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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a Special meeting on August 23, 2012, at the Mission Inn Hotel, San Diego Room, 3649 Mission Inn Avenue, Riverside, California.

2. ROLL CALL

Ramon Alvarez C., President of the Board, called the meeting of the Board to order at 8:12 a.m.

Present: Ramon Alvarez C.
Robert T. (Tom) Flesh
Peter Hoffman
David C. Lizárraga
Bismarck Obando (arrived 8:15 a.m.)
Victoria Rusnak
Glenn E. Stevens
David W. Wilson

William G. Brennan, Executive Director
Robin Parker, Senior Staff Counsel

Absent: Ryan L. Brooks

3. PLEDGE OF ALLEGIANCE

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

4. DISCUSSION AND CONSIDERATION OF YAMAHA MOTOR CORPORATION, U.S.A.'S RENEWED REQUEST THAT THE BOARD FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF ITS ARGUMENTS REGARDING THE JURISDICTION OF THE BOARD, BEFORE THE SECOND DISTRICT COURT OF APPEAL IN VENTURA

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.
Protest No. PR-2122-08; SLO County Superior Court No. CV098090; and Court of Appeal No. B236705

Mr. Alvarez C. read the following statement into the record:

> As you may know, the one-year grace period for three of our members (Victoria Rusnak, Glenn Stevens, and David Wilson) expired on January 15, 2012. In accordance with Government Code section 1782 the Board is required to notify the "appropriate appointing authority" that vacancies exists for the three Board positions, one of which is a public member and two are dealer members. Section 1782 provides that "Notwithstanding any other provision of the law...Except as provided in Section 1774 [relating to appointments subject to Senate confirmation], the person occupying the vacated...seat on the board...shall continue to serve until notified by the appropriate appointing authority." These appointments are not subject to confirmation by the Senate. In light of these provisions, the Board has been in contact with Business, Transportation and Housing Agency as well as the Governor's Appointments Office. Members Rusnak, Stevens and Wilson are continuing to serve on the Board until either reappointed or notified by the Governor that their respective terms have expired.

Mr. Alvarez C. indicated that counsel for the parties in *Powerhouse* and all of the case management matters involving *McMahon's RV v. Roadtrek Motorhomes* have been apprised of these provisions and do not object to Members Rusnak, Stevens, or Wilson participating in these matters.

The members were provided with a memorandum concerning Yamaha's renewed request that the Board file an amicus curiae brief in support of its arguments regarding the jurisdiction of the Board in the court of appeal. The members were also provided with an opposition from counsel for Powerhouse and Jerry Namba, successor in interest to Timothy L. Pilg and Chapter 7 Bankruptcy Trustee.

Ms. Parker reported that at the May 22, 2012, General Meeting, the initial request was considered by the Public and Dealer Members of the Board. Yamaha's request was denied. The Board indicated that Yamaha could present additional information to support its request.

Maurice Sanchez, Esq. of Baker & Hostetler LLP on behalf of Yamaha presented public comments. Dennis D. Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsports Group, Inc. ("Powerhouse) and Tim Pilg presented public comments.

After a lengthy discussion, Mr. Flesh moved to deny Yamaha's request. Mr. Stevens seconded the motion. The motion carried by a seven-to-one vote with Ms. Rusnak opposed.

5. ORAL PRESENTATION BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD

Given these seven case management matters involved recreational vehicles both Public and Dealer Members participated.

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

Given the number of case management matters in *Mega RV v. Roadtrek Motorhomes*, counsel stipulated to the order of the presentations, which side made its presentation first, and the time allotted for each. Rebuttal comments and member questions were allocated in those times. This stipulation was approved in advance of the meeting.

Additionally, counsel stipulated to allow up to five demonstrative exhibits as well as a selection of exhibits admitted into evidence. The demonstrative exhibits although not admitted into evidence were agreed upon in advance by opposing counsel. The members were provided with these exhibits in separate binders.

Oral comments were presented before the Public and Dealer Members of the Board. Michael J. Flanagan, Esq. of the Law Offices of Michael J. Flanagan, and John A. Belcher, Esq. of the Law Offices of John A. Belcher, represented Protestant. Mr. Belcher's participation was limited to the oral comments on the termination protest (Protest No. PR-2244-10). Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

Protestant and Respondent made background presentations that lasted 45-60 minutes each. Any time remaining under this section was reserved for other presentations.

After the conclusion of the background presentations, the members took a one hour lunch break.

Next, Protestant made a 45-60 minute presentation on the Termination Proposed Decision (PR-2244-10), followed by Respondent's presentation.

Protestant made a 15-30 minute presentation for each Modification Proposed Decision (PR-2199-10 and PR-2201-10), followed by Respondent's presentation.

Respondent made make a 15-30 minute presentation on the Establishment Proposed Decision (PR-2233-10), followed by Protestant's presentation.

The Warranty Proposed Decision (PR-2206-10, PR-2208-10, and PR-2209-10) and

Franchisor Incentive Proposed Decision (PR-2205-10, PR-2211-10, and PR-2212-10) were presented together. Respondent and Protestant each had 15-30 minutes.

The Proposed Order was presented separately after the oral comments on the Proposed Decisions. Since Respondent had the burden of proof, it presented its comments first followed by Protestant.

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

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

c. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10
Veh. Code § 3075 Warranty Reimbursement Claims

d. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10
Veh. Code § 3076 Franchisor Incentive Program Claims

e. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2233-10
Veh. Code § 3072 Establishment

f. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2244-10 and PR-2245-10
Veh. Code § 3070 Termination

g. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2244-10 and PR-2245-10
Veh. Code § 3070 Termination

6. **Closed Executive Session deliberations.**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the

evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to reject the Administrative Law Judge's Proposed Decision. The modification protest for Colton was sustained. Roadtrek violated Vehicle Code section 3070(b)(1). This matter will be referred to the Department of Motor Vehicles pursuant to Vehicle Code section 3050(c)(1) and (c)(3). A decision will be forthcoming in the next several weeks. Mr. Flesh seconded the motion. The motion carried unanimously.

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

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to reject the Administrative Law Judge's Proposed Decision. The modification protest for Irvine was sustained up until the time it relocated to Westminster. Roadtrek violated Vehicle Code section 3070(b)(1). This matter will be referred to the Department of Motor Vehicles pursuant to Vehicle Code section 3050(c)(1) and (c)(3). A decision will be forthcoming in the next several weeks. Mr. Wilson seconded the motion. The motion carried unanimously.

c. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10
Veh. Code § 3075 Warranty Reimbursement Claims

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Ms. Rusnak moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Obando seconded the motion. The motion carried unanimously.

d. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10
Veh. Code § 3076 Franchisor Incentive Program Claims

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Ms Rusnak moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Stevens seconded the motion. The motion carried unanimously.

e. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest No. PR-2233-10
Veh. Code § 3072 Establishment

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Hoffman moved to adopt the Administrative Law Judge's Proposed Decision. Ms. Rusnak seconded the motion. The motion carried unanimously.

f. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2244-10 and PR-2245-10
Veh. Code § 3070 Termination

Consideration of the Administrative Law Judge's Proposed Decision, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Ms. Rusnak moved to reject the Proposed Decision and sustain the protest. Mr. Lizárraga seconded the motion. The motion did not carry in a straw vote. Mr. Hoffman moved to adopt the Administrative Law Judge's Proposed Decision with regards to Colton. Mr. Wilson seconded the motion. The motion carried by a six-to-two vote with Mr. Lizárraga and Ms. Rusnak opposed. Mr. Hoffman amended his motion to include adoption of the Administrative Law Judge's entire Proposed Decision which included Colton and Irvine/Westminster. Mr. Wilson seconded the motion. The motion carried by a six-to-two vote with Mr. Lizárraga and Ms. Rusnak opposed.

g. MEGA RV CORP., dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2244-10 and PR-2245-10
Veh. Code § 3070 Termination

Consideration of the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10 (Scotts Valley)", by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10 (Scotts Valley)". Mr. Wilson seconded the motion. The motion carried by a six-to-two vote with Mr. Lizárraga and Ms. Rusnak opposed.

7. **OPEN SESSION**

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

8. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

9. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 6:55 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board