

1 **FERRUZZO & FERRUZZO, LLP**  
2 A Limited Liability Partnership,  
3 including Professional Corporations  
4 3737 Birch Street, Suite 400  
5 Newport Beach, California 92660  
6 Telephone (949) 608-6900  
7 E-Mail: gferruzzo@ferruzzo.com

8 GREGORY J. FERRUZZO, SBN 165782

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

10 **STATE OF CALIFORNIA**

11 **NEW MOTOR VEHICLE BOARD**

12 In the Matter of the Protests of )  
13 ALDON, INC., a California corporation, dba )  
14 CARSON TOYOTA, and )  
15 ALDON, INC., a California corporation, dba )  
16 CARSON SCION, and )  
17 CABE BROTHERS, a California corporation, )  
18 dba CABE TOYOTA and CABE SCION, and )  
19 Protestants, )  
20 v. )  
21 TOYOTA MOTOR SALES, U.S.A., INC., a )  
22 California corporation, )  
23 Respondent. )

CONSOLIDATED MATTERS:

PROTEST NO. PR-2339-12

PROTEST NO. PR-2340-12

PROTEST NO. PR-2341-12

**PROTESTANT CABE TOYOTA'S  
POST-HEARING OPENING BRIEF**

**Hearing Conducted: 6/3/2013 - 6/21/2013  
Before Victor Ryerson, Administrative  
Law Judge**

24 H.T.L. AUTOMOTIVE, INC., dba HOOMAN )  
25 TOYOTA OF LONG BEACH and HOOMAN )  
26 SCION OF LONG BEACH, )  
27 Intervenor. )

28 Protestant CABE BROTHERS, a California corporation dba CABE TOYOTA and CABE  
SCION (hereinafter referred to as "CABE" or "CABE TOYOTA") hereby submits its Post-Hearing  
Opening Brief in the above-captioned matter.

1 **1. INTRODUCTORY STATEMENT**

2       Cabe Toyota undoubtedly has a very long standing and substantial permanent investment in its  
3 Long Beach dealership. Cabe Toyota is a small neighborhood dealership already squeezed among other  
4 larger surrounding Toyota dealers. Cabe Toyota's surrounding Primary Market Area ("PMA") is  
5 challenging. It is substantially smaller than those of the other Toyota dealers in the market. It has fewer  
6 Units in Operation ("UIO") and presents limited opportunity for sales and service.

7       Since 2008, when Dan Duddridge began working as Operations Manager for the dealership, Cabe  
8 Toyota has made improvements. These changes brought real results and improved sales performance.  
9 Toyota recognized these improvements in the dealership by awarding Cabe Toyota the prestigious  
10 Toyota President's Award for the last three years. This award recognizes the "best of the best" Toyota  
11 dealers and is awarded to those dealers who exceed Toyota's dealer performance standards. Although  
12 Cabe Toyota has recently made great improvements in the areas of new vehicle sales and overall  
13 customer satisfaction, Cabe Toyota continues to struggle financially, primarily due to extreme  
14 competitive proximity factors and an unusually small assigned PMA.

15       For the last several years, Cabe Toyota has been in the process of expanding and improving its  
16 facility. These improvements, which are required by Toyota, cost Cabe Toyota millions of dollars.

17       Cabe Toyota and Hooman Toyota are located in the same city and are currently only 3.1 miles  
18 apart. These dealers are separated by Signal Hill. Toyota proposes to relocate Hooman Toyota to a  
19 vastly larger facility located right off of the 405 freeway. This proposed move will completely change  
20 the playing field and move Hooman Toyota even closer to Cabe Toyota's primary customer base and  
21 into the area that is Cabe Toyota's best opportunity to capture additional sales and service business.

22       If the proposed relocation is permitted, Hooman Toyota will gain much greater freeway visibility  
23 and access to more customers outside its assigned PMA. It is certain that if this proposed relocation  
24 is permitted, Hooman Toyota will realize increased service, parts and vehicle sales. These gains will  
25 however come primarily at the expense of Cabe Toyota.

26       The combination of the increased financial burden to Cabe Toyota as a result of its current facility  
27 renovation project together with the adverse impact that the proposed relocation of Hooman Toyota to  
28 a freeway visible facility only 2.2 miles away, will undoubtedly cause Cabe Toyota to fail.

1 **2. AUTHORITY FOR CABE TOYOTA'S PROTEST**

2 *Vehicle Code* section 3062 provides that if a franchisor seeks to relocate an existing motor vehicle  
3 dealership, the franchisor shall notify, in writing, the Board and each franchisee within the 10 mile  
4 relevant market area. Cabe Toyota was provided such notice, is situated within the 10 mile relevant  
5 market area, and timely filed a protest as provided by *Vehicle Code* section 3062. This section provides  
6 that franchisor may not relocate the proposed dealership until the Board has held a hearing as provided  
7 by *Vehicle Code* section 3066.

8 Pursuant to *Vehicle Code* section 3066, the Board, or an administrative law judge designated by  
9 the Board, shall hear and consider the oral and documented evidence introduced by the parties and other  
10 interested individuals and groups.

11 *Vehicle Code* section 3063 identifies various factors that shall be taken into consideration.

12 *Vehicle Code* section 3063 states:

13 In determining whether good cause has been established for not  
14 entering into or relocating an additional franchise for the same line-make,  
the board shall take into consideration the existing circumstances,  
including, but not limited to, all of the following:

- 15 (a) Permanency of the investment.
- 16 (b) Effect on the retail motor vehicle business and the  
consuming public in the relevant market area.
- 17 (c) Whether it is injurious to the public welfare for an  
additional franchise to be established.
- 18 (d) Whether the franchisees of the same line-make in that  
relevant market area are providing adequate competition and convenient  
19 consumer care for the motor vehicles of the line-make in the market area  
which shall include the adequacy of motor vehicle sales and service  
20 facilities, equipment, supply of vehicle parts, and qualified service  
personnel.
- 21 (e) Whether the establishment of an additional franchise would  
increase competition and therefore be in the public interest.

22 **3. CABE TOYOTA'S PERMANENT INVESTMENT IN ITS DEALERSHIP.**

23 Cabe Toyota was established in Long Beach, California in 1966. The Cabe Toyota dealership  
24 has been family owned and operated for 46 years. The Cabe Toyota dealership was founded by Loy  
25 Cabe and was one of the first Toyota dealerships established in California.

26 Cabe Toyota currently has 95 employees. Many of these employees are long time employees of  
27 the company with 30 years of service.

28 The current ownership of Cabe Toyota is held by Mr. John Cabe (82%), Mrs. Marilyn Gidden

1 (sister - 9%) and Mrs. Glenda Favilla (sister - 9%). John Cabe is the Dealer Principal and General  
2 Manager of the dealership.

3 Cabe Toyota employs other members of the Cabe family. The great-grandson of Loy Cabe just  
4 recently graduated from college and has started working in the sales department of Cabe Toyota.

5 Dan Duddridge (John Cabe's son-in-law) began working at the Cabe Toyota dealership in 2008  
6 as Operations Manager.

7 Cabe Toyota is located on Long Beach Boulevard, approximately one mile south of the 405  
8 freeway. Although the dealership is fairly accessible, it is not located in a high traffic area, freeway  
9 location or auto mall; thus, the dealership suffers from a lack of visibility afforded to most other dealers.  
10 In addition, due to the narrow property characteristics, Cabe Toyota's sales, service and parts operations  
11 are split over 3 blocks. Cabe Toyota has evaluated multiple relocation alternatives over the past 30  
12 years; however, due to the one mile limitation previously imposed by Toyota Management, and the  
13 desire to remain in Long Beach, Cabe Toyota chose to remain at its original location. Currently, Cabe  
14 Toyota is expanding its facilities to meet the Toyota Image II requirements.

15 Cabe Toyota has always been a leader in customer satisfaction and has enjoyed modest profits  
16 over the years. However, due to a variety of adverse conditions, including location, proximity of  
17 customers, size of primary market area, and other factors, Cabe Toyota's profit has been minimal  
18 compared to the average metro Toyota dealer. Regardless, Cabe Toyota has consistently met the  
19 expectations of Toyota and has been awarded numerous honors, including the Service Excellence  
20 Award and the pretigious President's Award the last three years.

21 **4. CABE TOYOTA'S CHALLENGING PRIMARY MARKET AREA**

22 Toyota assigns its dealers a geographic area called a "Primary Market Area" or "PMA." The  
23 PMA is used by Toyota to evaluate the dealer's performance (the dealer has the geographic advantage  
24 in its assigned PMA). In addition to geographic advantage in the PMA, dealers receive marketing and  
25 financial support from Toyota for those customers in a dealer PMA. The PMAs established by Toyota  
26 are defined by census tracts. The PMA that Toyota has established for Cabe Toyota is the smallest in  
27 the region. The units in operation ("UIO") in the Cabe PMA are currently 5,778. In comparison, the  
28 average UIO for other Toyota dealers in the Relative Market Area ("RMA") is 15,854, with the smallest

1 other than Cabe being Carson with 9,467 UIO, and the largest being Cerritos with 30,918. This small  
2 PMA with a lower number of UIOs makes Cabe Toyota's business challenging.

3 Cabe Toyota's PMA is also unusually shaped (tall and skinny) and approximately only one mile  
4 wide where the dealership is located. Much of its area, particularly to the south, consists of industrial  
5 areas associated with the Port of Long Beach. Cabe Toyota's PMA contains significant portions of  
6 households with annual incomes below \$30,000. The PMA contains portions of eight zip codes. No  
7 more than 78% of any of these zip codes lie within Cabe Toyota's PMA. All of these zip codes are  
8 shared or "split" with other surrounding Toyota dealers as part of their PMAs. The surrounding dealers  
9 are among the largest in the region and no other dealer in the Region has competing dealers with such  
10 close proximity on all sides of Cabe. This situation also makes business challenging for Cabe Toyota.

11 The facts show the dealers with the greatest proximity challenges (Toyota dealers with multiple  
12 nearby competing Toyota dealers) struggle to capture market share in their assigned PMA. As an  
13 example, in the RMA, Cabe Toyota, Norwalk Toyota and Elmore Toyota all have two competing  
14 dealers less than 3.6 miles nearby. Norwalk Toyota and Cabe Toyota both have seven competitors  
15 within 10 miles of their dealerships. The most recent Service Market Share rankings show Norwalk  
16 has the lowest SMS of any active metro dealer. Elmore and Cabe were also in the bottom 10% ranked  
17 54 & 53 out of 58 active dealers.

18 Farhat Exhibit A-75 (YTD September 2012) shows Cabe, Elmore and Norwalk were also at the  
19 bottom in PMA sales percent rankings. Cabe Toyota had the lowest PMA sales percent ranking.  
20 Conversely, DCH Torrance and Huntington Beach only have 3 competing dealers within 10 miles, and  
21 DCH Torrance has only one dealer within 5 miles. DCH Torrance is #1 in SMS while Huntington  
22 Beach is #2. Both dealers are also top performers in sales percentage within their PMA.

23 The dealers that border Cabe Toyota are among the largest and most successful in the Region  
24 (Cerritos #3, Carson #15 and Hooman #37 in rankings). Cabe Toyota's PMA is also 33.4% of the size  
25 of the other dealers in the RMA. Cabe Toyota clearly suffers from proximity challenges in addition to  
26 multiple disadvantages of a much smaller PMA. Moving Hooman even closer to Cabe Toyota and into  
27 its PMA and customer base near the 405 freeway will make it almost impossible for Cabe Toyota to  
28 improve its Sales and Service Market Share and eliminate any chance Cabe Toyota has to increase

1 revenue in these areas needed to offset the additional overhead costs from their Image II remodel.

2       Cabe Toyota receives half of the Toyota leads of other dealers in the District and Region based  
3 on its PMA and because all Cabe Toyota's zip codes are shared, competitive dealers are presented to  
4 prospective customers searching for a Toyota dealer. The result of Cabe Toyota's unusually small  
5 PMA, shared zip code, and close proximity of large competing dealers is below average Primary Market  
6 Share for both sales and service. In addition, Cabe Toyota's gross margin is impacted due to the  
7 unusual competitive circumstances.

8       75% of the UIOs in Cabe Toyota's PMA and its greatest opportunity for sales, as well as a  
9 majority of Cabe Toyota's current customer base, are those households situated near or to the north of  
10 the 405 freeway. This is the same area that Hooman Toyota is proposing to move closer to.

11       Toyota claims Cabe Toyota has tremendous potential to improve its profitability by improving  
12 sales results in its PMA. This is not realistic or logical based on Cabe Toyota's challenging  
13 circumstances.

14       Cabe Toyota has been in operation in the same location for 45 years. Cabe Toyota has  
15 continually been ranked near the bottom in sales performance. Toyota contends that, if Hooman was  
16 to relocate, suddenly Cabe Toyota could take some new or magical action that will improve its  
17 operational results and it will become an above average or top ranked dealer. In fact, the relocation will  
18 make it much more difficult to achieve the same results Cabe Toyota has achieved the previous 45  
19 years.

20       The result from the Hooman relocation will add an additional strain on the business operations  
21 that will force Cabe Toyota to close its doors. The relocation will also damage the attractiveness of  
22 Cabe Toyota's franchise to the point that if Cabe Toyota is forced to close, selling the franchise will not  
23 be an option due to the poor desirability with another competing dealer only 2 miles away on the 405  
24 freeway.

25 **5. CABE TOYOTA'S PERMANENT INVESTMENT IN IT'S TOYOTA DEALERSHIP**  
26 **WILL BE JEOPARDIZED BY THE PROPOSED RELOCATION OF HOOMAN**  
27 **TOYOTA**

28       Cabe Toyota has been a strong member of the Long Beach community for 47 years. When most

1 every other dealer left Long Beach for cheaper land in Signal Hill, Cabe Toyota supported the  
2 community of Long Beach and has continually invested in the dealership facility needs, property and  
3 community, including many local charities. Cabe Toyota is the 3<sup>rd</sup> largest tax contributor for the City.  
4 In addition to the financial investment, Cabe Toyota and its employees have put years of sweat equity  
5 into the company with an average tenure of over 10 years for all employees and over 20 years tenure  
6 for the management staff.

7 In 2006 Cabe Toyota, began to acquire additional property so it could expand its facility and be  
8 able to better serve its customers. During the next several years, Cabe invested \$3,000,000.00 on land  
9 purchases.

10 Prior to March 2010, Cabe Toyota had a six year Dealer Agreement with Toyota. The six year  
11 term Dealer Agreement is the longest term agreement that Toyota offers to its best dealers. At the  
12 expiration of this six year agreement, Toyota offered Cabe Toyota a one year Dealer Agreement.

13 On September 20, 2010, Cabe Toyota enrolled in Toyota's Image II program. Cabe Toyota has  
14 undertaken the commitment to comply with the requirements of Toyota's Image II program.

15 In March 2011, Toyota offered Cabe Toyota another one year Dealer Agreement. The stated  
16 reason Cabe Toyota was only offered a one year Dealer Agreement was because Cabe Toyota had not  
17 yet cured its facility deficiencies by completing its Image II renovation. In March 2011, Cabe Toyota  
18 was exceeding Toyota's performance standards in terms of car and truck sales efficiency, as well as all  
19 areas of customer satisfaction. Cabe Toyota's market share exceeded the regional average in both  
20 passenger car and light truck. Cabe Toyota also exceeded Toyota's performance standards for SSI and  
21 SPSI. Cabe Toyota was compliant with Toyota's capitalization and profitability standards as of its  
22 January 2011 financial statement.

23 Beginning in June 2011, Cabe Toyota began construction of its Image II renovation project. The  
24 project will cost \$4.3 million. The Image II renovation of Cabe Toyota is scheduled to be completed  
25 over the next few months.

26 To fund the Image II renovation project, Cabe Toyota has obtained a \$5.3 million construction  
27 loan with Toyota Financial Services. Cabe Toyota's Image II renovation project will increase the costs  
28 of doing business.

1 These additional costs will be borne by the dealership. Under the terms of the proposed  
2 construction loan with Toyota Financial Services, Cabe Toyota will be required to make an additional  
3 \$30,000 per month payment to Toyota Financial Services. These expenses increase the cost to Cabe  
4 Toyota to conduct business.

5 **6. SCOTT WATKINS' ANALYSIS OF THE PROPOSED RELOCATION AND EFFECT**  
6 **ON CABE TOYOTA**

7 Protestant Cabe Toyota has engaged Mr. Scott Watkins, a professional business and market  
8 analyst and senior consultant at the consulting firm of Anderson Economic Group, as an expert witness  
9 in this matter. Mr. Watkins' analysis of the market conditions for the area surrounding Protestant Cabe  
10 Toyota and the proposed relocation site, as well as the statutory "Relevant Market Area," demonstrate  
11 that there will be an adverse impact to Cabe Toyota in terms of lost sales. Mr. Watkins' testimony,  
12 together with the testimony of Mr. John Cabe and Mr. Dan Duddridge, establish that good cause exists  
13 for not allowing the proposed relocation under the California *Vehicle Code*.

14 The analysis conducted by Mr. Scott Watkins conservatively finds that Cabe Toyota will lose  
15 9.2% of its business if Hooman Toyota is allowed to relocate. This conservative estimate focused  
16 primarily on Cabe Toyota's business to the east of the dealership. However, based upon the testimony  
17 of Cabe Toyota's Operation Manager Dan Duddridge, an equal or larger impact to Cabe Toyota will  
18 come from the loss of service business to the north of Cabe Toyota.

19 Mr. Scott Watkins has prepared a Loss Gross Profit Analysis and conservatively estimates that  
20 the combined loss of new and used vehicle sales together with projected loss of service department sales  
21 (repair orders), as well as parts and accessory department sales, will result in total Lost Gross Profits  
22 of \$455,443.00 annually.

23 When this loss in sales is considered in combination with the increase in costs to Cabe Toyota  
24 as a result of its extensive Image II renovation project, which is currently in progress, the financial result  
25 is ruinous to Cabe Toyota's business.

26 Toyota's current dealership network provides adequate competition and convenient customer care  
27 within the Relevant Market Area. This is based upon the fact that Toyota has eight dealerships within  
28 the 10 mile Relevant Market Area. The market is adequately served by Toyota dealers.

1 Toyota's customer satisfaction measures, as well as retail sales effectiveness scores, show that,  
2 on the whole, consumers in the Relevant Market Area have access to adequate consumer care.

3 The proposed relocation of Hooman Toyota to the north and to the west will leave a larger  
4 number of Toyota customers with a longer distance to travel to their nearest Toyota dealership, thus  
5 reducing the level of convenient customer care.

6 The relocation of Hooman Toyota from its current location to the proposed location, only 2.2  
7 miles away from Cabe Toyota, will have a substantial negative impact on Cabe Toyota. This relocation  
8 threatens the competitive position of Cabe Toyota and puts their investment at risk.

9 The proposed relocation of Hooman Toyota will result in greater freeway access and visibility  
10 for Hooman Toyota. This will place Hooman Toyota in a position to intercept Cabe Toyota's  
11 customers.

12 **7. GOOD CAUSE EXISTS TO DENY THE PROPOSED RELOCATION OF HOOMAN**  
13 **TOYOTA**

14 *Long Beach Honda v. American Honda Motor Company*, Protest No. PR-1835-02, is a dealer  
15 relocation protest that considered the statutory factors under *Vehicle Code* §3062 in the context of the  
16 statutory 10 mile radius surrounding the proposed relocation site, or the "Relevant Market Area."  
17 (Section 507 defines the relevant market area as "any area within a radius of 10 miles from the site of  
18 a potential new dealership.") In *Long Beach Honda*, Honda had the fewest dealerships in the RMA of  
19 any other major brand. Unlike the *Long Beach Honda* case, Respondent Toyota in this pending matter  
20 has more dealers in the RMA than its competitors (Toyota has eight dealers in the RMA more than any  
21 other dealer).

22 In *Long Beach Honda*, the proposed relocation site was 4.3 miles from Protestant and the  
23 relocation site was in a different city (City of Carson). The present protest involves a move much closer  
24 to Protestant Cabe's dealership. Currently, Hooman Toyota is only 3.1 miles from Cabe Toyota and  
25 is already located in the same city. The proposed relocation in this case is distinguishable from the  
26 *Long Beach Honda* case because the proposed move will take two dealerships who are already in very  
27 close proximity and put them even closer together at a distance of only 2.2 miles from one another in  
28 the same city. In fact, the proposed relocation will put Hooman Toyota and Cabe Toyota in the same

1 zip code. The very close proximity of these two Toyota dealers will result in a substantial adverse  
2 financial impact on Cabe Toyota.

3 The impact on Cabe Toyota will be more significant than was shown in the *Long Beach Honda*  
4 case. The *Long Beach Honda* case is also distinguishable for another reason. Protestant Long Beach  
5 Honda was a very highly profitable dealership. It had earnings of over \$2,500,000 in 2002 alone, based  
6 on Honda's own profitability comparison (net to sales ratio).

7 In fact, Long Beach Honda was the most profitable Honda dealership in the State of California.  
8 Protestant Long Beach Honda could not demonstrate that the proposed relocation will threaten its  
9 financial viability. Clearly, Cabe Toyota is a much different case. In this case, Cabe Toyota has been  
10 shown to be the smallest Toyota dealer in the RMA. Cabe Toyota's profitability is much lower  
11 (profitability comparison of Cabe Toyota to other Toyota dealers in the RMA) and will not be able to  
12 withstand the adverse financial impact that will result from the proposed relocation.

13 Another fact which distinguishes the *Long Beach Honda* case from the present protest is the  
14 Protestant's relative facilities. Long Beach Honda is located at 1500 East Spring Street in the City of  
15 Signal Hill (the same Signal Hill Auto Center that is situated between Cabe Toyota and Hooman Toyota  
16 in this matter). Previously, like Cabe Toyota, Long Beach Honda was located on a small 1.1 acre  
17 facility on Long Beach Boulevard. In 1995, Long Beach Honda, like many other dealers in the area,  
18 relocated to the Signal Hill Auto Center. Since 1995, Long Beach Honda has enjoyed a "state of the  
19 art" facility which consists of 5.5 acres. Long Beach Honda's facility in Signal Hill exceeded Honda's  
20 facility guideline standards in terms of showroom size, administration area, required number of service  
21 stalls (lifts), and parts storage.

22 By comparison, Cabe Toyota does not benefit from the higher visibility and greater customer  
23 access of being located in an auto mall. Cabe Toyota does not have the benefit of the additional space  
24 and "above guide" facility as Long Beach Honda. Cabe Toyota has had to contend with the constraints  
25 of its limited facility.

26 As in the present protest, Hooman Toyota, like Harbor City Honda in the *Long Beach Honda*  
27 matter, is proposing to occupy a much larger facility which is "state of the art" and will be visible and  
28 accessible from the 405 freeway. This proposed move will give Hooman Toyota a competitive

1 advantage over Cabe Toyota.

2 The decision by Honda to support the proposed relocation in the *Long Beach Honda* case was  
3 justified by a formal market study performed by Honda. In the present protest, Toyota did not perform  
4 a formal market study as part of its decision to approve the proposed relocation. The evidence  
5 demonstrates that Toyota had, for years, turned down Hooman Nissani's repeated requests to relocate  
6 to the Coast Cadillac site. [See Exs 1016, 1017, 1018, 1042 p. 5, 1097, 1099, 1100, 1102 p. 1; 1105  
7 pp. 4-5, 1111, 1117, 1119, 1138, 1141, 1147 p. 1] It was not until February 23, 2012, when counsel  
8 for Hooman Nissani threatened Toyota with litigation, that the request to relocate was suddenly given  
9 approval by Toyota. [See Ex 1150]

10 Prior decisions of the NMVB support the conclusion that good cause exists not to permit the  
11 proposed relocation. In the *Long Beach Honda* case, the proposed relocation of Harbor City Honda was  
12 supported by a "optimal location analysis" which determined that a location very close to the proposed  
13 relocation site in Carson would be the optimal location to maximize customer convenience. In this  
14 matter, the proposed relocation of Hooman Toyota moves the dealership away from the center of its  
15 assigned PMA, which is less than optimal.

16 In the *Long Beach Honda* matter, the Protestant presented expert testimony from Dr. Earnest  
17 Manuel of the Fontana Group (the same automobile industry consulting firm as relied upon in this  
18 matter by Intervenor Hooman Toyota). Long Beach Honda's expert presented an impact analysis which  
19 predicted a weighted figure of 16% lost sales due to the foreseeable increased sales competition from  
20 the relocating dealer 4.3 miles away in the City of Carson. This predicted loss would result in the loss  
21 of around 137 sales per year. Taking into consideration the effect of those lost sales on each of the  
22 dealership's departments, Long Beach Honda claimed that it would lose around \$500,000 in profit  
23 annually. This calculation of lost sales and their corresponding decrease in profits to the dealership is  
24 strikingly similar to the loss in profits that Cabe Toyota will experience as a result of the proposed  
25 relocation of Hooman Toyota (Cabe Toyota's expert Scott Watkins opined that Cabe Toyota will see  
26 a loss of \$455,000.00 based on Cabe Toyota's 2011 financials). The important distinguishing fact here  
27 is that Cabe Toyota does not have the financial ability to withstand such an economic blow.

28 There is little doubt that the proposed relocation of Hooman Toyota to a much larger, more

1 accessible and freeway visible location on the 405, only 2.2 miles away from Cabe Toyota, will increase  
2 the already very high level of competition for available local customers between these two dealers. As  
3 the Board found in the *Long Beach Honda* case, if Cabe Toyota does not have the opportunity or ability  
4 to increase its penetration of the market, it will certainly lose sales to Hooman Toyota and its already  
5 modest level of profit will be further decreased (*Long Beach Honda, supra*, at 9:20-24).

6 Because Cabe Toyota is not the most profitable Toyota dealer in the State of California, as Long  
7 Beach Honda was for the Honda brand, the conclusion that the resulting increase in competition would  
8 not be ruinous to Cabe Toyota is not supported by the facts here. Given Cabe Toyota's relative size in  
9 the local market, the increase in its operational costs as a result of its current facility expansion and  
10 renovation and the even closer proximity of Hooman Toyota's proposed relocation, the facts of this  
11 Protest compel a different result. Based on the same considerations reflected in the *Long Beach Honda*  
12 decision, good cause does exist to deny the proposed relocation of Hooman Toyota to a much larger  
13 facility on the 405 freeway only 2.2 miles from Cabe Toyota.

14 The more recent decision in *Walter Timmons Enterprises, Inc. v. Volkswagen Group of America,*  
15 *Inc.*, Protest No. PR-2146-09, also provides compelling authority for the denial of the proposed  
16 relocation by Hooman Toyota.

17 The *Timmons Volkswagen* protest was also a relocation case that considered the same statutory  
18 factors set forth in Vehicle Code section 3062. Protestant Timmons Volkswagen was located at 3940  
19 Cherry Avenue in the City of Long Beach, California, not far from where Cabe Toyota is located. The  
20 proposed relocating dealer, McKenna VW - Norwalk, was located at 10850 Firestone Boulevard in the  
21 City of Norwalk, California. The distance between those two dealership locations was 7.5 miles.

22 The proposed relocation of McKenna VW - Norwalk would have moved the dealership south  
23 approximately four miles down the 605 freeway to the Cerritos Auto Square. The proposed relocation  
24 site at the Cerritos Auto Square would have put McKenna VW - Norwalk a distance of 4.6 miles away  
25 from the Protestant Timmons Volkswagen in the City of Long Beach.

26 In the *Timmons Volkswagen* matter, the Board found good cause existed to deny the proposed  
27 relocation of McKenna VW - Norwalk. As with the proposed relocation of Hooman Toyota, the  
28 proposed relocation of McKenna VW - Norwalk would have relocated the dealership to the outer edge

1 of its assigned “Primary Market Area of Influence” or PAI<sup>1</sup> (what would be comparable to the PMA  
2 assigned to dealers by Toyota).

3 As with the pending protest concerning Hooman Toyota, the manufacturer, Volkswagen, did not  
4 perform a formal market study prior to the protest being filed (*Timmons Volkswagen, supra*, at 11:2-4,  
5 14:16-19).

6 Like Cabe Toyota, Protestant Timmons Volkswagen is a second generation family owned  
7 dealership in Long Beach for 30 plus years. Like John Cabe, Greg Timmons’ father started the business  
8 and he has been involved in the business for many years before assuming the role of General Manager.

9 Like Cabe Toyota is in the process of doing now, Timmons Volkswagen invested considerable  
10 money into expanding and renovating its facility in Long Beach to meet the manufacturer’s facility  
11 standards.

12 Similar to Hooman Toyota in the pending protest, McKenna VW - Norwalk contended that its  
13 existing Volkswagen facility, located in the same facility as the Audi dealership, was not “ideal.” As  
14 Hooman Nissani promised Toyota in the past, McKenna VW - Norwalk promised the manufacturer that  
15 it would build an improved facility.

16 Also similar to the pending protest, the proposed relocation site in the *Timmons Volkswagen*  
17 matter was an existing vacant dealership facility (a former Volvo dealership located at the Cerritos Auto  
18 Square). Like Hooman Nissani, Mr. Danny McKenna secured the proposed relocation site (by  
19 purchasing the land rather than leasing it as Mr. Nissani has done) before the proposed relocation was  
20 permitted. This lot was however “unsalable” (*Timmons Volkswagen, supra*, at 15:9-15). Despite  
21 McKenna VW - Norwalk’s multi-million dollar investment in this proposed relocation site, the Board  
22 still found that there was good cause not to allow the proposed relocation.

23 In the *Timmons Volkswagen* decision, the Administrative Law Judge found that the second largest  
24 cluster of dealerships in the RMA, after the Cerritos Auto Square, was the Long Beach - Signal Hill  
25 area (at 15:20-22). The proposed relocation of Hooman Toyota will effectively put two Toyota  
26 dealerships each at opposite ends of the same cluster of dealerships. This will be the equivalent of  
27

28 <sup>1</sup>In the *Timmons Volkswagen* case, Volkswagen proposed to “right size” the respective PAIs of the two dealers  
by increasing McKenna VW - Norwalk’s PAI and reducing the size of Protestant Timmons Volkswagen’s assigned PAI.

1 having two Toyota dealers in the same auto center.

2 As with the proposed relocation of Hooman Toyota, the proposed relocation of McKenna VW -  
3 Norwalk would have moved the dealership further away from many of its customers (*Timmons*  
4 *Volkswagen, supra*, 16:11-12).

5 The only benefit to be gained by the proposed relocation of Hooman Toyota is a financial gain  
6 to Hooman Toyota. It asserts that it will be less expensive for Hooman Toyota to occupy the vacant  
7 Coast Cadillac facility located at the very edge of its defined PMA rather than construct an improved  
8 facility elsewhere. While such a move may indeed serve the financial interests of Intervenor Hooman  
9 Toyota, such a move is not properly permissible if, as here, it comes at the expense of Cabe Toyota.

10 It was previously determined at the outset of this hearing that the ruling upon Respondent's  
11 Motion in Limine to exclude evidence established that no evidence of other alternate sites will be  
12 permitted and that for the purposes of this matter, it will be presumed that other viable options for  
13 Hooman Toyota could be found if this particular relocation site is denied (May 30, 2013 Reporter's  
14 Transcript of Telephonic Hearing, 83:3-22).

15 As with the pending protest, the *Timmons Volkswagen* case did not involve a proposed relocation  
16 to an "open point." In the pending matter, Hooman Toyota does not propose to move to an open point  
17 in order to fill a gap in an under-served market. Instead, the evidence in this matter is that the local  
18 market is already adequately served by the eight Toyota dealers in the RMA.

19 As the decision in the *Timmons Volkswagen* case points out, the statutory inquiry requires a  
20 balancing of the sometimes competing interests of manufacturers and dealers (23:11-16). The decision  
21 in the *Timmons Volkswagen* case concluded that the proposed relocation of another Volkswagen dealer  
22 only 4.6 miles away would not increase competition in a desirable sense but instead would put the two  
23 dealers in a "competitive struggle" for the same customers in a bad economy (27:19-22). The public  
24 interest is **not** served by a situation where it is likely that one or both dealers will be harmed. In this  
25 case, it is clear that the proposed relocation of Hooman Toyota to a larger, more favorable freeway  
26 location only 2.2 miles from Cabe Toyota, in the same city, in the same zip code and competing for  
27 customers in the same market area, will be detrimental to Cabe Toyota.

28 The facts of the pending protest are more compelling than those of the *Timmons Volkswagen*

1 case. Giving weight to the same statutory factors, the Board determined that there was good cause to  
2 not permit McKenna VW - Norwalk to relocate. Given the facts of this case, the same result should  
3 follow. Hooman Toyota should not be permitted to relocate to a site only 2.2 miles away from Cabe  
4 Toyota.

5 **8. HOOMAN TOYOTA OF LONG BEACH'S HISTORY OF FINANCIAL AND**  
6 **OPERATIONAL PROBLEMS**

7 Within only a few months of Mr. Hooman Nissani assuming ownership and control of the Toyota  
8 of Long Beach location, Toyota began having great concerns with several areas of Hooman Toyota's  
9 operation. As early as September 23, 2008, Toyota began documenting the numerous concerns with  
10 Hooman Toyota. These concerns included: questionable financial transactions, the failure to submit  
11 timely financial statements, misrepresenting the facts on the dealership financial statements, failing to  
12 make timely payments to Toyota, deficiencies in the dealership's net worth (below \$7,000,000.00  
13 minimum), and deficiencies in net working capital.

14 Hooman Toyota of Long Beach also was discovered to be "out of trust" in material breach of its  
15 obligations to Toyota.

16 The ongoing problems with the operation of Hooman Toyota resulted in Toyota conducting two  
17 financial audits of the records of the dealership.

18 When Hooman Toyota's two year dealer agreement expired on January 8, 2010, it was not  
19 renewed by Toyota. Instead, Hooman Toyota's Dealer Agreement was placed on a number of three  
20 month extensions. Then, beginning on June 20, 2011, Hooman Toyota was placed on a series of one  
21 month extensions of its Dealer Agreement.

22 The numerous financial problems with Hooman Toyota's operation persisted through the years.  
23 On June 22, 2011, Toyota issued a 180-Day Notice to Cure to Hooman Toyota.

24 On August 3, 2011, Toyota sent Hooman Toyota a follow-up letter reiterating the numerous  
25 deficiencies Hooman Toyota was required to cure or face possible termination of its Dealer Agreement.

26 The past five years of Hooman Toyota's operations shows a persistent pattern of financial  
27 problems and material breaches of the dealership's obligations to Toyota and its lenders.

28 ///

1 **9. TOYOTA’S APPROVAL OF HOOMAN TOYOTA’S REQUEST TO RELOCATE IS**  
2 **BASED ON INCOMPLETE AND/OR INACCURATE INFORMATION AND TOYOTA**  
3 **REPEATEDLY TURNED DOWN HOOMAN TOYOTA’S REQUEST TO RELOCATE**

4 On February 9, 2009, Hooman Nissani requested Toyota’s support to relocate to the previous  
5 Coast Cadillac facility located at 3399 E. Willow Street, Long Beach, California 90806.

6 On or about February 11, 2009, Toyota Representative Dennis Thornhill and Jeff Bracken  
7 discussed Hooman Toyota’s relocation to the Coast Cadillac facility. It was noted in an email by Mr.  
8 Thornhill that, “The Coast Cadillac site is subject to protest and based upon the new proximity to Cabe  
9 Bros. of only 2.18 miles, the likelihood of success seems challenging.”

10 In a subsequent letter dated February 12, 2009, Hooman Nissani stated to Toyota, in regard to  
11 his relocation request, that, “As you know, our goal from day one has been to relocate this location.”

12 From the outset, Hooman Nissani sought to relocate to the Coast Cadillac site.

13 In a meeting with Jeff Bracken and Mike Durby on July 24, 2009, Mr. Hooman Nissani again  
14 expressed his desire to move the dealership to the Coast Cadillac site. Mr. Jeff Bracken noted that he  
15 had previously advised Mr. Nissani that the Coast Cadillac location is problematic for the following  
16 reasons:

- 17 1) The proposed location is closer to Cabe Toyota.
- 18 2) The proposed location is more than one mile from Hooman Toyota’s current facility.
- 19 3) Hooman Toyota’s instability in current operations.

20 Early on, Hooman Nissani had an opportunity to purchase the land for his sales department as  
21 well as the service department from landlord The Bixby Land Co. The real estate broker working on  
22 behalf of The Bixby Land Co., Mr. Patrick Toomey approached Mr. Nissani and provided him with an  
23 offering memorandum concerning the property which Hooman Toyota occupied as being offered for  
24 sale. Hooman Nissani passed on this opportunity to invest in his Long Beach Toyota dealership and  
25 make that investment permanent.

26 Subsequently, the parcels were sold. The sales department land (4401 E. Pacific Coast Highway)  
27 was sold to CVS. The service department land (1775 Ximeno Avenue) was sold to a “private investor.”

28 Mr. Hooman Nissani subsequently entered into negotiations with CVS Realty representative

1 Kristen Holst to purchase the property for the sales department. Mr. Nissani did not reach a deal.  
2 Again, Mr. Nissani passed on an opportunity to make his investment in the Long Beach Toyota  
3 dealership permanent.

4 Despite Mr. Nissani's ongoing financial problems at Hooman Toyota, Mr. Nissani did, however,  
5 purchase a Nissan dealership located in Signal Hill between Hooman Toyota of Long Beach and Cabe  
6 Toyota of Long Beach.

7 On December 17, 2010, Toyota notified Hooman Nissani, in writing, that he was not in  
8 compliance with his agreement to complete the required Image II upgrade of his facility by  
9 December 31, 2010.

10 On May 16, 2011, Mr. Steve Hearne wrote a letter to Mr. Hooman Nissani regarding the ongoing  
11 financial issues and irregularities concerning the Hooman Toyota dealership. In this letter, Mr. Hearne  
12 states that "Dealer must provide and agree to a new facility timeline and funding plan to correct its  
13 deficiencies within 14 days."

14 On June 22, 2011, Toyota issued Hooman Nissani a 180 Day Notice to Cure various material  
15 breaches of the terms of his Toyota Dealer Agreement. One of these specific deficiencies was the  
16 failure of Hooman Toyota to construct an Image II facility meeting all TMS guides no later than  
17 December 31, 2010.

18 On June 24, 2011, in response to this 180 Day Notice to Cure letter, Hooman Nissani made an  
19 official written request to relocate the dealership to the Coast Cadillac site (3399 E. Willow Street,  
20 Long Beach, California 90806).

21 On July 11, 2011, Mr. Steve Hearne wrote a letter to Mr. Hooman Nissani regarding his request  
22 to relocate the Hooman Toyota dealership to the Coast Cadillac location at 3399 E. Willow Street. Mr.  
23 Hearne again noted that the proposed relocation site was over 1 mile from the current location and  
24 would be subject to protest under the California Vehicle Code. He stated this would be problematic  
25 because, among other reasons:

- 26 1) The proposed location is closer to Cabe Toyota (2.18 miles away vs the current 3.08 miles).
- 27 2) No fewer than seven dealers would have the right to protest a relocation to this site.
- 28 3) Hooman Toyota's capitalization issues make the viability of a relocation questionable.

1 Based upon the financial irregularities identified in two audits Toyota has conducted of Hooman  
2 Toyota, and persistent capitalization deficiencies, Toyota questioned whether Hooman Toyota had the  
3 financial capacity to undertake a relocation. Mr. Hearne concluded by stating that Toyota did not have  
4 enough information to fully evaluate the proposed relocation.

5 On July 27, 2011, Hooman Nissani met with representatives of Toyota and told them of his plan  
6 to relocate to the Coast Cadillac facility and that he had found an investor (Dr. Sean Leoni) lined up  
7 who would replace Kevin Golsham as 25% owner of the dealership, and contribute approximately  
8 \$2,000,000.00 capital into the dealership, contingent upon approval of the relocation of the facility.

9 On August 3, 2011, Steve Hearne wrote to Mr. Nissani reiterating that the proposed relocation  
10 had been discussed and would be problematic because, among other reasons, the proposed relocation  
11 is closer to Cabe Toyota (2.18 miles away vs. the current 3.08 miles). Mr. Hearne also noted that, given  
12 the questions regarding Hooman Toyota's capitalization, TMS did not have enough information to fully  
13 evaluate the relocation request or conclude that such a proposal was viable.

14 Hooman Nissani has subsequently never demonstrated that the proposed relocation to 3399 E.  
15 Willow Street is viable.

16 On September 7, 2011, Mr. Steve Hearne again wrote to Mr. Nissani stating that Mr. Nissani had  
17 failed to substantiate his proposed relocation and that Toyota had not been provided with sufficient  
18 information to evaluate the proposal.

19 Toyota further questioned Mr. Nissani's business dealing when it came to Toyota's attention that  
20 a lawsuit had been filed against Mr. Nissani, and other's including Sean Leoni, alleging, among other  
21 things, that Mr. Nissani had induced the plaintiffs (the Kahrobaves) to borrow money (\$3,000,000.00)  
22 and contribute the funds to help purchase the Hooman Toyota dealership.

23 On December 2, 2011, Toyota informed Mr. Hooman Nissani that, based on the fact that  
24 information submitted previously by Hooman Toyota was discovered to be inaccurate, another audit  
25 would be conducted of the financial records of Hooman Toyota. However, Toyota indicated that it  
26 would evaluate the proposed relocation in accordance with its site evaluation policies and procedures.

27 At this point in time, Hooman Toyota was still in breach of its obligations to Toyota. However,  
28 on December 22, 2011, Toyota extended the 180 Day Notice to Cure period to June 8, 2011.

1 Toyota representatives discussed with Hooman Nissani the fact that the extremely limited time  
2 frame in which Mr. Nissani had requested site approval did not provide TMS with enough time to  
3 conduct due diligence and thoroughly analyze the proposed relocation.

4 On February 9, 2012, Mr. Steve Hearne wrote to Mr. Hooman Nissani and stated that TMS was  
5 conducting it's own further due diligence into Hooman Toyota's ownership and capitalization  
6 discrepancies and has determined not to proceed with a site evaluation for the proposed relocation until  
7 it had further reviewed these concerns. Mr. Hearne stated that based on the responses received from  
8 multiple dealers and other relevant factors, TMS had determined that it would not support or authorize  
9 relocation by Hooman Toyota to the former Cadillac location at 3399 Willow Street.

10 On February 23, 2012, Mr. Hooman Nissani's counsel, Mr. Michael J. Flannagan, wrote a letter  
11 to Mr. Steve Hearne at Toyota. Mr. Flannagan's letter stated that Hooman Nissani had already executed  
12 a lease with an option to purchase the proposed relocation site and that, unless TMS issued the statutory  
13 notices required for Hooman's relocation on or before February 28, 2012, the owner of the property  
14 would pursue another buyer. Further, Mr. Flannagan's letter stated that if Hooman's relocation  
15 proposal was not approved without further delay and the statutory notice sent, Hooman would incur  
16 losses in excess of \$12,000,000.00.

17 Suddenly, the threat of litigation by Hooman Toyota changed Toyota's evaluation of the proposed  
18 relocation.

19 Toyota and Hooman struck a deal. Toyota would agree to support the relocation if Hooman  
20 Nissani agreed to pay the legal costs to defend the anticipated protests.

21 The approval of Hooman Toyota's relocation suddenly proceeded quickly, without appropriate  
22 due diligence or analysis of the information provided by Mr. Nissani.

23 On July 20, 2012, Mr. Steve Hearne wrote a letter memorializing Toyota's agreement with  
24 Hooman Nissani that Hooman Toyota would contribute \$500,000.00 toward the cost of defending the  
25 anticipated legal protests and that Toyota was now relying on the commitment of Dr. Sean Leoni as the  
26 source of funds for Hooman Toyota's proposed relocation and construction.

27 Shortly thereafter, on July 26, 2012, Toyota issued its Site Request Transmittal requesting  
28 authorization of the complete relocation of all of Hooman Toyota's operations.

1 This request was approved without adequate or proper due diligence or verification of the  
2 information provided by Hooman Nissani. Hooman Toyota has consistently misrepresented  
3 information to Toyota regarding the amount of his facility rent, his rights to the freeway reader board  
4 sign located at the proposed relocation site, the challenges regarding his current facility, and his  
5 dealership's service volume. No Pro Forma was prepared as required by Toyota's site evaluation  
6 procedures. The figures relied upon in the evaluation process were not verified or accurate. No  
7 market study was conducted. Toyota executive management spent just a few hours reviewing a few  
8 sales reports that did not provide any information that could be used to reliably predict an outcome or  
9 impact from a relocation. [Doug Eroh, RT Vol. 10, 202:12-19] No service data was reviewed by the  
10 executive management decision team.

11 On July 30, 2012, Toyota granted approval of the site relocation conditioned upon certain  
12 conditions. These conditions included:

- 13 – A final resolution of the protest satisfactory to Toyota.
- 14 – Until the protest is resolved in the dealer's favor, the site approval is of no force and  
15 effect.
- 16 – Any financial commitments made by the dealer prior to the resolution of any protest are  
17 at the dealer's own risk and Toyota shall not bear any liability therefore.
- 18 – Receipt and approval of a Pro Forma, including compliance to net working capital  
19 requirements.
- 20 – Confirmation of receipt of funds in the amount of \$500,000.00, which shall represent  
21 dealer's contribution toward Toyota's anticipated legal fees and expenses to defend the  
22 protests.

23 **10. THE PROPOSED RELOCATION OF HOOMAN TOYOTA WILL SEVERELY IMPACT**  
24 **CABE TOYOTA**

25 Relocating Hooman Toyota from the Traffic Circle, located on the opposite side of town from  
26 Cabe Toyota, to the proposed freeway location will likely cripple Cabe Toyota to the point that it will  
27 no longer be able to provide adequate service for its customers and will, in the end, put Cabe Toyota  
28 out of business. Currently, Hooman Toyota and Cabe Toyota are separated by the industrial area and

1 Signal Hill, a very small city of only 2.2 square miles and a population of only 11,016 people. The  
2 relocation will move Hooman Toyota to the 405 freeway, only 2 miles from Cabe Toyota. 10% of Cabe  
3 Toyota's UIO from census tracks will now be closer to Hooman Toyota. Even more troubling is the  
4 fact that 75% of the units in operation in Cabe Toyota's PMA are located in the zipcodes that touch or  
5 are located north of the 405 freeway. The majority of Cabe Toyota's service and parts customers are  
6 located in this north, northeast area of its PMA. JD Powers and other studies show that location is the  
7 top criteria when choosing a Toyota service facility. Since the majority of Cabe Toyota's customers  
8 and Toyota owners will have similar drive time to either the proposed Hooman Toyota or Cabe Toyota  
9 location, and the proposed Hooman Toyota location will be much larger and much more visible than  
10 the Cabe Toyota location, it will be logical to predict that a large number of Cabe Toyota's customers  
11 will be cannabalized by Hooman Toyota. With the added cost of Cabe Toyota's new facility, a  
12 conservative loss of gross profits nearing 10% will be devastating for Cabe Toyota, and even a minimal  
13 loss of 3% will have resulted in an annual financial loss for Cabe Toyota in every year for the past 7  
14 years.

15 The proposed Hooman Toyota relocation will move the dealership further from its core client  
16 base, high traffic area and local retail benefits enjoyed by its current customers. The move will not  
17 better serve its PMA, but allow Hooman a better opportunity to become a mega freeway dealer and take  
18 business from other Toyota dealers like Cabe Toyota.

19 The proposed Hooman relocation will place Hooman into the same zip code as Cabe Toyota. The  
20 relocation will make an already confusing situation with two dealers in the same City even worse. Cabe  
21 Toyota does not have the same benefit of a large digital reader board sign located on the freeway  
22 supported by the City or high traffic area currently enjoyed by Hooman. In addition Hooman Toyota  
23 will be relocating into Cabe Toyota's PMA as defined by ELMS (Toyota's lead management system).  
24 This will further negatively impact leads that Cabe Toyota receives from Toyota. Cabe Toyota will be  
25 unable to realize the return on its investment in its new facility and will likely be put out of business.

26 ///  
27 ///  
28 ///

1 **11. THE PROPOSED RELOCATION OF HOOMAN TOYOTA WILL NOT BE IN THE**  
2 **BEST INTERESTS OF THE TOYOTA BRAND BECAUSE IT WILL HARM THE**  
3 **INTERESTS OF CABE TOYOTA**

4 As a result of the relocation, Cabe Toyota will either lose customers and market share, which will  
5 weaken its ability to provide adequate service for its customers, or go out of business. In either case,  
6 Hooman Toyota, with a much lower customer satisfaction ranking, will gain customers at the expense  
7 of Cabe Toyota, a top ranked customer service dealership. Hooman Toyota sells more vehicles than  
8 Cabe Toyota. However, Hooman Toyota has not performed as well as Cabe Toyota in terms of  
9 customer satisfaction. Toyota customer satisfaction reports show Hooman Toyota ranked 75 out of 76  
10 Toyota dealers in Sales Satisfaction for 2012, and Cabe Toyota ranked six. Hooman Toyota ranked  
11 51 in Service Satisfaction, and Cabe Toyota ranked 18. Hooman Toyota has far more customer  
12 complaints than Cabe Toyota according to Toyota's own customer handling information. In 2012, Cabe  
13 Toyota had only 14 open cases (customer complaints) out of 386 for the entire region. For the same  
14 period, Hooman Toyota had 64. This larger number is not attributable to Hooman selling more  
15 vehicles. It is instead an excessively large number of complaints for its size and a much greater  
16 percentage of the entire Region. In 2011, Hooman Toyota had 81 such complaints as compared to Cabe  
17 Toyota's 22. In 2010, Hooman Toyota had 103 complaints as compared with Cabe Toyota's 36.

18 When Mr. Hooman Nissani took over the operation of the Toyota of Long Beach location, he  
19 implemented a VIP Customer Program which he has aggressively marketed since acquiring the  
20 dealership. This VIP advertising campaign advertises free lube oil and filter changes, free tires for life,  
21 free car washes, free flat tire repair, free road hazard replacement, and free loaner vehicles for as long  
22 as you own your car when you purchase your vehicle from Hooman Toyota. This advertisement of free  
23 merchandise, gifts or services provided by a dealer contingent on the purchase of a vehicle is a violation  
24 of California *Vehicle Code* section 11713.1(h) and by statute constitutes an unlawful act by such dealer.

25 Hooman Toyota's "VIP" customer program violates California law and is injurious to the public  
26 and not good for the Toyota brand.

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**12. CONCLUSION**

Based on the foregoing, the evidence will demonstrate that giving consideration to all the relevant facts and circumstances there is good cause not to permit the proposed relocation.

Respectfully submitted,

DATED: August 15, 2013

**FERRUZZO & FERRUZZO**

By: \_\_\_\_\_

Gregory J. Ferruzzo, Esq.  
Vasko R. Mitzev, Esq.  
Attorneys for Protestant CABE BROTHERS dba  
CABE TOYOTA and CABE SCION

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



**Service List**

For the Consolidated Cases of:  
 NMVB Protest Nos. PR 2339-12, PR 2340-12, PR 2341-12, PR 2342-12 and PR 2343-12

<p>Patricia R. Britton, Esq.          Nelson Mullins Riley &amp; Scarborough LLP          Atlantic Station, 201 17th Street N.W., Suite 1700          Atlanta, Georgia 30363          Ph: 404-322-6000          Fax: 404-322-6050          E-mail: patricia.britton@nelsonmullins.com</p>	<p>Attorneys for Respondent,          Toyota Motor Sales, U.S.A., Inc.</p>
<p>Steven A. McKelvey, Jr., Esq.          S. Keith Hutto, Esq.          Steven B. McFarland, Esq.          Nelson Mullins Riley &amp; Scarborough LLP          1320 Main Street, 17th Floor          Post Office Box 11070 (29211-1070)          Columbia, South Carolina 29201          Ph: 803-799-2000          Fax: 803-255-9043          E-mail: steve.mckelvey@nelsonmullins.com          keith.hutto@nelsonmullins.com          steven.mcfarland@nelsonmullins.com</p>	<p>Attorneys for Respondent,          Toyota Motor Sales, U.S.A., Inc.</p>
<p>Halbert B. Rasmussen, Esq.          Timothy D. Robinett, Esq.          Manning Leaver Bruder &amp; Berberich          5750 Wilshire Boulevard, Suite 655          Los Angeles, California 90036-3637          Ph: 323-937-4730          Fax: 323-937-6727          E-mail: hrasmussen@manningleaver.com</p>	<p>Attorneys for Protestants          Aldon, Inc. dba Carson Toyota and          Carson Scion</p>
<p>Michael J. Flanagan, Esq.          Gavin M. Hughes, Esq.          Law offices of Michael J. Flanagan          2277 Fair Oaks Boulevard, Suite 450          Sacramento, California 95825          Ph: 916-646-9100          Fax: 916-646-9138          E-mail: lawmjf@msn.com</p>	<p>Attorneys for Intervenor          H.T.L. Automotive, Inc. dba Hooman          Toyota of Long Beach and Hooman Scion          of Long Beach</p>
<p>California New Motor Vehicle Board          1507 21st Street, Suite 330          Sacramento, California 95811</p>	<p>Ph: 916-445-1888          Fax: 916-323-1632          E-mail: nmvb@nmvb.ca.gov</p>