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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a Special meeting on October 17, 2012, at the Hilton Los Angeles Airport, Newport B Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 11:08 a.m.

Present: Ramon Alvarez C. (left 1:18 p.m.) William G. Brennan, Executive Director
Ryan L. Brooks (arrived 11:13 a.m.) Robin Parker, Senior Staff Counsel
Robert T. (Tom) Flesh
David C. Lizárraga
Peter Hoffman (left 1:18 p.m.)
Bismarck Obando
Victoria Rusnak (left 1:18 p.m.)
Glenn E. Stevens
David W. Wilson (left 1:18 p.m.)

3. **PLEDGE OF ALLEGIANCE**

Mr. Obando led the members and staff in the Pledge of Allegiance.

4. **ORAL ARGUMENTS BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD PURSUANT TO GOVERNMENT CODE SECTION 11517(C)(2)(E)(II)**

Mr. Alvarez read the following statement into the record:

As you may know, the one-year grace period for three of our members (Victoria Rusnak, Glenn Stevens, and David Wilson) expired on January 15, 2012. In accordance with Government Code section 1782 the Board is required to notify the “appropriate appointing authority” that vacancies exists

for the three Board positions, one of which is a public member and two are dealer members. Section 1782 provides that “Notwithstanding any other provision of the law...Except as provided in Section 1774 [relating to appointments subject to Senate confirmation], the person occupying the vacated...seat on the board...shall continue to serve until notified by the appropriate appointing authority.” These appointments are not subject to confirmation by the Senate. In light of these provisions, the Board has been in contact with Business, Transportation and Housing Agency as well as the Governor’s Appointments Office. Members Rusnak, Stevens and Wilson are continuing to serve on the Board until either reappointed or notified by the Governor that their respective terms have expired.

Mr. Alvarez indicated that counsel for the parties in today’s agenda item have been apprised of these provisions and do not object to Members Rusnak, Stevens, or Wilson participating in Agenda Items 4-5 or Mr. Stevens’ participation in Agenda Item 7.

Given these two case management matters involve recreational vehicles both Public Members and Dealer Members will participate.

Mr. Alvarez C. read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision, proposed order, or proposed ruling must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.” Furthermore, he indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e), therefore members of the public may not comment on such matters.

- a. MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2199-10
Veh. Code § 3070 Modification

- b. MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2201-10
Veh. Code § 3070 Modification

Combined oral arguments were presented before the Public Members and Dealer Members of the Board. Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Brent McMahon, the president and CEO of Mega RV, was also present. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent. Paul Cassidy, Vice President of Sales for Roadtrek, was also present. Respondent had the burden of proof and presented its oral arguments first.

5. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF “ORDER CONFIRMING DECISION TO SUSTAIN PROTEST”**

MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.

Protest No. PR-2199-10

Veh. Code § 3070 Modification

Consideration of the Board’s “Order Confirming Decision to Sustain Protest”, by the Public and Dealer Members of the Board.

The Public Members and Dealer Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the “Order Confirming Decision to Sustain Protest.” Mr. Flesh seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF “ORDER CONFIRMING DECISION TO SUSTAIN PROTEST”**

MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.

Protest No. PR-2201-10

Veh. Code § 3070 Modification

Consideration of the Board’s “Order Confirming Decision to Sustain Protest”, by the Public and Dealer Members of the Board.

The Public Members and Dealer Members of the Board deliberated in closed Executive Session. Ms. Rusnak moved to adopt the “Order Confirming Decision to Sustain Protest.” Mr. Brooks seconded the motion. The motion carried unanimously.

6. **OPEN SESSION**

The Public Members and Dealer Members returned to Open Session. Ms. Parker announced the decisions in *Mega RV v. Roadtrek Motorhomes, Inc.*

7. **PURSUANT TO VEHICLE CODE SECTION 3050(C)(1) AND (3), CONSIDERATION OF REFERRAL TO THE DEPARTMENT OF MOTOR VEHICLES TO CONDUCT AN INVESTIGATION AND MAKE A WRITTEN REPORT, AND/OR EXERCISE ITS AUTHORITY AND POWER TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST ROADTREK MOTORHOMES, INC.'S OCCUPATIONAL LICENSE FOR VIOLATING VEHICLE CODE SECTION 3070(b) IN PROTEST NOS. PR-2199-10 AND PR-2201-10, BY THE PUBLIC MEMBERS OF THE BOARD**

MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2199-10

MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2201-10

Mr. Alvarez indicated that in Protest Nos. PR-2199-10 and PR-2201-10, the Board in its "Orders Confirming Decision to Sustain Protest", indicated that it was possible that the Board may refer these matters to the Department of Motor Vehicles pursuant to Section 3050(c)(1) and (c)(3). Because Section 3050(c) provides in part that: "A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor..." consideration of such a referral will be considered only by the Public Members. Therefore, this matter was referred to Bismarck Obando, Public Member and Vice President.

Mr. Obando presided over this agenda item and the remainder of the meeting. The members were provided with a memorandum concerning whether Roadtrek's violations of Vehicle Code section 3070(b) should be referred to DMV pursuant to Section 3050(c)(1) or (3).

Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Brent McMahon, the president and CEO of Mega RV, was also present. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent. Paul Cassidy, Vice President of Sales for Roadtrek, was also present. During the oral comments, Mr. Brooks requested that counsel consult with their clients concerning possible settlement prior to the Board rendering a decision. At 1:18 p.m., counsel took a 10 minute break to speak with their clients. During this break, the Dealer Members left the meeting since this matter was for Public Member consideration only. After the break, counsel for Roadtrek indicated that they were willing to go to mediation. Oral comments resumed.

Pursuant to Vehicle Code section 3050(c)(1), Mr. Flesh moved to refer this matter to DMV for investigation. A written report of the results is to be submitted to the Board within 60-90 days from the date of the meeting. Mr. Stevens seconded the motion. The motion carried by a four-to-one vote with Mr. Brooks opposed.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:03 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Ramon Alvarez C.
President
New Motor Vehicle Board