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11 **STATE OF CALIFORNIA**  
12 **NEW MOTOR VEHICLE BOARD**

13 In the Matter of the Protest of:

14 MEGA RV CORP dba  
15 MCMAHON'S RV,

16 Protestant,

17 v.

18 ROADTREK MOTORHOMES, INC.,

19 Respondent.

20 **Protest Nos: PR.- 2198-10,2199-10, 2201-01,**  
21 **2205-10, 2206-10, 2208-10, 2209-10,**  
22 **2211-10, 2212-10, 2233-10, 2244-10 and**  
23 **2245-10. Consolidated**

24 **PROTESTANT'S OPPOSITION TO**  
25 **ROADTREK MOTORHOMES, INC.'S**  
26 **MOTION TO DISMISS PROTESTS-**  
27 **SCOTTS VALLEY**

28 **INTRODUCTION**

Protestant, Mega RV Corp., dba McMahan's RV ("Mega"), files this opposition to Respondent's, Roadtrek Motorhomes, Inc. ("Roadtrek"), motion to dismiss Protest Nos. 2198-10, 2209-10, 2211-10, 2245-10.

**ARGUMENT**

Respondent argues in its motion that the claims filed in regard to Protestant's Scotts Valley location should be dismissed because Protestant no longer has standing to bring such claims and those claims are moot. These allegations are completely inaccurate and Protestant should be allowed to pursue these claims before the New Motor Vehicle Board.

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1           **A. Protestant had, and continues to have, standing to bring its claims in regard**  
2           **to the Scotts Valley location because Protestant, Mega RV Corp., is a**  
3           **“dealer” as defined under Cal. Veh. Code Section 285.**

4           Respondent claims in its motion that “Mega’s Scotts Valley dealership lacks standing to  
5 bring protests against Roadtrek because it is no longer a ‘dealer’ as defined in the California  
6 Vehicle Code.” This claim is inaccurate for two reasons: Mega Scotts Valley did not bring any  
7 protests against Roadtrek; Mega RV Corp., dba McMahon’s RV filed these protests. Second,  
8 Protestant, Mega RV Corp., dba McMahon’s RV is a “dealer” as defined under the California  
9 Vehicle Code and therefore does have standing to bring such claims.

10           In order to meet the statutory standing requirements under the Vehicle Code, the  
11 Protestant must qualify under the definition of a “dealer.” Pursuant to California Vehicle Code  
12 Section 285(a), a “dealer” is defined as someone who, “[f]or commission, money, or other thing  
13 of value, sells, exchanges, buys or offers for sale, negotiates or attempts to negotiate, a sale or  
14 exchange of an interest in a vehicle subject to registration...” Mega RV Corp. is currently an  
15 active California corporation that is in the business of selling, exchanging and buying  
16 recreational vehicles subject to registration under the California Vehicle Code.

17           In addition, the Protestant in all relevant claims, Mega RV Corp., is the owner of the  
18 business licensed with the California Department of Motor Vehicles, McMahon’s RV. (See  
19 “Occupational License Status Information System” printout from the California Department of  
20 Motor Vehicles website, heretofore attached as Attachment A). As shown in the Occupational  
21 License Status Information of Attachment A, Protestant has dealer licenses with a main location  
22 of McMahon’s RV in Irvine, California, and additional branch locations, including Scotts  
23 Valley, California. Pursuant to the protest rights granted to dealers under the Vehicle Code,  
24 Mega RV is the only entity able to bring any claims before the New Motor Vehicle Board.  
25 Thus, Mega RV Corp. is the appropriate Protestant in these matters to protect its rights  
26 concerning any actions taken by Respondent at any of Protestant’s locations.

26 //  
27 //  
28 //

1           **B. Protestant’s claims made in regard to its Scotts Valley location are not moot**  
2           **because a final decision by the Board will have practical impact and provide**  
3           **effective relief in providing a basis for the Federal Court to properly award**  
4           **damages.**

5           As cited by Respondent in its motion, “[a] case becomes moot when a court ruling can  
6           have no practical impact or cannot provide the parties with effective relief.” *Simi Corp. v.*  
7           *Garamendi*, 109 Cal. App. 4<sup>th</sup> 1496, 1503 (2003). In regard to Protestant’s claims against  
8           Roadtrek for its Scotts Valley location, any findings of the New Motor Vehicle Board *will* have  
9           practical impact and *will* subsequently provide the parties with effective relief. In order for  
10          Protestant to be awarded money damages in the related Federal Court case, it must first exhaust  
11          its administrative remedies. This requires the New Motor Vehicle Board to make findings  
12          under California Vehicle Code Sections 3070, 3075 and 3076 and the good cause factors  
13          pertaining thereto, before any further action can occur in the Federal Court related to these  
14          matters.

15          According to long-standing California law, “if an administrative remedy is provided by  
16          statute, relief must be sought from the administrative body and such remedy exhausted” before  
17          a party can seek judicial relief on such claim from the court. *Ralph’s Chrysler-Plymouth v. New*  
18          *Car Dealers Policy & Appeals Board*, 8 Cal.3d 792, 794. Pursuant to the doctrine of exhaustion  
19          of administrative remedies, relief must be sought, by exhausting the remedy before the courts  
20          will act, if there is a remedy available before an administrative agency by statute, regulation or  
21          ordinance. E.g., *California Correctional Peace Officers Assn. v. State Personnel Bd.*, 10 Cal. 4<sup>th</sup>  
22          1133 (1995); *Rojo v. Kliger*, 52 Cal. 3d 65 (1990). In addition, “[t]he requirement of exhaustion  
23          of administrative remedies before pursuing judicial remedies is a jurisdictional prerequisite, not  
24          a matter of judicial discretion.” *Anthony v. Snyder*, 116 Cal. App. 4<sup>th</sup> 643 (4<sup>th</sup> Dist. 2004);  
25          *Marquez v. Gourley*, 102 Cal. App. 4<sup>th</sup> 710 (2d Dist. 2002).

26          In this case, the Federal Court needs findings from the New Motor Vehicle Board to  
27          determine “...whether sufficient good cause has been established for modifying, replacing,  
28          terminating, or refusing to continue a franchise of a dealer of new recreational vehicles...” and  
            whether all warranty and incentive claims in dispute were “...approved or disapproved within

1 30 days after their receipt by [Roadtrek]." Cal. Veh. Code Sections 3071, 3075 and 3076.  
2 Once the Board has made these findings, the Federal Court can then address the claims before it  
3 and award money damages if it determines they are appropriate.  
4

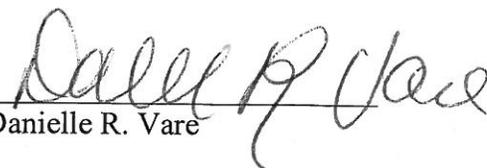
5 Respondent claims in its motion that, "[b]ecause the Board has limited jurisdiction and  
6 cannot award Mega damages..." the Board cannot provide Mega with any relief. This is  
7 inaccurate. Although the Board has limited jurisdiction and cannot award Mega damages, the  
8 Board must address the requirements of Vehicle Code Sections 3070, 3075 and 3076, as well as  
9 the good cause factors set forth in the Vehicle Code Section 3071 and make findings regarding  
10 the issues set forth above pursuant to the jurisdiction granted to it under the California Vehicle  
11 Code.

### 11 CONCLUSION

12 In conclusion, the Board should deny Respondent's motion to dismiss Protest Nos.  
13 2198-10, 2209-10, 2211-10 and 2245-10 because Protestant's claims in regard to its Scotts  
14 Valley location are not moot and Protestant has standing to bring such claims before the New  
15 Motor Vehicle Board.  
16

17 Dated: January 25, 2012  
18

19  
20 LAW OFFICES OF MICHAEL J. FLANAGAN

21  
22 By: 

23 Danielle R. Vare  
24  
25  
26  
27  
28

# Attachment A



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### Occupational License Status Information System

Following is the result of your search

#### Branch Location Information

MCMAHONS RV  
5060 SCOTTS VALLEY DR  
SCOTTS VALLEY, CA 95066  
Tel: (949)279-4493

Branch Opened : 09/12/2006

Branch Closed:

[New Auto/Commercial Vehicle Dealer.](#)

Licensed to Provide, Offer or Sell: [New Trailer Vehicle Dealer.](#)  
[New Recreational Trailer Vehicle Dealer.](#)  
[New Motorhome Vehicle Dealer.](#)

Language(s) in Addition to English:

#### Main Location Information

MCMAHONS RV  
6441 BURT RD 10  
IRVINE CA 92618  
Tel: (949)653-6711

Location Opened : 04/09/2001

Location Closed:

[Used Auto/Commercial Vehicle Dealer.](#)

Licensed to Provide, Offer or Sell: [New Recreational Trailer Vehicle Dealer.](#)  
[New Motorhome Vehicle Dealer.](#)

#### License Information

License No.: 52559  
License First Issued: 04/09/2001  
Operator or Contact:  
Owner of Business: MEGA RV CORP  
Mailing Address:  
Other Business Name:

#### License Information

Status of License  
Valid

Current Admin Actions  
None

Prior Admin Actions  
None

[Administrative Action Definitions](#)

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**DECLARATION OF SERVICE BY FIRST CLASS MAIL**

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Blvd., Suite 450, Sacramento, California, 95825.

I declare that on January 25, 2012, I caused to be served a true and complete copy of:

***PROTESTANT'S OPPOSITION TO  
ROADTREK MOTORHOMES, INC'S  
MOTION TO DIMSISS PROTESTS-SCOTTS VALLEY***

***McMahon RV v Roadtrek  
Protest No. PR-2245-10, 2198-10, 2199-10, 2201-10,  
2205-10, 2206-10, 2208-10, 2209-10,  
2211-10, 2212-10, 2233-10, 2244-10  
Consolidated***

By First Class Mail:

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SEYFARTH SHAW LLP  
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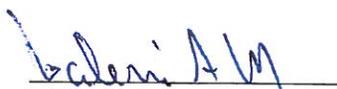
*Also by Email*

Louis S. Chronowski  
SEYFARTH SHAW LLP  
131 South Dearborn Street  
Suite 2400  
Chicago IL 60603

*Also by Email*

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25 January, 2012, Sacramento, California.

  
Valerie A. Coffey