

1 NEW MOTOR VEHICLE BOARD
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CERTIFIED MAIL

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7 STATE OF CALIFORNIA
8 NEW MOTOR VEHICLE BOARD

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10 In the Matter of the Protest of

11 ALDON, INC., a California corporation, dba
CARSON TOYOTA,

12 Protestant,

13 v.

14 TOYOTA MOTOR SALES U.S.A., INC., a
California corporation,

15 Respondent,

16 H.T.L. AUTOMOTIVE INC., dba HOOMAN
17 TOYOTA OF LONG BEACH and HOOMAN
SCION OF LONG BEACH,

18 Intervenor.

19 In the Matter of the Protest of

20 ALDON, INC., a California corporation, dba
21 CARSON SCION,

22 Protestant,

23 v.

24 TOYOTA MOTOR SALES U.S.A., INC., a
California corporation,

25 Respondent,

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

28 Intervenor.

Protest No. PR-2339-12

**ORDER GRANTING IN PART AND
DENYING IN PART INTERVENOR'S
AND RESPONDENT'S JOINT
MOTION TO STRIKE CABE
TOYOTA'S POST-HEARING
OPENING BRIEF**

Protest No. PR-2340-12

1 In the Matter of the Protest of

2 CABE BROTHERS, a California corporation, dba
3 CABE TOYOTA and CABE SCION,

Protest No. PR-2341-12

4 Protestant,

5 v.

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

7 Respondent,

8 H.T.L. AUTOMOTIVE INC., dba HOOMAN
9 TOYOTA OF LONG BEACH and HOOMAN
10 SCION OF LONG BEACH,

11 Intervenor.

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7 An informal telephonic conference in this proceeding was held on Friday, August 23, 2013, before
8 Victor D. Ryerson, an Administrative Law Judge ("ALJ") for the New Motor Vehicle Board. Franjo
9 Dolenac, Esq. of Manning, Leaver, Bruder & Berberich represented Protestants Aldon, Inc., a California
10 corporation, dba Carson Toyota and Aldon, Inc., a California corporation, dba Carson Scion. Gregory J.
11 Ferruzzo, Esq. of Ferruzzo & Ferruzzo, LLP represented Protestant Cabe Brothers, a California
12 corporation, dba Cabe Toyota and Cabe Scion ("Cabe Toyota"). S. Keith Hutto, Esq. and Steven B.
13 McFarland, Esq. of Nelson Mullins Riley & Scarborough, LLP represented Respondent Toyota Motor
14 Sales, U.S.A., Inc. ("Toyota"). Michael J. Flanagan, Esq. and Danielle R. Vare, Esq. of the Law Offices
15 of Michael J. Flanagan represented Intervenor H.T.L. Automotive Inc., dba Hooman Toyota of Long
16 Beach and Hooman Scion of Long Beach ("Hooman Toyota").

17 During the informal conference, counsel for the parties stipulated to a briefing schedule and also to
18 allow ALJ Ryerson to rule on the motion without hearing oral arguments.

19 On August 30, 2013, Intervenor Hooman Toyota and Toyota filed a joint motion to strike Cabe
20 Toyota's Post-Hearing Opening Brief.

21 On September 5, 2013, Cabe Toyota filed its Opposition to Motion to Strike Post-Hearing
22 Opening Brief.

23 After consideration of the pleadings, IT IS HEREBY ORDERED that:

24 Intervenor's and Respondent's Joint Motion to Strike Cabe Toyota's Post-Hearing Opening Brief is
25 GRANTED in part and DENIED in part, as follows:

26 1. The references in Cabe Toyota's Post-Hearing Opening Brief (Cabe's Brief) to earlier
27 Board cases are permissible, and shall not be stricken. Even if Government Code section 11425.60 were a
28 limitation upon parties' citation of cases as binding precedent, that is not the circumstance here. There is
no restriction against a party citing Board cases as persuasive authority, and the Board will not impose
such a limitation in this instance. The discussion of the cases in Cabe's Brief constitutes fair argument,

1 and will not be stricken.

2 2. Any references to, or discussion of, dealership locations Hooman Toyota may have
3 considered other than the former Coast Cadillac dealership location at issue in the proceeding and its
4 current (i.e. Traffic Circle) location are improper, and shall be stricken from Cabe's Brief wherever they
5 appear. However, references to attempted expansion of Hooman Toyota's current location by acquisition
6 of contiguous parcels or other enhancements of its present dealership are relevant to the existing
7 circumstances of this case and to the good cause factors, and the Board will not preclude Cabe Toyota
8 from referring to such facts, whether or not Cabe Toyota determines to do so.

9 3. The Board only requires parties to include specific references to testimony, exhibits, or
10 other parts of the record in their proposed findings, and for that reason, no part of Cabe Toyota's Brief will
11 be stricken by reason of the omission of such references. Reference in briefs to proposed findings, or to
12 the evidence cited in support thereof, is helpful to the Board and therefore desirable, but it is not required.
13 In any event, it appears that Cabe Toyota has addressed the objection raised by the Intervenor and
14 Respondent in their Joint Motion by serving its Exhibit "A" with its Opposition to the present motion.

15 SO ORDERED.

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17 DATED: September 6, 2013.

NEW MOTOR VEHICLE BOARD

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19 By


VICTOR D. RYERSON
Administrative Law Judge