

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
MEGA RV CORP. dba MCMAHONS RV,
Protestant,
v.
ROADTREK MOTORHOMES, INC.,
Respondent.

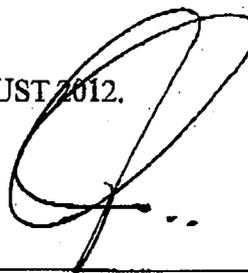
Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10

DECISION

At its regularly scheduled meeting of August 23, 2012, the Public and Dealer Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matters. 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 23rd DAY OF AUGUST 2012.



RAMON ALVAREZ C.
President
New Motor Vehicle Board

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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of
12 MEGA RV CORP. dba MCMAHON'S RV,
13 Protestant,
14 v.
15 ROADTREK MOTORHOMES, INC.,
16 Respondent.

**Protest Nos. PR-2205-10, PR-2211-10,
and PR-2212-10**

**PROPOSED DECISION
Vehicle Code section 3076
[Franchisor Incentive Program]**

17
18 **PROCEDURAL BACKGROUND**

19 **Parties and Counsel**

20 1. Protestant Mega RV Corp doing business as McMahon's RV (herein "Mega RV" or
21 "Protestant") is a recreational vehicle dealership, with several California and Arizona locations. Until
22 early 2012, its primary dealership location was in Irvine, California at 6441 Burt Road, #10; on or about
23 March 31, 2012, Protestant relocated that dealership to 5400 Garden Grove Boulevard, Westminster,
24 California.

25 2. Mega RV is a California corporation owned by Brent McMahon. Mega RV is a

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1 “franchisee” within the meaning of Vehicle Code section 331.1.¹

2 3. Protestant is represented by the Law Offices of Michael J. Flanagan, by Michael J.
3 Flanagan, Esquire; Gavin M. Hughes, Esquire; Erin R. Hegedus McIntosh, Esquire; and Danielle R.
4 Vare, Esquire (as of 11/21/11), 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

5 4. Respondent Roadtrek Motorhomes, Inc. (herein “Roadtrek” or “Respondent”)
6 manufactures Class B motorhomes. It is located in Kitchener, Ontario, Canada.

7 5. Roadtrek is a Canadian corporation. Roadtrek is a “franchisor” within the meaning of
8 Section 331.2.

9 6. Respondent is represented by Seyfarth Shaw, LLP, by Louis S. Chronowski, Esquire; and
10 Kavitha Janardhan, Esquire (until 5/1/12), 131 South Dearborn Street, Suite 2400, Chicago, Illinois.

11 **Preliminary Procedural Note**

12 7. Between January and July of 2010, Mega RV filed with the New Motor Vehicle Board
13 (“Board”) 18 protests alleging violations of the Vehicle Code by Respondent Roadtrek involving Mega
14 RV's dealership locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing
15 in August 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed.²

16 8. Also in 2010, Mega RV filed with the Board two petitions (Petition Nos. P-456-10 and
17 P-457-10) against Roadtrek. Both petitions were rejected upon first consideration and the portions of the
18 petitions that sought adjudication of the dispute pursuant to Section 3050(c)(2) were dismissed by the
19 Board at the June 15, 2010, and December 3, 2010, General Meetings, respectively. The petitions also
20 requested that the Board direct the Department of Motor Vehicles (hereinafter “DMV”) to conduct an
21 investigation of the allegations contained in the petitions and to order DMV to exercise any and all
22 authority over Respondent’s Occupational License. These requests were also denied at the meetings noted
23 above.

24
25 ¹ Hereinafter, unless otherwise indicated, all section references are to the Vehicle Code. The statutory references are subject to
26 some qualification: although the parties are properly identified as “franchisee” and “franchisor” under Sections 331.1 and
27 331.2, it was only as of January 1, 2009 that Section 331.3 (“recreational vehicle franchise”) was enacted. Section 11713.22
28 (“written [RV] franchise agreement”) was effective January 1, 2008, and amended effective January 1, 2009; Section 11713.23
29 (“sale of new [RV]”) was effective January 1, 2009. Section 3072 (“establishing or relocating RV dealerships”) became
effective January 1, 2004.

² In the 19 months between the first filing and the first day of hearing, several pre-hearing matters were heard and decided by
Presiding Administrative Law Judge (“ALJ”) Anthony M. Skrocki.

9. On January 31, 2012, the September 20, 2010 order of consolidation for purposes of the merits hearing was amended for preparation of the Proposed Decisions and Decision by the Board; the new order consolidated the 12 protests into five groups, as follows:

Vehicle Code	Type of Protest	Filed	Protest Nos
Section 3070(b)	Modification	January 29, 2010 January 29, 2010 January 29, 2010	PR-2198-10 (Scotts Valley) ³ PR-2199-10 (Colton) PR-2201-10 (Irvine)
Section 3075	Warranty reimbursement violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2206-10 (Colton) PR-2208-10 (Irvine) PR-2209-10 (Scotts Valley)
Section 3076	Franchisor incentive program violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2205-10 (Colton) PR-2211-10 (Scotts Valley) PR-2212-10 (Irvine)
Section 3072(a)	Establishment violations	May 11, 2010	PR-2233-10 (Colton)
Section 3070(a)	"De facto termination"	July 13, 2010 July 13, 2010	PR-2244-10 (Colton/Irvine) PR-2245-10 (Scotts Valley)

10. A hearing on the merits of the 12 protests was held before Administrative Law Judge Diana Woodward Hagle on the following dates in 2011: August 9 through 12, inclusive; August 15 through 19, inclusive; September 21 through 23, inclusive; September 30; November 7 through 11, inclusive; November 14 and 15; November 17 and 18; and November 28 through December 2, inclusive. Hearing dates in 2012 were the following: January 9 and 10; January 12 and 13; January 18 and 19; January 31; and February 1.

11. The hearing was re-opened for a telephonic hearing on April 26, 2012 to provide evidence of the relocation of Mega RV's primary dealership location from Irvine to Westminster.

12. The matters were submitted on May 3, 2012.⁴

³ Subsequently, Protestant requested dismissal of Protest PR-2198-10, which was ordered on March 6, 2012.

⁴ In October 2010, counsel for the parties stipulated to extend the time the ALJ has to render the proposed decisions from 30 to 60 days after the matters were deemed submitted; the time for the Board to consider the proposed decisions was also extended from 30 to 60 days from the date the ALJ submits the proposed decisions. On May 29, 2012, counsel stipulated to extend the ALJ's time to final and sign the proposed decisions from 60 days to 90 days, or August 1, 2012.

1 **Pendant Federal Case**

2 13. The parties to these protests are also parties to an action for money damages currently
3 pending in United States District Court in the Central District of California, Case No. CV 09-09466 SJO.
4 The federal proceeding is stayed pending the Board's Decision in these protests. (RT 9/21: 36-37)⁵

5 **Statement of the Case**

6 **(Franchisor Incentive Program Protest Nos. PR-2205-10, 2211-10 and 2212-10)**

7 14. On February 9, 2010, Mega RV filed Protest No. PR-2205-10 with the Board; an amended
8 protest was filed on February 18, 2010. The protest alleged that Roadtrek had violated Section 3076 by
9 failing to pay franchisor incentive program claims for Roadtrek recreational vehicles sold from Mega
10 RV's Colton, California dealership location.

11 15. On February 18, 2010, Mega RV filed Protest No. PR-2211-10 with the Board. The
12 protest alleged that Roadtrek had violated Section 3076 by failing to pay franchisor incentive program
13 claims for Roadtrek recreational vehicles sold from Mega RV's Scotts Valley, California dealership
14 location.

15 16. On February 18, 2010, Mega RV filed Protest No. PR-2212-10 with the Board. The
16 protest alleged that Roadtrek had violated Section 3076 by failing to pay franchise incentive program
17 claims for Roadtrek recreational vehicles sold from Mega RV's Irvine, California dealership location.

18 17. On March 20, 2012, Administrative Law Judge Diana Woodward Hagle issued an Order
19 Overruling Protestant's Objection to Introduction in Evidence of James E. Hammill's Declaration Re:
20 Franchisor Incentive Program Claims; Findings Related Thereto (herein referred to as "Order"). The
21 Order is attached hereto as Exhibit A and is incorporated by reference as though set forth at length herein.

22 **ISSUES PRESENTED**

23 18. Did Mega RV sustain its burden of proof of establishing that Roadtrek violated Section
24 3076, in that Roadtrek failed to fulfill obligations to Mega RV for franchisor incentive program claims?

25 19. Did Roadtrek sustain its burden of proof of showing that it paid approved claims in a

26 ///

27 _____
28 ⁵ References herein to "RT" followed by a date (excluding the year) are to the transcripts of the proceedings. References to
"Exh" are to Exhibits.

1 manner meeting the requirements of Section 3076?⁶

2 **PROTESTANT'S CONTENTION**

3 20. Roadtrek failed to fulfill an agreement to pay Mega RV's claims under the terms of
4 Roadtrek's franchisor incentive program.

5 **RESPONDENT'S CONTENTION**

6 21. Roadtrek satisfied all obligations to Mega RV for franchisor incentive program claims by
7 either paying Mega RV for the claims or by offsetting amounts owed to Mega RV for the claims against
8 debts which Mega RV owed to Roadtrek.

9 **IDENTIFICATION OF WITNESSES**

10 **Protestant's Witnesses**

11 22. Brent McMahon is the president and CEO of Mega RV Corp, doing business as
12 McMahon's RV. (RT 8/9:76-173; 8/10:14-244; 8/11:6-267; 8/12:7-249; 8/15:6-205; 8/16:6-124)

13 23. Paul Schilperoort is the Director of Operations at Mega RV, a position he has held since
14 mid-2008. His duties include overseeing the "...daily operations of the entire company...". He initially
15 was hired in November 2005 as service and parts director. (RT 8/16:127-220; 8/17:117-218; 8/18:6-215;
16 8/19:8-211; 9/21:9-190; 9/22:6-71; 1/31:207-226; 2/1:6-144; 4/26:30-100)

17 24. Laurie Fosdick was initially hired by Mega RV in September of 2006 (during a "growing
18 phase") as Controller for all Mega RV locations. Since January 2011, she has been the Office Manager of
19 Mega RV's Colton and Palm Desert dealerships. (RT 8/10:82; 1/9:6-86)

20 25. Marshall Maresh is Mega RV's Sales Manager - Motorhomes. He started in sales with
21 Brent McMahon in early 2001, having previously worked for Brent McMahon's stepfather's RV
22 dealership. In late 2009 or early 2010, he was promoted to his current position. (RT 1/12:7-44)

23 **Respondent's Witnesses**

24 26. Jeff Hanemaayer is the son of the founder of Roadtrek. Until 2009, he was Chairman of
25 the company, handling marketing, finance and accounting. He described himself and James Hammill
26 "...more as co-CEO's...", each involved in different areas of the company. (Exh 601; RT 11/14:11-249;

27 _____
28 ⁶ Here, the burden of proof is allocated to Respondent because it is in a better position to have knowledge of the facts regarding these issues.

1 11/15:6-166)

2 27. James Hammill is President and CEO of Roadtrek. He was initially hired as General
3 Manager in April 2005. He was appointed President around the beginning of 2007 and was named a
4 Director of the company in 2008. He oversees "...all operations, everything tangible about the company,
5 reporting to the board of directors... sales, manufacturing, engineering, quality, materials, purchasing...
6 [e]ssentially all departments." (RT 9/22:73-242; 9/23:6-220; 11/7:8-217; 11/8:9-187; 11/9:6-225; 11/10:
7 6-208; 11/11:6-93)

8 28. Paul A. Baumann, CPA, is a principal with Baumann Moreau Consulting Group in Tampa,
9 Florida. He testified as Roadtrek's expert witness. (RT 1/31:7-206)

10 **VEHICLE CODE SECTION 3076 GOVERNS THE SUBMISSION AND PAYMENT OF**
11 **FRANCHISOR INCENTIVE PROGRAM CLAIMS**

12 29. Section 3076, effective on January 1, 2004, provides a framework for the submission,
13 payment and audits of claims made by franchisees pursuant to recreational vehicle "franchisor incentive
14 programs". "Franchisor incentive program" is not defined in Section 3076, and there may be other "terms
15 of the franchisor incentive program" which are operative in areas where the statute is silent.

16 30. For example, no time requirement or manner of making a claim is statutorily imposed on
17 the franchisee. The franchisor, however, must approve or disapprove a franchisee's claim "within 30 days
18 after receipt". (Section 3076(a))

19 31. The 30-day period is critical for the franchisor: "[a] claim not specifically disapproved in
20 writing within 30 days from receipt shall be deemed approved on the 30th day." (Section 3076(a))

21 32. Additionally, and within the 30-day period, if the franchisor wishes to disapprove a claim:
22 "...the franchisee ... shall be notified in writing of its disapproval within the required period,⁷ and each
23 notice shall state the specific grounds upon which the disapproval is based." (Section 3076(a))

24 33. Furthermore, in regard to disapproved claims, "[f]ranchisee claims for incentive program
25 compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the
26 incentive program, lack of material documentation, or fraud." (Section 3076(b))

27 _____
28 ⁷ The phrase, "...within the required period..." refers to the 30 days after receipt of the claim.

1 34. Approved claims (no specific notice is required) must be paid "within 30 days following
2 approval"; therefore, under the statute, the latest date an approved claim may be paid is 60 days following
3 receipt by the franchisor.

4 35. A franchisor's failure to pay or approve a claim within permissible time limits may be
5 excused "...in individual instances for reasons beyond the reasonable control of the franchisor...".
6 (Section 3076(a))

7 **FINDINGS OF FACT**⁸

8 **Preliminary Findings**

9 **Respondent Roadtrek Motorhomes, Inc. (formerly Home & Park Motorhomes)**

10 36. Roadtrek is a Class B motorhome manufacturer headquartered in Kitchener, Ontario,
11 Canada. (RT 11/14:12-13)

12 37. Between 1981 or 1982 and at least 2006, Roadtrek was the largest manufacturer of Class B
13 motorhomes in North America.⁹

14 38. Class B motorhomes (also called "vans") are built on General Motors and Chrysler
15 manufactured chassis. (RT 9/23:212)

16 39. Roadtrek maintains a website, a part of which is dedicated for use by Roadtrek dealers.
17 (RT 8/12:31)

18 **Protestant Mega RV Corp doing business as McMahon's RV**

19 40. Brent McMahon, the owner of Mega RV, started in the recreational vehicle¹⁰ business at
20 "TravelLand", a large multi-dealer RV park in Irvine, California. He then owned a small dealership
21 selling used RVs; on April 9, 2001, he established Mega RV Corp as a new recreational vehicle dealer.
22 (Exh 1; RT 8/9:83-88)

23 41. Brent McMahon eventually expanded Mega RV to other locations throughout California,
24

25 ⁸ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding
26 and are not intended to be all-inclusive.

27 Findings of Fact are organized under topical headings for readability only and are not to be considered relative to only the
particular topic under which they appear.

28 ⁹ Official notice was taken of the Board's Decision in *Manteca Trailer and Camper Inc. v. Home and Park Motorhomes Roadtrek* (PR-2036-07 and 2074-07). The reference is at page 6.

¹⁰ Hereinafter, recreational vehicles will sometimes be referred to as "RVs".

1 and into Arizona. In addition to the Irvine dealership located at "TravelLand" (which was the main
2 location), Mega RV had dealerships in Colton, California and Scotts Valley, California. (RT 8/9:106,
3 109, 139)

4 **Roadtrek's "Franchisor Incentive Program"**

5 42. Roadtrek called its "franchisor incentive program" the Consumer Cash Back Incentive
6 Program ("CCB").¹¹ Each week, on Fridays, CCB incentives were announced on the dealer-only portion
7 of Roadtrek's website called "Dealer Notes". "Dealer Notes" stated that if certain listed van models and
8 model years were "retail delivered" within "effective dates", consumers would receive amounts which
9 ranged between \$500 and \$7,000.¹² (Exhs 516, 642; RT 9/23:41, 54, 83)

10 43. To qualify for the CCB incentive, dealers were required to submit to Roadtrek a CCB
11 Incentive Claim Form signed by the customer, together with the retail sales contract and other sales
12 documents. Roadtrek would then send the incentive check directly to the dealer. Roadtrek took the
13 position that it was up to the dealer and the customer how to apply the cashback. (RT 1/10:113-114, 118)
14 Marshall Maresh (Mega RV's Sales Manager – Motorhomes) recalled several ways that the CCB would
15 be applied: "[s]ometimes we would take it off the price of the MSRP. Sometimes we would put it and
16 use it as down payment." (Exhs 382, 385, 497, 516, 642; RT 8/19:46-47; 60-64; 1/12:17-18)

17 44. Mega RV was one of the Roadtrek RV dealers participating in the CCB Incentive Program.
18 Mega RV submitted claims to Roadtrek pursuant to the program. (Exhs 335, 382, 695; RT 9/23:55, 87;
19 1/10:58-59)

20 **Roadtrek's "Offsetting" or "Crediting"¹³ of Mega RV's Approved CCB Incentive Program**
21 **Claims**

22 45. Roadtrek received CCB Incentive Program claims from Mega RV and---either expressly or
23 by failing to disapprove the claim within 30 days of receipt---approved some claims. (Exh A, p. 5)

24
25
26 ¹¹ Neither SPIFFs (cash incentives paid directly to the salesperson by the manufacturer) nor informal price concessions made
over the phone or by email to clinch a sale are "franchisor incentive programs" under Section 3076. (RT 1/12:13)

27 ¹² Several of the "Dealer Notes" website pages show that Roadtrek would also offer a "Dealer Cash Incentive" program. (Exh
516, pp. RMI 007455, 007457) This separate program is not part of this protest.

28 ¹³ James E. Hammill, in his declaration, uses "offset" and "credit" interchangeably. (Declaration of James E. Hammill
Submitted in Response to Protestant Mega RV Corp's Incentive Claims, dated January 18, 2012)

1 46. Beginning at an unknown time, but at least as early as September 12, 2008, Roadtrek
2 would "offset" or "credit" approved CCB Incentive Program claims submitted by Mega RV against
3 amounts it contended were owed to it by Mega RV.¹⁴ (Exhibit A, pp. 5-21)

4 47. According to Paul A. Baumann, CPA, "offsetting" is "...[w]hen a ... business has monies
5 that are owed to them and they're also doing business with that entity, ...that instead of actually rendering
6 a physical check back to that particular customer, they simply take that amount and they deduct it from
7 the amount that's due and don't actually physically send them a check." (RT 1/31:129)

8 48. Roadtrek did not advise Mega RV that it was "offsetting" or "crediting" approved CCB
9 Incentive Program claims against amounts it contended were owed to it by Mega RV for "units" (vans).
10 Roadtrek did not advise Mega RV of the dates that it was "offsetting" or "crediting" the claims, nor did
11 Roadtrek identify to Mega RV the vans against which the claims were "offset" or "credited". (Exh 496, p.
12 RMI 009154; RT 8/19:61, 85; 11/9:81-84; 1/10:31-34)¹⁵

13 49. Roadtrek did not advise Mega RV that it was "offsetting" or "crediting" approved CCB
14 Incentive Program claims against amounts it contended were owed to it by Mega RV for "parts".
15 Roadtrek did not advise Mega RV of the dates that it was "offsetting" or "crediting" the claims, nor did
16 Roadtrek identify to Mega RV the parts invoice numbers against which the claims were "offset" or
17 "credited". (Exh 496, pp. RMI 009155-009158; RT 8/19:61, 85; 11/9:81-84; 1/10:31-34)

18 50. Roadtrek did not advise Mega RV that it was "offsetting" or "crediting" approved CCB
19 Incentive Program claims against amounts it contended were owed to it by Mega RV for "shows".
20 Roadtrek did not advise Mega RV of the dates that it was "offsetting" or "crediting" the claims, nor did
21 Roadtrek identify to Mega RV the shows against which the claims were "offset" or "credited". (Exh 496,
22 p. RMI 009159; RT 8/19:61, 85; 11/9:81-84; 1/10:31-34)

23 _____
24 ¹⁴ Paul A. Baumann, Respondent's expert witness, did not make an inquiry into whether or not an accounting of "offsets" was
25 ever sent to Mega RV. (RT 1/31:130)

26 ¹⁵ There is no evidence that, at the time of each Roadtrek offset, Mega RV received notice and information about it. (RT
27 11/9:81-84; 1/10:31-34)

28 James Hammill testified that Exhibit 496 is a summary of Roadtrek's position on selected financial transactions between the
parties (information with which Mega RV may not necessarily agree); he stated that Exhibit 496 is "...an account[s] receivable
summary from [Roadtrek's] business records that tries to show all the actions taken by Roadtrek financially ... into one
document to set off the monies owed by McMahon's to Roadtrek by applying the monies that Roadtrek owed to McMahon's."
(RT 11/8:28)

1 51. Roadtrek did not advise Mega RV that it was "offsetting" or "crediting" approved CCB
2 Incentive Program claims against amounts it contended were owed to it by Mega RV for "interest".
3 Roadtrek did not advise Mega RV of the dates that it was "offsetting" or "crediting" the claims, nor did
4 Roadtrek identify to Mega RV the interest against which the claims were "offset" or "credited". (Exh 496,
5 p. RMI 009160; RT 8/19:61, 85; 11/9:81-84; 1/10:31-34)

6 52. Although he was aware that offsets were going back and forth between the parties in 2008
7 and 2009, James Hammill gave no direction to anyone at Roadtrek to make sure that offsets as to any
8 given sales incentive claim were notified to the dealer within a given period of time. He stated that "I
9 don't see offsets as part of the incentive process. I see the initial incentive claim, and when we disagree
10 with it, we would definitely contact the dealer immediately, but not the offset. So I didn't think about
11 that." (RT 11/9:81-84)

12 **FINDINGS CONTAINED IN EXHIBIT A (ATTACHED HERETO) REGARDING**
13 **14 FRANCHISOR INCENTIVE CLAIMS APPROVED BY ROADTREK¹⁶**

14 53. "In lieu of sending payment checks directly to Mega RV for no fewer than 14 franchisor
15 incentive claims which it had approved, Roadtrek offset these claims against amounts Roadtrek contends
16 were owed, but unpaid by Mega RV, to Roadtrek for vans, shows, parts, and interest." (Exhibit A, p. 5)

17 54. All 14 claims were approved by Roadtrek since it agreed to "pay" Mega RV for each
18 claim.¹⁷ Roadtrek "paid" each claim by "issuing" a check, but it did not mail the checks to Mega RV, nor
19 did it appear that Roadtrek intended to mail the checks to Mega RV. Roadtrek's bookkeeping system
20 required it to "issue" checks even though the checks were not going to be transmitted to the payee.¹⁸
21 Instead, Roadtrek "credited" the amounts it acknowledged were "Roadtrek obligations to Mega RV" by
22 "offsetting" them against amounts which Roadtrek contended were "Mega RV obligations to Roadtrek"
23 for "units" (vans), "parts", "shows" and "interest".¹⁹ (Exhibit A, pp. 4-5)

24
25
26 ¹⁶ References in quotes are from the declaration of James E. Hammill.

27 ¹⁷ One claim, and possibly two, appear to be approved only in part. Where Roadtrek "paid" an amount less than the approved
Mega RV claim, it was obligated, under Section 3076, to notify Mega RV in writing of its disapproval, stating the specific
grounds on which the disapproval was based.

28 ¹⁸ It is unknown whether Roadtrek completed writing the checks and, if so, the identities of the payees.

¹⁹ When the credits were made is unknown. See footnote 18 above.

1 55. James Hammill stated that Exhibit 496 is "...an account[s] receivable summary from
2 [Roadtrek's] business records...[showing] all the actions taken by Roadtrek ...to set off the monies owed
3 by McMahon's to Roadtrek by applying the monies that Roadtrek owed to McMahon's." (RT 11/8:28)
4 The implication is that the exhibit reflects accounting entries on the dates stated, but this may not be so.²⁰

5 56. Assuming *arguendo* that Roadtrek's "offsetting" or "crediting" of accounts was a proper
6 manner to "pay" franchisor incentive program claims, there were two instances where Roadtrek "paid"
7 Mega RV beyond the 30 days permitted by Section 3076(a):

8 A. In regard to the sale of a 2009 Roadtrek AG, Roadtrek vouchered check #56857 on
9 12/18/08, but offset \$375 which Roadtrek contended that Mega RV owed for parts purchased on or about
10 4/17/09, four months later (Exhibit A, p. 7); and

11 B. In regard to the sale of a 2008 Roadtrek AD, Roadtrek vouchered check #56857 on
12 12/18/08, but offset \$375 which Roadtrek contended that Mega RV owed for parts purchased on or about
13 4/17/09, four months later (Exhibit A, pp. 8-9).

14 57. The failure of Roadtrek to provide notice to Mega RV is compounded by the complexity of
15 some of its "offsets". Examples are the following:

16 A. In regard to the sale of a 2010 Roadtrek AG, Roadtrek grouped the \$5,000 incentive with
17 other "offsets" totaling \$25,000, then "offset" the \$25,000 against nine separate line-items which Roadtrek
18 contended that Mega RV owed it for vans, although none of the vans was the 2010 Roadtrek AG (Exhibit
19 A, pp. 18-19); and

20 B. In regard to the sale of a 2008 Roadtrek AD, Roadtrek grouped the \$1,500 incentive with
21 other "offsets" totaling \$4,874.98, then "offset" the \$4,874.98 against six separate line-items which
22 Roadtrek contended that Mega RV owed it for one van, two shows, and three parts invoices, asserted
23 debts ranging from 9/21/07 to 12/19/08. (Exhibit A, pp. 8-9)

24 ///

25 ///

26 _____
27 ²⁰ For example, in one case, the date of the "offset" preceded the date the asserted debt arose. (Exhibit A, pp. 8-9) If Exhibit
28 496 does not reflect contemporaneous accounting entries, then the implication is that Roadtrek withheld approved incentive
payments from Mega RV, presumably because it felt that Mega RV owed it money, and did not make "offset" entries in its
ledgers when it withheld the payments. This, of course, is a matter for the federal court to resolve.

1 58. On one occasion, in regard to the sale of a 2010 Roadtrek AD, Roadtrek neither paid to
2 Mega RV the \$2,000 incentive nor did it "offset" the amount against obligations it contended were owed
3 by Mega RV to Roadtrek. (Exhibit A, pp. 19-20)

4 ANALYSIS

5 59. The requirement in Section 3076(a) that approved franchisor incentive program claims
6 must be "paid" within 30 days of approval assumes that the franchisee will receive a meaningful statement
7 identifying with particularity the franchise incentive claim being paid, the exact amount of the claim being
8 paid, the date the claim is being paid (or "credited" or "offset"), and the account or debt against which the
9 "offset" or "credit" is made. Moreover, if the franchisor elects to "pay" by way of a "credit" or an
10 "offset", both parties must be in agreement not only that the franchisee approves of this manner of
11 "payment", but also that there is an agreed-upon debt the franchisee owes against which the "credit" or
12 "offset" is made.

13 60. None of the above conditions of payment were present in Roadtrek's processing of Mega
14 RV's approved CCB Incentive Program claims.

15 61. Finally, there is a fundamental problem with a franchisor "offsetting" payments to a
16 franchisee for incentive claims which it has expressly---or by not disapproving within 30 days of
17 receipt---approved. The dollar amounts of a manufacturer's incentives are designed to motivate
18 customers to buy, and dealers to sell, particular models chosen by the manufacturer. Under Roadtrek's
19 CCB Incentive Program, the customer must sign the claim form so the customer is well aware of the
20 incentive and its amount. The customer, the targeted beneficiary of the program, expects a commensurate
21 reduction in price or application to a down payment, as Marshall Maresh stated. (This is true even though
22 under Roadtrek's program the incentive check is sent to the dealership.) To remove this immediate
23 benefit by "offsetting" would defeat the dealer's incentive to make the sale, since it would be paying the
24 customer out of its own pocket (or cut its profit margin) the amount of the franchisor's incentive.²¹ (RT
25 1/12:17-18)

26 ///

27 _____
28 ²¹ And, since the franchisor's incentive is available to all its franchisees, customers would likely buy elsewhere if the franchisee is unwilling to offer an incentive knowing it would be "offset".

1 CONCLUSIONS

2 62. Mega RV has sustained its burden of proof of establishing that Roadtrek violated Section
3 3076, in that Roadtrek failed to fulfill obligations to Mega RV in regard to "franchisor incentive program"
4 claims.

5 63. Roadtrek has not sustained its burden of proof of showing that it paid approved claims in a
6 manner meeting the requirements of Section 3076, as follows:

7 A. Roadtrek did not "pay" approved incentive claims within the meaning of the statute when it
8 "offset" or "credited" the claims without notice to Mega RV; and

9 B. Even assuming *arguendo* that Roadtrek's "offsetting" or "crediting" approved incentive
10 claims is proper, Roadtrek failed to "pay" approved claims within the statutory time stated in Section
11 3076.

12 PROPOSED DECISION

13 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the
14 Protests in *Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest Nos. PR-2205-10,
15 PR-2211-10, and PR-2212-10, are sustained.

16
17 I hereby submit the foregoing which constitutes my
18 Proposed Decision in the above-entitled matter, as
19 the result of a hearing before me, and I recommend
20 this Proposed Decision be adopted as the decision of
21 the New Motor Vehicle Board.

22 DATED: July 26, 2012

23 

24 By: DIANA WOODWARD HAGLE
25 Administrative Law Judge

26
27 George Valverde, Director, DMV
28 Mary Garcia, Branch Chief,
Occupational Licensing, DMV

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

CERTIFIED MAIL

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6
7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD
9

10 In the Matter of the Protest of
11 MEGA RV CORP. dba MCMAHONS RV,
12 Protestant,
13 v.
14 ROADTREK MOTORHOMES, INC.,
15 Respondent.

Protest Nos. PR-2199-10, and PR-2201-10
ORDER OVERRULING
PROTESTANT'S OBJECTION TO
INTRODUCTION IN EVIDENCE OF
JAMES E. HAMMILL'S DECLARATION
RE: FRANCHISOR INCENTIVE
PROGRAM CLAIMS;
FINDINGS RELATED THERETO
[Vehicle Code section 3076]

16 In the Matter of the Protest of
17 MEGA RV CORP. dba MCMAHONS RV,
18 Protestant,
19 v.
20 ROADTREK MOTORHOMES, INC.,
21 Respondent.

Protest Nos. PR-2206-10, PR-2208-10, and
PR-2209-10

22 In the Matter of the Protest of
23 MEGA RV CORP. dba MCMAHONS RV,
24 Protestant,
25 v.
26 ROADTREK MOTORHOMES, INC.,
27 Respondent.

Protest Nos. PR-2205-10, PR-2211-10, and
PR-2212-10

28
1
ORDER OVERRULING PROTESTANT'S OBJECTION TO INTRODUCTION OF EVIDENCE OF JAMES E.
HAMMILL'S DECLARATION RE: FRANCHISE INCENTIVE PROGRAM CLAIMS: FINDINGS RELATED

EXHIBIT A

1 In the Matter of the Protest of
2 MEGA RV CORP. dba MCMAHON'S RV,
3 Protestant,

Protest No. PR-2233-10

4 v.
5 ROADTREK MOTORHOMES, INC.,
6 Respondent.

7 In the Matter of the Protest of
8 MEGA RV CORP. dba MCMAHONS RV,
9 Protestant,

Protest Nos. PR-2244-10 and PR-2245-10

10 v.
11 ROADTREK MOTORHOMES, INC.,
12 Respondent.

13
14 To: Michael J. Flanagan, Esq.
15 Gavin M. Hughes, Esq.
16 Danielle R. Vare, Esq.
17 Attorneys for Protestant
18 LAW OFFICES OF MICHAEL J. FLANAGAN
19 2277 Fair Oaks Boulevard, Suite 450
20 Sacramento, California 95825

21 James D. McNairy, Esq.
22 Attorney for Respondent
23 SEYFARTH SHAW LLP
24 400 Capitol Mall, Suite 2350
25 Sacramento, California 95814-4428

26 Louis S. Chronowski, Esq.
27 Kavitha Janardhan, Esq.
28 Attorneys for Respondent
SEYFARTH SHAW LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603

PROCEDURAL BACKGROUND

1. During the testimony of James E. Hammill (President of respondent RoadTrek) on November 10, 2011, the parties stipulated and Administrative Law Judge Diana Woodward Hagle ordered the following:

1 to "pay" Mega RV for each claim.⁶ RoadTrek "paid" each claim by "issuing" a check, but it did not
2 mail the checks to Mega RV,⁷ nor did it appear that RoadTrek intended to mail the checks to Mega RV.
3 As noted above, RoadTrek's bookkeeping system required it to "issue" checks even though the checks
4 were not going to be transmitted to the payee.⁸ Instead, RoadTrek "credited" the amounts it
5 acknowledged were "RoadTrek obligations to Mega RV" by "offsetting" them against amounts which
6 RoadTrek contended were "Mega RV obligations to RoadTrek" for "units" (vans), "parts", "shows" and
7 "interest".

8 10. Determining whether this procedure comports with section 3076 is not within the scope of
9 this objection, which is merely to rule on the admissibility of the declaration. Therefore, for example, no
10 review of the record has been made for an agreed-to franchisor incentive program (or "terms" of such an
11 agreement); or for relevant dates relating to each incentive claim to determine if the statutory guidelines
12 have been met; or for notices, communications or agreements between the parties relative to submission
13 and processing of franchisor incentive claims.

14 FINDINGS⁹

15 1. An agreement existed between the parties, express or implied, that Mega RV would
16 receive cash incentives for selling RoadTrek vans. This was a "franchisor incentive program" under
17 Vehicle Code section 3076.

18 2. In lieu of sending payment checks directly to Mega RV for no fewer than 14 franchisor
19 incentive claims which it had approved, RoadTrek offset these claims against amounts RoadTrek
20 contends were owed, but unpaid by Mega RV, to RoadTrek for vans, shows, parts, and interest.

21
22 ⁶ Actually, one claim, and possibly two, appear to be approved only in part, thus "disapproving" part of the claims (see Paras 9
23 and 10 *infra*). Where RoadTrek "paid" an amount less than the approved Mega RV claim, it was obligated, under the statute,
24 to notify Mega RV in writing of its disapproval, stating the specific grounds on which the disapproval was based.

25 ⁷ Protestant's brief states, "...only four checks were attached and both [sic] of them were for payments made to Protestant and
26 cashed by Protestant, rather than through the offsetting method these declarations were supposed to address." (Brief, p. 2:12-
27 14) In fact, in this matter (incentive claims), two checks were attached to the declaration (Exhs. 7 and 10), both of which Mr.
28 Hammill attests were not mailed to Mega RV, but which were "credited" on debts RoadTrek contends were owed by Mega
RV. (Declaration, pp. 6:22-26, 8:21-26)

⁸ It is unknown whether RoadTrek completed writing the checks and, if so, the identities of the payees.

⁹ Findings herein are based upon the Declaration of James E. Hammill, and on inferences to be drawn from the declaration,
and on Exhibits 496 and 706. The findings do not reflect a close examination of the record of the lengthy hearing; therefore,
where a finding is preceded by the phrase "it is unknown", the parties in their post-hearing briefs may point to evidence
already in the record which will dispel the unknown. Additionally, there is a citation to the record and to respondent's brief;
the latter, of course, is not evidence.

- 1 3. 2008 RoadTrek POP (Serial/VIN #xxxx71233131)¹⁰
- 2 A. Mega RV sold a 2008 RoadTrek POP (Serial/VIN #xxxx71233131) and, pursuant to
- 3 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$1,000
- 4 cash incentive.
- 5 B. Mega RV made a claim to RoadTrek for the \$1,000 cash incentive.
- 6 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
- 7 within 30 days of receipt---approved the claim.
- 8 D. RoadTrek determined that this \$1,000 "RoadTrek obligation to Mega RV" would be used
- 9 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
- 10 RoadTrek".
- 11 E. A check memo shows that RoadTrek "vouchered"¹¹ check #56079 reflecting the Mega RV
- 12 claim for \$1,000; it listed a total "net amount" of \$1,000, stated the date to be 09/12/08,
- 13 and referenced "Invoice 71233131".
- 14 F. RoadTrek did not mail check #56079 to Mega RV. It is unknown if check #56079 was
- 15 negotiated.
- 16 G. RoadTrek entered a line-item "credit" of \$1,000 to Mega RV, referencing check #56079,
- 17 as an offset to amounts which RoadTrek contends Mega RV owed for a "show" on or
- 18 about 10/21/07. (Exh. 496, p. RMI 009159)
- 19 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
- 20 payment of the \$1,000 cash incentive, as well as the form of the notice, if given; that it
- 21 was offsetting the \$1,000 on obligations it contended were owed by Mega RV to
- 22 RoadTrek, and that the offset was credited against asserted obligations arising from a
- 23 show occurring in or about October 2007.

24 ///

25 _____

26 ¹⁰ This finding relies on the Hammill declaration. (p. 2:5-23; Exh. 1)

27 ¹¹ "When [RoadTrek vouchers] a check, [RoadTrek assigns] it a number. So it's printed or created in the system to be printed",

28 and "voucher as it's commonly known in RoadTrek is when a check is printed, [it's] assigned a check number, not necessarily signed off. But when [RoadTrek vouchers] one, it actually creates a check." (Testimony of Dawn Crowe, 01/10/12, pp. 134:14-135:5) Although Ms. Crowe's testimony was in reference to warranty claims, it is applicable here.

- 1 4. 2009 RoadTrek AG (Serial/VIN # xxxx85272992)¹²
- 2 A. Mega RV sold a 2009 RoadTrek AG (Serial/VIN # xxxx85272992) and, pursuant to
- 3 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$3,000
- 4 cash incentive.
- 5 B. Mega RV made a claim to RoadTrek for the \$3,000 cash incentive.
- 6 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
- 7 within 30 days of receipt---approved the claim.
- 8 D. RoadTrek determined that this \$3,000 "RoadTrek obligation to Mega RV" would be used
- 9 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
- 10 RoadTrek".
- 11 E. A check memo shows that RoadTrek vouchered check #56857 reflecting the Mega RV
- 12 claim for \$3,000; it listed a total "net amount" of \$4,874.98, stated the date to be 12/18/08,
- 13 and referenced one of the three items listed as \$3,000 for "Invoice 85272992".
- 14 F. RoadTrek did not mail check #56857 to Mega RV. It is unknown if check #56857 was
- 15 negotiated.
- 16 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check #56857,
- 17 as follows: \$570 as an offset to amounts which RoadTrek contends Mega RV owed for a
- 18 van (VIN xxxx71219724) which RoadTrek sold to Mega RV on or about 9/21/07;
- 19 \$1,134.46 as an offset to amounts which RoadTrek contends Mega RV owed for a "show"
- 20 on or about 10/21/07; \$2,444.65 as an offset to amounts which RoadTrek contends Mega
- 21 RV owed for a "show" on or about 3/19/2008; \$241.93 as an offset to amounts which
- 22 RoadTrek contends Mega RV owed for "parts" purchased on or about 2/3/09; \$375 as an
- 23 offset to amounts which RoadTrek contends Mega RV owed for "parts" purchased on or
- 24 about 4/17/09; and \$108.94 as an offset to amounts which RoadTrek contends Mega RV
- 25 owed for "parts" purchased on or about 12/19/08. The six amounts total \$4,874.98. (Exh.
- 26 496, pp. RMI 009154, 009157, and 009159)

27 _____

28 ¹² This finding relies on the Hammill declaration. (pp. 2:5-17, 3:8-15; Exh. 2)

1 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
2 payment of the \$3,000 cash incentive, as well as the form of the notice, if given; that it
3 was offsetting the \$3,000 on obligations it contended were owed by Mega RV to
4 RoadTrek; and that the offset was credited against asserted obligations arising from the
5 sale of a van, against asserted obligations arising from Mega RV's purchase of parts, and
6 against asserted obligations arising from shows occurring in or about October 2007 and in
7 or about March 2008.

8 5. 2008 RoadTrek AD (Serial/VIN # xxxx75178058)¹³

9 A. Mega RV sold a 2008 RoadTrek AD (Serial/VIN # xxxx75178058) and, pursuant to
10 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$1,500
11 cash incentive.

12 B. Mega RV made a claim to RoadTrek for the \$1,500 cash incentive.

13 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
14 within 30 days of receipt---approved the claim.

15 D. RoadTrek determined that this \$1,500 "RoadTrek obligation to Mega RV" would be used
16 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
17 RoadTrek".

18 E. A check memo shows that RoadTrek vouchered check #56857 reflecting the Mega RV
19 claim for \$1,500 (several vouchers were grouped together with the check memo "net
20 amount" totaling \$4,874.98); it stated the date to be 12/18/08, and referenced one of the
21 three items listed as \$1,500 for "Invoice 75178058".

22 F. RoadTrek did not mail check # 56857 to Mega RV. It is unknown if check #56857 was
23 negotiated.

24 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check #56857,
25 as follows: \$570 as an offset to amounts which RoadTrek contends Mega RV owed for a
26 van (VIN xxxx71219724) which RoadTrek sold to Mega RV on or about 9/21/07;
27

28 ¹³ This finding relies on the Hammill declaration. (pp. 2:5-17; 3:21-26 to 4;1-2; Exh. 2)

1 \$1,134.46 as an offset to amounts which RoadTrek contends Mega RV owed for a "show"
2 on or about 10/21/07; \$2,444.65 as an offset to amounts which RoadTrek contends Mega
3 RV owed for a "show" on or about 3/19/2008; \$241.93 as an offset to amounts which
4 RoadTrek contends Mega RV owed for "parts" purchased on or about 2/3/09; \$375 as an
5 offset to amounts which RoadTrek contends Mega RV owed for "parts" purchased on or
6 about 4/17/09; and \$108.94 as an offset to amounts which RoadTrek contends Mega RV
7 owed for "parts" purchased on or about 12/19/08. The six amounts total \$4,874.98. (Exh.
8 496, pp. RMI 009154, 009157, and 009159)

9 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
10 payment of the \$1,500 cash incentive, as well as the form of the notice, if given; that it
11 was offsetting the \$1,500 on obligations it contended were owed by Mega RV to
12 RoadTrek; and that the offset was credited against asserted obligations arising from the
13 sale of a van, against asserted obligations arising from Mega RV's purchase of parts, and
14 against asserted obligations arising from shows occurring in or about October 2007 and in
15 or about March 2008.

16 6. 2008 RoadTrek 190 (Serial/VIN # xxxx71217743)¹⁴

17 A. Mega RV sold a 2008 RoadTrek 190 (Serial/VIN # xxxx71217743) and, pursuant to
18 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$5,000
19 cash incentive.

20 B. Mega RV made a claim to RoadTrek for the \$5,000 cash incentive.

21 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
22 within 30 days of receipt---approved the claim.

23 D. RoadTrek determined that this \$5,000 "RoadTrek obligation to Mega RV" would be used
24 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
25 RoadTrek".

26 E. A check memo shows that RoadTrek vouchered check #57051 reflecting the Mega RV
27

28 ¹⁴ This finding relies on the Hammill declaration. (pp. 2:5-17, 4:13-17; Exh.3)

1 claim for \$5,000; it listed a total "net amount" of \$5,000, stated the date to be 02/03/09,
2 and referenced "Invoice 71217743".

3 F. RoadTrek did not mail check #57051 to Mega RV. It is unknown if check #57051 was
4 negotiated.

5 G. RoadTrek entered a line-item "credit" of \$5,000 to Mega RV, referencing check #57051,
6 as an offset to amounts which RoadTrek contends Mega RV owed for "interest", which
7 obligation RoadTrek contends arose on or about 04/07/08. (Exh. 496,
8 p. RMI 009160)

9 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
10 payment of the \$5,000 cash incentive, as well as the form of the notice, if given; that it
11 was offsetting the \$5,000 on an obligation it contended was owed by Mega RV to
12 RoadTrek, and that the offset was credited against an asserted obligation for interest,
13 which obligation RoadTrek contends arose on or about 04/07/08.

14 7. 2008 RoadTrek 190 (Serial/VIN # xxxx071218496)¹⁵

15 A. Mega RV sold a 2008 RoadTrek 190 (Serial/VIN # xxxx071218496) and, pursuant to
16 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a cash
17 incentive. The amount of the cash incentive is not established, nor is the reason for the
18 discrepancy between the following two amounts: Mega RV claims that it is owed a
19 \$1,000 cash incentive from RoadTrek; RoadTrek has offset \$5,000, thus raising the
20 inference that it believes that the proper amount of the cash incentive owed to Mega RV is
21 \$5,000.¹⁶

22 B. Mega RV made a claim to RoadTrek for a cash incentive relative to the sale of the above-
23 referenced van in an unknown amount.

24 C. RoadTrek received the claim and----either expressly or by failing to disapprove the claim
25 within 30 days of receipt---approved the claim.

26
27 ¹⁵ This finding relies on the Hammill declaration. (pp. 2:5-17, 4:18-24; Exh. 4)

28 ¹⁶ Another scenario is that the amount of the cash incentive was \$5,000 and RoadTrek paid \$4,000, leaving Mega RV with a \$1,000 claim. This, however, is unlikely because RoadTrek prepared a check memo for the entire \$5,000 amount and offset that amount.

- 1 D. RoadTrek determined that this "RoadTrek obligation to Mega RV" would be used to
- 2 "offset" amounts which RoadTrek contended were "Mega RV obligations to RoadTrek".
- 3 E. A check memo shows that RoadTrek vouchered check #57383 reflecting the Mega RV
- 4 claim, which RoadTrek stated to be \$5,000 (several voucher numbers were grouped
- 5 together with the check memo "net amount" totaling \$10,500); it stated the date to be
- 6 04/21/09, and referenced one of the five items listed as \$5,000 for "Invoice 71218496".
- 7 F. RoadTrek did not mail check # 57383 to Mega RV. It is unknown if check #57383 was
- 8 negotiated.
- 9 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check #57383.
- 10 The following were recorded as offsets to amounts which RoadTrek contends Mega RV
- 11 owed for vans: \$2,500 for a van with VIN xxxx75222728, \$1,000 for a van with VIN
- 12 xxxx71216355, \$1,000 for a van with VIN xxxx81120781, and \$1,000 for a van with VIN
- 13 xxxx81120781. Also, \$300 was offset to amounts which RoadTrek contends Mega RV
- 14 owed for "parts" it asserted were purchased on or about 12/19/08. The five amounts total
- 15 \$5,800. (Exh. 496, pp. RMI 009154, RMI 009157)
- 16 H. In addition, RoadTrek offset \$4,700 for the 2008 RoadTrek 190 (Serial/VIN #
- 17 xxxx071218496) which was the subject of this transaction, since it contended that on or
- 18 about 04/02/09, Mega RV "short-paid" the invoice amount by \$4,700. (Exh. 496, p. RMI
- 19 009154)
- 20 I. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
- 21 payment of the cash incentive, as well as the form of the notice, if given; that it was
- 22 offsetting the cash incentive on obligations it contended were owed by Mega RV to
- 23 RoadTrek; and that the offset was credited against asserted obligations arising from sales
- 24 of four vans, against an asserted obligation which RoadTrek contends arose from a "short-
- 25 payment" by Mega RV for the van, and against asserted obligations arising from Mega
- 26 RV's purchase of parts.

27 ///

28 ///

- 1 8. 2008 RoadTrek 190 (Serial/VIN # xxxx171217325)¹⁷
- 2 A. Mega RV sold a 2008 RoadTrek 190 (Serial/VIN # xxxx171217325) and, pursuant to
- 3 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$7,000
- 4 cash incentive.
- 5 B. Mega RV made a claim to RoadTrek for the \$7,000 cash incentive.
- 6 C. RoadTrek received the claim and----either expressly or by failing to disapprove the claim
- 7 within 30 days of receipt---approved the claim.
- 8 D. RoadTrek determined that this \$7,000 "RoadTrek obligation to Mega RV" would be used
- 9 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
- 10 RoadTrek".
- 11 E. A check memo shows that RoadTrek vouchered check #59323 reflecting the Mega RV
- 12 claim for \$7,000 (several voucher numbers were grouped together with the check memo
- 13 "net amount" totaling \$23,726.33); it stated the date to be 11/09/09, and referenced one of
- 14 the five items listed as \$7,000 for "Invoice 71217325".
- 15 F. RoadTrek did not mail check #59323 to Mega RV. It is unknown if check #59323 was
- 16 negotiated.
- 17 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check #59323.
- 18 The following were recorded as offsets to amounts which RoadTrek contends Mega RV
- 19 owed for vans: \$1,000 for a van with VIN xxxx81196125¹⁸, \$16,625 for a van with VIN
- 20 xxxx71168492, \$5,200 for a van with VIN xxxx85246770, and \$901.33 for a van with
- 21 VIN xxxx811288016. The four amounts total \$23,726.33. (Exh. 496, p. RMI 009154)
- 22 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
- 23 payment of the \$7,000 cash incentive, as well as the form of the notice, if given; that it
- 24 was offsetting the \$7,000 on obligations it contended were owed by Mega RV to
- 25 RoadTrek; and that the offset was credited against asserted obligations arising from sales
- 26 of four vans.

27
28 ¹⁷ This finding relies on the Hammill declaration. (pp. 2:5-17, 5:8-14; Exh. 5)

¹⁸ The declaration identifies the line-item in Exhibit 496, p. RMI 009154 as line 9, when the entry in fact is on line 19.

- 1 9. 2008 RoadTrek POP (Serial/VIN # xxxx81128016)¹⁹
- 2 A. Mega RV sold a 2008 RoadTrek POP (Serial/VIN # xxxx81128016) and, pursuant to
- 3 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a cash
- 4 incentive. The amount of the cash incentive is not established, nor is the reason for the
- 5 discrepancy between the following two amounts: Mega RV claims that it is owed a
- 6 \$2,500 cash incentive from RoadTrek; RoadTrek has offset only \$1,000, thus raising the
- 7 inference that it believes that the proper amount of the cash incentive owed to Mega RV is
- 8 \$1,000.²⁰
- 9 B. Mega RV made a claim to RoadTrek for a cash incentive relative to the sale of the above-
- 10 referenced van in an unknown amount.
- 11 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
- 12 within 30 days of receipt---approved the claim.
- 13 D. RoadTrek determined that this "RoadTrek obligation to Mega RV" would be used to
- 14 "offset" amounts which RoadTrek contended were "Mega RV obligations to RoadTrek".
- 15 E. A check memo shows that RoadTrek vouchered check #59323 reflecting the Mega RV
- 16 claim, which RoadTrek stated to be \$1,000 (several voucher numbers were grouped
- 17 together with the check memo "net amount" totaling \$23,726.33); it stated the date to be
- 18 11/09/09, and referenced one of the five items listed as \$1,000 for "Invoice 81128016".
- 19 F. RoadTrek did not mail check #59323 to Mega RV. It is unknown whether check #59323
- 20 was negotiated.
- 21 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check # 59323.
- 22 The following were recorded as offsets to amounts which RoadTrek contends Mega RV
- 23 owed for vans: \$1,000 for a van with VIN xxxx81196125, \$16,625 for a van with VIN
- 24 xxxx71168492, \$5,200 for a van with VIN xxxx85246770, and \$901.33 for a van with
- 25 VIN xxxx811288016. The five amounts total \$23,726.33. (Exh. 496, p. RMI 009154)

26 ///

27 _____

28 ¹⁹ This finding relies on the Hammill declaration. (pp. 2:5-17, 5:15-21; Exh. 5)

²⁰ See footnote 6, *supra*.

1 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
2 payment of the cash incentive, as well as the form of the notice, if given; that it was
3 offsetting the cash incentive on obligations it contended were owed by Mega RV to
4 RoadTrek; and that the offset was credited against asserted obligations arising from sales
5 of five vans.

6 10. 2008 RoadTrek VER (Serial/VIN #xxxx81120371)²¹

7 A. Mega RV sold a 2008 RoadTrek VER (Serial/VIN #xxxx81120371) and, pursuant to
8 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a cash
9 incentive. The amount of the cash incentive is not established, nor is the reason for the
10 discrepancy between the following two amounts: Mega RV claims that it is owed a
11 \$10,000 cash incentive from RoadTrek; RoadTrek states that "...[it] does not offer a
12 \$10,000 incentive on any of its vehicles" and has offset \$1,000, thus raising the
13 inference that it believes that the proper amount of the cash incentive owed to Mega RV is
14 \$1,000.²²

15 B. Mega RV made a claim to RoadTrek for a cash incentive relative to the sale of the above-
16 referenced van in an unknown amount.

17 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
18 within 30 days of receipt---approved a \$1,000 claim.

19 D. RoadTrek determined that this "RoadTrek obligation to Mega RV" would be used to
20 "offset" amounts which RoadTrek contended were "Mega RV obligations to RoadTrek".

21 E. A check memo shows that RoadTrek vouchered check #59322 reflecting a Mega RV
22 claim for \$1,000; it listed a total "net amount" of \$1,000, stated the date to be 11/09/09,
23 and referenced "Invoice 81120371".

24 F. RoadTrek did not mail check #59322 to Mega RV. It is unknown whether check #59322
25 was negotiated.

26 ///

27
28 ²¹ This finding relies on the Hammill declaration. (pp. 2:5-17, 6:10-16; Exh. 6)

²² See footnote 6, *supra*.

1 G. RoadTrek entered a line-item "credit" of \$1,000 to Mega RV, referencing check #59322,
2 as an offset to amounts which RoadTrek contends Mega RV owed for the 2008 RoadTrek
3 VER van (VIN xxxx81120371), which was the subject of this transaction, since it
4 contended that on or about 10/14/09, Mega RV "short-paid" the invoice amount by
5 \$8,870. (Exh. 496, p. RMI 009154)

6 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
7 payment of the \$1,000 cash incentive, as well as the form of the notice, if given; that it
8 was offsetting the \$1,000 on an obligation it contended was owed by Mega RV to
9 RoadTrek, and that the offset was credited against an asserted obligation arising from the
10 sale of the van.

11 11. 2009 RoadTrek AG (Serial/VIN #xxxx85266077)²³

12 A. Mega RV sold a 2009 RoadTrek AG (Serial/VIN #xxxx85266077) and, pursuant to
13 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$5,000
14 cash incentive.

15 B. Mega RV made a claim to RoadTrek for the \$5,000 cash incentive.

16 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
17 within 30 days of receipt---approved the claim.

18 D. RoadTrek determined that this \$5,000 "RoadTrek obligation to Mega RV" would be used
19 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
20 RoadTrek".

21 E. RoadTrek wrote check #0734 with Mega RV ("McMahons RV - Mega RV Corporation")
22 as payee in the amount of \$5,000, which stated the date to be 04/08/10, with a check
23 memo which referenced "Invoice 85266077".

24 F. RoadTrek did not mail check #0734 to Mega RV. Instead, RoadTrek entered a line-item
25 "credit" of \$5,000 to Mega RV, referencing check #734, as an offset to an amount which
26 RoadTrek contends Mega RV owed for the 2009 RoadTrek AG van

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28 ²³ This finding relies on the Hammill declaration. (pp. 2:5-17, 6:22-27; Exh. 7)

1 (VIN xxxx85266077) on or about 09/26/08. (Exh. 496, p. RMI 009154)

2 G. It is unknown whether check #0734 was negotiated.

3 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
4 payment of the \$5,000 cash incentive, as well as the form of the notice, if given; that it
5 was offsetting the \$5,000 on an obligation it contended was owed by Mega RV to
6 RoadTrek, and that the offset was credited against an asserted obligation arising from the
7 sale of the van.

8 12. 2010 RoadTrek AG (Serial/VIN #xxxx85268791)²⁴

9 A. Mega RV sold a 2010 RoadTrek AG (Serial/VIN #xxxx85268791) and, pursuant to
10 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$4,000
11 cash incentive.

12 B. Mega RV made a claim to RoadTrek for the \$4,000 cash incentive.

13 C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim
14 within 30 days of receipt---approved the claim.

15 D. RoadTrek determined that this \$4,000 "RoadTrek obligation to Mega RV" would be used
16 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
17 RoadTrek".

18 E. A check memo shows that RoadTrek vouchered check #58874 reflecting the Mega RV
19 claim for \$4,000; it listed a total "net amount" of \$4,000, stated the date to be 10/01/09,
20 and referenced "Invoice 85268791".

21 F. RoadTrek did not mail check #58874 to Mega RV. It is unknown whether check #58874
22 was negotiated.

23 G. RoadTrek entered two line-item "credits" to Mega RV, both referencing check #58874
24 and both referencing sales of vans, as follows: \$2,000, as an offset to an amount which
25 RoadTrek contends Mega RV owed for VIN xxxx85234968 on or about 08/26/09; and
26 \$2,000, as an offset to an amount which RoadTrek contends Mega RV owed for
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28 ²⁴ This finding relies on the Hammill declaration. (pp. 2:5-17, 7:10-15; Exh. 8)

VIN xxxx81126744 on or about 06/06/09. (Exh. 496, p. RMI 009154)

H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct payment of the \$4,000 cash incentive, as well as the form of the notice, if given; that it was offsetting the \$4,000 on obligations it contended were owed by Mega RV to RoadTrek, and that the offset was credited against asserted obligations arising from the sale of two vans.

13. 2009 RoadTrek POP (Serial/VIN #xxxx81198486) ²⁵

A. Mega RV sold a 2009 RoadTrek POP (Serial/VIN #xxxx81198486) and, pursuant to RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a cash incentive. The amount of the cash incentive is not established, nor is the reason for the discrepancy between the following two amounts: Mega RV claims that it is owed a \$1,000 cash incentive from RoadTrek; RoadTrek has offset \$5,000, thus raising the inference that it believes that the proper amount of the cash incentive owed to Mega RV is \$5,000.²⁶

B. Mega RV made a claim for a cash incentive relative to the sale of the above-referenced van in an unknown amount.

C. RoadTrek received the claim and---either expressly or by failing to disapprove the claim within 30 days of receipt---approved the claim.

D. RoadTrek determined that this "RoadTrek obligation to Mega RV" would be used to "offset" amounts which RoadTrek contended were "Mega RV obligations to RoadTrek".

E. A check memo shows that RoadTrek vouchered check #59319 reflecting Mega RV claims (several vouchers were grouped together with the check memo "net amount" totaling \$25,000); it stated the date to be 11/09/09, and referenced one of the five items listed as \$5,000 for "Invoice 81198486".

F. RoadTrek did not mail check #59319 to Mega RV. It is unknown whether check #59319 was negotiated.

²⁵ This finding relies on the Hammill declaration. (pp. 2:5-17, 7:16-22; Exh. 9)

²⁶ See Para. 7, *supra*.

- 1 G. RoadTrek entered nine line-item "credits" to Mega RV, all referencing check #59319 and
2 all arising out of transactions where RoadTrek claims that Mega RV owes it for vans.
3 The nine amounts total \$25,000. (Exh. 496, p. RMI 009154)
- 4 H. One of the nine line-item "credits" to Mega RV was an offset of \$3,000 which RoadTrek
5 asserts arose on or about 10/05/09 out of the sale of the 2009 RoadTrek POP (Serial/VIN
6 #xxxx81198486) which was the subject of this transaction, since RoadTrek contends that
7 on or about 10/05/09, Mega RV "short-paid" the invoice amount by \$3,000. (Exh. 496, p.
8 RMI 09154)
- 9 I. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
10 payment of the cash incentive, as well as the form of the notice, if given; that it was
11 offsetting the cash incentive on obligations it contended were owed by Mega RV to
12 RoadTrek; and that the offset was credited against asserted obligations arising from sales
13 of eight vans; and from the asserted obligation which arose from the "short-payment" by
14 Mega RV for the van which was the subject of this transaction.
- 15 14. 2010 RoadTrek AG (Serial/VIN #xxxx85274418)²⁷
- 16 A. Mega RV sold a 2010 RoadTrek AG (Serial/VIN #xxxx85274418) and, pursuant to
17 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$5,000
18 cash incentive.
- 19 B. Mega RV made a claim to RoadTrek for the \$5,000 cash incentive.
- 20 C. RoadTrek received the claim and----either expressly or by failing to disapprove the claim
21 within 30 days of receipt---approved the claim.
- 22 D. RoadTrek determined that this \$5,000 "RoadTrek obligation to Mega RV" would be used
23 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
24 RoadTrek".
- 25 E. A check memo shows that RoadTrek vouchered check #59319 reflecting Mega RV claims
26 (several vouchers were grouped together with the check memo "net amount" totaling
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28 ²⁷ This finding relies on the Hammill declaration. (pp. 2:5-17, 8:1-7; Exh. 9)

1 \$25,000); it stated the date to be 11/09/09, and referenced one of the five items listed as
2 \$5,000 for "Invoice 85274418".

3 F. RoadTrek did not mail check #59319 to Mega RV. It is unknown whether check # 59319
4 was negotiated.

5 G. RoadTrek entered nine line-item "credits" to Mega RV, all referencing check #59319. All
6 were recorded as "offsets" to amounts which RoadTrek contends Mega RV owed for the
7 vans. None of the nine offsets related to the sale of the 2010 RoadTrek AG (Serial/VIN
8 #xxxx85274418), which was the subject of this transaction. The nine amounts total
9 \$25,000. (Exh. 496, p. RMI 009154)

10 H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct
11 payment of the \$5,000 cash incentive, as well as the form of the notice, if given; that it
12 was offsetting the \$5,000 claim on obligations it contended were owed by Mega RV to
13 RoadTrek, and that the offset was credited against asserted obligations arising from the
14 sales of nine vans (not including the van which was the subject of this transaction).

15 15. 2010 RoadTrek AD (Serial/VIN #xxxx85318287)²⁸

16 A. Mega RV sold a 2010 RoadTrek AD (Serial/VIN #xxxx85318287) and, pursuant to
17 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$2,000
18 cash incentive.

19 B. Mega RV made a claim to RoadTrek for the \$2,000 cash incentive.

20 C. RoadTrek received the claim and----either expressly or by failing to disapprove the claim
21 within 30 days of receipt---approved the claim.

22 D. RoadTrek determined that this \$2,000 "RoadTrek obligation to Mega RV" would be used
23 to "offset" amounts which RoadTrek contended were "Mega RV obligations to RoadTrek"
24 and, although RoadTrek states it vouchered check #58874 reflecting the Mega RV claim
25 for \$2,000, the voucher did not reference Serial/VIN #xxxx85318287.

26 Moreover, the voucher related to an entirely separate transaction.²⁹

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28 ²⁸ This finding relies on the Hammill declaration. (pp. 2:5-17, 8:8-12; Exh. 8)

1 E. RoadTrek neither paid to Mega RV the \$2,000 cash incentive for the sale of the 2010
2 RoadTrek AD (Serial/VIN #xxxx85318287), nor did RoadTrek offset the amount against
3 obligations it contended were owed by Mega RV to RoadTrek.

4 16. 2010 RoadTrek AG (Serial/VIN #xxxx85261120)³⁰

5 A. Mega RV sold a 2010 RoadTrek AG (Serial/VIN #xxxx85261120) and, pursuant to
6 RoadTrek's "franchisor incentive program", Mega RV was entitled to receive a \$5,000
7 cash incentive.

8 B. Mega RV made a claim to RoadTrek for the \$5,000.

9 C. RoadTrek received the claim and----either expressly or by failing to disapprove the claim
10 within 30 days of receipt---approved the claim.

11 D. RoadTrek determined that this \$5,000 "RoadTrek obligation to Mega RV" would be used
12 to "offset" amounts which RoadTrek contended were "Mega RV obligations to
13 RoadTrek".

14 E. RoadTrek wrote check #0735 with Mega RV ("McMahons RV - Mega RV Corporation")
15 as payee in the amount of \$5,000, which stated the date to be 04/08/10, with a check
16 memo which referenced "Invoice 85261120".

17 F. RoadTrek did not mail check #0735 to Mega RV. It is unknown whether check #0735
18 was negotiated.

19 G. RoadTrek entered several line-item "credits" to Mega RV, all referencing check #0735.
20 The following were recorded as offsets to amounts which RoadTrek contends Mega RV
21 owed for vans: \$1,260 for a van with VIN xxxx91115903, \$1,500 for a van with VIN
22 xxxx91116788, \$1,800 for a van with VIN xxxx85312668, and \$440 for a van with
23 VINxxxx75157060. None of the offsets related to the van which is the subject of this
24 transaction. These amounts total \$5,000. (Exh. 496, p. RMI 009154)

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28 ²⁹ See Paragraph 12 *supra*, and Exhibit 8 attached to the Hammill declaration.

³⁰ This finding relies on the Hammill declaration. (pp. 2:5-17, 8:21-26; Exh. 10)

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H. It is unknown whether RoadTrek gave notice to Mega RV that it was withholding direct payment of the \$5,000 cash incentive, as well as the form of the notice, if given; that it was offsetting the \$5,000 claim on obligations it contended were owed by Mega RV to RoadTrek, and that the offset was credited against asserted obligations arising from the sale of four vans (not including the van which was the subject of this transaction).

SO ORDERED.

DATED: March 20, 2012

NEW MOTOR VEHICLE BOARD



By _____
DIANA WOODWARD HAGLE
Administrative Law Judge

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