

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95811  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

MANTECA TRAILER AND CAMPER INC. dba  
RVS OF SACRAMENTO,

Protestant,

v.

HOME AND PARK MOTORHOMES  
ROADTREK,

Respondent.

Protest No. PR-2036-07

In the Matter of the Protest of

MANTECA TRAILER AND CAMPER, INC.,  
dba BRAWLEY'S RV,

Protestant,

v.

HOME AND PARK MOTORHOMES  
ROADTREK,

Respondent.

Protest No. PR-2074-07

DECISION

At its regularly scheduled meeting of December 13, 2007, the Public Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 13<sup>th</sup> DAY OF DECEMBER 2007

  
ROBERT T. (TOM) FLESH  
Vice President  
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD  
1507 – 21<sup>ST</sup> Street, Suite 330  
2 Sacramento, California 95811  
Telephone: (916) 445-1888  
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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD  
10

11 In the Matter of the Protest of

12 MANTECA TRAILER AND CAMPER INC. dba  
13 RVS OF SACRAMENTO,

14 Protestant,

15 v.

16 HOME AND PARK MOTORHOMES  
ROADTREK,

17 Respondent.

**Protest No. PR-2036-07**

**PROPOSED DECISION**

18 In the Matter of the Protest of

19 MANTECA TRAILER AND CAMPER, INC.,  
20 dba BRAWLEY'S RV,

21 Protestant,

22 v.

23 HOME AND PARK MOTORHOMES  
ROADTREK,

24 Respondent.  
25

**Protest No. PR-2074-07**

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1 **PROCEDURAL BACKGROUND**

2 1. Protestants are Manteca Trailer and Camper, Inc., dba RVs of Sacramento ("RVs of  
3 Sacramento") located at 1015 El Camino Avenue, Sacramento, California and Manteca Trailer and  
4 Camper, Inc., dba Brawley's RV ("Brawley's RV") located at 5933 McHenry Avenue, Modesto,  
5 California.

6 2. Protestants are licensed by the California Department of Motor Vehicles ("DMV") as new  
7 motor vehicle dealers.

8 3. Respondent, Home and Park Motorhomes now known as Roadtrek Motorhomes Inc.  
9 ("Roadtrek" or "Respondent"), is licensed by the DMV as a manufacturer of new motor vehicles.  
10 Roadtrek headquarters are located at 100 Shirley Avenue, Kitchener, Ontario, Canada.<sup>1</sup>

11 4. Protestants are franchisees of Roadtrek and authorized to sell and service Roadtrek class B  
12 motor homes at the addresses indicated above. Terry Davis is the dealer principal and David Tenney is  
13 the General Manager of both dealerships.

14 5. By letter dated December 21, 2006, pursuant to Vehicle Code section 3070<sup>2</sup>, Respondent  
15 gave separate notices to RVs of Sacramento and Brawley's RV of Roadtrek's intent to terminate their  
16 Dealer Agreements signed on October 5, 2006 and May 30, 2006, respectively. The notice stated the  
17 following reasons for termination:

- 18 1. Low closing percentage of 0.9%, compared with a national average of  
19 2.0%.
- 20 2. The investment made in marketing, advertising, programs and vehicle  
21 development by Roadtrek Motorhomes Inc. (formerly Home & Park  
22 Motorhomes) is not being satisfactorily repaid through appropriate  
23 performance of sales in your territory.
- 24 3. Cuts to your credit facility have made it impossible to stock Roadtreks  
25 effectively. This affects sales performance negatively.
- 26 4. Cancellation of orders due to item #3. This has caused financial penalty to  
27 this company.
- 28 5. Delay of shipments due to slow floor plan financing related to item #3.  
This has caused financial penalty to this company.

26 ///

27 <sup>1</sup> Although Roadtrek was previously named Home and Park Motorhomes and some exhibits utilize that name, all references to  
28 the company will reflect the current name.

<sup>2</sup> All statutory references are to the California Vehicle Code unless noted otherwise.

1 The effective date of the terminations was February 19, 2007.

2 6. RVs of Sacramento and Brawley's RV filed a single timely protest on January 12,  
3 2007, with the New Motor Vehicle Board ("Board"). This protest was assigned Protest No. PR-  
4 2036-07. David Tenney, an employee of the parent corporation, Manteca Trailer and Camper  
5 Inc., initially represented Protestants.<sup>3</sup> On March 1, 2007, Michael M. Sieving, Esq. substituted  
6 in as counsel for Protestants.

7 7. An Amended Protest was filed on July 19, 2007, and pertained to RVs of Sacramento.<sup>4</sup>  
8 However, because the Amended Protest referenced the wrong Vehicle Code section, a Second Amended  
9 Protest properly referencing Section 3070 was filed on July 24, 2007.

10 8. Also on July 19, 2007, a separate protest was filed in behalf of Brawley's RV. This protest  
11 was assigned Protest No. PR-2074-07. It too referenced the wrong Vehicle Code section, and an  
12 Amended Protest properly referencing Section 3070 was filed on July 24, 2007.

13 9. Pursuant to stipulation of counsel, on July 23, 2007, the Board issued an order of  
14 consolidation for purposes of hearing.

15 10. On the first morning of the hearing, Respondent filed a "Motion for Continuance of  
16 Hearing and Reopening of Discovery." Respondent contended that "...the treatment of the original  
17 protest as two separate, discrete cases requires that respondent be afforded a reasonable continuance for  
18 the opportunity to reevaluate its approach to each protest, including a determination of their legal  
19 sufficiency and timeliness, and to the evidence which it will provide in support of its separate decisions to  
20 terminate the dealerships." The motion was heard by Administrative Law Judge ("ALJ") Marybelle D.  
21 Archibald, the ALJ assigned to hear the merits of the Protests. Respondent's motion for a continuance  
22 was denied.<sup>5</sup> Respondent's motion to reopen discovery was granted in part and denied in part with the  
23 ALJ ruling as follows: "To the extent that joint exhibits already prepared are not sufficiently distinct as  
24

25 <sup>3</sup> The opinion in *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4<sup>th</sup> 1094, 1103, pet. rev.  
26 den. Sept. 18, 2002, held "the general common law rule requiring corporations to be represented by counsel in proceedings  
before courts of record other than small claims courts does not extend to proceedings before administrative agencies and their  
tribunals."

27 <sup>4</sup> The Board's legal staff requested that counsel for Protestants separate the two Roadtrek franchises by amending the first  
28 protest to refer to RVs of Sacramento and filing a second protest that referred to Brawley's RV. This procedural request was  
consistent with Section 3070.

<sup>5</sup> Section 592 of Title 13 of the California Code of Regulations.

1 to a specific dealer, the parties will be permitted to modify or clarify those exhibits, and the parties will be  
2 permitted to offer additional exhibits pertaining to the dealers. No additional depositions are permitted at  
3 this time; however, Respondent may renew this portion of the motion before it concludes its case-in-  
4 chief.”

5 11. A hearing on the merits of the Protests was held on July 23-24, and July 26-27, before ALJ  
6 Archibald.<sup>6</sup> A recess was granted from Tuesday, July 24 at 10:15 a.m. until Thursday, July 26 at 9:00  
7 a.m. to permit the parties to prepare exhibits pursuant to the order relating to reopening of discovery.  
8 Respondent did not renew its motion for additional depositions.

9 12. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving, 350 University  
10 Avenue, Suite 105, Sacramento, California, represented Protestants.

11 13. Robert W. Jarvis, Esq., 4720 American River Drive, Carmichael, California, represented  
12 Respondent.

13 14. Respondent, who has the burden to prove good cause to terminate, presented the testimony  
14 of four witnesses: James Hammill, General Manager of Roadtrek; Paul Cassidy, Vice President of Sales  
15 for Roadtrek; Michael Woods, Regional Sales Manager for Roadtrek’s Western Territory; and Dawn  
16 Crowe, a Roadtrek Sales and Shipping Assistant.

17 15. Protestants presented the testimony of two witnesses: David Tenney, General Manager of  
18 Manteca Trailer and Camper, Inc., and adverse witness Paul Cassidy, Vice President of Sales for  
19 Roadtrek.

20 16. Post-hearing briefs were filed by the parties in compliance with the schedule established at  
21 the conclusion of the hearing, and the matter was submitted for decision on October 31, 2007.

## 22 **ISSUES PRESENTED**

### 23 **Whether Roadtrek has Established Good Cause for the Termination of** 24 **The RVs of Sacramento Franchise; Whether Roadtrek has Established Good Cause** 25 **for the Termination of the Brawley’s RV Franchise**

26 17. Pursuant to Section 3066(b), Roadtrek has the burden to establish good cause for the  
27 termination of Protestants’ franchise agreements. In determining whether Roadtrek has established good

28 <sup>6</sup> The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding and are not intended to be all-inclusive. The Reporter’s Transcript (“RT”) is identified by volume. Joint Exhibits (“Jt. Exh.”), Protestants’ Exhibits (“Prot. Exh.”), and Respondent’s Exhibits (“Resp. Exh.”) are identified by number.

1 cause for the terminations, Section 3071 requires that the Board consider the “existing circumstances”,  
2 including, but not limited to, all of the following:

3 (a) Amount of business transacted by the franchisee, as compared to the business  
4 available to the franchisee;

5 (b) Investment necessarily made and obligations incurred by the franchisee to perform  
6 its part of the franchise;

7 (c) Permanency of the investment;

8 (d) Whether it is injurious or beneficial to the public welfare for the franchise to be  
9 modified or replaced or the business of the franchisee disrupted.

10 (e) Whether the franchisee has adequate new recreational vehicle sales and, if required  
11 by the franchise, service facilities, equipment, vehicle parts, and qualified service personnel, to  
12 reasonably provide for the needs of the consumers of the recreational vehicles handled by the  
13 franchisee and has been and is rendering adequate services to the public;

14 (f) Whether the franchisee fails to fulfill the warranty obligations agreed to be  
15 performed by the franchisee in the franchise; and

16 (g) Extent of the franchisee’s failure to comply with the terms of the franchise.

17 **EVIDENTIARY RULINGS**

18 **Respondent’s Exhibit 9**

19 18. Protestants objected to the admission of Respondent’s Exhibit 9, *2006 Dealer Satisfaction*  
20 *Index Report*, issued by the National Recreational Vehicle Dealers Association. The *Report* was offered  
21 to rebut Mr. Tenney’s opinion that Roadtrek and Mr. Woods had not performed properly in some areas.<sup>7</sup>  
22 The *Report* “. . . measures dealer attitudes toward their manufacturers’ products, policies, and  
23 procedures”, and Roadtrek was recognized for receiving overall ratings of 80% or higher.<sup>8</sup> To be rated, a  
24 manufacturer must be rated by at least 15 or more dealers; however, there is no indication how many of  
25 Roadtrek’s 74 United States dealers participated in the survey.<sup>9</sup> The objection is overruled, and the  
26 exhibit is admitted for the limited purpose of establishing that Roadtrek dealers have differing attitudes

27 <sup>7</sup> See, for example, RT III, p. 151:10-11; RT IV, p. 123:2-25.

28 <sup>8</sup> Resp. Exh. 9, p. 2.

<sup>9</sup> RT I, p. 35:18-19; Resp. Exh. 9, p. 2.

1 toward Respondent.

2 **Existing Circumstances**

3 19. Evidence was offered by both parties, and admitted, relating to events which occurred and  
4 information learned after the December 21, 2006, termination letters. The parties differ in their positions  
5 as to whether this evidence may be considered. All relevant admissible evidence has been considered:  
6 some post-termination letter evidence merely updates status; other post-termination letter evidence  
7 expands upon allegations of the parties. In general, the weight given to evidence of the events and  
8 information learned after December 21, 2006, is not as great as that assigned to events which formed the  
9 basis for the terminations.

10 **GENERAL FINDINGS OF FACT**

11 **Roadtrek**

12 20. Roadtrek has been the largest manufacturer of Class B motor homes in North America  
13 since 1981 or 1982.<sup>10</sup> Roadtrek's current models include the 17 foot SS Agile, which is a high-mileage  
14 model, and the 22 foot RS Adventurous, as well as 19 and 21 foot models.<sup>11</sup> The average price to the  
15 dealer for a Roadtrek motor home is \$65,000.00.<sup>12</sup> Sixty-year old couples comprise the core of the  
16 Roadtrek customer base.<sup>13</sup>

17 21. Seven of Roadtrek's seventy-four United States dealers are in California; of those, three  
18 are in Northern California, including RVs of Sacramento and Brawley's RV.<sup>14</sup> Roadtrek uses regional  
19 sales managers for each of its territories.<sup>15</sup> The Western Territory, which consists of Washington,  
20 Oregon, Idaho, Nevada, Utah and California, encompasses ten dealers in fourteen locations, including  
21 RVs of Sacramento and Brawley's RV.<sup>16</sup>

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25 <sup>10</sup> RT I, p. 35:10-14. Witnesses mentioned "Class A" big motor homes and "Class B" motor homes, but did not otherwise  
define these terms.

26 <sup>11</sup> RT I, p. 135:8-19; *see, for example*, Jt. Exh. 7, p. 2.

27 <sup>12</sup> RT III, p. 204:22-24.

28 <sup>13</sup> RT III, p. 55:9-10.

<sup>14</sup> RT I, pp. 35:18-- 36: 7.

<sup>15</sup> RT I, p. 36:8-12.

<sup>16</sup> RT I, p. 36:13-18; p. 115:6-17.

1 **Roadtrek Management**

2 22. In April 2005, James Hammill joined Roadtrek as General Manager.<sup>17</sup> Mr. Hammill's  
3 prior experience was in the motor vehicle industry.<sup>18</sup> In August 2005, Paul Cassidy joined Roadtrek as  
4 Director of Sales.<sup>19</sup> Mr. Cassidy has over twenty years of experience in the recreational vehicle  
5 industry.<sup>20</sup>

6 **The Western Territory Regional Sales Manager**

7 23. In May 2005, Michael Woods, who has been in the recreational vehicle industry since  
8 1968 joined Roadtrek as the Western Territory Regional Sales Manager.<sup>21</sup> Mr. Woods is not an  
9 employee of Roadtrek; he is an independent contractor.<sup>22</sup> Mr. Hammill described the status of Mr.  
10 Woods as working 60% for Roadtrek and 40% for the dealer.<sup>23</sup> Mr. Woods is paid by Roadtrek on a  
11 commission basis.<sup>24</sup>

12 24. The duties of the regional sales manager include ongoing training; support on ordering;  
13 making sure the dealer stays at the required level of stocking; supporting the dealer with information from  
14 the factory concerning shipments, orders, or any problems; assisting the dealer to grow the business;  
15 developing new dealers; working recreational vehicle shows; and assessing how the dealer is doing.<sup>25</sup>

16 **Manteca Trailer and Camper, Inc.**

17 25. Manteca Trailer and Camper, Inc. is a family-owned company which includes three  
18 recreational vehicle dealerships: RVs of Sacramento, Brawley's RV in Modesto, and Manteca Trailer and  
19 Camper in Manteca.<sup>26</sup> David Tenney is the General Manager for the company.<sup>27</sup> Mr. Tenney has twenty

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22 <sup>17</sup> RT III, p. 3:7-13.

23 <sup>18</sup> RT III, p. 3:18-24.

24 <sup>19</sup> RT I, p. 32:14-24. His title changed to Vice President of Sales in October 2006. RT I, p. 32:18; p. 33:2.

25 <sup>20</sup> RT I, p. 33:14-15.

26 <sup>21</sup> RT I, p. 41:4-11; p. 86:13-16; p. 113:20-22.

27 <sup>22</sup> RT I, p. 86:17-23; p. 114:19-20. An employee is generally under the complete supervision and control of an employer. See  
*Empire Star Mines Co. v. Cal. Emp. Com.* (1946) 28 Cal.2d 33, 43.

28 <sup>23</sup> RT IV, p. 127:5-11. Roadtrek argues that Mr. Woods functioned as a general agent for Roadtrek in its dealings with  
Protestants and functioned as a special agent for Protestants when he took responsibility for ordering Roadtrek products for  
them. Resp. Post-Trial Brief, pp. 29-30.

<sup>24</sup> RT I, pp. 86:24—87:16; pp. 116: 4 – 117:3.

<sup>25</sup> RT I, pp. 41:12 – 42:24; p. 117:4-25.

<sup>26</sup> RT III, pp. 134:12 – 135:2. References to "Manteca Trailer and Camper, Inc." are to the corporate entity; references to  
Manteca Trailer and Camper are to the Manteca dealership.

<sup>27</sup> RT III, p. 134:12-15.

1 years of experience in the recreational vehicle industry.<sup>28</sup> His duties include managing the office and  
2 overseeing various departments, ranging from real estate to product selection and management.<sup>29</sup>

3 26. Roadtrek and RVs of Sacramento first executed a Dealer Agreement in December 2001  
4 and January 2002.<sup>30</sup> The agreement was renewed in 2004 and 2006.<sup>31</sup> RVs of Sacramento has an on-site  
5 manager, Renee Johnson.

6 27. Roadtrek and Brawley's RV first executed a Dealer Agreement on December 2001 and  
7 October 2002.<sup>32</sup> The agreement was renewed in 2004 and 2006.<sup>33</sup> Brawley's RV has an on-site  
8 manager, Stan Holloway.

### 9 Termination of the Agreements

10 28. As of May 2006, when the Brawley's RV Dealer Agreement was renewed, Roadtrek had  
11 made no determination to terminate the Dealer Agreement of either RVs of Sacramento or Brawley's  
12 RV.<sup>34</sup>

13 29. In October 2006, the RVs of Sacramento Dealer Agreement was renewed. Mr. Woods  
14 testified that when the Dealer Agreement comes up for renewal a "pretty good" review is performed.<sup>35</sup>

15 30. The annual recreational vehicle industry show takes place in Louisville, Kentucky, in late  
16 November or early December. Prior to the 2006 Louisville show, Mr. Woods spoke with two dealers  
17 about the possibility of taking over the Roadtrek line-make from RVs of Sacramento.<sup>36</sup>

18 31. At the 2006 Louisville show, Messrs. Woods, Hammill, and Cassidy met to discuss  
19 terminating the Dealer Agreements of RVs of Sacramento and Brawley's RV.<sup>37</sup>

20 32. Mr. Cassidy made the decision to terminate the Dealer Agreements and authorized Mr.  
21 Woods to notify Mr. Tenney. While still attending the Louisville show, Mr. Woods placed a telephone  
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23 <sup>28</sup> RT III, p. 135:17.

24 <sup>29</sup> RT III, p. 135:3-14.

25 <sup>30</sup> Jt. Exh. 4, p. 8.

26 <sup>31</sup> Resp. Exh. 2; Jt. Exh. 3. References to the RVs of Sacramento Dealer Agreement will be to the 2006 agreement, unless  
27 otherwise necessary.

28 <sup>32</sup> Jt. Exh. 2, p. 8.

<sup>33</sup> Resp. Exh. 3; Jt. Exh. 1. References to the Brawley's RV Dealer Agreement will be to the 2006 agreement, unless otherwise  
29 necessary.

<sup>34</sup> RT I, p. 85: 4-7, 14-20.

<sup>35</sup> RT I, p. 124: 14-17.

<sup>36</sup> RT II, p. 5:3-17.

<sup>37</sup> RT I, p. 43:3-13; RT III, p. 100: 8-16.

1 call to Mr. Tenney to inform him the Dealer Agreements of RVs of Sacramento and Brawley's RV were  
2 being terminated.<sup>38</sup>

3 33. After the Louisville show, Mr. Woods emailed Mr. Cassidy on December 5, 2006 and  
4 enumerated the reasons why he was recommending the termination of the RVs of Sacramento and  
5 Brawley's RV agreements.<sup>39</sup>

6 34. Termination letters dated December 21, 2006 were transmitted to RVs of Sacramento and  
7 Brawley's RV.<sup>40</sup> The effective date of the terminations was February 19, 2007.

### 8 FINDINGS OF FACT RELATING TO THE GOOD CAUSE FACTORS

#### 9 Findings Relating to the Amount of Business Transacted by the Franchisee, 10 as Compared to the Business Available to the Franchisee [§ 3071(a)]

##### 11 A. Business Transacted by RVs of Sacramento and Brawley's RV

12 35. As one cause for termination of the Dealer Agreements, Roadtrek alleges both dealers had  
13 a low closing percentage of sales, compared to the national average.<sup>41</sup> Roadtrek also alleges both dealers  
14 do not have appropriate sales performance in their territories, thereby failing to satisfactorily repay  
15 Roadtrek's investment made in marketing, advertising, programs and vehicle development.<sup>42</sup>

16 36. Roadtrek considered the sales history of Protestants in making the decision to terminate the  
17 Dealer Agreements.<sup>43</sup> Mr. Cassidy testified that sales dropped in 2004 because Roadtrek did not have a  
18 model on the new Sprinter chassis.<sup>44</sup> According to Mr. Woods, the statistics for sales establish that the  
19 "market went bad" in the summer of 2005.<sup>45</sup> The general market for Roadtrek products, according to Mr.  
20 Woods, beginning in June 2006, was active.<sup>46</sup>

21 37. Roadtrek compares the sales effectiveness of California dealers, including Protestants, to  
22 the national statistics. For example, in 2006, RVs of Sacramento's sales by dealer versus inquiries was  
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25 <sup>38</sup> RT I, pp. 4:19 – 5:2; RT III, pp. 158: 20 – 160: 1.

26 <sup>39</sup> RT I, p. 128:1-11; Jt. Exh. 13.

27 <sup>40</sup> Jt. Exhs. 5 and 6.

28 <sup>41</sup> Jt. Exhs. 5 and 6, p. 1, item 1.

<sup>42</sup> Jt. Exhs. 5 and 6, p. 1, item 2.

<sup>43</sup> RT I, p. 46: 9-13; pp. 57:22 – 58:7; Jt. Exhs. 8 and 9.

<sup>44</sup> RT I, p. 56:6-20; Jt. Exh. 9.

<sup>45</sup> RT II, p. 18:1-2.

<sup>46</sup> RT I, p. 134:21-24.

1 0.4%; Brawley's RV's was 0.6%; the national average was 1.9%.<sup>47</sup>

2 38. In support of its contention that Protestants have low closing percentages and sales  
3 performance, Respondent offered a comparison of McMahon's three southern California dealerships,  
4 which sold 113 Roadtrek units in 2006 and RVs of Sacramento and Brawley's RV, which sold 20  
5 Roadtrek units in 2006.<sup>48</sup> As startling as the comparison may appear, it fails to provide an accurate image  
6 of business transacted compared to business available. Roadtrek did not offer any evidence, and concedes  
7 that it has none, which would establish the number of potential core Roadtrek customers (60 year old  
8 couples) who live in southern California, compared to the number of potential core Roadtrek customers  
9 who live in the Sacramento-Modesto area.

10 39. Another indicator emphasized by Roadtrek is the 100 mile radius – Roadtrek evaluates  
11 performance of a dealer within a 100 mile radius and also evaluates performance outside that radius.<sup>49</sup>  
12 Roadtrek's witnesses seemed to have difficulty gauging distances and knowing the distances of one dealer  
13 from the other.<sup>50</sup> Brawley's RV's primary area of market responsibility is a 60 mile radius of Modesto.<sup>51</sup>  
14 No evidence was presented as to how the 100 mile radius rule impacts Protestants, who have dealerships  
15 located less than 100 miles from each other.<sup>52</sup> Roadtrek does not compile or rely upon information  
16 relating to in-sells or cross-sells.<sup>53</sup>

17 40. Respondent also contends that a comparison of increasing national sales necessarily means  
18 that all dealers, regardless of location, will have increasing sales. Mr. Cassidy testified "very, very few of  
19 markets in all North America that aren't growing" and that if a dealer is not increasing sales "we assume  
20 it has a lot to do with a dealer".<sup>54</sup> Roadtrek contends that sales were increasing, in part, because gasoline  
21 prices were rising and Roadtrek offers smaller recreational vehicles with good mileage. If there is no  
22 evidence that there are 60 year old couples in the Sacramento-Modesto area who are interested in and can  
23

24 <sup>47</sup> RT III, p. 21:6-24; Resp. Exh. 1, p. 1.

25 <sup>48</sup> RT III, pp. 31:12 – 32:1.

26 <sup>49</sup> RT III, p. 111: 3-22.

27 <sup>50</sup> Mr. Woods refused to answer a question concerning the drive time between Gilroy and Modesto; Mr. Cassidy did not know  
28 the distance between Gilroy and Scott's Valley or Gilroy and Modesto.

<sup>51</sup> Jt. Exh. 1, p. 1, sec. 108.

<sup>52</sup> Pursuant to Evidence Code section 452(h), judicial notice is taken that the driving mileage from RVs of Sacramento to  
Brawley's RV in Modesto is just under 77 miles. (76.59 miles, [www.mapquest.com](http://www.mapquest.com); 76.7 miles, [www.maps.yahoo.com](http://www.maps.yahoo.com).)

<sup>53</sup> RT I, p. 110: 2-7.

<sup>54</sup> RT I, p. 110: 10-12, 17-18.

1 afford Roadtrek vehicles, the national trend in increased sales means nothing in evaluating Protestants’  
2 sales.

3 **B. Stocking Requirements, Ordering Process and Floor Plan**

4 41. Mr. Woods, an independent contractor who served as the Western Regional Sales Manager  
5 for Roadtrek, was responsible for ordering Roadtrek units for RVs of Sacramento and Brawley’s RV.<sup>55</sup>  
6 This function included making sure that both locations were properly stocked with the required models, as  
7 well as those models which would sell fastest.<sup>56</sup> Mr. Woods selected the models and number of units,  
8 advised the on-site managers which units he was ordering, and Mr. Tenney signed off on the orders once  
9 they were in place.<sup>57</sup> “Sold Orders” – those special orders for customers – were not the responsibility of  
10 Mr. Woods, and these orders are a very small portion of Protestants’ sales.<sup>58</sup>

11 42. Manteca Trailer and Camper, Inc., the corporate parent of Protestants, provided Mr.  
12 Woods with an amount of capital – a floor plan allotment – for ordering; however, if additional funds  
13 were necessary, Mr. Woods could contact Mr. Tenney and additional funds would be approved.<sup>59</sup> In  
14 2006, the flooring limit for Protestants was \$500,000.00, and on the effective date of the terminations, the  
15 flooring limit for both dealerships was \$750,000.00.

16 43. Mr. Tenney testified that he receives a report almost daily from Key Bank, the institution  
17 which provides a credit line for Manteca Trailer and Camper, Inc., and that report shows the balance on  
18 account.<sup>60</sup> Mr. Tenney would forward those reports to Mr. Woods.<sup>61</sup> Two to four times per month, it was  
19 Mr. Tenney’s practice to give recreational vehicle representatives, including Mr. Woods, a list from Key  
20 Bank of everything floored or sold in the past twelve months.<sup>62</sup> By using those two types of reports,  
21 representatives could know which models were selling.<sup>63</sup> Mr. Woods kept records, tracking warranty

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23 <sup>55</sup> RT II, p. 11: 5-11. Following the notices of termination, in January or February 2007, Mr. Woods was removed from the  
ordering process. RT III, p. 163:4-8. Those duties are now performed for both Protestants by Mr. Tenney and the on-site  
manager for RVs of Sacramento. RT III, p. 172:11-20.

24 <sup>56</sup> RT II, p. 11:5-11; p. 12: 2-9; Jt. Exhs. 1 and 3, sec. 109. Stocking requirements varied by season (generally, fewer models  
25 were required to be stocked in the off-season) and by models (depending upon those discontinued and newly introduced by  
Roadtrek).

26 <sup>57</sup> RT II, pp. 13: 20 – 14:10.

27 <sup>58</sup> RT III, p. 150:4-18.

28 <sup>59</sup> RT IV, pp. 18: 19 – 20:18.

<sup>60</sup> RT III, p. 144:4-12; *see also* Jt. Exh. 17.

<sup>61</sup> RT III, p. 144:4-12.

<sup>62</sup> RT III, p. 144:13-25; p. 145:7-23.

<sup>63</sup> RT III, 144: 4-25.

1 cards reflecting units delivered, utilizing the periodic reports he received from Mr. Tenney, and  
2 conducting on-site inventory checks.<sup>64</sup>

3 44. Conflicting testimony was received regarding effective use of the flooring allotment,  
4 financial reports, and the success of the ordering process. At all times, Mr. Tenney was in a position to  
5 take over the ordering process; however, he made the decision to let Mr. Woods have that responsibility  
6 even though Mr. Tenney expressed concerns to Mr. Woods about underutilization of the flooring  
7 allotment, ordering units that did not sell, and Mr. Woods' apparent difficulty in analyzing the financial  
8 information.

9 45. Mr. Woods could have ceded the ordering responsibility to Mr. Tenney; however, he  
10 maintained that control, even though he complained that he was not able to order popular units because  
11 the on-site managers had bad experiences with them and really did not want to stock more than the  
12 minimum number of those units. Mr. Woods testified that because he is paid on a commission – based  
13 upon the number of units sold by Roadtrek to the Protestants – he was motivated to make sure the dealers  
14 were fully stocked with models that would sell quickly.<sup>65</sup>

15 46. Without the popular models, Protestants plausibly lost sales (perhaps to each other,  
16 perhaps to a third dealer). However, no amount of popular models will increase sales if the Sacramento-  
17 Modesto area lacks real customers. As discussed below, a “lead” does not equal a real customer.

18 **C. Business Available to RVs of Sacramento and Brawley's RV**

19 **1. Lead System**

20 47. Roadtrek measures dealer effectiveness based upon an elaborate system of leads, or  
21 individual consumer contacts. “A lead is a retail inquiry generated by the company, either through our  
22 website or directly through phone call.”<sup>66</sup> Mr. Hammill explained that Roadtrek expends millions of  
23 dollars on its complex marketing system and expects to recoup that investment by way of increased  
24

25 \_\_\_\_\_  
26 <sup>64</sup> RT II, pp. 25: 14 – 27:6.

27 <sup>65</sup> Mr. Tenney complained that Mr. Woods failed to secure the popular Sprinter models for Protestants. Mr. Woods initially  
28 claimed there was no flooring to purchase Sprinters; he then testified that Protestants had no interest in that model. RT II, p.  
23:5-23. The statistics presented by Mr. Hammill establish that Protestants received their appropriate share of Sprinters.  
Resp. Exh. 6.

<sup>66</sup> RT I, p. 107:22-24.

1 sales.<sup>67</sup>

2 **2. Viability of Leads**

3 48. Mr. Hammill testified that Roadtrek considers each lead to be generated from a viable  
4 customer. Presumably this would be someone whose income level would be sufficient to pay for the  
5 \$65,000.00 motor home or someone who is seriously considering purchase of a Roadtrek unit. However,  
6 the leads provided to RVs of Sacramento and Brawley's RV include persons who appear to be prisoners  
7 at San Quentin Prison,<sup>68</sup> residents at Atascadero State Hospital,<sup>69</sup> and the General Manager of Manteca  
8 Trailer and Camper, Inc.<sup>70</sup> The lists also include the "test" leads generated by Mr. Tenney when he was  
9 testing the time it took for Roadtrek to send out sales materials to potential customers.<sup>71</sup>

10 49. Mr. Hammill agreed that errors do occur in the system. Roadtrek's assumption that each  
11 lead represents a viable customer is overly optimistic.

12 **3. Distribution of Leads**

13 50. In distributing leads, the Roadtrek typical rule is to distribute them to the two dealers who  
14 are geographically closest to the potential customer.<sup>72</sup> Mr. Hammill testified that based upon that typical  
15 rule, Roadtrek assumes the average dealer will make 50% of sales.<sup>73</sup>

16 51. However, there is an exception to the Roadtrek typical rule: if the two dealers who are  
17 geographically closest to the potential customer have the same ownership group, then the lead is also  
18 distributed to a third dealer.<sup>74</sup> It is not unusual for RVs of Sacramento and Brawley's RV to receive the  
19 same leads.<sup>75</sup> Roadtrek considers RVs of Sacramento and Brawley's RV to be dealers in the same  
20 ownership group.<sup>76</sup> Thus, if Roadtrek follows the exception to the typical rule, some of those leads will  
21 be shared with a third Roadtrek dealer. Mr. Hammill testified that in the statistical analysis of that type of

22 <sup>67</sup> RT III, p. 5:1-4; p. 10: 5-15; Jt. Exh. 11.

23 <sup>68</sup> Jt. Exh. 14, p. 29; David Allen Raley, 09/04/02.

24 <sup>69</sup> Jt. Exh. 14, p. 4; Dwayne Smith, 02/11/02.

25 <sup>70</sup> Jt. Exh. 14, p. 15; David W. Tenney, 05/15/02.

26 <sup>71</sup> Although Mr. Tenney testified that Roadtrek took as much as 45 days to get information to the test customers, Mr. Hammill  
provided testimony based upon business records reflecting the delivery time was no more than 10 days. Resp. Exh. 5.

27 <sup>72</sup> RT III, p. 6: 7-8.

28 <sup>73</sup> RT III, p. 20: 19-22. Mr. Hammill explained that some consideration is given to the effect of geographical barriers, such as  
mountain ranges, and to whether a dealer is located in an urban area, such as New York City.

<sup>74</sup> RT III, pp. 6: 19 - 7:2.

<sup>75</sup> See, for example, Jt. Exh. 14, p. 145 and Jt. Exh. 15, p. 156; Rosa Garza, 06/17/05; Jt. Exh. 14, p. 145 and Jt. Exh. 15, p.  
156; George Retamoza, 06/14/05.

<sup>76</sup> RT I, p. 89: 7-9; see Jt. Exh. 11. However, Mr. Tenney testified that Protestants are actually competitive dealerships, with  
different ownership under the Manteca Trailer and Camper, Inc. umbrella. RT III, pp. 178:10 - 179:7.

1 lead distribution, Protestants would count as having one lead and the independent dealer would be  
2 counted as having one lead.<sup>77</sup> One measure of sales effectiveness is to divide the number of leads by the  
3 number of retail sales.<sup>78</sup>

#### 4 **4. The Gilroy Dealership**

5 52. Mr. Woods criticizes Protestants for failing to pick up Roadtrek customers of a Gilroy  
6 dealer that went out of business in May 2006.<sup>79</sup> A new dealer, McMahon's, was in place in Scott's Valley  
7 in June 2006.<sup>80</sup> Mr. Woods had specifically advised Gilroy customers about Brawley's RV, the Modesto  
8 dealer. Inexplicably, Mr. Woods refused to respond to a question concerning drive-time from Gilroy to  
9 Modesto.<sup>81</sup> Mr. Cassidy did not know the mileage between Gilroy and Modesto or Gilroy and Scott's  
10 Valley, nor could he identify which dealer has the assigned territory for Gilroy.<sup>82</sup>

11 53. Mr. Cassidy relied upon the alleged failure of Protestants to corral the Gilroy customers in  
12 making his decision to terminate the Dealer Agreements. Given that the Scott's Valley dealership opened  
13 a mere month after the closing of the Gilroy dealer, and given that Mr. Cassidy does not know which  
14 dealer has Gilroy in its assigned territory, utilization of this allegation fails to bolster Roadtrek's assertion  
15 that termination is warranted.

#### 16 **5. Sales Potential**

17 54. To determine sales potential in the Sacramento-Modesto area, Roadtrek relies upon an  
18 analysis of the leads generated in that territory.<sup>83</sup> Although Roadtrek asserts that there is overall national  
19 growth in Roadtrek sales, and growth in the Sacramento-Modesto market area, Roadtrek management  
20 conceded that no demographic studies, income level studies, customer preference surveys, or analysis of  
21 in-sells, pumpouts, or cross-sells, had been conducted to support the contention that the motor home  
22 market had grown in Sacramento-Modesto.<sup>84</sup>

23 55. Mr. Hammill, who has experience in the motor vehicle industry, points out that analysis of  
24

25 <sup>77</sup> Resp. Exh. 1, pp. 1 and 2, fn. 3.

26 <sup>78</sup> RT I, p. 108:12-17.

27 <sup>79</sup> Jt. Exh. 13, para. 1.

28 <sup>80</sup> RT I, p. 50: 18-20.

<sup>81</sup> RT II, pp. 39:18 – 40:6.

<sup>82</sup> RT I, p. 100:8-24; p. 101:14-16.

<sup>83</sup> RT I, p. 107:6-10; RT III, pp. 65:18 – 66:4..

<sup>84</sup> RT I, pp. 109:6 – 110:7; RT III, pp. 61:18 – 62: 2; pp. 63:9 – 66:4.

1 motor vehicle sales and recreational vehicle sales cannot be accurately analyzed using the same criteria.  
2 This is a reasonable observation; however, the restrictive nature of the Roadtrek leads system and the  
3 assumption that each lead is connected to a viable customer is simplistic.

4 **D. Annual Review of Dealer Effectiveness**

5 56. Section 112 of the Dealer Agreements requires Roadtrek to perform an annual review of  
6 dealer effectiveness and to furnish written effectiveness reviews to the dealer.<sup>85</sup> The reviews are to cover  
7 “retail sales and/or registrations, market share (where available), stocking of Roadtreks and Roadtrek  
8 service parts, sales and service personnel and facilities, customer satisfaction, and warranty and service  
9 performance.”<sup>86</sup>

10 57. No evidence was presented that annual written effectiveness reviews were provided to RVs  
11 of Sacramento and Brawley’s RV. A reasonable inference is that Protestants’ effectiveness met or  
12 exceeded Roadtrek’s minimum standards because their Dealer Agreements were renewed.<sup>87</sup>

13 **Findings Relating to the Investment Necessarily Made and Obligations Incurred**  
14 **by the Franchisee to Perform its Part of the Franchise [§ 3071(b)]**

15 58. As one cause for termination of the Dealer Agreements, Roadtrek alleges that both dealers  
16 have had cuts to their credit line, making it impossible to stock Roadtreks effectively and resulting in a  
17 negative effect on sales performance.<sup>88</sup>

18 **A. Flooring**

19 59. Roadtrek considered Protestants’ available flooring for Roadtrek products when it made  
20 the decision to terminate the Dealer Agreements.<sup>89</sup>

21 60. Key Bank provides the Manteca Trailer and Camper, Inc. corporate entity with a \$53  
22 million line of credit, which includes the flooring for Roadtrek products.<sup>90</sup> The flooring available at any  
23 one time was a matter of dispute. Mr. Woods contended that when he started with Roadtrek, around May  
24

25 <sup>85</sup> Jt. Exhs. 1 and 3, p. 2, sec. 112.

26 <sup>86</sup> Jt. Exhs. 1 and 3, p. 2, sec. 112.

27 <sup>87</sup> Jt. Exhs. 1 and 3; Resp. Exhs. 2 and 3.

28 <sup>88</sup> RT IV, p. 50: 16-18; Jt. Exhs. 5 and 6, p. 1, item 3.

<sup>89</sup> RT I, pp. 135: 24 – 136:2; RT III, p. 58:10-13.

<sup>90</sup> RT IV, p. 4:16; p. 18: 1-18.

1 or June 2005, the flooring limit for the two dealerships combined was \$350,000.00.<sup>91</sup> This testimony is  
2 not reliable. In order to remain in good standing during the “selling season” of March 1 to September 30,  
3 RVs of Sacramento was required to stock 5 Roadtrek units, and Brawley’s RV was required to stock 3  
4 units.<sup>92</sup> If the flooring limit had been \$350,000.00, Protestants could only have ordered 5 or 6 units  
5 (assuming \$65,000.00 dealer cost per unit), and not the minimum of 8. If Mr. Woods is to be believed,  
6 Protestants would have been in material breach of their Dealer Agreements in May 2005, and there is no  
7 evidence to support that conclusion.

8 61. Mr. Tenney testified that the flooring had been \$500,000.00 since 2003.<sup>93</sup> Mr. Tenney was  
9 emphatic in his testimony that the flooring limit could easily have been increased – all Mr. Woods had to  
10 do was call Mr. Tenney for approval.<sup>94</sup> Mr. Woods concedes that he was advised by Mr. Tenney in  
11 September 2006 that the flooring would be increased on February 1, 2007; however, Mr. Woods testified  
12 that notice did not announce the amount of the increase while Mr. Tenney contends the amount was  
13 included in the communication.<sup>95</sup>

14 62. The effective date of termination of the Dealer Agreements is February 19, 2007. On that  
15 date, the flooring limit for Protestants had been raised from \$500,000.00 to \$750,000.00, an amount Mr.  
16 Cassidy testified was more than sufficient to meet stocking requirements.<sup>96</sup> Mr. Hammill testified that he  
17 was aware that the flooring would increase, and he considered that when making the decision to terminate  
18 the Dealer Agreements of RVs of Sacramento and Brawley’s RV.<sup>97</sup>

19 **B. Section 172: Cancellations**

20 63. As another cause for termination of the Dealer Agreements, Roadtrek alleges that  
21 cancellation of orders by Protestants due to cuts in their credit line caused financial penalty to Roadtrek.<sup>98</sup>

22 64. Cancellations of previously ordered motor homes do occur, and Section 172 of the Dealer  
23 Agreements includes a cancellation provision which permits some types of cancellations requiring the  
24

25 <sup>91</sup> RT I, pp. 141:19 – 142:5.

26 <sup>92</sup> Resp. Exhs. 2 and 3, p. 1, sec. 109.

27 <sup>93</sup> RT III, p. 152:16-24; p. 154: 12-14.

28 <sup>94</sup> RT III, p. 210: 4-12; pp. 215:24 – 216:5; RT IV, p. 19: 15-18.

<sup>95</sup> RT II, p. 19: 1-18; RT III, p. 155:18-25.

<sup>96</sup> RT I, p. 105: 19-23.

<sup>97</sup> RT III, p. 58:10-13.

<sup>98</sup> Jt. Exhs. 5 and 6, p. 1, item 4.

1 dealer to pay a penalty, and prohibiting other types of cancellations.<sup>99</sup> Cancellations cost Roadtrek money  
2 because parts and labor may have been expended for certain orders, and the delay in finding another  
3 dealer to buy the unit requires Roadtrek to pay interest on loans.<sup>100</sup>

4 65. Mr. Cassidy and Mr. Hammill described a special-order unit ordered by Brawley's RV  
5 which was canceled before it was shipped.<sup>101</sup> Mr. Cassidy testified that he believed it was canceled  
6 because Brawley's RV had insufficient funding available.<sup>102</sup> Ultimately, Mr. Cassidy admitted he had no  
7 idea why the order was canceled – possibly the customer changed his or her mind.<sup>103</sup> Mr. Tenney testified  
8 that no Sold Orders were cancelled.<sup>104</sup> This example does not support Roadtrek's allegation.

9 66. Ms. Crowe, a Roadtrek Sales and Shipping Assistant, provided a chart reflecting purported  
10 cancellations by Protestants and explained the information.<sup>105</sup> Ms. Crowe had no personal knowledge of  
11 the circumstances surrounding the units designated as "cancelled".<sup>106</sup> Mr. Tenney noted that three of the  
12 purported cancellations by Protestants were errors – the units were not even ordered by Protestants, and  
13 ultimately Roadtrek withdrew its attempt to exercise the penalty clause of Section 172 on those three  
14 units.<sup>107</sup>

15 67. Roadtrek's attempt to prove that Protestants had a record of excessive order cancellations  
16 which cost Roadtrek money was not substantiated by the evidence.

17 **C. Delay of Shipments**

18 68. As a separate cause for termination of the Dealer Agreements, Roadtrek alleges that slow  
19 floor plan financing caused delay of shipments to both dealers which resulted in financial penalty to  
20 Roadtrek.<sup>108</sup> Key Bank pays Roadtrek for the units upon delivery, so delay of shipments delays payment  
21 to Roadtrek.

22 69. Ms. Crowe testified that as part of her responsibilities, when a recreational vehicle is

23 <sup>99</sup> RT III, p. 44: 5-10; Jt. Exhs. 1 and 3, p. 3, sec. 172.

24 <sup>100</sup> RT III, pp. 43:21 – 44:4.

24 <sup>101</sup> RT IV, p. 34:2-21.

25 <sup>102</sup> RT IV, p. 34:22-24.

25 <sup>103</sup> RT IV, pp. 34:25 – 35:4.

26 <sup>104</sup> RT 111, pp. 150: 19 – 151:6.

26 <sup>105</sup> Resp. Exh. 4. The chart, page 1 of Resp. Exh. 4, was admitted. The underlying documentation was admitted over a hearsay  
27 objection. No hearsay exception makes that portion of the exhibit admissible, and no other admissible evidence was offered to  
27 support the allegations of excessive cancellations.

27 <sup>106</sup> RT IV, pp. 93:5—95:5; 97:4 – 98:18; 99:14 – 102:1.

28 <sup>107</sup> RT IV, pp. 149:19 – 151:1.

28 <sup>108</sup> Jt. Exhs. 5 and 6, p. 1, item 5.

1 complete and ready to be shipped, she obtains financing approval from the financing company and  
2 schedules drivers to transport the unit to the dealer.<sup>109</sup> When shipping, as many as three units can be  
3 placed on one truck to save extra cost to the dealers.<sup>110</sup> Ms. Crowe prepared a chart listing examples of  
4 delays in shipping which were purportedly caused by Key Bank's refusal to confirm the availability of  
5 flooring for Protestants, but Ms. Crowe had no personal knowledge of the incidents.<sup>111</sup> Personal  
6 knowledge of 5 or 6 delays in shipping, caused by Key Bank's refusal to approve shipping, was provided  
7 by Mr. Cassidy.<sup>112</sup> These examples occurred between May and October 2006; 2 of the units were Special  
8 Orders.<sup>113</sup>

9 70. Evidence was received that Roadtrek had, on occasion, shipped units without financing  
10 approval.<sup>114</sup> Mr. Hammill testified that as early as August 2005, he knew about and was involved with  
11 flooring delays, but he authorized shipment of units to Protestants without financing approval.<sup>115</sup> Mr.  
12 Tenney contended that financing was never an issue, since Key Bank finances the entire operation of  
13 Manteca Trailer and Camper, Inc., the corporate entity, and there is always money available.

14 71. Although there is evidence that Key Bank, the institution providing flooring for  
15 Protestants, delayed approval which delayed shipping, there is also evidence that Roadtrek did not strictly  
16 enforce the approval procedure. The delay in itself does not constitute grounds for termination.

17 **D. Section 320: Dealer Personnel**

18 72. Section 320 of the Dealer Agreements obligates Roadtrek dealers to employ and train  
19 competent personnel.<sup>116</sup> In making the decision to terminate Protestants' Dealer Agreements, Roadtrek  
20 considered the December 5, 2006, email from Mr. Woods concerning staffing.<sup>117</sup>

21 73. Mr. Woods reported that due to a change in the pay plan for sales personnel, RVs of  
22 Sacramento had all new staff and Brawley's lost 2 sales people, adversely affecting potential sales at a  
23

24 <sup>109</sup> RT IV, p. 63: 11-22.

25 <sup>110</sup> RT IV, p. 71: 6-18.

26 <sup>111</sup> Resp. Exh. 4. The chart, page 1 of Resp. Exh. 4, was admitted. The underlying documentation was admitted over a hearsay  
objection. No hearsay exception makes that portion of the exhibit admissible.

27 <sup>112</sup> RT IV, pp. 29:2 – 30:10.

28 <sup>113</sup> RT IV, pp. 29:2 – 30:10; pp. 31:21 – 32:1.

<sup>114</sup> RT IV, p. 35:5-18.

<sup>115</sup> RT III, p. 41: 4-12.

<sup>116</sup> Jt. Exhs. 1 and 3, p. 6, sec. 320.

<sup>117</sup> Jt. Exh. 13, para. 2.

1 September 2006 show. In contrast, Mr. Tenney testified that three sales people quit when the pay plan  
2 changed, and they had been in the bottom 25% of productivity.<sup>118</sup>

3 74. The testimony of Mr. Woods and Mr. Tenney differs significantly on the details of the new  
4 pay plan. Mr. Tenney testified that Protestants' initial pay plan was overly lucrative.<sup>119</sup> He testified that  
5 the new pay plan is still more lucrative than the industry and includes commissions, "pack" percentage,  
6 and bonuses based upon the number of units sold.<sup>120</sup> Mr. Woods testified that the commission now paid  
7 by Protestants is well below anyone else, and he understood that the new pay plan was a straight  
8 commission.<sup>121</sup>

9 75. Mr. Woods was apparently not fully informed about the details of the new pay plan.  
10 Nevertheless, when he heard about the the new pay plan Mr. Woods started thinking about recommending  
11 termination of the Brawley's RV Dealer Agreement.<sup>122</sup> Having "green pea" sales people would require  
12 more training, and initially fewer sales, and that would impact Mr. Woods's commission income. Mr.  
13 Tenney testified that the change in pay scale did not result in any decrease in sales for any line-make.<sup>123</sup>

14 76. Mr. Cassidy acknowledged that he did nothing to independently check Mr. Woods'  
15 allegations.<sup>124</sup> Evidence was presented that all sales personnel employed by Protestants have been tested  
16 and certified by Roadtrek.<sup>125</sup> No evidence was presented as to the number of sales personnel required to  
17 be employed by a dealer. This allegation does not support the decision to terminate Protestants' Dealer  
18 Agreements.

19 **E. Facilities**

20 **1. RVs of Sacramento**

21 77. Mr. Woods testified that a factor he used to place Roadtrek motor homes with a dealer was  
22 the facility, a factor which is starting to become important. According to Mr. Tenney, at the time  
23 Roadtrek was added at the RVs of Sacramento location, the bathrooms were redone, inside carpeting was  
24

25 <sup>118</sup> RT III, p. 157: 10-13.

<sup>119</sup> RT III, p. 156: 8.

<sup>120</sup> RT III, pp. 156: 19 –157: 5. "Pack", according to Mr. Tenney, is a cost figure: dealers take the pack out or take a percentage of the invoice and call it a pack before they calculate commissions. RT III, p. 156: 10-14.

<sup>121</sup> RT I, p. 127: 9-11.

<sup>122</sup> RT I, p. 125: 14-19; pp. 125: 22 – 126:8.

<sup>123</sup> RT III, pp. 157:25 – 158:3.

<sup>124</sup> RT I, p. 102: 3-7.

<sup>125</sup> RT II, p. 8:1-9; RT III, p. 158:8-11.

1 replaced, and outside blacktop was resurfaced. As early as August 2005, the Manteca Trailer and  
2 Camper, Inc., the corporate entity, was meeting with the City of Sacramento regarding plans for  
3 renovation of RVs of Sacramento. In September 2006, a \$1.4 million escrow closed on the property, and  
4 funds have been expended for an architect to prepare plans for the renovation.

5 78. Mr. Woods testified that in 2005-2006, he had visited the RVs of Sacramento location  
6 some twenty times. Surprisingly, while he was engrossed in critiquing housekeeping issues, Mr. Woods  
7 was so disconnected that he remained ignorant of the proposed plans for major renovation.<sup>126</sup>

8 79. Roadtrek concedes that the issue of the facility of RVs of Sacramento was not significant  
9 in making the decision to terminate its Roadtrek franchise.

## 10 2. Brawley's RV

11 80. In 1991, the Brawley's RV business was purchased by Manteca Trailer and Camper, Inc.,  
12 from bankruptcy proceedings. The facility was approved by Roadtrek when it authorized Brawley's RV  
13 as a Roadtrek franchisee and entered into a Dealer Agreement.

14 81. Roadtrek concedes that the issue of the facility of Brawley's RV was not significant in  
15 making the decision to terminate its Roadtrek franchise.

### 16 Permanency of the Investment [§ 3071(c)]

#### 17 A. RVs of Sacramento

18 82. RVs of Sacramento was first authorized as a Roadtrek dealer in January 2002.<sup>127</sup> Prior to  
19 that date, there had not been another Roadtrek dealer in that territory.<sup>128</sup> Since becoming a Roadtrek  
20 dealer, funds have been expended for renovations including bathroom upgrades, carpeting the building,  
21 and blacktopping a large area.<sup>129</sup> In addition, funds have been expended for an architect to provide major  
22 renovation plans, and \$1.4 million was spent to purchase the property on which the dealership is  
23 located.<sup>130</sup>

24 83. Mr. Woods claimed ignorance of the property purchase and major renovation plans.<sup>131</sup> Mr.

26 <sup>126</sup> RT II, pp. 35:22 – 36:13; p. 37:3-17.

27 <sup>127</sup> Jt. Exh. 4, p. 8.

28 <sup>128</sup> RT III, p. 137:10-13.

<sup>129</sup> RT III, p. 138:15-19.

<sup>130</sup> RT III, pp. 138:20 – 139:11; p. 143: 3-14.

<sup>131</sup> RT II, pp. 35:22 – 36:13; p. 37:3-17; RT IV, p. 36:13-18.

1 Cassidy relied upon the incomplete and uninformed assessment by Mr. Woods of the facilities situation.  
2 Mr. Cassidy did not speak, email, or correspond with anyone at RVs of Sacramento about this issue.<sup>132</sup>

3 84. There is no dispute that RVs of Sacramento has trained and certified sales personnel,  
4 although Mr. Woods contends that turnover is high because of the pay schedule.

5 85. No evidence was presented that RVs of Sacramento does not have adequate service  
6 facilities and staff.

7 86. The base flooring limit during 2005 and 2006 was \$500,000.00 total for both dealerships.  
8 As of the effective date of the termination, there was a \$750,000.00 flooring limit dedicated to Roadtrek  
9 for RVs of Sacramento and Brawley's RV.

10 87. Other than the facilities issue about which he did not communicate, Mr. Cassidy and  
11 Roadtrek had no concerns about the permanency of investment at RVs of Sacramento.<sup>133</sup>

12 **B. Brawley's RV**

13 88. Brawley's RV was first authorized as a Roadtrek dealer in December 2001.<sup>134</sup> Prior to that  
14 date, there had not been another Roadtrek dealer in that territory.<sup>135</sup> Funds were expended in 1991, when  
15 Brawley's was purchased out of bankruptcy.<sup>136</sup>

16 89. There is no dispute that Brawley's RV has trained and certified sales personnel, although  
17 Mr. Woods contends that turnover is high because of the pay schedule.

18 90. The Brawley's facility was approved for operations by Roadtrek.<sup>137</sup> No evidence was  
19 presented that Brawley's RV does not have sufficient service facilities and staff; Mr. Woods testified that  
20 the service facility was fair.<sup>138</sup>

21 91. The base flooring limit during 2005 and 2006 was \$500,000.00 for both dealerships. As of  
22 the effective date of the termination, there was a \$750,000.00 flooring limit dedicated to Roadtrek for  
23 Brawley's RV and RVs of Sacramento.

24 92. Mr. Cassidy relied upon Mr. Woods' assessment that the physical facility was inadequate;

25 \_\_\_\_\_  
132 RT IV, pp. 36:19 – 37:2.

26 133 RT IV, pp. 39:21 – 40:7.

27 134 Jt. Exh. 2, p. 8.

28 135 RT III, p. 137:10-13.

136 RT III, p. 194:14-20.

137 RT III, p. 137:14-15, 20-22.

138 RT I, p. 143:22-24.

1 Mr. Cassidy did not speak, email, or correspond with anyone at Brawley's RV about this issue.<sup>139</sup>

2 93. Other than the facilities issue about which he did not communicate, Mr. Cassidy and  
3 Roadtrek had no concerns about the permanency of investment at Brawley's RV.<sup>140</sup>

4 **Whether it is Injurious or Beneficial to the Public Welfare for the Franchise to be**  
5 **Modified or Replaced or the Business of the Franchisee Disrupted [§ 3071(d)]**

6 94. Evidence was presented by Respondent that customers will travel long distances to  
7 purchase a recreational vehicle and to have it serviced.<sup>141</sup> Prior to RVs of Sacramento and Brawley's RV  
8 being established as Roadtrek dealers, there were no Roadtrek dealers in the Sacramento-Modesto area of  
9 California. There is only one other Roadtrek dealer in Northern California, and it is located in Scott's  
10 Valley. No testimony or declarations were submitted by Roadtrek customers indicating the harm they  
11 might suffer if they are no longer able to utilize Protestants' dealerships. It is Mr. Tenney who argues for  
12 those customers by contending that termination of Protestants' Dealer Agreements will require the public  
13 to have longer drive times for sales and service.<sup>142</sup>

14 95. Roadtrek contracts with Desrosiers Automotive, an outside consultant, to compile  
15 information relating to customer satisfaction.<sup>143</sup> Reports are provided twice a year to every dealer, except  
16 when the response rate is too low.<sup>144</sup> The Desrosiers report issued May 2006 was considered as a factor  
17 by Roadtrek in terminating Protestants' Dealer Agreements. According to Mr. Cassidy, the report was  
18 not a dominant factor in the decision to terminate RVs of Sacramento.<sup>145</sup> However, the Desrosiers report  
19 was a significant factor in terminating Brawley's RV.<sup>146</sup>

20 96. According to Mr. Cassidy, dealers receive a copy of the Desrosiers report and "generally"  
21 the regional sales manager would follow up and discuss the report with the dealer.<sup>147</sup> No evidence was  
22 presented that Mr. Woods discussed the Desrosiers report with anyone at RVs of Sacramento or  
23 Brawley's RV. Mr. Cassidy could not recall any specific conversations in which Mr. Woods provided

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25 <sup>139</sup> RT IV, pp. 36:19 – 37:2.

<sup>140</sup> RT IV, pp. 39: 21 – 40:7.

<sup>141</sup> RT II, p. 40:1-6; RT III, p. 112: 18-22; RT III, p. 14:11-13.

<sup>142</sup> RT III, pp. 159:2 – 160:1.

<sup>143</sup> RT I, pp. 65: 15 – 66:7; Jt. Exh. 7.

<sup>144</sup> RT I, p. 66: 18-20; p. 68:20-22.

<sup>145</sup> RT I, p. 74: 14-17; p. 97:2-8.

<sup>146</sup> RT I, p. 74:8-13.

<sup>147</sup> RT I, pp. 72:23 – 73:18.

1 feedback concerning any such discussions.<sup>148</sup> Mr. Hammill testified that he has not had any discussions  
2 with any representative of RVs of Sacramento or Brawley's RV concerning any perceived deficiencies in  
3 the customer satisfaction index.<sup>149</sup>

4 97. While the Desrosiers report provides some insight about customer opinions collected in  
5 2005, the report suffers because no one is mandated to respond to the Desrosiers inquiries: only five  
6 responses were received for RVs of Sacramento and only eight responses were received for Brawley's  
7 RV.<sup>150</sup>

8 98. Mr. Woods had discussions with two other dealers in September 2006 about the possibility  
9 of taking over RVs of Sacramento's Roadtrek business. Mr. Cassidy testified that if the protest of RVs of  
10 Sacramento is overruled, Roadtrek intends to get a dealer in place as soon as possible, but has no dealer in  
11 mind.<sup>151</sup> Mr. Cassidy also testified that Roadtrek would work with any dealer, not just Roadtrek dealers,  
12 to make sure that warranty and non-warranty work would be performed for customers.<sup>152</sup>

13 99. Mr. Hammill described his efforts to assist a Brawley's RV customer who felt she was  
14 treated rudely and forced through the purchase process, but he testified such complaints were not  
15 unusual.<sup>153</sup> Mr. Cassidy testified that if the protest of Brawley's RV is overruled, Roadtrek intends to get  
16 a dealer in place as soon as possible, but has no dealer in mind.<sup>154</sup> Mr. Cassidy also testified that  
17 Roadtrek would work with any dealer, not just Roadtrek dealers, to make sure that warranty and non-  
18 warranty work would be performed for customers.<sup>155</sup>

19 100. Customer complaints occur in the recreational vehicle business. While Roadtrek's goal is  
20 to improve service, the evidence presented by the low response to the Desrosiers survey does not portray  
21 Protestants as incapable of representing Roadtrek, especially when termination will result in increased  
22 drive times for customers.

23 ///

24  
25 <sup>148</sup> RT I, pp. 73:19 – 74:7.

26 <sup>149</sup> RT III, p. 95: 19; p. 96:8.

27 <sup>150</sup> RT I, p. 95: 1; p. 96:19; Jt. Exh. 7, RVs of Sacramento Dealer Report, p. 3; Brawley's RV Dealer Report, p. 3.

28 <sup>151</sup> RT I, pp. 82: 21 – 83:2.

<sup>152</sup> RT I, p. 83: 3-20.

<sup>153</sup> RT III, pp. 97:3 – 98:6.

<sup>154</sup> RT I, p. 82: 6-20.

<sup>155</sup> RT I, p. 83: 3-16.

1 **Whether the Franchisee has Adequate New Recreational Vehicle Sales and, if required by the**  
2 **Franchise, Service Facilities, Equipment, Vehicle Parts, and Qualified Service Personnel, to**  
3 **Reasonably Provide for the Needs of the Consumers for the Recreational Vehicles Handled by the**  
4 **Franchisee and has been and is Rendering Adequate Services to the Public [§ 3071(e)]**

5 **A. Sales and Service Facilities**

6 101. As of May 2006 when Roadtrek renewed its Dealer Agreement with Brawley's RV, it is  
7 presumed that the sales and service facilities met or exceeded the minimum Roadtrek standards.<sup>156</sup> In  
8 May 2006, when the Gilroy dealership ceased selling Roadtrek, Mr. Woods notified customers in the  
9 Gilroy territory about Brawley's RV in Modesto.<sup>157</sup> If the sales and service facilities at Brawley's RV  
10 were not adequate, he simply could have notified those customers to wait a month until June 2006, when  
11 McMahon's Scott's Valley dealership opened. In the alternative, for those who needed immediate  
12 service, Mr. Woods could have made arrangements with any local recreational vehicle dealer to perform  
13 service, even if the dealer had no relationship to Roadtrek.<sup>158</sup>

14 102. As of October 2006 when Roadtrek renewed its Dealer Agreement with RVs of  
15 Sacramento, it is presumed that the sales and service facilities met or exceeded the minimum Roadtrek  
16 standards.<sup>159</sup>

17 103. There was no evidence presented of any change, detrimental or otherwise, in the sales and  
18 service facilities of either dealer between the dates of their Dealer Agreement renewal and the Louisville  
19 show in late November or early December 2006, when the decision was made to terminate their Dealer  
20 Agreements. Mr. Woods testified that he had been to the RVs of Sacramento facility 20 times in 2005-  
21 2006, and to the Brawley's RV locale 10 times in 2005-2006.<sup>160</sup> Other than Mr. Woods' observations  
22 regarding housekeeping matters, no evidence was presented of any changes in the sales and service  
23 facilities in 2007.

24 104. It is determined that Roadtrek failed to prove that RVs of Sacramento and Brawley's RV  
25 did not have adequate new recreational vehicles sales and service facilities to reasonably provide for the  
26 needs of the consumers for the recreational vehicles handled by these dealers.

27 <sup>156</sup> Jt. Exh. 1, p. 1, sec. 107.

28 <sup>157</sup> RT I, p. 129:9-16.

<sup>158</sup> Mr. Cassidy testified that this type of arrangement could be made if the Brawley's RV protest was overruled. RT I, p. 83:3-16.

<sup>159</sup> Jt. Exh. 1, p. 1, sec. 107.

<sup>160</sup> RT I, p. 142: 23-24.

1           **B. Equipment and Vehicle Parts**

2           105. No evidence was presented on this subject. It is determined that Roadtrek failed to prove  
3 that RVs of Sacramento and Brawley’s RV did not have adequate equipment and vehicle parts to provide  
4 for the needs of the consumers for the recreational vehicles handled by these dealers.

5           **C. Qualified Service Personnel**

6           106. Mr. Tenney testified that one or more service personnel went to the Roadtrek factory for  
7 training.<sup>161</sup> No other evidence was presented on the qualifications of service personnel at either  
8 dealership. It is determined that Roadtrek failed to prove that RVs of Sacramento and Brawley’s RV did  
9 not have qualified service personnel to provide for the needs of the consumers for the recreational  
10 vehicles handled by these dealers.

11           **D. Adequate Service to the Public**

12           107. Mr. Cassidy testified that customer complaints are an “ongoing battle”.<sup>162</sup> Mr. Tenney  
13 testified that five years ago, before the Messrs. Hammill and Cassidy were in charge of Roadtrek, he had  
14 been told that the customer satisfaction index for RVs of Sacramento and Brawley’s RV was  
15 inadequate.<sup>163</sup> Since that discussion, no additional discussions of inadequate customer satisfaction have  
16 occurred between Mr. Tenney and Roadtrek.<sup>164</sup> Mr. Cassidy reported that Protestants had a high amount  
17 of customer complaints, but he did not know if the complaints were the results of deficiencies in  
18 equipment, vehicle parts, or service personnel, or if the complaints were due to a design or manufacturing  
19 defect.<sup>165</sup>

20           108. Mr. Hammill testified that it is a problem throughout the industry that dealers, including  
21 Roadtrek dealers, are not anxious to perform service on vehicles they have not sold.<sup>166</sup> He described  
22 complaints from customers who purchased a Roadtrek motor home at McMahon’s in Scott’s Valley and  
23 were refused service by Brawley’s RV.<sup>167</sup> Mr. Tenney was not aware of any instance where service was  
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26 <sup>161</sup> RT III, p. 158: 12-19.

27 <sup>162</sup> RT IV, p. 45: 5-13.

28 <sup>163</sup> RT III, p. 169: 13-18.

<sup>164</sup> RT III, p. 169: 18-19.

<sup>165</sup> RT IV, pp. 44:5 – 46:17.

<sup>166</sup> RT III, p. 27: 6-18.

<sup>167</sup> RT III, p. 59:1-7

1 refused and that is against company policy.<sup>168</sup>

2 109. As Mr. Hammill points out, even one or two complaints involving refusal to provide  
3 service can be detrimental. However, there is insufficient evidence to establish that either dealership  
4 failed to provide adequate service.

5 **Whether the Franchisee Fails to Fulfill the Warranty Obligations Agreed to be**  
6 **Performed by the Franchisee in the Franchise [§ 3071(f)]**

7 110. Section 192 of the Dealer Agreements requires the dealers to perform warranty service on  
8 a Roadtrek unit, even if that unit was not purchased at these dealerships.<sup>169</sup> RVs of Sacramento and  
9 Brawley's RV are not only authorized to perform warranty work on Roadtrek units they have sold, but  
10 they are also obligated to perform warranty work on units purchased elsewhere.

11 111. Mr. Cassidy testified that he was aware of complaints involving warranty recall work;  
12 however, Mr. Cassidy did not have any knowledge whether the complaints were due to failure to perform  
13 the work or whether the complaints were due to defects in the design or production of the Roadtrek units.  
14 Mr. Hammill generally described complaints alleging Brawley's RV had failed to fulfill the warranty  
15 obligations set forth in the Dealer Agreements.<sup>170</sup>

16 112. Mr. Cassidy had no discussions with the Roadtrek service and warranty manager about any  
17 deficiencies of RVs of Sacramento or Brawley's RV.<sup>171</sup>

18 113. In May 2006, the Gilroy dealer ceased selling Roadtreks, and Mr. Woods referred Gilroy  
19 territory customers to Brawley's RV. Mr. Woods must have considered Brawley's RV's ability to  
20 perform warranty work adequate, for if he had not, he could have told those customers to simply wait a  
21 month until the Scott's Valley dealership opened up in June 2006 or authorized service at other  
22 recreational vehicle dealers, even if they had no relationship with Roadtrek.

23 114. There is insufficient evidence to support a finding that Protestants failed to fulfill the  
24 warranty obligations.

25 ///

26 \_\_\_\_\_  
27 <sup>168</sup> RT IV, pp. 24:22 – 25:6.

<sup>169</sup> Jt. Exhs. 1 and 3, p. 4, sec. 182.

28 <sup>170</sup> RT III, p. 59:17; RT IV, p. 48:4-25; pp. 49:21-25 – 50: 1-3.

<sup>171</sup> RT IV, p. 46:8-17.

1           **Extent of the Franchisee’s Failure to Comply with the Terms of the Franchise [§ 3071(g)]**

2           115. In addition to the failings alleged in the termination letters, Roadtrek asserts that  
3 Protestants have failed to comply with other terms of their Dealer Agreements.

4           **A.     Section 120: Shows**

5           116. The Brawley’s RV Dealer Agreement does not specify certain shows in which Brawley’s  
6 RV must participate; rather, Brawley’s RV is required to assist RVs of Sacramento.<sup>172</sup> The inconsistent  
7 interpretation of that requirement by Roadtrek management is troubling: Mr. Hammill insisted that  
8 Brawley’s RV is required to attend shows, but Mr. Cassidy testified that Brawley’s RV is not obligated,  
9 but expected, to attend shows.<sup>173</sup> Mr. Woods testified that he worked seven shows in 2006 with RVs of  
10 Sacramento. Mr. Woods told Mr. Cassidy and Mr. Hammill that Brawley’s did not attend any shows;  
11 thus, Mr. Hammill alleged this section of the Dealer Agreement had been violated by Brawley’s RV.

12           117. Mr. Woods’ December 5, 2006, email discusses Protestants’ sales staff and states, “They  
13 sold nothing at the September show.” Mr. Cassidy said he understood the email to refer to both  
14 dealerships. Thus, a reasonable interpretation of the email is that “They” refers to sales personnel from  
15 both RVs of Sacramento and Brawley’s RV who was present at the September show, but sold no  
16 Roadtrek products.

17           118. In addition, the Desrosiers report had at least one response for Brawley’s RV confirming  
18 that the customer had learned about Brawley’s RV at a show.<sup>174</sup> A reasonable inference is that Brawley’s  
19 had staff at that show.

20           119. The allegation that Brawley’s RV failed to comply with this provision of the Dealer  
21 Agreement is not sustained.

22           **B.     Section 140: Factory Leads**

23           120. As discussed above, Roadtrek’s marketing program gathers potential customer leads,  
24 which are the property of Roadtrek, and dealers are to use them to market only Roadtrek vehicles.<sup>175</sup>

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26 \_\_\_\_\_  
27 <sup>172</sup> Jt. Exh. 1, p. 2, sec. 120.

<sup>173</sup> RT IV, p. 53: 3-8; p. 119: 9-20.

28 <sup>174</sup> Jt. Exh. 7, Brawley’s RV Dealer Report, p. 2.

<sup>175</sup> RT III, pp. 51: 21—52:11; Jt. Exhs. 1 and 3, p. 3, sec. 140.

1 Each lead costs an average of \$60.00, depending upon its source.<sup>176</sup>

2 121. RVs of Sacramento and Brawley's RV sell multiple line-makes; however, neither sells  
3 Pleasureway, which is Roadtrek's biggest competitor.<sup>177</sup> Roadtrek alleges that leads provided to  
4 Protestants were funneled through their parent corporation and given to the corporation's third  
5 recreational vehicle dealership, which does stock Pleasureway motor homes.<sup>178</sup> The allegation that leads  
6 were misappropriated is not supported by the evidence. Mr. Hammill testified that over three years prior  
7 to the date of termination, leads were provided by Roadtrek to RVs of Sacramento and Brawley's RV, and  
8 eight of those leads ultimately purchased a Pleasureway motor home from Manteca Trailer and Camper,  
9 the third dealership owned by the corporate entity Manteca Trailer and Camper, Inc.<sup>179</sup> Mr. Hammill  
10 conceded that there was no way to tell from the lead list if the persons who requested information about  
11 Roadtrek also submitted requests to Pleasureway for information on its products.<sup>180</sup>

12 122. No evidence was submitted to support Roadtrek's contention that potential customers who  
13 sought information from Roadtrek, and whose names were provided to Protestants, ultimately purchased a  
14 Pleasureway unit from Manteca Trailer and Camper as a result of theft of the leads. Roadtrek's allegation  
15 that Protestants failed to comply with this term of their Dealer Agreements is unsubstantiated.

16 **C. Section 350: Financial Reports**

17 123. This provision of the Dealer Agreements requires each dealer to annually furnish Roadtrek  
18 with a complete financial report. Mr. Hammill concedes that Roadtrek has never requested such a report  
19 from Protestants, apparently even when he was dealing with delay of shipping issues.<sup>181</sup>

20 124. Roadtrek had access to periodic reports concerning Protestants' financial situation through  
21 the Key Bank reports Mr. Tenney transmitted to Mr. Woods. Mr. Cassidy received at least one of these  
22 reports from Mr. Woods.<sup>182</sup>

23 125. There was no evidence that RVs of Sacramento and Brawley's RV's failure to furnish  
24 annual financial reports as required by Section 350 of their Dealer Agreements caused financial harm to

25 \_\_\_\_\_  
26 <sup>176</sup> RT III, p. 88: 16-20.

<sup>177</sup> RT III, p. 86: 19-24; pp. 112:23 – 113:5; p.136:12-22.

<sup>178</sup> RT III, pp. 136:23 – 137:1.

<sup>179</sup> RT III, pp. 113: 22 – 114:10.

<sup>180</sup> RT III, pp. 86: 25 – 87: 6; pp. 119: 16 -- 120:25; Jt. Exh. 14.

<sup>181</sup> RT IV, p. 146: 1-8.

<sup>182</sup> RT I, p. 97:19-25.

1 Roadtrek.

2 **D. Section 355: Delivery, Sales and Estimate Reports**

3 126. Roadtrek offered generalized testimony that there was a problem with Protestants not  
4 turning in warranty cards, also known as retail delivery reports, in a timely manner.<sup>183</sup> The information  
5 on the warranty card is critical because it establishes the start of warranty coverage.

6 127. Mr. Hammill testified that he was aware of 4 instances in which Protestants had violated  
7 this provision of the Dealer Agreements.<sup>184</sup>

8 128. The evidence presented supports a finding that Protestants did not always turn in the  
9 warranty cards on a timely basis.

10 **DETERMINATION OF ISSUES**

11 **RVs of Sacramento**

12 129. Roadtrek has not established that RVs of Sacramento is not conducting an adequate  
13 amount of business as compared to the business available to it. [Section 3071(a)]

14 130. Roadtrek has not established that RVs of Sacramento has not made the investment  
15 necessary and incurred the obligations necessary to perform its part of the Roadtrek franchise. [Section  
16 3071(b)]

17 131. Roadtrek has not established that RVs of Sacramento's investment was not permanent.  
18 [Section 3071(c)]

19 132. Roadtrek has not established that it would not be injurious to the public welfare for the  
20 franchise to be replaced. [Section 3071(d)]

21 133. Roadtrek has not established that RVs of Sacramento does not have adequate recreational  
22 vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel, to  
23 reasonably provide for the needs of the consumers for the recreational vehicles handled by the franchisee  
24 and has been and is rendering adequate services to the public. [Section 3071(e)]

25 134. Roadtrek has not established that RVs of Sacramento failed to fulfill the warranty  
26 obligations of Roadtrek to be performed by RVs of Sacramento. [Section 3071(f)]

27  
28 <sup>183</sup> RT II, p. 25:5-6; pp. 32:19 – 34:20; RT III, pp. 114:20 – 119:15; Jt. Exhs. 1 and 3, p. 6, sec. 355.

<sup>184</sup> RT III, pp. 114:20 – 119:15.

1 135. Roadtrek has not established that RVs of Sacramento failed to comply with the terms of  
2 the franchise. [Section 3071(g)]

3 **Brawley's RV**

4 136. Roadtrek has not established that Brawley's RV is not conducting an adequate amount of  
5 business as compared to the business available to it. [Section 3071(a)]

6 137. Roadtrek has not established that Brawley's RV has not made the investment necessary  
7 and incurred the obligations necessary to perform its part of the Roadtrek franchise. [Section 3071(b)]

8 138. Roadtrek has not established that Brawley's RVs investment was not permanent. [Section  
9 3071(c)]

10 139. Roadtrek has not established that it would not be injurious to the public welfare for the  
11 franchise to be replaced. [Section 3071(d)]

12 140. Roadtrek has not established that Brawley's RV does not have adequate recreational  
13 vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel, to  
14 reasonably provide for the needs of the consumers for the recreational vehicles handled by the franchisee  
15 and has been and is rendering adequate services to the public. [Section 3071(e)]

16 141. Roadtrek has not established that Brawley's RV failed to fulfill the warranty obligations of  
17 Roadtrek to be performed by Brawley's RV. [Section 3071(f)]

18 142. Roadtrek has not established that Brawley's RV failed to comply with the terms of the  
19 franchise. [Section 3071(g)]

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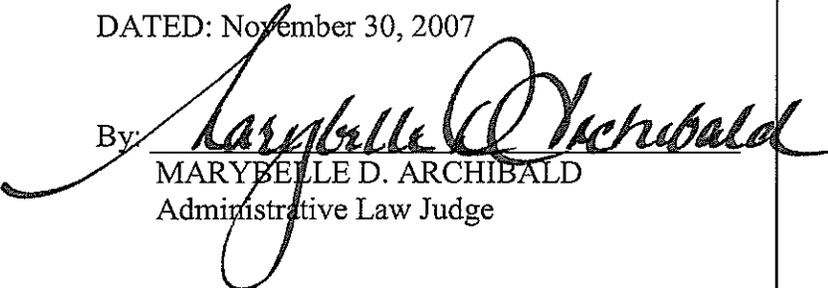
1 **PROPOSED DECISION**

2 Based on the evidence presented and the findings herein, it is hereby ordered that *Manteca Trailer*  
3 *and Camper, Inc., dba RVs of Sacramento v. Home and Park Motorhomes Roadtrek*, Protest No. PR-  
4 2036-07 is sustained. Respondent has not met its burden of proof under Vehicle Code Section 3066(b) to  
5 establish that there is good cause to terminate the Roadtrek franchise of RVs of Sacramento.

6 Based on the evidence presented and the findings herein, it is hereby ordered that *Manteca Trailer*  
7 *and Camper, Inc., dba Brawley's RV v. Home and Park Motorhomes Roadtrek*, Protest No. PR-2074-07 is  
8 sustained. Respondent has not met its burden of proof under Vehicle Code Section 3066(b) to establish  
9 that there is good cause to terminate the Roadtrek franchise of Brawley's RVs.

10  
11  
12 I hereby submit the foregoing which constitutes my  
13 Proposed Decision in the above-entitled matters, as  
14 the result of a hearing before me and I recommend  
15 this Proposed Decision be adopted as the decision of  
16 the New Motor Vehicle Board.

17 DATED: November 30, 2007

18 By:   
19 MARYBELLE D. ARCHIBALD  
20 Administrative Law Judge  
21  
22  
23  
24  
25  
26

27 George Valverde, Director, DMV  
28 Mary Garcia, Branch Chief,  
Occupational Licensing, DMV