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12 **STATE OF CALIFORNIA**

13 **NEW MOTOR VEHICLE BOARD**

14 In the Matter of the Protests of )

15 ) CONSOLIDATED MATTERS:

16 ALDON, INC., a California corporation, )

PROTEST NO. PR-2339-12

16 dba CARSON TOYOTA, and )

17 ALDON, INC. a California corporation, dba )

PROTEST NO. PR-2340-12

17 CARSON SCION, and )

PROTEST NO. PR-2341-12

18 CABE BROTHERS, a California )

PROTEST NO. PR-2342-12

18 corporation, dba CABE TOYOTA and )

19 CABE SCION, and )

PROTEST NO. PR-2343-12

20 APAULO, INC., dba NORWALK )

20 TOYOTA and NORWALK SCION, and )

21 DWWSB, INC., dba SOUTH BAY )

**RESPONDENT TOYOTA MOTOR**  
**SALES, USA, INC.'S REPLY IN**  
**OPPOSITION TO CARSON TOYOTA'S**  
**POST-HEARING OPENING BRIEF**

22 TOYOTA and SOUTH BAY SCION, )

22 Protestants, )

23 v. )

24 TOYOTA MOTOR SALES, U.S.A., INC., )

24 a California corporation, )

25 Respondent. )

1 H.T.L. AUTOMOTIVE, INC., dba )  
2 HOOMAN TOYOTA OF LONG BEACH )  
3 and HOOMAN SCION OF LONG BEACH, )  
4 )  
5 )  
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Intervenor.

Pursuant to the Order Establishing Post-Hearing Briefing Schedule and the Notice Regarding Post-Hearing Briefs, Respondent Toyota Motor Sales, USA, Inc. hereby submits its Reply in Opposition to Carson Toyota’s Opening Brief in the above-captioned matter.

**INTRODUCTION**

This action involves the proposed relocation of Hooman Toyota to a new site that is a mere 0.9 miles and 72 seconds of drive time closer to Protestants than its current facility. (RT. Vol. III 100:8-17) (Ex. 2056, TMS-Prod\_016432). Despite this slight proximity change in one of the most populated and largest automotive markets in the country, Carson Toyota alleges that the proposed relocation would completely disrupt the existing Toyota dealer network in Los Angeles, harm consumers, and place Protestants’ investments at risk. Specifically, although Carson Toyota recently completed construction of a new, expanded, modern dealership facility and Cabe Toyota is in the process of expanding and modernizing its facility, Carson Toyota claims that the proposed relocation should be denied because the Toyota dealers in the RMA have “reasonably relied” on the dealer network remaining unchanged. Carson Toyota also claims that allowing Hooman Toyota to move into a newly renovated facility (just like Protestants) would somehow give Hooman Toyota an unfair competitive advantage. Contrary to these claims, however, there is no evidence that Hooman Toyota’s slight relocation to a new facility within its own PMA will have any material effect on Protestants, cause any harm to consumers, or give Hooman Toyota an unfair competitive advantage. Instead, the evidence demonstrates that the proposed relocation will allow Hooman Toyota to better serve customers in the RMA, and that Carson Toyota—not Hooman Toyota—is the party seeking an unfair competitive advantage in this case.

1 ARGUMENT

2 I. Protestants Did Not Justifiably Rely on the “Permanency” of the Toyota Dealer Network.

3 In its Opening Brief, Carson Toyota claims that the proposed relocation should be denied  
4 because Protestants committed to investing in their dealerships in purported reliance on the  
5 “permanency of the existing dealer network” and the associated “predictable business atmosphere.”  
6 (Brief at 1, 7-8). Carson Toyota disingenuously claims that “any disruption in the permanency of the  
7 dealer network” will result in aversion to investment or risk to existing investments, and that Hooman  
8 Toyota’s proposed relocation is “unfair competitive behavior” that would disrupt the competitive  
9 balance. (*Id.*). However, there is no evidence that Protestants chose to invest in their dealership  
10 facilities in reliance on the existing dealer network remaining unchanged, relied on Hooman Toyota not  
11 relocating, or had any reasonable basis in law or in fact for doing so.

12 As an initial matter, Protestants cannot credibly allege they have relied on the permanency of the  
13 existing Toyota dealer network when Protestants themselves have actively engaged in efforts to  
14 substantially alter the existing dealer network. In 2008, Carson Toyota completed construction of a  
15 new Toyota dealership facility, which greatly exceeds TMS’s facility standards, improves the  
16 appearance of the dealership, provides additional features and amenities for its customers, and gives it  
17 excellent visibility for customers travelling along the 405 Freeway. (RT Vol. X. 31:1-4; RT Vol. IX.  
18 173:13-177:23; 201:9-202:5) (Ex. 2038). Similarly, Cabe Toyota broke ground on a major renovation  
19 about four months ago, which will provide more square footage, additional parking, improved customer  
20 waiting area, a new showroom, and a better overall dealership experience for its customers. (RT Vol.  
21 II. 19:25-21:2; 51:13-18; 97:18-98:6) (RT Vol. V. 132:12-135:13). Given these facts, it is clear that  
22 Carson Toyota is not claiming that the dealer network should remain unchanged, but instead is claiming  
23 that Protestants should be the **only** Toyota dealers permitted to change it. Carson Toyota—not Hooman  
24 Toyota—is seeking an unfair competitive advantage. Hooman Toyota is merely seeking the opportunity  
25

1 to provide its consumers better dealership facilities like Carson Toyota and Cabe Toyota, and to  
2 compete with the local Toyota dealerships and other brands on a level playing field.

3 Moreover, there is no evidence that Protestants decided to renovate their facilities in reliance on  
4 Hooman Toyota remaining at its current location. It is undisputed that Protestants both committed to  
5 renovating their facilities several years **before** Mr. Nissani even acquired Toyota of Long Beach and  
6 began operating it as Hooman Toyota. Cabe Toyota entered into a Dealer Agreement agreeing to  
7 renovate its facilities in 2001, seven years before Mr. Nissani acquired the dealership, and Carson  
8 Toyota entered a similar agreement committing to renovate its facility three years before Mr. Nissani  
9 acquired the dealership. (RT Vol. II. 44:11-22; RT Vol. XI. 213:20-214:7). The Dealer Principal for  
10 Carson Toyota expressly admitted that when he agreed to renovate its facility, TMS had not made any  
11 representations about whether other Toyota dealerships might be allowed to relocate:

12 Q. Okay. Back in 2005 when you entered into the agreement  
13 to build your facility, there was no plans that were told to you one  
14 way or the other as to what future actions might take place  
in the market. Correct, Mr. Skinner?

15 A. That is correct.

16 (RT Vol. XI. 214:2-7).

17 In addition to previously agreeing to renovate its facilities, Cabe Toyota knew that Hooman  
18 Toyota planned to relocate as early as 2008. Cabe Toyota's operations manager admitted that he  
19 became aware that Hooman Toyota was considering relocating to the Proposed Site several years ago:

20 Q. At some point did you become aware of the idea  
21 that Hooman Toyota was trying or considering relocating to  
the Coast Cadillac location on Willow?

22 A. I was aware he was trying to relocate since 2008.  
23 So very early on.

24 (RT Vol. V. 62:25-63:4). Based on its own admission, Cabe Toyota had actual notice of Hooman  
25 Toyota's plans **four years** before this proposed relocation was noticed and **five years** before Cabe

1 Toyota broke ground on its facility in April 2013. (RT Vol. II. 51:13-18; RT Vol. II. 97:18-98:6; RT  
2 Vol. V. 132:12-133:25). Cabe Toyota also acknowledged that it made the business decision to move  
3 forward with its renovation despite learning about the proposed relocation. (RT. Vol. VII. 198:5-13).  
4 As such, the evidence in this case expressly contradicts Carson Toyota’s claim that Protestants  
5 committed to renovate their facilities in reliance on Hooman Toyota remaining at its current location.

6 Even assuming arguendo that Protestants had relied on Hooman Toyota staying at its current  
7 facilities, Protestants had no reasonable basis for concluding that Hooman Toyota would never be  
8 permitted to relocate. The Toyota Dealer Agreement contains standard provisions that establish  
9 minimum facility standards for its dealers. (RT Vol. X. 18:9-19:4) (Ex. 2012, pp. TMS-Prod\_13731).  
10 This provision makes clear that Toyota wants all of its dealers to maintain competitive facilities that  
11 meet customer expectations. (RT Vol. X. 25:16-26:9). In addition to this language, Cabe Toyota and  
12 Carson Toyota’s Dealer Agreements both make clear that TMS has the right to relocate or add dealers  
13 within a particular market (subject to the requirements of state law). (Ex. 1153, pp. Cabe\_001043-44)  
14 (Ex. 1508, pp. TMS-Prod\_00749-50). State law also specifically permits manufacturers to approve the  
15 relocation of existing dealers (or even add additional dealers to a market) subject to the notice and  
16 protest procedures established by the legislature. (Veh. Code. § 3062). Accordingly, Protestants have  
17 no basis in law or in fact for alleging they somehow justifiably relied on the lack of future changes to  
18 the Toyota dealer market, including the proposed relocation of Hooman Toyota.

19 **II. Hooman Toyota has made a Substantial Permanent Investment in its Dealership.**

20 Carson Toyota next alleges that the proposed relocation should be denied because Hooman  
21 Toyota is a “relative newcomer” and allegedly has not made a permanent investment in its dealership.  
22 Specifically, Carson Toyota first claims that Hooman Toyota has not made a permanent investment in  
23 the dealership or in its current dealership facilities, and has only made minor improvements to its  
24

1 current facility. This argument, however, ignores the millions of dollar Hooman Toyota has invested  
2 into the dealership and the significant accommodations for customers it has implemented at its facilities.

3 Mr. Nissani and his partners purchased Hooman Toyota in January 2008 for approximately  
4 \$10.3 million. (Ex. 1007, TMS-Prod\_001643). Given the space constraints at the dealership, Hooman  
5 Toyota subsequently made numerous efforts to expand and improve its facility for the benefit of its  
6 customers. Hooman Toyota (1) built out its service write-up area to increase the number of service  
7 advisor stations, (2) closed a hallway and installed additional stations for service advisors, (3) relocated  
8 a dumpster that was next to the service facility so it could build an outdoor customer waiting area, and  
9 (4) added additional service stalls at the dealership. (RT Vol. XIV. 24:14-21; 26:4-20; 27:1-13)  
10 (Carillo Depo. 42:8-25). In addition to these accommodations, Hooman Toyota also has acquired two  
11 off-site facilities that it currently uses for vehicle storage, used vehicle preparation, and heavy-duty  
12 parts storage, (RT Vol. XIV. 25:4-26:1; 37:25-38:10), and it has made arrangements to have customer  
13 vehicles cleaned at two independent car washes. (RT Vol. XIV. 36:22-37:20). All told, Hooman  
14 Toyota has invested more than \$20.3 million into the dealership since acquiring the store in 2008. (RT  
15 Vol. XIV. 109:9-14) (Ex. 252). As such, there is no evidence to support Carson Toyota’s claim that  
16 Hooman Toyota has failed to invest in its dealership or its current facilities.

17 Carson Toyota next alleges that Hooman Toyota has not made a sufficient investment in its  
18 proposed new facility, specifically because Hooman Toyota allegedly has not proven it has the right to  
19 purchase that site. As an initial matter, the Vehicle Code does not require a relocating dealer to prove  
20 it has the right to purchase the proposed facility. However, even if such a requirement did exist,  
21 Hooman Toyota did present evidence of its right to purchase the proposed facility. Although Carson  
22 Toyota claims that “Mr. Nissani never testified that he executed an option to purchase the Proposed  
23 Relocation [sic] for \$8,250,000,” Mr. Nissani indeed specifically testified that he entered into an option  
24 to purchase the proposed new facility and that the purchase price is \$8,250,000:  
25

1 MR. FLANAGAN: Now let's take a look at 275.  
2 (Exhibit 275 was marked for identification.)

3 Q. What is that?

4 A. That's the option to purchase the property.

5 Q. Let me call your attention to -- when we say "the option  
6 to purchase the property," since we are on a transcribed record  
7 here, we are talking about the proposed new facility. Right?

8 A. Yes.

9 ...  
10 Q. What I was about to ask you, as a matter of fact, before I  
11 just noticed that myself, go down to subsection (e), the little tiny  
12 subsection paragraph (e).

13 A. Yes.

14 Q. That says, (READING) Lessee elects to exercise the  
15 option -- this option to purchase. The purchase price to be paid  
16 by lessee shall be. (END OF READING.) What?

17 A. \$8,250,000.

18 Q. Is that your recollection of what you negotiated as the  
19 purchase price of the proposed facility that you are relocating  
20 your Toyota dealership to?

21 A. Yes.

22 (RT Vol. XIV. 104:17-105:3; 106:9-22). The executed Option to Purchase identified as Exhibit 2275  
23 in this testimony also was admitted into evidence. (Ex. 275, pp. HTL\_001210). Hooman Toyota also  
24 introduced evidence that it has a long-term lease to secure the facility, as Carson Toyota acknowledges  
25 in its own brief. (Brief at 14-15) (RT Vol. 14, 102:6-25; 104:17-106:22; Exs. 274, 275). As such, the  
claim that Hooman Toyota has not invested in its proposed facility is wholly unfounded.

Carson Toyota next alleges that Hooman Toyota has not made a permanent investment in its  
dealership because it previously experienced some financial and capitalization issues. While Hooman  
Toyota did experience various issues in the past, there is absolutely no evidence that Hooman Toyota  
continues to have any financial or capitalization issues. On June 22, 2011, TMS sent Hooman Toyota a

1 180-Day Notice to Cure outlining its concerns with Hooman Toyota's financial condition and giving the  
2 dealer six months to cure those concerns. (RT Vol. X. 68:10-70:11). By November 2011, Hooman  
3 Toyota had made substantial progress towards curing these concerns and significantly increased its  
4 capital and profitability. (RT Vol. XII. 225:14-226:20). Based on this improvement, TMS retained an  
5 independent third-party accountant to perform a review of Hooman Toyota's financial and operating  
6 records, and in June 2012, the accountant issued a report verifying that Hooman Toyota had cured its  
7 operational and financial issues **before** TMS approved the proposed relocation. (RT Vol. XIII. 226:21-  
8 229:6) (Ex. 2059).<sup>1</sup> Since that time, Hooman Toyota has not had any financial issues whatsoever, (RT  
9 Vol. XII. 230:3-6), and Protestants have not produced any evidence of any ongoing financial concerns  
10 at the dealership. Protestants cannot explain how Hooman Toyota's past financial issues are relevant to  
11 this case or would somehow affect the proposed relocation.<sup>2</sup> Accordingly, Carson Toyota's claim that  
12 Hooman Toyota has not made a permanent investment is unfounded and should be disregarded.

### 13 **III. The Proposed Relocation Will Increase Competition and Benefit the Consuming Public.**

#### 14 **A. The Existing Toyota Dealers Are Not Adequately Capturing the Sales and Service** 15 **Business Available in the RMA.**

16 Carson Toyota alleges the proposed relocation should be denied because the existing Toyota  
17 dealer network is providing adequate representation and competition in the RMA. In support of this  
18 claim, Carson Toyota first contends that the existing dealer network must be adequate because TMS has  
19 eight dealers in the RMA, which is the most of any competitive brand in this particular 10-mile radius.  
20 This claim misses the point. This protest involves the relocation of an existing dealer, not the proposed  
21

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22 <sup>1</sup> The delay from November 2011 to the accountant report in June 2012 was due to the relative unavailability of financial  
23 auditors due to tax season. (RT Vol. X. 156:17-20).

24 <sup>2</sup> Throughout its Opening Brief, Carson Toyota repeatedly acknowledges that the proposed relocation would significantly  
25 reduce Hooman Toyota's fixed costs. (Brief at 14-15). Although Carson Toyota appears to claim these reduced expenses  
will somehow injure the public, this allegation is wholly inconsistent with Carson Toyota's claim that Hooman Toyota  
should not be permitted to relocate because it previously experienced financial difficulties. Indeed, by reducing its fixed  
costs, Hooman Toyota will be in a better position to serve customers and will improve its profitability.

1 addition of a new dealer, and thus the number of Toyota dealers will remain entirely unchanged.  
2 Moreover, none of the experts in this case raised any concerns with the number of Toyota dealers in the  
3 RMA. Cabe Toyota's expert admitted he had no criticism of the number of Toyota dealers in the  
4 RMA. (RT Vol. III. 99:17-21). Although TMS currently has two Toyota dealers in Long Beach,  
5 TMS's expert witness analyzed the opportunity for Toyota sales in the RMA and concluded that the  
6 City of Long Beach alone could support 2.5 Toyota dealers. Accordingly, the Long Beach area has  
7 more than sufficient opportunity to support at least two strong Toyota dealers that are operating out of  
8 the right facilities and in the right locations. (RT Vol. XIII. 105:20-106:7).

9 Carson Toyota's Opening Brief next alleges that the existing dealers are providing adequate  
10 representation because Toyota's market share in the RMA is higher than the California average. While  
11 it is true that the Los Angeles area is a strong market for the Toyota brand, three of the four dealer  
12 network experts in this case agreed that Toyota's market share in the RMA is below expected levels,  
13 particularly in close proximity to Cabe Toyota and Hooman Toyota. Cabe Toyota's own expert witness  
14 conceded that the Toyota brand does not penetrate the market in Long Beach as well as it does in other  
15 areas. (RT Vol. III. 74:15-75:15; 102:2-22). Similarly, TMS's expert witness and Hooman Toyota's  
16 expert witness determined that Toyota's market share is materially depressed in Cabe Toyota and  
17 Hooman Toyota's PMAs. (RT Vol. XIII. 70:24-72:11) (RT Vol. VI. 46:2-47:7) (Ex. 254, pp. Tab 7  
18 Pages 1-3). Indeed, by analyzing the registrations and opportunity in the RMA, Mr. Farhat concluded  
19 that in 2012 alone, there was opportunity for the existing Toyota dealers to make an additional 1,620  
20 sales without capturing a single sale from each other. (RT Vol. XIII. 130:20-131:4).<sup>3</sup>

21  
22  
23 <sup>3</sup> On Page 32 of its Opening Brief, Carson Toyota includes a chart that allegedly shows the "market penetration" of the  
24 dealers in the RMA. However, this chart does not show the dealer's market penetration, which refers to the percentage of  
25 business captured by the Toyota brand in their respective PMAs. This chart instead shows their sales efficiency, which  
measures a dealer's sales performance based on the total number of vehicle sales made **anywhere** in the country.  
Accordingly, Carson Toyota's chart is not instructive on the performance of these dealers in their PMAs or in the RMA, and  
it has no bearing on how effectively they have captured the opportunity for new vehicle sales in the market.

1           Although Carson Toyota claims that the current dealers are providing adequate representation,  
2 its Opening Brief noticeably avoids any discussion of their service performance or the opportunity for  
3 additional service business available in the RMA. Cabe Toyota’s service manager admitted that its  
4 service market share is currently below the average levels for the Region and the Los Angeles metro.  
5 (Torres Depo. 75:23-77:13). He also acknowledged that Cabe Toyota currently is capturing only about  
6 20% of the UIO in its PMA or, stated differently, that Cabe Toyota is **not** servicing 4,937 of the 6,300  
7 Toyota UIO in its PMA. (Torres Depo. 75:23-77:13). (RT Vol. XIII. 87:9-17) (Ex. 2088, pp. A-29).  
8 Accordingly, he admitted there is significant opportunity for Cabe Toyota to increase its service  
9 business. (Torres Depo. 76:14-17). Similarly, more than 43% of the Toyota vehicles in Hooman  
10 Toyota and Carson Toyota’s PMAs are not currently being serviced by any Toyota dealer. (RT Vol.  
11 XIII. 86:14-88:11) (Ex. 2088, pp. A-28 and A-30). As such, there clearly is a significant amount of  
12 additional service opportunity available for these dealers. This data also demonstrates that the existing  
13 dealers in the RMA are not providing adequate competition and consumer care in the RMA.

14           **B. The Existing Toyota Dealership Facilities are not Adequate to Serve Consumers.**

15           Carson Toyota next alleges that the proposed relocation is unnecessary because Cabe Toyota,  
16 Carson Toyota, and Hooman Toyota’s dealership facilities “generally meet” TMS’s facility guidelines  
17 and have “no extraordinary facility deficiencies.” (Brief at 20, 33). While it is true that Carson Toyota  
18 recently completed a renovation of its facility, Cabe Toyota and Hooman Toyota’s current dealership  
19 facilities are undersized, unattractive, and woefully insufficient to adequately serve consumers.

20           Cabe Toyota’s Operations Director admitted that its dealership facility is “less than ideal as far  
21 as from a location and property.” (RT Vol. IV. 145:2-20). Indeed, Cabe Toyota currently has one of  
22 the least competitive and appealing facilities for Toyota dealers. (RT Vol. X. 33:13-16). Although  
23 Carson Toyota claims that Cabe Toyota’s facility “generally meets” TMS’s facility standards, it is  
24 undisputed that the facility does not have sufficient space in its service department (3,045 square feet  
25

1 deficient), sufficient parking (50,171 square feet deficient), or sufficient total building and land area  
2 (69,039 square feet or 1.6 acres deficient). (RT Vol. II. 12:9-13:14) (Ex. 2058). Cabe Toyota's  
3 current facilities also suffer from several other operational and consumer convenience deficiencies. (RT  
4 Vol. V. 54:2-6; RT Vol. X. 33:17-24) (Torres Depo. 29:10-30:14). By way of example only, Cabe  
5 Toyota admitted that its service drive is "very bad," (RT Vol. II. 89:23-24), and that the accessibility  
6 for service customers is "very challenging." (RT Vol. IV. 146:15-19).

7 Hooman Toyota's current dealership facilities also are significantly undersized, are inadequate  
8 for consumers, and present numerous operational and convenience issues for its customers. (Ex. 1009,  
9 pp. TMS-Prod\_008736) (RT Vol. X. 40:14-16). Although Carson Toyota again claims that Hooman  
10 Toyota's facilities "generally meet" TMS's facility standards, it is undisputed that Hooman Toyota's  
11 current facilities are old, weathered, and unattractive, (RT. Vol. X. 42:1-9), and do not have sufficient  
12 building space, land area, parking, or service department space for customers. (RT Vol. X. 40:14-16)  
13 (Ex. 1500, HoCT001794). Indeed, Carson Toyota's own expert admitted that Hooman Toyota "needs  
14 a larger facility" simply to meet TMS's minimum facility guides. (RT Vol. IX. 164:25-166:2). Like  
15 Cabe Toyota's current facility, Hooman Toyota's current facilities also suffer from several significant  
16 operational and customer service deficiencies. Customers visiting Hooman Toyota currently must (1)  
17 cross a busy street to travel between its sales and service facilities; (2) park and wait for service in the  
18 middle of the street; and (3) wait for dealership employees to retrieve vehicle inventory from multiple  
19 off-site locations. (RT Vol. X. 41:17-43:8; RT Vol. XIV. 22:23-23:10; 31:15-32:3).

20 Although Carson Toyota claims that customer surveys show they are "actually very satisfied"  
21 with these facilities, the evidence conclusively demonstrates otherwise. Mr. Cabe, the Dealer Principal  
22 of Cabe Toyota, admitted that customers have expressed concerns about its dealership facilities:

23  
24 Q. All right. Now, sir, in addition to not complying with  
25 the Toyota space and image requirements, customers have actually  
expressed concerns to Cabe Toyota over the years about the current  
facilities that you operate in; is that correct?

1 A. Correct.

2 Q. They've expressed concerns about both the sales  
3 department and the service department, correct?

4 A. Correct.

5 (Vol. II. 14:1-9). Indeed, customers have rated Cabe Toyota's sales and service facilities "red  
6 standard," which denotes that the facilities are poor or substandard. (RT Vol. II. 17:21-19:11) (Ex.  
7 2003, TMS-Prod\_017004). Customers also have raised concerns with the cleanliness of Cabe Toyota's  
8 dealership facilities, the lack of convenient parking, and the comfort of the service waiting area. (*Id.*).

9 Customers also have repeatedly expressed concerns with Hooman Toyota's dealership facilities.  
10 During the hearing in this case, Hooman Toyota introduced several actual customer surveys that raised  
11 concerns with its facilities, including (1) the ease and convenience of parking, (2) having to wait in the  
12 street for service, (3) the lack of adequate space, (4) the confusing layout of the dealership, (5) the lack  
13 of comfortable waiting areas, (6) the lack of customer amenities, and (7) the lack of an express service  
14 facility for oil changes and similar services. (RT Vol. XIV. 39:11-55:13). Customers also have rated  
15 Hooman Toyota's current facilities "yellow" standard, which indicates they are substandard and need  
16 improvement. (Ex. 2005, pp. TMS-Prod\_017052). Accordingly, there is no evidence that the existing  
17 Toyota dealership facilities are adequate or present some valid reason to deny the proposed relocation.

18 **C. The Proposed Relocation Will Significantly Improve Customer Convenience.**

19 Despite the customer concerns with Hooman Toyota's current facilities, Carson Toyota alleges  
20 that the proposed relocation would injure the public welfare because it would reduce customer  
21 convenience. Carson Toyota even makes the incredible claim that the expert witnesses for Hooman  
22 Toyota, Cabe Toyota, and TMS reached a "consensus" that the proposed relocation would make the  
23 dealership less convenient for consumers. (Brief at 29-30). This allegation, however, contorts the  
24 evidence at the hearing and is expressly contradicted by the testimony of these expert witnesses.  
25

1           Although the proposed relocation (like any relocation) would move the dealership further away  
2 from some customers, it is undisputed that Hooman Toyota is proposing to relocate a mere 1.14 miles  
3 away from its current facility, which is approximately 250 yards outside the 1-mile protest exemption  
4 set forth in Vehicle Code section 3062(b)(1). (RT Vol. X. 88:17-19). Based on this relocation, the  
5 average consumer in Hooman Toyota's PMA would only have to travel an additional **0.5 miles** or **30**  
6 **seconds** to reach the new facility. (RT Vol. XIII. 122:11-123:7; 126:19-127:11; RT Vol. VI. 86:16-  
7 87:19). Indeed, Carson Toyota's own expert witness testified that the Proposed Site is located in the  
8 same neighborhood and the same general area where Hooman Toyota has operated for years, and that  
9 the Proposed Site would keep Hooman Toyota in position to service its existing customers. (RT Vol.  
10 IX. 99:19-100:8). Accordingly, Carson Toyota's claim that the relocation would make Hooman Toyota  
11 inconvenient for customers is unsupported by the evidence and contradicted by its own expert witness.

12           Moreover, the expert witnesses for Cabe Toyota, Hooman Toyota, and TMS agree that this  
13 minimal change in drive time would be **significantly outweighed** by the numerous benefits and  
14 improvement to consumer convenience afforded by the proposed facility. As set forth above, Hooman  
15 Toyota's current dealership facilities are undersized, inadequate, and inconvenient for consumers. *See*  
16 *infra*, Section III.B. The proposed site would alleviate these concerns and would provide improved  
17 dealership facilities with additional space, an improved layout, additional parking, and a host of  
18 additional amenities that will benefit consumers. (RT Vol. X. 44:9-16; 161:21-162:4; RT Vol. XIV.  
19 65:3-11; RT Vol. IX. 220:2-22) (Ex. 1500, HoCT001789).

20           Cabe Toyota's expert witness admitted that if he were a customer in Long Beach, he would find  
21 it more convenient to (1) travel an additional 1.14 miles to visit a dealership with all of its operations  
22 under one roof, adequate parking, adequate on-site inventory, shorter wait times, a better service drive,  
23 rather than (2) travel a shorter distance to a dealership that is spread out over multiple sites, has little  
24 parking, longer wait times, and insufficient service operations. (RT Vol. III. 209:16-210:9). Although  
25

1 Carson Toyota spuriously claims otherwise, TMS’s expert witness Mr. Farhat testified that the  
2 increased customer convenience resulting from the improvements to Hooman Toyota’s proposed new  
3 facility “far outweighs” any change in drive time based on the proposed relocation. (RT Vol. XIII.  
4 125:23-127:11). Similarly, Hooman Toyota’s expert witness testified that the minimal change in drive  
5 time due to the relocation would be “imperceptible to customers” and that the “positive convenience  
6 implications” associated with the new facility would “overwhelm” any change in drive time. (RT Vol.  
7 VI. 87:16-88:14). Accordingly, Carson Toyota’s claim that the proposed relocation would negatively  
8 affect customer convenience is unfounded and contradicted by Protestants’ very own market experts.<sup>4</sup>

9 **III. The Proposed Relocation Will Not Have any Material Adverse Effect on Protestants.**

10 **A. Cabe Toyota’s Proximity to Other Dealers and Relatively Small PMA do not Hinder its**  
11 **Ability to Make Sales.**

12 Carson Toyota Opening Brief contains several theories under which it claims that the proposed  
13 relocation will harm Protestants. Carson Toyota’s first theory is that the proposed relocation will harm  
14 Cabe Toyota because of its proximity to other Toyota dealers and the relatively small size of its PMA.<sup>5</sup>  
15 In support of this claim, Carson Toyota alleges that the size of Cabe Toyota’s PMA reduces its  
16 territorial advantage over other dealers, limits its ability to make sales locally, and forces the dealership  
17 to make the majority of its sales at great distances from its facility. (Brief at 22-23).

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20 <sup>4</sup> Carson Toyota also alleges that the proposed relocation will harm the public because Hooman Toyota currently offers a  
21 “VIP” program that provides its customers with various benefits such as free car washes, oil changes, loaner vehicles, and  
22 other amenities. Although Carson Toyota alleges this program is illegal and injurious to the public, it is difficult to  
23 understand how providing additional customer services would be injurious to the public interest—especially when Cabe  
24 Toyota currently offers a nearly-identical program called the “Value Guarantee” to its customers. (RT Vol. V. 11:8-12:14).  
25 More importantly, however, this program is wholly irrelevant to this case. As Carson Toyota acknowledges in its brief,  
Hooman Toyota currently offers the VIP program from its existing facility, and the program is not a consequence or result  
of the proposed relocation. Accordingly, the VIP program is irrelevant to the sole question at issue in this case—whether  
there is good cause not to permit Hooman Toyota to relocate its operations to a new facility.

<sup>5</sup> Although Carson Toyota claims that Cabe Toyota’s PMA has the smallest number of Toyota UIO of any dealer in the  
Region, several Toyota dealers in the Region (including Toyota of Lompoc, Toyota of Ridgecrest, Perry Motors Toyota,  
and Toyota San Luis Obispo) have less UIO in their PMA than Cabe Toyota. (See Exhibit 2062, pp. TMS-Prod\_016838).

1 While it is certainly true that Cabe Toyota makes the majority of its sales at large distances from  
2 its dealership, Cabe Toyota's sales patterns are not due to the size or layout of its PMA. Although  
3 Carson Toyota claims otherwise, Cabe Toyota's Operations Director specifically admitted that Cabe  
4 Toyota's PMA is not a hindrance on its ability to sell vehicles:

5 Q. I understand you want to come in and suggest that the PMA is  
6 somehow a restriction on you. But doesn't this document, and doesn't the  
7 sales pattern of Cabe Toyota demonstrate that that's just not a restriction  
8 on Cabe or a hindrance to Cabe's ability to sell vehicles?

8 A. What is your question?

9 Q. My question is, the size of the PMA is not a hindrance on  
10 Cabe's ability to sell vehicles. Isn't that right?

10 A. That's correct.

11 (RT Vol. V. 186:14-25). Cabe Toyota's Dealer Principal expressly admitted that the reason Cabe  
12 Toyota makes the vast majority of its sales to customers located at great distances from the dealership is  
13 because it has made the business decision to focus on internet sales and marketing:

14 Q. You stated that most or the great majority of Cabe Toyota's  
15 advertising is done on the internet and AutoTrader and Edmunds, and  
16 TrueCar; is that correct?

16 A. Correct.

17 Q. And Cabe also has a business development center where it has  
18 hired salesmen that are totally focused on the internet; is that correct?

19 A. Correct.

20 Q. And because of this focus as we have just gone over of all of these  
21 things on the internet, that's why the great majority of Cabe Toyota's sales are  
22 made to customers who live further away from the dealership, correct?

22 THE WITNESS: I would imagine, yes.

23 ADMINISTRATIVE LAW JUDGE RYERSON: Let's see if we can get  
24 a stronger answer one way or the other. Are you agreeing that that's the case?

24 THE WITNESS: Yes.  
25

1 (RT Vol. II. 39:12-24). Cabe Toyota's Operations Director similarly attributed the dealership's sales  
2 patterns to internet sales and marketing:

3 Q. You acknowledge that somewhere in the neighborhood of 50  
4 percent are more than ten miles away, so outside of the RMA. Correct?

5 A. Yes.

6 Q. Do you attribute this draw from -- of the 90 plus percent of  
7 the sales, or let's even go with the 50 percent that are more than ten  
8 miles away, give or take a point or two, to your internet marketing?

9 A. I would say that would be a factor, yes.

10 Q. What other factors might that be?

11 A. The -- I would say primarily the use of the consumer with the  
12 internet search for dealers may not be related to our specific marketing.

13 (RT Vol. V. 192:11-23).

14 Moreover, although Carson Toyota claims that Cabe Toyota's location and PMA somehow  
15 hinder its ability to make sales near the dealership, it is undisputed that Cabe Toyota previously was  
16 able to make a large percentage of its sales within close proximity to its facility while having the same  
17 PMA, the same location, and the same competing dealers that it has today. (RT Vol. IX. 137:18-  
18 138:5). In 2007 and 2008, Cabe Toyota made approximately 75% of its sales within ten miles of its  
19 dealership, and in 2009 and 2010, it made approximately 65% of its sales within 10 miles of its  
20 dealership. (Ex. 2088, pp. R-8) (RT Vol. IX. 136:12-139:19). In 2010, Cabe Toyota made the  
21 business decision to start focusing on internet sales because it believed the internet is the "wave of the  
22 future." (RT Vol. II. 38:1-20). Cabe Toyota's Dealer Principal admitted that this is when the  
23 dealership began selling more vehicles at greater distances from its facility. (RT. Vol. II. 37:17-38:17).  
24 Indeed, in 2012, Cabe Toyota made **only 7.9%** of its new vehicle sales into its PMA and **only 37%** of  
25 its sales to customers **within 10 miles** of its facility. (Ex. 1219, pp. Cabe 01774) (Ex. 2088, pp. R-8).

1           Accordingly, by its own admission, Cabe Toyota makes the majority of its sales at great  
2 distances from its dealership because it made the business decision to focus on internet sales, **not**  
3 because of some disadvantage due to the size of its PMA or location of its facility. More importantly,  
4 however, this evidence demonstrates that Cabe Toyota’s sales are concentrated into areas located far  
5 away from the dealership, not into the area where Hooman Toyota is proposing to relocate. Given this  
6 fact, Hooman Toyota’s slight relocation 0.9 miles and 72 seconds of drive time closer to Cabe Toyota  
7 will have no material effect on Cabe Toyota’s new vehicle sales or interfere with its chosen business  
8 strategy. (RT. Vol. III 100:8-17) (Ex. 2056, TMS-Prod\_016432).

9           **B. Dr. Matthews’ “Encroachment” or “Polygon” Analysis Does Not Reliably Evaluate the**  
10 **Potential Effect of the Proposed Relocation.**

11           Carson Toyota next cites Dr. Matthews’ “encroachment” or “polygon” analysis to support its  
12 claim that the proposed relocation will have a negative effect on Cabe Toyota. Under this analysis, Dr.  
13 Matthews concluded that the proposed relocation would move Hooman Toyota closer to approximately  
14 24% of Cabe Toyota’s PMA, and thus the relocation would “encroach” on Cabe Toyota’s customers in  
15 that area. (Brief at 23). However, this analysis is flawed, is unreliable, and does not accurately depict  
16 the potential effect of Hooman Toyota’s proposed relocation for many reasons.

17           Dr. Matthews admitted that he has **never** used this analysis in any case prior to this action, (RT  
18 Vol. IX. 149:3-7), and Carson Toyota’s own brief refers to this analysis as a “novel approach.” (Brief  
19 at 23). Moreover, Dr. Matthews created this new analysis for the sole purpose of this litigation, and he  
20 admittedly did not use a reliable, peer-reviewed, or industry standard methodology for analyzing this  
21 case. Most importantly, however, Dr. Matthews did not make any attempt to analyze how much  
22 business Cabe Toyota might actually lose out of this “area of encroachment.” Although Dr. Matthews  
23 alleges Hooman Toyota would “encroach” on 24% of Cabe Toyota’s PMA, he did not analyze how  
24 many sales Cabe Toyota actually makes inside this area. (RT Vol. IX. 151:23-152:5). Indeed, from  
25

1 2009 to 2012, Cabe Toyota made only **2.9%** of its sales in that area. (RT Vol. IX. 154:8-155:1). Dr.  
2 Matthews also admitted that while Hooman Toyota’s relocation would move it relatively closer to  
3 customers in that area, Cabe Toyota would still be the closest Toyota dealer to each and every Toyota  
4 customer in that 24% area. (RT Vol. IX. 128:3-129:7; RT Vol. VIII. 155:2-14). Accordingly, Cabe  
5 Toyota would still have the geographic advantage to each of these customers, and there is no reason to  
6 believe that the proposed relocation would materially affect Cabe Toyota’s business.

7 **C. Dr. Matthews’ “Fixed Cost” Analysis is Unreliable and Based on Admittedly Flawed**  
8 **Assumptions.**

9 Carson Toyota’s Opening Brief next claims that the proposed relocation will harm Protestants  
10 based on Dr. Matthews “fixed cost” analysis. Under this analysis, Dr. Matthews compared the size of  
11 the proposed facility to the size of Hooman Toyota’s current facility, and concluded that the proposed  
12 facility would be 90% larger than its current facility. Curiously (and contradictorily), Carson Toyota  
13 first claims that the proposed facility is too large and expensive for the market, then later claims that  
14 Hooman Toyota’s fixed costs will go down as a result of this move, and that it will thus receive a  
15 “windfall” and will be too competitive with their dealerships. However, both of these conclusions are  
16 based on inaccurate data and false assumptions.

17 Although Carson Toyota alleges the proposed facility will be much larger than its current  
18 facility, it is undisputed that Hooman Toyota’s current facility is undersized and significantly smaller  
19 than TMS’s minimum facility guides. (Ex. 1009, pp. TMS-Prod\_008736) (RT Vol. X. 40:14-16).  
20 Even Dr. Matthews admitted that Hooman Toyota “needs a larger facility” to comply with TMS’s  
21 minimum standards and that the proposed facility will be just equal to or near TMS’s facility guides in  
22  
23  
24  
25

1 every respect. (RT Vol. IX. 164:25-166:2) (Ex. 1500, HoCT001789). Accordingly, Carson Toyota's  
2 claim that Hooman Toyota's proposed facility will be too large is contradicted by its own expert.<sup>6</sup>

3 Similarly, Dr. Matthews' opinion that the reduction in Hooman Toyota's fixed costs will give it  
4 a competitive advantage simply is not credible. In his initial expert report, Dr. Matthews opined that  
5 because Hooman Toyota's proposed facility would be larger than its current facility, the dealership's  
6 fixed costs would necessarily increase due to the proposed relocation. At that time, Dr. Matthews  
7 alleged that this **increase** in costs would harm the public because Hooman Toyota would need to  
8 increase prices and decrease customer service in order to offset this alleged additional cost. (RT Vol.  
9 IX. 191:19-22; RT Vol. VIII. 213:11-214:2). However, after later learning that the proposed  
10 relocation would actually reduce Hooman Toyota's fixed costs, Dr. Matthews admitted that this opinion  
11 was based on a mere "assumption" and that "the assumption was wrong." (RT Vol. IX. 110:19-  
12 111:7). Dr. Matthews then conveniently changed his opinion, reversed tide, and testified that the  
13 **reduction** in Hooman Toyota's fixed costs would be harmful to the public because it allegedly would  
14 force other dealers to eliminate customer services and expenses in order to compete.

15 This type of "flip-flopping" testimony simply is not credible or reliable. This is particularly  
16 true given that Dr. Matthews admitted **he did not perform any analysis** of the actual fixed costs  
17 associated with the proposed new facility or how the proposed relocation would affect Hooman  
18 Toyota's expenses. (RT Vol. IX. 122:21-124:25). Instead, Dr. Matthews merely speculated that he  
19 "might imagine a scenario" where reducing its fixed costs could allow Hooman Toyota to capture  
20

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21  
22 <sup>6</sup> Carson Toyota's complaints about the size of the proposed Hooman Toyota facility are ironic given that in 2008, Carson  
23 Toyota completed construction on a new Toyota dealership facility that is approximately 250% to 300% larger than Toyota's  
24 facility guides. (RT Vol. IX. 173:13-177:23) (Ex. 2038). Similarly, although Carson Toyota complains that Hooman  
25 Toyota's proposed site has 56 service bays, Carson Toyota's new facility has 74 service bays alone, about three times more  
than Toyota's facility guides. (Vogel Depo. 70:12-71:71:6) (RT Vol. IX. 167:16-25). Carson Toyota's witnesses testified  
that they were pleased to have this many service bays and that additional service bays gives it flexibility and the opportunity  
to grow. (Vogel Depo. 71:13-25). Accordingly, although Carson Toyota complains that the proposed facility is too large  
and would provide Hooman Toyota an unfair competitive advantage, it is Carson Toyota that is asking to hinder competition  
and preserve its competitive advantage over Hooman Toyota.

1 business from other Toyota dealers and force them to reduce expenses. (RT Vol. VIII. 214:22-215:25).  
2 Despite this speculation, Dr. Matthews did not perform any analysis of a potential range of business  
3 Protestants might lose as a result of the proposed relocation. (RT Vol. IX. 212:4-213:2).

4 The only conclusion Dr. Matthews could reach with any certainty is that by reducing its fixed  
5 costs, Hooman Toyota will be able to provide more services and amenities that will benefit consumers:

6 Q. Okay. But with reduced costs, Hooman would not have to charge higher  
7 prices to consumers, would he? You already testified to that.

8 A. Yes, that's correct. He would not have to charge higher prices.

9 ...

10 Q. Hooman can pass those savings on to consumers. Correct?

11 A. He could.

12 Q. With lower prices?

13 A. Yes, he could.

14 Q. With more customer service?

15 A. Yes, he could.

16 Q. With more customer amenities at his dealership?

17 A. Yes.

18 Q. And that's good for consumers. Correct?

19 A. Those would be good for consumers.

20 (RT Vol. VIII. 117:22-118:16). Mr. Nissani further testified that these costs savings will allow  
21 Hooman Toyota to provide better deals and service to customers. (RT Vol. XIV. 199:22-200:3). He  
22 also anticipates that the proposed relocation would enable the dealership to hire additional employees  
23 and place them in higher paying positions, which increases employment, increases the local tax base,  
24 and is beneficial for the community. (RT Vol. XIV. 116:5-24). Accordingly, Dr. Matthews analysis  
25 actually demonstrates that the proposed relocation will benefit—not harm—the public interest.<sup>7</sup>

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<sup>7</sup> Carson Toyota's Opening Brief also cites to the testimony of Cabe Toyota's expert witness, Mr. Watkins, in support of its claim that the proposed relocation will adversely affect Protestants. TMS's Opening Brief thoroughly outlines the numerous

1 Similarly, there is no evidence that the proposed relocation will cause Carson Toyota to lay off  
2 employees or reduce customer services. Although Carson Toyota’s Dealer Principal testified that he  
3 “feels” the proposed relocation may force the dealership to lay off some employees, (RT Vol. XI.  
4 194:12-22; 209:19-210:25), he admitted that he is not involved in the day-to-day operations of the  
5 dealership. The Dealer Principal acknowledged that he is only at the dealership about once a week or  
6 once a month, and that he has no personal knowledge of where Carson Toyota makes its sales, the  
7 amount of sales Hooman Toyota and Carson Toyota make into each other’s PMAs, or Hooman  
8 Toyota’s business practices. (RT Vol. XI. 211:10-212:13; 234:6-8). Moreover, Carson Toyota’s own  
9 expert witness could not identify any harm to the dealership as a result of the proposed relocation, but  
10 instead testified that it is a “wild card” or an “unknown” if the proposed relocation would harm Carson  
11 Toyota. (RT Vol. IX. 206:1-15). Accordingly, there is no reason to believe Carson Toyota would  
12 have to lay off any employees or suffer any adverse effects as a result of the proposed relocation.

13 **D. There is Substantial Untapped Opportunity Available for Toyota Dealers to Make**  
14 **Additional New Vehicle Sales in the RMA.**

15 In its Opening Brief, Carson Toyota next alleges that there is not sufficient opportunity in the  
16 market to support Hooman Toyota’s proposed relocation. In support of this allegation, Carson Toyota  
17 claims the proposed relocation is premature because the existing dealer network can support additional  
18 sales capacity, and it quotes TMS’s expert witness, Mr. Farhat, for the proposition that a proposed  
19 relocation should not be permitted if it “was to plan for 5,000 additional sales, but there are only 1,000  
20 available” in the market. (Brief at 26). To the contrary, however, Mr. Farhat specifically concluded  
21 that there is more than enough opportunity available in the market to support the existing dealers and  
22 the proposed relocation.

23  
24  
25 severe deficiencies and analytical flaws in Mr. Watkins’s analysis. In the interest of judicial economy and to avoid  
duplication, TMS will not restate that discussion in this Reply, but instead incorporates it by reference herein.

1 As set forth above, Mr. Farhat, Hooman Toyota's expert, and Cabe Toyota's expert all  
2 concluded that Toyota's market share is lower than expected in Cabe Toyota and Hooman Toyota's  
3 PMAs. (RT Vol. III. 74:15-75:15; 102:2-22) (RT Vol. XIII. 70:24-72:11) (RT Vol. VI. 46:2-47:7).  
4 Based on this data, Mr. Farhat concluded that in 2012 alone, there was opportunity for the existing  
5 Toyota dealers to make an additional **1,620 sales** without capturing a single sale from each other. (RT  
6 Vol. XIII. 130:20-131:4). The Toyota dealers in the RMA also have the opportunity to capture an  
7 additional 3,800 to 5,600 sales from other Toyota dealerships that are currently making sales into the  
8 RMA. (RT Vol. XIII. 131:10-133:13).

9 This substantial additional opportunity far exceeds any reasonable amount by which Hooman  
10 Toyota could increase its sales due to the proposed relocation. If Hooman Toyota were to improve its  
11 sales to the average level expected in this market, its additional sales would only amount to 3.2% of the  
12 opportunity available in the market. (Ex. 2088, pp. A-82). Even if Hooman Toyota were able to  
13 improve to the level of sales made by the largest and most aggressive dealer in the RMA, its additional  
14 sales would only amount to 23.2% of the opportunity available in the market. (RT Vol. XIII. 136:23-  
15 137:17) (Ex. 2088, pp. A-83). Accordingly, there is no reason to believe that any increase in Hooman  
16 Toyota's sales following the relocation would negatively affect Protestants.

17 **E. Hooman Toyota's Expert Witness Determined that the Proposed Relocation Would**  
18 **Have No Material Effect on Protestants.**

19 Carson Toyota next claims that Hooman Toyota's expert witness, Mr. Stockton, corroborated  
20 the conclusion that the proposed relocation would harm Protestants, and it even claims that Mr.  
21 Stockton performed an analysis showing that Cabe Toyota would lose 10.6% of its registrations at the  
22 California average if Hooman Toyota were permitted to relocate. (Brief at 28). This allegation,  
23 however, severely misconstrues Mr. Stockton's testimony and opinions.

1 Mr. Stockton did **not** testify that Hooman Toyota’s relocation would cause Cabe Toyota to lose  
2 10.6% of its sales, but instead he simply testified that the proposed relocation would move Hooman  
3 Toyota marginally **closer** to approximately 10.6% of Cabe Toyota’s existing customers. (RT Vol. VI.  
4 80:25-85:16) (Ex. 254, pp. Tab 11 Page 1). Once Mr. Stockton completed his analysis of the  
5 registrations and other data in this case, he concluded that the proposed relocation would cause a 0.32%  
6 reduction in Cabe Toyota’s new vehicle sales and a 0.27% reduction in Carson Toyota’s sales. (RT  
7 Vol. VI. 134:1-12) (Ex. 254, pp. Tab 17 Page 1). Moreover, he concluded that if Hooman Toyota  
8 significantly improved its performance to become one of the highest selling dealers in the RMA, the  
9 proposed relocation would result in a mere 1.23% reduction in Cabe Toyota’s new vehicle sales and a  
10 mere 0.88% reduction in Carson Toyota’s sales. (Ex. 254, pp. Tab 17 Page 1). Mr. Stockton testified  
11 that this minimal effect is consistent with the short distance of the relocation, the high dealer density in  
12 the RMA, and Cabe Toyota’s focus on internet sales. (RT Vol. VI. 139:2-9). As such, Carson  
13 Toyota’s claim that Mr. Stockton somehow confirmed the proposed relocation would materially harm  
14 Protestants or cause Cabe Toyota to lose 10.6% of its sales is totally unfounded.

15 **V. TMS Carefully and Thoroughly Evaluated the Proposed Relocation.**

16 Recognizing the dearth of evidence supporting its allegations, Carson Toyota’s Opening Brief  
17 next launches an attack on TMS and its Region personnel. Specifically, Carson Toyota claims that  
18 TMS personnel “irresponsibly” and “carelessly” approved the proposed relocation without performing  
19 any due diligence and without regard for its effect on other Toyota dealers and the consuming public.  
20 (Brief at 34-35). These unfounded allegations are simply false.<sup>8</sup>

21  
22  
23 <sup>8</sup> Carson Toyota also claims that TMS “forces” dealers to provide adequate facilities out of its own self-interest “as an  
24 advertisement for Toyota to promote the brand, increase market share . . . , and sell as many Toyota vehicles as it can.”  
25 While it is true that TMS establishes facility guides for Toyota dealers, it is undisputed that adequate facilities are important  
to allow dealers to provide effective customer service and compete with other brands. Over the course of time, dealers that  
meet TMS’s facility standards have proven to be more profitable, have higher market share, and have higher customer  
satisfaction and retention rates. (RT Vol. X. 27:4-17). Although Carson Toyota attempts to make this sound nefarious,  
Cabe Toyota’s own expert witness admitted that Toyota is facing more competition from other brands, and that given this

1 TMS presented substantial evidence outlining its lengthy and extensive analysis of Hooman  
2 Toyota's proposed relocation. (RT Vol. X. 174:9-175:15). On June 24, 2011, Hooman Toyota sent  
3 TMS a letter formally proposing to relocate the dealership to the Proposed Site. (RT Vol. X. 82:7-  
4 83:11) (Ex. 1100). Although Carson Toyota claims that TMS hastily and carelessly approved the  
5 proposed relocation, TMS did not approve the proposed relocation until July 2012, more than **thirteen**  
6 **months later**. (RT Vol. X. 170:6-9) (Exs. 1164; 1165). During that thirteen-month period, TMS  
7 conducted substantial due diligence to evaluate the proposed relocation, including the following:

- 8 • On August 23, 2011, TMS conducted an initial internal market analysis of the proposed  
9 relocation. (RT Vol. X. 93:14-95:5) (Ex. 1109). This market analysis evaluated the geography  
10 at issue, the PMAs of the Toyota dealers in the RMA, the distance of the proposed move, the  
11 household income and population patterns in the RMA, the new vehicle sales and service  
12 patterns in the RMA, and the cross-sell between dealers in the RMA. (Ex. 1109).
- 13 • On February 27, 2012, TMS conducted a second more formal market analysis that further  
14 evaluated the surrounding geography, PMAs, demographics, the new vehicle sales patterns, and  
15 cross-sell data. (RT Vol. X. 115:21-116:16) (Ex 2056).
- 16 • TMS analyzed the service business performed by the Toyota dealers in the RMA, including the  
17 percentage of service customers they retain and the percentage of service business they are  
18 capturing in their PMAs. This analysis revealed that there is substantial opportunity in the RMA  
19 for these dealers to gain additional service business. (RT Vol. X. 143:1-149:16) (Hearne Depo.  
20 62:21-63:16).
- 21 • TMS reviewed cross-sell information and Cabe Toyota's sales patterns, which showed that Cabe  
22 Toyota makes the vast majority of its sales at great distances from its dealership, and does not  
23 make a significant portion of its sales near the Proposed Site. (RT Vol. X. 136:2-139:16).
- 24 • TMS personnel drove the market and visited all of the dealership facilities at issue, including the  
25 Proposed Site. (RT Vol. X. 167:19-168:18) (Hearne Depo. 77:1-14).
- TMS evaluated the Proposed Site and determined that it would be a significant improvement for  
customers. TMS found that the proposed site would provide the consuming public a larger and  
more modern dealership facility with more space, improved visibility and accessibility, a  
consolidated facility with all operations under one roof, additional parking, and additional  
customer amenities. (RT Vol. X. 161:13-162:4) (Hearne Depo. 77:1-14).

increased competition, it is appropriate for Toyota dealers to take steps to increase their visibility and accessibility to consumers. (RT Vol. III. 26:9-20; 187:3-7). Accordingly, adequate facilities not only promote the Toyota brand, but also benefit Toyota dealers—the dealers tasked with selling Toyota vehicles to consumers.

- 1 • TMS received an estimate of Hooman Toyota's construction costs from an architectural firm  
2 named Dennis J. Flynn Architects, Inc. (Ex. 1164, pp. TMS-Prod\_012929).
- 3 • TMS evaluated Hooman Toyota's lease agreements for the Proposed Site and performed a  
4 comparison of the change in Hooman Toyota's rent factor due to the proposed relocation, which  
5 showed that Hooman Toyota's facility expenses and fixed costs would decrease following the  
6 proposed relocation. (Ex. 1164, pp. TMS-Prod\_012929) (Hearne Depo. 86:2-87:14).
- 7 • TMS retained an independent third party accountant to perform a review of Hooman Toyota's  
8 financial and operating records, which verified that Hooman Toyota had the financial  
9 wherewithal to support the relocation. (RT Vol. XIII. 226:21-229:6) (Ex. 2059).

10 Moreover, contrary to Carson Toyota's conclusory allegations, the central purpose of this  
11 extensive evaluation process was to carefully analyze the proposed relocation's effect on consumers and  
12 other Toyota dealers. (RT Vol. X. 174:9-175:15). The current General Manager for Toyota's Los  
13 Angeles Region specifically testified that the proposed relocation's effect on surrounding dealers was an  
14 essential part of the evaluation process. (RT Vol. X. 142:4-6; 169:8-17).

15 Q. Now, based on the personal visits that you've described  
16 and the information that was made available to Toyota management,  
17 including its analysis, but also additional information provided  
18 and available to you, did Toyota reach any conclusions about  
19 whether this relocation should be supported?

20 A. Yes.

21 Q. And in doing so, did Toyota take into consideration in  
22 any material impact of any kind on other dealers?

23 A. Absolutely.

24 Q. And you've testified that you did not believe there would  
25 be such an impact. Right?

A. That's correct.

Q. If you, as the head of the region and formerly assistant at  
the region, along with Mr. Hearne as manager, had determined that  
this would impact in any significant way any of the other dealers,  
would you have supported this?

A. No. The success of our dealers is critical to us. We want all  
of our dealers to be successful. We have a lot of respect for their

1 businesses and their operations, and we would not support this if we  
2 felt it had a material impact on any other dealer.

3 (RT Vol. X. 168:19-169:17). In summary, there is simply no support for Carson Toyota’s claim that  
4 TMS “hastily” or “carelessly” approved the proposed relocation, performed inadequate due diligence,  
5 or failed to evaluate the proposed relocation’s potential effect on other Toyota dealers.

6 Despite these undisputed steps taken by TMS to evaluate the proposed relocation, Carson Toyota  
7 next alleges TMS’s evaluation was insufficient because it did not perform a formal market study. This  
8 allegation, however, confuses the definition and purpose of a market study. TMS performs a market  
9 study when evaluating whether there is a need for additional representation in a particular market. (RT  
10 Vol. X. 303:15-304:7). That is not the situation presented in this case. In this case, TMS is not  
11 seeking to add a dealer to the market, and Hooman Toyota—not TMS—proposed to relocate its  
12 dealership to a new location. In order to fully evaluate Hooman Toyota’s proposal, TMS engaged in a  
13 thirteen-month process that included two separate market analyses of the RMA and evaluated the  
14 geography at issue, the effect of the proposed relocation on consumers, and the effect on other Toyota  
15 dealers. (RT Vol. X. 168:19-170:0) (Exs. 1164; 1165). This evaluation fully complied with TMS’s  
16 policies and procedures, and it was anything but “hasty” or “careless.”

17 Carson Toyota next alleges that TMS’s evaluation of the proposed relocation was insufficient  
18 because it has not yet obtained a pro forma from Hooman Toyota. TMS’s standard pro forma outlines  
19 the costs associated with the dealer operation out of the proposed new facility, including rent and  
20 construction costs. (RT Vol. X. 252:8-20). Although Carson Toyota claims otherwise, TMS  
21 specifically evaluated the financial effects of the proposed relocation on Hooman Toyota, including its  
22 construction costs and proposed new rent. Prior to approving the proposed relocation, TMS received  
23 an estimate of Hooman Toyota’s construction costs from the architectural firm Dennis J. Flynn  
24 Architects, Inc., in the amount of \$2.95 million. (Ex. 1164, pp. TMS-Prod\_012929). TMS also  
25 received and evaluated Hooman Toyota’s lease agreements for the Proposed Site, and it performed a

1 comparison of the change in Hooman Toyota’s rent factor due to the proposed relocation. (Ex. 1164,  
2 pp. TMS-Prod\_012929) (Hearne Depo. 86:2-87:14). Based on this information, and as Carson Toyota  
3 admits in its Opening Brief, Hooman Toyota’s facility expenses and fixed costs would actually **decrease**  
4 following the proposed relocation. (Ex. 1164, pp. TMS-Prod\_012929) (Hearne Depo. 86:2-87:14)  
5 (Brief at 14-15). Prior to approving the proposed relocation, TMS also retained an independent third  
6 party accountant to review Hooman Toyota’s financial and operating records, which verified that it had  
7 the financial wherewithal to support the relocation. (RT Vol. XIII. 226:21-229:6) (Ex. 2059).

8 In addition to evaluating all of this information prior to approving the relocation, TMS’s site  
9 approval also requires Hooman Toyota to provide a pro forma with updated expense and construction  
10 costs data before commencing **construction** on its new facility. (RT Vol. X. 178:3-6; 179:1-15). This  
11 practice of obtaining a pro forma before construction is consistent with TMS’s policies and practices in  
12 relocation cases. (RT Vol. X. 179:1-15; 253:7-10) (“The pro forma is required. And typically with  
13 relocations that involve Protests it’s required at time of construction.”). As such, the evidence does not  
14 support Carson Toyota’s claim that TMS did not fully evaluate the costs associated with Hooman  
15 Toyota’s proposed relocation, its effect on consumers, or the effect on surrounding dealers.<sup>9</sup>

16 **VI. The ALJ Did Not Apply an Erroneous Standard of Proof or Otherwise Err in the**  
17 **Adjudication of this Case.**

18 After attacking TMS and its personnel, Carson Toyota’s Opening Brief next finds fault with the  
19 Administrative Law Judge (“ALJ”) for various rulings made prior to and during trial. However, there  
20 is absolutely no evidence that the ALJ made any improper rulings in this case.

21 \_\_\_\_\_  
22 <sup>9</sup> Carson Toyota cites Vehicle Code section 11713.3 for the proposition that the California legislature considers pro formas  
23 and planning potential “material to any relocation protest.” That provision, however, does **not** apply to all relocation  
24 protests as Carson Toyota claims, but by its own terms is limited to situations where a dealer enters into a voluntary  
25 agreement waiving its right to protest the proposed addition or relocation of a dealer. Specifically, section 11713.3 states  
that California law does not prohibit a voluntary waiver agreement supported by valuable consideration “to waive the right  
of a dealer to file a protest under Section 3062 for the proposed establishment or relocation of a specific proposed  
dealership” if the agreement contains planning potential and other financial information. (Veh. Code § 11713.3(g)(3)(H)(i).  
These requirements were **not** included in the statutes governing relocation protests, and no dealer in this case executed an  
agreement waiving their right to protest this proposed relocation. Accordingly, this statute does not apply to this case.

1 Carson Toyota first claims that the ALJ imposed an overly restrictive relevancy standard  
2 throughout the hearing. In support of this claim, Carson Toyota merely cites places in the record where  
3 counsel made relevance objections, including situations where those objections were sustained and  
4 situations where they were overruled. (Brief at 39). It does not identify a single piece of evidence  
5 excluded as irrelevant that Carson Toyota claims was material, relevant, and otherwise admissible, or  
6 even explain the allegedly “restrictive” relevancy standard employed by the ALJ. Accordingly, there is  
7 no reason to believe that the ALJ imposed some improper evidentiary standard in this case.

8 Carson Toyota next claims that the ALJ applied an overly stringent burden of proof and  
9 evidentiary threshold “on the mistaken belief that the standard for a relocation protest differed and was  
10 much higher than the standard for an establishment protest under the same statute.” (Brief at 39). In  
11 support of this claim, Carson Toyota points to discussions between the ALJ and counsel regarding an  
12 apparent ambiguity in the good cause factors set forth in Vehicle Code section 3063. Specifically,  
13 several of the factors expressly refer to the effects of an “additional franchise,” which creates an  
14 apparent ambiguity as to whether those factors apply in relocation cases. Veh. Code. § 3063.

15 Although the ALJ discussed this apparent ambiguity on the record, there is no indication that he  
16 applied an improper burden of proof or otherwise imposed inappropriate evidentiary thresholds. Quite  
17 to the contrary, the ALJ raised the issue of this ambiguity for discussion purposes, asked the parties to  
18 brief this issue following the hearing, and indicated he would further investigate the issue himself. (RT  
19 Vol. I. 91:12-19; RT Vol. II. 7:22-8:6). Moreover, the ALJ expressly stated that he “will certainly be  
20 interested in hearing **all the evidence**” by the parties. (*Id.*) (emphasis added). As such, there is simply  
21 no support for Carson Toyota’s claim that the ALJ applied an overly strict burden of proof or  
22 improperly limited the evidence at the hearing in any way.

23 Carson Toyota further alleges that the ALJ inappropriately granted a Motion in Limine  
24 excluding evidence of potential facility alternatives available to Hooman Toyota other than the Proposed  
25

1 Site. However, as set forth in TMS's Motion in Limine, the Vehicle Code grants the Board jurisdiction  
2 to determine whether there is good cause not to permit a specific proposal by a dealer to relocate to a  
3 specific site. (Veh. Code § 3062). It does not authorize or require the Board to evaluate other potential  
4 sites for an existing dealer that have not been proposed, nor does it require the Board to serve as a  
5 dealership-site-locating agency that must weigh the relative merits of various alleged alternative sites.  
6 (*Id.*). As such, the ALJ's decisions in this case were entirely appropriate, were consistent with the  
7 Vehicle Code and Evidence Code, and were not erroneous or prejudicial to Protestants.

8 **CONCLUSION**

9 For the reasons set forth above, Carson Toyota has failed to demonstrate good cause not to  
10 permit Hooman Toyota's proposed relocation. Accordingly, TMS respectfully requests that the Board  
11 enter an Order denying their Protests and permitting Hooman Toyota's proposed relocation.

12  
13 DATED: September 19, 2013

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14  
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