

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 **STATE OF CALIFORNIA**

13 **NEW MOTOR VEHICLE BOARD**

14 In the Matter of the Protests of:

15 MEGA RV CORP dba
16 MCMAHON'S RV,

17 Protestant,

18 v.

19 ROADTREK MOTORHOMES, INC.,

20 Respondent.

21 **Protest Nos: 2199-10, 2201-10, 2205-10,**
22 **2206-10, 2208-10, 2209-10, 2211-10,**
23 **2212-10, 2233-10, 2244-10 and 2245-10.**

24 **PROTESTANT'S PROPOSED**
25 **FINDINGS OF FACT**

26 **PROCEDURAL BACKGROUND**

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

¹ The determination of damages in the federal action requires the interpretation of, and conclusions regarding, 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.

1 2. Protestant filed twelve protests, beginning with the franchise modification protests
2 pursuant to California Vehicle Code § 3070² on January 29, 2010 (PR-2198-10, PR-2199-10
3 and 2201-10). Protestant proceeded to file its warranty and incentive claims protests pursuant to
4 Cal. Veh. Code § 3075 and § 3076 throughout the month of February, 2010 (2205-10, 2206-10,
5 2208-10, 2209-10, 2211-10, 2212-10). On May 11, 2010, Protestant filed its franchise
6 establishment protest (2233-10) pursuant to Cal. Veh. Code § 3072 and on July 13, 2010,
7 having received notices of franchise termination dated June 14, 2010, Protestant filed its
8 protests pursuant to Cal. Veh. Code § 3070 (2244-10 and 2245-10).

9 3. Both parties filed preliminary motions prior to the hearing. Respondent filed its Motion
10 to Reserve Making Findings of Fact and Conclusions of Law on UCC Issues. Protestant filed its
11 response on July 18, 2011, with Respondent replying on July 20, 2011.

12 4. On July 11, 2011, Protestant filed its Notice of Motions and Motions in Limine and
13 Requests for Conclusions of Law and Other Relief. Respondent filed its response, dated July 18,
14 2011, and Protestant filed its reply July 25, 2011.

15 5. Protestant and Respondent filed their Pre-Hearing Briefs on August 2, 2011.

16 6. On August 3, 2011, ALJ Skrocki issued his Order Granting in Part and Denying in Part
17 Protestant's Motions in Limine and Requests for Conclusions of Law and Other Relief as well
18 as his Order Deferring Ruling on Respondent's Motion to Reserve Making Findings of Fact and
19 Conclusions of Law on UCC Issues.

20 7. A consolidated hearing on all of the protests was held before Administrative Law
21 Judge ("ALJ") Diana Woodward Hagle on: August 9, 2011 through August 19, 2011;
22 September 21, 2011 through September 23, 2011; September 30, 2011; November 7, 2011
23 through November 18, 2011; November 28, 2011 through December 2, 2011; January 9, 2012
24 through January 13, 2012; January 18, 2012 through January 19, 2012; and January 31, 2012
25 through February 1, 2012.³

26 8. The in-person portion of the hearing ended on February 1, 2012, and was re-opened
27 and concluded telephonically on April 26, 2012. Protestant was represented by Michael J.

28

² All statutory references are to the Vehicle Code unless otherwise indicated.

³ The hearing was dark on August 16, 2011 and January 11, 2012.

1 Flanagan, Esq., Gavin M. Hughes, Esq., Danielle R. Vare, Esq., and Erin R. Hegedus McIntosh,
2 Esq. of Law Offices of Michael J. Flanagan. Respondent was represented by Louis S.
3 Chronowski, Esq. and Kavitha Janardhan, Esq. of Seyfarth Shaw LLP.

4 9. On August 15, 2011, Protestant filed a Request That Official Notice Be Taken for the
5 Manteca Trailer and Camper Inc. dba RVs of Sacramento v. Home and Park Motorhomes
6 Roadtrek (PR-2036-07) and Manteca Trailer and Camper, Inc., dba Brawley's RV v. Home and
7 Park Motorhomes Roadtrek (PR-2074-07) cases, decided 11/30/07. Respondent served its
8 opposition on August 17, 2011. On September 22, 2011, ALJ Woodward Hagle issued her
9 Order Granting Protestant's Request That Official Notice Be Taken of Decision of New Motor
10 Vehicle Board.

11 10. In an order dated January 31, 2012, the ALJ ordered all the protests except PR-2233-10
12 be consolidated for preparation of their respective Proposed Decisions. Thus: PR-2198-10, PR-
13 2199-10 and PR-2201-10 were consolidated; PR-2206-10, PR-2208-10, and PR-2209-10 were
14 consolidated; PR-2205-10, PR-2212-10, and PR-2211-10 were consolidated; and PR-2244-10
15 and PR-2245-10 were consolidated. It was further ordered that all of the Proposed Decisions
16 would be submitted simultaneously to the New Motor Vehicle Board ("the Board").

17 11. On March 1, 2012, Mega filed its Request For Dismissal With Prejudice of its
18 modification protest for Scotts Valley (PR-2198-10). On March 6, 2012, the Board issued an
19 order dismissing this protest, leaving 11 remaining protests.

20 **ISSUES PRESENTED**

21 **ESTABLISHMENT**

22 [PR-2233-10]

23 12. Was Respondent required, pursuant to Cal. Veh. Code § 3072(a), to give notice to
24 Protestant prior to establishing an additional Roadtrek franchise, Mike Thompson RV
25 ("MTRV"), within Protestant's relevant market area?

26 13. Is the exception contained in Cal. Veh. Code Section 3072(b)(5) applicable to MTRV?

27 /

28 /

1 **MODIFICATION**

2 [PR-2199-10 AND PR-2201-10]

3 14. Did Respondent modify Protestant's franchise, as that term is used in Cal. Veh. Code §
4 3070(b)(1), by establishing MTRV within Protestant's exclusive territory?

5 15. If there was a modification, did it substantially affect the franchisee's sales or service
6 obligations or investment so that Respondent was required, pursuant to Cal. Veh. Code §
7 3070(b)(1), to give notice to Protestant prior to that modification?

8 16. If there was a modification and notice was required, was that notice provided in writing
9 at least 60 days in advance of the modification, as required by Cal. Veh. Code § 3070(b)(1)?

10 **TERMINATION**

11 [PR-2244-10, PR-2245-10]

12 17. Did Respondent have good cause under Cal. Veh. Code §§ 3070-3071 to terminate
13 Protestant's franchises, taking into account the good cause factors of § 3070 and the existing
14 circumstances:

- 15 a. Did Protestant conduct a sufficient amount of business as compared to the
16 business available to Protestant?
- 17 b. Did Protestant make a sufficient investment and incur sufficient obligations to
18 perform its part of the franchise?
- 19 c. Did Protestant make a sufficiently permanent investment?
- 20 d. Is it injurious to the public welfare for Protestant's franchise to be modified or
21 replaced or the business of Protestant disrupted?
- 22 e. Did Protestant have adequate new recreational vehicle sales facilities?
- 23 f. Did Protestant's franchise agreement require it to have adequate service
24 facilities, equipment, vehicle parts, and qualified service personnel, to reasonably
25 provide for the needs of the consumers of the recreational vehicles handled by
26 Protestant?
- 27 g. If Protestant's franchise agreement required it to have adequate service facilities,
28 equipment, vehicle parts, and qualified service personnel, to reasonably provide

1 for the needs of the consumers of the recreational vehicles handled by Protestant,
2 did Protestant meet this requirement?

- 3 h. Did Protestant render adequate services to the public?
- 4 i. Did Protestant fail to fulfill its warranty obligations?
- 5 j. If so, were Roadtrek's actions responsible for Protestant's inability to comply
6 with these obligations?
- 7 k. Did Protestant fail to comply with the terms of the franchise?
- 8 l. If so, were Roadtrek's actions responsible for Protestant's inability to comply
9 with the franchise?

10 18. Under the existing circumstances, in addition to the good cause factors, did
11 Respondent have good cause to terminate Protestant?

- 12 a. Did Respondent's actions of ceasing unit shipments and warranty payments,
13 withholding parts, repossessing units, and establishing an additional dealer
14 within several hundred feet of Protestant's Colton location effectively terminate
15 Protestant's franchises prior to the Notices of Termination being sent?
- 16 b. Did Respondent's actions of ceasing unit shipments and warranty payments,
17 withholding parts, repossessing units, and establishing an additional dealer
18 within the same relevant market area impede Protestant's ability to comply with
19 the terms of the franchise?
- 20 c. Was the removal of Protestant's Roadtrek units from the 2009 Pomona RVIA
21 Show without prior notice, as required due to the prior course of conduct
22 between the parties, illegal?

23 **WARRANTY**

24 [PR-2206-10, PR-2208-10, and PR-2209-10]

25 19. Did Respondent fail to approve or disapprove Protestant's warranty claims within 30
26 days after receipt as required by Cal. Veh. Code § 3075?

27 /
28 /

1 20. Did Respondent fail to provide Protestant written notice stating the specific grounds
2 for disapproval of Protestant's warranty claims within 30 days of receipt as required by Cal.
3 Veh. Code § 3075?

4 21. Did Respondent fail to pay Protestant's warranty claims within 30 days of approval as
5 required by Cal. Veh. Code § 3075?

6 **INCENTIVES**

7 [PR-2205-10, PR-2212-10, and PR-2211-10]

8 22. Did Respondent fail to provide Protestant written notice stating the specific grounds
9 for disapproval of Protestant's incentive claims within 30 days of receipt as required by Cal.
10 Veh. Code § 3076?

11 23. Did Respondent fail to pay Protestant's incentive claims within 30 days of approval as
12 required by Cal. Veh. Code § 3076?

13 **PROPOSED FINDINGS**

14 **I. PRELIMINARY FINDINGS OF FACT**

15 24. Protestant has been a Roadtrek franchisee since 2001, having acquired its first
16 franchise in Irvine, California. (McMahon, R.T. 8/9/11, 105:1-2.)⁴ Subsequently, Protestant
17 established additional Roadtrek franchises in Colton, CA, Stanton, CA, Scotts Valley, CA, San
18 Diego, CA and Palm Desert, CA. (McMahon, R.T. 8/9/11, 106:22-110:1.) The parties'
19 relationship continued for almost a decade and, for at least the first 7 years, was extremely
20 productive and mutually beneficial. (McMahon, R.T. 8/15/11, 124:17-25; Hammill, R.T.
21 11/14/11, 158:20-159:9.)

22 25. By 2007, Roadtrek, as well as many other manufacturers of recreational vehicles,
23 began experiencing financial difficulties that would not abate for many years to come. (Ex. 606;
24 Hanemaayer, R.T. 11/14/12, 165:18-173:12.) Many years later, these financial difficulties
25 forced Roadtrek to sell 65% of the company to an outside investor. (Hammill, R.T. 9/22/11,
26 77:13-78:8.)

27 /

28 ⁴ Hereafter citations to the hearing transcripts will be in the following format, with the italicized portions being filled in with the appropriate information: (*Witness last name, R.T. Date, Page:Line number.*)

1 26. In March 2008, the parties met in Kitchener, Ontario, Canada (“the Kitchener
2 meeting”). (See Ex. 609.) At the Kitchener meeting, Mega met with Roadtrek representatives
3 who explained Roadtrek’s financial difficulties to Mr. McMahon and proceeded to request that
4 he forgive the approximately \$166,000 holdback owed to him. (Hanemaayer, R.T. 11/14/11,
5 44:1-23.) According to the holdback program agreed to between Mega and Roadtrek, Roadtrek
6 owed Mr. McMahon \$1,000 per Roadtrek unit delivered to Mega within a given year.
7 (Schilperoort, R.T. 8/18/11, 191:6-20.)

8 27. While Mr. McMahon sympathized with Roadtrek’s position, the economic downturn
9 had affected his dealership business as well and he was in no position to relieve Roadtrek of its
10 financial obligations. (McMahon, R.T. 8/10/11, 36: 7-16, 64:7-23.) After Mr. McMahon refused
11 to forgo the holdback, the relationship between the parties began to deteriorate. (Hanemaayer,
12 R.T. 11/14/11, 62:9-63:2.)

13 28. Since the beginning of the parties’ relationship, Roadtrek shipped to Mega the number
14 and composition of units Roadtrek desired on a regular basis. (McMahon, R.T. 8/11/11, 159:2-
15 20.) (See also Ex. 699.) These shipments were always made without obtaining prior approval
16 from Mega, let alone getting actual orders from Mega. (See Ex. 699.) This method was mutually
17 acceptable to the parties at the beginning of their relationship because Roadtrek was
18 experimenting with providing flooring, and no interest was being charged to Mega to keep the
19 product. (Hammill, R.T. 11/11/11, 49:25-50:9; Hammill, R.T. 9/22/11, 157:6-158:3; McMahon,
20 R.T. 8/10/11 62:1-63:24.)

21 29. However, this oversaturation of product became beneficial only to Roadtrek when it
22 stopped flooring units to Mega, claiming it was owed interest on such shipments. (McMahon,
23 R.T. 8/11/11, 10:8-18.) Despite these alterations to the prior course of conduct between the
24 parties, Roadtrek continued to ship a large volume of inventory to Mega at will. (*Id.* at 10:8-24.)
25 These shipments consisted of models not ordered or chosen by Mega,⁵ but selected solely by
26 Roadtrek. (*Id.* at 10:8-24.) Mega continually communicated to Roadtrek this was unacceptable
27

28 ⁵ 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 and that it wanted to be consulted prior to units being shipped. (*Id.* at 9:9-13:4.) (*See also* Ex.
2 632.) However, Roadtrek continued its prior conduct of shipping units without Mega's input.
3 (McMahon, R.T. 8/11/11, 11:13-14.)

4 30. Because of Roadtrek's precarious financial position, as revealed during the Kitchener
5 meeting, Mega was concerned Roadtrek might soon be unable to make payments for incentives,
6 customer warranty reimbursement, and other amounts owed. (*Id.* at 138:3-16; Ex. 658.) During
7 this same time period, several RV manufacturers had already filed for bankruptcy (Hanemaayer,
8 R.T. 11/14/11, 172:7-173:12; Hammill, R.T. 9/22/11, 78:8-12) and it was widely reported that
9 Chrysler and General Motors would soon file for bankruptcy as well.⁶ Mega had already
10 suffered significant financial losses when other line-makers, for which Protestant was a
11 franchisee, either filed for bankruptcy or went out of business. (McMahon, R.T. 8/11/11,
12 135:19-138:2; Ex. 658.)

13 31. Mr. McMahon sought advice regarding how best to limit his potential losses in the
14 event of a Roadtrek bankruptcy and was informed by his advisors and lenders he should always
15 leave a running balance owed to Roadtrek approximately equivalent to the amount Roadtrek
16 owed Mega. (McMahon, R.T. 8/11/11, 138:3-140:7; Schilperoort, R.T. 8/19/11, 91:19-92:19;
17 Ex. 658.) Mr. McMahon believed this to be his only option to ensure any debts owed by
18 Roadtrek would not be discharged in bankruptcy, resulting in a substantial loss to Mega. (*Id.*)

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

25 33. Roadtrek began withholding payment to Mega for incentives and customer warranty
26 work reimbursement. (Ex. 639; Ex. 645.) (*See also* Ex. 5; Ex. 774; Schilperoort, R.T. 8/17/11,

27 /
28 _____
⁶ Roadtrek units are constructed on General Motors and Chrysler manufactured chassis. (Hammill, R.T. 9/23/11, 212:4-11.)

1 133:23-12; Schilperoort, R.T. 9/21/11, 128:6-14.) The last check Mega received from Roadtrek
2 was in July or August of 2008. (Schilperoort, R.T. 8/19/11, 65:20-65:8.)

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

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

16 36. Recreational vehicle manufacturers, through the Recreational Vehicle Industry
17 Association ("RVIA"), from time-to-time sponsor shows at which units from their franchised
18 dealers' inventories are displayed and sold. One such show occurred in Pomona in October
19 2009, described in the record as the October 2009 Pomona RVIA show ("2009 Pomona Show")

20 37. In the months preceding the 2009 Pomona Show, a manufacturer show for which Mega
21 provided its own units for display as Roadtrek's official Roadtrek dealer, Roadtrek had
22 discussions among its management employees and its counsel regarding plans to abscond with
23 Mega's units at the 2009 Pomona Show. (Hammill, R.T. 127:20-128:12.) In preparation for the
24 planned repossession, in the weeks preceding the 2009 Pomona Show, Roadtrek representatives
25 made every effort to see that Mega delivered the entirety of its inventory to the 2009 Pomona

26 /

27
28 ⁷ 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 Show as well as all documentation concerning such inventory. (McMahon, R.T. 8/11/11,
2 144:18-21.)

3 38. During the two-week 2009 Pomona Show, Mega sold a record number of units, which
4 would ordinarily be considered very successful. (*Id.* at 113:22-114:9.) Nonetheless, without
5 prior notice, at the close of the show Roadtrek informed Mega it would be taking possession of
6 the unsold units and delivering them to Quality Drive Away to be stored. (Schilperoort, R.T.
7 11/7/11, 140:25-141:2; McMahon, R.T. 8/11/11, 58:20-59:4, 145:18-146:12.)

8 39. At the end of the 2009 Pomona Show, in disregard of the prior course of conduct
9 between the parties, Roadtrek ceased unit shipments to Mega. (McMahon, R.T. 8/11/11, 160:1-
10 161:2.) Further, it refused to accept Mega's orders for new units or parts, in addition to
11 continuing to refuse to reimburse Mega for warranty work. (McMahon, R.T. 8/11/11, 161:3-8;
12 Schilperoort, R.T. 9/21/11, 133:19-134:20.)

13 40. In the fall of 2009, Roadtrek began soliciting new dealers within the exclusive
14 territories already assigned Mega. (Martinelli, R.T. 1/19/12, 22:4-25:21, 28:1-5, 41:5-10.)
15 Roadtrek solicited Mike Thompson's RV ("MTRV") as a potential franchisee to replace Mega
16 as early as August or September of 2009. (Martinelli, R.T. 1/19/12, 24:22-25:1.) At the 2009
17 Pomona Show, Roadtrek began speaking to Giant RV in addition to MTRV about the possibility
18 of becoming a Roadtrek dealer. (*Id.* at 22:4-23:4, 23:22-24:18, 25:12-21, 28:1-5.) However,
19 after the 2009 Pomona Show, from October 2009 to January 2010, Roadtrek's discussions with
20 MTRV went from merely speculative solicitations to true negotiations. (*Id.* at 41:5-10.)

21 41. On December 1, 2009, the parties met to resolve their differences in Louisville,
22 Kentucky during a trade show both parties were attending. (Hammill, R.T. 11/14/11, 76:12-17)
23 At that dinner, the parties reached a verbal agreement settling the monetary issues between the
24 parties. (Hammill, R.T. 11/14/11, 76:12-17.) Over the next couple weeks, Mega worked with
25 Mr. Jeff Hanemaayer, Roadtrek's Vice President, to complete a written document that would
26 embody the oral agreement reached at the dinner. (*See Ex. 27.*)

27 42. On or about December 14, 2009, after the parties had passed several drafts back and
28 forth (*See Ex. 27*), Roadtrek ceased settlement negotiations. (Ex. 26; Lankford, R.T. 11/17/11,

1 110:1-10.) Roadtrek communicated to Mega that it no longer wanted to do business with Mega
2 and wished to work with a different dealer. (Ex. 26; Lankford, R.T. 11/17/11, 110:1-10, 112:7-
3 116:15.)

4 43. On January 29, 2010, shortly after Roadtrek backed away from the unexecuted
5 settlement agreement with Mega, Roadtrek entered into franchise agreements with MTRV at
6 several California locations, without providing Mega or the New Motor Vehicle Board any prior
7 notice. (Ex. 685.) (See also Ex. 699, stating no notice had previously been provided.) These
8 franchises included, among others, locations in Colton and Fountain Valley, within territories
9 exclusively assigned to Mega. (See Ex. 685; Ex. 600; Ex. 604; Ex. 63.) In fact, the Colton
10 location is directly across the street from Mega. (McMahon, R.T. 8/11/11, 157:4-8.) Under the
11 Cal. Veh. Code, Mega remained a Roadtrek franchisee at this time. See Cal. Veh. Code §§
12 3070-3071.

13 44. Roadtrek had previously been made aware by the New Motor Vehicle Board itself of
14 the Cal. Veh. Code notice procedures required before terminating a dealer. Manteca Trailer and
15 Camper Inc. dba RVs of Sacramento v. Home and Park Motorhomes Roadtrek (PR-2036-07)
16 and Manteca Trailer and Camper, Inc., dba Brawley's RV v. Home and Park Motorhomes
17 Roadtrek (PR-2074-07), decided 11/30/07. (See also the order of the ALJ taking official notice
18 of the Manteca case, R.T. 9/21/11, 7:9-14.) Not only was respondent aware of the proper
19 procedure for terminating franchises while the events of late 2009 and early 2010 unfolded, it
20 was aware of the notice and hearing requirements as early as 2006.

21 45. Mr. DeGelas, the owner of MTRV, was aware there would likely be legal
22 repercussions resulting from his actions and specifically negotiated Section 802 titled
23 "Indemnification" in his dealer agreement with Roadtrek because he was worried about getting
24 sued by Mega. (Hammill, R.T. 11/10/11, 124:8-13; Ex. 685 ¶ 802.) Mr. DeGelas refused to sign
25 a dealer agreement with Roadtrek without an indemnity clause specifically shielding MTRV
26 from legal action, including the filing of a protest, by Mega. (Hammill, R.T. 11/7/11, 213:15-
27 20.) (See also Martinelli, R.T. 1/19/12, 46:6-11.)

28 /

1 46. On the same day Roadtrek enfranchised MTRV, Mega filed its first two of many
2 protests in this case, stating it was informed and believed Roadtrek intended to establish an
3 additional Roadtrek dealer within Mega's exclusive territory in violation of the Dealer
4 Agreements ("DA") between the parties. (See Protests PR-2199-10 and PR-2201-10.) Mega
5 continued to file its additional protests over the next seven months. (See Protests 2205-10, 2206-
6 10, 2208-10, 2209-10, 2211-10, 2212-10, 2233-10, 2244-10 and 2245-10.)

7 47. On June 14, 2010, Roadtrek sent Mega the Notices of Termination required under the
8 Cal. Veh. Code. (Ex. 701, Ex. 702.)

9 48. After the parties commenced litigation, due to Roadtrek's precarious financial
10 condition, Roadtrek was compelled to seek the investment of a private equity company in order
11 to sustain enough capital to reduce its debt load and continue to grow the company. (Hammill,
12 R.T. 9/22/11, 77:13-78:8.) The private equity firm, Industrial Opportunity Partners, bought
13 approximately 65% of Roadtrek in March of 2011. (*Id.* at 77:22-25.)

14 **II. FINDINGS OF FACT REGARDING THE ESTABLISHMENT OF MTRV**
15 **WITHIN PROTESTANT'S RELEVANT MARKET AREA. [PR-2233-10]**

16 49. In the fall of 2009, Roadtrek began soliciting new dealers within the exclusive
17 territories already assigned Mega. (Martinelli, R.T. 1/19/12, 22:4-25:21, 28:1-5, 41:5-10.)
18 Roadtrek solicited MTRV as a potential franchisee to replace Mega as early as August or
19 September of 2009. (Martinelli, R.T. 1/19/12, 24:22-25:1.)

20 50. At the 2009 Pomona Show, Roadtrek began speaking to Giant RV in addition to
21 MTRV about the possibility of becoming a Roadtrek dealer. (*Id.* at 22:4-23:4, 23:22-24:18,
22 25:12-21, 28:1-5.) However, after the 2009 Pomona Show, from October 2009 to January 2010,
23 Roadtrek's discussions with MTRV went from merely speculative solicitations to true
24 negotiations. (*Id.* at 41:5-10.)

25 51. On or about December 14, 2009, Roadtrek ceased settlement negotiations with Mega
26 and communicated to Mega that it no longer wanted to do business with Mega and wished to
27 work with a different dealer. (Ex. 26; Lankford, R.T. 11/17/11, 110:1-10, 112:7-116:15.)

28 /

1 52. In January 2010, Mega was still considered a Roadtrek franchisee under the provisions
2 of Cal. Veh. Code § 3070 (which requires notice and an opportunity to file a Protest before a
3 franchise can be lawfully terminated), with a dealership in the exclusively assigned Colton
4 territory.⁸ (Ex. 600.)

5 53. On January 29, 2010, Roadtrek and MTRV entered into a dealer agreement, providing
6 MTRV with Roadtrek franchises in Colton and Fountain Valley, as well as other locations. (Ex.
7 685.)

8 54. Roadtrek established its MTRV franchise in Colton, a mere 0.2 miles away from
9 Mega's Colton location. (Ex. 63.) In fact, MTRV is located directly across the street from
10 Mega. (McMahon, R.T. 8/11/11, 157:4-8; Ex. 685; Ex. 600; Ex. 63.)

11 55. Pursuant to Cal. Veh. Code § 507, "relevant market area" is defined as "any area
12 within a radius of 10 miles from the site of a potential new dealership."

13 56. As Mega's Colton location is within a 10 mile radius of Roadtrek's Colton MTRV
14 franchise, Mega's already existing franchise is within the relevant market area of Roadtrek's
15 MTRV franchise in Colton, established in January 2010.

16 57. Pursuant to Cal. Veh. Code § 3072(a), "if a franchisor seeks to enter into a franchise
17 establishing an additional motor vehicle dealership within a relevant market area where the
18 same recreational vehicle line-make is then represented...the franchisor shall, in writing, first
19 notify the board and each franchisee in that recreational vehicle line-make in the relevant
20 market area of the franchisor's intention to establish an additional dealership...within that
21 market area."

22 58. Roadtrek had previously been made aware in 2006 by the New Motor Vehicle Board
23 itself of the notice procedures required under the Cal. Veh. Code. Manteca Trailer and Camper
24 Inc. dba RVs of Sacramento v. Home and Park Motorhomes Roadtrek (PR-2036-07) and
25 Manteca Trailer and Camper, Inc., dba Brawley's RV v. Home and Park Motorhomes Roadtrek
26 (PR-2074-07), decided 11/30/07. (See also the order of the ALJ taking official notice of the
27 /

28

⁸ As discussed previously, no Notice of Termination was received until June 2010. (See Ex. 701, Ex. 702.)

1 Manteca case, R.T. 9/21/11, 7:9-18.) Despite this awareness, Roadtrek believed it did not need
2 to provide written notice to Mega.

3 59. Neither Protestant nor the Board were given the required notice under Cal. Veh. Code
4 § 3072(a) of Roadtrek's intent to establish MTRV as a Roadtrek franchisee in Colton.
5 (Hammill, R.T. 11/8/11, 24:20-25:3; Ex. 699, stating no notice had previously been provided.)
6 Roadtrek's failure to provide this notice deprived Mega of its ability to exercise the rights
7 granted to it under the Cal. Veh. Code *before* Roadtrek established the MTRV franchise within
8 Mega's relevant market area. Cal. Veh. Code § 3072(a).

9 60. Roadtrek contends its establishment of MTRV's Colton franchise falls within the
10 exception contained in Cal. Veh. Code § 3072(b)(5).

11 61. Cal. Veh. Code § 3072(b)(5) provides an exception to the notice required when
12 "establishing an additional motor vehicle dealership within a relevant market area *where the*
13 *same recreational vehicle line-make is then represented...*" Cal. Veh. Code § 3072(a)(1)
14 (emphasis added) The exception states that it applies to a "dealership protesting the *location* of
15 another dealership *with the same recreational vehicle line-make within its relevant market area,*
16 if the *dealership location subject to the protest* was established on or before January 1, 2004."
17 Cal. Veh. Code § 3072(b)(5) (emphasis added).

18 62. The MTRV *dealership not including RT* was the only MTRV dealership established
19 before January 1, 2004. Although Frank DeGelas has been the President of MTRV stores since
20 December of 1979 (DeGelas, R.T. 1/13/12, 7:15-21), the Roadtrek franchise was not established
21 at MTRV until January of 2010. (Ex. 685.)

22 63. Protestant had the right to file a protest against "the location of another dealership with
23 the same recreational vehicle line-make within its relevant market area," unless "the dealership
24 location subject to the protest (i.e. the MTRV Roadtrek dealership location) was established on
25 or before January 1, 2004." It was not. (Ex. 685.)

26 64. The protest right referred to in Cal. Veh. Code § 3072(b)(5) pertains to the
27 establishment of a *new dealership for the same line-make* within the relevant market area.

28 /

1 Therefore the exception contained in Cal. Veh. Code § 3072(b)(5) does not apply to the MTRV
2 dealership that existed before it was enfranchised by Roadtrek.

3 65. When MTRV and Roadtrek entered into a dealer agreement on January 29, 2010, both
4 parties contemplated the possibility of legal repercussions to their actions, including a protest by
5 Mega. (Ex. 685 ¶ 802.) Mr. DeGelas, the owner of MTRV, specifically negotiated ¶ 802 titled
6 “Indemnification” in his dealer agreement with Roadtrek because he was worried about getting
7 sued by Mega. (Hammill, R.T. 11/10/11, 124:8-13; Ex. 685 ¶ 802.)

8 66. The indemnification clause in ¶ 802 of the dealer agreement between MTRV and
9 Roadtrek states, “[Roadtrek] will use its best efforts to defend any actions, *protests* or other
10 legal claims by or on behalf of *McMahon’s* RV Superstore, Inc. or any of its shareholders or
11 affiliates regarding or relating to the franchise granted to [MTRV] herein.” (Ex. 685 ¶ 802.)
12 (emphasis added)

13 67. Although Mr. DeGelas testified to precious little and was singularly unforthcoming in
14 his testimony (Martinelli, R.T. 1/19/12, 47:24-25, 49:6-7; DeGelas, R.T. 1/13/12, 24:6-20,
15 26:13-19, 27:2-10, 28:24-29:10), he is known to be a savvy business person who is aware of the
16 laws regarding protest rights under the Cal. Veh. Code. (Lankford, R.T. 11/18/11, 63:7-8.) In
17 fact, Mr. DeGelas testified he specifically and personally negotiated the provisions of the dealer
18 agreement with Mr. Hammill. (DeGelas, R.T. 1/13/12, 20:10-23, 73:8-10.) Mr. DeGelas refused
19 to sign a dealer agreement with Roadtrek without an indemnity clause specifically shielding
20 MTRV from legal action, including the filing of a protest, by Mega. (Hammill, R.T. 11/7/11,
21 213:15-20.) (*See also* Martinelli, R.T. 1/19/12, 46:6-11.)

22 68. Roadtrek was required to provide Mega and the Board with notice of its intent to
23 establish the MTRV Roadtrek franchise in Colton, across the street from Mega’s Roadtrek
24 franchise. Its failure to do so renders the establishment of the MTRV Roadtrek franchise in
25 Colton void, and it is now a matter to be referred to the California Department of Motor
26 Vehicles (“DMV”) for investigation and appropriate licensing action against Roadtrek and
27 MTRV.

28 /

1 **A. Findings Of Fact Regarding The Administration Of Cal. Veh. Code § 3073**
2 **And Consideration Of The Good Cause Factors In Regard To The**
3 **Establishment Of The MTRV Franchise.**

4 69. On July 7, 2011, Protestant filed its Motions in Limine and Requests for Conclusions
5 of Law and Other Relief (“Motions in Limine”).

6 70. On August 3, 2011, ALJ Skrocki issued an order (“ALJ Skrocki’s Order”) granting in
7 part and denying in part Protestant’s Motions in Limine. Pursuant to paragraph 21 of ALJ
8 Skrocki’s Order, “[t]he Board should not be asked to administer the provisions of Section 3073
9 to prevent what the law already precludes by the provisions of Section 3072.” In addition, Judge
10 Skrocki stated the Board should not “be asked to administer the provisions of Section 3073 to
11 allow the establishment of the additional franchise if the establishment is barred due to the lack
12 of compliance with Section 3072.”

13 71. Thus, regardless of the outcome of whether Cal. Veh. Code § 3072(b)(5) is applicable,
14 there was no need for an evidentiary hearing pursuant to Cal. Veh. Code § 3073 regarding the
15 establishment of the additional franchise in Colton, CA. (ALJ Skrocki’s Order ¶ 13.)

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

22 73. As the notice exception in Cal. Veh. Code § 3072(b)(5) is not applicable in this case,
23 and no notice was given pursuant to Cal. Veh. Code § 3072(a), the establishment of the
24 additional franchise at MTRV in Colton is illegal and void, and as noted in Finding 68 above,
25 the matter should be referred to the DMV for appropriate action.

26 **B. Findings Of Fact Regarding Referring The Establishment Of MTRV To**
27 **The California DMV For Investigation And Appropriate Action Pursuant to**
28 **California Code of Regulations § 593.3.**

 74. Cal. Veh. Code § 3050 enumerates the powers and duties of the Board, which include
hearing “any matter concerning the activities or practices of any person applying for or holding

1 a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor,
2 distributor branch, or representative..." Cal. Veh. Code § 3050(c). After the Board has
3 considered such matters, it is also empowered to "order the department [of motor vehicles] to
4 exercise any and all authority or power that the department may have with respect to the
5 issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor
6 vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or
7 representative..." Cal. Veh. Code § 3050(c)(3).

8 75. Under Chapter 13 of the California Code of Regulations § 593.3, "[f]ailure to file or
9 timely file the statutorily required notices, schedules, or formulas required by the Vehicle Code"
10 may result in the Board ordering the DMV to exercise the authority mentioned in the finding
11 above.

12 76. In ALJ Skrocki's Order, ALJ Skrocki deferred ruling on Mega's motion requesting the
13 Board refer the unlawful establishment of MTRV to the California DMV, and left the decision
14 to the determination of the ALJ hearing the matter. (ALJ Skrocki's Order ¶ 23). ALJ Skrocki's
15 Order states the ALJ hearing the matter may recommend "to the Board that any violations found
16 to have occurred or found likely to have occurred be referred to the Department of Motor
17 Vehicles for appropriate action." (ALJ Skrocki's Order ¶ 23).

18 77. It is clear from the evidence presented in this case that MTRV's Colton Roadtrek
19 franchise was unlawfully established within 10 miles of Protestant's Roadtrek franchise due to
20 Roadtrek's failure to provide the Board and Protestant notice and an opportunity to protest
21 before the establishment of the MTRV's Colton Roadtrek franchise. Since Roadtrek's actions
22 were unlawful and contrary to Cal. Veh. Code § 3072, the Board refers the matter for review
23 and action by the DMV.

24 **III. FINDINGS OF FACT REGARDING MODIFICATIONS TO PROTESTANT'S**
25 **FRANCHISES [PR-2199-10 AND PR-2201-10].**

26 78. The Colton/Irvine DA sets forth that, "[Mega] shall have the *exclusive* right to
27 purchase, display and resell Roadtreks, parts and accessories in the Territory...Dealer territory
28 shall be limited to an area within 60 mile radii of Irvine, California, Colton, California and

1 Stanton California. So long as Dealer remains in good standing during the terms of this
2 Agreement, [Roadtrek] will not locate another dealer within Dealer's territory." (Ex. 600 §§
3 107-108.) (emphasis added)

4 79. During the period of time relevant to this dispute, from 2005 through 2011, Mega's
5 Colton facility was located at 1312 RV Center Dr #16, Colton, CA 92324 and Mega's Irvine
6 facility was at 6441 Burt Road #10, Irvine, CA 92618. (Ex. 601 at 1.)

7 80. In a fashion similar to Roadtrek's DA with Mega, Roadtrek's DA with MTRV states,
8 "[MTRV] shall have the *exclusive* right to purchase, display and resell Roadtreks, and parts and
9 accessories related thereto, throughout the counties of Ventura, Los Angeles, Orange, Riverside,
10 and San Bernardino in the State of California." (Ex. 685 § 106.) (emphasis added) According to
11 Roadtrek's DA with MTRV, MTRV will sell Roadtreks at the following locations:

12 13940 E. Firestone Blvd., Santa Fe Springs, CA 90670

13 18240 Ward St., Fountain Valley, CA 92708

14 10480 Talbert Avenue, Fountain Valley, CA 92708

15 902 RV Center Drive Lots #6-9, Colton, CA 92324

16 (Ex. 685 § 107.)

17 81. The distances between Mega's and MTRV's locations are outlined in the table below:

	MTRV: Santa Fe Springs	MTRV: Ward St., Fountain Valley	MTRV: Talbert Ave., Fountain Valley	MTRV: Colton
MEGA: Irvine	21.4 miles	10.5 miles	10.9 miles	35.9 miles
MEGA: Colton	42.9 miles	43.5 miles	43.5 miles	0.2 miles

18
19
20
21 (Ex. 63.) All MTRV locations are located within a 60 mile radius of Mega's Irvine and Colton
22 locations. (*Id.*)

23 82. Pursuant to Cal. Veh. Code § 3070(b)(1), "Notwithstanding...the terms of any
24 franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise
25 with a succeeding franchise if the modification or replacement would substantially affect the
26 franchisee's sales or service obligations or investment, unless the franchisor has first given the
27 board and each affected franchisee written notice thereof at least 60 days in advance of the
28 modification or replacement."

1 83. Pursuant to paragraph 34 of ALJ Skrocki's Order, "...regardless of which of the
2 conclusions are made here [whether there has been a modification of Protestant's franchise with
3 no notice given or there has not been a modification of Protestant's franchise], there is no need
4 for a hearing to address the good cause factors as stated in Section 3071."

5 84. Roadtrek contends Mega was not entitled to maintain exclusive territories under its DA
6 because Roadtrek believes Mega was not in good standing, as required by its DA. (Roadtrek's
7 Opening Brief at 16:19-23.) This argument is without merit under Cal. Veh. Code § 3070(b)(1),
8 which states that its requirements apply "[n]otwithstanding...the terms of any franchise."

9 85. Roadtrek's enfranchisement of MTRV within the exclusive territory Roadtrek had
10 already assigned to Mega in its DA resulted in a modification of Mega's franchise under Cal.
11 Veh. Code § 3070(b)(1).

12 86. In order for Roadtrek to be required to give notice of the modification of a franchise
13 agreement to the Board and its franchisee, the modification must substantially affect the sales
14 and service obligation and investment of the franchisee. Cal. Veh. Code § 3070(b)(1).

15 87. In the fall of 2009, Roadtrek began soliciting new dealers within the exclusive
16 territories already assigned Mega. (Martinelli, R.T. 1/19/12, 22:4-25:21, 28:1-5, 41:5-10.)
17 Roadtrek solicited MTRV as a potential franchisee to replace Mega as early as August or
18 September of 2009. (Martinelli, R.T. 1/19/12, 24:22-25:1.) However, after the 2009 Pomona
19 Show, where Roadtrek repossessed all Mega's inventory, Roadtrek's discussions with MTRV
20 went from merely speculative solicitations to true negotiations(*Id.* at 41:5-10.), resulting in the
21 execution of a dealer agreement between Roadtrek and MTRV in January 2010 (Ex. 685.)

22 88. During the time period Roadtrek was negotiating its dealer agreement with MTRV, it
23 ceased its shipment of units to Mega (McMahon, R.T. 8/11/11, 160:1-161:2), refused to accept
24 Mega's orders for new units or parts, and continuing to refuse to reimburse Mega for warranty
25 work (McMahon, R.T. 8/11/11, 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20).

26 89. As part of maintaining its Roadtrek franchise, Protestant had to hire technicians, stock
27 parts, and ensure its facilities had the right equipment. (McMahon, R.T. 8/9/11, 134:3-9.)
28 Roadtrek's establishment of a franchise at the MTRV dealership directly across the street from

1 Mega (McMahon, R.T. 8/11/11, 157:4-8.) undermines the investment Protestant made in its
2 Roadtrek franchise.

3 90. Paragraph 111 of the DA, titled “Dealer Commitment,” requires Protestant to
4 “...purchase for retail sale a minimum of one hundred (100) new and demonstrator Roadtreks
5 per calendar year.” (Ex 600 § 111.) However, it is impossible for Protestant to purchase any
6 Roadtrek units, parts or accessories and have the exclusive right to do so within its Territory (Ex
7 600 §106) when Respondent will not provide to Protestant any units, parts or accessories
8 (McMahon, R.T. 8/11/11, 160:1-161:8; Schilperoort, R.T. 9/21/11, 133:19-134:20) and instead
9 provides them to another dealer within Protestant’s exclusive territory (Ex. 685 § 106). Not only
10 does a lack of exclusive territory affect a dealer’s sales ability, it also affects its parts and
11 service business. (McMahon, R.T. 8/9/11, 133:13-19.)

12 91. Roadtrek’s refusal to sell Mega warranty parts⁹ (Schilperoort, R.T. 9/21/11, 133:24-
13 134:9) prevented Mega from doing warranty work on Roadtreks because it lacked the necessary
14 parts (*Id.* at 134:10-20). Roadtrek’s refusal to reimburse Mega for warranty work (Schilperoort,
15 R.T. 9/21/11, 134:5-6) resulted in Mega funding its own warranty work for Roadtrek, which
16 became financially draining for Mega. (*Id.* at 136:17-21.) This action against Mega had a
17 substantial impact on Mega’s reputation, finances, and ability to provide service. (*Id.* at 134:21-
18 136:16, 136:1-4.) Mega eventually had to tell Roadtrek customers to go elsewhere to get their
19 repairs done, even if a customer had just bought a unit from Mega. (*Id.* at 135:10-12.)

20 92. Over the years, Mega invested in its advertising of the Roadtrek product, creating
21 infomercials, advertising with sports teams, and having contract negotiations with all the major
22 radio and television stations. (McMahon, R.T. 8/10/11, 48:19-51:1, 96:21-97:1; McMahon, R.T.
23 8/16/11, 7:17-9:10) Ninety percent of Mega’s advertising was for the Roadtrek product.
24 (McMahon, R.T. 8/18/11, 105:12-23.) During the course of the parties’ relationship, Mega also
25 expended time and money to train all of its salespeople to be able to sell Roadtreks. (McMahon,
26 R.T. 8/10/11, 99:22-100:2.) When Roadtrek unlawfully repossessed Mega’s units (*see Findings*

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.)

1 151-158) and enfranchised MTRV within Mega's exclusive territory, it negated these
2 investments Mega made in its Roadtrek franchises.

3 93. The modifications to Protestant's DA with Roadtrek substantially affect Protestant's
4 sales and service obligations, as well as its investment in its Roadtrek franchises.

5 94. Pursuant to Cal. Veh. Code § 3070(b)(1), a franchisor cannot modify a franchise if the
6 modification would substantially affect the franchisee's sales or service obligations or
7 investment, unless the franchisor has first given the Board and each affected franchisee written
8 notice thereof at least 60 days in advance of the modification. The franchisee may then file a
9 protest and ask the Board to determine whether there is good cause to make such modification.
10 Cal. Veh. Code § 3070(b)(1). All of this is required under the Vehicle Code and *cannot be*
11 *waived* by the parties in the terms of a franchise agreement. *Id.* The notice requirement under
12 the statute is in place to protect the rights of the dealers against unfair practices of
13 manufacturers. Cal. Veh. Code § 3070. *See also New Motor Vehicle Bd. of California v. Orrin*
14 *W. Fox Co.*, 439 U.S. 96 (1978).

15 95. Because the modifications to Protestant's DA with Roadtrek substantially affect
16 Protestant's sales and service obligations and its investment in the Roadtrek franchise, Roadtrek
17 was required to give Protestant notice before modifying its franchise. Cal. Veh. Code §
18 3070(b)(1).

19 96. Neither Protestant nor the Board were given the required notice of Roadtrek's intent to
20 establish MTRV as a Roadtrek franchisee. (Roadtrek's Opening Brief at 22:17-19.) (*See also*
21 *Jim Hammill*, 11/8/11, p. 24:20-25:3; Ex. 699, stating no notice had previously been provided.)

22 97. In addition to the statutory notice requirement in the Cal. Veh. Code, the parties agreed
23 by contract that Roadtrek was required to give notice to Protestant before substantially changing
24 the material terms of the DA. (*See Ex. 600 ¶ 520.*) Pursuant to paragraph 520 of Exhibit 600,
25 titled "Home & Park Termination," Roadtrek [Home & Park] was required to give Protestant *at*
26 *least 365 days prior written notice* before making any substantial modification, such as adding a
27 Roadtrek dealer within Protestant's exclusive territory.

28 /

1 98. The DA between the parties also contemplates compliance with all applicable laws.
2 (See Ex. 600 ¶ 375; Ex. 604 ¶ 375) In paragraph 375, titled “Compliance with Laws, Rules and
3 Regulations,” the parties agreed to “comply with all applicable federal, state, provincial and
4 local laws, rules and regulations...” (Ex. 600.)

5 **IV. FINDINGS OF FACT REGARDING GOOD CAUSE TO TERMINATE MEGA’S**
6 **FRANCHISE AGREEMENTS UNDER CAL. VEH. CODE §§ 3070 AND 3071.**
7 **[PR-2244-10, PR-2245-10]**

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

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

26 Under this statute, Roadtrek has the burden to prove there is good cause to terminate Mega’s
27 Roadtrek franchises. (Cal. Veh. Code § 3066(b).)

28 **A. Findings Of Fact Regarding Amount Of Business Conducted by Mega As**
Compared To The Business Available To Mega. [Cal. Veh. Code § 3071(a)]

100. The business relationship between the parties began at or around 2001. (McMahon,
R.T. 8/9/11, 105:1-2.)

101. Within two to three years of the start of that relationship, Mega broke every record
Roadtrek ever had. (McMahon, R.T. 8/9/11, 106:4-5, 113:8-11; Ex. 709.) Mega had been the
number one dealer from a multiple-location standpoint since 2005. (Hammill, R.T. 11/9/11,
52:14-23, 194:8-11; McMahon, R.T. 8/9/11, 106:5-6.)

1 102. Roadtrek commemorated Mega's success as the number one Roadtrek dealer by having
2 custom-made, lithograph photos of Roadtrek units made and presented to Mega in the form of
3 3x2 foot (approx.) plaques. (See Ex. 68 for photos of some examples.)

4 103. When Roadtrek produced its 20,000th unit, it held a ceremony to present the keys to the
5 unit to Mr. McMahon. (Ex. 601.) Roadtrek decided that Mega would be the dealer to receive
6 that honor because of its Roadtrek sales, commitment to the product, and the personal friendship
7 between Mr. James Hammill and Mr. McMahon. (Hammill, R.T. 11/9/11, 172:21-173:5.)

8 104. In the two to three years prior to the March 2008 Kitchener meeting, Mega sold close
9 to 30% of Roadtrek's manufactured inventory. (Schilperoort, R.T. 8/16/11, 193:23-194:2.)

10 105. Roadtrek acknowledges that, as of 9/17/08, 8/24/09, and 9/16/09, Mega had acceptable
11 minimum stocking levels. (Crowe, R.T. 1/10/12, 170:14-171:6; Ex. 691 at 6796; Ex. 692; Ex.
12 693; Ex. 695.)

13 106. In addition to meeting its required minimum stocking levels, Mega also stocked more
14 than twice the amount of units at its locations, in the aggregate, than MTRV is now required to
15 stock at its locations, in the aggregate. Pursuant to Mega's DA with Roadtrek for its Colton, CA
16 and Irvine, CA franchises, Mega was required to keep at least 22 Roadtrek units on its lot to
17 remain in good standing. (Ex. 600 ¶ 109.) Pursuant to Mega's DA with Roadtrek for its Scotts
18 Valley, CA franchise, Mega was required to keep at least 20 Roadtrek units on its lot to remain
19 in good standing. (Ex. 604 ¶ 110.) However, Roadtrek granted MTRV liberal stocking levels,
20 only requiring MTRV to maintain a minimum stock of 15 units, in the aggregate, at four
21 locations. (Ex. 685.)

22 107. In 2010, MTRV's sales volume was approximately 80 units. (Hammill, R.T. 11/9/11,
23 224:7-16.) However, during settlement negotiations in December of 2009, Roadtrek was asking
24 Mega to sell approximately twice that amount (156 units throughout 2010). (McMahon, R.T.
25 8/16/11, 88:3-14.) Mega had already well-surpassed 80 units in sales in prior years, selling 117
26 in 2006 and 161 in 2007. (Ex. 709.)

27 /

28 /

1 **B. Findings Of Fact Regarding Mega's Substantial and Permanent**
2 **Investments In Its Franchises. [Cal. Veh. Code § 3071(b) and (c)]**

3 108. Protestant has two established locations from which it is able to sell and service
4 Roadtrek units. Protestant has studied Roadtrek's products and been familiar with the brand
5 since 2001. (McMahon, R.T. 8/12/11, 35:6-7; McMahon, R.T. 8/10/11, 99:22-100:2.)
6 Protestant set up all service facilities and has trained personnel in order to be able to service
7 Roadtrek vehicles. (McMahon, R.T. 8/10/11, 99:22-100:2.) Protestant also has a substantial rent
8 factor for each of its three locations and is prepared with state-of-the-art facilities to sell and
9 service recreational vehicles for years to come. (McMahon, R.T. 8/9/11, 133:24-134:3; 141:21-
10 142:2.)

11 109. Protestant has invested in advertising the Roadtrek product. Protestant has infomercials
12 advertising itself and its products, has had contract negotiations with all the major radio and
13 television stations, has advertised Roadtrek with sports teams, and is generally more aggressive
14 in its advertising strategies than other RV dealers. (McMahon, R.T. 8/10/11, 48:19-51:1, 96:21-
15 97:1; McMahon, R.T. 8/16/11, 7:17-9:10) Ninety percent of Mega's advertising was for the
16 Roadtrek product. (McMahon, R.T. 8/18/11, 105:12-23.) In fact, Mega is one of the top
17 spenders in advertising within the RV business. (McMahon, R.T. 8/10/11, 50:21-23.)

18 110. Protestant has flooring with General Electric ("GE") in the amount of \$12-13 million.
19 (John Print Dep. 19:1-21, 33:22-34:2.) Protestant has maintained flooring for recreational
20 vehicles and Protestant had and continues to have flooring available to it in order to floor
21 Roadtrek vehicles. (Ex. 704.) Without the cooperation of Roadtrek, however, Mega can not get
22 Roadtreks floored. (John Print Dep. 34:3-8, 34:19-24.) Protestant is ready and willing to floor
23 Roadtrek units and perform its obligations as a Roadtrek dealer, but can only do so with the
24 cooperation of Respondent. (Protestant's Post-Hearing Opening Brief at 26:15-16.)

25 **C. Findings Of Fact Regarding Whether The Termination of Mega's Roadtrek**
26 **Franchises Is Injurious To The Public Welfare. [Cal. Veh. Code § 3071(d)]**

27 111. During the years Protestant had a Roadtrek franchise, beginning in 2001 and ending
28 effectively in 2009, Mega was the number one Roadtrek dealer in the country. (Ex. 68;
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 McMahon, has been committed to the Roadtrek franchise. (Hammill, R.T. 11/9/11, 172:21-
3 173:5.) In fact, Roadtrek awarded Mr. McMahon the keys to the 20,000th Roadtrek built in a
4 special ceremony held in Kitchener, Ontario, Canada precisely because of his performance and
5 his commitment to the Roadtrek brand. (Ex, 601.)

6 112. For the past two years, Protestant has been unable to serve the public as well as it
7 might have liked as a Roadtrek franchise because of Roadtrek's failure to provide parts, units, or
8 warranty reimbursement. (McMahon, R.T. 8/11/11, 161:3-8; Schilperoort, R.T. 9/21/11,
9 133:19-134:20.) Respondent presented no evidence, aside from circumstances inflicted by
10 Respondent that were out of the control of Protestant, to demonstrate Protestant did anything but
11 adequately serve the public.

12 113. Roadtrek has not met its burden under Cal. Veh. Code § 3066(b) to show Mega's
13 termination was beneficial, rather than injurious, to the public welfare.

14 **D. Findings Of Fact Regarding Mega's Adequate Sales, Service Facilities,**
15 **Equipment, Vehicle Parts, And Qualified Service Personnel To Reasonably**
16 **Provide For The Needs Of The Consumers And Provided Adequate Services**
To The Public. [Cal. Veh. Code § 3071(e)]

17 114. Prior to Roadtrek's repossession of Mega's units at the 2009 Pomona Show, Mega had
18 a very successful Roadtrek sales record. Mega has been the number one dealer from a multiple-
19 location standpoint since 2005, when it sold 54 units in a year. (Hammill, R.T. 11/9/11, 52:14-
20 23, 194:8-11; McMahon, R.T. 8/9/11, 106:5-6; Ex. 68; Ex. 709.) In subsequent years Mega
21 more than doubled, then tripled, those sales, selling 117 Roadtrek units in 2006 and 161
22 Roadtrek units in 2007. (Ex. 709.)¹⁰ In fact, Mega was selling close to 30% of Roadtrek's
23 manufactured inventory. (Schilperoort, R.T. 8/16/11, 193:23-194:2.)

24 115. Protestant has two established locations from which it is able to sell and service
25 Roadtrek units. Protestant has studied Roadtrek's products and been familiar with the brand
26 since 2001. (McMahon, R.T. 8/12/11, 35:6-7; McMahon, R.T. 8/10/11, 99:22-100:2.)
27 Protestant set up all service facilities and has trained personnel in order to be able to service

28 ¹⁰ The principal reason these levels were not maintained in later years was the market crash and subsequent industry decline from 2008 onward.

1 Roadtrek vehicles. (McMahon, R.T. 8/10/11, 99:22-100:2.) Protestant also has a substantial rent
2 factor for each of its three locations and is prepared with state-of-the-art facilities to sell and
3 service recreational vehicles for years to come. (McMahon, R.T. 8/9/11, 133:24-134:3; 141:21-
4 142:2.)

5 116. Protestant has two facilities that are well-equipped and ready to sell and service
6 Roadtrek units as soon as these units are made available to Protestant. (McMahon, R.T. 8/9/11,
7 77:3-7.)

8 117. Although Mega has adequate service facilities, equipment and qualified service
9 personnel to reasonably provide for the needs of consumers in the market, it has been unable to
10 provide service to Roadtrek customers since Roadtrek stopped selling Mega parts and
11 reimbursing for warranty work. (Schilperoort, R.T. 9/21/11, 133:24-136:21.)

12 118. Roadtrek's refusal to sell Mega warranty parts¹¹ (Schilperoort, R.T. 9/21/11, 133:24-
13 134:9) prevented Mega from doing warranty work on Roadtreks because it lacked the necessary
14 parts (*Id.* at 134:10-20). Roadtrek's refusal to reimburse Mega for warranty work (Schilperoort,
15 R.T. 9/21/11, 134:5-6) resulted in Mega funding its own warranty work for Roadtrek, which
16 became financially draining for Mega. (*Id.* at 136:17-21.) This action against Mega had a
17 substantial impact on Mega's reputation, finances, and ability to provide service. (*Id.* at 134:21-
18 136:16, 136:1-4.) Mega eventually had to tell Roadtrek customers to go elsewhere to get their
19 repairs done, even if a customer had just bought a unit from Mega. (*Id.* at 135:10-12.)

20 119. Further, when Roadtrek established MTRV within Mega's exclusive territory, it
21 affected Mega's sales ability, as well as its parts and service business. (McMahon, R.T. 8/9/11,
22 133:13-19.)

23 120. Roadtrek has offered no evidence to establish that Mega does not have adequate sales,
24 service facilities, equipment and qualified service personnel to reasonably provide for the needs
25 of consumers in the market.

26 /

27
28 ¹¹ 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 **1. The Relocation of Protestant's Irvine dealership to Westminster is**
2 **not relevant to the issues in this case and shall not be considered as**
3 **grounds for termination.**

4 121. Respondent did not specify relocation of Protestant's Irvine facility as grounds for
5 termination in its Notices of Termination. (Ex. 701, Ex. 702.) However, Respondent now
6 alleges the relocation should be taken into account when considering whether there was good
7 cause to terminate Protestant's franchises.

8 122. A franchisor cannot raise additional unspecified grounds for termination at a hearing if
9 those grounds were not specifically stated in the franchisor's Notice of Termination. (Cal. Veh.
10 Code § 3070(a); *American Isuzu Motors, Inc. v. New Motor Vehicle Bd.*, 186 Cal.App.3d 464,
11 476-477 (1986); *British Motor Car Distributors, Ltd. v. New Motor Vehicle Bd.*, 194
12 Cal.App.3d 81, 90-91 (1987).)

13 123. Since Respondent did not list relocation as a ground for termination of Protestant's
14 Irvine franchise within its Notices of Termination, Respondent cannot now use it as grounds for
15 termination in this proceeding. If Respondent believes the relocation is a legitimate ground for
16 termination and wishes to pursue a termination based upon that ground, Respondent must send a
17 new Notice of Termination or amend the Notice of Termination it sent in June of 2010, and
18 Mega must have the opportunity to file a Protest, in response to that Notice, and prepare and
19 present its case concerning that matter to the Board.

20 124. On March 31, 2012, long after the commencement of the hearing, Protestant relocated
21 its Irvine dealership to Westminster, CA. Protestant's new facility in Westminster, CA is state-
22 of-the-art and is located at the intersection of the 405 and 22 freeways with high traffic volume
23 and visibility. (Schilperoort, R.T. 4/26/12, 92:18-93:14; 94:3-95:5.) The new Westminster
24 dealership has a three-and-a-half to four-acre facility, three-story parking structure, 52 vehicle
25 service bays, 12 to 13 motor home service bays, employee parking, a 24,000 square foot
26 showroom with business offices and a parts department and warehouse. (Schilperoort, R.T.
27 4/26/12, 36:21-37:5.)

28 125. The new Westminster facility meets the minimal facility requirements set forth in
 Protestant's Dealer Agreement with Roadtrek. (Ex. 600.) In addition, Roadtrek did not limit

1 Protestant in its dealer agreement to a specific address from which it could operate and did not
2 have any specific requirements that Protestant needed to follow before relocating its dealership.
3 (*Id.*)

4 126. Pursuant to Exhibit 600, the Dealer Agreement is made between Home & Park
5 Motorhomes, having its head office at 100 Shirley Avenue, Ontario, Canada, N2B 2E1 and
6 Mega RV corporation, doing business as McMahon's RV, having its head office at 1312 RV
7 Center Dr. #16, Colton, CA, USA 92324 and doing business at 1312 RV Center Dr. #16,
8 Colton, CA 92324 and at 6441 Burt Road #10, Irvine, CA 92818. (Ex. 600.)

9 127. As can be seen in Exhibit 600, the Dealer Agreement simply recites addresses at
10 which the parties do business. Nowhere in the recital of addresses, nor located in any other
11 paragraph of the Dealer Agreement, does it require that the parties solely do business from the
12 listed locations or that the parties are restricted from doing business from any other location. In
13 fact, the actual agreement between the parties does not begin until Section 100, "Sales to
14 Dealers," following the language "...it is agreed by and between the parties hereto as follows:"
15 (*Id.*) Further, Section 301, titled "Facility and Location," (emphasis added) does not state any
16 specific location or address where Protestant must establish a dealership, just that "Dealer shall
17 establish...a...facility capable of meeting the sales and service potential of Dealer's Territory."
18 (Ex. 600, ¶ 301.) There is no limitation of the dealership location to the address listed in the
19 introduction paragraphs, nor any other specific address. There is no evidence the Westminster
20 location fails to meet the minimal and broadly stated requirements of Section 301 of the Dealer
21 Agreement.

22 128. In addition, Respondent admitted there are no specific provisions in the Vehicle Code
23 requiring a dealer to give notice of the relocation of its dealership.

24 129. Pursuant to paragraph 111 of Exhibit 600, titled "Dealer Commitment", there is
25 evidence that the parties considered expansion of Protestant's locations when signing the Dealer
26 Agreement. Paragraph 111 states, "Additionally, Home & Park will work with Dealer to
27 expand his operation effectively, subject to our normal conditions, as long as that expansion
28 does not encroach on other dealers' territories." (Ex. 600.) Further, "[i]f Dealer expands his

1 operation to *new locations*, Roadtrek will be the number one selling Class B motorhome at
2 those locations.” (emphasis added)

3 **E. Findings Of Fact Related To Mega’s Fulfillment Of All Of Its Warranty**
4 **Obligations. [Cal. Veh. Code § 3071(f)]**

5 130. Roadtrek alleges in its Notices of Termination that Mega failed “to service or provide
6 warranty service on Roadtrek motorhomes as required by sections 189, 190, 192, 194” of the
7 DAs. (Ex. 701; Ex. 702.)

8 131. At or about the third quarter of 2008, Roadtrek stopped sending payments to Mega for
9 warranty claims. (Schilperoort, R.T. 9/21/11, 128:6-14; Schilperoort, R.T. 8/19/11, 65:20-65:8;
10 Fresh, R.T. 1/9/12, 115:4-16, 44:7-9.)

11 132. At or about the summer of 2009, prior to the unlawful Roadtrek unit repossessions at
12 the 2009 Pomona Show, Roadtrek stopped selling Mega warranty parts in addition to not
13 reimbursing Mega for warranty claims.¹² (Schilperoort, R.T. 9/21/11, 133:24-134:9.)

14 133. Mega’s inability to obtain parts from Roadtrek, and thus the cessation of service for
15 Roadtrek customers, impacted Mega’s reputation and finances. (Schilperoort, R.T. 9/21/11,
16 134:21-136:16.) Mega tried to provide service in this situation – sometimes even resorting to
17 pulling a part off a Roadtrek stock unit so the service department could repair customers’
18 Roadtreks that needed service. (*Id.* at 135:1-7.) Mega found itself funding its own warranty
19 work for Roadtrek, which became financially draining for Mega. (*Id.* at 136:17-21.)

20 134. Mega’s inability to obtain parts and do warranty work for Roadtrek affected Mega’s
21 sales. (Schilperoort, R.T. 9/21/11, 136:1-4.) Roadtrek has a very small group of followers who
22 gather together and attend rallies. (*Id.* at 136:1-16.) At the rallies, stories spread that it was
23 unwise to buy from Mega because Mega could not fix the motor home after it was sold. (*Id.* at
24 136:8-16.)

25 135. But for these actions by Roadtrek, Mega would have been able to continue to fulfill all
26 of its warranty obligations (*Id.* at 134:10-24), which it had been doing successfully since the
27 /

28

¹² See the prior footnote for examples of two exceptions to this.

1 parties relationship began at or around 2001. As a result, Roadtrek has not met its burden of
2 proving it had good cause to terminate Mega based on its warranty and service performance.

3 **F. Findings of Fact Regarding Mega's Effort To Comply With The Terms Of**
4 **The Roadtrek Franchise Agreements. [Cal. Veh. Code § 3071(g)]**

5 **1. At Roadtrek's request, Mega provided its financial statements when**
6 **available.**

7 136. Roadtrek's Notices of Termination allege Mega failed "to submit annual financial
8 reports as required by Section 350" of the DAs. (Ex. 701; Ex. 702.) Section 350 states, "In
9 furtherance of their mutual interests, Dealer shall furnish to [Roadtrek] on an annual basis, a
10 complete financial statement reflecting the true financial condition of the dealership operations.
11 Upon review of each annual financial statement, [Roadtrek] will advise Dealer in writing if they
12 are approved for C.O.D. terms of payment. Financial information furnished by Dealer shall be
13 held on a confidential basis by [Roadtrek] and shall not be disclosed to any third party." (Ex.
14 600; Ex. 604.)

15 137. Whenever Roadtrek requested financial statements from Mega, Mega provided
16 financial statements to Roadtrek.¹³ (Schilperoort, R.T. 8/19/11, 8:19-9:19; Ex. 621.)

17 138. Protestant has submitted all documentation to Roadtrek regarding its financial
18 statements and its ability to floor Roadtrek units. (See Ex. 629; Ex. 64; Ex. 65; Ex. 66; Ex. 686.)

19 139. The allegation that Mega did not provide Roadtrek with financial reports as required by
20 the DAs is thus incorrect and unsupported by the evidence.

21 **2. Mega did not use Roadtrek leads to sell other manufacturer's Class B**
22 **motor homes.**

23 140. In its Notices of Termination, Roadtrek alleged Mega used "Roadtrek leads to sell
24 other manufacturer's Class B motorhomes." (Ex. 701; Ex. 702.) The relevant section of the DAs
25 state, "All consumer leads provided by Roadtrek to Dealer are the exclusive property of
26 Roadtrek and are to be used for the marketing of Roadtrek products only. No consumer lead
27 provided by Roadtrek shall be taken to see another manufacturer's class B motorhome *unless*

28 ¹³ Mega's 2007 financial statements were delayed because Mega believed it needed to file a reviewed statement,
but later found out it needed to file an audited statement. (McMahon, R.T. 8/10/11, 189:21-190:8.) Once the
audited statement was completed, it was provided to Roadtrek. (*Id.* at 190:9-15.)

1 *such consumer specifically requests to see other manufacturers' class B motorhomes.*" (*Id.* at ¶
2 140) (emphasis added).

3 141. Roadtrek leads are those customers interested in its products who contact Roadtrek and
4 are then directed by Roadtrek to its dealers. (Hammill, R.T. 9/22/11, 121:16-123:6.)

5 142. There was no documentation to prove Mega improperly used Roadtrek leads to sell
6 other brands and the only testimony on the subject related to a speculative observation by Mr.
7 Hammill that Mega was showing Roadtrek customers Pleasure-Way units at the 2005 Pomona
8 RVIA show. (Hammill, R.T. 9/22/11, 110:19-111:1.) However, Mr. Hammill had no proof these
9 customers did not ask to see the other brands available. (Hammill, R.T. 11/9/11, 161:3-22.)
10 There was no evidence that such customers were persuaded or coerced into looking at Pleasure-
11 Way units. (*See* Maresh, R.T. 1/12/12, 33:23-34:4.) In addition, Mr. Hammill admitted he never
12 observed this alleged conduct happen again. Hammill, R.T. 11/9/11, 160:2-9; Hammill, R.T.
13 9/22/11, 138:12-17.)

14 143. Although Roadtrek alleged Mega improperly used leads to sell such customers other
15 brands, no proof was offered to substantiate this claim. (Hammill, R.T. 9/22/11, 110:19-111:1.)

16 **3. Mega conducted its dealership operations in a way that reflected**
17 **favorably upon Roadtrek.**

18 144. In Roadtrek's Notices of Termination, it alleges Mega failed "to operate a dealership in
19 a way that reflects favorably on it and Roadtrek as required by Section 370 [of the DA]." (Ex.
20 701; Ex. 702.) Section 370 states, "Dealer shall conduct dealership operations in a manner that
21 will reflect favorably at all times on the reputation of Dealer, other authorized Roadtrek dealers
22 and [Roadtrek]." (*Id.*)

23 145. There is virtually no evidence in the record to demonstrate Mega has ever conducted
24 business in a manner that did not reflect favorably upon Roadtrek. What little evidence was
25 offered was clearly insufficient to prove Roadtrek's claim in this regard.

26 /

27 /

28 /

1 **G. Findings of Fact Regarding The Existing Circumstances That Effectively**
2 **Terminated Protestant In October 2009.**

3 146. In October 2009, Roadtrek took actions that effectively terminated Mega as a Roadtrek
4 franchisee. (Schilperoort, R.T. 11/7/11, 140:25-141:2.) After that point, Roadtrek systematically
5 cut off Mega from the resources it needed in order to continue functioning as a Roadtrek
6 franchisee. (McMahon, R.T. 8/11/11, 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20.)

7 147. The end result was that Roadtrek, first, prevented Mega from meeting its obligations
8 under the DAs (*see* Findings 148-150 below) then, second, terminated Mega because it was not
9 meeting its obligations under the DAs. This course of conduct by Roadtrek is contrary to the
10 notice requirements of Cal. Veh. Code § 3070(b)(1) and hindered Mega's ability to argue
11 against the termination and address the good cause factors. These existing circumstances must
12 be taken into account when determining the legality of the proposed termination of Mega's
13 franchises.

14 **1. Findings of fact related to Protestant being prevented from**
15 **conducting business as a Roadtrek franchisee long before the Notices**
16 **of Termination were issued.**

17 148. Protestant has been prevented from conducting business as a Roadtrek dealer since the
18 October 2009 Pomona Show, when Roadtrek repossessed Mega's inventory. (*See* Findings 151-
19 158 below) (Roadtrek's Opening Brief at 9:5-15; Schilperoort, R.T. 11/7/11, 140:25-141:2.)
20 Respondent absconded with all Roadtrek units in Protestant's possession on the last day of the
21 show. (McMahon, R.T. 8/11/11, 58:20-59:4.) Since that time, Protestant has been unable to
22 order units or parts, or be reimbursed by Roadtrek for warranty work. (McMahon, R.T. 8/11/11,
23 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20.) Additionally, Roadtrek communicated it
24 no longer wanted to do business with Mega (Ex. 26; Lankford, R.T. 11/17/11, 110:1-10, 112:7-
25 116:15) and then began doing business with MTRV within Mega's exclusive territory (Ex. 685).

26 149. These actions by Roadtrek effectively ended Mega's ability to function as a Roadtrek
27 dealer. However, Roadtrek did not send its Notices of Termination to Protestant until June 14,
28 2010. (Ex. 702.) Roadtrek failed to provide notice of its intent to terminate Mega's franchises
until eight months after Mega was effectively terminated and prevented from conducting any
Roadtrek business and five months after Roadtrek replaced Mega with another dealer in its

1 exclusive territory, including one in Colton only a few hundred feet away from Mega's existing
2 Roadtrek franchise. (See Ex. 702; Roadtrek's Opening Brief at 9:5-15; McMahon, R.T. 8/11/11,
3 161:3-8; Schilperoort, R.T. 9/21/11, 133:19-134:20; Ex. 685) In addition, Roadtrek granted to
4 the new dealer, MTRV, "exclusive" territories that encroached upon Protestant's exclusive
5 territories. (Ex. 685.)

6 150. These actions by Roadtrek caused Mega to be unable to quickly and adequately
7 exercise its rights under the Cal. Veh. Code when the termination effectively occurred in
8 October 2009.

9 **2. Findings of fact related to Roadtrek's repossession of Mega's units at
the 2009 Pomona RV show.**

10 151. A "Security Agreement and Power of Attorney" was entered into by the parties in
11 April 2008. (See Ex. 614.) This new contract required, *inter alia*, Mega to pay for Roadtrek
12 units upon their sale or at the expiration of 365 days from the date of delivery. (*Id.*) The contract
13 also provided that if Mega defaulted on the contract, Roadtrek could repossess the units. (*Id.*)

14 152. Mega's conduct with Roadtrek prior to signing the Security Agreement showed Mega
15 had a pattern of paying for units late but always made the payments eventually. (McMahon,
16 R.T. 8/10/11, 202:11-23.) Mega purchased over 700 Roadtrek units and, except for the four
17 remaining unpaid units, Mega fully paid for all of them. (McMahon, R.T. 8/11/11, 67:19-21;
18 McMahon, R.T. 8/10/11, 202:22-23.) (See also Schilperoort, R.T. 8/19/11, 118:13-23.)

19 153. This less-than-ideal payment record of Mega continued to occur even after the parties
20 executed the Security Agreement. As of October 2009, it was a common and frequent
21 occurrence for Mega to be behind in its payments for units. (Hammill, R.T. 11/9/11, 201:21-
22 202:1.) Despite this, Roadtrek never declared a default or invoked its right to repossess. Instead,
23 it continued to provide written and oral demands to Mega for payment. (Hammill, R.T. 11/9/11,
24 203:11-21.) After receiving those demands, Mega paid for all but four of those units.¹⁴

25 154. Roadtrek continued to accept these late payments and did not insist on strict
26 compliance with the Security Agreement's terms with respect to payments on units. (*Id.* at
27

28 ¹⁴ 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.)

1 202:2-16.) In fact, even after witnessing Mega's average payment time go from 37 days to 78-
2 80 days, Roadtrek continued to grant Mega leeway in payment to try and help Mega through its
3 cash-flow problems. (*Id.* at 202:12-16.)

4 155. Despite the prior conduct between the parties of demanding payment and then
5 belatedly receiving it, Roadtrek decided to repossess Mega's inventory at the 2009 Pomona
6 Show. (Roadtrek's Opening Brief at 9:5-15; Schilperoort, R.T. 11/7/11, 140:25-141:2.)
7 Roadtrek claims to have absconded with the units pursuant to the Security Agreement
8 previously entered into by the parties. (Hammill, R.T. 11/9/11, 201:16-20; Schilperoort, R.T.
9 11/7/11, 140:14-21.) Roadtrek absconded with the units without informing Mega strict
10 compliance with the terms of the Security Agreement would be required to avoid repossession,
11 claiming it was not required to give Mega any notice. (Roadtrek's Opening Brief at 9:16-17.)
12 (See also Hanemaayer, R.T. 11/14/11, 246:24-247:5; McMahon, R.T. 8/11/11, 145:18-146:12.)

13 156. The law allows for contract clauses authorizing the repossession of chattel, such as
14 Roadtrek units, upon default. Nevada Nat. Bank v. Huff, 94 Nev. 506, 512, 582 P.2d 364, 369,
15 24 UCC Rep.Serv. 1044 (1978). *See also* Article 9-503 of the UCC and Lawrence Barker, Inc.
16 v. Briggs, 39 Cal. 2d 654, 248 P.2d 897 (1952). Even if there is an established course of dealing
17 under which the debtor made continual late payments and the secured party accepted them, this
18 does not result in a waiver of the secured party's right to rely upon a clause in the agreement
19 authorizing him to declare a default and repossess the chattel. Nevada, 94 Nev. at 512-13. *See*
20 *also* Ford Motor Credit Co. v. Waters, 273 So.2d 96, 12 UCC Rep.Serv. 18 (Fla.App.1973);
21 Fontaine v. Industrial National Bank of Rhode Island, 111 R.I. 6, 298 A.2d 521, 11 UCC
22 Rep.Serv. 1096 (1973).

23 157. However, "a secured party who has not insisted upon strict compliance in the past, who
24 has accepted late payments as a matter of course, Must, before he may validly rely upon such a
25 clause to declare a default and effect repossession, Give notice to the debtor (lessee) that strict
26 compliance with the terms of the contract will be demanded henceforth if repossession is to be
27 avoided." Nevada, 94 Nev. at 513 (citing Ford Motor Credit Co., 273 So.2d 96; Fontaine, 111
28 /

1 R.I. 6; Kupka v. Morey, 541 P.2d 740, 17 UCC Rep.Serv. 1383 (1975); Varela v. Wells Fargo
2 Bank, 15 Cal. App. 741, 93 Cal. Rptr. 428 (1971)) (capitalizations in the original).

3 158. According to Nevada, the course of conduct between the parties required that Roadtrek
4 provide notice, prior to repossession, that strict compliance with the terms of the long-ignored
5 contract would henceforth be required in order to avert repossession. 94 Nev. at 514, 582 P.2d
6 at 370. Roadtrek, had a duty to provide notice beforehand and its failure to do so was wrongful
7 and rendered the repossessions unlawful. Nevada, 94 Nev. 506.

8 **3. Protestant's inability to acquire Roadtrek vehicles.**

9 159. Roadtrek alleges in its Notices of Termination that Mega failed "to purchase for retail
10 sale the number of Roadtrek motorhomes as required by Section 111" of the Irvine/Colton DA
11 and Section 112 of the Scotts Valley DA. (Ex. 701; Ex. 702.) According to these sections,
12 Scotts Valley is required to purchase a minimum of 75 units per year and Irvine/Colton is
13 required to purchase a minimum of 100 units per year.

14 160. Roadtrek presented no evidence at hearing as to the purchase levels reached by Mega.

15 161. In addition, the Notices of Termination allege Mega failed "to stock the required
16 number of Roadtrek motorhomes as required by Section 109" of the Irvine/Colton DA and
17 Section 110 of the Scotts Valley DA. (*Id.*)

18 162. Roadtrek presented no evidence at hearing concerning the number of units stocked by
19 Mega at any given time. Roadtrek claimed, instead, that since Mega had no Roadtrek stock after
20 Roadtrek repossessed Mega's units in October 2009, it would have been impossible to meet
21 these requirements. (Hammill, R.T. 11/8/11, 122:22-123:7.) Roadtrek claims Mega was at fault
22 for not getting new stock because Mega had not placed any orders for units. (Hammill, R.T.
23 11/8/11, 123:4-8.)

24 163. Roadtrek alleges it has a strong ordering policy and procedure for ordering units and
25 Mega did not place any orders for units under that policy after October 2009. (*Id.* at 123:7-8.)
26 However, contrary to this alleged policy, during the relationship that existed between the parties
27 prior to October 2009, Roadtrek would ship Mega the number and composition of units it
28 desired on a regular basis. (McMahon, R.T. 8/11/11, 159:2-20; McMahon, R.T. 8/10/11, 62:11-

1 63:1.) (*See also* Ex. 699.) These shipments were always made without obtaining prior approval
2 from Mega, let alone receiving actual *orders* from Mega. (*See* Ex. 699.)

3 164. Prior to the Kitchener meeting, Roadtrek had provided interest-free units to Mega
4 through an informal “on-the-arm” program under which Roadtrek would select and ship to
5 Mega the inventory Roadtrek chose and Mega would provide payment to Roadtrek after the
6 units were sold. (McMahon, R.T. 8/10/11, 57:4-9; Schilperoort, R.T. 8/16/11, 185:16-21.) This
7 program was experimental and allowed Roadtrek to be established as a top seller of Class B
8 motor homes in the California market. (Hammill, R.T. 9/22/11, 152:23-153:7; McMahon, R.T.
9 8/10/11, 46:2-13; Ex. 608.)

10 165. This method was mutually beneficial to the parties at the beginning of their
11 relationship when Roadtrek was experimenting with providing flooring and no interest was
12 being charged to Mega to keep the product. (Hammill, R.T. 9/22/11, 157:1-18, 161:6-162:14.)
13 This method resulted in Mega being, for a time, oversaturated with Roadtrek product, but Mega
14 was not entirely opposed to this, as it meant it had a large variety of stock from which to sell.
15 (McMahon, R.T. 8/9/11, 54:24-56:6; Hammill, R.T. 9/22/11, 157:19-158:3; Ex 608.)

16 166. At the Kitchener meeting, after Mr. McMahon refused to forgive the \$166,000
17 holdback owed, Roadtrek advised Mega it would immediately begin charging Mega interest on
18 units shipped. (Schilperoort, R.T. 8/16/11, 189:5-25.) In addition, Roadtrek wanted immediate
19 payment of ‘past interest’ that had never previously been discussed, agreed upon, or billed
20 between the parties. (McMahon, R.T. 8/10/11, 58:23-60:6; Schilperoort, R.T. 8/16/11, 181:12-
21 21, 182:22-183:16; Ex. 608.) Mega agreed to make two \$35,000 payments towards the past due
22 interest Roadtrek alleged Mega owed. (McMahon, R.T. 8/10/11, 147:24-148:13; Schilperoort,
23 R.T. 8/16/11, 192:4-7; Ex. 612.)

24 167. After making the first \$35,000 payment, Mega began to question the soundness of
25 continuing to pay for interest that had never previously been due. (Schilperoort, R.T. 8/19/11,
26 64:20-65:7.) This feeling that interest should not be owed to Roadtrek was legitimized by
27 discussions Mega had with Mr. Hammill, Roadtrek’s President and CEO, who continually
28 /

1 stated Mega did not need to “worry about interest.” (Schilperoort, R.T. 9/21/11, 105:11-14;
2 Fosdick, R.T. 1/9/12, 185:4-25.)

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

11 169. The mutually beneficial overstocking situation changed when Roadtrek stopped
12 flooring units for Mega and began charging interest for its units. (McMahon, R.T. 8/11/11, 10:8-
13 18.) Despite these changes to the financial circumstances between the parties, Roadtrek
14 continued to ship a large amount of inventory to Mega at will. (*Id.* at 10:8-24.) These shipments
15 consisted of models not ordered or chosen by Mega,¹⁶ but rather selected solely by Roadtrek.
16 (*Id.*) Mega continually communicated to Roadtrek this was unacceptable and that it wanted to
17 be consulted prior to orders being shipped. (*Id.* at 9:9-13:4.) (*See also* Ex. 632.) However,
18 Roadtrek continued to ship at will and Mega continued to receive assurances from Mr. Hammill
19 that interest was not due. (McMahon, R.T. 8/11/11, 11:13-14; Schilperoort, R.T. 9/21/11, 105:5-
20 7, 105:11-14.)

21 170. Despite this prior course of conduct, Roadtrek ceased unit shipments after the 2009
22 Pomona Show. (*Id.* at 160:1-161:2.) Roadtrek claims Mega was at fault for not getting new
23 stock because Mega didn’t have adequate credit to purchase units. (Hammill, R.T. 11/9/11,
24 201:3-7.) Despite Mega’s insistence it could floor product with General Electric (“GE”),
25 Roadtrek continued to allege that Mega didn’t have adequate flooring. (*Id.* at 137:15-20.)

26 /
27 _____
¹⁵ See Ex. 614 for the Security Agreement executed in April 2008.

28 ¹⁶ 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.)

1 171. In an attempt to prove to Roadtrek that it had flooring, Mega contacted its lender, GE
2 and asked it to acknowledge this fact for Roadtrek's benefit. (See Ex 704.) GE did so, stating,
3 "McMahon's RV can floor Roadtrek Motorhomes." (*Id.*) However, despite this assurance,
4 Roadtrek continued to not provide any units to Mega. Without Roadtrek's cooperation, Mega
5 continued to be unable to obtain any Roadtrek units. (John Print Dep. 34:3-8; 19-24.)

6 172. In an attempt to get new units, Mega sent a letter to Roadtrek attempting to lay out the
7 units it wished to order. (McMahon, R.T. 8/11/11, 158:14-159:1.) (*See also* Ex. 699.) Roadtrek
8 never filled this order.

9 173. Mega's lack of Roadtrek inventory after October 2009 and inability to acquire the
10 Roadtrek stock it needed occurred through no fault of its own, but rather through the action and
11 inaction of Roadtrek.

12 **H. Findings of Fact Regarding The Referral Of Protestant's Termination To
The California DMV.**

13 174. In ALJ Skrocki's Order on Protestant's Motions in Limine, Judge Skrocki stated, "[i]f
14 evidence is adduced to show that Respondent has engaged in conduct that includes the
15 allegations made in this motion," the ALJ hearing the matter may recommend the Board
16 exercise its powers pursuant to Cal. Veh. Code §§ 3050(c)(1) and (c)(3). (ALJ Skrocki's Order
17 ¶ 45.)

18 175. The Board has authority to order the DMV to exercise its authority and review the
19 status and license of Respondent and MTRV in this matter. (Cal. Veh. Code § 3050; 13 C.C.R.
20 § 593.3.) The Board, thus, exercises its authority and refers the matter of Protestant's
21 termination to the DMV.

22 **V. FINDINGS OF FACT REGARDING WARRANTY CLAIMS. [PR-2206-10, PR-
2208-10, and PR-2209-10]**

23 **A. Findings Of Fact Regarding Approval Or Disapproval Of Warranty Claims
24 Within Thirty (30) Days After Receipt, As Required By Cal. Veh. Code §
3075.**

25 176. Throughout the parties' relationship, Mega submitted numerous warranty claims to
26 Roadtrek. (Ex. 517; Ex. 517A.)

27 177. All warranty claims at issue in this case were submitted to Roadtrek by Mega through
28 Roadtrek's warranty system. (Deakins, R.T. 11/29/11, 43:22-45:1.)

1 178. The parties have stipulated to a factual chart summarizing all of the warranty claims at
2 issue in this case. (Ex. 774.) Exhibit 774 was created by the parties to include details from
3 Exhibit 708 (a list of warranty claims for which Mega alleges it has not yet been paid), Exhibit
4 517 (printouts of relevant warranty claims' history from Roadtrek's warranty system), and
5 Exhibit 517A (supplemental claim printouts from Roadtrek's warranty system).

6 179. California law requires all warranty claims made by franchisees "shall be either
7 approved or disapproved within 30 days after their receipt by the franchisor. A claim not
8 specifically disapproved in writing within 30 days from receipt by the franchisor shall be
9 deemed approved on the 30th day." Cal. Veh. Code § 3075(d).

10 180. In Roadtrek's warranty system, the authorization date is "the date that Roadtrek
11 personnel approved the claim." (Deakins, R.T. 11/29/11, 74:4-6.) Exhibit 774 sets forth the
12 stipulated facts regarding the dates various warranty claims were "approved" or
13 "disapproved."¹⁷

14 181. The date of "receipt by the franchisor" for the warranty claims is debated by the
15 parties, with Roadtrek alleging it should be the date a claim was *last* submitted to warranty
16 personnel and Mega alleging it should be the date a claim was *first* submitted to warranty
17 personnel. (Deakins, R.T. 12/1/11, 22:4-24:16.) As such, Exhibit 774 contains stipulated facts
18 regarding both dates.¹⁸ Exhibit 774 also includes two calculation columns for these dates:
19 column 11 calculates the number of days that passed before a claim was authorized using the
20 date the claim was first submitted to warranty personnel, and the 12th column calculates the
21 number of days that passed before a claim was authorized using the date the claim was last
22 submitted to warranty personnel. Where the number of days that passed are greater than 30, the
23 cells are highlighted in yellow. (Ex. 774.)

24 182. When determining if a warranty claim was approved within 30 days using the date a
25 warranty claim was *first* submitted to warranty personnel, the result is fourteen (14) claims not

26 /
27
28 ¹⁷ 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."

¹⁸ See the 8th and 9th column headings of Exhibit 774, respectively.

1 approved within 30 days. (Ex. 774.) When using the date a warranty claim was *last* submitted to
 2 warranty personnel, the result is three (3) claims not being approved within 30 days. (*Id.*)

3 183. As illustrated on the table below, of the ten (10) claims Roadtrek alleges it cancelled,
 4 nine (9) of those claims were not cancelled within 30 days of the date they were *first* submitted
 5 to warranty personnel, and seven (7) of those claims were not cancelled within
 6 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

16 184. Regardless of which date is used to determine the date of “receipt by the franchisor”
 17 for the warranty claims at issue, there were warranty claims not approved or disapproved within
 18 the 30 day time period allotted by Cal. Veh. Code § 3075(d). Such claims were thus, under
 19 California law, “deemed approved” on the 30th day and payment on them was owed to Mega
 20 within 30 days of approval. Cal. Veh. Code § 3075(d).

21 **B. Findings Of Fact Regarding Whether Roadtrek Provided Written Notice**
 22 **Stating Specific Grounds For Disapproval of Warranty Claims Within**
 23 **Thirty (30) Days, As Required By Cal. Veh. Code § 3075.**

24 185. When a claim is disapproved, the franchisor must notify the franchisee within 30 days
 25 of submission, in writing, and “state the specific grounds upon which the disapproval is based.”
 26 Cal. Veh. Code § 3075(d).

27 186. Isolated statements that a “claim [*is sic*] over 90 days” does not amount to a specific
 28 ground upon which disapproval is based.¹⁹ Other statements, such as “Approved R08-0417 for

¹⁹ See MC#70227: “claim over 90 days.” Exhibit 517 at 10053; MC#18745: “Claim has been in system for 5 months and not submitted. Considered cancelled.” Exhibit 517 at 10255; MC#18843: “9 months has gone by with

1 batteries Approved R07-3131 for the labor back in Nov” do not amount to a specific ground
2 upon which disapproval is based.²⁰

3 187. Although all cancellations at issue were in writing and sent through Roadtrek’s
4 warranty system, they did not all “state the specific grounds upon which the disapproval is
5 based.” Roadtrek’s failure to provide “specific grounds upon which the disapproval is based” is
6 a violation of Cal. Veh. Code § 3075 as a matter of law.

7 **C. Findings Of Fact Regarding Whether Roadtrek Paid Warranty Claims**
8 **Within Thirty (30) Days Of Approval, As Required By Cal. Veh. Code §**
9 **3075.**

10 188. Exhibit 774 contains two dates relevant to the date of payment: the “check date” and
11 the “sign off date.”²¹ The “check date” means “the date that the check was issued” and the “sign
12 off date” would indicate the date the check received a signature after being issued. (Deakins,
13 R.T. 12/1/11, 11:25-12:4.)

14 189. Neither the “check date” nor the “sign off date” as defined above indicate the exact
15 date payment was made to Mega. Whether payment was made through offsetting or mailing a
16 check, the date a check was issued and then signed does not necessarily equal the same date said
17 check was mailed to Mega, received by Mega, or applied to its accounts through offsetting. The
18 two dates do illustrate, however, the earliest possible point at which Mega *could* have received
19 payment, for without the checks being issued or signed it is not possible for Mega to have been
20 paid.

21 190. Using the “check date” and the “status changed to authorized” date, 124 warranty
22 claims were not paid by Roadtrek within 30 days of approval. (Ex. 774.) Using the “sign off
23 date” and the “status changed to authorized” date, 129 warranty claims were not paid by
24 Roadtrek within 30 days of approval. (*Id.*) (*See Appendix 2 for a listing of the MC#s for the*
25 *claim totals discussed above.*)

26 /
27 no activity on this claim. Cancelled.” Exhibit 517 at 10386; MC#35982: “No action in system on this claim for 3
28 months. Cancelled.” Exhibit 517A at 11955.

²⁰ See also MC#19623: “Please submit repair on recall form and delete claim from system.” 517 at 10040;
MC#24136: “Please see emailed response back, sublet is missing tax ID numbers etc. This is not a realistic sublet
bill. Cancelled.” 517 at 10192.

²¹ See columns 14 and 16, respectively.

1 191. Using the “check date” and the “submitted for payment” date, 106 warranty claims
2 were not timely paid by Roadtrek.²² Using the “sign off date” and the “submitted for payment”
3 date, 112 warranty claims were not timely paid by Roadtrek.²³ (See also Appendix 2 for a listing
4 of the MC#s for the claim totals discussed above.)

5 192. California law requires all warranty claims made by franchisees “shall be paid within
6 30 days following approval.” Cal. Veh. Code § 3075(d).

7 193. Regardless of the method of payment (by offsetting²⁴ or by direct check), Exhibit 774
8 reveals Roadtrek did not pay warranty claims to Mega within 30 days of approval. Exhibit 774
9 thus provides *prima facie* evidence Roadtrek violated Cal. Veh. Code § 3075(d) as a matter of
10 law.

11 194. At the time of the alleged offsetting, Mega was never made aware of the practice.
12 (Schilperoort, R.T. 8/19/11, 88:22-89:3; Schilperoort, R.T. 9/21/11, 132:16-133:4.) When
13 Mega’s other franchisors pay Mega for warranty or parts through offsetting, Mega receives a
14 statement to that effect so it is able to clear such claims from its records as having been paid.
15 (Fresh, R.T. 1/9/12, 47:2-49:17.) However, Roadtrek never sent such offsetting accountings to
16 Mega. (*Id.* at 44:7-9, 115:4-16; Schilperoort, R.T. 9/21/11, 130:18-133:9.)

17 **VI. FINDINGS OF FACT RELATED TO INCENTIVE CLAIMS. [PR-2205-10 for**
18 **Colton, PR-2212-10 for Irvine, and PR-2211-10 for Scotts Valley].**

19 195. During the course of the parties’ relationship, Mega submitted numerous claims for
20 payments pursuant to Roadtrek’s incentive programs. (See Ex. 706.) Mega stocked an adequate
21 amount of units to qualify for Roadtrek’s incentive programs. (Crowe, R.T. 1/10/12, 170:14-
22 171:6; Ex. 691 at 6796; Ex. 692; Ex. 693; Ex. 695.)

23 196. Roadtrek administers three different types of incentive programs. One type is called
24 “Consumer Cash Back” (“CCB”) and acts like a rebate to the consumer. (Schilperoort, R.T.
25 8/17/11, 136:25-137:5.) “Dealer Cash” is the next type of incentive and consists of monies
26

27 ²² See Exhibit 774, column 15 entitled “# of days from Submitted for Payment to Check Date”, for the number of
days that elapsed between these two dates.

28 ²³ 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.

²⁴ Roadtrek has not provided evidence or authority that the statute permits payment by offset.

1 promised to the dealer for the sale of a unit. (*Id.*) The third type is considered “goodwill
2 money,” i.e. “spiffs,” and is an amount in addition to the first two types of incentives that is
3 negotiated between Mega and Roadtrek to assist Mega’s salespeople in selling units. (*Id.* at
4 136:25-137:5; Hanemaayer, R.T. 11/15/11, 6:13-7:3.) The first two types of incentives are
5 approved upon the sale of a unit; Roadtrek has already provided a form with the terms,
6 including which units qualify for incentives, and payment is automatically made when Roadtrek
7 receives the completed form. (Schilperoort, R.T. 8/17/11, 142:16-22; Schilperoort, R.T. 8/19/11,
8 61:8-13.)

9 197. Spiffs are often the result of an oral contract between the parties. (Hammill, R.T.
10 11/9/11, 92:2-11; Hammill, R.T. 9/23/11, 77:11-20; Cassidy, R.T. 1/18/12, 158:5-159:13.) It
11 was a practice between the parties for Mega to contact Roadtrek and ask for price support in
12 order to make a sale. (Hammill, R.T. 11/9/11, 92:2-11.) This would occur sometimes
13 telephonically, by email, or in person. (*Id.* at 92:10-11; Hammill, R.T. 9/23/11, 77:11-20;
14 Cassidy, R.T. 1/18/12, 158:5-159:13.)

15 198. When these informal requests (Hammill, R.T. 9/23/11, 77:19) were made by a dealer,
16 Roadtrek would make an assessment as to approval or disapproval of that request at the time of
17 the request. (*Id.* at 78:5-10.) For those requests made telephonically by Mega (a common
18 practice between the parties) approval would, thus, have to be given orally in the moment, as
19 Roadtrek would not do an assessment afterwards. (*Id.* at 78:8-10.) Likewise, any disapproval of
20 telephonic requests would, thus, be made orally as well. These informal deals and the process of
21 approval or disapproval surrounding them were often not documented. (McMahon, R.T. 8/9/11,
22 149:18-150:13.)

23 199. In the RV industry it is standard practice for the deal to go forward irrespective of
24 whether the paperwork had been received by the franchisor. (Hammill, R.T. 11/9/11, 102:18-
25 24.) If paperwork for these deals is submitted at all, it is standard practice for that paperwork to
26 be submitted after the sale deal for the unit is completed. (*Id.* at 101:16-24, 102:24-103:1.)

27 200. California law requires all incentive claims “made by a franchisee for payment under
28 the terms of a franchisor incentive program shall be either approved or disapproved within 30

1 days after receipt by the franchisor... A claim not specifically disapproved in writing within 30
2 days from receipt shall be deemed approved on the 30th day.” Cal. Veh. Code § 3076(a). In
3 addition, when a claim is disapproved in whole or in part, “the franchisee who submits it shall
4 be notified in writing of its disapproval within the required period, and each notice shall state
5 the specific grounds upon which the disapproval is based.” *Id.*

6 201. Disapprovals of incentive claims, in whole or in part, were not all communicated in
7 writing. (McMahon, R.T. 8/9/11, 149:18-150:13; Hammill, R.T. 11/9/11, 109:20-110:3.)

8 202. Roadtrek’s method of disapproving some claims orally is contrary to Cal. Veh. Code §
9 3076(a)’s requirement that disapproval be in writing.

10 203. Pursuant to an order by ALJ Skrocki, Mega created a list at the beginning of this case
11 listing the incentive claims which Mega alleges Roadtrek has not yet paid. (*See Ex. 706.*)

12 204. Roadtrek alleged it could not find any CCB forms for certain units Mega claimed to be
13 owed incentives on. (Hammill, R.T. 11/8/11, 105:8-106:5.) Roadtrek alleged this meant
14 Roadtrek did not owe Mega money for those claims because a CCB form is required in order for
15 Mega to be owed any incentive. (Hammill, R.T. 11/8/11, 105:8-106:5, 106:14-107:5; Hammill,
16 R.T. 11/10/11, 173:19-174:7.) Below are claims from Exhibit 706 for which Roadtrek alleges it
17 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

18
19
20
21
22
23
24 205. However, Roadtrek has previously claimed to have either “paid” Mega for some of
25 these claims through offsetting or has otherwise indicated some of them were approved. Units
26 R714 [VIN#81132003] and R693 [VIN#75764151] were previously claimed by Roadtrek to
27 have been approved and offset against Mega’s accounts. (Hammill, R.T. 11/8/11, 109:6-111:1.)
28 /

1 In addition, Exhibit 741, an email from Roadtrek to Mega in June of 2009, indicates the
2 approval of CCBs and spiffs for units R739 [VIN#81193115], and R663 [VIN#81121956].²⁵

3 206. Roadtrek's argument that it did not pay certain incentive claims to Mega because Mega
4 did not turn in the CCB forms is, thus, without merit. Based upon the evidence and testimony,
5 the prior course of dealing between the parties was that the CCB forms were not always
6 required for approval and payment of incentive claims and, regardless, Roadtrek received CCB
7 forms for the claims outlined above.

8 207. Exhibit 5 was created by Mega in the normal course of business and consists of all
9 unpaid incentives from the beginning of Mega's relationships with its franchisors, including 35
10 unpaid claims for Roadtrek. (Schilperoort, R.T. 8/17/11, 134:6-12, 140:4-7.) In addition to
11 listing all unpaid incentives, Exhibit 5 also provides the number of days elapsed since the claims
12 have been on the schedule. (*Id.* at 132:2-6.)

13 208. Roadtrek alleges it paid Mega for incentive claims through offsetting. (Roadtrek's
14 Opening Brief at 42:6-8.) Mega was not made aware Roadtrek was offsetting incentive
15 amounts. (Schilperoort, R.T. 8/19/11, 88:22-89:3.) Roadtrek, however, has failed to prove that
16 offsetting is an allowable form of payment under Cal. Veh. Code § 3076(a). Therefore,
17 Roadtrek has failed to pay Mega incentives for 35 claims and, as of 3/31/10, these claims were
18 90 to 602 days old. (Ex. 5.)

19 /
20 /
21 /
22 /
23 /
24 /
25 /
26 /
27 /

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.

