

1 SEYFARTH SHAW LLP
James D. McNairy (State Bar No. 230903)
2 Email: jmcnairy@seyfarth.com
400 Capitol Mall, Suite 2350
3 Sacramento, California 95814-4428
Telephone: (916) 448-0159
4 Facsimile: (916) 558-4839

5 SEYFARTH SHAW LLP
Louis S. Chronowski (Admitted *Pro Hac Vice*)
6 Email: lchronowski@seyfarth.com
Kavitha Janardhan (Admitted *Pro Hac Vice*)
7 Email: kjanardhan@seyfarth.com
131 South Dearborn Street, Suite 2400
8 Chicago, Illinois 60603
Telephone: (312) 460-5000
9 Facsimile: (312) 460-7000

10 Attorneys for Respondent
ROADTREK MOTORHOMES, INC.

11 THE STATE OF CALIFORNIA
12 NEW MOTOR VEHICLE BOARD

13 MEGA RV CORP dba)
14 MCMAHONS RV,) Protest Nos. 2199-10, 2201-10, 2205-10,
) 2206-10, 2208-10, 2209-10, 2211-10, 2212-
15 Protestant,) 10, 2233-10, 2244-10, 2245-10
)
16 v.) **RESPONDENT ROADTREK**
) **MOTORHOMES, INC.'S POST-**
17 ROADTREK MOTORHOMES, INC.) **HEARING BRIEF**
)
18 Respondent.)

19
20 Respondent Roadtrek Motorhomes, Inc. ("Roadtrek") established that Protestant Mega
21 RV Corp. d/b/a McMahons RV ("Mega") is not entitled to any relief from this Board. All of the
22 disputes between Roadtrek and Mega were caused by, and exacerbated, by Mega's conduct.
23 Each and every protest must be overruled.

24 Mega violated its Dealer Agreements and the Security Agreement with Roadtrek. Since
25 at least September 2009, Mega purposely withheld nearly \$300,000 from Roadtrek for
26 motorhomes sold by Mega. After settlement discussions between the parties broke down in
27

28
RESPONDENT'S POST-HEARING BRIEF

1 December 2009, Roadtrek availed itself of remedies allowed by the California Uniform
2 Commercial Code and demanded that Mega provide adequate assurances to Roadtrek. Mega's
3 response was "good luck." No adequate assurances were provided and, by law, Mega repudiated
4 its Agreements with Roadtrek.

5
6 Mega's response to every action by Roadtrek is one of the following. First, California
7 law bars whatever Roadtrek did. Second, Mega argues that it sold over 700 Roadtrek
8 motorhomes since 2001 and Roadtrek should have treated Mega differently. Third, Mega always
9 paid its bills so Roadtrek just should have waited. These arguments are too superficial.

10 After the smoke of Mega's arguments settle, none of these arguments save any of Mega's
11 protests. It is clear that Roadtrek did not violate California law or its agreements with Mega. Far
12 from it -- Roadtrek bent over backwards to support Mega. Roadtrek provided floor plan
13 financing to Mega. Roadtrek allowed Mega to pay it 30, 40 and 50 days late on most
14 motorhomes. Roadtrek provided McMahon with a holdback program in 2006-2008 that it was
15 not obligated to provide under the Dealer Agreements or California law. Roadtrek agreed to
16 support Mega in a program for the Anaheim Ducks. (Ex. 3; 8/10/11 Tr. at 17:10-19:25)¹.

18 The evidence presented at the hearing makes clear that Mega owes Roadtrek on a net
19 basis far more than vice versa. Even though this Board will not enter any money judgment, the
20 status of the amounts owing between the parties is important to understand the steps that
21 Roadtrek took in late 2009 and early 2010. Mega's deliberate failure to pay Roadtrek caused
22 Roadtrek significant financial problems. (9/23/11 Tr. at 192:15-193:16). This caused Roadtrek
23 to take certain actions, all legal, to protect itself and ensure continued sales in one of the most
24 important RV markets in North America.

25
26
27 ¹ "Ex." refers to exhibits admitted at the hearing. "Tr." refers to hearing transcripts.

1 For these reasons, and the reasons discussed below, Roadtrek requests that the Board
2 overrule all of Mega's protests.

3 **I. BACKGROUND**

4 Roadtrek is a Class B motorhome manufacturer located in Kitchener, Ontario, Canada.
5 (11/14/11 Tr. at 12-13). Roadtrek was founded by Jacques Hanemaayer. (*Id.*). Jacques' son,
6 Jeff Hanemaayer ("Hanemaayer"), grew Roadtrek to its current position as the leading Class B
7 motorhome seller in North America. (*Id.* at 12-15). James "Jim" Hammill is the President of
8 Roadtrek. (9/22/11 Tr. at 73).

10 Mega is a recreational vehicle dealer now headquartered in Westminster, California.
11 (8/9/11 Tr. at 77).² Mega was founded by Brent McMahon ("McMahon"). (8/9/11 Tr. at 87).
12 Mega has dealer locations in California and Arizona. (*Id.* at 77). Mega sells over 60 different
13 brands, or line makes, from 10 different manufacturers. (*Id.*)

15 Roadtrek and Mega started a relationship in approximately 2001. (8/9/11 Tr. at 103:20-
16 105:2). On February 22, 2006, Roadtrek and Mega executed a Dealer Agreement for Mega's
17 locations in Irvine and Colton. (Ex. 600). On January 31, 2008, Roadtrek and Mega executed a
18 Dealer Agreement for Mega's location in Scotts Valley. (Ex. 604).

19 **II. ISSUES**

20 **A. The March 2008 Meeting**

21 The March 2008 meeting in Kitchener was undoubtedly a significant event in the parties'
22 relationship.³ Mega understood this before the meeting. In a pre-meeting memorandum, unlike
23

24 _____
25 ² Based on discussions between the parties on April 4, it is anticipated that a stipulation or further
26 evidence will establish this point.

27 ³ Although the hearing covered evidence prior to this meeting, this meeting begins the period of
28 time relevant to the parties' dispute.

1 any written by Mega before, Mega identified two primary issues that needed to be discussed at
2 the meeting: McMahon's holdback payment for 2007 and interest. (Ex. 609; 8/12/11 Tr. at
3 93:22-94:8). Mega understood that the payment of interest under the parties' floor plan
4 agreement was an issue since at least December 2007 when McMahon met with Hanemaayer.
5 (8/10/11 Tr. at 93:22-94:8). In an apparent effort to explain why McMahon needed his 2007
6 holdback payment made, Mega also discussed in its memorandum all of the expenses that Mega
7 faced as a dealer. Although the Mega memorandum seemed to suggest that the expenses were
8 directed solely toward the sale of Roadtrek motorhomes, the expenses discussed in operating
9 Mega related to all of the brands that Mega sold, not just Roadtrek. (8/10/11 Tr. at 96:5 -96:14,
10 98:11-99:12).

11
12 At the meeting, the parties reached three significant agreements. First, Roadtrek agreed
13 to pay McMahon \$166,000 for 2007 holdback. Second, Mega agreed to pay Roadtrek \$70,000
14 (in two \$35,000 payments) for interest. The first \$35,000 payment was due in April 2008 and
15 the second \$35,000 payment was due in the third quarter of 2008. (Ex. 612; 8/10/11 Tr. at
16 147:22-148:13; 9/22/11 Tr. at 226:14-227:7). Mega was only to be charged interest for the time
17 between the sale of a motorhome to a customer and when Mega paid Roadtrek. (8/16/11 Tr. at
18 92:1-92:12). This is a significant benefit to Mega because GE and Bank of America charge
19 Mega interest as soon as a motorhome is delivered to Mega. (8/16/11 Tr. at 90:2-91:25;
20 11/15/11 Tr. at 20:15-20:20). Third, Mega and Roadtrek agreed to sign an agreement to
21 formalize the floor plan financing that Roadtrek was providing Mega. (Ex. 614).

22
23
24 Mega will, in its brief, undoubtedly make much about Hanemaayer's request for
25 McMahon to forego the holdback payment for 2007. As Hanemaayer explained, Roadtrek was
26

1 facing losses in 2007 and Hanemaayer asked whether McMahon, as a business partner, would
2 forego the payment for 2007. (11/14/11 Tr. at 44:11-44:23). However, this is a non-issue.
3 McMahon refused to forego the payment and the payment was made. (Ex. 615). The same
4 cannot be said for Mega's commitment to pay Roadtrek for interest. Mega paid the first \$35,000
5 payment, but never made the second payment. Mega fails to offer any explanation for not
6 making this payment. (1/12/12 Tr. at 6:10-6:21).
7

8 The parties executed the Security Agreement on April 3, 2008. (Ex. 614). The Security
9 Agreement set forth the terms by which Roadtrek would grant floor plan financing to Mega.
10 Roadtrek was not obligated to provide floor plan financing. Roadtrek floor plan financing
11 allowed Mega to use its third party floor plan lines for other brands. (8/16/11 Tr. at 96). Mega
12 was not obligated to use Roadtrek's floor plan financing either. Mega could have used
13 traditional third party floor plan lenders like GE or Bank of America.
14

15 **B. Mega's Payments Start to Lag**

16 From roughly mid-2008 to the end of 2009, Roadtrek constantly chased Mega for
17 payments on sold Roadtrek motorhomes. (Exs. 617, 637). Pursuant to Section 7(b) of the
18 Security Agreement, Mega was required to pay for each Roadtrek motorhome upon the sale of
19 the motorhome to a purchaser. (Ex. 614 at §7(b)). Roadtrek later agreed that Mega could pay it
20 upon the retail funding for each unit. (8/18/11 Tr. at 183:21-183:25). Retail funding signifies
21 the time when Mega receives all of the retail proceeds either from the customer or the customer's
22 retail financing lender. (8/18/11 Tr. at 184:17-185:17). However, Mega rarely complied with
23 this significant accommodation. By failing to pay Roadtrek on time, Mega was using Roadtrek's
24 funds to operate Mega's business. In the RV business, this is known as being "out of trust."
25 (8/18/11 Tr. at 198:4-198:22).
26

1 Exhibit 765 shows Mega's payment record for Roadtrek motorhomes. Even if it took ten
2 days after sale for retail funding, Mega paid late, by a significant amount of time, on the vast
3 majority of Roadtrek motorhomes that it sold. (Ex. 765).

4 Each time Cassidy or Hammill raised the issue of late payments to Mega, Mega would
5 respond by saying that it would catch up quickly. (Exs. 626, 637, 664, 641). However, these
6 promises were never fulfilled and Roadtrek kept chasing Mega for timely payments. (Exs. 735,
7 737, 740, 742, 743).

9 **C. Mega Starts to Offset**

10 Starting in August of 2008, Mega's Laurie Fosdick decided to offset certain obligations
11 of Mega to Roadtrek against certain purported obligations of Roadtrek to Mega. Fosdick did this
12 by short-paying invoices based on the consumer cash back incentives that she believed Mega
13 earned. (1/11/12 Tr. at 197:11-197:19; 1/10/12 Tr. at 27:19-28:1). This was a violation of
14 Roadtrek's consumer cash back policy because payment was approved after each sale and
15 Roadtrek would then send a check to Mega. (Ex. 516 at RMI 7367-68). Fosdick later informed
16 Schilperoort about her practice of offsetting. (1/10/12 Tr. at 84:21-85:4).

18 Mega's practice of offsetting created an accounting mess for Roadtrek. (Ex. 729; 8/19/11
19 Tr. at 185:23-186:14). This forced the parties to communicate on multiple occasions solely to
20 understand what Mega was purporting to do with respect to offsets. (Exs. 725, 729, 735).

22 Because Mega began offsetting against Roadtrek, and because of Mega's poor record of
23 making timely payments to Roadtrek, Roadtrek began offsetting liabilities against Mega. Exhibit
24 496 shows all of the offsets made by Roadtrek. After all offsets are applied, Mega still owes
25 Roadtrek over \$599,000 for motorhomes, parts and interest. (Ex. 496).

1 **D. 2009 Starts Auspiciously**

2 Roadtrek continued to hound Mega for payments on motorhomes in early 2009. Cassidy
3 was primarily responsible for communicating with Mega about this. (Ex. 632). By mid-2009,
4 the payment problems were significant enough that Hammill traveled to Irvine to meet with
5 Mega. (9/23/11 Tr. at 1431).

6 **E. Meeting in May and June 2009 at Irvine (Mill House)**

7 In May 2009, Mega and Roadtrek had a meeting at Mega. This meeting was the first
8 time that Mega provided Roadtrek with an “invoice” purporting to show what Roadtrek owed
9 Mega. (Ex. 639; 9/23/11 Tr. at 143). Mega apparently did this so that it could “paper” the file if
10 necessary for any upcoming legal dispute with Roadtrek. The invoice, however, was not
11 accurate.
12

13 First, the invoice purported that Roadtrek owed Mega \$50,000 for the 2007-2008
14 Anaheim Ducks sponsorship. (Ex. 639). However, McMahon testified that this amount was
15 paid. (8/12/11 Tr. at 169: 4-178:12; Ex. 657). Second, the invoice purports to require payment
16 in the amount of \$140,000 for 2008 holdbacks. (Ex. 639). However, any holdback payment was
17 to be made to McMahon, individually, not Mega. As McMahon testified, the holdback was the
18 way he got paid. (8/10/11 Tr. at 27-28). In any event, Mega only sold 83 Roadtrek motorhomes
19 in 2008.⁴ (Ex. 709 at McMahon 275). So, the most McMahon, not Mega, would be owed for
20 holdback is \$83,000 for 2008. Third, the invoice suggests that \$11,000 was owed for 2009
21
22

23 _____
24 ⁴ During the hearing, McMahon and Schilperoort contended that holdback payments were due
25 upon the shipment of a motorhome by Roadtrek to Mega. (8/10/11 Tr. at 32:11-33:16; 8/16/11
26 Tr. at 153:11-155:7) Hammill testified that it was due upon the retail sale. (9/22/11 Tr. at
27 146:17-147:6) McMahon’s and Schilperoort’s interpretation of “holdback” makes no sense.
28 However, even if their contention is accepted, Mega only accepted delivery of 68 Roadtreks in
2008. (Ex. 765).

1 holdback. However, there was no evidence presented of any holdback agreement between
2 Roadtrek and McMahon for 2009.

3 The parties had another meeting at the Mill House in June 2009. (9/23/11 Tr. at 183).
4 The parties discussed the devastating effect that Mega's \$1.3 million in out-of-trust units was
5 having on Roadtrek. (9/23/11 Tr. at 184-185). Mega promised to become current at this
6 meeting. (9/23/11 Tr. at 184-185). However, this did not happen.

8 **F. Parties' Discussions Between August and September 2009**

9 Roadtrek continued its efforts to try to get Mega to timely pay for motorhomes purchased
10 pursuant to the Security Agreement. The parties spent considerable time in phone conferences
11 discussing payments between the parties. (Ex. 657; 8/18/11 Tr. at 59:13-60:13). Mega
12 continued to promise to make prompt payments to Roadtrek, but this never happened. (Exs. 727,
13 737, 740, 742). Indeed, at about this same time, Mega and its consultant, Conrad Plomin,
14 decided to not pay Roadtrek for certain motorhomes because of their purported concern that
15 Roadtrek would file bankruptcy. (8/17/11 Tr., at 46:21-47:25; 8/19/11 Tr., at 92:4-92:19). There
16 is, of course, no legal justification for this policy and it is a violation of Mega's agreements with
17 Roadtrek. Mega did not inform Roadtrek that it was implementing this policy. (11/14/11 Tr., at
18 91:1-91:11). Moreover, Mega continued to tell Roadtrek that it would catch up in payments, but
19 it had no plan to do so based on the policy it implemented with Plomin. (Exs. 727, 737, 740,
20 742).

21
22
23 Roadtrek informed Mega in September that it would no longer provide floor plan
24 financing to Mega. (Ex. 654). Pursuant to the Dealer Agreements, Mega was required to
25 maintain sufficient floor plan financing to stock the minimum number of Roadtreks required
26 under the Dealer Agreements. (Exs. 600 and 604, § 330). Although Mega claims that it had full
27

1 control over its floor plan financing and that it could have taken on Roadtrek units at any time,
2 Mega did not floor plan with GE or Bank of America a sufficient number of Roadtreks. (8/16/11
3 Tr. at 106:3-109:12)

4 **G. Pomona RVIA Show 2009**

5 At the beginning of the Pomona RVIA Show in October 2009, Hammill met with
6 McMahan and Hammill told him that they needed to discuss payments for unpaid motorhomes.
7 (11/7/11 Tr. at 127:7-127:19). McMahan told Hammill to work with Schilperoort and Lankford
8 because he needed to focus on show sales. (11/7/11 Tr. at 127:7-127:19). Hammill then met
9 with Schilperoort and Lankford and told him that if an agreement regarding payment was not
10 reached, Roadtrek would repossess Mega's Roadtrek inventory at the end of the show. (11/7/11
11 Tr. at 129:12-130:1; 11/18/11 Tr. at 104:6-104:25).

12
13 Mega will undoubtedly make much about its claim that McMahan did not know about the
14 repossession before it happened. However, this is incredible given the unquestioned notice given
15 to at least Schilperoort and Lankford. But, most importantly, Roadtrek was not required to give
16 Mega notice. Section 14 of the Security Agreement provides that Roadtrek may repossess the
17 inventory without notice after a default by Mega. (Ex. 614 at § 14). Mega defaulted under
18 Section 13(a) of the Security Agreement for failing to pay for units when due.
19

20 **H. Settlement Discussions Fail**

21 Leading up to the Louisville RVIA Show in 2009, both parties recognized the urgent
22 need to reach an agreement about several matters between the parties. The parties appeared to
23 reach a settlement on December 1, 2009 at a dinner meeting. Over the next several days,
24 Roadtrek sent Mega a number of iterations of the settlement agreement. (Exs. 27, 421, 668,
25 672). Hanemaayer and Lankford worked on the language for the settlement agreement.
26
27

1 Roadtrek informed Mega throughout the settlement discussions that concluding the settlement
2 agreement was an urgent matter. (Ex. 674; 11/14/11 Tr. at 121:13-122:6). Ultimately, Mega
3 refused to sign the settlement agreement and Roadtrek demanded adequate assurances from
4 Mega, discussed below.

5 Normally, settlement discussions are not admissible in trial or hearings. Cal. Evid. Code
6 1119 (a). However, in certain circumstances, settlement discussions can be considered evidence.
7 *See Rinaker v. Superior Court.*, 62 Cal. App. 4th 155 (Cal. App. 3d Dist. 1998). Although both
8 parties apparently tried to try to reach a settlement, there was no requirement under the law or the
9 agreements that they did. Further, the settlement discussions unequivocally shows that Mega
10 owed Roadtrek more than vice versa.⁵

11
12
13 **I. Roadtrek Demands Adequate Assurances**

14 Following the failure of the parties' settlement discussions, Roadtrek attempted to
15 salvage its business relationship with Mega by seeking "adequate assurances" as provided under
16 the California Uniform Commercial Code (UCC). In his pre-hearing order on Roadtrek's
17 Motion to Defer Ruling on UCC Issues, Judge Skrocki determined that the Board may consider
18 "issues that are within Division 2 of the UCC relating to the claimed demand for assurances
19 made by Respondent and the consequences of Protestant's alleged responses or lack thereof to
20 the demand." (August 31, 2011 Order Deferring Ruling on Respondent's Motion to Reserve
21 Making Findings of Fact and Conclusions of Law on UCC Issues, at ¶ 51.) Judge Skrocki went
22 on to state that "[t]he obligation to pay for inventory sold to Protestant and the maintenance of an
23

24
25
26 ⁵ After netting the amounts owed to each party in Exhibit 27-7, Mega owed \$260,000 more to
27 Roadtrek. (Ex. 27-7).

1 On December 14, 2009, Jeff Hanemaayer of Roadtrek sent an email to Brent McMahon,
2 in which he stated:

3 "We will need adequate assurances as defined under the UCC before completing any
4 further transactions. Those adequate assurances must take the form of:

- 5 1. payment for out-of-trust units;
- 6 2. and for future deliveries, an irrevocable letter of credit OR a 25% deposit before
7 production and payment by cashier's check before delivery." (Ex. 674).

8 Brent McMahon responded to Hanemaayer's email with a two-word statement: "good
9 luck." (Ex. 674). McMahon's email was followed by an email from Schilperoort on December
10 16, 2009, in which he stated that "[t]his letter is to inform you that all settlement negotiations
11 between Roadtrek Motorhomes, Inc. and McMahon's RV have been terminated." (Ex. 677).

12 McMahon's "good luck" email and Mega's subsequent refusal to provide adequate
13 assurances within a reasonable period constituted a repudiation of the Dealer Agreements. *See*
14 *Trust Co.*, 1997 U.S. App. LEXIS at *7 (seller was justified in terminating contract where buyer
15 failed to provide assurances of any sort after being given ample time to do so). As such,
16 Roadtrek was entitled to suspend its performance under Cal. U. Comm. Code § 2-609(1).
17

18 In addition to being entitled to suspend its performance under Cal. U. Comm. Code § 2-
19 609, Roadtrek was entitled to withhold the delivery of units to Mega under Cal. U. Comm. Code
20 §2703. That section provides, "Where a buyer ... fails to make a payment due on or before
21 delivery or repudiates with respect to a part or the whole, then with respect to any goods directly
22 affected ... the aggrieved seller may (a) withhold delivery of such goods; ... (e) recover damages
23 for nonacceptance ... or in a proper case the price ...; (f) Cancel." Thus, Roadtrek had a
24 statutory right to suspend its performance under the Dealer Agreements.
25
26

1 **L. The Protests**

2 Mega filed 18 protests against Roadtrek. On March 1, 2012, Mega requested dismissal of
3 its modification protest regarding Scotts Valley, PR-2198-10. On March 6, 2010, the Board
4 issued an Order dismissing this Protest. Therefore, there are 11 protests remaining as
5 summarized in the following chart:
6

7 PROTEST NO.	8 MEGA LOCATION	9 ISSUE
10 PR-2199-10	Colton	Modification, V.C. § 3070(b)
11 PR-2201-10	Irvine	Modification, V.C. § 3070(b)
12 PR-2233-10	Colton	Notice, V.C. § 3072
13 PR-2244-10	Colton/Irvine	Termination, V.C. § 3070(a)
14 PR-2245-10 ⁶	Scotts Valley	Termination, V.C. § 3070(a)
15 PR-2206-10	Colton	Warranty Claims, V.C. § 3075
16 PR-2209-10	Scotts Valley	Warranty Claims, V.C. § 3075
17 PR-2208-10	Irvine	Warranty Claims, V.C. § 3075
18 PR-2205-10	Colton	Incentive Claims, V.C. § 3076
19 PR-2211-10	Scotts Valley	Incentive Claims, V.C. § 3076
20 PR-2212-10	Irvine	Incentive Claims, V.C. § 3076

21 **M. Mega Closes Irvine Location**

22 There is no dispute that Mega’s Irvine location was its flagship location. This is the
23 location where it received all Roadtrek motorhomes for Southern California, and distributed
24 them to Colton as necessary. (8/18/11 Tr. at 87:9-88:10). Mega’s Irvine location was at
25 “Traveland.” (8/10/11 Tr. 203:22-203:24). Traveland was a multi-dealer RV park. Mega’s
26 lease for the Irvine location ended on March 31, 2012.⁷

27 On March 19, 2012, Mega opened a new location in Southern California. The new
28 location in Westminster is 19 miles from Irvine. It is undisputed that Mega does not have a

6 On March 13, 2012, Judge Skrocki entered an Order stating that this protest would be dismissed with prejudice at the time all other pending protests come before the Board.

7 It is expected that this fact will be established by stipulation or further testimony as discussed with Judge Hagle on April 4, 2012.

1 Roadtrek dealership agreement for Westminster. There is no reference in Exhibit 600 to the
2 Westminster location. Mega will undoubtedly take the ridiculous position that it has a Dealer
3 Agreement for Westminster, despite its repudiation of the Irvine/Colton Agreement. There is no
4 support for this proposition under California law. *Goodman v. Citizens Life and Cas. Ins. Co.*,
5 61 Cal. Rptr. 682, 687 (Cal. Ct. App. 1967), citing Cal. Civ. Code § 1698 (“A contract in writing
6 may be altered by a contract in writing, or by an executed oral agreement, and not otherwise”).
7 In order to succeed on its claim that its franchise rights transferred to the Westminster location,
8 Mega was required to present evidence to show that the parties entered an oral agreement for that
9 location that meets all the elements of a contract, such as mutual assent and consideration. *Id.*
10 There is no such agreement. Roadtrek never agreed to allow Mega to sell Roadtreks from
11 Westminster.
12

13
14 **III. THE BOARD DOES NOT HAVE JURISDICTION OVER THE**
15 **MODIFICATION PROTESTS: PR-2199-10 (COLTON) AND PR-**
16 **2201-10 (IRVINE)**

17 In its first set of protests against Roadtrek, Mega alleges that Roadtrek improperly
18 modified its Dealer Agreements without notice by appointing Mike Thompson’s RV as a dealer
19 within 60 miles of Mega’s Scotts Valley, Colton and Irvine dealerships. Under Cal. Veh. Code
20 3070(b), “a franchisor of a dealer of recreational vehicles may not modify or replace a franchise
21 with a succeeding franchise if the modification or replacement would substantially affect the
22 franchisee’s sales or service obligations or investment, unless the franchisor has first given the
23 board and each affected franchisee written notice thereof at least 60 days in advance of the
24 modification or replacement.” It was Mega’s burden during these hearings to show that
25 Roadtrek “modified” its franchise in a manner which will “substantially affect [Mega’s] sales or
26 service obligations or investment.” (November 29, 2010 Proposed Sequence of Presenting
27

1 Evidence and Exhibits at Merits Hearing, at 4.) On March 6, 2012, Mega voluntarily dismissed
2 its modification protest regarding Scotts Valley, PR-2198-10. On March 13, 2012, an Order was
3 entered dismissing this Protest. (March 13, 2012 Order). Moreover, Mega failed to offer any
4 evidence of any modification of the Dealer Agreements. (Exs. 600, 604).

5
6 Mega failed to meet that burden because it failed to prove that Roadtrek modified its
7 franchise. Section 108 of the Dealer Agreements for the Colton and Irvine locations provides as
8 follows:

9 Dealer territory shall be limited to an area within 60 miles of
10 Irvine, California, Colton California and Stanton, California. So
11 long as Dealer remains in *good standing* during the terms of the
12 Agreement, Home & Park will not locate another dealer within
13 Dealer's territory. (Ex. 600, at § 108) (emphasis added).

14 Similarly, Section 108 of the Scotts Valley Dealer Agreement provides as follows:

15 Dealer territory shall be limited to a 50 mile radius of Scotts Valley, CA,
16 so long as Dealer remains in *good standing* during the terms of this
17 agreement, Roadtrek will not locate another dealer within Dealer's
18 territory. Good standing includes hitting minimum sales targets. (Hearing
19 Ex. 604, at § 108) (emphasis added).

20 Unlike "good cause," which is a statutory requirement for termination under 3070, "good
21 standing" is a contractual term that was negotiated between the parties and set forth in the written
22 terms of the Dealer Agreement. (8/12/11 Tr. at 15:8-15:18). Accordingly, the determination of
23 whether Mega is in "good standing" is not a matter within the Board's jurisdiction. Instead, it
24 was within Roadtrek's discretion to determine whether Mega was in "good standing" and
25 therefore entitled to maintain exclusive territories under the Dealer Agreements.

26 Regardless of whether it is within the Board's jurisdiction to determine whether Mega
27 was in "good standing," the evidence presented at the hearing unequivocally proves that Mega
28

1 failed to meet the “good standing” requirements set forth under the terms of the Dealer
2 Agreements. Mega specifically failed to meet the following requirements:

3 *Stocking*

- 4
- 5 • To be in good standing under the Colton/Irvine Agreement, Mega was required to stock a
6 minimum of 22 Roadtrek motorhomes at each of its locations, for a total of 44 Roadtrek
7 units. Mega consistently failed to meet that requirement from November of 2008 to
8 December of 2009. (Exs. 506, 600 at § 109).
 - 9 • To be in good standing under the Scotts Valley Agreement, Mega was required to stock
10 20 Roadtrek motorhomes at its Scotts Valley location. From October of 2008 through the
11 end of 2009, Mega’s stocking levels at this location were consistently below the
12 minimum requirement. (Exs. 507, 604 at § 110).

13 *Sales*

- 14 • To be in good standing under the Colton/Irvine Agreement, Mega was required to sell a
15 minimum of one hundred (100) new Roadtreks per calendar year. Mega sold 55
16 Roadtreks in 2008 and 49 Roadtreks in 2009. (Ex. 600, at § 111; 508).
- 17 • To be in good standing under the Scotts Valley Agreement, Mega was required to sell a
18 minimum of sixty (60) Roadtreks per calendar year. Mega sold only 30 Roadtreks in
19 2008 and 20 Roadtreks in 2009. (Ex. 604, at § 109; 509).

20 *Credit*

- 21 • To be in good standing under the Colton/Irvine Agreement and the Scotts Valley
22 Agreement, Mega was required to maintain and employ adequate net working capital and
23 lines of wholesale credit to meet its requirements under the Dealer Agreement. After
24 Roadtrek withdrew its flooring line from Mega in October of 2009, Mega failed to
25 maintain sufficient credit to meet its obligations. (Exs. 600 and 604, at § 330; Andino
26 Dep., 36:1-37:5, Ex. 676).

27 *Financial Reports*

- 28 • To be in good standing under the Colton/Irvine Agreement and the Scotts Valley
Agreements, Mega was required to furnish to Roadtrek its financial reports on an annual
basis. Despite repeated requests, Mega failed to submit its 2007 financial statements to
Roadtrek until October, 2008. (Exs. 619 and 629). Mega never submitted its 2008 or
2009 financial statements.

Mega was also not in good standing under the Dealer Agreements for other reasons.

“Good standing” is not limited in the Dealer Agreements to those provisions where good
standing is mentioned. Mega was not in good standing also because it repudiated the Dealer
Agreements by refusing to provide adequate assurances to Roadtrek. Roadtrek’s appointment of

1 Mike Thompson's was allowed under the express terms of the Dealer Agreements and, therefore,
2 cannot constitute a "modification" of Mega's franchise.

3 California case law illustrates that there is no modification here. In *Ri-Joyce Inc. v. New*
4 *Motor Vehicle Bd.*, 3 Cal. Rptr. 2d 546, 553 (Cal. Ct. App. 1992), a franchisee alleged an
5 improper modification under Vehicle Code Section 3060⁸ after a franchisor established a new
6 dealership more than 10 miles away from its dealership location. The dealer agreement at issue
7 in *Ri-Joyce* gave the franchisor the power to appoint another dealer "near" the dealer's approved
8 location. Applying the parol evidence rule, which states that "extrinsic evidence cannot be
9 admitted to prove what the agreement was...because as a matter of law the agreement is the
10 writing itself," the court held that "where a franchisee asserts that a franchisor is attempting to
11 modify his franchise the first step is to determine what *rights were granted under the franchise.*"
12 3 Cal. Rptr. 2d at 552. (emphasis added). The court found no modification because the
13 "franchise agreement provides that the appointment of another dealer near Ri-Joyce's location is
14 an action Mazda *may take in the event its business expectations are not fulfilled and if Mazda*
15 *determines that it would be in the best interests of customers or of Mazda to do so.*" 3 Cal. Rptr.
16 2d at 553 (emphasis added).

17 Similarly, in *BMW of North Am., Inc. v. New Motor Vehicle Bd.*, 209 Cal. Rptr. 50 (Cal.
18 Ct. App. 1984), a dealer protested the establishment of a new dealership within its county. The
19 franchise agreement in that case gave the franchisor the power to appoint an additional dealer
20 with the AOR (area of responsibility) of an existing dealer. The dealer claimed that the
21 establishment of the new dealership constituted a modification under Section 3060.
22
23
24

25
26 ⁸ Section 3060 is an analogous provision to Section 3070, applying to modifications of motor
27 vehicle franchises.

1 The *BMW* court rejected the dealer's argument that the establishment of a new dealership
2 outside the dealer's relevant market area was a modification. In doing so, the court cited to the
3 *express terms of the franchise agreement*, which it defined as "an agreement between two private
4 entities arising out of 'the general right to engage in a lawful business, part of the liberty of the
5 citizen.'" 209 Cal. Rptr. at 51. The court further held that:

7 In determining the rights and liabilities of BMW and Watkins
8 under the franchise agreement, *the first reference must be the*
9 *written terms of the contract.* ...BMW expressly reserved the right
 to appoint other dealers in BMW products, whether located in
 Watkins' geographic area or not. (emphasis added).

10 On those findings, the *BMW* court determined that the manufacturer "was acting pursuant to,
11 rather than in derogation of, Watkins' franchise agreement." *Id.*

12 In accordance with *Ri-Joyce* and *BMW*, the Board has only sustained modification
13 protests where a manufacturer's actions fail to conform to the written terms of the franchise. In
14 *Novato Toyota v. Toyota Mot. Dist., Inc.*, PR-13-75, for example, a manufacturer sent a dealer a
15 letter stating that the dealer was precluded from selling its franchise to an existing business or
16 making any change in ownership or management. The Board sustained the dealer's protest,
17 because the existing franchise agreement would have permitted the sale and, therefore, the letter
18 sent to the dealer deviated from the terms of the franchise and constituted a modification.
19 Similarly, in *Champion Motorcycles, Inc. dba Champion Honda Yamaha v. Yamaha Motor*
20 *Corp. USA*, PR-498-83, a dealer alleged that a manufacturer modified its franchise agreement by
21 mandating additional requirements as a prerequisite for a dealer's procurement of the
22 manufacturer's products, which were covered under the franchise agreement. The Board
23 determined that the manufacturer's action resulted in a modification of the dealer's franchise
24
25
26
27
28

1 because the franchise agreement gave the dealer the right to sell the manufacturer's products
2 without the prerequisite.

3 Unlike the manufacturers in the *Novato* and *Champion* protests, Roadtrek is not seeking
4 to impose additional obligations or withhold rights owed to Mega under the terms of the parties'
5 franchise agreements. Instead, Roadtrek is exercising its right under the terms of the Agreements
6 to appoint a new dealer in Mega's territory, based on Mega's failure to maintain good standing.
7 In other words, Roadtrek is not attempting to add, change or delete any language of the Dealer
8 Agreements. There is no modification and, therefore, Mega's modification protests should not
9 be sustained.
10

11 **IV. ROADTREK WAS NOT REQUIRED TO GIVE NOTICE OF**
12 **APPOINTMENT OF MIKE THOMPSON'S RV AT COLTON:**
13 **PROTEST NO. (PR-2233-10)**

14 In a protest (PR 2233-10) filed under Cal. Veh. Code Section 3072, Mega alleges that
15 Roadtrek failed to notify the Board and Mega that it intended to establish Mike Thompson's RV
16 as a Roadtrek franchise in Colton, California. In his pre-hearing Order Granting in Part and
17 Denying in Part Protestant's Motions in Limine, Judge Skrocki ruled that "[t]he only issue to be
18 determined regarding the establishment of the additional dealership as a Roadtrek franchise in
19 Colton, California is whether the language in Section 3072(b)(5) is applicable to the facts of this
20 establishment." (August 31, 2011 Order Granting in Part and Denying in Part Protestant's
21 Motions in Limine, at ¶ 8.)

22 Cal. Veh. Code Section 3072(a) provides that "if a franchisor seeks to enter into a
23 franchise establishing an additional motor vehicle dealership with a relevant market area where
24 the same recreational vehicle line-make is then represented...the franchisor shall, in writing, first
25 notify the board and each franchisee in that recreational vehicle line-make in the relevant market
26
27

1 area of the franchisor's intention to establish an additional dealership." Section 3072(b) contains
2 several exemptions, including an exemption under subsection (5) "*where the dealership location*
3 *subject to the protest was established on or before January 1, 2004*" (emphasis added).

4 Roadtrek's establishment of Mike Thompson's RV at Colton clearly falls within this exemption.

5
6 Standard principles of statutory construction provide that, "[i]f the words themselves are
7 not ambiguous, we presume the Legislature meant what it said, and the statute's plain meaning
8 governs." *Wells v. One2One Learning Found.*, 141 P.3d 225, 236 (Cal. 2006). "In construing...
9 statutory provisions a court...may not rewrite the statute to conform to an assumed intention
10 which does not appear from its language." *Cal. Teachers Ass'n v. Governing Bd. of Rialto*
11 *Unified Schl.*, 927 P.2d 1175, 1189 (Cal. 1997).

12
13 Although the term "dealership location" is not defined within the Code, it does not need
14 to be because its meaning is plain on its face. It is the location of a dealership. Nonetheless, the
15 term "dealer" is defined as a person who "is engaged wholly or in part in the business of selling
16 vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for
17 sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the vehicles are
18 owned by the person." Cal. Veh. Code § 285. There can be no dispute that Mike Thompson's
19 Colton facility is a dealership location. There is also no dispute that Mike Thompson's RV has
20 had an RV dealer location in Colton since at least July 1, 1999. (1/13/12 Tr. at 7-8; 11/8/11 Tr.
21 at 24:20-27-5; 11/15/11 Tr. at 177-178). Thus, under a plain reading of the statute, Roadtrek was
22 not required to give notice upon the establishment of Mike Thompson as a Roadtrek franchise.

23
24 Roadtrek made this argument before Judge Skrocki in its motion to dismiss this protest.
25 Though Judge Skrocki disagreed that Section 3075(b)(5) was plain in its meaning, he found that
26 "no conclusive interpretation of the meaning and scope of Section 3073(b)(5) has been made."
27

1 (July 26, 2010 Order Denying Motion to Dismiss, at ¶ 103) (emphasis added). In particular, he
2 stated that “[t]he difficulties arise when one attempts to apply the language in Section 3072(b)(5)
3 together with the definitions listed and discussed above and in conformity with Section 3072(a)”
4 and that “the language of the section is less than artful... .” (July 26, 2010 Order at ¶ 47, p.15 fn.
5 12).
6

7 If the Board believes that 3075 is in fact vague, as Judge Skrocki’s order suggests, it
8 would be unjust to hold a manufacturer such as Roadtrek accountable to the requirements of
9 Section 3075(a) without either the legislature or a California court first clarifying the 3072(b)(5)
10 exception. One of the purposes of the Vehicle Code is to “legitimize the activity of motor
11 vehicle brokering by defining that activity.” 1994 Cal. ALS ch 1253. The Code does not serve
12 its intended purpose if a manufacturer such as Roadtrek cannot follow a plain reading of its
13 provisions.
14

15 Indeed, the evidence presented at the hearings shows that Roadtrek reviewed Section
16 3075(b)(5) prior to appointing Mike Thompson as a dealer in Colton and, based on its review,
17 Roadtrek believed in good faith that it did not need to provide written notice to Mega. When
18 asked why Roadtrek did not give notice to Mega RV that it was appointing a new dealer in
19 Colton, California, Jim Hammill testified that “our reading of California law said it wasn’t
20 required.” Hammill testified that Section 3075(b)(5)’s plain language “meant that we could
21 establish a dealership within a market -- within the relevant market area of another dealership as
22 long as the dealership we were establishing was -- the location was originally established before
23 January 1st, 2004.” (11/8/11 Tr. at 24:20-27:5; 11/15/11 Tr. at 177-178). RV manufacturers like
24 Roadtrek must be able to read the statute consistent with its plain language without incurring
25 liability. For this reason, it would be unjust and illegal, based on California law and on the plain
26
27
28

1 reading of the statute, for the Board to find against Roadtrek in this protest. If Mega has a
2 problem with the statute, it should ask the California legislature to change it.

3 **V. ROADTREK HAS GOOD CAUSE TO TERMINATE MEGA RV:**
4 **PROTEST NOS. PR-2244-10 (COLTON/IRVINE); PR-2245-10**
5 **(SCOTTS VALLEY)**

6 In three protests filed under Vehicle Code 3070(a), Mega asserts that Roadtrek
7 terminated its Dealer Agreement for the Colton and Irvine locations and its Dealer Agreement
8 for the Scotts Valley location without good cause. These protests should be denied because (1)
9 Mega's Scotts Valley location is no longer in operation and therefore its protest with respect to
10 that location is moot, (2) Mega's Irvine location is also no longer in operation and the Board
11 does not have jurisdiction to hear a protest with respect to the Westminster location, and (3) in
12 any event, Roadtrek has proven that it has good cause to terminate the Dealer Agreements, with
13 respect to all Mega locations, Irvine, Colton and Scotts Valley.

14
15 **A. Mega's Scotts Valley Protest (PR 2245-10) is Moot**

16 It is undisputed that Mega closed the Scotts Valley location in 2010, rendering any issues
17 relating to the termination of the Scotts Valley Dealer Agreement moot. (8/12/11 Tr. at 208:2 –
18 208:8). Under California law, "a case becomes moot when a court ruling can have no practical
19 impact or cannot provide the parties with effective relief." *Simi Corp. v. Garamendi*, 1 Cal. Rptr.
20 3d 207, 212 (Cal. Ct. App. 2003). The only relief that the Board can award Mega is to block the
21 termination of the Scotts Valley dealership. That relief has no practical effect on the Scotts
22 Valley dealership, which is already closed.

23
24 In his March 13, 2012 Proposed Order Granting Respondent's Motion to Dismiss Protest
25 No. PR-2245-10, Judge Skrocki made the following conclusion:

1 Any decision issued by the Board that the protest be sustained and
2 that Roadtrek not be permitted to terminate the franchise of Mega
3 for the Scotts Valley dealership will not have the effect of
4 maintaining the existence of the dealership with all of the benefits
5 generated by an ongoing business and avoiding all of the negatives
6 that would occur if Roadtrek were permitted to terminate the
7 franchise (which would ordinarily result in the closure of an
8 ongoing dealership).

9 Based on the arguments set forth herein, and on Judge Skrocki's proposed order, Protest No.
10 2245-10 should be denied or dismissed as moot. Based on Judge Skrocki's proposed order, it is
11 understood that this protest will be dismissed upon Judge Hagle's decision on the remaining
12 protests. (March 13, 2012 Proposed Order Granting Respondents Motion to Dismiss Protest No.
13 PR-2245-10, at ¶ 78).

14 **B. Mega No Longer Operates a Dealership in Irvine and Cannot**
15 **Maintain a Protest for its Westminster Location**

16 Mega filed this protest on July 13, 2010, asserting that Roadtrek improperly terminated
17 its location at 6331 Burt Road, #10, Irvine, CA. Throughout the course of these hearings, Mega
18 represented that it would maintain its location at Irvine indefinitely. However, through the
19 parties' briefing on Roadtrek's Motion to Issue Subpoenas to Traveland and the Irvine Company,
20 it was uncovered that Mega was being evicted from the Traveland facility in Irvine on March 1,
21 2012. (Protestant's Opposition to Roadtrek's Motion to Issue Subpoenas to Traveland and the
22 Irvine Company, Ex. B). Mega subsequently dismantled its Irvine dealership and opened a
23 facility in Westminster. Although there are no specific provisions in the Vehicle Code requiring
24 a dealer to give notice of the relocation of its dealership, section 11713.3 of the Code, which
25 relates to assignment of franchises, lists as one of the factors that a manufacturer may consider in
26 withholding consent to assignment, "the location of the proposed dealer." At no point did Mega
27 inform Roadtrek of its relocation or attempt to enter into a written franchise agreement with
28 Roadtrek for its Westminster location.

1 to have jurisdiction over this protest there must be a 'franchise' in existence under the terms of
2 which McMahon's Palm Desert would be a 'franchisee' and Roadtrek would be a 'franchisor.'"
3 Proposed Order Granting Respondent's Motion to Dismiss Consolidated Protests with Respect to
4 PR-2198-10, at 29. Based on his finding that "[t]here is nothing before the Board to establish
5 factually that there is a 'written agreement' between McMahon's Palm Desert and Roadtrek that
6 would qualify as a franchise," Judge Skrocki dismissed the protest brought by Mega's Palm
7 Desert location.
8

9 Similarly, there is no written agreement between Mega's Westminster location and
10 Roadtrek that would qualify as a franchise. The Westminster location is not a "franchisee" and
11 the Board does not have jurisdiction to hear any protests brought on its behalf. Thus, Mega's
12 Westminster location cannot maintain a termination protest against Roadtrek.
13

14 **C. In any Event, Roadtrek Has Good Cause to Terminate the**
15 **Colton, Irvine and Scotts Valley Dealerships**

16 Even if the Board elected to determine Mega's remaining protests on their merits,
17 Roadtrek has met its burden of proving that it has good cause to terminate the Scotts Valley,
18 Irvine and Colton Dealer Agreements.

19 Vehicle Code Section 3070(a) provides that a franchisor "may not terminate or refuse to
20 continue a franchise" without adequate notice and "good cause." Section 3071 provides that
21 "good cause" includes, but is not limited to:

22 (a) the amount of business transacted by the franchisee, as compared to the business
23 available to the franchisee;

24 (b) the investment necessarily made and obligations incurred by the franchisee to
25 perform its part of the franchise;

26 (c) the permanency of the investment;

1 (d) whether it is injurious or beneficial to the public welfare for the franchise to be
2 modified or replaced or the business of the franchisee disrupted;

3 (e) whether the franchisee had adequate new recreational vehicle sales and, if
4 required by the franchise, service facilities, equipment, vehicle parts, and qualified service
5 personnel, to reasonably provide for the needs of the consumers of the recreational vehicles
6 handled by the franchisee and has been and is rendering adequate services to the public;

7 (f) whether the franchisee fails to fulfill the warranty obligations agreed to be
8 performed by the franchisee in the franchise; and

9 (g) the extent of the franchisee's failure to comply with the terms of the franchise.

10 As Judge Skrocki discussed in his proposed order granting Roadtrek's motion to dismiss the
11 Scotts Valley termination protest, "the Board is required to take into account 'existing
12 circumstances' as well as the specific factors stated in the Vehicle Code" in evaluating whether
13 there is good cause for termination. (May 19, 2012 Proposed Order Granting Respondent's
14 Motion to Dismiss Protest No. PR-2245-10, at ¶ 63.) The existing circumstances here include
15 the fact that the Irvine and the Scotts Valley locations are closed, and that Mega has transacted
16 no Roadtrek business from its Colton location since late-2009. Regardless of the outcome of
17 these protests, Mega will not have a dealership in either Scotts Valley or Irvine, and Mega most
18 likely cannot have a dealership in Colton because it does not have the financing to stock
19 Roadtrek units. Thus, "the legislative intent of maintaining the status quo and possibly
20 preventing the loss of the investment of the franchisee and the loss of the public of the goods and
21 services provided by the franchisee's dealership cannot now be effected." *Id.*, at ¶ 59.

1 **1. Mega is Transacting No Business on Behalf of Roadtrek**
2 **(Sec. 3071(a))**

3 Roadtrek has good cause to terminate Mega's franchises under subsection (a) of Section
4 3071 because Mega has voluntarily ceased operating as a Roadtrek franchise since at least
5 October of 2009. Thus, Mega is transacting no business within the otherwise profitable Southern
6 California market. Mega also repudiated its Dealer Agreements.

7 During the hearings, Brent McMahon characterized Southern California as the "premier
8 market in the country." (8/12/11 Tr. at 229:3-229:5). Yet, it is undisputed that, in the past two
9 years, Mega has not sold enough Roadtreks in Southern California to maintain a presence in that
10 market. In 2009, Mega sold only 49 Roadtreks from its Colton and Irvine locations, combined.
11 (Ex. 508). As Hanemaayer testified regarding the urgency of the parties' December, 2009
12 settlement discussions, "Southern California is a huge market to us and [Mega's lack of sales]
13 was really hurting Roadtrek financially." (11/7/11 Tr. at 197:9-197:18).

14 In addition to failing to meet its sales requirements, Mega has failed to maintain any
15 Roadtrek inventory, much less sufficient inventory to meet its obligations under the Dealer
16 Agreements, from late-2009 to the present. In October of 2009, Roadtrek repossessed units from
17 Mega due to Mega's failure to meet the terms of the parties' Security Agreement. After losing
18 its ability to floor units directly from Roadtrek due to nonpayment, Mega made no effort to
19 create space on its existing credit lines with GE Capital and Bank of America to maintain its
20 required inventory levels, to settle its accounts with Roadtrek and to resume operating as a
21 Roadtrek dealer. Despite Schilperoort's November 24, 2009 email to Roadtrek requesting the
22 shipment of Roadtrek units, Mega still refused to pay Roadtrek for units that it sold out of trust.
23 (Ex. 663). On November 26, 2009, two days after receiving Schilperoort's email, Roadtrek sent
24 a letter to Brent McMahon requesting that Mega agree to an acceptable stocking level for its
25

1 stores and secure adequate financing for Roadtrek units so that Mega could resume selling
2 Roadtreks. (Ex. 664). Mega refused to meet those conditions. Mega's decision to essentially
3 cease its operations as a Roadtrek dealer, and repudiate its Dealer Agreements, in and of itself
4 constitutes sufficient good cause to terminate its franchise.

5
6 Mega has not transacted any business, despite a substantial amount of business being
7 available to it. Thus, this factor favors Roadtrek and there is good cause for termination under
8 subsection (a) of Section 3071.

9 **2. Mega Has Made a Minimal and Short Term Investment**
10 **in its Roadtrek Facilities (Sec. 3071 (b) and (c))**

11 Roadtrek has proven that Mega has made no substantial and long-term investment that
12 would be adversely impacted by its termination. Accordingly, Roadtrek has met its burden with
13 respect to subsections (b) and (c) of Section 3071.

14 In his testimony, McMahon identified three investments that Mega purportedly made to
15 perform its sales and service obligations under the Dealer Agreements: (1) Mega leased property;
16 (2) Mega ordered parts; (3) Mega purchased equipment. (8/9/11 Tr. at 141:21 -142:2). All three
17 of those "investments" are short-term, low risk obligations that Mega ultimately failed to uphold.

18
19 With respect to its leasing arrangements for the Scotts Valley, Irvine and Colton
20 locations, Mega only holds a lease for one of those dealer locations, at Colton. Mega closed its
21 Scotts Valley location in 2010, and was evicted from its Irvine facility in March of 2012, so
22 Mega has no present investment in those leases. Mega's lease at Westminster cannot be
23 considered an "investment" because Mega never obtained approval from Roadtrek or entered
24 into a franchise for that location. *See Serpa Automotive Group v. Volkswagen of America*, PR-
25 1977-05, at ¶ 86 (new dealer site was not an investment because the location "was never
26 approved as an authorized site for the VWoA franchise"). With respect to Mega's lease at
27

1 Colton, Mega uses its leased space to sell several different line makes -- not just Roadtrek.
2 Therefore, if Mega's Colton franchise is terminated, Mega can continue to sell other products
3 from its Colton location and its investment will not be affected. In fact, as the site survey
4 showed, the Colton location was full of motorhomes and RV's.

5 Mega's other two purported investments, parts and equipment, are also not long-term
6 investments because, in any case, Roadtrek is obligated under the Vehicle Code Section
7 11713.13 (d) to repurchase parts, signs, special tools and inventory from Mega within 90 days
8 following the termination of Mega's franchises. Thus, Mega's investments in parts and
9 equipment should have no bearing on whether Roadtrek can terminate Mega's franchise.

10 Mega also has made no facility-related investments in order to carry the Roadtrek line.
11 As Hammill testified, Roadtrek does not require dealers to make special investments in their
12 facilities. (9/22/11 Tr. at 94). McMahon and Schilperoort agreed that no specific investment to
13 sell Roadtrek was made at any location. (8/15/11 Tr. at 94:23-95:5). Roadtrek only requires that
14 dealers have the facilities to meet the terms of the dealer agreement:
15
16

17 Q: [F]rom the time that you have been employed at Roadtrek, are you aware of what
18 investment is required of a prospective dealer in order to obtain a Roadtrek franchise?

19 A: Required by who?

20 Q: By Roadtrek.

21 A: There's no requirement for an investment.

22 Q: Is there any requirement for a specific kind of facility?

23 A: No.

24 Q: Is there any requirement for a specific kind of -- or size of lot?

1 A: The lot needs to suit the market needs to be able to stock the right amount of
2 inventory to match the inventory requirements. (11/9/11 Tr. at 155:2-155:16).

3 Finally, despite Mega's previous attempts to inflate its expenditures on advertising and
4 staffing, in reality the investments that Mega has made in those areas are *de minimus*. In a memo
5 labeled "Points of Contention," prepared by Mega in March of 2008, Mega claimed that it hired
6 a "hundred employees that are sales staff that represent the Roadtrek product." (See Ex. 609).
7 However, when questioned about that statement, McMahon testified that "I would be honest and
8 say that's probably a little bit of an exaggeration." Similarly, Mega's average monthly cost of
9 \$140,000 for advertising was "cross the spread of all the events and everything that we do for a
10 vehicle." McMahon testified that "[w]e weren't spending \$140,000 a month just focusing on
11 Roadtrek." (8/10/11 Tr. at 96:5 -96:14, 98:11-99:12). There is no other evidence of any material
12 investment by Mega to sell Roadtrek motorhomes.
13
14

15 **3. Mega's Termination Would Not be Injurious to the**
16 **Public (Sec. 3071(d))**

17 The termination of Mega's franchises would not be injurious to the public because (1)
18 Mega has not provided any services to the public in over two years, and (2) the service that Mega
19 provided to the public was poor. (9/23/11 Tr. at 171-172; Exs. 682, 683). Therefore, it would be
20 in the public interest to terminate Mega's franchise so that customers can be served by a better
21 performing Roadtrek dealer.

22 In about March of 2010, it came to Roadtrek's attention that Mega was falsifying
23 signatures on consumer cash back forms. (1/10/12 Tr. at 94:22-95:12). Based on that
24 information, Roadtrek conducted an audit by comparing each signature on a consumer cash back
25 form to each signature on the customer's retail sales contracts. (1/10/12 Tr. at 96:14-96:22,
26 98:12-98:20). Roadtrek determined that the signatures did not match, and then sent a
27

1 questionnaire to its customers requesting responses on whether the customer signed the cash
2 back form. The customers confirmed in writing and in depositions that they did not sign
3 consumer cash back forms, and that Mega did not even notify them that cash back incentives
4 were available on their units. (Exs. 691, 692, 693; Kurt Brittain Dep. at 9:1-9:7, 10:8-10:20;
5 Robin Hays Dep. at 7:24-8:4; 11:6-11:19; Tom DeRossett Dep. at 13:23-14:5, 14:8-15:5).

7 One customer, Tom DeRossett, also testified that Mega delayed payment to him for a
8 vehicle that he traded-in, and he had to make several visits to Mega's Irvine dealership to receive
9 his money. DeRossett was forced to make payments on the vehicle before he received his
10 payment from Mega. (DeRossett Dep. at 12:14-12:22). DeRossett described his experience in
11 dealing with Mega as "very difficult" and stated that he "wouldn't even want to drive by the
12 place." (DeRossett Dep. at 13:13-13:21).

14 Evidence of Mega failing to maintain business operations, misleading its customers, and
15 falsifying claim forms is sufficient to prove that Mega has failed to provide adequate services to
16 the public. Therefore, terminating Mega's franchise would be no more injurious to the public
17 welfare than allowing Mega to continue as Roadtrek dealer.

18 **4. Mega has Failed to Maintain Adequate Sales and**
19 **Service Facilities, Equipment, Vehicle Parts and**
20 **Qualified Personnel to Provide Adequate Services to the**
21 **Public (Sec. 3071(e))**

22 Since October 2009, and continuing, there has been virtually no Roadtrek sales or service
23 activity from any of Mega's locations. There are no dealerships at Scotts Valley and Irvine,
24 which are authorized locations agreed upon by the parties, and Mega has failed to secure
25 financing to order sufficient parts and inventory to serve customers near its Colton location.
26 Mega's failure to maintain Roadtrek dealerships is sufficient to warrant termination.

27 *Thompson's Auto & Truck Center, Inc. v. DaimlerChrysler Motors Co.*, PR-1965-05, ¶ 78 (good

1 cause for termination existed where dealer did not maintain sales or service facilities for more
2 than a year prior to the date of the notice of termination).

3 As discussed above, Mega failed to maintain an adequate Roadtrek inventory after
4 October 2009.

5
6 **5. Mega Failed to Comply With the Terms of its Franchise
(Sec. 3071(g))**

7 Roadtrek has proven good cause under subsection (g) of Section 3071 by presenting
8 evidence that Mega failed to comply with the terms of the Dealer Agreements. In addition to
9 failing to meet sales and stocking requirements and failing to provide adequate services to the
10 public (see above), Mega failed to comply with the terms of the franchise by (1) as discussed
11 above, repudiating its Dealer Agreements, (2) using customer leads developed by Roadtrek to
12 sell vehicles to Roadtrek's competitors, including Pleasure-Way (Section 140), (3) failing to
13 maintain sufficient working capital and wholesale financing to meet its obligations under the
14 Dealer Agreement (Section 330), (4) failing to submit annual financial reports (Section 350), and
15 (5) failing to operate a dealership in a way that reflects favorably on it and Roadtrek (Section
16 370).
17
18

19 ***Mega Used Customer Leads Provided by Roadtrek to Sell Pleasure-Way Units (Section
20 140)***

21 Section 140 of the Dealer Agreements provides that “[a]ll customer leads provided by
22 Home & Park to Dealer are the exclusive property of Home & Park and are to be used for the
23 marketing of Roadtrek products only.” (Exs. 600 and 604, at § 140). Leads are generated using
24 marketing programs developed and maintained by Roadtrek, which until 2007 cost Roadtrek
25 about \$3 million to \$3.5 million per year. (9/22/11 Tr. at 124:14-124:23). Roadtrek gathers
26 leads by asking customers to enter their contact information into the Roadtrek website and by
27
28

1 recording calls made by customers requesting information on Roadtrek vehicles. Roadtrek
2 reviews the leads once a week and compiles excel spreadsheets containing the customers'
3 contact information. Roadtrek sends the excel spreadsheets to its dealers. Hammill testified that,
4 once a dealer receives leads:

5
6 “[] Our expectation was based two ways. One was just, you know, morally and
7 ethically, work our product on those leads. And legally, contractually, the leads
8 are our in the dealer agreement, and we say that, and the dealer signs off on that
9 when they sign the dealer agreement. They’re not allowed to take our leads to
other products. We invested a lot of money to generate these leads.” (9/22/11 Tr.
at 124: 4-124: 13).

10 Before every recreational vehicle show, Roadtrek conducts email marketing campaigns in which
11 it reminds its leads that one of its dealers will have a booth and will be selling its products onsite.
12 (9/22/11 Tr. at 130:19-131: 2).

13 Since as early as 2005, Mega has used leads developed and maintained by Roadtrek to
14 sell Pleasure-Way vehicles. (9/22/11 Tr. at 110:8-110:24). When asked why Mega engaged in
15 this practice, Mike Lankford, Director of Sales for Mega, testified “[b]ecause I have 20
16 [Pleasure-Way’s] on my lot as well and they’re just as pretty.” (1/12/12 Tr. at 22:24-23:6).

17
18 ***Mega Failed to Maintain Adequate Capital and Wholesale Financing (Section 330)***

19 Section 330 of the Dealer Agreement requires Mega to “at all times maintain and employ
20 in connection with his dealership operations, separately from any other business of Dealer, such
21 total investment, net working capital, adequate lines of wholesale credit and competitive retail
22 financing plans for Roadtreks, that will enable Dealer to fulfill his responsibilities under this
23 agreement.” Mega failed to meet this requirement.

24 Numerous times during the hearing, Mega representatives insisted that Mega had
25 sufficient flooring with GE Capital to meet the requirements of its Dealer Agreements. (See e.g.,
26 8/16/11 Tr. at 111, 112). However, Barbara Andino of GE testified during her deposition that
27

1 when Mega tried to floor pre-sold Roadtrek units through GE in November of 2009, Mega was
2 already nearing or near above its \$10 million flooring limit. (Andino Dep. at 36:1-37:5).
3 Andino also testified that, at the time Mega requested funding from GE, it was out-of-trust on
4 units funded under its GE floor planning line and could not fund any additional units until it
5 remitted payment to GE. (Andino Dep. at 68:3-69:16). Andino testified that Mega's practice of
6 holding units out-of-trust was "more frequent" than other dealers that GE provided flooring to.
7 (Andino Dep. at 77:17-77:24).
8

9 With respect to Bank of America, Mega contended that Bank of America refused to floor
10 Roadtrek units. (Ex. 630; 8/10/11 Tr. at 212:14-217:3). However, Bank of America financed
11 between 150-175 units for other Roadtrek dealers in 2009. (Ex. 630; 1/18/12 Tr. at 104:12-
12 104:24).
13

14 Through October, November and December of 2009 -- after Roadtrek ended its floor plan
15 financing arrangement with Mega -- Mega failed to secure financing for any Roadtrek vehicles.
16 In December of 2009, Roadtrek requested adequate assurances -- in the form of payment for out-
17 of-trust units and an irrevocable letter of credit -- before it would ship units to Mega's locations.
18 Mega failed to provide Roadtrek with a letter of credit guaranteeing that it had flooring for future
19 shipments.
20

21 The only purported "assurance" that Mega ever gave to Roadtrek that it was able to floor
22 units was a one sentence email on August 19, 2010 from John Print of GE Capital. This was
23 received well after the 30 day time period required for the provision of adequate assurances. The
24 email simply states that "McMahon's RV can floor Roadtrek Motorhomes."⁹ In his deposition,
25

26
27 ⁹ As Jim Hammill testified, Roadtrek has a broad agreement with GE that allows dealers such as
28 Mega to floor Roadtrek motorhomes under a credit arrangement between Roadtrek and GE, so it

1 Print testified that he intended his email to mean that he would approve the flooring of Roadtreks
2 if Mega requested to put Roadtreks on its existing flooring line. (Print Dep. at 18:9-18:13, 21:3-
3 21:10). Print did not intend the email to mean that Mega has sufficient flooring for Roadtreks.
4 (Print Dep. at 18:14-18:23). Mega did not provide Roadtrek with any other further documents,
5 or assurances, from GE evidencing that it had flooring available for Roadtreks.
6

7 On September 2, 2009, Mega's counsel sent Roadtrek an email stating, "My client just
8 opened a new flooring line, and will put the Roadtrek units on within the next 30 days." (Ex.
9 651). Despite that promise, Mega never put a sufficient number of Roadtreks on its flooring line.
10 To this day, Mega has not provided a letter of credit to Roadtrek evidencing its ability to floor
11 sufficient inventory to meet the requirements of the Dealer Agreements.
12

13 Thus, despite Mega's assertions to the contrary, Mega does not have sufficient working
14 capital or wholesale flooring to meet its obligations under the Dealer Agreements. Therefore,
15 Mega is in breach of Section 330 of the Dealer Agreements.

16 ***Mega Failed to Submit Annual Financial Statements***

17 Section 250 of the Dealer Agreements requires Mega to "furnish to Home & Park on an
18 annual basis, a complete financial statement reflecting the true financial condition of the
19 dealership operations." Mega breached Section 250 by failing to submit financial statements for
20 2008 and 2009 to Roadtrek. No evidence was provided that those financial statements were
21 submitted to Roadtrek.
22
23
24
25
26

27 was not surprising that Mega could floor one or two Roadtrek units. (11/8/11 Tr. at 130:9-
131:13).

1 ***Mega Failed to Operate its Dealership in a Manner that Reflects Favorably on***
2 ***Roadtrek***

3 Section 370 of the Dealer Agreements requires Mega to “operate its dealership in a way
4 that reflects favorably on it and Roadtrek.” Mega breached this requirement by making false
5 statements to customers regarding Roadtrek’s brand, failing to provide customers with adequate
6 service, falsifying incentive claim forms submitted to Roadtrek and keeping Roadtrek vehicles in
7 poor condition on its lots. (11/8/11 Tr. at 150:5-151:3).

9 **6. Other Factors Support Good Cause for Termination**

10 The Good Cause factors identified in Section 3071 are not exclusive. Indeed, the Board
11 is also required to consider the existing “circumstances.” The existing circumstances and other
12 “factors” support Good Cause for the termination of the Dealer Agreements.

13 Most importantly, as discussed above, Mega repudiated its Dealer Agreements with
14 Roadtrek. Roadtrek was well within its rights under the UCC to demand adequate assurances.
15 Roadtrek had sufficient grounds for insecurity. Mega made a deliberate decision to stop paying
16 Roadtrek for units. Mega had not paid a Roadtrek parts invoice since 2008. (Ex. 496 at RMI
17 9155-9158). Roadtrek demanded adequate assurances and Mega failed to respond within thirty
18 days.
19

20 Mega was required under the parties’ Dealer Agreement and the Security Agreement to
21 pay Roadtrek the full invoice price of financed vehicles within 14 days after those vehicles were
22 “retail sold.” (Ex. 614). From at least late 2007, Mega wrongfully withheld payments from
23 Roadtrek and forced Roadtrek to expend its time and resources to collect amounts owed. (*See*
24 *e.g.*, Exs. 617, 623, 632, 637 and 641). Despite promises from Mega that it would improve its
25 payment record, including a promise from Schilperoort in August, 2008 “that from this point
26
27

1 forward there will be little to no complaints regarding this issue,” Mega continued to short pay
2 its invoices. (Ex. 622). As of September 9, 2008, four units were out of trust. (Ex. 626). In late
3 2008, Paul Cassidy of Roadtrek met with Schilperoort and Fosdick in an effort to collect
4 payment on the out-of-trust units. (Ex. 632). Cassidy was unsuccessful, and in August of 2009,
5 Hammill sent Mega an email stating that Mega’s payment record “has disintegrated from 20 days
6 average to 45 days average.” (Ex. 644).
7

8 Roadtrek learned for the first time during the course of these hearings that Mega
9 implemented a policy of not paying for a number of Roadtrek units. Laurie Fosdick, Mega’s
10 controller, testified that she initiated the practice of “short paying” for units in March of 2008,
11 after Brent McMahon returned from Kitchener. Fosdick stated that McMahon instructed her not
12 to pay for units because Roadtrek owed him holdback monies for 2007. McMahon never told
13 Fosdick that Roadtrek paid him for the holdback in April of 2008. (1/10/12 Tr. at 77:22-79:4).
14 Fosdick testified that Mega continues its practice of withholding payment on four units to this
15 day. (1/10/12 Tr. at 21:15-21:17).
16

17 Even after the parties tried to settle their accounts in December of 2009, Mega still
18 refused to make payments on four units to Roadtrek. Mega contends that its decision was based
19 on the advice of Conrad Plomin, a consultant who began working with Mega in late 2009.
20 Plomin testified that, despite advising Mega not to pay Roadtrek, he never did any analysis of
21 how much money the parties owed each other, of Roadtrek’s financial stability or of the parties’
22 dealer and security agreements. (8/17/11 Tr. at 61:2-62:5, 63:20-64:9).
23

24 * * *

1 Therefore, for the reasons set forth above, the Board should overrule Mega's termination
2 protests and allow the termination of Mega's Roadtrek franchises for Colton, Irvine and Scotts
3 Valley.

4 **VI. MEGA IS NOT ENTITLED TO RELIEF ON ITS INCENTIVE**
5 **PROTESTS: PROTEST NOS. PR-2205-10, PR-2211-10 AND PR-**
6 **2212-10)**

7 In these protests, Mega alleged that Roadtrek violated Vehicle Code Section 3076 by
8 failing to pay or disapprove in writing incentive claims submitted by Mega. Pursuant to Judge
9 Skrocki's November 29, 2010 Order on the Proposed Sequence of Presenting Evidence and
10 Exhibits at the Merits Hearing, it was Mega's burden to prove that there was a violation of the
11 right to payment for its incentive claims. Mega failed to meet that burden.

12 Vehicle Code Section 3076 provides that "all claims made by a franchisee for payment
13 under the terms of a franchisor incentive program shall be either approved or disapproved within
14 30 days after receipt by the franchisor." The same section provides that "[f]ailure to approve or
15 pay within the above specified time limits, *in individual instances for reasons beyond the*
16 *reasonable control of the franchisor*, do not constitute a violation of this article."

17 **A. Mega Did Not Establish When It Submitted Its Claims**

18 These protests should be denied because Mega failed to establish that Roadtrek took over
19 30 days to pay or disapprove its incentive claims. Mega failed to establish the dates that it
20 submitted its claims, and then failed to establish that Roadtrek waited over 30 days to pay or
21 disapprove its claims.
22
23

24 The only evidence that Mega presented in support of its incentive claims is Exhibit 706,
25 which Mega produced in response to a motion to compel filed by Roadtrek and an Order of
26 Judge Skrocki. (11/9/11 Tr. at 6-7). Exhibit 706 is a summary listing of all incentive claims for
27

1 which Mega contends it is owed. It was admitted into evidence on August 17, 2011 and contains
2 a total of 35 incentive claims, equaling \$156,796.33.

3 Paul Schilperoort of Mega testified that Exhibit 706 was created in March of 2011, using
4 Mega's ADP system. Four columns within Exhibit 706 set forth the number of days that a
5 particular claim was pending as of the date that the document was printed. According to Exhibit
6 706, all of the incentives that Mega claims under these protests are over 120 days past due.
7 However, the document gives no indication of when the incentive was submitted to Roadtrek,
8 and whether the incentive was disapproved.
9

10 This evidence was also undercut by the testimony of Mega's witnesses. First, Exhibit
11 706 was not prepared in the ordinary course of Mega's business. (8/19/11 Tr. at 79). It was
12 created for litigation purposes. (*Id.*)

13 There is no other evidence supporting Mega's claim that Roadtrek waited over 30 days to
14 pay or disapprove Mega's incentive claims, nor is there any evidence that Mega properly
15 submitted the claims listed in Exhibit 706 to Roadtrek. For this reason alone, Mega's incentive
16 protests should be denied.
17

18 **B. The Evidence Shows that Roadtrek Paid or Credited All**
19 **Properly Submitted Claims**

20 Mega's incentive protests should also be denied because the evidence set forth by
21 Roadtrek conclusively establishes that Roadtrek complied with Section 3076. Although Mega
22 failed to come forward with any evidence showing that Roadtrek failed to pay or disapprove
23 Mega's claims within the 30 day period set forth in Code Section 3076, Roadtrek provided
24 testimony and supporting declarations which prove that Roadtrek either paid or credited all
25 claims properly submitted by Mega.
26

1 Jim Hammill testified that, upon receiving Exhibit 706, he reviewed the individual files
2 for each incentive payment made to Mega and cross-referenced each claim to Roadtrek's
3 business records. Based on his review, Hammill found that Mega's claims fell into four broad
4 categories: (1) claims for which Mega failed to submit a required consumer cash back form; (2)
5 claims for vehicles that were not sold by Mega; (3) claims relating to out of trust vehicles; and
6 (4) claims that were credited by Roadtrek. (11/8/11 Tr. at 105; Ex. 706A). For those claims
7 falling into the first three categories, Roadtrek is not obligated to pay those claims because Mega
8 failed to comply with the terms of the "franchisor incentive program." V.C. § 3076(a).

9
10 In lieu of further, more detailed testimony by Hammill, Roadtrek offered a declaration
11 by Hammill, in which he attested to each and every crediting or payment to Mega for properly
12 submitted incentive claims. The declaration tied Exhibit 706 with Exhibit 496, which is a
13 spreadsheet of offsets created by Hammill. The declarations were admitted into evidence over
14 Mega's objections pursuant to an order issued by Judge Hagle dated March 20, 2012.

15
16 In her order overruling Mega's protests and findings related thereto, Judge Hagle found
17 that Roadtrek "paid" each claim by "issuing" a check, but it did not mail the checks to Mega RV,
18 nor did it appear that Roadtrek intended to mail the checks to Mega RV. (March 20, 2012 Order
19 Overruling Protestant's Objection to Introduction of Evidence of James E. Hammill's
20 Declaration re: Franchise Incentive Program Claims and Findings Related Thereto, at ¶ 9.)
21 Instead, "Roadtrek 'credited' the amounts it acknowledged were 'Roadtrek obligations to Mega
22 RV' by 'offsetting' them against amounts which it contended were 'Mega RV obligations to
23 RoadTrek' for 'units (vans),' 'parts,' 'shows' and 'interest.'" Though Judge Hagle made no
24 determination of whether Roadtrek's procedure comported with Section 3076, she found that --
25 with the exception of one incentive claim -- Roadtrek offset or attempted to offset all fourteen of
26
27

1 the incentive claims for which Mega submitted consumer cash back forms. This was consistent
2 with the practice of offsetting adopted by both parties.

3 Thus, it is clear that Mega failed to meet its burden of proving that Roadtrek violated
4 Section 3076 by failing to disapprove or pay for incentive claims within 30 days. Mega, which
5 has the burden of proof on these protests, failed to offer any evidence to contradict this. To the
6 contrary, Roadtrek has proven that it properly credited Mega for incentive claims that were
7 properly submitted.
8

9 **VII. MEGA IS NOT ENTITLED TO RELIEF ON WARRANTY**
10 **PROTESTS: PROTEST NOS. PR-2206-10; PR-2208-10 AND PR-**
11 **2209-10**

12 In these protests, Mega alleges that Roadtrek violated Vehicle Code Section 3075 by
13 failing to pay or disapprove in writing warranty claims submitted by Mega. In his August 3,
14 2011 Order Granting in Part and Denying in Part Protestant's Motions in Limine, Judge Skrocki
15 ruled that the evidence presented at the hearing should be limited to the issues of "(a) whether
16 the warranty claims were approved or disapproved within 30 days after receipt by Respondent;
17 (b) whether, within the stated 30 days, there was written notice of disapproval given to Protestant
18 which stated the specific grounds for disapproval; and (c) whether the claims "were paid" within
19 30 days of approval, including whether "paid" includes reducing any debt Protestant owed to
20 Respondent by way of a "set off" for the amounts of the warranty claims that were specifically
21 approved by Respondent or deemed approved by virtue of Section 3075."
22

23 Section 3075(d) provides that "[a]ll claims made by franchisees pursuant to this section
24 shall be either approved or disapproved within 30 days after their receipt by the franchisor. A
25 claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall
26 be deemed approved on the 30th day." The same section provides, "Failure to approve or pay
27

1 within the above specified time limits, in individual instances for reasons beyond the reasonable
2 control of the franchisor, do not constitute a violation of this article.”

3 **A. Mega Failed to Meet its Burden of Proof**

4 Pursuant to Judge Skrocki’s November 29, 2010 Order on the Proposed Sequence of
5 Presenting Evidence and Exhibits at the Merits Hearing, it was Mega’s burden to prove that there
6 was a violation of the right to payment for its warranty claims. Mega failed to meet that burden.
7

8 The only evidence that Mega introduced in support of its warranty protests is a summary
9 chart, Exhibit 708, which it produced in response to Roadtrek’s motion to compel and the Order
10 of Judge Skrocki. (11/8/11 Tr. at 114). Like Exhibit 706, Exhibit 708 does not specify the date
11 that warranty claims were submitted to Roadtrek, nor does it indicate whether Mega’s claims
12 were properly submitted.

13 The only testimony that Mega offered in support of these protests was the testimony of
14 Jen Fresh, warranty claim administrator for Mega. Fresh joined Mega as an independent
15 contractor in March 2009 so she has no personal knowledge of claims processed before that date.
16 (1/9/12 Tr. at 7-8). Fresh testified that she tracks warranty claim submissions by running
17 schedules from Mega’s accounting system every two weeks and transferring her handwritten
18 notes from a previous schedule to the new schedule. (Ex. 697; 1/9/2012 Tr. at 27:16-36:25).
19 Fresh testified that, if a claim was denied by Roadtrek, she would know by logging onto
20 Roadtrek’s online system which would indicate whether Roadtrek denied a claim. (1/9/2012 Tr.
21 at 42:21-43:9). Fresh had no knowledge that Roadtrek paid Mega for warranty claims by
22 offsetting amounts owed by Mega to Roadtrek even though, as more fully discussed below, that
23 was Roadtrek’s practice. (1/9/2012 Tr. at 115:4-115:16). Mega did not present any further
24
25
26
27
28

1 testimony or documentary evidence proving that Roadtrek violated Section 3075. Because Mega
2 failed to meet its burden of proof, its protests should be denied.

3 **B. The Evidence Shows that Roadtrek Paid or Credited All**
4 **Properly Submitted Claims**

5 Mega's warranty protests should also be denied because the evidence put forth by
6 Roadtrek shows that Roadtrek either paid or credited Mega for all of its claims. After receiving
7 Exhibit 708 from Mega, Roadtrek conducted an investigation of Mega's warranty claims with
8 the help of Chris Deakins, its warranty claim administrator. Deakins testified extensively
9 regarding Roadtrek's approval or adjustment of warranty claims submitted by Mega. Deakin's
10 testimony established that the amounts claimed by Mega were inconsistent with amounts
11 authorized by Roadtrek.
12

13 In addition, Roadtrek submitted a declaration of Jim Hammill, who created a record of
14 Roadtrek's offsets of amounts owed to Mega for warranty claims. (See Ex. 496). The
15 declaration submitted by Roadtrek identified "which obligations owed by Roadtrek to Mega RV
16 for warranty work were offset by Roadtrek" and attached "check memos" reflecting the claims
17 for which Roadtrek was crediting Mega. (March 20, 2012 Order Overruling Protestant's
18 Objection to Introduction of Evidence of James E. Hammill's Declaration re: Warranty
19 Reimbursement Claims, ¶ 4.) The declaration was admitted into evidence on March 20, 2012
20 over Mega's objections. Mega offered no evidence to contradict this.
21

22 In her Order Overruling Protestant's Objection to Introduction of Evidence of James E.
23 Hammill's Declaration re: Warranty Reimbursement Claims, Judge Hagle found that "[i]n lieu of
24 sending payment checks directly to Mega RV for some, if not all, warranty claims which it had
25 approved from approximately July of 2008 to approximately February of 2010, Roadtrek offset
26 these claims against amounts Roadtrek contends were owed, but unpaid by Mega RV, to
27

1 Roadtrek for parts.” (March 20, 2012 Order, ¶ 9.) Though Judge Hagle did not determine
2 whether Roadtrek’s offset procedure comports with Section 3075, she nonetheless found that
3 Roadtrek had “credited the amounts it owed to Mega RV for warranty work by offsetting them
4 against amounts which Roadtrek contended were Mega RV obligations to Roadtrek for parts.”
5 (March 20, 2012 Order, at ¶ 9).
6

7 Thus, it is clear that Mega failed to meet its burden of proving that Roadtrek violated
8 Section 3075 by failing to disapprove or pay for warranty claims within 30 days. To the
9 contrary, Roadtrek has proven that it properly credited Mega for warranty claims that were
10 properly submitted.

11 **VIII. CONCLUSION**

12 For all of the foregoing reasons, Roadtrek requests that the Board overrule all of Mega’s
13 remaining protests.
14

15 Respectfully submitted,

16 ROADTREK MOTORHOMES, INC.

17 

18 _____
One of Its Attorneys

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I, Louis S. Chronowski, am employed in the County of Cook, State of Illinois. I am over the age of eighteen (18) years and not a party to the within action. My business address is Seyfarth Shaw, LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603.

On April 5, 2012, I served a true and correct copy of the foregoing document(s) described as **RESPONDENT'S POST-HEARING BRIEF** on the interested parties in this action as follows:

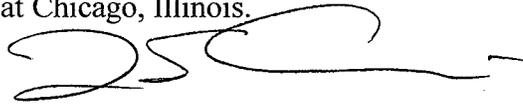
Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite 450, Sacramento, CA 95825 (lawmjf@msn.com) **via email and U.S. Mail**

New Motor Vehicle Board, 1501 21st Street, Suite 330, Sacramento, CA 95811 (nmvp@nmvb.ca.gov) **via email and Federal Express**

- by hand delivery.
- by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Chicago, Illinois, addressed as set forth above.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth above.

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, the document(s) listed above would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and executed on April 5, 2012 at Chicago, Illinois.



Louis S. Chronowski