franchises**
24 **Because The Modifications Are Barred Due To Lack Of Compliance With**
25 **Section 3070.**

26 Pursuant to paragraph 34 of Skrocki's Order, Judge Skrocki found the law in regard to
27 the modification protest is similar to his analysis of the franchise establishment protest
28 discussed above. Thus, Judge Skrocki reiterated the same conclusion he reached regarding the
establishment protest. Namely, "...regardless of which of the conclusions are made here
[whether there has been a modification of Protestant's franchise with no notice given or there

1 has not been a modification of Protestant's franchise], there is no need for a hearing to address
2 the good cause factors as stated in Section 3071."

3 As stated above in Section (I)(B), and reiterated in Skrocki's Order, it is clear that, given
4 Respondent's lack of compliance with the notice requirements under the statute, it is
5 unnecessary to evaluate the modification of Protestant's Colton and Irvine franchises under the
6 good cause factors. The Board should find Respondent's addition of another Roadtrek franchise
7 within Protestant's exclusive territory, as well as the confiscation of all Roadtrek units and parts
8 from Protestant's dealership, substantially affected Protestant's sales and service obligations, as
9 well as its investment. Therefore protests PR-2199-10 and PR-2201-10 should be sustained.

10 **III. ROADTREK DID NOT HAVE GOOD CAUSE UNDER CAL. VEH. CODE §§**
11 **3070 AND 3071 TO TERMINATE MEGA'S FRANCHISE AGREEMENTS. [PR-**
12 **2244-10, PR-2245-10]**

13 Pursuant to Cal. Veh. Code § 3071, in order to determine whether good cause has been
14 established for terminating Mega's Roadtrek franchises, the Board shall take into consideration
15 the existing circumstances, including, but not limited to:

- 16 (a) The amount of business transacted by the franchisee, as compared to the business
17 available to the franchisee.
- 18 (b) The investment necessarily made and obligations incurred by the franchisee to
19 perform its part of the franchise.
- 20 (c) The permanency of investment.
- 21 (d) Whether it is injurious or beneficial to the public welfare for the franchise to be
22 modified or replaced or the business of the franchisee disrupted.
- 23 (e) Whether the franchisee has adequate new recreational vehicle sales and, if required
24 by the franchise, service facilities, equipment, vehicle parts, and qualified service
25 personnel, to reasonably provide for the needs of the consumers of the recreational
26 vehicles handled by the franchisee and has been and is rendering adequate services
27 to the public.
- 28 (f) Whether the franchisee fails to fulfill the warranty obligations agreed to be performed
by the franchisee in the franchise.
- (g) The extent of franchisee's failure to comply with the terms of the franchise.

25 Under this statute, Roadtrek has the burden to prove there is good cause to terminate Mega's
26 Roadtrek franchises. (Cal. Veh. Code § 3066(b).) In this case, Roadtrek has been unable to meet
27 its burden, consequently Protests PR-2244-10 and PR-2245-10 should be sustained.

28 //

1 **A. Mega Conducted An Ample Amount Of Business As Compared To The**
2 **Business Available To Mega. [Cal. Veh. Code § 3071(a)]**

3 The business relationship between the parties began at or around 2001. (McMahon, R.T.
4 8/9/11, 105:1-2.) Within two to three years of the start of that relationship, Mega shattered every
5 new unit sales record Roadtrek ever had. (*Id.* at 8/9/11, 106:4-5, 113:8-11.) In fact, Mega has
6 been the number one selling dealer from a multiple-location standpoint since 2005. (Hammill,
7 R.T. 11/9/11, 52:14-23, 194:8-11; McMahon, R.T. 8/9/11 106:5-6.) Roadtrek took a number of
8 actions to celebrate Mega's success as a Roadtrek dealer. For example, Roadtrek had custom
9 made lithograph photos of Roadtrek units made and presented to Mega in the form of 3x2 foot
10 (approx.) plaques. (*See* Ex. 68 for photos of some examples.) In addition, when Roadtrek
11 produced its 20,000th unit, it held a ceremony to present the keys of the unit to Mr. McMahon.
12 (Ex. 601.) Roadtrek decided Mega would be the dealer to receive that honor because of its
13 Roadtrek sales, "commitment to the product," and the personal friendship between Mr. Hammill
14 and Mr. McMahon. (Hammill, R.T. 11/9/11, 172:21-173:5.) In the two to three years prior to
15 the March 2008 Kitchener meeting, Mega sold close to 30% of Roadtrek's manufactured
16 inventory. (Schilperoort, R.T. 8/16/11, 193:23-194:2.) As one of Roadtrek's Director of Sales
17 stated, Mega is "the B specialist in Southern CA., and in the short and long term this dealership
18 is capable of giving us more volume than anyone out there." (Ex. 620 at 2.)

19 In short, Mega exceeded Roadtrek's sales expectations time-and-time again since the
20 start of the parties' relationship. Yet, despite these accomplishments, Roadtrek claims Mega was
21 not meeting its stocking requirements. (*See* Ex. 701; Ex. 702.) However, according to Ms.
22 Dawn Crowe, that was not the case. Ms. Crowe testified that as of 9/17/08, 8/24/09, and
23 9/16/09, Mega had acceptable minimum stocking levels. (Crowe, R.T. 1/10/12, 170:14-171:6;
24 Ex. 691 at 6796; Ex. 692; Ex. 693; Ex. 695.)

25 In addition to meeting its required minimum stocking levels, Mega also stocked more
26 than twice the amount of units at its locations, in the aggregate, than MTRV is now required to
27 stock at its locations, in the aggregate. Pursuant to Mega's DA with Roadtrek for its Colton, CA
28 and Irvine, CA franchises, Mega was required to keep at least 22 Roadtrek units on its lot to
 remain in good standing. (Ex. 600 ¶ 109.) Pursuant to Mega's DA with Roadtrek for its Scotts

1 Valley, CA franchise, Mega was required to keep at least 20 Roadtrek units on its lot to remain
2 in good standing. (Ex. 604 ¶ 110.) However, Roadtrek granted MTRV very liberal stocking
3 levels, only requiring MTRV to maintain a minimum stock of 15 units, in the aggregate, at four
4 locations. (Ex. 685.) Obviously, this is a very substantial disparity in unit requirements,
5 especially for a franchisor who claims stocking levels to be one of its main reasons for
6 terminating Protestant's franchises.

7 The double standard continues when looking at the sales volume expectations for Mega
8 versus MTRV. According to Mr. Hammill, in 2010, MTRV's sales volume was approximately
9 80 units. (Hammill, R.T. 11/9/11, 224:7-16.) However, when Roadtrek was purporting to reach
10 a settlement with Mega in December of 2009, it was asking Mega to sell approximately twice
11 that amount (156 units throughout 2010). (McMahon, R.T. 8/16/11, 88:3-14.) Mega had already
12 well-surpassed 80 units in sales in prior years, selling 117 in 2006 and 161 in 2007. (Ex. 709.)

13 Roadtrek has claimed the degree of difference regarding stocking levels required in
14 Mega's dealer agreements versus MTRV's dealer agreements is immaterial because, at the time
15 Roadtrek signed a DA with MTRV, Mega did not have any Roadtrek stock on its lots. However,
16 this fact was the result of Roadtrek's actions, and not due to any fault of Mega. As will be
17 discussed in detail below, it was Roadtrek who unlawfully absconded with Mega's inventory at
18 the 2009 Pomona Show without prior notice, and it was Roadtrek who thereafter failed to
19 provide stock to Mega, contrary to the prior course of conduct between the parties.

20 Accordingly, any failure on the part of Mega to conduct an ample amount of Roadtrek
21 business from October 2009 onward was the direct result of Roadtrek's unlawful actions. These
22 actions were taken in an effort to divert Roadtrek sales from Mega's facility to that of MTRV,
23 across the street, and to effectively impede Mega's ability to maintain its prior superior sales
24 performance regarding Roadtrek. As Mega's sales history reveals, it conducted more than an
25 ample amount of business compared to what was available in its market area and continued to
26 do so up until Roadtrek made it impossible for Mega to maintain its sales levels. Given these
27 facts, Roadtrek cannot meet its burden of proving it had good cause to terminate Mega based on
28 the amount of business it conducted as compared to the business available.

1 **B. Mega Made Substantial and Permanent Investments And Incurred**
2 **Significant Obligations In Its Efforts To Perform As A Roadtrek Dealer.**
3 **[Cal. Veh. Code § 3071(b) and (c)]**

4 In this section, Protestant will address both subsections (b) and (c) of Cal. Veh. Code §
5 3070 as they apply to Roadtrek's noticed grounds for termination. Roadtrek alleges in its
6 Notices of Termination that Mega failed "to maintain adequate lines of wholesale credit as
7 required by Section 330" of the Irvine/Colton DA and Section 330 of the Scotts Valley DA.
8 (Ex. 701; Ex. 702.) These sections require that: "Dealer shall at all times maintain and employ
9 in connection with his dealership operations, separately from any other business of Dealer, such
10 total investment, net working capital, adequate lines of wholesale credit and competitive retail
11 financing plans for Roadtreks, that will enable Dealer to fulfill his responsibilities under this
12 agreement." However, the evidence presented at the hearing illustrated Mega has met this
13 requirement and Roadtrek has failed to meet its burden to prove otherwise.

14 In previous Board decisions, the Board has determined "permanency of investment"
15 and/or "investment necessarily made" includes such items as dedication of land/buildings to the
16 line-make in question, the number of years Protestant has represented the line-make, the part of
17 Protestant's business represented by Respondent's brand, Protestant's dedication and devotion
18 to Respondent's brand as well as Protestant's performance in representing the brand.
19 Permanency of investment has long been understood to mean the level of commitment, financial
20 or otherwise, that Protestant has demonstrated to the brand. In this case, there is no question
21 regarding Protestant's commitment to the brand.

22 As stated above in Section (II)(A), Protestant has made a substantial investment in its
23 Roadtrek franchise. Protestant has three established and successful locations from which it is
24 able to sell and service Roadtrek units. Protestant has studied Roadtrek's products and been
25 familiar with the brand since 2001. Protestant set up all service facilities and has trained
26 personnel in order to be able to service Roadtrek vehicles. (Brent McMahon 8/10/11, 99:22-
27 100:2.) Protestant also has a substantial rent factor for each of its three locations and is prepared
28 with state-of-the-art facilities to sell and service recreational vehicles for years to come. (Brent
29 McMahon 8/9/11, 133:24-134:3; 141:21-142:2.)

1 Protestant has also made a significant investment in its advertising of the Roadtrek
2 product. Protestant has infomercials advertising itself and its products, has had contract
3 negotiations with all the major radio and television stations, and is generally more aggressive in
4 its advertising strategies than other RV dealers. (McMahon, R.T. 8/10/11, 48:19-51:1, 53:1-25.)
5 Protestant spent approximately \$3.5 million in advertising for 2011. (McMahon, R.T. 8/10/11,
6 48:21-22.)

7 In addition, Protestant also has a flooring line with General Electric ("GE") in the
8 amount of \$12-13 million. (John Print Dep. 19:1-21, 33:22-34:2.) Protestant has always
9 maintained flooring for recreational vehicles and Protestant always had and continues to have
10 flooring available to it in order to floor Roadtrek vehicles. (Ex. 704.)

11 In fact, as stated in the deposition of John Print, "[i]f the manufacturer won't cooperate
12 in the flooring, there is no way that McMahon's can actually accomplish the flooring without
13 the manufacturer's cooperation." (John Print Dep. 34:19-24.) McMahon needs involvement
14 from the manufacturer in order to get units floored. (*Id.* at 34:3-8.) Protestant is ready and
15 willing to floor Roadtrek units and perform its obligations as a Roadtrek dealer, but can only do
16 so with the cooperation of Respondent.

17 **C. Disrupting The Business Of Mega By Terminating Its Roadtrek Franchise**
18 **Is Injurious To The Public Welfare. [Cal. Veh. Code § 3071(d)]**

19 Pursuant to Cal. Veh. Code § 3066(b), "[i]n a hearing on a protest filed pursuant to
20 Section...3070..., the franchisor shall have the burden of proof to establish that there is good
21 cause to...terminate...a franchise." In this case, Roadtrek has not met its burden according to
22 the statute. Respondent presented no evidence to demonstrate Protestant did anything but
23 adequately serve the public. In fact, if Roadtrek was aware of any facts that might support its
24 assertion that disrupting the business of Mega would not be injurious to the public welfare, it
25 should have produced evidence of such facts. It did not.

26 During the years Protestant had a Roadtrek franchise, beginning in 2001 and ending
27 effectively in 2009, Mega was the number one Roadtrek dealer in the country. (Ex. 68;
28 Hammill, R.T. 11/9/11, 52:14-23, 194:8-11; McMahon, R.T. 8/9/11, 106:5-6.) Mega has

1 received numerous awards and praise from Roadtrek. (Ex. 68; Ex. 601.) Mega's owner, Brent
2 McMahan, has been committed to the Roadtrek franchise. (Hammill, R.T. 11/9/11, 172:21-
3 173:5.) Clearly, Mr. McMahan's knowledge has always enabled the dealership to serve the
4 public in the best way possible. In fact, Roadtrek awarded Mr. McMahan the keys to the
5 20,000th Roadtrek built in a special ceremony held in Kitchener, Ontario, Canada precisely
6 because of his performance and his commitment to the Roadtrek brand. (Ex. 601.)

7 For the past two years, Protestant has been unable to serve the public as well as it might
8 have liked as a Roadtrek franchise because of Roadtrek's wrongful conduct against Protestant.
9 Despite Protestant's prior successful sales and service record, Respondent has offered very little
10 evidence in the record regarding any alleged inability of Protestant to serve the public.

11 **D. Mega Had Adequate Sales, Service Facilities, Equipment, Vehicle Parts,
12 And Qualified Service Personnel To Reasonably Provide For The Needs Of
13 The Consumers And Provided Adequate Services To The Public Up Until
14 The Point Roadtrek's Actions Made Providing Such Services Impossible.
15 [Cal. Veh. Code § 3071(e)]**

16 As stated above, Mega has always had adequate sales, service facilities, equipment and
17 qualified service personnel to reasonably provide for the needs of consumers in the market, and
18 Roadtrek has offered no evidence to the contrary. Protestant has three facilities that are well-
19 equipped and ready to sell and service Roadtrek units as soon as these units are made available
20 to Protestant. (McMahan, R.T. 8/9/11, 77:3-7.)

21 Any present or future inability of Protestant to sell or market Roadtrek vehicles is the
22 direct result of Roadtrek not fulfilling its own obligations to Mega under the Dealer Agreement.
23 If any requirements of "adequate" volumes of units or parts are currently not being met by
24 Mega, it is because Roadtrek has withheld units and parts from Mega since the 2009 Pomona
25 Show. Roadtrek unlawfully absconded with Mega's Roadtrek units and has refused to supply
26 Mega with parts or new units since the Pomona Show in October of 2009. (See Section
27 (III)(G)(4) below for a detailed discussion of these facts.) Thus, any inability of Mega to sell
28 Roadtrek units and parts, and to perform warranty service, is due to Roadtrek's refusal to
perform *its* duties set forth in the dealer agreement.

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1 Soon, Mega had no choice but to tell Roadtrek customers to go elsewhere to get their
2 repairs done, even if a customer had just bought a unit from Mega. (*Id.* at 135:10-12.)
3 Consequently, the customer satisfaction level dropped and customers started assuming Mega
4 was not a Roadtrek dealer because it was unable to do warranty work on customers' vehicles.
5 (*Id.* at 135:8-12, 137:8-11.)

6 Mega's inability to obtain parts and do warranty work for Roadtrek also affected Mega's
7 sales. (*Id.* at 136:1-4.) Roadtrek has a very small group of followers who gather together and
8 attend rallies. (*Id.* at 136:1-16.) At the rallies, stories spread that it was unwise to buy from
9 Mega because Mega could not fix the motor home after it was sold. (*Id.* at 136:8-16.)

10 In addition to not shipping Mega parts, at or about the third quarter of 2008, Roadtrek
11 stopped sending payments to Mega for warranty claims. (*Id.* at 128:6-14; Schilperoort, R.T.
12 8/19/11, 65:20-65:8.) This practice came to Mr. Schilperoort's attention when Mega's warranty
13 claims to Roadtrek began aging past sixty (60) days. (Schilperoort, R.T. 9/21/11, 128:6-14.) Ms.
14 Jennifer Fresh also became aware of this lack of payment during her tenure at Mega from
15 March 2009 to approximately early 2010. During that time, Ms. Fresh was in charge of updating
16 Mega's warranty schedule, which recorded unpaid warranty claims Mega submitted to
17 manufacturers and the amounts Mega believed it was owed. (*See Ex. 697* for an example.)
18 When manufacturers make warranty payments to Mega, Ms. Laurie Fosdick, Mega's Office
19 Manager and prior Controller, input the receipt number and amount paid into Ms. Fresh's
20 warranty schedule below the given claim's control number. (Fresh, R.T. 1/9/12, 80:10-22,
21 113:6-9.) When manufacturers, such as Winnebago, pay Mega for warranty or parts through
22 offsetting, this information is also reflected on Ms. Fresh's schedule so she is able to post that
23 money to the appropriate work orders and remove the orders from her schedule. (*Id.* at 114:12-
24 115:3.) However, neither offsetting of payments, nor payments by check, ever appeared on Ms.
25 Fresh's schedule concerning Roadtrek (*Id.* at 115:4-16, 44:7-9) because Roadtrek did not pay by
26 check or give notice of any offsets.

27 In an effort to fix this problem, Ms. Fresh contacted Roadtrek to clarify why payments
28 were not being received by Mega. (*Id.* at 44:10-14.) She emailed Ms. Pamela DeBeus at

1 Roadtrek about the situation a couple times, who responded that Roadtrek was “working on it.”
2 (*Id.* at 44:12-20.) However, if Roadtrek was “working on it,” Roadtrek did not fix the problem
3 before Ms. Fresh left Mega in early 2010, because during her entire tenure Ms. Fresh never saw
4 a payment from Roadtrek. (*Id.* at 25:22-25, 44:7-9.)

5 Prior to not paying Mega for warranty claims at all, Roadtrek was habitually late in
6 paying Mega for warranty claims. As discussed in more detail in Section (IV) below, Cal. Veh.
7 Code § 3075(d) requires all approved warranty claims be paid within thirty (30) days. However,
8 despite this law, Roadtrek paid over one hundred claims in this dispute over 30 days after the
9 time required by statute.¹² As a result, Roadtrek cannot meet its burden of proving it had good
10 cause to terminate Mega based on its warranty and service performance.

11 **F. Mega Made Every Effort To Comply With The Terms Of The Roadtrek**
12 **Franchise And Any Failures On Its Part Were The Result Of Roadtrek’s**
13 **Actions And Out Of Mega’s Control. [Cal. Veh. Code § 3071(g)]**

14 Mega always made its best efforts to comply with the terms of its franchise agreement.
15 However, Protestant is unable to continue to meet its obligations under the DA because
16 Respondent will not honor its own obligations. Protestant has submitted all documentation to
17 Roadtrek regarding its financial statements and its ability to floor Roadtrek units. (*See* Ex. 629;
18 Ex. 64; Ex. 65; Ex. 66; Ex. 686.)

19 Any present or future inability of Protestant to sell or service Roadtrek vehicles is the
20 direct result of Roadtrek not fulfilling its own obligations to Mega under the DAs. Any
21 requirements concerning adequate inventories of units or parts cannot be met by Mega
22 currently, because Roadtrek has withheld units and parts from Mega since the 2009 Pomona
23 Show. Roadtrek unlawfully absconded with Mega’s Roadtrek units (*See* Section (III)(G)(2) of
24 this brief) at that time and has refused to supply Mega with parts since. Thus, any inability of
25 Mega to sell Roadtrek units and parts and perform warranty service is due to Roadtrek’s refusal
26 to perform *its* duties set forth in the dealer agreement.

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¹² See Section (IV)(C) below for a detailed analysis of this topic.

1 **1. At Roadtrek’s request, Mega provided its financial statements when**
2 **available.**

3 Roadtrek’s Notices of Termination allege Mega failed “to submit annual financial
4 reports as required by Section 350” of the DAs. (Ex. 701; Ex. 702.) Section 350 states, “In
5 furtherance of their mutual interests, Dealer shall furnish to [Roadtrek] on an annual basis, a
6 complete financial statement reflecting the true financial condition of the dealership operations.
7 Upon review of each annual financial statement, [Roadtrek] will advise Dealer in writing if they
8 are approved for C.O.D. terms of payment. Financial information furnished by Dealer shall be
9 held on a confidential basis by [Roadtrek] and shall not be disclosed to any third party.” (Ex.
10 600; Ex. 604.)

11 The allegation that Mega did not provide Roadtrek with financial reports as required by
12 the DAs is incorrect and unsupported by the evidence. Mr. Paul Schilperoort, Mega’s Director
13 of Operations, testified that whenever Roadtrek requested financial statements from Mega,
14 Mega subsequently provided financial statements to Roadtrek. (Schilperoort, R.T. 8/19/11,
15 8:19-9:19; Ex. 621.) This alleged ground for termination listed in Roadtrek’s Notices of
16 Termination is unfounded and therefore should not be considered a valid basis for franchise
17 termination under Cal. Veh. Code § 3070.

18 **2. Roadtrek has not proven its allegations that Mega used Roadtrek**
19 **leads to sell other manufacturer’s Class B motor homes.**

20 In its Notices of Termination, Roadtrek alleged Mega used “Roadtrek leads to sell other
21 manufacturer’s Class B motorhomes.” (Ex. 701; Ex. 702.) The relevant section of the DAs state,
22 “*All consumer leads provided by Roadtrek to Dealer are the exclusive property of Roadtrek and*
23 *are to be used for the marketing of Roadtrek products only. No consumer lead provided by*
24 *Roadtrek shall be taken to see another manufacturer’s class B motorhome unless such consumer*
25 *specifically requests to see other manufacturers’ class B motorhomes.” (Id. at ¶ 140).*

26 As described by Mr. Hammill, Roadtrek leads are those customers interested in its
27 products who contact Roadtrek and are then directed by Roadtrek to its dealers. (Hammill, R.T.
28 9/22/11, 121:16-123:6.) Although Roadtrek alleged Mega used leads to sell such customers
 other brands, no proof was offered to substantiate this claim. (*Id.* at 110:19-111:1.) There was

1 no documentation to this effect and the only testimony on the subject related to a speculative
2 observation by Mr. Hammill that Mega was showing Roadtrek customers Pleasure-Way units at
3 the 2005 Pomona RVIA show. (*Id.*) However, Mr. Hammill had no proof these customers did
4 not ask to see the other brands available. (Hammill, R.T. 11/9/11, 161:3-22.) There was no
5 evidence that such customers were persuaded or coerced into looking at Pleasure-Way units. In
6 addition, Mr. Hammill admitted he never observed this alleged conduct happen again. (*Id.* at
7 160:2-9; Hammill, R.T. 9/22/11, 138:12-17.)

8 As a Mega salesperson testified, customers will want to explore all their options when
9 making a Class B purchase, and it is not wrong for Mega to show the customer what the
10 customer wants:

11 If you were to drive up to our lot, you would see 25 Roadtreks on this side, 25
12 Pleasure-Ways on that side, ten Great West and five Leisure Travels. We would
13 show (the customer) every van on the lot because that's what they were there to
14 see. And you can't control what the customer wants to purchase. You just sell
15 them the one they'd like to buy.

16 (Maresh, R.T. 1/12/12, 33:23-34:4.)

17 Given the above, Roadtrek has not met its burden of proving its allegation that Mega
18 used Roadtrek leads to sell other brands. Therefore, this allegation does not constitute good
19 cause to terminate Mega as a Roadtrek dealer.

20 **3. Mega has always conducted its dealership operations in a way that**
21 **reflects favorably upon Roadtrek.**

22 In Roadtrek's Notices of Termination, it alleges Mega failed "to operate a dealership in a
23 way that reflects favorably on it and Roadtrek as required by Section 370 [of the DA]." (Ex.
24 701; Ex. 702.) Section 370 states, "Dealer shall conduct dealership operations in a manner that
25 will reflect favorably at all times on the reputation of Dealer, other authorized Roadtrek dealers
26 and [Roadtrek]." (*Id.*)

27 There is no evidence in the record to demonstrate Mega has ever conducted business in a
28 manner that did not reflect favorably upon Roadtrek. This is, therefore, not a valid reason for
terminating Protestant's franchises and should not be considered when evaluating these protests.

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1 **G. In Addition To The Good Cause Factors Set Forth In Cal. Veh. Code § 3071,**
2 **The Existing Circumstances In This Case Show Respondent Has Engaged In**
3 **Conduct That Effectively Terminated Protestant In October 2009.**

4 In October 2009, Roadtrek took actions that effectively terminated Mega as a Roadtrek
5 franchisee. After that point, Roadtrek systematically cut off Mega from the resources it needed
6 in order to continue functioning as a Roadtrek franchisee. Taken in combination with the good
7 cause factors already discussed above, these existing circumstances illustrate that, even though
8 Roadtrek failed to provide timely notice of termination as required under Cal. Veh. Code §
9 3070(b)(1), it still severely hindered, if not completely eliminated, Mega's ability to meet its
10 obligations under the DAs. As a result, Mega's ability to argue against the proposed termination
11 and address the good cause factors was prejudiced and these existing circumstances must be
12 taken into account when determining the legality of the proposed termination of its franchise.

13 **1. Protestant was prevented from conducting business as a Roadtrek**
14 **franchisee long before the Notices of Termination were issued and,**
15 **therefore, Protestant's ability to argue the good cause factors set**
16 **forth in Cal. Veh. Code § 3071 were severely prejudiced.**

17 Protestant has been prevented from conducting business as a Roadtrek dealer since the
18 October 2009 Pomona Show. Respondent absconded with all Roadtrek units in Protestant's
19 possession on the last day of the show. (McMahon, R.T. 8/11/11, 58:20-59:4.) Since that time,
20 Protestant has been unable to order units or parts, or be reimbursed by Roadtrek for warranty
21 work. (McMahon, R.T. 8/11/11, 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20.) In
22 essence, Protestant has been unable to function as a Roadtrek dealer. However, Roadtrek did not
23 send its Notices of Termination to Protestant until June 14, 2010. (Ex. 702.) In fact, as stated in
24 a letter from Mr. McMahon to Roadtrek dated April 26, 2010, in which Protestant attempted to
25 order units, Roadtrek had not yet sent any notices of termination. (Ex. 699.)

26 Moreover, although Roadtrek claimed Protestant was not meeting its stocking
27 obligations, it still expected Protestant's Roadtrek franchises to remain active. (*Id.*) In direct
28 contradiction to Roadtrek's claims that Protestant's franchises were still active after October
2009, Roadtrek's Vice President, Mr. Jeff Hanemaayer, spoke with Mr. Mike Lankford, Mega's
Vice President of Sales, on or about December 14, 2009, after a lengthy attempt at settlement
and said it was "too late," he was "gonna go play with someone else." (Ex. 26; Lankford, R.T.

1 11/17/11, 110:1-10.) Mr. Lankford testified Mr. Hanemaayer communicated to him Roadtrek no
2 longer wanted to do business with Mega. (Lankford, R.T. 11/17/11, 112:7-116:15.)

3 It is impossible for Protestant to meet any stocking or sales obligations if it does not
4 have access to Roadtrek products. It is also impossible for Protestant to have access to Roadtrek
5 products if Roadtrek “does not want to do business with Mega” any longer. Therefore, Roadtrek
6 effectively terminated Protestant in October of 2009 when it absconded with its stock and
7 refused to fulfill parts or unit orders. Due to Respondent’s lack of regard for Protestant’s right to
8 notice before termination of its franchise, Protestant was *told* it still had a franchise agreement,
9 but was unable to act under such agreement. Roadtrek’s denial of its effective termination of
10 Protestant caused Mega to be unable to quickly and adequately exercise its rights under the Cal.
11 Veh. Code as soon as such termination effectively occurred in October 2009.

12 **2. Deviating from the prior course of conduct between the parties,**
13 **Respondent unlawfully absconded with Mega’s units without prior**
14 **notice at the 2009 Pomona Show and removed all existing inventory**
15 **from Mega’s lots.**

16 Roadtrek does not deny it repossessed Mega’s Roadtrek units at the October 2009
17 Pomona Show. (Schilperoort, R.T. 11/7/11, 140:25-141:2.) Roadtrek claims to have absconded
18 with the units pursuant to the Security Agreement previously entered into by the parties.
19 (Hammill, R.T. 11/9/11, 201:16-20; Schilperoort, R.T. 11/7/11, 140:14-21.) It claims Mega was
20 in default of this agreement and, for that reason, Roadtrek was entitled to repossess the
21 inventory at the show, as well as any other Roadtrek units on Mega’s lots. Mega disputes the
22 allegation that it was in default under the Security Agreement, but even if Mega had been in
23 default, Roadtrek’s actions during the show still constitute an illegal seizure.

24 The law allows for contract clauses authorizing the repossession of chattel, such as
25 Roadtrek units, upon default. Nevada Nat. Bank v. Huff, 94 Nev. 506, 512, 582 P.2d 364, 369,
26 24 UCC Rep.Serv. 1044 (1978). *See also* Article 9-503 of the UCC and Lawrence Barker, Inc.
27 v. Briggs, 39 Cal. 2d 654, 248 P.2d 897 (1952). Even if there is an established course of dealing
28 under which the debtor made continual late payments and the secured party accepted them, this
does not result in a waiver of the secured party's right to rely upon a clause in the agreement

1 authorizing him to declare a default and repossess the chattel. Nevada, 94 Nev. at 512-13. *See*
2 *also Ford Motor Credit Co. v. Waters*, 273 So.2d 96, 12 UCC Rep.Serv. 18 (Fla.App.1973);
3 Fontaine v. Industrial National Bank of Rhode Island, 111 R.I. 6, 298 A.2d 521, 11 UCC
4 Rep.Serv. 1096 (1973). However,

5 a secured party who has not insisted upon strict compliance in the past, who has
6 accepted late payments as a matter of course, Must, before he may validly rely
7 upon such a clause to declare a default and effect repossession, Give notice to the
debtor (lessee) that strict compliance with the terms of the contract will be
demanded henceforth if repossession is to be avoided.

8 Nevada, 94 Nev. at 513 (citing Ford Motor Credit Co., 273 So.2d 96; Fontaine, 111 R.I. 6;
9 Kupka v. Morey, 541 P.2d 740, 17 UCC Rep.Serv. 1383 (1975); Varela v. Wells Fargo Bank,
10 15 Cal. App. 741, 93 Cal. Rptr. 428 (1971)) (capitalizations in the original).

11 In Nevada, 94 Nev. at 508, a debtor entered into a contract to lease a pick-up truck from
12 a creditor. The contract required monthly payments be made and the vehicle be insured. *Id.* If
13 the debtor defaulted on the contract, the creditor was entitled to repossess the vehicle. *Id.* at 509.
14 In the years prior to making this contract, the debtor had engaged in other transactions with the
15 creditor which proved him to be a “less-than-ideal debtor.” *Id.* at 508. His past conduct showed
16 he paid late on a regular basis, often being several months behind on payments, and his
17 insurance had been cancelled several times. *Id.* The debtor was well known in the creditor’s
18 collection department to be consistently late on payments. *Id.* at 509.

19 After the contract was entered into in Nevada, the debtor continued to be late with every
20 single one of his payments to the creditor over the course of more than two years. Despite this,
21 the creditor “never declared a default or invoked its right to repossess.” *Id.* Instead, the creditor
22 continued to provide written and oral demands for payment. *Id.* at 514. After each demand, the
23 debtor quickly paid. *Id.* Despite this prior conduct of demanding payment and then receiving it,
24 the creditor decided to repossess the inventory. *Id.* at 510. The creditor did so without speaking
25 to the debtor or informing him strict compliance with the terms of the contract would now be
26 required to avoid repossession. *Id.*

27 The court in Nevada held the course of conduct between the debtor and creditor imposed
28 upon the creditor the duty, before it could repossess, to give notice to the debtor that “strict

1 compliance with the terms of the long-ignored contract would henceforth be required in order to
2 avert repossession of the vehicle.” *Id.* at 514. Because the creditor failed to provide such notice,
3 its repossession was wrongful. *Id.*

4 In the present case, the debtor, Mega, and the creditor, Roadtrek, already had an existing
5 relationship when the “Security Agreement and Power of Attorney” was entered into in April
6 2008. (*See Ex. 614.*) This new contract required, *inter alia*, Mega to pay for Roadtrek units upon
7 their sale or at the expiration of 365 days from the date of delivery. (*Id.*) The contract also
8 provided that if Mega defaulted on the contract, Roadtrek could repossess the units. Much like
9 in Nevada, Mega’s conduct with Roadtrek prior to signing the Security Agreement showed
10 Mega had a pattern of paying for units late but always made the payments eventually.
11 (McMahon, R.T. 8/10/11, 202:11-23.) According to Mr. McMahon, Mega purchased over 700
12 Roadtrek units and, except for the four remaining unpaid units, Mega fully paid for all of them.
13 (McMahon, R.T. 8/11/11, 67:19-21; McMahon, R.T. 8/10/11, 202:22-23.) (*See also*
14 Schilperoort, R.T. 8/19/11, 118:13-23, stating Mr. Schilperoort worked his best to get Roadtrek
15 units paid off within the designated time period but, even though the payments may have been
16 late, Mega always paid Roadtrek for the units.)

17 This “less-than-ideal” payment record of Mega continued to occur even after the parties
18 executed the Security Agreement. As of October 2009, it was a common and frequent
19 occurrence for Mega to be behind in its payments for units. (Hammill, R.T. 11/9/11, 201:21-
20 202:1.) Despite this, much like the creditor in Nevada, Roadtrek never declared a default or
21 invoked its right to repossess. Instead, it continued to provide written and oral demands to Mega
22 for payment. (Hammill, R.T. 11/9/11, 203:11-21.) After receiving those demands, Mega paid
23 for all but four of those units.¹³ Roadtrek continued to accept these late payments and did not
24 insist on strict compliance with the Security Agreement’s terms with respect to payments on
25 units. (*Id.* at 202:2-16.) In fact, even after witnessing Mega’s average payment time go from 37

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27
28 ¹³ It is disputed between the parties whether these payments were made in full after Mega deducted incentive amounts or whether portions of the units remained unpaid until Roadtrek offset those amounts. (Hammill, R.T. 11/9/11, 203:22-205:12.)

1 days to 78-80 days, Roadtrek continued to grant Mega “leeway in payment to try and help
2 [Mega] through their cash-flow problems.” (*Id.* at 202:12-16.)

3 Despite the prior conduct between the parties of demanding payment and then belatedly
4 receiving it, Roadtrek decided to repossess Mega’s inventory at the 2009 Pomona Show.
5 Roadtrek did so without informing Mega strict compliance with the terms of the Security
6 Agreement would be required to avoid repossession, as required by the prior course of conduct
7 between the parties. *See Nevada*, 94 Nev. at 510, 582 P.2d at 368.

8 Roadtrek’s testimony as to whether it provided notice prior to repossession is
9 inconsistent at best. At one point, Mr. Hammill affirmatively claimed to have provided Mega
10 with a written notice of default under the security agreement, in the form of a letter, prior to the
11 repossession. (Hammill, R.T. 11/9/11, 202:25-203:10.) However, after being questioned again
12 about whether Roadtrek provided notice, Mr. Hammill was no longer so assured stating, “I
13 don’t know. I don’t think so, no...” (*Id.* at 205:13-19.) Further, out of the hundreds of
14 documents in this case, no letter of the kind Mr. Hammill previously claimed to have sent was
15 produced. The record contains only a threatening letter dated over a year prior to the
16 repossession, and that letter was written not to Mr. McMahon, but to Roadtrek personnel, and
17 only copied to Mr. McMahon. (*See Ex. 619.*) Moreover, when forced to admit he had written a
18 falsehood into the letter, namely that he had received instructions from the bank “to call in the
19 [flooring] line,” Mr. Hammill admitted he had done that as a way of “creating a lever on Brent
20 to get the [financial] statements.” (Hammill, R.T. 11/10/11, 74:8-14.) After having read a
21 portion of Mr. Hammill’s deposition transcript regarding the letter, the ALJ concluded:

22 I am -- I see where you're going, Mr. Flanagan, and I see the use of "fear" twice in
23 the deposition. But I understand that Mr. Hammill was -- this could be a matter of
24 argument -- exaggerating or telling an untruth in order to prompt certain action on
the part of Mr. McMahon. I understand that. The important point is was the bank,
EDC, or Bank of Nova Scotia actually threatening to call in the line at that time?

25 (*Id.* at 75:25-76:8.) As noted above, Mr. Hammill had admitted the answer to that question was
26 “no.” (*Id.* at 75:13-76:10.) In other words, this letter amounted to no more than a bluff by
27 Roadtrek (which, as noted above, was not even addressed to Mr. McMahon) and cannot be
28 considered a notice of default for purposes of the repossessions that occurred over a year later.

1 In addition, Mr. Hanemaayer testified he did not believe Roadtrek provided written
2 notice to Mega prior to the repossession (Hanemaayer, R.T. 11/14/11, 246:24-247:5) and Mega
3 asserts it did not receive any written notice prior to the repossession. (McMahon, R.T. 8/11/11,
4 145:18-146:12.) Roadtrek was unable to provide any further documentation or concrete
5 testimony to show it provided a notice of repossession under the Security Agreement prior to
6 the repossession. The only “notice” Roadtrek does emphatically claim it gave to Mega occurred
7 at the 2009 Pomona Show, not prior, and consisted of nothing more than a vague oral threat that
8 Mega needed to pay for outstanding units and ‘meet promises that were made’ previously.
9 (Hanemaayer, R.T. 11/15/11, 134:25- 135:6.) Roadtrek claimed that if Mega “would have met
10 [its] promises we would not have acted.” (*Id.* at 135:5-6, 116:3-14.) Mr. McMahon denies
11 receiving any notice at the show, or prior to it, whether orally or in writing. (McMahon, R.T.
12 8/11/11, 145:18-146:12.)

13 Given the above, there was no notice in this case as required by Nevada. According to
14 Nevada, the course of conduct between the parties required that Roadtrek provide notice, prior
15 to repossession, “that strict compliance with the terms of the long-ignored contract would
16 henceforth be required in order to avert repossession...” 94 Nev. at 514, 582 P.2d at 370. As
17 stated in Ford Motor Credit Co., a case relied upon by Nevada,

18 The issue is the right of the [debtor] to rely upon the prior dealings that had taken
19 place and the [debtor’s] right to be notified of a modification of such conduct on
20 the part of the [creditor]. The facts before us adequately set up a pattern of
21 conduct that would lead the [debtor] to believe that late payments would be
accepted by the [creditor] and that he would be allowed to catch up in his
payment arrears. Notification of a change in this pattern should have been given
to [debtor] by [creditor] prior to the repossession...

22 273 So. 2d at 100. As was found in that case, as well as the Nevada case, the creditor, Roadtrek,
23 had a duty to provide notice beforehand and its failure to do so was wrongful and rendered the
24 repossessions unlawful.

25 **3. Respondent caused Protestant to be unable to acquire Roadtrek**
26 **vehicles.**

27 Roadtrek alleges in its Notices of Termination that Mega failed “to purchase for retail
28 sale the number of Roadtrek motorhomes as required by Section 111” of the Irvine/Colton DA

1 and Section 112 of the Scotts Valley DA. (Ex. 701; Ex. 702.) According to these sections,
2 Scotts Valley is required to purchase a minimum of 75 units per year and Irvine/Colton is
3 required to purchase a minimum of 100 units per year. However, Roadtrek presented no
4 evidence at hearing as to the purchase levels reached by Mega.

5 In addition, the Notices of Termination allege Mega failed “to stock the required number
6 of Roadtrek motorhomes as required by Section 109” of the Irvine/Colton DA and Section 110
7 of the Scotts Valley DA. As with the minimum inventory purchase level requirement, Roadtrek
8 presented no evidence at hearing concerning the number of units stocked by Mega at any given
9 time.

10 In lieu of any such evidence necessary to prove the allegations claimed above, Roadtrek
11 claimed that, since Mega had no Roadtrek stock after October 2009, it would have been
12 impossible to meet these requirements. (Hammill, R.T. 11/8/11, 122:22-123:7.) However,
13 Mega’s lack of Roadtrek inventory and inability to acquire the Roadtrek stock it needed
14 occurred through no fault of its own and should not be considered evidence of good cause for
15 termination.

16 In addition to repossessing all Mega’s Roadtrek inventory in October 2009, as discussed
17 above in Section (III)(G)(2), Roadtrek also prevented Mega from acquiring any new Roadtrek
18 units thereafter. Roadtrek claims Mega was at fault for not getting new stock because Mega had
19 not placed any orders for units. (Hammill, R.T. 11/8/11, 123:4-8.) Mr. Hammill testified
20 “Roadtrek has a strong ordering policy and procedure” for ordering units and Mega had not
21 placed any orders. (*Id.* at 123:7-8.) However, this comment is entirely misleading and
22 completely contrary to the course of conduct that had previously existed between the parties.

23 During the relationship that existed between the parties prior to October 2009, Roadtrek
24 would ship Mega the number and composition of units it desired on a regular basis. (McMahon,
25 R.T. 8/11/11, 159:2-20; McMahon, R.T. 8/10/11, 62:11-63:1.) (*See also* Ex. 699.) These
26 shipments were always made without obtaining prior approval from Mega, let alone receiving
27 actual *orders* from Mega. (*See* Ex. 699.) This method was mutually beneficial to the parties at
28 the beginning of their relationship when Roadtrek was experimenting with providing flooring

1 and no interest was being charged to Mega to keep the product. (Hammill, R.T. 9/22/11, 157:1-
2 18, 161:6-162:14.) This method resulted in Mega being, for a time, oversaturated with Roadtrek
3 product. Mega was not entirely opposed to this, though, as it meant it had a large variety of
4 stock from which to sell. (McMahon, R.T. 8/9/11, 54:24-56:6; Hammill, R.T. 9/22/11, 157:19-
5 158:3; Ex 608.)

6 The situation changed, however, when Roadtrek stopped flooring units for Mega and
7 began charging interest for its units. (McMahon, R.T. 8/11/11, 10:8-18.) Despite these changes
8 to the financial circumstances between the parties, Roadtrek continued to ship a large amount of
9 inventory to Mega at will. (*Id.* at 10:8-24.) These shipments consisted of models not ordered or
10 chosen by Mega,¹⁴ but rather selected solely by Roadtrek. (*Id.*) Mega continually communicated
11 to Roadtrek this was unacceptable and that it wanted to be consulted prior to orders being
12 shipped. (*Id.* at 9:9-13:4.) (*See also* Ex. 632.) However, Roadtrek “continued to do what they
13 wanted to do.” (McMahon, R.T. 8/11/11, 11:13-14.)

14 Despite this prior course of conduct, Roadtrek ceased unit shipments after the 2009
15 Pomona Show. (*Id.* at 160:1-161:2.) Roadtrek claims Mega was at fault for not getting new
16 stock because Mega didn’t have adequate credit to purchase units. (Hammill, R.T. 11/9/11,
17 201:3-7.) Roadtrek claimed it needed adequate assurances Mega had floor plans with its lenders.
18 (Hammill, R.T. 11/7/11, 137:3-15.) Despite Mega’s insistence it could floor product with
19 General Electric (“GE”), Roadtrek continued to allege that Mega didn’t have adequate flooring.
20 (*Id.* at 137:15-20.) In an attempt to prove to Roadtrek that it had flooring, Mega contacted its
21 lender, GE and asked it to acknowledge this fact for Roadtrek’s benefit. (*See* Ex 704.) GE did
22 so, stating, “McMahon’s RV can floor Roadtrek Motorhomes.” (*Id.*) However, despite this
23 assurance, Roadtrek continued to not provide any units to Mega. Without Roadtrek’s
24 cooperation, Mega continued to be unable to obtain any Roadtrek units. (John Print Dep. 34:3-
25 8; 19-24.)

26 //

27 _____
28 ¹⁴ There were few exceptions to this when Mega would find a certain model desirable and would request that
model, specifically, also be included in the shipments Roadtrek was already sending. (McMahon, R.T. 8/11/11,
11:21-12:1.) There were also a few custom orders for customers. (*Id.* at 160:1-21.)

1 In a final attempt to get new units, Mega sent a letter to Roadtrek attempting to lay out
2 the units it wished to order. (McMahon, R.T. 8/11/11, 158:14-159:1.) (See also Ex. 699.)
3 Roadtrek ignored this order, apparently having no reason to ship new product to Mega while it
4 was already shipping its product into the area for MTRV. As these circumstances illustrate,
5 Mega's lack of Roadtrek inventory resulted from no fault of its own and it therefore should not
6 be considered as evidence of good cause for termination.

7 **H. As The Evidence In This Case Demonstrates, Respondent Has Engaged In**
8 **Conduct That Effectively and Unlawfully Terminated Protestant's**
9 **Franchises Before The Notices Of Termination Were Issued And Protestant**
10 **Therefore Requests The Board Refer The Unlawful Termination Of Mega**
11 **To The California Department Of Motor Vehicles For Investigation And**
12 **Appropriate Action Regarding Roadtrek's Distributor's License.**

13 As stated above, pursuant to Cal. Veh. Code § 3050 and 13 C.C.R. § 593.3 the board
14 may order the Department of Motor Vehicles to exercise its authority and review the status and
15 license of Respondent and MTRV in this matter.

16 Skrocki's Order denied Protestant's Motion No. 6, which requested the Board find there
17 has been a *de facto* termination of Protestant's franchise. However Skrocki's Order states, "[i]f
18 evidence is adduced to show that Respondent has engaged in conduct that includes the
19 allegations made in this motion," ALJ Hagle may recommend the Board exercise its powers
20 pursuant to Cal. Veh. Code §§ 3050(c)(1) and (c)(3). (Skrocki's Order ¶ 45.) It is clear from
21 the evidence presented in this case that Protestant's franchise was unlawfully and effectively
22 terminated when Respondent absconded with Protestant's vehicle inventory and refused to sell
23 it additional parts or units. Protestant was unable to continue to operate as a Roadtrek franchise
24 without Roadtrek's cooperation. Roadtrek failed to give the Board and Protestant notice and an
25 opportunity to protest before effectively terminating its franchise. Since Roadtrek's actions
26 were unlawful and contrary to Cal. Veh. Code § 3070, the Board should refer this matter for
27 review and appropriate action by the DMV.

28 **IV. ROADTREK DID NOT APPROVE OR DISAPPROVE MEGA'S WARRANTY**
CLAIMS, PROVIDE SPECIFIC WRITTEN NOTICE OF DISAPPROVAL, OR
PAY MEGA FOR APPROVED CLAIMS WITHIN THE STATUTORILY
REQUIRED TIME PERIODS, AS SET FORTH IN CAL. VEH. CODE § 3075.

Throughout the parties' relationship, Mega submitted numerous warranty claims to
Roadtrek. However, Roadtrek failed to approve or disapprove all claims within the time period

1 allotted by statute. *See* Cal. Veh. Code § 3075(d). In addition, notice of disapproved claims
2 were not specific and approved claims were not paid for within the time period allotted by
3 statute. *Id.*

4 As all Mega locations experienced similar violations of Cal. Veh. Code § 3075 by
5 Roadtrek, the discussion below will incorporate warranty claims from all protesting locations
6 [PR-2206-10 for Colton, PR-2208-10 for Irvine, and PR-2209-10 for Scotts Valley]. The parties
7 have stipulated to a factual chart summarizing all of the warranty claims at issue in this case
8 (Ex. 774), which will serve as the primary foundation for the arguments below. Exhibit 774 was
9 created by the parties to include details from Exhibit 708 (a list, created pursuant to Judge
10 Skrocki's order, of warranty claims for which Mega alleges it has not yet been paid), Exhibit
11 517 (printouts of relevant warranty claims' history from Roadtrek's warranty system), and
12 Exhibit 517A (supplemental claim printouts from Roadtrek's warranty system). Exhibit 774
13 therefore represents factual dates and numbers undisputed by the parties and encompasses all
14 197 warranty claims concerning which Mega alleges Roadtrek's actions violated Cal. Veh.
15 Code § 3075(d).

16 **A. Roadtrek Failed To Approve Or Disapprove Warranty Claims Within**
17 **Thirty (30) Days After Receipt, As Required By Cal. Veh. Code § 3075.**

18 California law requires all warranty claims made by franchisees "shall be either
19 approved or disapproved within 30 days after their receipt by the franchisor. A claim not
20 specifically disapproved in writing within 30 days from receipt by the franchisor shall be
21 deemed approved on the 30th day." Cal. Veh. Code § 3075(d). Exhibit 774 clearly delineates
22 the stipulated facts regarding the dates various warranty claims were "approved" or
23 "disapproved."¹⁵ However, the date of "receipt by the franchisor" is debated by the parties. For
24 this reason, both the date a claim was *first* submitted to warranty personnel and the date a claim
25 was *last* submitted to warranty personnel are included within Exhibit 774.¹⁶ Exhibit 774 also
26 includes two calculation columns for these dates: column 11 calculates the number of days that
27

28 ¹⁵ *See* the 10th column of Exhibit 774, entitled "Status Changed to Authorized," for the dates of authorization or a
notation that the claim was "cancelled."

¹⁶ *See* the 8th and 9th column headings of Exhibit 774, respectively.

1 passed before a claim was authorized using the date the claim was first submitted to warranty
2 personnel, and the 12th column calculates the number of days that passed before a claim was
3 authorized using the date the claim was last submitted to warranty personnel. Where the number
4 of days that passed are greater than 30, the cells are highlighted in yellow.

5 Regardless of which submission date is used, it is apparent there are claims that were not
6 approved within the allotted 30 days. When using the date a warranty claim was *first* submitted
7 to warranty personnel, the result is fourteen (14) claims not approved within 30 days. When
8 using the date a warranty claim was *last* submitted to warranty personnel, the result is three (3)
9 claims not being approved within 30 days. As stated in the Cal. Veh. Code, those claims “not
10 specifically disapproved in writing within 30 days from receipt by the franchisor shall be
11 deemed approved on the 30th day.” § 3075(d). Accordingly, all claims mentioned above that
12 were not approved, nor disapproved, within the allotted 30 day time period were deemed
13 approved on the 30th day and payment for them was owed to Mega within 30 additional days.

14 **B. Roadtrek Failed To Provide Mega Written Notice Stating The Specific**
15 **Grounds For Disapproved Warranty Claims Within Thirty (30) Days, As**
16 **Required By Cal. Veh. Code § 3075.**

17 As stated above, a franchisor must either approve or disapprove a warranty claim within
18 30 days of receipt of the claim and if it does not to do so within those 30 days, the claim is
19 automatically deemed approved. Cal. Veh. Code § 3075(d). In the case of disapproval, the
20 franchisor must notify the franchisee within 30 days of submission, in writing, and “state the
21 specific grounds upon which the disapproval is based.” *Id.*

22 Those claims Roadtrek alleges were “cancelled” or “disapproved” were not disapproved
23 in writing within 30 days of receipt of the claim by Roadtrek. As discussed above, the official
24 date of receipt of a claim by Roadtrek is debated by the parties, with Mega alleging the
25 applicable date is the date a claim was *first* submitted to warranty personnel, and Roadtrek
26 alleging it is the date a claim was *last* submitted to warranty personnel. However, regardless of
27 which date is used, there are claims Roadtrek did not cancel (or disapprove) within the
28 statutorily allotted 30 days. As illustrated on the table below, of the ten (10) claims Roadtrek
alleges it cancelled, nine (9) of those claims were not cancelled within 30 days of the date they

were *first* submitted to warranty personnel, and seven (7) of those claims were not cancelled within 30 days of the date they were *last* submitted to warranty personnel.

Bates Range	Mega Control #	VIN #	1st time Submitted to Warranty Personnel	Last time Submitted to Warranty Personnel	Status Changed to Cancelled	# of Days before Cancelled based on 1st Submission	# of Days before Cancelled based on Last Submission
09821 - 09823	70066	61117090	07/12/07	07/12/07	11/01/07	112	112
09981 - 09984	51755	65968003	03/12/08	05/07/08	05/11/08	60	4
10039 - 10041	19623	71121579	06/30/08	10/30/08	11/27/08	150	28
10052 - 10054	70227	71121794	10/08/07	10/08/07	04/01/08	176	176
10191 - 10193	24136	61263203	01/27/10	01/27/10	03/17/10	49	49
10254 - 10256	18745	71217703	never submitted		11/09/09	n/a	n/a
10276 - 10279	51776	71218375	02/12/08	05/07/08	06/13/08	122	37
10385 - 10388	18843	75221650	10/30/08	10/30/08	08/11/09	285	285
10461 - 10464	52351	81121026	11/20/08	11/20/08	02/17/09	89	89
11954 - 11957	35982	61263203	09/18/09	09/18/09	12/21/09	94	94

As these claims were not disapproved within the allotted 30 days, under California law they were “deemed approved” on the 30th day and payment on them was owed to Mega within 30 days of approval. *Id.*

California law also requires, “[w]hen a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state the specific grounds upon which the disapproval is based.” Cal. Veh. Code § 3075(d). Although all cancellations at issue were in writing and sent through Roadtrek’s warranty system, they did not all “state the specific grounds upon which the disapproval is based.”

For example, Mega Control Number (“MC#”) claim 70066’s only relevant statement regarding cancellation is “claim over 90 days.” (Ex. 517 at RMI 9822.) First, as discussed above, any claims should have been approved or disapproved within 30 days, not 90. Secondly, “claim over 90 days” is not sufficient notice of “specific grounds upon which the disapproval is based.” Likewise, four (4) other cancelled claims at issue share similar unspecific statements that reveal nothing except they were disapproved well past the 30 day limit.¹⁷ Three (3) additional disapproved claims use different language to state the claims were cancelled, but still

¹⁷ See Ex. 517 at RMI 10053 (MC#70227: “claim over 90 days”), RMI 10255 (MC#18745: “Claim has been in system for 5 months and not submitted. Considered cancelled”), RMI 10386 (MC#18843: “9 months has gone by with no activity on this claim. Cancelled.”); Ex. 517A at RMI 11955 (MC#35982: “No action in system on this claim for 3 months. Cancelled.”)

1 fall short of providing “specific grounds.” For example, MC#51755 merely states, “Approved
2 R08-0417 for batteries Approved R07-3131 for the labor back in Nov.”¹⁸ (Ex. 517A at RMI
3 11922.) The lack of specificity is underscored by contrasting these notes with a disapproved
4 claim that *did* provide specific grounds; MC#52351 stated:

5 We have looked at this claim and there are too many items that do not make
6 sense. We do not believe that this is a Roadtrek vehicle. 21PC vehicles do not
7 have bathroom windows. They also do not have multiple side entry doors. We
8 also do not have customer information or warranty registration received for this
9 owner at this time. There has been no response to questions. Claim is denied.

10 (*Id.* at RMI 11929.) (*See also* Ex. 517 at RMI 10462.) This is a detailed, specific, and clear
11 explanation of why Roadtrek is disapproving Mega’s claim. Mega was entitled to the same
12 specific notice of disapproval on the nine (9) other claims Roadtrek cancelled. Roadtrek’s
13 failure to provide “specific grounds upon which the disapproval is based” is a violation of Cal.
14 Veh. Code § 3075 as a matter of law.

15 **C. Roadtrek Failed To “Pay” Warranty Claims, Through Either Offsets Or
16 Payment, Within 30 Days Of Approval, As Required By Cal. Veh. Code §
17 3075.**

18 California law requires all warranty claims made by franchisees “shall be paid within 30
19 days following approval.” Cal. Veh. Code § 3075(d). Regardless of the method of payment (by
20 offsetting¹⁹ or by direct check), Exhibit 774 reveals Roadtrek violated the Cal. Veh. Code by not
21 paying warranty claims to Mega within 30 days of approval.

22 To determine whether Roadtrek paid for warranty claims within the statutorily
23 prescribed time period, it is necessary to know the date of “approval” and the date the claim was
24 “paid.” In Roadtrek’s warranty system, the authorization date is “the date that Roadtrek
25 personnel approved the claim.” (Deakins, R.T. 11/29/11, 74:4-6.) Thus, Exhibit 774 clearly
26 delineates the dates various warranty claims were “approved,” i.e. had their “status changed to
27 authorized.” (*See* the 10th column in Ex. 774.)

28 However, the date Roadtrek “paid” Mega is disputed by the parties. In deciding what to
include in Exhibit 774’s table, the parties agreed to include two dates in reference to payment:

¹⁸ *See also* Ex. 517 at RMI 10040 (MC#19623: “Please submit repair on recall form and delete claim from system”), RMI 10192 (MC#24136: “Please see emailed response back, sublet is missing tax ID numbers etc. This is not a realistic sublet bill. Cancelled.”)

¹⁹ Roadtrek has not provided evidence or authority that the statute permits payment by offset.

1 the “check date” and the “sign off date.”²⁰ According to Mr. Chris Deakins, Roadtrek’s service
2 and warranty parts coordinator, the “check date” means “the date that the check was issued” and
3 the “sign off date” would indicate the date the check received a signature after being issued.
4 (Deakins, R.T. 12/1/11, 11:25-12:4.) Mr. Deakins qualified his answer regarding these dates by
5 noting he does not work in the accounting office and is not in charge of inserting those dates
6 into the system. (*Id.*) However, since Roadtrek did not call any witnesses from its accounting
7 department, Mr. Deakins represents the best source available for the meaning of these terms.

8 Even with these definitions, though, the record is still unclear as to the exact date Mega
9 received payment from Roadtrek, as neither the “check date” nor the “sign off date” as defined
10 above indicate the exact date payment was made to Mega. Whether payment was made through
11 offsetting or mailing a check, the dates a check was issued and then signed do not necessarily
12 equal the same date said check was mailed to Mega, received by Mega, or applied to its
13 accounts through offsetting. In essence, these two dates provide little to no help in determining
14 the exact number of days lapsed before Mega was paid after its claims were approved. What
15 these two dates do illustrate, however, is the *earliest* possible point at which Mega *could* have
16 received payment, for without the checks being issued or signed, it is not possible for Mega to
17 have been paid.

18 When looking at the “check date” and the “sign off date” as the earliest possible dates
19 the warranty claims could have been paid, the prevalence of Roadtrek’s violations of Cal. Veh.
20 Code § 3075(d) is striking. Using the “check date” and the “status changed to authorized” date,
21 124 warranty claims were not paid by Roadtrek within 30 days of approval. Using the “sign off
22 date” and the “status changed to authorized” date, 129 warranty claims were not paid by
23 Roadtrek within 30 days of approval. (*See* Appendix 2 for a listing of the MC#s for the claim
24 totals discussed above.)

25 Roadtrek is expected to argue the date the “status changed to authorized” is not the
26 appropriate date of “approval” and that, instead, the date to be used is the date a claim was
27 “submitted for payment.” However, even when using this later date, Roadtrek still failed to pay
28

²⁰ See columns 14 and 16, respectively.

1 Mega for warranty claims within 30 days, violating Cal. Veh. Code § 3075(d). Using the “check
2 date” and the “submitted for payment” date, 106 warranty claims were not timely paid by
3 Roadtrek.²¹ Using the “sign off date” and the “submitted for payment” date, 112 warranty
4 claims were not timely paid by Roadtrek.²² (See Appendix 2 for a listing of the MC#s for the
5 claim totals discussed above.)

6 Thus, regardless of what dates are used, Roadtrek’s failure to pay for the above-
7 mentioned warranty claims “within 30 days following approval” is a violation of Cal. Veh.
8 Code § 3075(d) as a matter of law. In addition, there may exist additional violations when one
9 takes into account the claims not included in the above totals still may not have been timely paid
10 by Roadtrek. Roadtrek has presented insufficient evidence to prove those claims were paid
11 within 30 days by offsetting or by sending a check to Mega. The parties have been barred from
12 delving too deeply into this issue in the present case before the New Motor Vehicle Board by
13 Skrocki’s Order, which stated: “Any issues of damages, and the amounts of any set-offs if the
14 set-offs do not constitute the claims being “paid” within the meaning of Section 3075 are not
15 within the jurisdiction of the Board.” (Skrocki’s Order at 9:19-21.) However, it is not even
16 necessary to get into the issue of offsetting with regard to timely payment of warranty claims
17 because, as discussed in detail above, no matter what dates are used, Roadtrek violated Cal.
18 Veh. Code § 3075(d) by repeatedly not paying for warranty claims “within 30 days following
19 approval.” This constitutes *prima facie* evidence Roadtrek violated Cal. Veh. Code § 3075(d) as
20 a matter of law.

21 Given all of the above, Roadtrek has violated almost all aspects of Cal. Veh. Code §
22 3075(d). Roadtrek failed to approve or disapprove warranty claims within 30 days after receipt,
23 failed to provide Mega written notice stating the specific grounds for disapproved warranty
24 claims within 30 days, and failed to pay warranty claims within 30 days of approval, as required
25 by Cal. Veh. Code § 3075(d). Thus, the Protests PR-2206-10, PR-2208-10, and PR-2209-10
26 should be sustained.

27 ²¹ See Exhibit 774, column 15 entitled “# of days from Submitted for Payment to Check Date”, for the number of
28 days that elapsed between these two dates.

²² See Exhibit 774, column 17 entitled “# of days from submitted for payment to sign off date”, for the number of
days that elapsed between these two dates.

1 **V. ROADTREK DID NOT PROVIDE SPECIFIC WRITTEN NOTICE OF**
2 **DISAPPROVAL OF MEGA'S INCENTIVE CLAIMS OR PAY MEGA FOR**
3 **APPROVED CLAIMS WITHIN THE STATUTORILY REQUIRED TIME**
4 **PERIODS, AS SET FORTH IN CAL. VEH. CODE § 3076.**

5 During the course of the parties' relationship, Mega submitted numerous claims for
6 payments pursuant to Roadtrek's incentive programs. However, Roadtrek failed to pay, either
7 by check or through offsetting,²³ all incentive claims within the thirty (30) days allotted by
8 statute. *See* Cal. Veh. Code § 3076. In addition, notices of disapproved claims were not written
9 and were not specific, as required by California law. *Id.*

10 As all Mega locations experienced similar violations of Cal. Veh. Code § 3076, the
11 discussion below will incorporate incentive claims from all protesting locations [PR-2205-10
12 for Colton, PR-2212-10 for Irvine, and PR-2211-10 for Scotts Valley]. Unfortunately, Roadtrek
13 has not produced the same type of detailed records regarding claim approval and disapproval
14 dates for incentive claims as it did for warranty claims. As a result, the arguments in this section
15 are forced to rely upon tables created by the parties, without backup documents for verification
16 of their accuracy, and emails²⁴ that purport to lay out the amounts owed between the parties.

17 Pursuant to an order by Judge Skrocki, Mega created a list at the beginning of this case
18 listing the incentive claims which Mega alleges Roadtrek has not yet paid. This exhibit [Ex.
19 706], Roadtrek's notes regarding this exhibit [Ex. 706A], and the Mega incentive schedule on
20 which this exhibit is based [Ex. 5] will serve as the foundation for Mega's arguments below.
21 Mega will also rely on Exhibit 741, an email from Roadtrek to Mega in June of 2009, which
22 includes detailed incentive tables created by Roadtrek.

23 **A. Roadtrek Failed To Provide Mega Written Notice Stating The Specific**
24 **Grounds For Disapproved Incentive Claims Within 30 Days, As Required**
25 **By Cal. Veh. Code § 3076.**

26 California law requires all incentive claims "made by a franchisee for payment under the
27 terms of a franchisor incentive program shall be either approved or disapproved within 30 days
28 after receipt by the franchisor... A claim not specifically disapproved in writing within 30 days

²³ Roadtrek has not provided evidence or authority that the statute permits payment by offset.

²⁴ Mega has located less than a handful of emails in the record Roadtrek may attempt to claim constitute written disapproval for incentive claims. (*See* Ex. 723; Ex. 726; Ex. 623; Ex. 625.) However, these exhibits do not "state the *specific* grounds upon which the disapproval is based" as required by Cal. Veh. Code § 3076(a) (emphasis added). Instead, they represent nothing more than attempts to balance accounting records between the parties.

1 from receipt shall be deemed approved on the 30th day” Cal. Veh. Code § 3076(a). In addition,
2 “When a claim is disapproved, the franchisee who submits it shall be notified in writing of its
3 disapproval within the required period, and each notice shall state the specific grounds upon
4 which the disapproval is based.” *Id.*

5 Roadtrek administers three different types of incentive programs. One type is called
6 “Consumer Cash Back” (“CCB”) and acts like a rebate to the consumer. (Schilperoort, R.T.
7 8/17/11, 136:25-137:5.) “Dealer Cash” is the next type of incentive and consists of monies
8 promised to the dealer for the sale of a unit. (*Id.*) The third type is considered “goodwill
9 money,” i.e. “spiffs,” and is an amount in addition to the first two types of incentives that is
10 negotiated between Mega and Roadtrek to assist Mega’s salespeople in selling units. (*Id.* at
11 136:25-137:5; Hanemaayer, R.T. 11/15/11, 6:13-7:3.) The first two types of incentives are
12 approved upon the sale of a unit; Roadtrek has already provided a form with the terms,
13 including which units qualify for incentives, and payment is automatically made when Roadtrek
14 receives the completed form. (Schilperoort, R.T. 8/17/11, 142:16-22; Schilperoort, R.T. 8/19/11,
15 61:8-13.)

16 The spiffs, however, are often the result of an oral contract between the parties. In fact, it
17 was a practice between the parties for Mega to contact Roadtrek and ask for price support in
18 order to make a sale. (Hammill, R.T. 11/9/11, 92:2-11.) This would occur sometimes
19 telephonically, by email, or in person. (*Id.* at 92:10-11; Hammill, R.T. 9/23/11, 77:11-20;
20 Cassidy, R.T. 1/18/12, 158:5-159:13.) When these “informal requests” (Hammill, R.T. 9/23/11,
21 77:19) were made by a dealer, Roadtrek claimed it would make an assessment as to approval or
22 disapproval of that request “at the time of the request.” (*Id.* at 78:5-10.) For those requests made
23 telephonically by Mega (a common practice between the parties) approval would, thus, have to
24 be given orally as Roadtrek “would not do... an assessment afterwards.” (*Id.* at 78:8-10.)
25 Likewise, any disapproval of telephonic requests would be made orally as well. Thus, these
26 informal deals and the process of approval or disapproval surrounding them were often not
27 documented.

28 //

1 In fact, Roadtrek admits in the RV industry it is “standard practice for the deal to go
2 forward irrespective of whether the paperwork had been received” by the franchisor. (Hammill,
3 R.T. 11/9/11, 102:18-24.) If paperwork for these deals is submitted at all, it is standard practice
4 for that paperwork to be submitted after the sale deal for the unit is completed. (*Id.* at 102:24-
5 103:1.) Mr. Hammill even expressed Roadtrek wasn’t the party who wanted such
6 documentation but, rather, it was Mega who wanted documented proof of Roadtrek’s oral
7 incentive promises. (*Id.* at 101:16-24.) Thus, if it was Mega pushing for incentive deals to be in
8 writing, then Roadtrek did not practice the strict, black-and-white requirement it now claims its
9 incentive programs require, namely getting everything in writing before approval.

10 If later paperwork submitted by Mega indicated it believed a larger incentive amount
11 had been approved orally than Roadtrek believed, Roadtrek “said ‘no’” to Mega’s paperwork.
12 (*Id.* at 104:4-105:2.) When asked to clarify what form such disapprovals in part took, Roadtrek
13 testified it was communicated in emails. (*Id.* at 109:20-110:1.) However, Roadtrek was not able
14 to point to any specific emails as examples and could not say whether *all* such disapprovals
15 were communicated in writing. (*Id.* at 109:20-110:3.)

16 However, according to Cal. Veh. Code § 3076(a), any disapproved claims, irrespective
17 of whether they are disapproved in whole or in part, must be “disapproved within 30 days” and
18 any such claim not “specifically disapproved *in writing* within 30 days from receipt shall be
19 deemed approved on the 30th day.” (emphasis added) Further, “When a claim is disapproved,
20 the franchisee who submits it shall be notified *in writing* of its disapproval within the required
21 period, and each notice shall state the specific grounds upon which the disapproval is based.”
22 Cal. Veh. Code § 3076(a). (emphasis added) Roadtrek’s method of disapproving some claims
23 over the phone is contrary to this law. In addition, Roadtrek has failed to prove that, when it
24 disapproved written claims in part, it disapproved those claims in writing, stating the specific
25 grounds for such disapproval.

26 When asked upon what grounds Roadtrek may have disapproved Mega’s incentive
27 claims, Mr. Hammill gave three grounds: (1) the units the incentives were claimed on are units
28 that remain unpaid to Roadtrek, (2) the unit was sold by another dealer, or (3) he could not find

1 any CCB forms for the units. Where Mr. Hammill alleged he could not find any CCB forms for
 2 certain units, he claimed this meant Roadtrek did not owe Mega money for those claims because
 3 a CCB form is required in order for Mega to be owed any incentive. (Hammill, R.T. 11/8/11,
 4 105:8-106:5, 106:14-107:5; Hammill, R.T. 11/10/11, 173:19-174:7.) Below are claims from
 5 Exhibit 706 for which Mr. Hammill alleges he could not find a CCB form. (*Id.*)

RT Unit Number	VIN Number	Amount Mega Claims is Owed	RT Unit Number	VIN Number	Amount Mega Claims is Owed
R739	81193115	\$9,726.33	R713	81128029	\$1,000.00
R693	75764151	\$6,000.00	R730	81129938	\$5,000.00
R714	81132003	\$1,000.00	R715	81196722	\$6,000.00
R659	75201365	\$1,500.00	R754	81197738	\$8,000.00
R686	75222727	\$1,500.00	R751	85234968	\$10,000.00
R660	81121094	\$1,500.00	R779	85267030	\$5,000.00
R663	81121956	\$1,000.00	R748	85270780	\$10,000.00
			R757	91115903	\$10,000.00

6
 7
 8
 9
 10
 11
 12
 13 However, contrary to Mr. Hammill's statements that a CCB form is required for an incentive to
 14 be owed or approved, Roadtrek has previously claimed to have either "paid" Mega for some of
 15 these claims through offsetting or has otherwise indicated some of them were approved.

16 For example, units R714 [VIN#81132003] and R693 [VIN#75764151] were previously
 17 claimed by Mr. Hammill to have been approved and offset against Mega's accounts. (Hammill,
 18 R.T. 11/8/11, 109:6-111:1.) In addition, Exhibit 741, an email from Roadtrek to Mega in June of
 19 2009, indicates the approval of CCBs and spiffs for units R739 [VIN#81193115], and R663
 20 [VIN#81121956], two other units Mr. Hammill now claims are missing CCB forms.²⁵
 21 Therefore, either Mr. Hammill's claims that CCB forms were not received by Roadtrek is false
 22 or his statement that the CCB forms were always required for approval is false. Either way, Mr.
 23 Hammill's assertions regarding why Roadtrek does not owe Mega for many of the incentive
 24 claims listed on Exhibit 706 are without merit and should not be taken at face value.

25 As discussed above, incentive deals between Roadtrek and Mega were very often
 26 informal and made over the phone. Documentation of such deals is not immediately feasible
 27 when a franchisee is trying to make a deal with a customer. (McMahon, R.T. 8/9/11, 149:18-

28 ²⁵ Exhibit 741 includes two detailed incentive tables (one for CCBs and one for spiffs) created by Roadtrek in 2009 and purporting to list the incentives Roadtrek "banked" for Mega up to that point.

1 150:13.) The exhibits and testimony reveal post-deal documentation was not always made, nor
2 was it always required. When Mega did document such deals, it was often for its own benefit,
3 rather than due to any purported requirement by Roadtrek. (*Id.* at 150:14-153:19.) Thus, for
4 Roadtrek to now claim it has strict policies that always required written documentation is
5 misleading and contrary to the prior course of dealing between the parties.

6 Additionally, Roadtrek asserts Mega did not qualify for its incentive programs because it
7 was not stocking an adequate amount of units. However, according to Ms. Crowe, such was not
8 the case. Ms. Crowe testified that as of 9/17/08, 8/24/09, and 9/16/09, Mega had acceptable
9 minimum stocking levels. (Crowe, R.T. 1/10/12, 170:14-171:6; Ex. 691 at 6796; Ex. 692; Ex.
10 693; Ex. 695.) In addition to Roadtrek's assertion being false, it was never communicated in
11 writing to Mega as a specific ground for the disapproval of incentive claims. For these reasons,
12 Roadtrek's assertion does not constitute a legitimate basis for denying Mega's incentive claims
13 and would not meet the requirements outlined in Cal. Veh. Code § 3076(a) for incentive claim
14 denials.

15 Given the above, Roadtrek did not provide Mega with sufficient written notice of
16 disapproved incentive claims, stating the specific grounds for disapproval. Accordingly,
17 Roadtrek has violated Cal. Veh. Code § 3076 as a matter of law and Protests PR-2205-10, PR-
18 2212-10, and PR-2211-10 should be sustained.

19 **B. Roadtrek Failed To "Pay" Incentive Claims, Through Either Offsets Or**
20 **Payment, Within 30 Days Of Approval, As Required By Cal. Veh. Code §**
21 **3076.**

22 California law requires that all incentive claims made by franchisees "shall be paid
23 within 30 days following approval." Cal. Veh. Code § 3076(a). Regardless of the method of
24 payment (offsetting²⁶ or by direct check), Roadtrek did not pay Mega for thirty-five (35)
25 incentive claims within 30 days of approval.

26 Exhibit 5 was created by Mega in the normal course of business and consists of all
27 unpaid incentives from the beginning of Mega's relationships with its franchisors. (Schilperoort,
28 R.T. 8/17/11, 140:4-7.) The data contained under the dividing line on McMahon 00098 through

²⁶ Roadtrek has not provided evidence or authority that the statute permits payment by offset.

1 the dividing line on McMahon 00101 relates to Roadtrek.²⁷ This segment of data, which can be
2 found in an isolated format in Exhibit 706, amounts to all “outstanding factory incentive monies
3 that were still remaining on [Mega’s] books that were unpaid by Roadtrek” at the point it was
4 created on 3/1/10. (*Id.* at 133:23-25.) According to Ms. Crowe, Roadtrek pays for approved
5 incentive claims “via a check that is mailed out to the dealership.” (Crowe, R.T. 1/10/12, 117:5-
6 12.) If a given incentive on this schedule had been paid, via check or offset, it would have been
7 cleared from the schedule at the end of every month. (Schilperoort, R.T. 8/17/11, 134:6-12.)
8 Given this testimony, this schedule represents all the incentives Mega has yet to be paid for,
9 including 35 from Roadtrek. (*Id.*)

10 In addition to listing all unpaid incentives, Exhibit 5 also provides the number of days
11 elapsed since the claims have been on the schedule. (*Id.* at 132:2-6.) This information is found
12 to the immediate right of the “Days:” identification. (*Id.*) This exhibit illustrates Roadtrek has
13 failed to pay Mega incentives for 35 claims and, as of 3/31/10, these claims were 90 to 602 days
14 old. Thus, Exhibits 5 illustrates Roadtrek has failed to pay incentive claims well past the 30 day
15 time period required by Cal. Veh. Code § 3076(a).

16 The record contains additional documents that set forth the total amounts Mega claimed
17 Roadtrek owed it for incentive claims toward the end of the parties’ dealings. In May 2009,
18 Mega claimed Roadtrek owed it \$55,570.00, which increased to \$68,796.11 by that October.
19 (*See* Ex. 639 and Ex. 645, respectively.) After conversations between the parties, Roadtrek
20 disclosed it knew it actually owed Mega more money for incentive claims than Mega had
21 previously alleged, totaling \$132,400.00.²⁸ This amount is later reflected as “Roadtrek’s figure”
22 in subsequent documents, dated 9/10/09 and 12/16/09. (*See* Ex. 657 and Ex. 677, respectively.)

23 As discussed above, regardless of the method of payment (offsetting or by direct check),
24 Roadtrek did not pay all incentive claims within 30 days of approval. In addition, there is no
25 evidence to show Roadtrek even “paid” for some of Mega’s incentive claims through offsetting.

26
27 ²⁷ Roadtrek related data is also identified by the “R” designation that precedes the vehicle number, which is the first
column on the left-hand side of the schedule. For example, the first Roadtrek incentive claim is R591 and appears
on this schedule on McMahon 00098 as the 5th claim from the bottom of the page.

28 ²⁸ *See* Ex. 661, page RMI 006362, where Mr. Hanemaayer acknowledges Mega has “trusted [his] figure for
incentives when it was higher than [Mega’s].”

1 Mega was not made aware Roadtrek was offsetting incentive amounts. (Schilperoort, R.T.
2 8/19/11, 88:22-89:3.) In addition, no one from RT's accounting department testified about how
3 they offset amounts to Mega's accounts or testified they ever informed Mega of this practice
4 through regular statements. There is insufficient evidence showing payments through offset for
5 approved incentive claims, suggesting this "payment" defense was thought up only after
6 litigation became imminent between the parties. It is additionally difficult to believe Roadtrek
7 was legitimately offsetting approved incentive claims at the time, because doing so is against
8 Roadtrek's own policy: incentives are "really the property, per se, of the salesperson. So it
9 wouldn't be right to apply those amounts to an amount owed by McMahon's to Roadtrek."
10 (Hanemaayer, R.T. 11/15/11, 7:2-6.)

11 Given the above, Roadtrek did not pay all of Mega's incentive claims within 30 days of
12 approval. That being the case, Roadtrek has violated Cal. Veh. Code § 3076 as a matter of law
13 and Protests PR-2205-10, PR-2212-10, and PR-2211-10 should be sustained.

14 CONCLUSION

15 The evidence in this case has demonstrated Respondent has violated a number of
16 provisions of the California Vehicle Code, including Sections 3070, 3072, 3075 and 3076.
17 Respondent did not provide the required notice to Protestant before establishing an additional
18 Roadtrek franchise within Protestant's relevant market area in violation of Cal. Veh. Code §
19 3072. Respondent's addition of the MTRV franchise without notice was also within Protestant's
20 exclusive territories as defined by Protestant's franchise agreement. This resulted in a
21 substantial modification of Protestant's franchise agreement with Respondent, which also
22 required notice under the California Vehicle Code. Respondent did not provide such notice, in
23 violation of Cal. Veh. Code § 3070.

24 Respondent also unlawfully absconded with all of Protestant's units in October 2009,
25 would not provide Protestant with any additional units or parts, and would not reimburse it for
26 warranty service performed. As a result of Respondent's actions, Protestant was effectively
27 terminated as a Roadtrek dealer. However, Respondent did not send a Notice of Termination as
28 required under the California Vehicle Code until June 24, 2010. The delay in compliance with

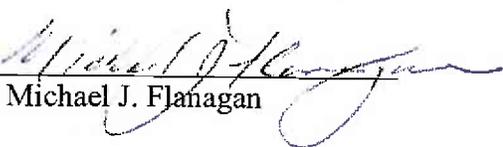
1 Cal. Veh. Code § 3070 resulted in Protestant's inability to efficiently and effectively exercise its
2 protest rights under the statute. Moreover, Respondent has completely failed to meet its burden
3 of proof, in consideration of the existing circumstances and the good cause factors delineated in
4 Cal. Veh. Code § 3070, that good cause exists to terminate Protestant's franchises. Finally,
5 Respondent failed to pay Protestant for, or give specific reasons for denial of, certain incentive
6 and warranty claims within the time-frames required under Cal. Veh. Code §§ 3075 and 3076.

7 Given the evidence set forth above, Respondent should be found to have violated Cal.
8 Veh. Code §§ 3070, 3072, 3075 and 3076. In addition, the termination of Mega and the
9 establishment of MTRV within Protestant's relevant market area should be referred to the
10 California DMV for review.

11 In view of all of the foregoing, Protestant respectfully submits that the record in these
12 Protest proceedings firmly establishes that each and all of Mega's Protests must be sustained.

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14 Dated: April 5, 2012

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16 LAW OFFICES OF MICHAEL J. FLANAGAN

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18
19 By: 
20 Michael J. Flanagan

