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NEW MOTOR VEHICLE BOARD

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

10 Attorneys for Respondent  
ROADTREK MOTORHOMES, INC.

11 THE STATE OF CALIFORNIA  
12 NEW MOTOR VEHICLE BOARD

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

19 Respondent Roadtrek Motorhomes, Inc. ("Roadtrek") submits this motion and brief in  
20 support of this motion to dismiss Protest Nos. 2198-10, 2209-10, 2211-10 and 2245-10, which  
21 relate to Protestant Mega RV Corp.'s ("Mega's") Scotts Valley location. Mega filed four  
22 protests relating to the Scotts Valley location: PR-2198-10 under Cal. Veh. Code 3070 (filed  
23 February 2, 2010); PR-2209-10 under Cal. Veh. Code 3075 (filed February 20, 2010); PR-2211-  
24 10 under Cal. Veh. Code 3076 (filed February 20, 2010); and PR-2245-10 under Cal. Veh. Code  
25 3070 (filed July 13, 2010). It is undisputed that Mega closed the Scotts Valley location in 2010,  
26 well before the commencement of these hearings, rendering any issues relating to the termination  
27  
28

**RESPONDENT'S MOTION TO DISMISS**

1 or modification of the Scotts Valley dealership or the reimbursement of warranty and incentive  
2 claims made by that dealership moot. (See 8/12/2011 Hearing Transcript, at 208). For this  
3 reason, Mega's protests for the Scotts Valley location should be dismissed.

4 "A judicial tribunal ordinarily may consider and determine only an existing controversy,  
5 and not a moot question or abstract proposition." *Wilson v. L.A. County Civil Service Com.*, 112  
6 Cal. App. 2d 450, 452, 246 P.2d 688 (Cal. 1952). "A case becomes moot when a court ruling  
7 can have no practical impact or cannot provide the parties with effective relief." *Simi Corp. v.*  
8 *Garamendi*, 109 Cal. App. 4th 1496, 1503 (2003).

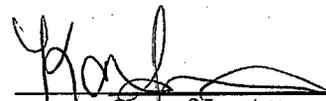
9  
10 Because the Board has limited jurisdiction and cannot award Mega damages from any  
11 actions alleged taken by Roadtrek with respect to its Scotts Valley location, the only relief the  
12 Board could have provided to Mega is to block the termination or modification of the Scotts  
13 Valley dealership. That relief has no practical effect on either Mega or Roadtrek because the  
14 Scotts Valley dealership no longer exists. Because the Board cannot provide Mega with any  
15 relief with respect to the Scotts Valley protests, those protests should be dismissed.

16  
17 The Board should also dismiss the Scotts Valley protests because doing so would  
18 promote the efficient resolution of those protests and these hearings in general. The Board has  
19 authority to dismiss a protest if doing so "is necessary for the due and efficient administration of  
20 powers expressly granted by statute." *Duarte & Witting, Inc. v. New Motor Vehicle Bd.*, 104  
21 Cal. App. 4th 626, 634, 641 (dismissing termination protest where manufacturer discontinued  
22 product, rendering any issues relating to good cause moot). There is no reason for the parties to  
23 spend time and money litigating matters relating to the Scotts Valley dealership when that  
24 dealership no longer exists.  
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1 Finally, Mega's Scotts Valley dealership lacks standing to bring protests against Roadtrek  
2 because it is no longer a "dealer" as defined in the California Vehicle Code. Section 3051 of the  
3 Vehicle Code states that the Chapter 6 of the Vehicle Code, which includes Section 3070 through  
4 3076 "applies to a new motor vehicle dealer, a dealer of new recreational vehicles." Section 285  
5 of the Code defines a dealer as any person who "[i]s engaged wholly or in part in the business of  
6 selling vehicles...." Mega's Scotts Valley dealership is no longer engaged in any way in the  
7 business of selling vehicles, and therefore it no longer has standing to pursue these protests.  
8

9 For the reasons stated above, Protest Nos. 2198-10, 2209-10, 2211-10 and 2245-10,  
10 which relate to Protestant Mega RV Corp.'s Scotts Valley location, should be dismissed as moot.  
11

12 Respectfully submitted,  
13 ROADTREK MOTORHOMES, INC.

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15 \_\_\_\_\_  
16 One of Its Attorneys.  
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1  
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA )  
4 ) ss  
5 COUNTY OF SACRAMENTO )

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

9 On January 12, 2012, I served a true and correct copy of the foregoing document(s)  
10 described as **RESPONDENT'S MOTION TO DISMISS PROTESTS – SCOTTS  
11 VALLEY** on the interested parties in this action as follows:

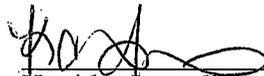
12 Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite 450, Sacramento, CA  
13 95825 (lawmjf@msn.com) via email

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

- 16  by hand delivery.  
17  by placing the document(s) listed above, together with an unsigned copy of this  
18 declaration, in a sealed Federal Express envelope with postage paid on account and  
19 deposited with Federal Express at \_\_\_\_\_, California, addressed as set forth  
20 above.  
21  by transmitting the document(s) listed above, electronically, via the e-mail  
22 addresses set forth above.

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

I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct and executed on January 12, 2012, at Sacramento, California.

  
Kavitha Janardhan