Halbert B. Rasmussen, Esq., SBN 108566
hrasmussen@manningleaver.com
Franjo M. Dolenac, Esq., SBN 259036
fdolenac@manningleaver.com
MANNING, LEAVER, BRUDER & BERBERICH
Attorneys at Law
5750 Wilshire Boulevard Suite 655
Los Angeles, California 90036
Tel: (323) 937-4730
Fax: (323) 937-6727

Attorneys for Protestant Aldon, Inc. dba Carson Toyota and Aldon, Inc. dba Carson Scion

NEW MOTOR VEHICLE BOARD

STATE OF CALIFORNIA

In the Matter of the Protests of	CONSOLIDATED MATTERS:
ALDON, INC., a California corporation, d.b.a. CARSON TOYOTA, and	PROTEST NO. PR-2339-12
ALDON, INC., a California corporation, d.b.a. CARSON SCION, and	PROTEST NO. PR-2340-12
CABE BROTHERS, a California corporation, d.b.a. CABE TOYOTA and CABE SCION	PROTEST NO. PR-2341-12
APAULO, INC. d.b.a. NORWALK TOYOTA and TOYOTA SCION, and	PROTEST NO. PR-2342-12
DWWSB, INC. d.b.a. SOUTH BAY TOYOTA and SOUTH BAY SCION	PROTEST NO. PR-2343-12
Protestants, v. TOYOTA MOTOR SALES U.S.A., INC., a California Corporation, Respondent.	**PROTESTANT ALDON, INC. DBA CARSON TOYOTA AND CARSON SCION'S REPLY BRIEF**
H.T.L AUTOMOTIVE, INC. dba HOOMAN TOYOTA OF LONG BEACH and HOOMAN SCION OF LONG BEACH, Intervening Party.	

Table of Contents

Table of Authorities

Statutes

Carson Toyota's Reply Brief

I. Introduction

Neither Hooman Toyota nor TMS raise credible countervailing points that negate protestants' showing of good cause not to allow relocation, and do nothing to dispute that Hooman Toyota will receive an unfair competitive advantage if the unnecessary Proposed Relocation is allowed to proceed. The Proposed Relocation will only result in tremendous windfalls to Hooman's investor group at the expense of the family-owned Carson Toyota and Cabe Toyota, the rest of the dealer network, and the consuming public.

Hooman Toyota's initial purchase of the former Toyota of Long Beach dealership reflects its investors' willingness to invest within a predictable dealer network. But their unwillingness to invest after their initial purchase, instead waiting for the sweet-heart deal, neglects the very network that prompted that investment. Even if the Proposed Relocation is not permitted, Hooman Toyota will still retain all the benefits of its initial investment. And like Carson Toyota and Cabe Toyota, Hooman Toyota should invest in its current location rather than personally gain from an unnecessary relocation at the other dealers' expense.

The Proposed Relocation will be at the expense of everyone but TMS and Hooman Toyota. While Hooman Toyota's expert witness predicts a *per se* increase in competition, Mr. Stockton fails to complete his own analysis by balancing that increase with the disproportionate anti-consumer effects. He also understates the verified negative impact on the dealer network by applying a model that inaccurately predicts Cabe Toyota's and Hooman Toyota's sales, and then unrealistically assumes that his model predicts sales with 100% accuracy, attributing any inaccuracy to a dealer's dubious inability to capture sales.

TMS's expert fares no better. Mr. Farhat posits an inadequate, irrelevant market area in his quest to find inadequacy in an otherwise adequate RMA. He inflates the availability of sales based on an over-aggressive benchmark (the most aggressive he could find). He also fails to reconcile 174 purported additional sales available under the inflated benchmark with the Proposed Relocation's ability to support an additional 2,500 sales. But when adjusting for population anomalies inherent in such a small selected market, the shortfall drops to only five or at most eighteen sales, which are materially and statistically insignificant. And contrary to Mr. Farhat's assumption, Cabe Toyota's focus on an internet-based business strategy in no way neglects its local market, but rather increases its overall sales with a less proportion of its additional sales being made within its tiny local market.

While Hooman Toyota and TMS may try to dazzle this Board with the benefits of the Proposed Relocation, they completely ignore that any claimed overcrowding or inefficiencies in Hooman Toyota's current facilities stem from the artificial service business generated by its unlawful VIP Program. By eliminating the 62 out of the 142 *daily* repair orders attributed to the Program, its facilities will be more than adequate for its actual service business. Thus, among the countless other means of addressing its current facilities issues, Hooman can wipe away much of the problem by simply discontinuing its unfairly competitive program.

For these reasons explained in detail below, Hooman Toyota and TMS failed to rebut Carson Toyota's and Cabe Toyota's establishing good cause not to allow the Proposed Relocation. Therefore, the Board should sustain this protest and protect Carson Toyota's substantial investment, protect the little territorial advantage that remains for Cabe Toyota, and protect California consumers.

II. Good cause exists not to permit the Proposed Relocation, because Hooman Toyota will still reap the benefits of its entire initial investment even if the Board sustains this protest, but Carson Toyota's investment returns will suffer if the Board overrules it.

A dealer's decision to investment at any given point reflects its perception of the market. A rational dealer would not invest unless it expected big returns, minimal risk, or some sliding scale of both. Here, Hooman Toyota and Carson Toyota both invested for these reasons in reliance on the existing dealer network: Hooman Toyota bought the former Toyota of Long Beach dealership[1] and Carson Toyota invested over $35 million to purchase land and build a new facility. But Hooman Toyota stands to substantially gain from the Proposed Relocation by benefiting first from the diminished market value of its perceived facility deficiencies reflected in a lower purchase price, and second by using those perceived deficiencies as a motive to relocate to a location with much smaller development costs to the detriment of surrounding dealers. And TMS and Hooman Toyota

1 Though Hooman Toyota claims it invested $610,000 in the Proposed Relocation without any supporting evidence, its itemization reflects transaction costs instead of any "permanent investment." [Ex. 253.] And Hooman Toyota omits from these transaction costs the half million dollars that it paid to TMS to approve the Proposed Relocation. [RT Vol. X, 284:1-285:8 (Eroh); Ex. 1157; Ex. 1165.]

claim that Carson Toyota and its significant investments can sustain this detriment. But they never give any valid reason why Carson Toyota's expected losses are less important than Hooman Toyota's substantial and expected gains when the equitable result would be for Hooman Toyota to invest in its current location. The Board should prevent the inequity of the Proposed Relocation.

A. "This dealer is in business now, has been in business since 2008, will continue to be in business regardless of the outcome of these proceedings." [RT Vol. V, 27:2-4 (Flannagan).]

Hooman Toyota's purchase price reflects its investors' eagerness to invest in a stable dealer network. The purchase price also reflects the fair market value of the dealership. First, having performed their due diligence before purchasing the dealership, its investors had all the pertinent information, including performance of the Toyota brand, performance of the dealership, relative locations of competing dealerships, and relative size of competing dealerships. Significantly, Carson Toyota's facility construction was well under way at that time. These are all factors relating to the permanency of investment in the established, 35 year old, Long Beach/Carson Toyota dealer network, and this information prompted Hooman Toyota's "substantial and permanent investment," as TMS claims.[2] As rational investors, that investment would not have been made unless the predictability and stability of the dealer network promised sufficient returns at proportionate risk.

Similarly, Hooman Toyota would not invest if the purchase price did not reflect the dealership's fair market value. But the purchase price already accounted for the diminished value of all of Hooman Toyota's now-claimed location or facility deficiencies, because they were known to the investor group at the time of purchase. The dealership is in the same exact location – on the traffic circle – as it was on the purchase date. [Ex. 1009 (TMS-PROD_013311).] The facilities were marginally deficient under TMS's guidelines, but even more so then. [Ex. 1009 (TMS-PROD_013313).] And Hooman Toyota does not contend that these circumstances were surprising or otherwise not reflected in its purchase price. Sam Carrillo, Hooman Toyota's fixed operations director, confirmed that purported customer concerns started "[i]mmediately as soon as we took

2 TMS claims that "Mr. Nissani purchased Hooman Toyota in January 2008 for approximately $10.3 million." [TMS Opening Brief, 9:11-12.] This is not true. When Mr. Nissani was asked to specify his capital contribution at the hearing, his response was, "I don't know." [RT Vol. XIII, 174:23-175:24.] To clarify, Mr. Nissani made no initial capital contribution for the dealership's purchase. Instead, Hooman Toyota's two investors, Kevin Golshan and Geraldine Weber, were each to contribute $3,501,050 with the remaining purchase price to be paid by a $7 million loan from Toyota Financial Services. [Ex. 1007 (TMS-PROD_001642).]

over the dealership," though Hooman Toyota did almost nothing to address them. [Carrillo Depo., 40:16-41:2; 98:15-99:1 (Carrillo).] Therefore, Hooman Toyota received the *exact* value of its bargain, including the state of its facilities, when it purchased the dealership.

Since its purchase, Hooman Toyota made virtually no investment in its facilities, and TMS struggles to identify anything significant, highlighting such achievements as "relocat[ing] a dumpster to increase parking." [TMS Opening Brief, 9:15.] And while Hooman Toyota claims that it added service stalls, which would have been its most significant facility improvement if true, its service stall count did not change at all according to TMS.[3] [Ex. 1007 (TMS-PROD_001644); Ex. 2008 (TMS-PROD_020056).] Hooman Toyota's lack of investment since its purchase is in line with its "goal from day one … to relocate this location." [Ex. 1018 (TMS-PROD_011330).] Based on these circumstances, Hooman Toyota's purpose behind the Proposed Relocation is to unjustly gain. It now uses its alleged deficiencies as a motive to promote the Proposed Relocation, claiming that it would be too expensive to invest in the current facilities. But because that information was already known to it when it purchased the dealership, Hooman Toyota already accounted for that cost in its purchase price. And if it did invest in its facilities, it would lose its supposed motive for the Proposed Relocation.

But the Proposed Relocation will have a negative impact on the surrounding dealers. Rather than incur the cost to develop its current facilities, Hooman Toyota intends to shift those costs by moving to a location with lower development costs, and then forcing a negative impact to the surrounding dealers through the Proposed Relocation. Therefore, Hooman Toyota stands to gain *twice* – first by its lower purchase price and second by its cost-shifting.

But even if it is not permitted to relocate, Hooman Toyota will still realize the full benefits of its initial investment. Mr. Flannagan admitted that Hooman Toyota "will continue to be in business regardless of the outcome of these proceedings." [RT Vol. V, 27:2-4 (Flannagan).] And no evidence suggests otherwise. Therefore, while some expectations of a windfall will be dashed, no actual investments of any party will suffer if the Board sustains this protest.

---

3 There is discrepancy among Mr. Nissani, Mr. Carrillo, and TMS regarding Hooman Toyota's number of service stalls. Hooman Toyota argues "there are only18 service stalls" (Intervenor Opening Brief, 12:24-25.) Mr. Carrillo claims there are 21. [Carrillo Depo., 30:25-31:6.] TMS shows there are 27. [Ex. 2008 (TMS-PROD_020056).] But the number of stalls has not changed since acquiring the dealership based on TMS guidelines.

B. Carson Toyota should not be forced to incur a lower return on its investment when the Skinner and Pennington families relied on the permanency of the existing dealer network to invest $35 million.

Much like Hooman Toyota, the Skinner and Pennington families, as rational investors, found significant value in the mature network when they decided to invest over $35 million to acquire land and build a new facility for Carson Toyota. And they expected a certain return subject to the same type of facts known to Hooman Toyota around that time. But a key fact not known to them was Hooman Toyota's intent to relocate the dealership. [RT Vol. XI, 195:24-196:6; 213:20-214:1 (Skinner).] And the Proposed Relocation is a significant, unforeseen increased risk that the Skinner and Pennington families did not contemplate when they demolished their old facility and built a new facility at the same location. Therefore, their expected return will now unjustifiably suffer though their reliance on an existing dealer network serving the Toyota brand very well for over 35 years was completely justified.

Yet TMS would penalize Carson Toyota for investing and being "highly profitable," and claims that Carson Toyota "has a significant amount of financial flexibility, and is more than capable of competing with Hooman Toyota following the relocation." [TMS Opening Brief, 13:11-12.] But unlike Hooman Toyota, Carson Toyota did not become "highly profitable" by engaging in unfair competition through unlawful programs, or by taking advantage of an established network and shifting its costs to other dealers for its own personal gain. Rather, it did so by helping establish that stable network, supporting the Toyota brand, and then investing over $35 million as a culmination of its over-35 year effort.

TMS fails to provide any good reason why Carson Toyota should sustain the adverse consequences of a demonstrated uncertain, transient, and unproven investor group's desire to relocate for its own gain. It fails to explain why the consequences of the Proposed Relocation should be borne by the party that was less informed as opposed to Hooman Toyota, which was fully informed of the relevant circumstances before it made its initial investment. If the arguments of TMS and Hooman are adopted by this Board, Los Angeles area dealers would receive a chilling message that investor groups can freely disrupt established dealer networks in mature markets under the guise of complying with factory facility requirements. As a matter of equity, Carson Toyota should be able to reap the full return on its investment. And both Carson Toyota and Hooman Toyota will fully and equitably benefit from their respective investments if the Proposed Relocation is denied. Therefore, the Board should sustain the protest.

C. A relocation's impact is not determinative of its distance from the statutorily-exempt, protestable area.

Both TMS and Hooman Toyota wrongly assume that a relocation's relative distance from the statutory exemption distance under *Vehicle Code* section 3062(b) – within one mile and within the same city as the existing dealership – somehow establishes a legislative presumption that no adverse impact will result on surrounding dealers. This is unfounded. This exemption can just as easily be viewed as supporting a strong public policy incentivising dealers to invest freely at their current location or very proximate locations without risk of any protest. Regardless, neither TMS nor Hooman Toyota cite to any legislative history reflecting their assumption for this arbitrarily-determined exempt area. And this exemption would be relevant only if it applied to the Proposed Relocation. All parties concede that it does not.

III. Mr. Stockton's finding that the Proposed Relocation will result in *per se* increase in competition is misleading, because he fails to complete his own analysis and account for the corresponding competitive response to a potential price decrease like Dr. Matthews did.

Simply because the Proposed Relocation may result in Hooman Toyota lowering its price does not mean that the consuming public will benefit or that competition will increase overall. [RT Vol. VI, 43:5-44:1 (Stockton); *see* Ex. 254 (Tab 6 p. 33).] "Any increase in competition will put pressure on other forms of competition. So if a price is pushed down, then the dealership's ability to increase service or to provide more unchanged amenities is under pressure." [RT Vol. VI, 45:2-8 (Stockton).]

Dr. Matthews considered these countervailing pressures. The surrounding dealers' competitive response to Hooman Toyota's aggressive price cut will adversely affect the public through lower levels of service, sharper business practices, and personnel cutbacks. [RT Vol. VIII, 235:1-22; 121:9-24 (Matthews); Ex. 1500 (HoCT001773, 1774).] Carson Toyota already expects to terminate about 25 employees and potentially cut other consumer-oriented services to effectively compete. [RT Vol. XI, 194:12-22; 196:7-17 (Skinner).]

But Mr. Stockton's conclusion is misleading and inconclusive. He fails to balance these pressures with the price decrease. And he does not opine that the Proposed Relocation will result in a net increase in competition. Therefore, Mr. Stockton's incomplete opinion provides no value to the Board.

A. Mr. Stockton predicts a marginal negative impact from the Proposed Relocation, but his gravity model does not apply to the unique circumstances of this protest, and his unrealistic assumptions result in his underestimation of the impact.

Mr. Stockton's expected negative impact is based on a derived hybrid model between two models, one that calculates gravitational force and another that is used to develop retail boundaries. [Ex. 254, (Tab 13, pp. 5-7).] He purposely chose this model because it works under the assumption that a dealer has territorial advantage and that the majority of its sales will be closest to it. But Cabe Toyota has no such advantage, and its actual sales behave nothing like Mr. Stockton's model predicts. Because of the model's improper fit, along with other unsubstantiated assumptions, Mr. Stockton grossly understates the Proposed Relocation's negative impact.

First, the model is based on Newton's law of gravitational force, containing the measured variables "mass" and "distance." Reilly's law of retail gravitation is derived from Newton's formula by substituting "mass" with "population." When applying these models, mass and population are measured, known, and inputted into their respective models. Reilly's law measures the distance at which a customer is indifferent toward traveling to one city versus another, or the "break even" point, based on the relative "gravitational attraction" or size of the city's population. Mr. Stockton extends the "break even" analysis and assumes that the relative level of influence of two cities at any particular distance between them can be calculated. [Ex. 254 (Tab 13, pp. 1-7).] From here, Mr. Stockton makes a leap in logic. He concludes that this extension of Reilly's law somehow can measure the Proposed Relocation's impact. Without explaining how his model is derived from Newton's formula or Reilly's law, Mr. Stockton claims that his model can accurately predict a dealer's sales based on a dealer's distance from a census tract relative to other dealers and also a dealer's ability or inability to capture sales, which he refers to as "mass" (not to be confused with the mass variable in Newton's formula).

Based on this nebulous model, Mr. Stockton first calculates a dealer's "share of proximity" for every census tract within the selected market area, which is the dealer's expected share of Toyota sales in any given census tract based on its distance from the tract relative to other dealers. The dealer's share is measured by the formula $1/d^2$ where "d" equals distance. [RT Vol. IX, 9:14-10:2; 12:3-20 (Matthews).] Based on this formula, a dealer's sales will exponentially decrease the farther the distance from the dealer. [RT Vol. IX, 32: 20-34:5 (Matthews); Ex. 1500 (HoCT001820).] But Mr. Stockton gives no explanation as to why or how Reilly's law applies here, or the reason for selecting the formula $1/d^2$ to calculate share of proximity. [RT Vol. IX, 9:8-13 (Matthews).]

Once Mr. Stockton calculates each dealer's share for every tract, he determines the dealer's expected sales in a census tract by multiplying its share of proximity to the total expected sales at the California market share average. He then tests his model by comparing the dealer's expected sales to a dealer's actual sales and performs a regression analysis. [Ex. 254 (Tabs 18-20).] The regression line depicts the relationship of the observations between the model's output of a dealer's expected sales ("X" coordinate or horizontal axis) and a dealer's actual sales ("Y" coordinate or vertical axis).

Mr. Stockton then uses the regression for each dealer to derive the "mass," or what he claims is a dealer's relative ability or inability to capture sales given its location. It is based on the slope of the regression line, which is the coefficient in front of the "X" variable. But Mr. Stockton fails to explain where this "mass" variable comes from, or how it is tied in any way to Newton's formula or Reilly's law. While both Newton and Reilly can measure the relative attractive forces of an object (Newton) and a city (Reilly), that attractive force is based on mass (Newton) and population (Reilly). And both mass and population are independently measured and inputted into their respective models to determine the attractive force. But the "mass" referred to by Mr. Stockton is not something that is independently measured or that can be expressed in any unit of measure like kilograms or number of people. Because "mass" is an obtuse, conceptual idea assumed by Mr. Stockton, its measured value is dependent on the output from Mr. Stockton's model unlike Newton and Reilly. Therefore, Mr. Stockton's use of the term "mass" is a misnomer though he means to use it conceptually in the same way as mass in Newton's formula and population in Reilly's law. [RT Vol. IX, 21:21-24:11 (Matthews).]

If the model predicted perfectly, its expected sales would equal the actual sales so that the slope of the line would be one. [RT Vol. IX, 15:10-19:15 (Matthews); Ex 1500 (HoCT001855).] But the model does not predict perfectly. The dealer's expected sales must be "adjusted," or multiplied, by the slope of the line so that the expected sales equal the dealer's actual sales. And Mr. Stockton assumes that the expected and actual sales do not match because of the dealer's relative ability to capture sales. If the slope is less than one, he assumes that the dealer cannot capture sales as well as his model predicts. So he then inexplicably reduces his model's output of the dealer's expected sales by a factor equal to the slope of the line. [RT Vol. VI, 141:20-143:7; Vol. VII, 106:13-107:11; 113:15-24 (Stockton).]

For Mr. Stockton's assumption to work properly, he must also assume that his model predicts a dealer's expected sales with 100% accuracy, and that any variance from the model is solely because the dealer is not meeting his model's expectations – not because his model is inaccurate. This is unrealistic.

Using Cabe Toyota as an example, the slope of its regression line is approximately 0.36. [Ex. 254 (Tab 19, p. 2).] If Mr. Stockton's model predicted 100 Cabe Toyota sales expected in a particular census tract, Mr. Stockton would "adjust" those sales by multiplying them by the slope 0.36 to obtain 36 expected Cabe Toyota sales instead. And he adjusts every dealer's expected sales by their respective slope and sums the dealer's total expected sales, first with Hooman Toyota at its current location, and then again at the Proposed Relocation. His final results reflect the loss in Carson Toyota's and Cabe Toyota's expected sales from the Proposed Relocation. [RT Vol. IX, 29:18-31:12 (Matthews); Ex. 254 (Tab 17, p. 1; Tab 22, p. 4).]

But Mr. Stockton's model is conceptually flawed, because (1) the model cannot accurately predict a dealer's actual sales; and (2) to the extent that it does predict a dealer's sales, the negative impact of the Proposed Relocation is grossly underestimated. As Mr. Stockton testified, "You can only lose what you've won." [RT Vol. VII, 85:4-11 (Stockton).] Similarly, a dealer can only lose what Mr. Stockton's model predicted it won. But the model predicts very poorly and then Mr. Stocton gives the dealers significantly less "winnings" when applying "mass."

First, the model does not fit the sales behavior of the dealer's in the RMA, specifically Cabe Toyota. The model assumes that a dealer has territorial advantage in the area closest to it, and therefore it will make most of its sales in close proximity while sales will exponentially drop as sales are farther from it. But Dr. Matthews explained that Cabe Toyota has virtually no territorial advantage because of its small and odd-shaped PMA assigned by TMS. And Dr. Matthews's "dot map" analysis shows that Cabe Toyota's sales are not concentrated within a 5-mile radius unlike other dealers in the RMA. Therefore, Mr. Stockton's model is biased against Cabe Toyota, because the model does not accurately reflect Cabe Toyota's actual sales behavior, and it punishes Cabe Toyota because it lacks territorial advantage.

Mr. Stockton blames Cabe Toyota for not taking advantage of its territorial advantage and fitting his model by not "winning" enough sales close it. [RT Vol. VII, 85:4-11 (Stockton),] According to Mr. Stockton and his model, these dealers can never show good cause not to permit a relocation, because TMS virtually ensured that Cabe Toyota can never show negative impact by assigning it a small, odd-shaped PMA, which provides no territorial advantage. But this unjust and inequitable result is not contemplated by the statute, because a good cause showing is relative for each unique protest and is based on the "existing circumstances." And Mr. Stockton should have accounted for the "existing circumstances" by acknowledging Cabe Toyota's lack of territorial advantage and using a proper fit model rather than assume that the dealer's sales behavior should reach his model's unattainable result.

The model's inaccuracy does not pertain only to Cabe Toyota. Its inaccuracy is prevalent for all dealers in the RMA. When analyzing the model's expected sales versus its actual sales for each dealer, Dr. Matthews calculated the model's expected sales to be off by an average of 52% for each dealer. He found this error rate to be "very, very large." [RT 13:4-15:8 (Matthews); Ex. 1500 (HoCT001855).]

Second, by applying "mass" to a dealer's predicted sales, Mr. Stockton blames the dealers because their respective sales do not follow his model's output. And he fabricates "mass" to shift his model's inaccurate forecasting to the dealer rather than opting for the more obvious correction – change the model to accurately predict the dealer's sales. But his concept of "mass" is not based on any sound theory. While he tries to analogize "mass" as the ability to capture sales to, in Newton's and Reilly's case, a measure of "gravitational attraction" based on the mass of an object or the population of a city, Mr. Stockton must derive "mass" from his model instead of independently measure it like mass or population. But relying on the model to generate an independently-measured variable, and then applying the generated variable back into the model, is entirely circular, and leads to invalid conclusions. [RT Vol. IX, 24:14-28:23 (Matthews).]

Notwithstanding this conceptual flaw, Mr. Stockton reduces a dealer's "winnings" by applying the "mass." For Cabe Toyota, he reduced its expected sales by 67%. And he reduced Hooman Toyota's expected sales by 23%. [Ex. 254, (Tab 18, p. 2; Tab 19, p. 2).] Therefore, Mr. Stockton underestimates sales that Cabe Toyota can potentially "lose" *and* he underestimates Hooman Toyota's ability to cannibalize sales. The results lead to reported negative impact that is much smaller than will actually occur from the Proposed Relocation. Accordingly, Mr. Stockton's resulting negative impact is, at best, grossly understated.

B. Dr. Matthews's sound analysis is not affected by any criticism, because TMS and Hooman Toyota do not dispute the underlying economic theories or assumptions supporting Dr. Matthews's conclusions.

Dr. Matthews's analysis of the negative impact on the RMA is consistent with the standards under the good cause factors. *Vehicle Code* section 3063, subsection (b) contemplates the "[e]ffect on the retail motor vehicle business and the consuming public in the relevant market area." And as Mr. Farhat explained, "the statute specifically says to study the ten miles around the proposed relocation" and that it "calls for a review of the relevant market area." [RT Vol. XIII, 48:9-16 (Farhat).] In summary, Dr. Matthews found that: (1) the RMA dealers are competing aggressively and more than adequately; (2) the current dealer network configuration and facilities are right-sized for the competition available to it; (3) the Proposed Relocation will introduce excess capacity into the network, and Hooman Toyota's fixed cost-savings will enable it to more effectively push idle-time costs from its surplusage to the dealers within the RMA and create uncertainty; (4) Cabe Toyota will be rendered redundant and it will less effectively compete with Hooman Toyota because the Proposed Relocation will encroach on its PMA by 24%; and (5) the idle-time costs forced by the Proposed Relocation will shift to the consuming public. Nowhere in the statute is a protesant required to show impact on any specific franchisee. But TMS and Hooman Toyota fabricate an irrelevant standard, claiming that Dr. Matthews's did not show impact on Cabe Toyota and Carson Toyota. This is simply untrue. The Proposed Impact will have a negative impact on both dealers, and his analysis meets the burden under the relevant standard expressed in the good cause factor.

1. Dr. Matthews's assumption regarding Hooman Toyota's expected fixed costs is based on sound economic theory, highlights the uniqueness of this protest, and is reconcilable with his conclusions.

Dr. Matthews's assumption that Hooman Toyota's substantial increase in facility capacity will lead to a corresponding increase in fixed costs, which would be passed on to the public, was a "legitimate concern" according to Mr. Stockton. [RT Vol. VI, 206:11-208:5 (Stockton).] Mr. Stockton testified that it was "understandable" for Dr. Matthews to make this assumption, because Hooman Toyota "was moving from a fairly small facility" to a "fairly large facility." [RT Vol. VI, 207:15-20 (Stockton).] But admittedly the assumption was incorrect. As Mr. Stockton explained, "Now, the very strange case here is that the – despite the intuition, it is my understanding that Hooman will experience a dramatic reduction in fixed costs." [RT Vol. VI, 207:21-24 (Stockton).] Mr. Stockton is correct; this is a very strange case. And Dr. Matthews's assumption only highlights the uniqueness of this protest.

But the assumption does not invalidate any of Dr. Matthews's conclusions. In a related, but separate, analysis, Dr. Matthews determined that the Proposed Relocation's facilities are excessive for the dealer network. This excess capacity will create idle-time costs for the unused, unnecessary space. Dr. Matthews concluded that because of the dramatic decrease in fixed costs, Hooman Toyota will be a more effective competitor and fill its excess capacity. But because the network can only support a limited amount of business, Hooman Toyota will be able to shift its idle-time costs to the surrounding dealers by cannibalizing their sales and filling its own facility to capacity. In this context, the fixed costs relate to Hooman Toyota's ability to shift idle-time costs to other dealers by stealing their business. Dr. Matthews's prior mistaken assumption does not invalidate his conclusion that the Proposed Relocation will result in significant idle-time costs, because the underlying fact for both conclusions – that the Proposed Relocation's facilities are not right-sized but excessive for the market – is *not* criticized. Therefore, while Dr. Matthews no longer expects Hooman Toyota to shift incorrectly-assumed fixed cost increases to the public, he does conclude that the verified decrease in fixed costs will allow Hooman Toyota to shift his idle-time costs to Carson Toyota and Cabe Toyota. Accordingly, Dr. Matthews's analyses are entirely reconcilable.

2. Dr. Matthews's novel "polygon" analysis is appropriate for the unique circumstances of this protest, and it shows the 24% territorial advantage that Cabe Toyota will lose from its already tiny advantage.

Dr. Matthews readily admits that this approach is novel but entirely appropriate because of Cabe Toyota's very small and narrow PMA. And he opined the classic approach or "flip method" would not work, especially because the PMA is only one census tract wide at the point where the dealership is located, and Hooman Toyota is proposing to move toward that one census tract. [RT Vol. VIII, 231:14-232:22; 226:19-227:13 (Matthews).] Therefore, no one can reasonably expect the census tract in which the dealership is located to flip unless the relocation would also be in that tract.[4] But simply because the method is novel does not invalidate its results. And TMS does not contend that Dr. Matthews's results are wrong.

This analysis shows the Proposed Relocation's encroachment on Cabe Toyota's territorial advantage based on the PMA boundaries assigned by TMS. Its importance is based on the undisputed assumption that territorial advantage directly corresponds to market advantage, and that a function of this Board is to protect a dealer's territorial advantage. But TMS's criticism is misguided, focusing instead on the acute issue of the number of registrations in the encroachment area rather than the important, significant market advantage that Cabe Toyota will lose from the territorial encroachment. And a 24% encroachment of Cabe Toyota's PMA is more than significant enough for this Board to intervene and not permit the Proposed Relocation.

---

4 Both TMS and Mr. Stockton found that by using the classic approach, census tracts would flip because of the Proposed Relocation. TMS's analysis shows that Hooman Toyota would gain one of Cabe Toyota's and one of Power Cerritos Toyota's census tracts, but lose a census tract containing virtually no registrations. [Ex. 1009 (TMS-PROD_017539-17540.] Mr. Stockton shows that Hooman Toyota will gain five of Cabe Toyota's, one of Power Cerritos Toyota's, and one of Elmore Toyota's census tracts, but lose one census tract to Power Cerritos based on drive time. [Ex. 254 (Tab 10, pp. 3-4).] But Mr. Stockton also shows that there is virtually no net change in flipped tracts based on the less preferred measures of air distance and drive distance consistent with Dr. Matthews's belief. [Ex. 254 (Tab 10, pp. 1-2; 5-6).]

In summary, Dr. Matthews's analyses meet the statutory standard expressed in the good cause factors. Any deviation of the facts from his sound assumptions highlights the unique circumstances of this protest. And neither TMS nor Hooman Toyota disputes the conclusions that he reached. For these reasons, the Board should consider Dr. Matthews's analyses with significant weight and credibility to find that good cause exists not to permit the Proposed Relocation.

IV. Mr. Farhat's analysis when properly adjusted shows no shortfall in the Long Beach PMAs, and Cabe Toyota is adequately representing its PMA in sales and service despite its territorial disadvantage.

Though Mr. Farhat found that the RMA dealers are providing adequate competition consistent with his statutory interpretation of the good cause factor standard, he ventures beyond the standard to find inadequacy within the combined Cabe/Hooman Toyota (Long Beach) PMAs market. But TMS is one of Urban Science's "major clients" that pays it "lots of money." [RT Vol. XIII, 199:20-200:24 (Farhat).] Not surprisingly, Mr. Farhat would want to employ a biased analysis in this protest for one of his major clients. And he does so by utilizing an unrealistically high benchmark for his segmented analysis. Because of the relatively small size of his selected market, its non-uniform demographic distribution regarding Asian and Hispanic populations create anomalies, especially because of their unique affinity for the Toyota brand. But once adjusted, the shortfall within Mr. Farhat's selected market falls to a statistically insignificant five units.

He also incorrectly assumes that Cabe Toyota's business decision to focus on internet sales caused an unsubstantiated inadequacy. But Cabe Toyota's proportion of Toyota sales relative to other Toyota dealer sales in the Long Beach PMAs did not change since it focused on internet sales. And its change in strategy is a solution to increase its overall sales that it otherwise cannot make because of its disadvantage from TMS's assigned PMA.

While Mr. Farhat also claims the market has significant service "opportunity," he exaggerates this measure, because he fails to consider whether that "opportunity" is realistically available for any rational business. Mr. Stockton would disagree with Mr. Farhat's characterization of service "opportunity." Therefore, Mr. Farhat's rudimentary analysis is inconclusive.

///

///

A. The combined Cabe/Hooman Toyota PMAs have no material or statistically significant shortfall when adjusted for Asian and Hispanic preferences.

Mr. Farhat explained that the RMA must be able to support the expected additional sales that the excessive Proposed Relocation facilities can accommodate. Otherwise good cause exists not to permit the Proposed Relocation. [RT Vol. XIII, 35:6-21 (Farhat).] And Carson Toyota, Cabe Toyota, and Hooman Toyota are all selling well above their expected sales nationally based on the regional average as calculated by TMS:

Dealer	2008	2009	2010	2011	2012
Carson Toyota[5]	284.8%	N/A	307.3%	318.1%	254.2%
Cabe Toyota	102.0%	103.1%	138.8%	178.5%	193.7%
Hooman Toyota	114.5%	81.8%	106.6%	114.5%	124.9%

[Ex. 1515 (TMS-PROD_004451); Ex. 1516 (TMS-PROD_004459); Ex. 1521 (HoCT001883); Ex. 2006 (TMS-PROD_003456; 3463; 3477; 20039); Ex. 2008 (TMS-PROD_010504; 20053).] Accordingly, TMS finds no shortfall of sales by any of these dealers based on its own measures.

But Mr. Farhat and Mr. Stockton incorrectly claimed to have found otherwise based on their analysis of the Long Beach PMAs.[6]

Mr. Farhat performed a segmented analysis on the Long Beach PMAs by applying the highest represented benchmark, which was the 10-mile PMAs less Long Beach PMAs average. [RT Vol. XIII, 53:17-55:1; 203:16-18; 204:19-205:2 (Farhat); Ex 2088 (p. A-8).] But his selected benchmark is almost a 3% higher market share than California and almost 2% higher than the Los Angeles markets. And TMS does not use such an extraordinarily high benchmark to regularly measure performance. Instead, its segmented analysis is based on the California average. [RT Vol. X, 304:14-305:5 (Eroh).] Mr. Stockton also used the California average to perform a segmented analysis. [RT Vol. VI, 83:15-84:9 (Stockton); Ex. 254 (Tab 11, p. 1).] Even Mr. Farhat used the California average in a previous protest under *Vehicle Code* sections 3062 and 3063 before this Board. [RT Vol. XIII, 201:18-202:15 (Farhat).] The selected case study included in Mr. Farhat's

---

5 Market penetration for Carson Toyota in 2008 is through November YTD and in 2012 is through September YTD based on available data.

6 Mr. Farhat also misconstrued insell into the RMA from competing Toyota dealers outside of the RMA as "opportunity," but Dr. Farhat completed the analysis and found that the RMA dealers are net exporters, or they outsell/pump out more than they insell/pump in, which is explained in detail in Carson Toyota's opening brief. [Carson Toyota Opening Brief, 32:11-27.]

report also used the California average as an appropriate benchmark. [RT Vol. XIII, 202:16-203:10 (Farhat); Ex. 2088 (p. A-87).] But by using this higher benchmark – a benchmark that no one agrees by their actions is proper, not even TMS – Mr. Farhat exaggerates the supposed inadequacy of sales in the Long Beach PMAs. Even with his exaggerated inadequacy, Mr. Farhat's calculated shortfall is nowhere near the additional 2,500 unit sales that the Proposed Relocation can accommodate. [RT Vol. VIII, 195:17-197:16 (Matthews); Ex. 1500 (HoCT001845).]

Mr. Stockton also erroneously concludes that Toyota's market share at the California average decreases the closer to Cabe Toyota and Hooman Toyota based on his regression analysis showing a negative coefficient. [RT Vol. VI, 53:11-24 (Stockton); Ex. 254 (Tab 8, p. 2).] But he never actually calculated the shortfall. [RT Vol. IX, 59:12-60:8 (Matthews); Ex. 1500 (HoCT001821).]

While a larger market area evenly distributes demographic characteristics that vary between neighborhoods, the relatively small sampling of the Long Beach PMAs exhibits inherent bias because its demographics are not normalized. Therefore, the analysis must be adjusted to account for the non-uniform demographic distribution. [RT Vol. IX, 41:20-42:21 (Matthews); Ex. 1500 (HoCT001821).] And both Mr. Stockton and Mr. Farhat do not make this required adjustment, which creates an inherent bias in their already unreliable results.

Dr. Matthews found that Toyota sales are much higher in census tracts with a higher concentration of self-declared Asian population. [RT Vol. IX, 42:22-45:11 (Matthews); Ex. 1500 (HoCT001821; HoCT001861).] He also found that when adjusting for the Asian population, Toyota sales were also higher for self-declared Hispanic households though not as strong as Asian households. [RT Vol. IX, 45:12-46:25 (Matthews); Ex. 1500 (HoCT001821; HoCT001861).] Dr. Matthews then adjusted Mr. Farhat's segmented analysis and Mr. Stockton's statistical analysis to account for the varying Asian and Hispanic populations in the Long Beach PMAs. [RT Vol. IX, 47:1-48:13 (Matthews).] And he found that the adjustment was statistically significant. [RT Vol. IX, 60:15-61:17; Ex 1500 (HoCT001866).]

He then calculated the expected sales after the adjustment based on the Los Angeles and Orange Counties average – an appropriate benchmark that is higher than the California average but below Mr. Farhat's unrealistic benchmark[7] – and found that out of 1,857 expected registrations, Cabe Toyota and Hooman Toyota were off by only five actual registrations. [RT Vol. IX, 48:14-50:18 (Matthews); Ex. 1500 (HoCT001821; HoCT001857-1858).] He also found that when replicating Mr. Stockton's calculation and making the appropriate adjustments, the supposed depressed market share of the Long Beach PMAs was statistically insignificant, which comports with Dr. Matthews's finding that the shortfall was materially insignificant with only five units. [RT Vol. IX, 61:18-62:14 (Matthews); Ex. 1500 (HoCT001821; HoCT001867).]

Mr. Stockton agrees that the adjustment for Asian population is "extraordinarily significant." [RT Vol. VII, 24:16-23 (Stockton).] While he attempts to perform a statistical analysis to validate his original conclusion, the analysis requires 2,913 observations (census tracts), but he materially omits an important ten observations from an otherwise precise, technical analysis. [*See* RT Vol. IX, 61:8-9 (Matthews); Ex. 283 ("SDAH;" "SDA").] His results are inconclusive, and have no bearing on Dr. Matthew's conclusion. But even when adjusting for only Asian population (no Hispanic adjustment), the Long Beach PMAs is off by only eighteen units out of 1,857 registrations, which is again materially insignificant. [RT Vol. IX, 52:9-54:3 (Matthews); Ex. 1566.]

A shortfall of only five or eighteen units has significant consequences to a dealer network where the Proposed Relocation will expand capacity by 2,500 units. The Proposed Relocation cannot be justified, because the five or eighteen units cannot support Hooman Toyota's expected additional sales, and Hooman Toyota will resort to cannibalizing sales from other surrounding Toyota dealers. [RT Vol. IX, 67:11-68:2 (Matthews); Ex. 1500 (HoCT001821).] And Mr. Farhat agrees: "good cause not to allow would be, for example, if the proposed relocation were to create was to plan for 5,000 additional sales, but there are only 1,000 available. That would be a significant potential impact on the marketplace." [RT Vol. XIII, 35:6-21 (Farhat).] Accordingly, good cause exists not to permit the relocation, because both the RMA dealers and the Long Beach PMAs provide adequate competition such that neither can support the Proposed Relocation's expected additional sales.

---

7 Mr. Farhat acknowledged Dr. Matthews's "very similar benchmark" and found no controversy with it. [RT Vol. XIII, 55:5-11 (Farhat).]

B. Cabe Toyota's adequately competes within its own PMA, and its focus on internet sales has only increased its total sales consistent with TMS's business objective.

TMS's business interest is to quantitatively sell as many units as it can. [RT Vol. X, 220:2-11 (Eroh).] TMS places no restrictions on where or how a dealer obtains those sales. [RT Vol. X, 125:17-126:6 (Eroh).] It encourages its dealers to look into its internet sales to increase overall sales, though Mr. Nissani generally rejects and ignores TMS's recommendations. [RT Vol. XIV, 196:16-25 (Nissani).] But Cabe Toyota heeded TMS's advice, and in 2010, it began to focus on increasing sales from the internet. [RT Vol. II, 38:1-39:7 (Cabe).]

TMS and Hooman Toyota contend that Cabe Toyota's focus on internet sales somehow neglects or reflects abandonment or ceding of its local customers, and bases this unsupported contention on Cabe's generally decreasing proportion of local sales compared to its total sales. This analysis is entirely misguided and provides no qualitative value regarding Cabe Toyota's representation in the local area. Rather, it only indicates that Cabe Toyota is making many more overall sales, consistent with TMS's business interest, such that a smaller proportion of its additional sales are made in its very small, saturated, and competitive local market.

The more appropriate inquiry is whether Cabe Toyota's local representation faded compared to other Toyota dealers since changing its strategy in 2010. If TMS's and Hooman Toyota's contention was correct, then Cabe Toyota's market share relative to other Toyota dealers within the local market would decrease. But this is not the case. Cabe Toyota's relative share of registrations compared to other Toyota dealer in the Long Beach PMAs significantly increased in 2010 and 2011 compared to previous years:

Dealer	2008	2009	2010	2011	2012	2008-2012
Cabe Toyota	10.5%	9.7%	12.2%	12.1%	10.4%	10.9%
Combined Cabe/Hooman Toyota	33.0%	36.4%	36.8%	36.6%	38.3%	36.0%

[Ex. 1227 (SW000054).] Therefore, its relative inability to penetrate the local market is completely unrelated to its business strategy.

Instead, its adjusted marketing efforts reflect a *solution (to support its survival)* to the inherent problems derived from its small, uniquely-shaped PMA assigned by TMS. Dr. Matthews concluded that Cabe Toyota's PMA characteristics diminish its location and market advantage that other dealers enjoy, and consequently Cabe Toyota cannot attract local customers as well as others, which is evidenced by his "dot map" analysis. Its problem is compounded because of the extensive cross-sell it faces from the close, surrounding competitive Toyota dealers. [RT Vol. III, 79:20-81:3 (Watkins); RT Vol. VIII, 181:12-182:21 (Matthews); Ex. 254 (Tab 4 p. 1); Ex. 1109 (TMS-PROD_017526); Ex. 1237; Ex. 1500 (HoCT001796).] Therefore, it must seek sales elsewhere to meet TMS's expectations, which it reluctantly does. But the Proposed Relocation's encroachment on its already small territory presents a serious threat to Cabe Toyota's viability, and it is unreasonable to expect it to rely on capturing even more sales outside of its PMA. [RT Vol. VIII, 189:1-11; 234:15-25 (Matthews); Ex. 1500 (HoCT001772, 1773, 1774).]

C. Mr. Farhat exaggerates the availability of service "opportunity," because he does not determine whether the purported opportunity is realistically available based on rational business considerations.

Cabe Toyota's competitive disadvantage is further reflected by its relative inability to capture service business in its PMA compared to other Toyota dealers. [Ex. 2088 (p. A-29).] Nor is this surprising – Hooman Toyota's 10-mile radius shuttle service covers Cabe Toyota's entire PMA. [Carrillo Depo., 163:2-12 (Carrillo); RT Vol. VIII, 168:8-16 (Matthews).] But Mr. Farhat and TMS mistakenly argue that its disadvantage only means that it has more "opportunity" to attract business from units that currently are not being serviced by any Toyota dealer. His expectation is unrealistic, and TMS also uses the term "available opportunity" loosely for Carson Toyota as well.

Mr. Stockton would disagree with both Mr. Farhat and TMS's analysis. According to Mr. Stockton, a rational dealership, which he assumed in this protest, will continue to do business, or pursue "available opportunity," only to a point where marginal cost equals marginal revenue, or where it is profitable to do so. [RT Vol. VI, 68:15-69:8 (Stockton); Ex. 254 (Tab 9, p. 1).] As a simplified example, if Cabe Toyota's PMA had 100 units in operation in 2011, 22 of those would be serviced by Cabe Toyota based on its service market share and 45 units would not be serviced by any Toyota dealer. [Ex. 2088 (p. A-29).] If the service optimization price was $10, and the owners of those 45 units were only willing to pay $9, Mr. Farhat and TMS would claim that *all* those 45 units are "available opportunity" under their rudimentary analysis only because Cabe Toyota is not servicing them. On the other hand, Mr. Stockton would claim that none are, because as profit maximizers, Cabe Toyota would not pursue that business. Realistically, some of the owners of those 45 units may be willing to pay $10 for service. But Mr. Farhat and TMS fail to account for these rational business considerations. Therefore, the "available opportunity" is overstated by an unknown degree.

The Proposed Relocation will only make Cabe Toyota's service retention worse by encroaching on its existing territory by 24%, especially because proximity from a customer's workplace or residence is an important factor for service business. [RT Vol. II, 112:7-19 (Cabe); RT Vol. IV, 68:1-14 (Watkins); RT Vol. VII, 93:10-94:12 (Stockton); RT Vol. XIII, 198:16-19 (Farhat).] And because Hooman Toyota's dramatic fixed costs and marginal costs savings from the Proposed Relocation will only make it an overall effective competitor, Cabe Toyota's lower service market share will be further reduced.

Based on these existing circumstances, good cause exists not to permit the Proposed Relocation, because the RMA cannot support the Proposed Relocation's additional sales and service potential based on the already extensive competition. Accordingly, the Board should sustain this protest for this reason.

V. Good causes exists not to permit the Proposed Relocation, because permitting relocation would expand Hooman Toyota's unlawful VIP Program whereas elimination of that program is a viable means of rendering the Proposed relocation unnecessary.

While Hooman Toyota may tout the benefits that the Proposed Relocation's excessive facilities may provide to its customers, it ignores a major cause of its problem in the first instance – its unfairly competitive VIP Program. (*See* Bus. & Prof. Code § 17200 ["As used in this chapter, unfair competition shall mean and include any unlawful, unfair, and fraudulent business act or practice . . . ."].) Hooman Toyota gives the Program free of charge to every customer that purchases or leases a new or used Toyota or Scion from it. [Carrillo Depo., 61:7-63:24 (Carrillo); Ex. 1143.] To provide some context, Hooman Toyota sold 8,403 new and used Toyota vehicles from 2008 through 2012. [Ex. 2008 (TMS-PROD_010504; 020053).] It will continue to add and service vehicles under its Program, free of charge, at a much faster rate for at least two more years before any of the vehicles are no longer considered in operation per TMS guidelines. [*See* RT Vol. XIII, 85:15-86:6 (Farhat).] The Program is simply unsustainable.

And its effects are serious; it prompted the Proposed Relocation. Though both Hooman Toyota and TMS complain of overcrowding at the current facilities, inefficiency from the facility constraints, and necessity for two, third-party, off-site car washes, these issues are all caused by the artificial service business spawned by the unlawful Program. And this artificial business is substantial. Hooman Toyota generates approximately 4,500 monthly repair orders. [Carrillo Depo., 82:2-12 (Carrillo).] Of the total repair orders, approximately 1,500 are customer pay and 900 are warranty. [Carrillo Depo., 81:21-82:1; 82:13-17 (Carrillo).] The remaining 2,100 repair orders are internal. [Carrillo Depo., 86:11-21 (Carrillo).] Work performed by Hooman Toyota under the VIP Program is documented as an internal repair order. [Carrillo Depo., 80:13-23 (Carrillo).] While used and other vehicle reconditioning and accessorizing vehicles are also documented as internal, these account for a very small portion of the internal repair orders. Generously assuming that every new vehicle was accessorized and every used vehicle was reconditioned in 2012, this would only account for 230 monthly internal repair orders on average. [Ex. 2008 (TMS-PROD_020053).] The remaining 1,870 monthly internal repair orders are classified as VIP Program work. And assuming that Hooman Toyota's service department is open 30 days a month, 62 of the 142 combined customer pay, warranty, and VIP *daily* repair orders (44%) are generated by the VIP Program.

The solution to Hooman Toyota's many, if not all, alleged service issues is simple – eliminate the VIP Program. By dissolving the Program, the dealer will significantly reduce its unnecessarily inflated service business that creates its purported overcrowding. The solution is not to move to the vacant Proposed Relocation, which apparently did not serve the previous occupant well. Instead, by remaining at its current, long-standing, well-known, more convenient location, it will continue to serve those customers that buy from Hooman Toyota because the "location clinched it" for them, which is a more important consideration for customers over any supposed facility deficiencies based on aggregate survey results. [Ex. 1179 (CABE000517).] And by furnishing additional resources that would have otherwise been wasted on the Program, its customer surveys would only be expected to improve, especially because customers servicing their vehicles under the

Program receive priority over all other service customers. [Carrillo Depo., 88:19-25 (Carrillo).] Therefore, the Proposed Relocation is unnecessary to solve Hooman Toyota's self-created problems. But discontinuing the VIP Program is.

VI. Alternatively, this Board should remand this protest for further hearing if it does not find sufficient evidence to sustain it, because ALJ Ryerson denied Carson Toyota to present relevant evidence consistent with his post-hearing determinations.

Rather than making appropriate case-by-case rulings based on evidence of the existing circumstances presented during the hearing, ALJ Ryerson prematurely granted prior to the hearing TMS's and Hooman Toyota's pre-hearing joint motion in limine to exclude any evidence regarding the availability of potential or alternative facility options for Hooman Toyota. But once ALJ Ryerson considered all the evidence after the three week hearing, he found it relevant in his Memorandum of Site Visit June 27, 2013 Long Beach, California to voluntarily include findings that would have been precluded under his blanket order. He again found this evidence relevant in his Order Granting in Part and Denying in Part Intervenor's and Respondent's Joint Motion to Strike Cabe Toyota's Post-Hearing Brief. Though both the Memorandum and the Order have now been amended consistent with ALJ Ryerson's prior ruling, the Board is not bound by that ruling. (*See* Gov. Code § 11517(c)(2)(D).) And Carson Toyota should be permitted to present that evidence, consistent now with ALJ Ryerson's review of the "existing circumstances" and post-hearing determinations if the Board finds insufficient evidence to sustain this protest.

VII. Conclusion

After over 35 years of the existing dealer network well-serving the Toyota brand in the Los Angeles metro area, Hooman Toyota now asks this Board to disrupt that careful balance, created by the eight concentrated RMA dealers, for its unjust gain. These RMA dealers sell extremely well for Toyota, exhibiting the highest market share for the brand in the most competitive automobile market in the country, even outselling the Toyota dealers surrounding the RMA. They also do well locally, penetrating their respective markets as expected at an aggressive metro benchmark, and selling beyond TMS's expectations nationally. Despite inherent land constraints in a densely populated metro market, Carson Toyota, Cabe Toyota, and Hooman Toyota all currently exist in facilities that generally meet service facilities guidelines and that for all purposes TMS has approved in renewed dealer agreements time and time again. Cabe Toyota and Carson Toyota have taken or are taking significant but not impossible steps to fully meet TMS's image and facility guidelines. And their customer surveys of all three dealers reflect both a satisfied customer base and no shortcomings of any actual or perceived sales or service facility deficiencies.

While Hooman Toyota contends that the Proposed Relocation will marginally improve its already good customer service and is necessary to support its unsustainable and unlawful VIP Program, neither TMS nor Hooman Toyota has shown that the Proposed Relocation is necessary to, or will, stimulate competition in Toyota's most successful market. But Carson Toyota has shown that Hooman Toyota will cannibalize sales from Carson Toyota, Cabe Toyota, and the surrounding RMA dealers, because the highly competitive market, containing virtually no additional sales to spare, cannot support the Proposed Relocation's expected additional 2,500 vehicle sales. This results in no net market share increase for Toyota. And because Hooman Toyota's fixed costs and marginal costs will dramatically decrease, Carson Toyota and Cabe Toyota – having incurred the additional costs of investing in their current locations – can compete only by reducing its pro-consumer services and staff.

Yet TMS and Hooman Toyota retort, claiming that Carson Toyota and Cabe Toyota can survive despite the consequences of TMS's careless decision to approve a demonstrably errant dealer's request to relocate. But they give no valid reason why Carson Toyota's and Cabe Toyota's investments *should* suffer the consequences, especially when the only parties that stand to gain from the Proposed Relocation are TMS and Hooman Toyota. And no party (including the public) will lose if the Proposed Relocation is denied.

Evaluation of good cause, including the enumerated factors, is not done by mathematical analysis. Instead, this Board must apply the statutory considering all existing circumstances in a manner that upholds the public policy concepts inherent in the enumerated factors. In this case, only by sustaining the protest will the Board be able to honor those public policy concepts and thereby protect California consumers, Carson Toyota's investment, Cabe Toyota's almost uniquely small minimal market advantage, and the rest of the dealer network. For these reasons, the Board should sustain this protest.

DATE: September 19, 2013

MANNING, LEAVER, BRUDER & BERBERICH

BY________________________________

Franjo M. Dolenac, Esq., Attorneys for Protestant Aldon Inc. dba Carson Toyota and Carson Scion

Proof of Service

I, the undersigned, declare and say as follows:

I am 18 years of age or older, employed at the business noted above my signature which is in the county where any mailing herein stated occurred, and not a party to the within action.

On September 19, 2013, I caused to be served the document(s) listed below my signature under the heading "Document(s) Served" by placing a copy of the document(s) (or the original, if so noted below) in individual envelopes for each of the parties listed below my signature under the heading "Parties Served" (except for fax-only service), addressed to them at their last known addresses in this action exactly as shown (excepting parenthetical references to their capacity), there being U.S. Mail delivery service to those addresses used for service by mail, and by sealing said envelopes, and on the same day, as marked with "X," by --

[X] **placing** each envelope **for collection and processing for mailing** following my firm's ordinary business practice with which I am readily familiar and under which on the same day correspondence is so placed for mailing it is deposited in the ordinary course of business with the U.S. Postal Service at my business address, 1st-class postage fully prepaid.

[ ] **depositing** each envelope **into the U.S. mail** with 1st-class postage fully prepaid at a mail box or collection facility in the city and state of my business address. "Parties Served" lists all parties and counsel served in the within matter, and their respective capacities. [required for federal cases, **including bankruptcy**, among others]

[X] **electronically sending [x] by email or [_] by fax** each page of each document and this proof of service to the parties served at their last known email address or fax numbers as listed below from a email or fax system located at my business address which reported no errors and which, if by fax, produced a transmission confirmation report, a true copy of which is attached hereto. [use only if electronic service authorized or as a supplement.]

[ ] depositing each envelope at a drop box or other facility in the city and state of my business address within the time and pursuant to procedures readily familiar to me necessary for delivery [ ] **by Federal Express** on the morning of the next business day or [_] **by courier** on the same day. [use only if overnight or courier service authorized or as a supplement.]

[_] **personal delivery** by [_] travelling to the address shown on the envelope and delivering it there during normal business hours or [_] handing the documents to the person served.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on September 19, 2013 at my business address, 5750 Wilshire Blvd., Suite 655, Los Angeles, California 90036, in the County of Los Angeles.

Ashley Langill

Document(s) Served (exact title)

PROTESTANT ALDON, INC. DBA CARSON TOYOTA AND CARSON SCION'S REPLY BRIEF

Parties Served (exact envelope address)

See Attached Service List

Certificate of Service
Service List

Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
LAW OFFICES OF MICHAEL J. FLANAGAN
2277 Fair Oaks Blvd., Suite 450
Sacramento, CA 95825
(916) 646-9138 (fax)
Email: lawmjf@msn.com

Attorneys for H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach

Gregory J. Ferruzzo, Esq.
James P. Barone, Esq.
Vasko R. Mitzev, Esq.
FERRUZZO & FERRUZZO, LLP
3737 Birch Street, Suite 400
Newport Beach, CA 92660
(949) 608-6994 (fax)
Email: gferruzzo@ferruzzo.com

Attorneys for Protestants Cabe Toyota and Cabe Scion

New Motor Vehicle Board
Email: nmvb@nmvb.ca.gov
1507 21st Street, Suite 330
Sacramento, CA 95811

(Send **ORIGINAL** Via US Mail)

Steven A. McKelvey, Jr., Esq.
S. Keith Hutto, Esq.
Steven B. McFarland, Esq.
NELSON MULLINS RILEY & SCARBOROUGH, LLP
1320 Main Street, 17th Floor
PO Box 11070 (29211-1070)
Columbia, SC 29201
(803) 255-9043 (fax)
Email: steve.mckelvey@nelsonmullins.com
keith.hutto@nelsonmullins.com
steven.mcfarland@nelsonmullins.com

Attorneys for Respondent Toyota Motor Sales, U.S.A., Inc.