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11 STATE OF CALIFORNIA
12 NEW MOTOR VEHICLE BOARD

13 In the Matter of the Protest of:
14 ALDON, INC. dba CARSON TOYOTA,
15 Protestant,
16 v.
17 TOYOTA MOTOR SALES U.S.A., INC.,
18 Respondent.

19 Protest No. PR-2339-12

20 **INTERVENOR'S PROPOSED
21 FINDINGS OF FACT AND
22 PROPOSED DECISION**

23 In the Matter of the Protest of:
24 CABE BROTHERS, dba
25 CABE TOYOTA, AND CABE SCION
26 Protestant,
27 v.
28 TOYOTA MOTOR SALES U.S.A., INC.,
Respondent.

Protest No. PR-2341-12

H.T.L. AUTOMOTIVE, INC., dba
HOOMAN TOYOTA OF LONG BEACH
Intervening Party.

1 **I. PROCEDURAL BACKGROUND**

2 **A. Statement of the Case**

3 1. By letter dated August 2, 2012, Toyota Motor Sales U.S.A., Inc. (“TMS” or “Toyota”) served Protestants Aldon, Inc. dba Carson Toyota (“Carson”) and Cabe Brothers dba Cabe Toyota (“Cabe”) with a Notice of Relocation pursuant to Vehicle Code section 3062¹ of its intent to permit H.T.L. Automotive, Inc. dba Hooman Toyota of Long Beach (“Hooman”) to relocate from its current dealership location at 4401 E. Pacific Coast Highway, Long Beach, California, to 3399 East Willow Street and 2679 Redondo Avenue, Long Beach, California.

9 2. On August 22, 2012, Cabe and Carson filed timely Protests pursuant to Vehicle Code section 3062.

11 3. A hearing was held simultaneously for both Protests before Administrative Law Judge (“ALJ”) Victor Ryerson on June 3, 2013 through June 7, 2013; June 10, 2013 through June 14, 2013; June 17, 2013 through June 21, 2013; and an ALJ site visit to all relevant locations was held on June 27, 2013, pursuant to a joint request by all parties. All parties were represented at the site visit and the ALJ prepared a written “Memorandum of Site Visit June 27, 2013 Long Beach, California,” thereafter, dated July 23, 2013, which was distributed to each party’s counsel. Protestant, Carson Toyota, filed a Motion to Strike Portions of the ALJ’s Memorandum of Site Visit. At a telephonic hearing on August 12, 2013, Carson’s motion was granted.

19 **B. Parties and Counsel**

20 4. Protestants Cabe and Carson are authorized Toyota “franchisees” within the meaning of Vehicle Code sections 331.1 and 3062(a)(1). Protestant Cabe Toyota was represented by Gregory J. Ferruzzo, Esq. of Ferruzzo & Ferruzzo, LLP; Protestant Carson Toyota was represented by Halbert B. Rasmussen, Esq. and Franjo M. Dolenac, Esq. of Manning, Leaver, Bruder & Berberich.

24 5. Respondent Toyota Motor Sales is a “franchisor” within the meaning of sections 331.2 and 25 3062(a)(1). Toyota was represented by Steven A. McKelvey, Jr., Esq., S. Keith Hutto, Esq. and Steven B. McFarland, Esq. of Nelson Mullins Riley & Scarborough, LLP.

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28 ¹ All statutory references are to the Vehicle Code unless otherwise indicated.

1 6. Intervenor Hooman Toyota is also a Toyota “franchisee” within the meaning of sections
2 331.1 and 3062(a)(1) and was represented by Michael J. Flanagan, Esq., Gavin M. Hughes, Esq. and
3 Danielle R. Vare, Esq. of the Law Offices of Michael J. Flanagan.

4 **C. Summary of Witnesses’ Testimony and Exhibits Introduced**

5 7. Protestant Cabe Toyota called the following witnesses: John Cabe, Dealer Principal and
6 General Manager of Cabe Toyota; Lillian Moore, Business Manager/Controller at Cabe Toyota; Dan
7 Duddridge, Operations Manager at Cabe Toyota. Protestant Cabe Toyota’s expert witness was Scott
8 Watkins, Senior Consultant and Director of Marketing and Industry Analysis at Anderson Economic
9 Group.

10 8. Protestant Carson Toyota called the following witnesses: Albert Skinner, Dealer Principal of
11 Carson Toyota; Martin Brylski, President and CEO of Carson Toyota. Protestant Carson Toyota’s
12 expert witness was John Matthews, Ph.D., Professor Emeritus.

13 9. Respondent Toyota called the following witnesses: Doug Eroh, General Manager of Toyota,
14 Los Angeles Region; Mike Durby, Vehicle Production and Sales Planning Manager at Toyota.
15 Respondent’s expert witnesses were Sharif G. Farhat, Vice President of Expert Analytical Services at
16 Urban Science Applications, Inc. and Herbert Walter, Consultant and Certified Public Accountant.

17 10. Intervenor Hooman Toyota called the following witnesses: Hooman Nissani, Owner and
18 President of Hooman Toyota of Long Beach. Intervenor’s expert witness was Edward M. Stockton,
19 Vice President and Director of Economic Services at The Fontana Group. Mr. Stockton established as
20 a condition of working on this matter that he would employ techniques similar to, if not identical to,
21 those he would use if conducting an analysis to be presented by a protesting dealership, rather than a
22 relocating dealership. (RT Vol. 6, 18:12-17.)

23 11. Pursuant to joint lodging by the parties, deposition excerpts of the following deponents
24 were admitted: Sam Carrillo, Fixed Operations Director for Hooman Toyota; Mike Vogel, Fixed
25 Operations Director at Carson Toyota; Jeff Bracken, Group Vice President and General Manager for
26 Lexus; Jason Kong, Field Sales Manager, Western Region for Lexus; Alfred Cabaero, General Sales
27 Manager at Carson Toyota; Steven Hearne, Vice President of Sales for Lexus; William Bergen,
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1 District Service and Parts Manager Los Angeles Region for Toyota; Julio Torres, Service Manager at
2 Cabe Toyota; and Patrick O'Donnell, Long Beach City Council Member.

3 12. The parties offered approximately 200 exhibits at the hearing and through declarations, and
4 offered deposition designations, as mentioned above.

5 13. Prior to commencement of the hearing, Intervenor filed a Motion to Exclude the testimony
6 of Greg Beck, the Declaration of Jim Speck, the Declaration of Dave Wilson, the Department of Motor
7 Vehicles documents and all documents untimely produced by Protestants. The Motion to Exclude the
8 testimony of Greg Beck was denied; The Motion to Exclude the Declaration of Jim Speck was denied;
9 provided, however, that the opposing parties would have the opportunity to present opposing evidence
10 concerning his declaration testimony; The Motion to Exclude the Declaration of Dave Wilson was
11 granted; The Motion to Exclude the Department of Motor Vehicles documents was granted; The
12 Motion to Exclude all documents untimely produced by Protestants was taken under submission and
13 denied at the hearing.

14 14. Respondent and Intervenor filed a Motion to Exclude Evidence of Potential Alternative
15 Facility Options for Hooman Toyota. This Motion was granted, providing that opposing parties may
16 offer impeachment or rebuttal evidence to the extent Respondent's or Intervenor's evidence raises this
17 issue in their cases in chief.

18 15. Respondent filed a Motion to Exclude Financial Analysis Untimely Produced by Cabe
19 Toyota. This Motion was taken under submission and denied at the hearing.

20 16. Cabe Toyota filed a Motion to Compel Production of Documents on Toyota. This Motion
21 was granted.

22 17. All parties agreed to a Joint Glossary of Non-Controversial Terms.

23 18. Cabe Toyota filed a Request for Judicial Notice of court documents. This Request was
24 granted and Judicial Notice was taken.

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1 **II. ISSUES PRESENTED**

2 19. Have Protestants demonstrated there is good cause not to relocate Hooman Toyota, under
3 Vehicle Code sections 3062 and 3063, taking into account the good cause factors of section 3063 and
4 the existing circumstances?

5 20. Pursuant to Vehicle Code section 3063, in order to determine whether good cause has been
6 established to not allow the relocation of Hooman Toyota, the Board shall take into consideration the
7 existing circumstances, including, but not limited to:

8 (a) Permanency of the investment.

9 (b) Effect on the retail motor vehicle business and the consuming public in the relevant
10 market area.

11 (c) Whether it is injurious to the public welfare for an additional franchise to be
12 established.

13 (d) Whether the franchisees of the same line-make in that relevant market area are
14 providing adequate competition and convenient consumer care for the motor vehicles of
15 the line-make in the market area which shall include the adequacy of motor vehicle
16 sales and service facilities, equipment, supply of vehicle parts, and qualified service
17 personnel.

18 (e) Whether the establishment of an additional franchise would increase competition
19 and therefore be in the public interest.

20 Under this statute, Protestants have the burden to prove there is good cause not to relocate
21 Hooman Toyota. (Veh. Code § 3066(b).)

22 **III. PROTESTANTS' CONTENTIONS**

23 21. Protestants contend the following: Hooman Toyota's proposed relocation will negatively
24 affect the public; the proposed relocation would not increase competition or be in the public interest,
25 but would result in significantly increased competition and be against the public interest; and the
26 proposed relocation of Hooman Toyota will cause Cabe Toyota to lose customers and sales.

1 **IV. RESPONDENT'S CONTENTIONS**

2 22. Respondent contends the following: Hooman Toyota's relocation would substantially
3 benefit the consuming public, the Toyota brand in the relevant market area ("RMA") and Hooman
4 Toyota's ability to provide excellent service to its customers; Hooman Toyota's proposed relocation
5 will have no meaningful negative effect on Carson Toyota or Cabe Toyota.

6 **V. INTERVENOR'S CONTENTIONS**

7 23. Intervenor contends the following: Hooman Toyota's current facilities are substantially
8 inadequate to serve the needs of Toyota sales and service customers; the proposed relocation will not
9 result in any appreciable impact to Protestants; the proposed relocation will result in substantial
10 benefits to the public; and the RMA is currently underserved by the existing dealers.

11 **VI. FINDINGS OF FACT**

12 **A. Preliminary Findings**

13 24. Protestant Cabe Toyota has been a Toyota franchisee in Long Beach, California since
14 1966. Cabe Toyota is located on Long Beach Boulevard, approximately one mile south of the 405
15 freeway. After 10 years of promising to upgrade its facility, first as Image I compliant and then as
16 Image II compliant, Cabe finally began construction a few weeks before this hearing commenced. (RT
17 Vol. 1, 130:14-131:4; 131:23-132:5; Vol. 2, 13:10-19; 45:18-46:6; Kong Depo., 94:20-25; Hearne
18 Depo., 159:23-160:12; Exs. 1070; 2044, Pages 24-25.)

19 25. Protestant Carson Toyota has been a Toyota franchisee in Carson, California since 1974.
20 Carson is located on E. 223rd Street, along the south-bound side of the 405 freeway. Carson updated
21 its facilities to become Image II compliant in 2008. (RT Vol. 1, 131:23-132:5.)

22 26. Toyota assigns its dealers a "Primary Market Area" or "PMA" for which each dealer is
23 responsible. A PMA is a geographical grouping of census tracts designating the dealership's main
24 sales territory. Customers have no idea where PMA lines are drawn. (RT Vol. 2, 29:19-30:13.)
25 Dealers have no exclusive rights to sales in their PMA. (*Id.*) Dealers are also not limited to sell in their
26 PMA. (Kong Depo., 79:8-10.)

1 27. Mr. Stockton considered the broader market to be Los Angeles and Orange Counties and
2 considered sales and registrations within these counties. (RT Vol. 6, 24:2-23.)

3 28. In a relocation case, the scope of analysis is limited. An analyst need not second-guess the
4 network design or opine on what should have been done differently. Rather, the task is to assess the
5 market as it is, evaluate the changes that will occur, and opine upon the relevant impacts upon the
6 interested parties affected by the relocation. These include the relocating dealer, the existing or
7 protesting dealers, the consuming public, and the brand in question. (RT Vol. 6, 19:14-20:2.)

8 29. Other dealerships in the RMA and Surrounding Area are separated by distances
9 comparable to those that would exist between Cabe and the Proposed Hooman Relocation point. For
10 example, Penske of Downey and Norwalk are 2.1 miles apart. (Ex. 254, Tab 4, Page 1.)

11 **B. Findings Related to the Permanency of Investment (Vehicle Code Section 3063(a))**

12 30. H.T.L. Automotive, Inc. dba Hooman Toyota of Long Beach is owned by Hooman Nissani
13 and Kevin Golshan. (RT Vol. 14, 101:1-102:5; Ex. 268.) Hooman Toyota currently operates from six
14 locations with various functions supporting the dealership. (RT Vol. 14, 18:4-7; 30:7-10; 37:25-38:10;
15 Kong Depo., 57:5-10.) H.T.L. Automotive, Inc. has made a total investment of \$20,317,307 in
16 Hooman Toyota's current location and facilities through November 30, 2012. (RT Vol. 14, 109:3-14;
17 110:12-112:13.) Intervenor purchased 50% of a freeway sign for the use of promoting the Hooman
18 Toyota dealership and shares advertising space with additional dealerships. (RT Vol. 14, 71:17-75:7;
19 Exs. 260; 278; 286, Hooman Proposed 00347.) Intervenor leased a new facility at approximately
20 \$36,000 per month, with an option to purchase at a cost of \$8.25 million, at 3399 E. Willow Street,
21 Long Beach, California and 2679 Redondo Avenue, Long Beach, California, in order to relocate its
22 Toyota dealership. (RT Vol. 14, 102:6-25; 104:17-106:22; Exs. 274; 275) Intervenor has made an
23 investment of more than \$610,000 in Hooman Toyota's proposed relocation facility. (RT Vol. 14,
24 112:14-24; Ex. 253.) Intervenor's total investment in its current dealership and proposed relocation as
25 of November 30, 2012 is over \$21 million. (Exs. 252, 285; RT Vol. 14, 109:2-113:5.)

26 31. Due to the excessive costs required to operate its Toyota dealership from six different
27 locations, the relocation of Hooman Toyota will result in the significant reduction of its costs and will
28

1 likely benefit consumers. Substantial cost savings will result from the elimination of redundancies,
2 such as not sending people off site to a car wash, not having to spend time managing the service lane,
3 no managing the parking lot and not shuttling cars between areas. (RT Vol. 6, 70:21-72:24; 179:16-23;
4 181:14-17; 207:21-208:17; Ex. 254, Tab 9, Page 1.)

5 32. Intervenor has made a substantial and permanent investment in its current and proposed
6 facilities.

7 **C. Findings Related to the Effect on the Retail Motor Vehicle Business and the Consuming**
8 **Public in the Relevant Market Area (Vehicle Code Section 3063(b))**

9 33. Hooman Toyota is moving just 1.2 miles from its current location to the proposed
10 relocation site. (Ex. 254, Tab 4, Page 1.) Hooman Toyota's proposed relocation site is still within its
11 current PMA and there will no change in how Toyota leads are allocated following the relocation. (Ex.
12 254, Tab 3, Page 3; Kong Depo., 80:18-21; Hearne Depo., 146:3-8; 147:9-14.) The following chart
13 sets forth the distances in miles between Hooman and the protesting dealers both before and after the
14 relocation:

15 Dealer	Current Distance	After Relocation	Difference
16 Cabe Toyota	3.1	2.2	.9
17 Carson Toyota	6.7	5.8	.9

18 34. The proposed relocation does not threaten the continued viability of either Protestant. (RT
19 Vol. 11, 210:23-211:9.) Carson Toyota's expert, Dr. Matthews, could not specify any expected impact
20 to Carson as a result of the proposed relocation. (Ex. 1500.) In fact, Dr. Matthews based his report on
21 the incorrect assumption that Hooman's increase in facility size will result in a corresponding or
22 similar increase in fixed costs. (Ex. 255, Para. 15; RT Vol. 6, 206:11-19.) However, Hooman Toyota
23 will dramatically reduce its fixed costs at the new facility and this reduction will have the opposite
24 effect as that postulated by Dr. Matthews in his entire analysis. (Ex. 255, Para. 15; RT Vol. 6, 206:19-
25 208:17.) Cabe Toyota's expert, Mr. Watkins' testimony was so deeply flawed as to render it wholly
26 unreliable. (RT Vol. 6, 109:17-111:12; 147:20-148:24; 187:10-206:4; Exs. 255; 1227.)

1 35. There have been three dealers, Carson Toyota, Cabe Toyota and Hooman Toyota, in the
2 same locations as they sit now for 36-37 years. All three are within 6.5 miles. (RT Vol. 11, 197:24-
3 198:15.)

4 36. In regard to direct mail advertising, the fact that Hooman's proposed location will share a
5 zip code with Cabe will not have an impact on Cabe. (RT Vol. 2, 60:5-14.) Cabe currently does not
6 have its own exclusive zip code and targets its own PMA and the zip codes of the surrounding PMAs
7 with direct mail advertising. (*Id.*)

8 37. When customers search for a dealership by zip code on the Toyota website, more than one
9 dealer will be offered if the zip codes are shared by those dealers. The customer is able to choose the
10 dealer it would like to patronize. (Kong Depo., 86:2-87:18; 90:25-91:8.)

11 38. Mr. Stockton's regression models consider 3 scenarios of impact upon Cabe and Carson.
12 The first scenario considers the impact only of the relocation itself. In the second scenario, Hooman
13 expands its mass or presence and increases its ability to draw customers at all distances. This
14 expansion also has the effect of reversing the observed market share reduction that exists in close
15 proximity to Cabe and Hooman. In the third scenario, Hooman still increases its mass but none of the
16 increased sales come from other brands. In other words, all gained sales come at the expense of other
17 Toyota dealerships. (RT Vol. 6, 132:24-133:25.)

18 39. The sales impact of Hooman's relocation (solely taking into account the distance of the
19 relocation) on Cabe Toyota is expected to be .32%; the sales impact on Carson Toyota is expected to
20 be .27% (RT, Vol. 6, 134:1-4; 19-24; 139:10-18; Ex. 254, Tab 17, Page 1.) If Hooman Toyota sales
21 grow and it does not manage to capture any interbrand competition (such as Honda), then the impact
22 on Cabe will still only be 2.79%, with even less impact on Carson. (RT Vol. 6, 134:13-18; 139:19-22;
23 Ex. 254, Tab 17, Page 1.) These statistical findings are strongly validated by the results demonstrated
24 in Tab 16, Pages 4 and 8 of Mr. Stockton's report, which show the numbers of sales that Carson and
25 Cabe made into areas into which they will gain and lose proximity advantage. (RT Vol. 6, 132:25-
26 137:7; Ex. 254, Tab 16, Pages 4, 8; Tab 17.) Cabe Toyota has plenty of opportunity in its PMA to
27 offset any possible losses due to Hooman's relocation by capturing in-sell currently made by other
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1 dealers as well as service customers that are not currently utilizing Cabe Toyota. (Kong Depo., 99:6-
2 19; RT Vol. 6, 114:18-115:13; 137:18-138:1; Ex. 254, Tab 15, Pages 4-6.)

3 40. Upon relocation, it is not likely that Hooman will improve its sales efficiency without
4 incremental Toyota registrations. (RT Vol. 6, 136:5-137:12; 139:23-140:9; Ex. 254, Tab 8, Page 2; Tab
5 17, Page 1.) Even if no incremental sales were generated, Cabe would be expected to lose less than
6 3% of its sales and the effect on Carson would be between -.88% and -1.57%. (*Id.*)

7 41. The effect on other dealerships from the proposed move itself is quite minimal. On the
8 basis of a gravity model², using drive time as the measure of distance, Hooman would gain a proximity
9 advantage of between 2.64% and 2.99% if the relocation were to proceed. Cabe would lose between
10 .48% and .54% of its proximity advantage. Carson would lose less than .4% of its proximity
11 advantage. Changing the area under consideration from Los Angeles and Orange Counties to only
12 those census tracts within and touching the RMA yields similar figures. Using air distance as the
13 measure of distance, Hooman would lose proximity advantage as a result of its move and Cabe and
14 Carson would gain proximity advantage. Because air distance measures do not account for travel
15 routes, the drive time measures are more meaningful than the air distance measures. (RT Vol. 6, 97:22-
16 108:10; Ex. 254, Tab 14, Pages 1-12.)

17 42. There is no apparent pattern regarding customers choosing between Cabe and Hooman
18 within 5 miles of Cabe. Notably, a five-mile ring covers much of the Cabe PMA. This indicates that
19 customers cross-shopping the two Long Beach dealerships, at least within this five-mile circle, draw
20 little distinction between the relative proximities of Cabe and Hooman. This suggests that the concerns
21 about lack of territorial advantage for Cabe if the dealerships were 2.2 miles apart already exist at the
22 current distance of 3.1 miles. (RT Vol. 6, 173:3-175:14; Ex. 254, Tab 23, Page 1.) Customers are not
23 differentiating between Cabe and Hooman in a manner that would be affected by the relocation of just
24 over one mile. Incorporating additional demographic factors does not change this result. (RT Vol. 6,
25 175:15-177:12; Ex. 254, Tab 24, Pages 1-2.)

26
27 ² A gravity model measures relative abilities to draw customers depending upon the mass or pull of the outlet,
28 the size of the market or portion of the market under consideration, and relative distance between the customers
and the outlet under consideration and other competitive outlets. (Ex. 254, Summary of Opinions, Tabs 13-14.)

1 43. Because of the very large number of dealerships competing for Toyota business in Los
2 Angeles and Orange County, a single Toyota dealership has its presence diluted fairly quickly as
3 distance from the dealership increases. Accordingly, the effect of a single dealership's relocation on
4 proximity is also diluted very quickly. In much of the RMA the change in Carson's and Cabe's
5 proximity advantages is negligible- between negative 1% and positive 1%. (RT Vol. 6, 111:13-117:3;
6 125:15-126:41; Ex. 254, Tab 15, Pages 3 and 7.)

7 44. Hooman Toyota and Cabe Toyota are located in different demographic markets.
8 (O'Donnell Depo., 38:5-19.) Hooman's current location and proposed locations are similar markets.
9 (O'Donnell Depo., 43:8-15.) Signal Hill separates the Cabe market location and Hooman market
10 location. (O'Donnell Depo., 41:13-42:12.) Cabe Toyota's customers are usually drawn to the
11 dealership because they already know about Cabe. (O'Donnell Depo., 38:20-24.) Hooman's relocation
12 will not likely have any impact on Cabe because Cabe is a family style business and customers already
13 know the Cabe dealership and the family. (O'Donnell Depo., 25:7:-26:12.)

14 45. Hooman's sales are most concentrated close to its dealership. Cabe has a more dispersed
15 sales pattern with concentrations of sales to the north and south of the dealership and closer to the
16 ocean, near the John Elway dealership. Carson has a very strong ability to draw sales given the
17 distance to its dealership. This characteristic is expressed through high mass in a gravity model. (RT
18 Vol. 6, 111:13-117:3; Ex. 254, Tab 15, Pages 1-9.)

19 46. When a dealership relocates, it moves closer to some potential customers and farther away
20 from other customers. Therefore, other dealerships lose some proximity advantage from the relocation
21 but have offsetting proximity gains elsewhere. Both effects must be considered. Cabe would lose
22 proximity advantages close to its dealership if the relocation were to proceed but would gain proximity
23 advantage elsewhere. Carson would have its largest proximity losses on a percentage basis to the east
24 of the dealership. Carson would also have offsetting proximity gains in the market if the relocation
25 were to proceed. (RT Vol. 6, 111:13-117:3; Ex. 254, Tab 15, Pages 1-9.)

26 47. Hooman's current facility constrains operations. The relaxation of a supply constraint
27 would have a positive effect upon consumers. Economic theory states that the market response to the
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1 relaxation of a supply constraint or restriction is a reduction in price and an increase in quantity of the
2 goods or service supplied. Therefore the removal of constraints will also result in an increase in
3 competition. (RT Vol. 6, 73:1-74:15; Ex. 254, Tab 9, Pages 2-3.)

4 **D. Findings Related to Whether it is Injurious to the Public Welfare for an Additional**
5 **Franchise to be Established [or a Franchise to be Relocated] (Vehicle Code Section**
6 **3063(c))**

7 48. Toyota brand performance is diminished in the areas most proximate to Hooman Toyota
8 and Cabe Toyota. (Ex. 254, Tab 7, Page 3.)

9 49. Customer convenience (as measured by dealership proximity) would be essentially
10 unaffected by the proposed relocation. (Ex. 254, Tab 11, Page 1; RT Vol. 6, 86:16-25.) Toyota
11 customers in the areas closest to Hooman would, on average, have to travel approximately 31 seconds
12 more to reach the nearest Toyota dealership. (RT Vol. 6, 86:4-10), while RMA customers would have
13 to travel two to four additional seconds to reach the nearest Toyota dealership. (Ex. 254, Tab 12, Pages
14 1-2; RT Vol. 6, 87:1-19.) In terms of convenience (drive time) of the Toyota dealer network to
15 customers in the RMA, the proposed relocation of Hooman would have a negligible effect. Within the
16 RMA, average drive time to the nearest Toyota dealership would increase by two or three seconds. It
17 is likely that the positive changes in the operational elements of customer convenience would
18 overwhelm the slight increase in travel time for customers. (RT Vol. 6, 85:17-88:14; Ex. 254, Tabs 12,
19 Pages 1-2.)

20 50. Hooman Toyota's current facilities, fractionalized into six different locations, are
21 dangerous and problematic operationally. (RT Vol. 14, 18:4-7; 30:7-10; 37:25-38:10; Kong Depo.,
22 57:5-10; Carrillo Depo., 41:18-22.) Hooman Toyota's off-site facilities include service areas and car
23 washes that require Hooman to incur additional costs and increase customers waiting times. (RT Vol.
24 6, 61:1-12; RT Vol. 14, 34:17-25; 38:11-22; 116:23-117:4.) There are also off-site storage facilities
25 which are featureless, don't provide any particular benefit to the customer, don't enhance customer
26 experience and are only functional for storing cars. (RT Vol. 6, 61:13-22.) Even if Hooman Toyota
27 relocates without upgrading its facility to be Image II compliant, the customer experience will be
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1 improved and more closely geared toward a typical Toyota experience. There is plausible reason to
2 believe some of that improvement would come at the expense of other brands' sales. (RT Vol. 6,
3 135:11-24; Ex. 254, Tab 17, Page 1.)

4 51. If Hooman Toyota relocates to the proposed site, the accessibility of customers to each of
5 the dealerships in the RMA does not change in any significant amount. In addition, Hooman's PMA
6 also does not change appreciably, and therefore, there is no support for Protestants' argument that
7 Hooman Toyota is abandoning customers to the south of its dealership. (RT Vol. 6, 77:21-78:15; Ex.
8 254, Tab 10, Pages 1-2.) The minimal travel time measurements, in the context of Hooman's
9 operational difficulties, result in an overwhelming positive over negative implication. (RT Vol. 6,
10 88:8-14.) The drive time between Hooman's current dealership and proposed relocation is about 5
11 minutes, a distance (5 miles). (RT Vol. 11, 236:9-25; Hearne Depo., 115:2-7.)

12 52. There are at least three dealerships to the southeast of Hooman Toyota to adequately serve
13 the customers in Long Beach: Toyota Place, Elmore and Toyota of Huntington Beach. (Ex. 254, Tab 3,
14 Page 2.) Toyota analyzed cross-sell data, winner maps and other data to determine that there is plenty
15 of opportunity in the southern California market to improve Toyota's market share in both Cabe and
16 Hooman's PMAs. (Kong Depo., 76:25-77:16.)

17 53. If the relocation of Hooman were to occur, certain census tracts that are closest to Cabe,
18 Hooman, or other Toyota dealerships would realign and would then be closest to different Toyota
19 dealerships on the basis of drive time, drive distance or air distance. The number of Toyota
20 Registrations at California Average (the number of Toyota registrations that would occur in an area if
21 Toyota's market share in each product segment were exactly equal to the state average market share in
22 that segment) in the census tracts closest to Cabe would decline by a negligible amount or up to
23 approximately 10%, depending upon the definition of proximity employed. (RT Vol. 6, 75:19-85:16;
24 Ex. 254, Tab 10, Pages 1-6; Tab 11, Page 1.)

25 54. Cabe Toyota acknowledged the danger and inconvenience of Hooman Toyota's current
26 location in advertisements it published stating "Avoid the Traffic Circle." (Ex. 2066.) The traffic
27 circle can also be hard to get to. (RT Vol. 11, 195:12-13.) Hooman's current location at the traffic
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1 circle is impacted with traffic, everyone has trouble driving through the traffic circle and there are an
2 above-average amount of accidents in the traffic circle. (O'Donnell Depo., 34:19-35:12; RT Vol. 14,
3 66:22-67:6; Ex. 276.)

4 55. When Carson Toyota built a brand new, Image II compliant facility, it was a benefit to
5 consumers and to the public and the Toyota brand. (RT Vol. 11, 213:6-19.) The same benefits would
6 result if Hooman Toyota were allowed to relocate and upgrade its facilities.

7 **E. Findings Related to Whether the Franchisees of the Same Line-Make in that Relevant**
8 **Market Area are Providing Adequate Competition and Convenient Consumer Care for**
9 **the Motor Vehicles of the Line-Make in the Market Area which shall include the**
10 **Adequacy of Motor Vehicle Sales and Service Facilities, Equipment, Supply of Vehicle**
11 **Parts, and Qualified Service Personnel (Vehicle Code Section 3063(d))**

12 56. The appearance of below average brand penetration close to Cabe and Hooman raises the
13 question of whether Toyota's market share is systematically diminished in close proximity to those
14 dealerships. A regression analysis confirms the existence of an actual pattern. A statistically
15 significant relationship exists between reduction in Toyota market share and close proximity to Cabe
16 and Hooman. (Ex. 254, Tab 7, Pages 1-3; Tab 8, Page 2; RT Vol. 6, 45:19-48:21; 52:25-54:3.)

17 57. At Hooman Toyota's current location, the approved sales facility is deficient and does not
18 provide adequate competition and convenient consumer care to customers in the relevant market area.
19 Employee and workers' stations are crammed into a small area on the second floor with little to no
20 storage or filing space available. Hooman Toyota utilizes every square foot of space at its current
21 facility in an attempt to operate as efficiently as possible. (RT Vol. 6, 65:12-21; Carrillo Depo., 92:4-
22 18; 99:2-17; Hearne Depo., 71:7-10, 14-22.) Hooman has tried numerous ways to add more space,
23 including moving trash cans, building an outside patio area and other creative ideas. (Carrillo Depo.,
24 52:17-53:3.) There is very little parking available at the sales facility. Customers are often confused
25 as to the location of the sales facility versus the location of the service facility. (Hearne Depo., 77:15-
26 78:8.) In order to navigate between the sales and service facilities, customers must cross a dangerous
27 boulevard. (RT Vol. 6, 57:4-13; Ex. 286, Hooman Current 00060.)

1 58. The current customer waiting area has only a few seats and is very small and cramped. (RT
2 Vol. 6, 59:7-9; 59:17-60:24; 64:13-65:8; 67:1-5; Vol. 14, 26:21-25; Ex. 286, Hooman Current 00179.)

3 59. Hooman Toyota's current facility has low functionality, especially relative to the size of
4 the market. (RT Vol. 6, 56:8-10; 66:6-10; 66:19-25.) The facility in general is overladen with
5 redundant costs and is highly constrained, to the detriment of both Intervenor and its customers. (RT
6 Vol. 6, 65:22-66:5; 19-24.) Hooman Toyota only has room in its showroom for one small car. (RT
7 Vol. 14, 22:23-23:4.) Hooman Toyota also had to acquire more property for inventory in order to store
8 the selection of cars and options demanded by the public. (RT Vol. 14, 23:20-24:7.)

9 60. At Hooman Toyota's current location, the approved service facility is deficient and does
10 not provide adequate competition and convenient consumer care in the relevant market area. (Carrillo
11 Depo., 28:22-29:7; 41:24-42:7.)) There are only 18 service stalls at the facility (RT Vol. 14, 31:10-
12 14) which is currently fully utilized and kept busy to capacity. (Carrillo Depo., 31:20-32:2.) Hooman
13 Toyota almost immediately had to make changes to the dealership in order to keep up with customer
14 demand. (RT Vol. 14, 22:3-16.) Hooman added service stalls in order to take care of more customers,
15 but this was at the cost of removing a car wash area (Carrillo Depo., 42:8-25), and there is very little
16 parking available at the service facility and cars are often double or triple-parked. (RT Vol. 6, 58:10-
17 24; 63:8-64:1; Ex. 286, Hooman Current 00255.) It normally takes three or four people to get a
18 vehicle off a service lift and out to the parking lot because one employee must direct traffic, one
19 employee must drive and another employee must move another car to make room. (RT Vol. 6, 60:6-
20 22; Carrillo Depo., 44:14-25.) Employees at Hooman are required to drive cars to different locations
21 for service and car washes, which wastes time, because there is not enough space and size available at
22 the current location. (Carrillo Depo., 43:1-8; RT Vol. 6, 56:6-23; 61:1-12; RT Vol. 14, 34:17-25.)
23 Customers are also concerned that Hooman employees are adding miles to their vehicles and using gas
24 due to the fact that they must take the cars to other locations for service or wash. (Carrillo Depo.,
25 47:15-48:9.)

26 61. Current employee morale at Hooman Toyota is affected by the customer complaints and it
27 is hard for the dealership to find new employees and keep good ones. (Carrillo Depo., 43:13-44:14;
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1 45:1-10.) The majority of customer complaints at Hooman Toyota are related to the lack of space and
2 the inconvenience customers encounter in bringing their cars to the dealership. (Carrillo Depo., 45:12-
3 23; RT Vol. 14, 39:9-40:2; 70:6-71:6; Ex. 272.) Customers also complain regarding the service drive
4 and the need for customers to line up in the street to wait for service. (Carrillo Depo., 46:11-47:14; RT
5 Vol. 14, 31:15-32:3.) Customers are being cited by police for blocking the street, and are upset if
6 customers are taken out of order in the line. (*Id.*)

7 62. At Hooman Toyota's current location, the equipment and supply of vehicle parts is
8 deficient and does not provide adequate competition and convenient consumer care in the relevant
9 market area. (RT Vol. 14, 32:9-33:25.) Toyota employees complain to Mr. Nissani about the lack of
10 space to drop parts at night, and Hooman Toyota runs out of parts halfway through weekend service
11 because Toyota cannot leave enough parts for the weekend. (*Id.*)

12 63. One aspect of the analysis of Cabe's sales is Cabe's reliance upon True Car. True Car is a
13 service that is used by some dealerships but not all. Many dealership avoid using True Car. Since
14 Hooman is not a True Car dealership, Cabe does not face competition from Hooman for True Car
15 customers and potentially other customers using other online services. Thus, these new vehicle
16 transactions would be largely unaffected by the relocation. (RT Vol. 6, 127:15-128:24.)

17 **F. Findings Related to Whether the [Relocation of the Franchise or] Establishment of an**
18 **Additional Franchise would Increase Competition and therefore be in the Public Interest**
19 **(Vehicle Code Section 3063(e))**

20 64. Hooman Toyota's new location will be easier for the general public to access because it is
21 right off the 405 freeway. (Hearne Depo., 77:15-19; 81:3-5.)

22 65. Hooman Toyota's facility at the proposed relocation site will have a wide service drive, be
23 clearly marked and provide extensive amenities for customers. (RT Vol. 14, 63:6-16.) The continuity
24 between the sales and service facilities will allow for better operational flow to the benefit of the
25 customers, dealer employees and the Toyota brand generally. (Kong Depo., 62:1-9.) The consolidated
26 operations will allow for better customer convenience. (*Id.*)

1 66. Hooman's proposed new facility allows for ample parking, parts storage and the safety and
2 comfort of one large waiting area with easy access to the showroom. (Kong Depo., 80:2-17; Hearne
3 Depo., 77:1-14; RT Vol. 14, 91:19-24; Ex. 266.) The proposed new facility will meet at least 99% of
4 the 2015 standard requirements set by Toyota. (RT Vol. 14, 97:23-98:11; Ex. 267.)

5 67. Cost reduction will clearly materialize given that Hooman Toyota will no longer have to
6 send employees off-site to car washes, manage service lanes and parking lots and shuttle cars between
7 areas. (RT Vol. 6, 70:21-71:11; Vol. 14, 116:5-20.) Given that cost reduction is highly likely if the
8 relocation is permitted, this results in a higher market output at a lower market prices, which is a *per se*
9 increase in competition. (RT Vol. 6, 70-12-14; 75:2-7.)

10 68. Car dealerships are formed as for-profit businesses and they should be allowed, and
11 expected, to compete for customers from other dealers. (RT Vol. 11, 223:20-224:2.)

12 69. It is a benefit to the City of Long Beach for Hooman Toyota to relocate the dealership
13 within city limits and upgrade the facility at the Coast Cadillac location. (O'Donnell Depo., 20:6-21:3;
14 24:1-18; 29:10-30:8.) The city of Long Beach will benefit from the jobs retained at Hooman Toyota,
15 as well as the tax revenue generated by the dealership. (O'Donnell Depo., 22:7-23:13.) Hooman
16 Toyota gives back to the Long Beach community and participates in numerous charity events.
17 (O'Donnell Depo., 23:18-23.)

18 **G. Findings Related to any other Existing Circumstances which Demonstrate that**
19 **there is Good Cause not to allow the relocation of Hooman Toyota**

20 70. Toyota has been diligent and rigorous in its review of Hooman Toyota's dealership and the
21 proposed relocation. (Kong Depo., 82:13-16; 83:14-21; 125:4-7.) Toyota reviewed cross-sell data,
22 winner maps, visibility, capacity standpoint, minimum facility requirements, land, building and stalls
23 for future growth and determined that Hooman Toyota's relocation is recommended. (Kong Depo.,
24 112:12-113:1.)

25 71. Toyota set forth issues to be addressed by Hooman Toyota before it would approve the
26 relocation. (Hearne Depo., 55:15-25.) All of those issues were addressed to the satisfaction of Toyota.
27 (Hearne Depo., 48:20-25; 49:3-13; 49:21-50:30.) An independent accountant reviewed Hooman
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1 Toyota's financial statements and determined that they were credible. (Hearne Depo., 106:13-108:13;
2 Ex. 2059.) Apart from facility requirements, Hooman is meeting its dealer agreement requirements
3 and minimum standards. (Kong Depo., 122:19-25.)

4 VII. CONCLUSIONS/ANALYSIS OF GOOD CAUSE FACTORS

5 **A. Permanency of the Investment (Vehicle Code Section 3063(a))**

6 72. Intervenor has established permanency of investment because Intervenor is a dealer with
7 substantial investments in land and property, as well as its present intent to upgrade its new facility at
8 the proposed relocation.

9 **B. Effect on the Retail Motor Vehicle Business and the Consuming Public in the Relevant** 10 **Market Area (Vehicle Code Section 3063(b))**

11 73. Protestants have not established that there will be a significant adverse effect upon the
12 retail motor vehicle business in the RMA if the Intervenor is allowed to relocate. There are no
13 immediate negative effects of the relocation and any negative effects that may arise will be outweighed
14 by the benefit to the public.

15 **C. Whether is it Injurious to the Public Welfare for an Additional Franchise to be** 16 **Established [or a Franchise to be Relocated] (Vehicle Code Section 3063(c))**

17 74. Protestants have not established that existing Toyota dealers presently providing sales and
18 services to the public in the RMA would more likely than not suffer a loss of business if Hooman
19 Toyota were allowed to relocate, nor have Protestants proven any other injurious effects on the public
20 welfare that might result.

21 **D. Whether the Franchisees of the Same Line-Make in that Relevant Market Area are** 22 **Providing Adequate Competition and Convenient Consumer Care for the Motor Vehicles of the** 23 **Line-Make in the Market Area which shall include the Adequacy of Motor Vehicle Sales and** 24 **Service Facilities, Equipment, Supply of Vehicle Parts, and Qualified Service Personnel (Vehicle** 25 **Code Section 3063(d))**

26 75. Protestants have not established that existing Toyota franchisees in the RMA are providing
27 adequate competition and convenient consumer care for Toyota motor vehicle customers. The
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1 relocation of Hooman Toyota will provide increased competition and convenient consumer care in the
2 RMA with a better location and upgraded facility.

3 **E. Whether the [Relocation of the Franchise or] Establishment of an Additional Franchise**
4 **would Increase Competition and therefore be in the Public Interest (Vehicle Code Section**
5 **3063(e))**

6 76. Protestants have not established that the relocation of the franchise would not increase
7 competition. The evidence indicates there will be an increase in competition as a result of the
8 relocation. The relocation will therefore be in the public interest.

9 **VIII. DETERMINATIONS OF ISSUES**

10 77. Intervenor has sustained its burden of proof of establishing the permanency of its
11 investment.

12 78. Protestants have not sustained their burden of proof to show there would be an adverse
13 effect on the retail motor vehicle business and the consuming public in the relevant market area if
14 Hooman Toyota is relocated.

15 79. Protestants have not proved that it would be injurious to the public welfare for Hooman
16 Toyota to relocate.

17 80. Protestants have not sustained their burden of proof to show there is already adequate
18 competition and convenient consumer care in terms of sales and distance. Protestants have not
19 sustained their burden of proof to show adequacy of sales and service facilities, equipment, supply of
20 vehicle parts, and qualified service personnel.

21 81. Protestants have not sustained their burden of proof to show that competition would not
22 increase if the relocation is allowed and would not be in the public interest.

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1 **IV. PROPOSED DECISION**

2 Protests Nos. PR-2339-12 and PR-2341-12 are hereby overruled. Neither Protestant Carson
3 Toyota nor Cabe Toyota has met its burden of proof under Vehicle Code section 3066(b) that there is
4 good cause not to relocate the Hooman Toyota dealership. Respondent Toyota shall be permitted to
5 proceed with the relocation of Hooman Toyota to the proposed location.

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7 Dated: August 15, 2013

NEW MOTOR VEHICLE BOARD

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9 By: _____
10 VICTOR RYERSON
11 Administrative Law Judge
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1 Service List

*Carson Toyota v Toyota Motor Sales U.S.A., Inc.
Protest No. PR-2339-12 Consolidated*

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