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NEW MOTOR VEHICLE BOARD  
DATE 1-31-12  
BY [Signature]

10 Attorneys for Respondent  
ROADTREK MOTORHOMES, INC.

11 THE STATE OF CALIFORNIA  
12 NEW MOTOR VEHICLE BOARD

13 MEGA RV CORP dba ) Protest Nos. 2198-10, 2209-10, 2211-10  
14 MCMAHONS RV, )  
15 Protestant, ) **RESPONDENT ROADTREK**  
16 v. ) **MOTORHOMES, INC.'S REPLY IN**  
17 ROADTREK MOTORHOMES, INC. ) **SUPPORT OF ITS MOTION TO**  
18 Respondent. ) **DISMISS PROTESTS – SCOTTS**  
 ) **VALLEY**

19  
20 Protestant Mega RV Corp (“Mega”) has not and cannot raise a valid or legally supported  
21 opposition to Roadtrek’s motion to dismiss the protests brought by Mega’s non-operational  
22 dealership in Scotts Valley. The protests filed by Mega’s former Scotts Valley location -- PR-  
23 2198-10, PR-2209-10, PR-2211-1, and PR-2245-10 -- should be dismissed because (1) the Board  
24 cannot provide relief to a defunct entity, and (2) Mega’s Scotts Valley location is not a “dealer”  
25 under the meaning of the Vehicle Code and therefore lacks standing to seek (or exhaust)  
26 administrative remedies before the Board. The arguments raised by Mega in its opposition are  
27 flimsy, non-sensical and circular, and do not in any way justify the Board expending additional  
28

**RESPONDENT’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS -- SCOTTS VALLEY**

1 time and resources on the Scotts Valley protests. If these protests are dismissed, Mega will still  
2 have eight (8) protests pending before the Board.

3 **I. Mega's Scotts Valley Location Is the Entity That Brought These Protests**

4 Mega has taken the outlandish position that Mega Scotts Valley did not file protests  
5 against Roadtrek. Clearly, Mega has not reviewed its own pleadings. Each of the four protests  
6 filed by Mega's Scotts Valley location lists the "Protestant's" address as Scotts Valley,  
7 California. For example, in paragraph 1 of PR-2198-10, the "Protestant" asserted that it "is a  
8 new recreational vehicle dealer selling Roadtrek recreational vehicles and is located at 5060  
9 Scotts Valley Dr., Scotts Valley, CA 95066." Similarly, Mega's Irvine and Colton dealerships  
10 each filed their own protests, listing the Irvine and Colton dealership addresses as the  
11 "Protestant's" location. The consolidation of the Irvine, Colton and Scotts Valley protests does  
12 not change the fact that the protests were brought by each individual dealership.  
13

14  
15 Moreover, Section 583 of the New Motor Vehicle Board regulations specify that a  
16 separate protest must be filed by each franchise. Mega's Scotts Valley location holds its own  
17 franchise (Ex. 604) under Section 331 of the Vehicle Code and is therefore required to bring its  
18 own protests. Thus, Mega's Scotts Valley location is the "Protestant" for the purposes of  
19 determining standing to bring these protests.  
20

21 **II. The Board Cannot Provide Any Relief to Mega Scotts Valley**

22 Mega's Scotts Valley dealership cannot get relief under its protests. In its opposition  
23 brief, Mega contends that the Board can provide effective relief to the Scotts Valley dealership  
24 by acting as a fact-finding body for wholly unrelated common law claims brought by Mega in  
25 the federal court case. That argument is absurd. An agency's factual findings cannot have a  
26 preclusive effect on subsequent judicial actions unless the issues raised in the subsequent  
27 proceeding are identical to the issues raised in the administrative proceeding. *County of Los*

1 *Angeles v. Southern Cal. Edison Co.*, 112 Cal. App. 4th 1108, 1120, 5 Cal. Rptr. 3d 575, 583  
2 (Cal. Ct. App. 2003). In these hearings, the Board has been called upon to determine whether  
3 California Vehicle Code Sections 3070, 3075 and 3076 have been violated by Roadtrek, and  
4 whether Roadtrek has good cause under Section 3075 to terminate Scotts Valley as a dealer. The  
5 Board's findings with respect to these statutory provisions cannot have a preclusive effect on  
6 Mega's claims for breach of contract in the federal case.  
7

8 Mega's assertion that the Board must hear the Scotts Valley protests so that Mega can  
9 exhaust administrative remedies is similarly misplaced. "The doctrine of exhaustion of  
10 administrative remedies does not apply in those situations where no specific administrative  
11 remedies are available to the plaintiff." *City of Coachella v. Riverside County Airport Land Use*  
12 *Com.*, 210 Cal. App. 3d 1277, 1287, 258 Cal. Rptr. 795 (Cal. Ct. App. 1989). Mega's Scotts  
13 Valley dealership does not have any administrative remedies available to it because it is no  
14 longer in operation. A Board decision giving Mega Scotts Valley the right to continue as a  
15 Roadtrek dealer would be inconsequential. Accordingly, there is no administrative remedy for  
16 Mega Scotts Valley to exhaust. By Mega's own contention, the Scotts Valley dealership seeks to  
17 recover money damages for alleged misconduct by Roadtrek. That remedy is only available in  
18 the courts.  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF SACRAMENTO            )

I, Kavitha Janardhan, 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 January 31, 2012, I served a true and correct copy of the foregoing document(s) described as **RESPONDENT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PROTESTS – SCOTTS VALLEY** 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)

New Motor Vehicle Board, 1501 21<sup>st</sup> Street, Suite 330, Sacramento, CA 95811 (nmvb@nmvb.ca.gov)

- By personal service
- 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 January 31, 2012, at Chicago, Illinois.

  
Kavitha Janardhan