

VIA E-MAIL

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AUG 22 2012
NEW MOTOR VEHICLE BOARD

FERRUZZO & FERRUZZO, LLP

A Limited Liability Partnership,
including Professional Corporations
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GREGORY J. FERRUZZO, SBN 165782
VASKO R. MITZEV, SBN 213973

FILED
NEW MOTOR VEHICLE BOARD
DATE 8-22-12
BY na

Attorneys for Protestant, CABE BROTHERS, dba CABE TOYOTA and CABE SCION

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
CABE BROTHERS, a California corporation,
dba CABE TOYOTA and CABE SCION,

Protestant,

v.

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

Respondents.

PROTEST NO. PR-2341-12

**PROTEST PURSUANT TO VEHICLE
CODE SECTION 3062 AND
REQUEST FOR PRE-HEARING
CONFERENCE AND HEARING**

Protestant, CABE BROTHERS dba CABE TOYOTA and CABE SCION
("Protestant"), through its attorneys, Ferruzzo & Ferruzzo LLP, files this protest under the
provisions of California Vehicle Code section 3062 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling *Toyota and Scion* new motor vehicles and associated parts, accessories and service, and is located at 2895 Long Beach Blvd., Long Beach, California. Protestant's telephone number is 562-595-7411.
2. Respondent Toyota Motor Sales U.S.A., Inc. ("TMS"), is the manufacturer/distributor of new *Toyota and Scion* motor vehicles and franchisor of Protestant, pursuant to an agreement and franchise entered into by and between Protestant and Respondent Toyota Motor Sales U.S.A., Inc., all subject to the jurisdiction of this Board.
3. Protestant is represented in this matter by Ferruzzo & Ferruzzo, LLP, whose

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1 address and telephone numbers are: 3737 Birch Street, Suite 400, Newport Beach, California
2 92660; telephone: 949-608-6900; facsimile: 949-608-6994. The attorneys assigned to the
3 matter are: Gregory J. Ferruzzo, Esq., State Bar No. 165782, and, Vasko R. Mitzhev, Esq.,
4 State Bar No. 213973.

5 4. On or about August 3, 2012, Protestant received from Respondent, Toyota
6 Motor Sales, U.S.A., Inc., with copy to Respondent H.T.L. AUTOMOTIVE, INC., dba Hooman
7 Toyota of Long Beach and Hooman Scion of Long Beach ("Hooman Dealerships"), a notice
8 that Toyota Motor Sales U.S.A., Inc. intends to permit the Hooman Dealerships to relocate
9 their facilities from 4401 E. Pacific Coast Highway, Long Beach, California 90804, to 3399
10 E. Willow Street and 2679 Redondo Avenue, Long Beach, California 90806, which are
11 contiguous to each other, and which relocation Respondent Toyota Motor Sales U.S.A. Inc.
12 consents to. A copy of the notice dated August 2, 2012, is attached hereto has **Exhibit "A"**.

13 5. The intended relocation is within a ten-mile, relevant market radius of
14 Protestant's location.

15 6. There is good cause for not permitting the relocation of the Hooman Dealerships
16 by reason of the following facts:

17 (a) Protestant has made a substantial and permanent investment in its
18 dealership, including but not limited to: (i) within the last 30 months, acquiring real
19 property for dealership facilities at a cost of approximately \$2,400,000; (ii) initiating
20 compliance with Toyota Motor Sales, U.S.A., Inc., facility image requirements (Image
21 II) at an estimated completion cost of \$3,200,000;

22 (b) Protestant has transacted and is transacting an adequate amount of
23 business compared to the business available to it in the relevant market area;

24 (c) It would be injurious to the public welfare for the Hooman Dealerships to
25 be relocated;

26 (d) Protestant's dealership and the surrounding dealerships in the relevant
27 market area are providing adequate competition and convenient consumer care for the
28 needs of prospective buyers and current owners of *Toyota* and *Scion* new and used

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1 motor vehicles including adequate motor vehicle sales and service facilities, equipment,
2 supply of vehicle parts, and qualified service personnel. In addition, Protestant has, for
3 each of the past three years, been awarded the Presidents Award by Toyota Motor
4 Sales, U.S.A., Inc., for its sales efficiency, facility compliance with Toyota standards,
5 and the like.

6 (e) The relocation of the Hooman Dealerships would not increase
7 competition, gives an unfair competitive advantage to the Hooman Dealerships, and
8 would not be in the public interest.

9 7. Protestant and its attorney(s) desire to appear before the Board. Protestant
10 estimates that the hearing in this matter will take five days to complete.

11 8. A Pre-Hearing Conference is requested.

12 WHEREFORE, Protestant prays as follows:

13 1. That the Board hold a hearing and based on the substantive evidence and proof
14 produced, determine and issue its decision determining that good cause does not exist to
15 permit the relocation of the Hooman Dealerships to 3399 E. Willow Street and 2679
16 Redondo Avenue, Long Beach, CA 90806; and thereby sustain this Protest;

17 2. That the Board issue its Order not permitting such relocation; and,

18 3. For such other and further relief as the Board deems proper, just and equitable.

19
20 DATED: August 21, 2012

~~FERRUZZO & FERRUZZO~~

21
22 By: _____

Gregory J. Ferruzzo, Esq.
Vasko R. Mitzev, Esq.

23 Attorneys for Protestant CABE BROTHERS dba
24 CABE TOYOTA and CABE SCION
25
26
27
28

EXHIBIT "A"

TOYOTA

Toyota Motor Sales, U.S.A., Inc.
Los Angeles Regional Office
2 Banting
Irvine, CA 92618-3602
949 727-2700
949 727-2810 Fax

Via Certified Mail, Return Receipt Requested

August 2, 2012

Toyota Motor Sales, U.S.A., Inc.
Los Angeles Region
2 Banting, Irvine, CA 92618

Mr. John Cabe
Cabe Brothers dba Cabe Toyota and Cabe Scion
2895 Long Beach Boulevard
Long Beach, CA 90806

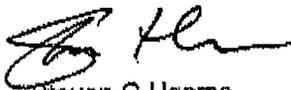
Re: Notice of Establishment or Relocation (Veh. Code §§ 3062 (a))

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."

Dear Mr. Cabe,

This letter constitutes notice, pursuant to California Vehicle Code Section 3062, that Toyota Motor Sales USA, Inc. ("Toyota") intends to permit H.T.L. Automotive, Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach, to relocate its facility from its current location at 4401 E Pacific Coast Highway, Long Beach, CA 90804 to 3399 E. Willow Street and 2679 Redondo Avenue, Long Beach, CA 90806, which are contiguous to each other.

Sincerely,



Steven G Hearne
General Manager

cc: New Motor Vehicle Board
Attention: William G. Brennan
Executive Director

cc: Hooman Nissani (Hooman Toyota of Long Beach and Hooman Scion of Long Beach)

 **TOYOTA**
Toyota Motor Sales, U.S.A., Inc.
Los Angeles Regional Office
2 Banning
Irvine, CA 92618-3602

**RETURN RECEIPT
REQUESTED**

CERTIFIED MAIL

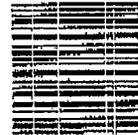


7005 1820 0003 8405 647B

Mr. John Cabe
Cabe Toyota
2895 Long Beach Blvd.
Long Beach, CA 90806



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91806

U.S. POSTAGE
PAID
IRVINE, CA
92619
AUG 02, 12
POSTNET
\$5.75
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9080681595 0015 

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF ORANGE)ss.

4 I am employed in the County of Orange, State of California. I am over the age of 18 and not a party
5 to the within action. My business address is 3737 Birch Street, Suite 400, Newport Beach,
California 92660.

6 On August 22, 2012, I served the foregoing document described as: **PROTEST PURSUANT TO**
7 **VEHICLE CODE SECTION 3062 AND REQUEST FOR PRE-HEARING CONFERENCE**
AND HEARING on all interested parties in said action by:

8 BY FACSIMILE TRANSMISSION From FAX No. (949) 608-6994 to the FAX number(s)
9 listed below. The facsimile machine I used complied with Rule 2003(3) and no error was reported
by the machine. SEE ATTACHED SERVICE LIST

10 BY PERSONAL SERVICE:

11 I delivered such envelope by hand to the offices of the addressee listed on the attached
12 Service List.

13 BY MAIL as follows:

14 placing the original a true copy thereof in a sealed envelope addressed as stated on
the ATTACHED SERVICE LIST.

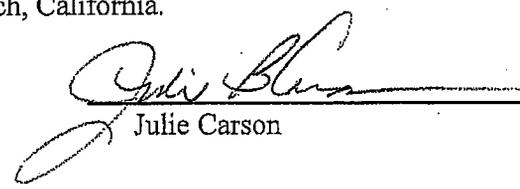
15 I am "readily familiar" with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with U.S. postal service on
that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course
17 of business. I am aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in
affidavit.

18 BY OVERNIGHT DELIVERY: I deposited such an envelope in a box or other facility
19 regularly maintained by the express service carrier, or delivered to an authorized courier or driver
20 authorized by the express service carrier to receive documents in an envelope or package designated
21 by the express service carrier with delivery fees paid or provided for, addressed to the person on
whom it is to be served as indicated on the ATTACHED SERVICE LIST, at the office address at
last given by that person on any document filed in the case and served on the party making service.

22 STATE - I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct.

24 FEDERAL - I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

25 Executed on August 22, 2012, at Newport Beach, California.

26 
27 _____
28 Julie Carson

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3737 Birch Street, Suite 400
Newport Beach, California 92660
Telephone: (949) 608-6900

Service List

Cabe Brothers dba Cabe Toyota and Cabe Scion v. Toyota Motor Sales, U.S.A., Inc.
New Motor Vehicle Board
Case No.:

Toyota Motor Sales, U.S.A., Inc. Los Angeles Region Attn: Steven G. Hearne, General Manager 2 Banting Irvine, California 92618-3602 Telephone: 949-727-2700 Facsimile: 949-727-2810	
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