

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)	CONSOLIDATED MATTERS:
13	ALDON, INC., a California corporation, dba)	PROTEST NO. PR-2339-12
14	CARSON TOYOTA, and)	
15	ALDON, INC., a California corporation, dba)	PROTEST NO. PR-2340-12
16	CARSON SCION, and)	
17	CABE BROTHERS, a California corporation,)	PROTEST NO. PR-2341-12
18	dba CABE TOYOTA and CABE SCION, and)	
19	Protestants,)	PROTESTANT CABE TOYOTA'S
20	v.)	PROPOSED FINDINGS OF FACT
21	TOYOTA MOTOR SALES, U.S.A., INC., a)	
22	California corporation,)	
23	Respondent.)	
<hr/>			
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 dba CABE TOYOTA AND CABE SCION (hereinafter "Cabe Toyota") hereby submits its Proposed Findings of Fact as follows:

29 ///
30 ///
31 ///

1 **1. PROCEDURAL BACKGROUND**

2 By letter dated August 2, 2012, Toyota Motor Sales, U.S.A., Inc. (hereinafter "TMS") gave notice
3 pursuant to Vehicle Code Section 3062(a) to Cabe Toyota and six other Toyota dealers of its intention
4 to relocate Hooman Toyota from 4401 E. Pacific Coast Highway, Long Beach, California, 90804 to
5 3399 East Willow Street and 2679 Redondo Avenue, Long Beach, California 90806.

6 On August 22, 2012, Cabe Toyota timely filed a Protest pursuant to Vehicle Code Section 3062
7 with the Board.

8 On August 16, 2012, Aldon, Inc. dba Carson Toyota (hereinafter "Carson Toyota") timely filed
9 a Protest pursuant to Vehicle Code Section 3062 with the Board.

10 On August 29, 2012, H.T.L. Automotive, Inc. dba Hooman Toyota (hereinafter "Hooman
11 Toyota") filed an application to intervene.

12 On September 10, 2012, the Protests of Cabe Toyota and Carson Toyota were consolidated.

13 On September 25, 2012, the application of Hooman Toyota to intervene was granted.

14 Throughout these proceedings, the parties have been represented by their respective counsel as
15 follows:

16 Cabe Toyota has been represented by Gregory J. Ferruzzo, Esq. of Ferruzzo & Ferruzzo, LLP,
17 3737 Birch Street, Suite 400, Newport Beach, California 92660.

18 Carson Toyota has been represented by Halbert B. Rasmussen, Esq. and Franjo M. Dolenac, Esq.
19 of Manning Leaver Bruder & Berberich, 5750 Wilshire Boulevard, Suite 655, Los Angeles, California
20 90036.

21 TMS has been represented by Steven A. McKelvey, Jr., Esq., S. Keith Hutto, Esq., and Steven
22 B. McFarland, Esq. of Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, 17th Floor,
23 Columbia, South Carolina 29201.

24 Hooman Toyota has been represented by Michael J. Flanagan, Esq. and Gavin M. Hughes, Esq.
25 of Law offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California
26 95825.

27 Pre-hearing discovery was conducted.

28 The evidentiary hearing of this matter was conducted June 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18,

1 19, 20 and 21 before Victor Ryerson, Administrative Law Judge for the Board.

2 An inspection of the various sites involved in these proceedings was conducted on June 27, 2012
3 by Judge Ryerson, and was attended by representatives of the parties and their counsel. Judge Victor
4 D. Ryerson visited and toured the following locations:

5 Hooman Toyota (current facility)
6 4401 E. Pacific Coast Highway
7 Long Beach, California 90804

8 Hooman Toyota (proposed facility)
9 3399 E. Willow Street
10 Long Beach, California 90806

11 Cabe Toyota
12 2895 Long Beach Boulevard
13 Long Beach, California 90806

14 Carson Toyota
15 1333 E. 223rd Street
16 Carson, California 90745

17 A site visit was conducted on June 27, 2013. A memorandum of the site visit was prepared by
18 Judge Victor D. Ryerson and by stipulation of the parties, the memorandum was modified.

19 **2. BRIEF STATEMENT OF THE CASE**

20 This matter concerns the proposed relocation of Hooman Toyota from 4401 E. Pacific Coast
21 Highway, Long Beach, California, 90804 to 3399 East Willow Street and 2679 Redondo Avenue, Long
22 Beach, California 90806, a distance of 1.2 miles. This proposed relocation will move Hooman Toyota
23 1 mile closer to Cabe Toyota. Protestant Cabe Toyota and Protestant Carson Toyota have alleged that
24 there is good cause not to permit the proposed relocation of Hooman Toyota closer to Cabe Toyota.

25 **A. SUMMARY OF WITNESS TESTIMONY**

26 (1) *John Cabe* (President and General Manager of Cabe Toyota) testified to the
27 ownership, history, operation, and local market of Cabe Toyota, and the effect of Hooman Toyota as
28 a competitor in the market, located only 3.1 miles away from Cabe Toyota, and of the effect of the
proposed relocation.

(2) *Lillian Moore* (Controller for Cabe Toyota) testified to financial statements of
Cabe Toyota, the costs of the recent Image II Renovation project and the profitability of Cabe Toyota.

(3) *Scott Watkins* (Cabe Toyota Expert Witness) is Director of the Industry Analysis

1 Practice for Anderson Economic Group, a consulting firm. Mr. Watkins testified that, based upon his
2 review of Toyota sales, market and dealership network data and analysis of market conditions including
3 economics, demographics and geography, the proposed relocation of Hooman Toyota would adversely
4 impact Cabe Toyota, and therefore there is good cause not to allow the proposed relocation of Hooman
5 Toyota.

6 (4) **Dan Duddridge** (Operations Manager of Cabe Toyota) testified to the operation
7 of Cabe Toyota, the challenges associated with Cabe Toyota's Primary Market Area ("PMA") and local
8 market conditions, the level of competition between Cabe Toyota and Hooman Toyota, the expansion
9 and Image II renovation of Cabe Toyota's facility, the financial status of the dealership, and the
10 anticipated adverse impact on Cabe Toyota that will result from the proposed relocation of Hooman
11 Toyota, and the negative economic effect upon Cabe Toyota.

12 (5) **Ted Stockton** (Intervenor Hooman Toyota's expert witness) is Vice President and
13 Director of Economic Services at The Fontana Group, which is an automobile industry consulting
14 group. Mr. Stockton testified to his analysis of the market and his opinions as to the impact of the
15 proposed relocation of Hooman Toyota.

16 (6) **John Matthews, Ph.D.** (Protestant Carson Toyota's expert witness) is a Ph.D. in
17 quantitative analysis. Dr. Matthews testified to his analysis of the impact of the proposed relocation
18 of Hooman Toyota.

19 (7) **Doug Eroh** (General Manager of Toyota's Los Angeles Region) testified to the
20 facts and circumstances concerning the proposed relocation of Hooman Toyota.

21 (8) **Albert Skinner** (Dealer Principal of Protestant Carson Toyota) testified to the
22 ownership history and local market of Carson Toyota, the effect of Hooman Toyotas as a competitor
23 in the market and the effect of the proposed relocation.

24 (9) **Martin Brylski** (President and CEO of Protestant Carson Toyota) testified to the
25 operation of Carson Toyota, the local market conditions, the level of competition among the dealers in
26 the market, and the proposed relocation of Hooman Toyota.

27 (10) **Herbert Walter** (Respondent Toyota Motor Sales' expert witness) is an
28 independent consultant with a background in financial management consulting. Mr. Walters testified

1 to his assessment of Cabe Toyota's financial performance for 2009 through 2012.

2 (11) *Michael Durby* (Vehicle Production and Sales Planning Manager for Toyota
3 Motor Sales) testified concerning his involvement with Hooman Toyota and the concerns which Toyota
4 Motor Sales had, over a period of years, regarding the financial condition and questionable accounting
5 practices of Hooman Toyota.

6 (12) *Sharif Farhat* (Vice President of Analytical Services for Urban Science
7 Applications, an auto industry consulting firm; Respondent Toyota Motor Sales' expert witness)
8 testified to his analysis of the LA / South Bay dealer network and evaluation of the proposed relocation
9 of Hooman Toyota.

10 (13) *Hooman Nissani* (Dealer Principal and General Manager of Intervenor Hooman
11 Toyota) testified to his acquisition of the Toyota of Long Beach dealership in 2008, the history and
12 operation of the dealership, and the proposed relocation of Hooman Toyota tot he proposed relocation
13 site.

14 **B. SUMMARY OF EXHIBITS INTRODUCED INTO EVIDENCE**

15 The following Exhibits were admitted into evidence during the hearing of this matter:

16 Intervenor Exhibits: 252, 253, 254, 255, 259, 260, 264, 266, 267, 268, 270, 271, 272, 273, 274,
17 275, 276, 278, 280, 281, 282, 283, 284, 285

18 Joint Exhibits: 286

19 Protestant Cabe Toyota Exhibits: 1001, 1003, 1007, 1009, 1013, 1016, 1017, 1018, 1030, 1035,
20 1039, 1042, 1043, 1048, 1050, 1054, 1058, 1070, 1072, 1076, 1084, 1087, 1089, 1094, 1095, 1097,
21 1098, 1099, 1100, 1102, 1103, 1105, 1109, 1110, 1111, 1115, 1116, 1117, 1118, 1119, 1122, 1138,
22 1139, 1141, 1143, 1145, 1147, 1150, 1152, 1153, 1156, 1157, 1162, 1164, 1165, 1166, 1167, 1170,
23 1174, 1176, 1179, 1182, 1184, 1185, 1188, 1189, 1190, 1192, 1196, 1197, 1198, 1200, 1201, 1202,
24 1203, 1204, 1209, 1213, 1215, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228,
25 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1241, 1242, 1243, 1245, 1247, 1248, 1249, 1250,
26 1254, 1256, 1258, 1260, 1261, 1263, 1264

27 Protestant Carson Toyota Exhibits: 1500, 1506, 1508, 1510, 1511, 1512, 1513, 1514, 1515, 1516,
28 1521, 1523, 1524, 1526, 1533, 1548, 1550, 1554, 1555, 1556, 1560, 1561, 1562, 1563, 1566

1 Respondent Toyota Motor Sales Exhibits: 2000, 2003, 2004, 2005, 2006, 2008, 2010, 2012,
2 2014, 2021, 2026, 2032, 2034, 2038, 2040, 2043, 2044, 2045, 2052, 2053, 2056, 2057, 2058, 2059,
3 2061, 2062, 2063, 2065, 2066, 2086, 2087, 2088, 2089

4 **C. PROTESTANT CABE TOYOTA’S CONTENTIONS**

5 Protestant Cabe Toyota contends that the decision by Toyota Motors to support the proposed
6 relocation of Hooman Toyota was not well considered. The proposed relocation was not supported by
7 any market study. No service study was conducted. Toyota did not do adequate “due diligence” to
8 determine the extent of the adverse economic impact on Cabe Toyota. No consideration was given to
9 the adverse impact that the proposed relocation would have upon Cabe Toyota in terms of sales or
10 service prior to regional management’s decision to support the relocation.

11 There was no formal study performed by any experts until after the relocation was approved by
12 Toyota and the other dealers protested the move.

13 In approving the relocation, Toyota management made their decisions based upon inaccurate
14 information. Toyota asserted that Cabe Toyota’s PMA was average sized, when in fact it is the smallest
15 PMA in the region. Toyota also believed that Cabe Toyota was very profitable in comparison to other
16 Toyota dealers who, on average, earn \$1,500,000 million per year. However, Cabe Toyota only showed
17 a net profit after taxes of \$378,122 in 2012. Toyota misunderstood where Cabe Toyota sold vehicles,
18 believing that 67% of its new vehicle sales were beyond 20 miles from the dealership, when in fact 51%
19 of Cabe Toyota’s new vehicle sales are made to customers located within 10 miles of the dealership.
20 Toyota was also unaware that Hooman Toyota would be relocated into the same zip code as Cabe
21 Toyota. It would be a first for Toyota to locate two dealers in the same city and the same zip code. It
22 would be logical to assume that if there were not severe concerns or consequences from such a situation
23 then there would be other examples of dealers located in the same city and same zip code. There is not
24 sufficient sales and service opportunity in the local market to allow Cabe Toyota to offset the loss of
25 income that would result from the proposed relocation of Hooman Toyota. Even if Cabe Toyota were
26 to achieve top 10% performance among all Toyota dealers for SMS and Sales Penetration, Cabe Toyota
27 will still not cover the added costs of the facility renovation; and the expected decrease in sales
28 performance will likely result in Cabe Toyota going out of business.

1 Hooman Nissani repeatedly misrepresented Hooman Toyota's financial situation to Toyota.
2 Hooman Toyota had been plagued with financial problems since Hooman Nissani acquired the
3 dealership in 2008. Since acquiring the Toyota of Long Beach dealership, Toyota Motors repeatedly
4 questioned the accuracy of Hooman Toyota's financial books and records. Two separate audits were
5 conducted of the financial books and records of Hooman Toyota. These audits revealed material
6 deficiencies and misrepresentations regarding the dealership's operations.

7 Protestant Cabe Toyota contends that Toyota was frequently misled and provided false
8 information by Hooman Nissani. Hooman Nissani misled Toyota with regards to facility conditions
9 and opportunity to cure facility deficiencies. Hooman dramatically inflated his rent amounts by
10 including third party car wash services in his rent. Hooman misrepresented that Hooman Toyota would
11 receive a larger percentage of ownership and visibility on the existing freeway sign if Hooman Toyota
12 is allowed to move.

13 Since February 9, 2009, Hooman Toyota had requested that Toyota Motors approve the relocation
14 of the dealership to 3399 East Willow Street in Long Beach, a former Cadillac facility.

15 Over a period of three (3) years, between February 9, 2009 [See Ex 1016] and February 9, 2012
16 [see Ex 1147], Toyota Motors repeatedly advised Hooman Toyota that the request would not be
17 approved.

18 The proposed relocation would move Hooman Toyota 1 mile closer to Cabe Toyota.

19 Cabe Toyota had previously committed to invest millions of dollars of capital into its dealership
20 to construct an Image II compliant facility. To accomplish this, Cabe Toyota was required to invest
21 \$3.6 million into the acquisition of additional property and over \$3 million in construction costs in
22 order to expand and renovate its facility to comply with Toyota's facility requirements.

23 Previously, before committing to undertake these improvements, Cabe Toyota sought assurances
24 from Toyota Motors that Hooman Toyota would not be permitted to relocate to the former Cadillac site,
25 1 mile closer to Cabe Toyota. Cabe Toyota was told that Hooman Toyota was not relocating.

26 Cabe Toyota has been in the same Long Beach location since 1969. [See Ex 1001] There has
27 been a second Toyota Dealership in the City of Long Beach, located at the Traffic Circle, since the mid-
28 1970s [John Cabe, RT Vol. 1, 117:19-118:7 and 157:21-158:4], only 3.1 miles away from Cabe Toyota.

1 Cabe Toyota is assigned a small PMA to serve. Much of this area is comprised of low income
2 households and much of the area to the south is comprised of industrial areas associated with the Port
3 of Long Beach. [See **Ex 1234**] Cabe Toyota has historically been minimally profitable over the years
4 and has managed to earn a modest profit compared to the average Toyota dealer. [See **Exs. 1013, 1048,**
5 **1072, 1122, 1260, 2000**]

6 Cabe Toyota has historically been one of the smallest volume Toyota dealers in the LA Metro
7 Market. Since 2007, Cabe Toyota has increased sales and made some improvements in its sales ranking
8 among Toyota dealers in the market. [Doug Eroh, RT Vol. 10, 211:18 - 215:24]

9 The area along the 405 freeway and to the north of Cabe Toyota is its area of greatest opportunity
10 in terms of both sales and service. [John Cabe, RT Vol. 1, 160:7-15] The proposed relocation of
11 Hooman Toyota to the former Cadillac facility at 3388 East Willow Street in Long Beach would place
12 Hooman Toyota into the same zip code as Cabe Toyota. [John Cabe, RT Vol. 1, 148:11-21] The result
13 would cause significant financial harm to Cabe Toyota and hinder its ability to realize a return on its
14 recent investment in its expanded and upgraded facility.

15 Currently, the Cabe Toyota location on the west side of the City of Long Beach and Hooman
16 Toyota on the east side of the City of Long Beach are 3.1 miles apart and separated by Signal Hill,
17 which is a prominent geographical feature that separates the two dealerships. [Hooman Nissani, RT
18 Vol. 14, 145:11-15; John Cabe, RT Vol. 1, 158:5-15] The proposed relocation would move Hooman
19 Toyota a mile north to the 405 freeway, and closer to Cabe Toyota. This relocation would eliminate
20 Signal Hill as a natural barrier between the two dealerships. [John Cabe, RT Vol. 1, 147:22-148:1]

21 Cabe Toyota and Hooman Toyota each advertise extensively to the same local Long Beach
22 residents. The level of competition between these two dealers is high. Since acquiring the Long Beach
23 dealership, Hooman Toyota has extensively advertised a “VIP” customer program which offers Hooman
24 Toyota’s customers free lube, oil and filter changes, free tires for life, free car washes, free flat tire
25 repair, free road hazard replacement, and free loaner vehicles for as long as the customers own their
26 vehicles when they are purchased from Hooman Toyota. [See **Ex 1143**] This advertising campaign
27 offering free merchandise, gifts, or services provided by a dealer contingent upon the purchase of a
28 vehicle is a violation of California *Vehicle Code* section 11713.1(h). [See Cabe Toyota **Request for**

1 **Judicial Notice Ex 2]**

2 **D. RESPONDENT TMS'S CONTENTIONS**

3 Respondent Toyota Motor Sales ("TMS") contends that the three Toyota dealers at issue in this
4 matter (Cabe Toyota, Carson Toyota, and Hooman Toyota) have continuously operated within 6.7 miles
5 of each other since 1977. TMS contends that because population and opportunity for sales in the
6 surrounding market have grown over the years, it is necessary for Hooman Toyota to relocate to a much
7 larger, more visible freeway location. TMS contends that Hooman Toyota's current facility is below
8 current facility standards and the proposed new location will alleviate the customer service and
9 operational issues of Hooman Toyota's current facility. Respondent TMS contends that the vehicle
10 sales and service data in this case demonstrates that the proposed relocation of Hooman Toyota will not
11 have a significant impact on Cabe Toyota because Cabe Toyota does not capture very much sales and
12 service business in the area closer to Cabe Toyota where Hooman Toyota is proposing to relocate.

13 **E. INTERVENOR HOOMAN TOYOTA'S CONTENTIONS**

14 Intervenor Hooman Toyota contends that the proposed relocation will not adversely impact Cabe
15 Toyota and/or Carson Toyota. Intervenor asserts that Protestant Cabe Toyota will not be adversely
16 impacted because Hooman Toyota and Cabe Toyota are located in different and distinct markets,
17 separated by Signal Hill. Intervenor also contends that Cabe Toyota's business relies upon internet
18 sales and it has chosen to ignore its proximate geography by not advertising to those customers in and
19 around Cabe Toyota's local PMA. Based on this, Intervenor asserts that a move one (1) mile closer to
20 Cabe Toyota will not have any significant impact because Cabe Toyota does not effectively capture the
21 sales and service opportunities that exist in the local area. Hooman Toyota also contends that the
22 proposed new location will allow Intervenor to move into a larger facility with greater freeway visibility
23 and access, and therefore benefit not only Hooman Toyota, but the Toyota brand and Toyota customers.

24 **3. PROPOSED FINDINGS OF FACT**

25 **A. FACTS RELATED TO PERMANENCY OF INVESTMENT (SECTION 3063(A))**

26 Cabe Toyota was established as a Toyota dealer in Long Beach, California in 1966. The Cabe
27 Family has owned and operated the Cabe Toyota franchise in the same location at 2895 Long Beach
28 Boulevard for 47 years. The Cabe Toyota dealership was founded by brothers Roy and Loy Cabe. [See

1 **Ex 1001]** John Cabe, son of Loy Cabe, is currently the Dealer Principal and General Manager. [John
2 Cabe, RT Vol. 1, 112:15-17] John Cabe is a hands-on owner who works at the dealership every day.
3 Cabe Toyota has many long term employees with many years of experience working at the dealership.
4 The dealership has a low staff turnover rate. [Dan Duddridge, RT Vol. 4, 122:16 - 123:6; see **Ex 1213]**

5 Since 2008, John Cabe's son-in-law, Dan Duddridge, has become involved in the operations of
6 the business as the Vice President of Operations of Cabe Toyota. [Dan Duddridge RT Vol. 4, 109:11-
7 25]

8 Over the years, Dan Duddridge has taken steps to improve the operations of the dealership.
9 These changes include:

- 10 - change of service manager
- 11 - expanding the customer waiting area
- 12 - improving service parking situation
- 13 - improving CSI scores
- 14 - implementing online appointment system
- 15 - modifying the dealership's pricing
- 16 - changing advertising
- 17 - training of staff
- 18 - adding CRM solution
- 19 - creating a new Cabe Toyota website
- 20 - creating business development team

21 [Dan Duddridge, RT Vol. 4, 200:20 - 203:10, see **Ex 2043]**

22 The Toyota President's Award recognizes dealers for their high performance in customer
23 satisfaction and sales efficiency. The Toyota President's Award honors those Toyota dealers who excel
24 in all facets of their operation. It is an award reserved for those Toyota dealers who are the best of the
25 best. [Doug Eroh, RT Vol. 10, 195:9 - 197:20]

26 Since Dan Duddridge became involved in the operations of the dealership, Cabe Toyota has been
27 recognized by Toyota for its outstanding performance and has received the Toyota President's Award
28 for the past years (2010, 2011, 2012). [Dan Duddridge, RT Vol 4, 190:13-21; see **Ex 1184.**]

29 Cabe Toyota is located on Long Beach Boulevard, approximately ½ mile south of the 405
30 freeway. The Cabe Toyota dealership located at 2895 Long Beach Boulevard has occupied an older
31 facility built in phases from the 1930s to the 1960s. The facility covers 3.3 acres which consists of
32 multiple buildings on several parcels along Long Beach Boulevard. The property is divided by two
33 streets, Columbia Street and 29th Street. [See **Exs. 1001, 1209]**

1 Cabe Toyota has taken action to address the limitations of its current facility by (1) looking for
2 other locations (which TMS turned down) and (2) making improvements to the dealership (acquiring
3 more land and expanding and improving the facility). [Dan Duddridge, RT Vol. 4, 145:11-14, RT Vol.
4 5, 53:10].

5 The dealership property which Cabe Toyota occupies is owned and controlled by the Cabe
6 Family. [John Cabe, RT Vol. 2, 180:3-6] The amount of rent which Cabe Toyota pays to the Cabe
7 Family is not excessive or unreasonable for a dealership in the LA Metro Area.

8 Over the years, Cabe Toyota has acquired additional adjacent parcels in order to expand the
9 facility to meet Toyota's Image II requirements. [See **Ex 1209**.]

10 In August 2006, Cabe Toyota purchased an additional parcel along long Beach Boulevard for
11 \$1.8 million dollars. [See **Ex 1209**]

12 In September 2009, Cabe Toyota purchased another parcel along Long Beach Boulevard for \$1.4
13 million dollars. [See **Ex 1209**]

14 In September 2010, Cabe Toyota enrolled in Toyota's Image II USA facility program. [See **Ex**
15 **1070**] This expansion and renovation program has been an ongoing for years.

16 In April 2012, Cabe Toyota purchased a lot located behind the dealership facility on Columbia
17 Street for \$400,000. [See **Ex 1209**; Testimony of John Cabe, RT Vol. 1, 123:4-20]

18 Cabe Toyota's facility is made up of several parcels strung together along Long Beach Boulevard.
19 The dealership operation is divided by 2 streets (Columbia and 29th). One street was closed by the City
20 and the other street is to be partially closed. Cabe Toyota has worked with the City of Long Beach to
21 remedy these issues and mitigate the negative effect on its operation. Cabe Toyota has similar issues
22 as those of Hooman Toyota in terms of operation from multiple buildings separated by streets. [Dan
23 Duddridge, RT Vol. 4, 146:20 - 147:13].

24 From the northern portion of Cabe Toyota's PMA, the easiest access route to get to Cabe Toyota
25 is Lakewood Boulevard or Cherry Avenue. [Dan Duddridge, RT Vol. 4, 147:14 - 149:14].

26 The North Long Beach Dealers Association has a "massive" freeway reader board sign located
27 along the 405 Freeway. [Dan Duddridge, RT Vol. 4, 151:5 - 153:18; see **Ex 1226**]

28 Dan Duddridge met with Hooman Nissani in March 2009. [Dan Duddridge, RT Vol. 5, 74:18]

1 75:14; see **Ex 1203**] Mr. Duddridge subsequently spoke with Mr. Nissani regarding allowing Cabe
2 Toyota to advertise on the 405 freeway sign; Mr. Nissani said, “No.” [Dan Duddridge, RT Vol. 5,
3 75:19 - 76:10]

4 Cabe Toyota experienced some financial issues in 2008-2009 as a result of the economic
5 recession. [Lillian Moore, RT Vol. 2, 161:24 to p. 162:2]

6 In 2008, Cabe Toyota showed a net loss after taxes of (-\$206,436). [See **Ex 1013**, page 2, line
7 67]

8 In 2009, Cabe Toyota showed a net loss after taxes of (-\$282,233.00). [See **Ex 1048**, page 2, line
9 67]

10 In 2010, Cabe Toyota showed a net profit after taxes of \$220,210.00. [See **Ex 1072**, page 2, line
11 67]

12 In 2011, Cabe Toyota showed a net profit after taxes of \$59,491.00. [See **Ex 1122**, page 2, line
13 67; Lillian Moore, RT Vol. 2 at page 146:11-15]

14 In 2012, Cabe Toyota showed a net profit after taxes of \$378,122.00 [See **Ex 2000**, page 2, line
15 67 (Bates TMS-PROS_018747); Lillian Moore, RT Vol. 2, 167:17-25]

16 Currently the Cabe Toyota facility is in the construction phase of its Toyota Image II facility
17 project. This renovation project includes converting the existing parts building into a modern
18 showroom and offices. The existing showroom building will be converted to a customer waiting area
19 with service offices and an enclosed service driveway. A new parts storage warehouse will be built
20 with a steel parts mezzanine structure. The existing service area will be renovated and a detail building
21 will be constructed behind the new showroom area. [See **Exs. 1070, 2045**]

22 Cabe Toyota will obtain financing through Toyota Financial Services to fund the expansion and
23 renovation. The cost of the ongoing Image II renovation will be \$5,349,000.00. [See **Ex 1238.**]

24 The Cabe Toyota facility, as it is to be renovated, has an appraised value of \$8,100,000.00. [See
25 **Ex 1162.**]

26 Prior to March 2010, Cabe Toyota had a 6 year Dealer Agreement with Toyota. [See **Ex 1003 -**
27 **3/2004 - 3/2010**] The 6 year term Dealer Agreement is the longest term agreement that Toyota offers
28 its best dealers. At the expiration of this 6 year agreement, Toyota offered Cabe Toyota a one year

1 Dealer Agreement. [See **Ex 1054**] In March 2011, Toyota offered Cabe Toyota another one year
2 Dealer Agreement. The stated reason Cabe Toyota was only offered a one year Dealer Agreement was
3 because Cabe Toyota had not yet cured its facility deficiencies by completing its Image II Renovation.
4 [See **Ex 1087**; March 2011 through March 2012]

5 Between 2010 and May 21, 2013, Cabe Toyota has invested \$613,875 in this renovation project.
6 [See **Ex 1261**; Lillian Moore, RT Vol. 2, 153:14 - 154:12; RT Vol. 3, 177:13 - 178:2.] The Image II
7 Renovation of Cabe Toyota is now scheduled to be completed over the next few months.

8 Cabe Toyota has sought a \$5.3 Million construction loan with Toyota Financial Services. [See
9 **Ex 1238**] Cabe Toyota's Image II Renovation project will increase the costs of doing business for Cabe
10 Toyota. [See **Ex 1247**]

11 In order to complete the Image II facility renovation required by Toyota, Cabe Toyota has had
12 to invest \$5.3 Million into the acquisition of land and construction of a new facility. These additional
13 costs will be borne by the dealership. Under the terms of the proposed construction loan which Toyota
14 Financial services, Cabe Toyota will be required to make an additional \$30,000 per month payment to
15 TFS. These expenses increase the cost to Cabe Toyota to conduct business. [See **Exs. 1238, 1242,**
16 **1247**]

17 Toyota Financial Services has projected Cabe Toyota's payment for the construction loan and
18 outlined the term sheet. The additional monthly cost to Cabe Toyota outlined is \$28,000.00 to
19 \$31,000.00 per month for a term of 20 years. [Dan Duddridge, RT Vol. 5, 69:12; 73:25 - 74:17; see
20 **Ex 1242**]

21 John Cabe made the decision to undertake the substantial financial commitment to renovate the
22 dealership and construct an Image II compliant facility before he was advised by Toyota that Hooman
23 Toyota's request to relocate to the proposed cite had been approved by Toyota. Had John Cabe known
24 that the proposed relocation of Hooman Toyota been approved, he would not have committed to spend
25 so much money to renovate the dealership. [John Cabe, RT. Vol. 1, 145:7-19; RT Vol. 2, 56:11-24.]

26 Prior to 2010, Cabe Toyota did not have a significant internet sales presence. Since 2010, Cabe
27 Toyota has begun utilizing internet sales services such as TrueCar and Edmunds.com. The result of this
28 increased internet sales presence has been an increase in the number of vehicles sold by Cabe Toyota.

1 [Dan Duddridge, RT Vol. 4, 196:13-15]

2 Cabe Toyota has limited its Google search engine advertising to a five mile radius. [Dan
3 Duddridge, RT Vol. 4, 198:5-15]

4 Currently Hooman Toyota is located at the Traffic Circle on Pacific Coast Highway,
5 approximately one (1) mile south of the 405 Freeway. The proposed relocation to this new larger,
6 freeway adjacent facility will likely increase Hooman Toyota's vehicle sales as well as its service
7 business. This expected growth would come, in some part, at the expense of Cabe Toyota. [John Cabe,
8 RT Vol. 1, 149:12-150:13; Edward Stockton, Vol. 7, 171:21 - 172:22]

9 Hooman Toyota's PMA is larger in terms of size and units in operation (UIO) than Cabe
10 Toyota's. Demographically, Hooman Toyota's PMA is comprised of higher income households.
11 [Hooman Nissani, RT Vol. 14, 145:23 - 146:12]

12 Currently Hooman Toyota and Cabe Toyota are separated by Signal Hill, a prominent geographic
13 feature that separates the eastern side of Long Beach where Hooman Toyota is located from the west
14 side (down town) area of Long Beach where Cabe Toyota is located. [Hooman Nissani, RT Vol. 14,
15 145:11-15; John Cabe, RT Vol. 1, 158:5-15]

16 Cabe Toyota's marketing is a collaborative effort shared among the individual department heads
17 who make recommendations and a high level budget is approved by the General Manager, John Cabe.
18 [Dan Duddridge, RT Vol. 4, 193:17-24]

19 Cabe Toyota's marketing strategy is to diversify its marketing efforts and make changes over time
20 based on results. Cabe Toyota's marketing strategy will continue to change in the future. [Dan
21 Duddridge, RT Vol. 4, 194:2 - 195:15]

22 Cabe Toyota's business is a neighborhood business. Its business model is more of a soft-sell
23 "family store" which attempts to distinguish itself in the market by being "friendly" and customer
24 oriented. [John Cabe, RT Vol. 2, 105:10-16.]

25 A major customer consideration for selecting a dealership to provide service is location and
26 convenience. [John Cabe, Vol. 2, 113:19 - 114:13; Edward Stockton, Vol. 7, 94:9-16]

27 Over 80% of customers looking to purchase new vehicles utilize the internet as part of the buying
28 process. [John Cabe, RT Vol. 2, 87:17 - 88:14.]

1 **B. FACTS RELATED TO EFFECT ON THE RETAIL MOTOR BUSINESS AND THE CONSUMING**
2 **PUBLIC IN THE RELEVANT MARKET AREA (SECTION 3063(B))**

3 Currently there are eight (8) Toyota dealers within the Relevant Market Area (“RMA”) (defined
4 by statute as a 10 mile radius). [Scott Watkins, RT Vol. 3, 21:4-8] The Signal Hill Auto Center has
5 many auto dealers representing most all of the major brands.

6 Cabe Toyota has conducted business from the same location on Long Beach Boulevard for the
7 past 47 years. [See **Ex 1001**] In the 1970s, a second Toyota dealer was established in Long Beach
8 (Toyota of Long Beach). [John Cabe, RT Vol. 1, 157:21-158:4]

9 The Toyota dealership located at the Traffic Circle has changed ownership over the years. [See
10 **Ex 1009**]

11 Most recently, Hooman Nissani (HTL Automotive) acquired the dealership in 2008. [See **Ex**
12 **1009**]

13 Cabe Toyota has struggled to remain profitable since 1970 when the second Toyota dealer was
14 established in Long Beach. [John Cabe, RT Vol. 1, 157:21-158:4]

15 Cabe Toyota is very small in size when compared to other Toyota Dealers in the surrounding
16 Relative Market Area (“RMA”). Cabe Toyota is situated between the largest Toyota dealers in the
17 country. [Dan Duddridge, RT Vol. 4, 127:25 - 128:3]. Carson Toyota to the west, only 3.6 miles up
18 the 405 freeway from Cabe Toyota, has a much larger, 10 acre, three story facility located right off of
19 the freeway. The proposed relocation would result in Hooman Toyota also being located right off of
20 the 405 freeway. This proposed relocation would place Cabe Toyota between two much larger and
21 freeway visible dealerships.

22 Cabe Toyota performs strongly to the east and not as strongly to the west. To the west of Cabe
23 Toyota is a large industrial area. Between Carson Toyota and Cabe Toyota lies the 710 Freeway,
24 railroad tracks, and the flood control / Los Angeles River. [John Cabe, RT Vol. 1, 148:23 - 149:3]

25 There are no other Toyota dealers located on the 405 Freeway east of Cabe Toyota until beyond
26 the 10 mile RMA boundary. [Scott Watkins, RT Vol. 3, 41:5-9]

27 The lack of another freeway visible Toyota Dealer to the east along the 405 freeway gives Cabe
28 Toyota an advantage to its east that is does not have to its west. [Scott Watkins, RT Vol. 3, 41:10-14]

1 The proposed relocation would give Hooman Toyota an “intercept position” along the 405
2 Freeway, 2.5 miles to the east of Cabe Toyota. [Scott Watkins, RT Vol. 3, 44:4-6]

3 This freeway advantage is seen in the sales of Cabe Toyota. Cabe Toyota’s retail vehicle sales
4 to the east are 14.2% as compared to the west at only 5%, a difference of 9%. [Scott Watkins, RT Vol.
5 3, 47:14 - 48:5; see **Ex 1227, E-11]**

6 12.3% of Cabe Toyota’s service customers come from due east. By comparison only, 5% of Cabe
7 Toyota’s customers come from due west. [Scott Watkins, RT Vol. 3, 50:10; 51:7-13; see **Ex 1228 (pp.**
8 **9, 10 of report)**]

9 The 9.2% lost calculated by Cabe Toyota’s expert witness, Scott Watkins, only reflects those
10 sales intercepted from the east. [Scott Watkins, RT Vol. 3, 49:18-21]

11 Those customers to the east are also more valuable customers in terms of revenue and contribute
12 a higher percentage of Cabe Toyota’s revenue than those to the west of Cabe Toyota. [Scott Watkins,
13 RT Vol. 3, 51:14 - 52:1; see **Ex 1228, Map 3]**

14 Cabe Toyota’s business is challenged by larger Toyota dealers to the west, north and east. Cabe
15 Toyota is located only 3 miles from the coast and the Pacific Ocean lies to the south. [Dan Duddridge,
16 RT Vol. 11, 54:5-18; see **Ex 2088, page A-2.**]

17 Vehicle Sales made by other Toyota dealers within Cabe Toyota’s PMA reflects the high level
18 of competition among Toyota dealers. In Cabe Toyota’s own PMA, Cabe Toyota sold 120 units,
19 Hooman sold 164 units, Cerritos sold 117 units, and Carson sold 95 units. [Dan Duddridge, RT Vol.
20 4, 177:18 - 178:25; see **Ex 1219, 1220**].

21 Longo Toyota, which is the largest Toyota dealer in the world, is only 15 miles away from Cabe
22 Toyota. [Dan Duddridge, RT Vol. 4, 179:2-10].

23 These closest surrounding Toyota dealers, Carson Toyota - 3.6 miles to the west, Power Toyota
24 Cerritos to the northeast, and Hooman Toyota - 3.1 miles to the east, are all ranked higher than Cabe
25 Toyota in retail sales rankings by Toyota.

26 Carson Toyota was ranked #15 by Toyota in retail sales in 2012. [See **Ex 1250, page 1.**]

27 Power Toyota of Cerritos was ranked #45 by Toyota in retail sales in 2012. [See **Ex 1250, page**
28 **1.**]

1 Hooman Toyota was ranked #57 by Toyota in retail sales in 2012. [See Ex 1250, page 1.]

2 There are only 2 Toyota Dealers in the Los Angeles Metro area that are located closer together
 3 than the 3.1 miles which separates Cabe Toyota and Hooman Toyota's current location. Penske Toyota
 4 in the city of Downey and Norwalk Toyota are 3.1 miles apart. Additionally, Toyota Place in the city
 5 of Garden Grove and Elmore Toyota in the city of Westminster are 2.4 miles apart. [See Ex 2088,
 6 Sharif Farhat Expert Report, A-6]

7 However, a trend is revealed when the performance of these dealerships who are in closest
 8 proximity to one another is considered. These Toyota Dealerships located in closest proximity to other
 9 Toyota dealerships see lower service market share and percentage of sales in their respective PMA.

	Toyota exhibit 206	Stockton Report Tab 4 pg 1				Farhat Report A-75	
	PMA Size	3 Closest Dealer Distances by Air Miles		# of Dealers within 10mi	Sales % of PMA Sept 2012 YTD Ranking		
Cabe	6,000	3.1	3.6	6.3	7	14.55	Lowest
Carson	9,840	3.6	4.4	5.4	5		
Buena Park	10,150	3.4	5.8	6	8	19.96	3rd Lowest
Norwalk	10,088	2.1	3.9	5	7	21.67	4th Lowest
Hooman	11,588	3.1	5.5	6.7	6		
Huntington Beach	12,746	3.6	5.6	6.7	3	34.62	#2 in RMA
Elmore	11,443	2.4	3.6	8.2	5	19.95	2nd Lowest
South Bay	20,454	4.4	5	7.8	3		
Toyota Place	21,982	2.4	5.6	6	4		
Cerritos	27,042	3.9	5.2	5.5	8		
Downey Penske	25,801	2.1	5.2	6.3	5		
DCH Torrance	21,704	5	5.4	8.6	3	35.83	#1 in RMA
	182,838						
Average	16,621.64						
	PMA Size	Three Closest Dealers by Air Miles Distance		# of Dealers within 10mi	Cabe exhibit 1202 SMS Rankings -out of 59 Metro Dealers		
Cabe	6,000	3.1	3.6	6.3	7	#53	Bottom 10%
Carson	9,840	3.6	4.4	5.4	5		
Buena Park	10,150	3.4	5.8	6	8		
Norwalk	10,088	2.1	3.9	5	7	#58	Lowest of Active
Hooman	11,588	3.1	5.5	6.7	6		
Huntington Beach	12,746	3.6	5.6	6.7	3	#13	Highest in RMA
Elmore	11,443	2.4	3.6	8.2	5	#54	Bottom 10%
South Bay	20,454	4.4	5	7.8	3		
Toyota Place	21,982	2.4	5.6	6	4		
Cerritos	27,042	3.9	5.2	5.5	8		
Downey Penske	25,801	2.1	5.2	6.3	5		
DCH Torrance	21,704	5	5.4	8.6	3	#17	2nd Highest RMA
	182,838						
Average	16,621.64						

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

1 If Cabe Toyota was among the top performing Toyota dealers in the market (ranked in the top
2 30 for sales penetration in its PMA's), the result would be modest in terms of additional cars sold.
3 Cabe Toyota simply cannot meet its financial goals by selling inside its (small) PMA due to the small
4 total number of Toyotas sold in that area. Cabe Toyota needs to sell outside its PMA to be viable. [Dan
5 Duddridge, RT Vol. 4, 179:11 - 180:11].

6 Toyota's Rejector Study shows that 85% of Cabe Toyota's customers cross-shop other Toyota
7 dealers. This is a high level of competition compared to the approximately 75% for the district. This
8 also reflects a high level of competition in the local market and there is a high level of cross-shopping
9 between Toyota dealers, and that negatively impacts Cabe Toyota's margins on sales. [Dan Duddridge,
10 RT Vol. 4, 181:15 - 182:19; see **Ex 1179**].

11 Toyota assigns each dealer a geographic area called a "Primary Market Area" or "PMA." The
12 PMA is made up of a number of census tracts. Cabe Toyota's assigned PMA is the smallest of the
13 Toyota dealers in the LA Metro Region. [See **Ex 1156**.]

14 The "Primary Market Area" or "PMA" which Toyota assigns to each Toyota dealer is the area
15 where dealers are expected to have a geographic advantage. [Doug Eroh, RT Vol. 10, 299:1-4]

16 The shape of the PMA assigned to Cabe Toyota is tall and narrow, only 1 mile wide where the
17 Cabe Toyota dealership is located. [See **Ex 1156**.]

18 Cabe Toyota's small assigned PMA presents challenges to the dealership. Cabe has the smallest
19 PMA of any Toyota dealer in the Metro LA Region and is approximately 36% of the size of the average
20 PMA (1/3 of the average territory). [Dan Duddridge, RT Vol. 4, 125:10-126:2]. Exhibit 1258 is a
21 summary of the UIO that Cabe Toyota has access to through SOAR by zip code. Zip code 90807 has
22 1,205 UIO which represents 25% of Cabe Toyota's PMA. [Dan Duddridge, RT Vol. 4, 131:14 -
23 133:21; see **Ex 1258**]. Exhibit 2062 is a Service Retention and Market Share Chart for Toyota Motor
24 Sales which shows that Cabe Toyota's PMA is 1/3 the size of the others in the Market. [Dan
25 Duddridge, RT Vol. 4, 134:1 - 135:14; see **Ex 2062**].

26 Much of the area included in Cabe Toyota's PMA consists of industrial areas associated with the
27 Port of Long Beach. Significant portions of Cabe Toyota's PMA are made up of low income
28 households with annual incomes below \$30,000.00. [See **Ex 1234**, **Ex 1227**; see Hooman Nissani, RT

1 Vol. 14, 145:23-146:12]

2 A dealer is said to have a geographic advantage over other dealers with respect to sales to those
3 customers who are located in close proximity to a particular dealership (known as geographic
4 advantage). [Doug Eroh, RT Vol. 10, 299:1-4]

5 Cabe Toyota's location, on Long Beach Boulevard off the 405 Freeway, has been challenging.
6 Cabe Toyota is off the beaten path, ½ mile south of the 405 Freeway. [Dan Duddridge, RT Vol. 4,
7 145:2-5]

8 Cabe Toyota has previously looked for alternative site locations for its own facility. [Dan
9 Duddridge, RT Vol. 5, 54:1-2]

10 Cabe Toyota's current facility location is divided by two streets, 29th Street and Columbia Street.
11 [Dan Duddridge, RT Vol. 5, 54:2-6]

12 Dan Duddridge was aware that Hooman Toyota was trying to relocate since 2008. Dan
13 Duddridge met with Hooman Nissani in 2008. [Dan Duddridge, RT Vol. 5, 62:25 - 63:8]

14 Cabe Toyota considered the possibility of relocation; however, Cabe Toyota was told by TMS
15 that Cabe Toyota could not relocate to site over 1 mile away or to another city, such as Signal Hill.
16 [Dan Duddridge, RT Vol. 5, 54:7-16]

17 In early 2000, Cabe Toyota started to acquire some of the surrounding property to permit
18 expansion of its facility. [Dan Duddridge, RT Vol. 5, 54:7 - 57:7, see **Ex 1209**]

19 Dan Duddridge looked at other potential facility locations for Cabe Toyota to relocate to,
20 including the Long Beach Gas Company site. In 2008 or 2009, Toyota asked Cabe Toyota if it would
21 be willing to relocate in the event Hooman Toyota went out of business. [Dan Duddridge, RT Vol. 5,
22 57:8 - 58:10]

23 Toyota Motor Sales told Dan Duddridge that Cabe Toyota would not be approved to relocate to
24 any site over 1 mile from its existing location. [Dan Duddridge, RT Vol. 5, 159:21 - 60:8]

25 Dan Duddridge discussed Cabe Toyota relocation options with Carolyn Carpenter at TMS. [Dan
26 Duddridge, RT Vol. 5, 61:7 - 62:13.]

27 In 2011, Cabe Toyota was ranked 33 of 76 in Sales Satisfaction Index. In 2012, Cabe Toyota was
28 ranked 6 out of 76 in Sales Satisfaction Index. In 2011, Cabe Toyota was ranked 9 out of 76 in Service

1 Satisfaction. In 2012, Cabe Toyota was ranked 20 out of 76 in Service Satisfaction. [Dan Duddridge,
2 RT Vol. 5, 20:15 - 21:23; see **Ex 1197**]

3 In 2012, Cabe Toyota had only 14 complaints out of 386 in the District. This is a relatively low
4 number of complaints. [Dan Duddridge, RT Vol. 5, 22:13-25, see **Ex 1197**]

5 In 2012, Hooman Toyota is 75 out of 76 in Sales Satisfaction and 51 out of 76 in Service
6 Satisfaction. In 2012, top five sales opportunities for Hooman Toyota include “honesty” and
7 “integrity.” [See **Ex 1198 p. 1**] In 2012, there were 64 complaints (open cases) for Hooman Toyota out
8 of the 368 in the District. [Dan Duddridge, RT Vol. 5, 23:9 - 26:17; see **Ex 1198**]

9 Historically, Cabe Toyota has ranked among the bottom 10% of Toyota dealers in new vehicle
10 sales and service. Cabe Toyota has been ranked number 70 out of 76 dealers in the district. In 2012,
11 Cabe Toyota achieved its highest ranking of 57 of 76. [Dan Duddridge, RT Vol. 4, 139:12-22]

12 “Units in Operation” or “UIO” refers to the number of Toyota vehicles registered within the last
13 7 years. Cabe Toyota’s PMA has slightly under 6,000 UIO. By comparison, the average UIO of other
14 Toyota dealers in the RMA is 16,480. [Dan Duddridge, RT Vol. 4, 127:18 - 129:12; see **Ex 1237**].

15 The UIO in Cabe Toyota’s PMA is only 37% of that of the average Toyota dealer in the RMA.
16 Cabe Toyota has the lowest number of UIO when compared to other surrounding Toyota dealers in the
17 LA Metro Area. [Doug Eroh, RT, Vol. 10, 2353-5; see **Ex 2062**].

18 In comparison to the other Toyota dealers in the RMA, Cabe Toyota has the lowest number of
19 UIO. [See **Ex 2062**]

20 Carson Toyota, located 3.6 miles to the west of Cabe Toyota, has UIO of 9,840, which is the next
21 smallest in the RMA. [See **Ex 2062**]

22 Cerritos Toyota located to the northeast of Cabe Toyota has the largest UIO in the RMA with
23 27,042. [See **Ex 2062**]

24 The PMA assigned to Cabe Toyota presents several challenges to the success of the dealership.
25 Cabe Toyota’s smaller PMA and competitive proximity challenges impact Cabe Toyota in that it effects
26 the profit margin (drives margins down). Cabe Toyota’s experience has been that price is a big factor
27 in customers’ decisions to purchase vehicles, and having such large nearby competing dealers drives
28 the prices which Cabe Toyota can sell vehicles for down. [Dan Duddridge, RT Vol. 4, 137:5-16]

1 Toyota provides marketing and financial support to Toyota dealers based upon the number of
2 registered Toyota customers in a particular dealer's PMA. Because Cabe Toyota has the lowest number
3 of UIO in its PMA of any other Toyota dealers in the RMA, Cabe Toyota receives a correspondingly
4 lower amount of market and financial support from Toyota. Cabe Toyota, like all other Toyota dealers
5 receives customer names and other marketing support from Toyota Motor Sales based on its PMA.
6 [Dan Duddridge, RT Vol. 4, 137:17-20].

7 Toyota Motor Sales provides dealers with the names of certain Toyota customers in a dealer's
8 PMA which dealers uses for their marketing purposes. Toyota Motor Sales will pay for ½ of the direct
9 mail and marketing as part of their co-op program. The result is that the dealers with a larger PMA get
10 more names for direct advertising. As a result, dealerships with larger PMAs and greater numbers of
11 UIO receive more co-op marketing assistance from Toyota to mail marketing materials to than a smaller
12 dealer, like Cabe Toyota, with a small PMA and fewer UIO. [Dan Duddridge, RT Vol. 4, 138:1-22]

13 Toyota provides dealers with a map of their assigned PMA and a structure list which reflects the
14 zip code included in their PMA ("structure list"). As of April 18, 2012, this structure list shows zip
15 codes "split" with other dealers. All zip codes are split with other dealers. This results in some zip
16 codes being shared or "split" among dealers. Because of the small size of Cabe Toyota's PMA
17 boundaries, all of the zip codes that fall within Cabe Toyota's PMA boundaries are shared with other
18 Toyota dealers. [See Ex 1156, p. 4.][Dan Duddridge, RT Vol. 4, 165:8 - 167:12].

19 Toyota has a system of providing Toyota dealers with customer leads known as the ELMS
20 system. The ELMS system relies on postal zip codes rather than census tracts which are used by Toyota
21 to define the PMA. The fact that the zip codes which fall within Cabe Toyota's PMA are "split" with
22 other Toyota dealers effect the number of leads that Cabe Toyota receives from the BuyAToyota.com
23 dealer locator. The BuyAToyota.com screen shot of results for zip code 90806 shows that for every
24 zip code in Cabe Toyota's PMA shows Cabe Toyota does not "own" any of the zip codes that fall
25 within the boundaries of its designated PMA. Other Toyota dealers are presented to the prospective
26 customers. [Dan Duddridge, RT Vol. 4, 167:18 - 169:2; see Ex 1222]

27 Cabe Toyota does not "own" any one zip code for the purpose of the ELMS system. The largest
28 portion of any of the 8 zip codes (90807) is 78%. [See Ex 1156 p 4]

1 Cabe Toyota receives only ½ of the leads from the Toyota ELMS system as the other Toyota
2 dealers in the District and the Region. [See **Exs 1188, 1218**; Testimony of Dan Duddridge, RT Vol.4,
3 171:5-16]

4 In December 2012, Cabe Toyota expressed concern to Toyota’s management regarding the ELMS
5 system and the number of leads Cabe Toyota was receiving. Specifically, that Cabe Toyota receives
6 48% of the district or average Toyota dealer. [Dan Duddridge, RT Vol. 4, 170:14 - 172:14]. The
7 ELMS system report - which is available to the dealers from the ELMS System - shows year to date
8 leads as of December 11, 2012 comparison to other dealers. [Dan Duddridge, RT Vol. 4, 172:15 -
9 174:7, see **Ex 1188**]. Cabe Toyota received fewer leads for the period of 1/1/2012 - 12/11/2012 as
10 compared to Region and Nation. [Dan Duddridge, RT Vol. 4, 174:8 - 175:21; see **Ex1192**]. Toyota’s
11 ELMS System is based on zip codes rather than census tracts. As a result, the proposed relocation site
12 would put Hooman Toyota into Cabe Toyota’s lead area for purposes of the ELMS System. [Dan
13 Duddridge, RT Vol. 4, 175:22 - 177:17; see **Ex 1223**].

14 Based on small size of Cabe Toyota’s PMA and low UIO, Cabe Toyota is at a disadvantage as
15 compared to other “larger” dealers when it comes to advertising “co-op” from Toyota Motor Sales.
16 [Dan Duddridge, RT Vol. 4, 143:14 - 144:5].

17 Hooman Toyota and Cabe Toyota have separate and distinct market demographics. These two
18 district markets are separated by Signal Hill. [Dan Duddridge, RT Vol. 4, 145:21-25]. The proposed
19 relocation will eliminate Signal Hill as a natural geographic barrier between Hooman Toyota and Cabe
20 Toyota. [John Cabe, RT Vol. 1, 158:10-15]

21 Cabe Toyota’s marketing efforts as demonstrated by its monthly newsletter highlights and
22 attempts to differentiate Cabe Toyota’s location near the 405 freeway from Hooman Toyota’s location
23 at the Traffic Circle. [Dan Duddridge, RT Vol. 4, 199:2 - 200:19; see **Ex 2066**]

24 The proposed relocation of Hooman Toyota to the 405 freeway will make it very challenging for
25 Cabe Toyota in terms of both marketing and customer access and visibility. [Dan Duddridge, RT Vol.
26 4, 146:1-6]

27 The proposed relocation would place Hooman Toyota squarely within Cabe Toyota’s most
28 important area of sales and service opportunity. Toyota Motor Sales management considered

1 reassigning the area to the north of Cabe Toyota to Hooman Toyota because that area would become
2 more proximate to Hooman Toyota if the relocation is permitted. The PMA boundaries would remain
3 the same. However, 10% of Cabe Toyota's UIO would still become more proximate to Hooman Toyota
4 if the proposed relocation is allowed. [Dan Duddridge, RT Vol. 4, 129:16 - 130:12; see Ex 1237]

5 C. FACTS RELATED TO WHETHER IT IS INJURIOUS TO THE PUBLIC WELFARE FOR
6 HOOAN TOYOTA TO BE RELOCATED TO THE PROPOSED SITE (SECTION
7 3063(C))

8 Within only a few months of Mr. Hooman Nissani assuming ownership and control of the Toyota
9 of Long Beach location, Toyota began having great concerns with several areas of Hooman Toyota's
10 operation. As early as September 23, 2008, Toyota began documenting the numerous concerns with
11 Hooman Toyota. These concerns included: questionable financial transactions, the failure to submit
12 timely financial statements, misrepresenting the facts on the dealership financial statements, failing to
13 make timely payments to Toyota, deficiencies in the dealership's net worth (below \$7,000,000.00
14 minimum), and deficiencies in net working capital. Hooman Toyota of Long Beach also was
15 discovered to be "out of trust" in material breach of its obligations to Toyota. [See Exs 1016, 1018,
16 1030, 1035] The ongoing problems with the operation of Hooman Toyota resulted in Toyota
17 conducting two financial audits of the records of the dealership. [See Exs 1042, 1050, 1076, 1094,
18 1095, 1097]

19 Toyota engaged an outside accounting firm to conduct another financial review of Hooman
20 Toyota's financial records to address concerns regarding Hooman Toyota's financial condition and
21 questionable accounting practices. The accounting firm reviewed Hooman Toyota's accounting records
22 back to 2008 when Hooman Nissani acquired the dealership. [Doug Eroh, RT Vol. 10, 49:1 - 54:8; Ex
23 1094]

24 A review of the financial records of Hooman Toyota conducted by Toyota in September 2009
25 revealed that, among other things, the initial capitalization of Hooman Toyota was misrepresented and
26 that \$2.6 million was missing from the dealership bank account after escrow closed. [Mike Durby, RT
27 Vol. 12, 244:1 - 246:32; see Ex 1548]

28 When Hooman Toyota's two year dealer agreement expired on January 8, 2010, it was not

1 renewed by Toyota. Instead, Hooman Toyota's Dealer Agreement was placed on a number of three
2 month extensions. Then, beginning on June 20, 2011, Hooman Toyota was placed on a series of one
3 month extensions of its Dealer Agreement. [See Exs 1084, 1098, 1103, 1110, 1115, 1139, 1145]

4 The numerous financial problems with Hooman Toyota's operation persisted through the years.
5 On June 22, 2011, Toyota issued a 180-Day Notice to Cure to Hooman Toyota. [See Ex 1099]

6 On August 3, 2011, Toyota sent Hooman Toyota a follow-up letter reiterating the numerous
7 deficiencies Hooman Toyota was required to cure or face possible termination of its Dealer Agreement.
8 [See Ex 1105]

9 The proposed relocation would move Hooman Toyota away from the center of its assigned PMA
10 and to a freeway location that will allow it to capture more business from Cabe Toyota. This move will
11 certainly stunt Cabe Toyota's growth [Dan Duddridge, RT Vol. 5, 76:18 - 77:24; see Ex 1227, page 46,
12 map D9 - change in customer proximity to closest Toyota dealer] and Cabe Toyota may not be able to
13 sustain its operations if Hooman Toyota is permitted to move to the proposed location.

14 10% of Cabe Toyota's census tracts in its PMA will become closer to Hooman Toyota if the
15 relocation is permitted. [Dan Duddridge, RT Vol. 5, 78:7-23] Because proximity is important, the
16 relocation will certainly take customers away from Cabe Toyota. [Dan Duddridge, RT Vol. 5, 78:17-
17 20]

18 Proximity is primary reason customers choose a Toyota dealer for service. [Dan Duddridge, RT
19 Vol. 5, 87:19 - 88:3]

20 The Cabe Toyota customers north of the 405 Freeway are Cabe Toyota's best economic
21 opportunity for growth of its sales and service. [Dan Duddridge, RT Vol. 5, 79:17 - 80:6]

22 Dan Duddridge has seen other stores in protests and it looks like they have experienced a loss of
23 25%. [Dan Duddridge, RT Vol. 5, 81:13; 82:15]

24 Cabe Toyota will lose sales business if the relocation allowed. [Dan Duddridge, RT Vol. 5, 88:4]

25 Anything over 3% loss in gross profit would put Cabe Toyota in a negative financial position.
26 [Dan Duddridge, RT Vol. 5, 88:14-20]

27 A high level break even analysis reflects:

28 - the construction costs / loan amounts and projected increase in costs

1 - from Toyota system, Cabe Toyota's existing service base of 7,086 customers
2 - approximate net gross for average RO less 15% selling expense and for cash - 2 service
3 visits per year

4 [Dan Duddridge, RT Vol. 5, 89:13; see **Ex 1247**]

5 Cabe Toyota will need to increase sales and service to cover additional costs. [Dan Duddridge,
6 RT Vol. 5, 91:1-11]

7 If Cabe Toyota were a top performer in its PMA, that would only add \$125,000.00; that would
8 not enough to overcome increase in costs as a result of renovation and negative impact from Hooman
9 Toyota relocation. [Dan Duddridge, RT Vol. 5, 97:6-10]

10 Watkins' map shows Hooman Toyota relocation would move it closer to Cabe Toyota's
11 customers. The map also illustrates why the Hooman Toyota relocation will have a negative impact
12 on Cabe Toyota. The majority of Cabe Toyota's business is to the northwest. [Dan Duddridge, RT
13 Vol. 5, 102:20 - 103:24; 104:1-15; see **Ex 1228.011**]

14 The Toyota Dealer Performance Statistics and locations of the various Toyota dealers in the RMA
15 reveal a correlation between proximity and dealer performance. Those Toyota dealers in the market
16 located in closest proximity to one another are shown to also have significantly lower sales and service
17 market share than those dealers not in close proximity to one another. There is a correlation between
18 proximity of dealers and sales / service performance.[Dan Duddridge, RT Vol. 5, 107:13; 110:12 -
19 111:4; see **Ex 1250.001**]

20 With an annual increase of \$352,000.00 in rent and the projected loss in sales caused from
21 Hooman Toyota relocation to be 10%, a loss as low as 3% would have a negative impact on Cabe
22 Toyota. [Dan Duddridge, RT Vol. 5, 87:23 - 102:6; see **Ex 1243**]

23 Based upon the 2011 financial statements for Cabe Toyota, the loss of 9.2% of its sales and
24 service revenue would be equivalent to a loss of \$455,000.00 to the dealership. [Scott Watkins, RT
25 Vol. 3, 63:12-18; 64:1; 65:15-21]

26 The relocation of Hooman Toyota would have a negative impact on Cabe Toyota at a time when
27 they have taken on a significant, permanent investment in its Toyota dealership. [Scott Watkins, RT
28 Vol. 3, 67:22-25]

1 Cabe Toyota does not have a large market area to compete in and must draw from other areas.
2 [Scott Watkins, RT Vol. 3, 72:12-15] The relocation would benefit Hooman Toyota at the cost of Cabe
3 Toyota. [Scott Watkins, RT Vol. 3, 75:23]

4 It would not be in the best interest of the Toyota brand if Cabe Toyota went out of business.
5 [Doug Eroh, RT Vol. 10, 220:23-25]

6 **D. FACTS RELATED TO WHETHER THE TOYOTA FRANCHISEES IN THE RELEVANT**
7 **MARKET AREA ARE PROVIDING ADEQUATE COMPETITION AND CONVENIENT**
8 **CONSUMER CARE (SECTION 3063(D))**

9 Toyota has eight dealerships in the 10-mile radius RMA, including two in Long Beach. These
10 eight dealerships give Toyota a strong position relative to other makes in the market, providing
11 consumers with multiple options for convenient vehicle sales and service. In fact, every other brand has
12 fewer dealerships in the RMA. [See **Ex 1227**, p. 8 - “Dealerships in the Market Area” and **Ex 1227**,
13 p. 42 - Map 4 (D-5) - “Automobile Dealerships, by Make, in the Relevant Market Areas.”]

14 Customer satisfaction measures, as collected on a regular basis by Toyota, show that, on the
15 whole, consumers in the RMA have access to adequate or more than adequate consumer care, with
16 adequacy being marked by average or above average customer satisfaction survey results. [See **Ex 1227**,
17 p. 12 - “Adequacy of Care” and **Ex 1227**, p. 57 (E-9) - “Customer Satisfaction Measures for RMA
18 dealerships, 2007-2012.”]

19 Toyota dealerships in the RMA also combine to post well above average Retail Sales Efficiency
20 (RSE) scores, as calculated by Toyota. This further evidences a more than adequate level of competition
21 within the market:

22 - RSE scores benchmark a dealer’s sales level with an expected sales level that is
23 determined using statewide market share data. An RSE of 100 suggests that a dealership is selling as
24 many units as would be expected given demand at the statewide level.

25 - Since 2007, Cabe Toyota has always exceeded the RSE target score of 100. Hooman has
26 only fallen below this target once since taking the dealership over in 2008. Five of the six remaining
27 Toyota dealerships in the RMA also regularly score above 100.

28 - The only dealership in the market consistently below a 100 RSE is Penske Toyota. Penske

1 is just 2 miles from Norwalk Toyota, and the low RSE evidences the negative effect that stems from
2 two closely-located sites.

3 [See **Ex 1227**, p. 56 (E-8) -“Retail Sales Efficiency Scores for RMA dealerships, 2007- mid-2012.”]

4 The statutory 10 mile “Relevant Market Area” or “RMA” has sufficient Toyota dealerships to
5 adequately serve the market. [Scott Watkins, RT Vol. 3, 16:4; see **Ex 1227, Maps D2, D3**]

6 There is adequate care and customer service within the market. [Scott Watkins, RT Vol. 3, 16:6-
7 8; see **Ex 1227, Maps D2, D3**]

8 The RMA is well dealered with seven other Toyota dealers within the 10 mile radius. [Scott
9 Watkins, RT Vol. 3, 27:18-24]

10 Toyota Retail Sales Efficiency scores for most Toyota dealerships in the RMA meet or exceed
11 a 100 RSE score and are sales “effective”; other dealers exceed 100 RSE by considerate amounts.
12 [Scott Watkins, RT Vol. 3, 29:3-17]

13 Based on Toyota’s own performance metrics, overall Toyota Dealer Network is providing
14 adequate customer care. [Scott Watkins, RT Vol. 3, 31:7 - 32:1]

15 Currently, sales of new Toyota vehicles in the market are above state average. The proposed
16 relocation would move Hooman Toyota away from the population center it is responsible to serve in
17 its assigned PMA and would reposition Hooman Toyota to be a “regional” dealer on the 405 Freeway.
18 [Scott Watkins, RT Vol. 3, 32:22 - 33:6]

19 RMA is well represented by 9 Toyota dealerships; most all of the Toyota dealers have very strong
20 sales performance. [Scott Watkins, RT Vol. 3, 58:12 - 59:3] The local market is densely populated and
21 not a lot of growth expected (no room for more growth, Long Beach is a built out, older community).
22 [Scott Watkins, RT Vol. 3, 23:8-10].

23 There is more than adequate customer care. The current location is in the heart of local Long
24 Beach and the proposed freeway site will provide more visibility and access on the 405 Freeway, but
25 not from within Hooman Toyota’s PMA. [Scott Watkins, RT Vol. 3, 61:3-16]

26 The proposed relocation moves away from local traffic flows within Hooman Toyota’s own PMA
27 and moves Hooman Toyota away from customers within Hooman Toyota’s own PMA. [Scott Watkins,
28 RT Vol. 3, 61:16-23]

1 Hooman Toyota's current location is at a junction of three major local traffic routes: Pacific Coast
2 Highway, Los Coyotes, and Lakewood Boulevard, in the center of a retail area.

3 The proposed relocation site is not a retail area. [Scott Watkins, RT Vol. 3, 34:3-8]

4 As a result, the move to the proposed location is not as convenient a location for the consumers
5 in the area. [Scott Watkins, RT Vol. 3, 34:25 - 35:6]

6 There are over 160,000 people in the area; only about 28,000 people would get closer to the
7 nearest dealership. There would be a decrease in convenience based on registered Toyota owners.
8 There are 11,300 registered Toyota owners (2009-2012 model year vehicles) in the area; the proposed
9 relocation moves Hooman away from these customers. [Scott Watkins, RT Vol. 3, 35:7 - 36:17; see
10 **Ex 1227, Map D9]**

11 Current intra brand and inter brand competition is already very strong, and any additional benefits
12 of increased competition would be marginal in terms of the consuming public. [Scott Watkins, RT Vol.
13 3, 37:16]

14 VIP program - free car washes is sign of a very competitive market. [Scott Watkins, RT Vol. 3,
15 38:3-8]

16 You have a well served and well performing market that is highly competitive. [Scott Watkins,
17 RT Vol. 3, 66:13]

18 Toyota misunderstood where Cabe Toyota sold vehicles, believing that 67% of its new vehicle
19 sales were beyond 20 miles from the dealership, when in fact 51% of Cabe Toyota's new vehicle sales
20 are made to customers located within 10 miles of the dealership. [Doug Eroh, RT Vol. 10, 222:18-
21 223:3; Transcript of the Deposition of Steve Hearne taken 3/26/2013, 59:16-21]

22 Hooman Toyota is proposing to relocate into Cabe Toyota's greatest area of sales and service
23 opportunity. The area to the north of Cabe Toyota, along the 405 freeway, is Cabe Toyota's greatest
24 area of opportunity in terms of sales and service. [See **Ex 1258]**

25 The proposed location would move Hooman Toyota away from the center of its assigned PMA
26 (populated density centers) that Toyota should remain positioned to serve. [Scott Watkins, RT Vol. 3,
27 25:7-15]

28 11,300 Toyota owners and 160,000 people will see reduction in convenience because relocation

1 site is away from center of Hooman Toyota market territory. [Scott Watkins, RT Vol. 3, 16:16-19]

2 A large number of brands are represented in the RMA. [Scott Watkins, RT Vol. 3, 20:22-24]

3 There are 54 automobile dealers in the RMA and 8 of the 54 are Toyota dealers. [Scott Watkins,
4 RT Vol. 3, 21:4-8]

5 No brand, other than Toyota, has two dealerships in the City of Long Beach. [Scott Watkins, RT
6 Vol. 3, 21:18-21]

7 No other brand has 8 dealerships in the RMA, and more just outside the RMA. [Scott Watkins,
8 RT Vol. 3, 22:1-3]

9 Strong inter brand and intra brand competition exists in the 10 mile RMA. [Scott Watkins, RT
10 Vol. 3, 22:15-18]

11 The City of Long Beach is an older and very densely populated area. It is very built out and as
12 a result, there does not exist a lot of opportunity for population growth in the Long Beach area. [Scott
13 Watkins, RT Vol. 3, 23:3-10]

14 Population growth projected is only 1.2% or 1.3% for this entire area. [Scott Watkins, RT Vol.
15 3, 23:10-12]

16 Compared to 3.5%, 2.4% for California. Population growth will not bring significant opportunity
17 for dealers. [Scott Watkins, RT Vol. 3, 23:17-19]

18 Minimal population changes projected in years to come. [Scott Watkins, RT Vol. 3, 23:23 to
19 24:5]

20 The Gravity Model is a big picture and is not good for local site selection; can't rely on
21 mathematical model to tell you what will occur in (local) market. [Scott Watkins, RT Vol. 3, 45:1-15]

22 **E. FACTS RELATED TO WHETHER THE RELOCATION OF HOOMAN TOYOTA TO THE**
23 **PROPOSED SITE WOULD INCREASE COMPETITION AND THEREFORE BE IN THE PUBLIC**
24 **INTEREST (SECTION 3063(E))**

25 On June 24, 2011, in response to this 180 Day Notice to Cure letter, Hooman Nissani made an
26 official written request to relocate the dealership to the Coast Cadillac site (3399 E. Willow Street,
27 Long Beach, California 90806). [See Ex 1100, p. 1]

28 On July 11, 2011, Mr. Steve Hearne wrote a letter to Mr. Hooman Nissani regarding his request

1 to relocate the Hooman Toyota dealership to the Coast Cadillac location at 3399 E. Willow Street. Mr.
2 Hearne again noted that the proposed relocation site was over 1 mile from the current location and
3 would be subject to protest under the California Vehicle Code. He stated this would be problematic
4 because, among other reasons:

5 1) The proposed location is closer to Cabe Toyota (2.18 miles away vs. the current 3.08
6 miles).

7 2) No fewer than seven dealers would have the right to protest a relocation to this site.

8 3) Hooman Toyota's capitalization issues make the viability of a relocation questionable.

9 Based upon the financial irregularities identified in two audits Toyota has conducted of Hooman
10 Toyota, and persistent capitalization deficiencies, Toyota questioned whether Hooman Toyota has the
11 financial capacity to undertake a relocation. [See Ex 1102, p. 1]

12 On July 27, 2011, Hooman Nissani met with representatives of Toyota and told them of his plan
13 to relocate to the Coast Cadillac facility and that he had found an investor (Dr. Sean Leoni) lined up
14 who would replace Kevin Golsham as 25% owner of the dealership, and contribute approximately
15 \$2,000,000.00 capital into the dealership, contingent upon approval of the relocation of the facility.
16 [See Ex 1105, p. 1]

17 On August 3, 2011, Steve Hearne wrote to Mr. Nissani reiterating that the proposed relocation
18 had been discussed and would be problematic because, among other reasons, the proposed relocation
19 is closer to Cabe Toyota (2.18 miles away vs. the current 3.08 miles), Mr. Hearne also noted that given
20 the questions regarding Hooman Toyota's capitalization, [See Ex 1105, pp. 4-5]

21 On September 7, 2011, Mr. Steve Hearne again wrote to Mr. Nissani stating that Mr. Nissani had
22 failed to substantiate his proposed relocation and that Toyota had not been provided with sufficient
23 information to evaluate the proposal. [See Ex 1111, pp. 1-2]

24 On December 2, 2011, Toyota informed Mr. Hooman Nissani that, based on the fact that
25 information submitted previously by Hooman Toyota was discovered to be inaccurate, another audit
26 would be conducted of the financial records of Hooman Toyota. However, Toyota indicated that it
27 would evaluate the proposed relocation in accordance with its site evaluation policies and procedures.
28 [See Ex 1138]

1 At this point in time, Hooman Toyota was still in breach of its obligations to Toyota. However,
2 on December 22, 2011, Toyota extended the 180 Day Notice to Cure period to June 8, 2011. [See Ex
3 1141]

4 On February 9, 2012, Mr. Steve Hearne wrote to Mr. Hooman Nissani and stated that TMS is
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 has determined that it will not support or authorize
9 relocation by Hooman Toyota to the former Cadillac location at 3399 Willow Street. [See Ex 1147,
10 p. 1]

11 On February 23, 2012, Mr. Hooman Nissani's counsel, Mr. Michael J. Flanagan, wrote a letter
12 to Mr. Steve Hearne at Toyota. Mr. Flanagan's letter stated that Hooman Nissani had already executed
13 a lease with an option to purchase the proposed relocation site and that unless TMS issues the statutory
14 notices required for Hooman's relocation on or before February 28, 2012, the owner of the property will
15 pursue another buyer. Further, Mr. Flannagan's letter stated that if Hooman's relocation proposal is
16 not approved without further delay and the statutory notice sent, Hooman will incur losses in excess
17 of \$12,000,000.00. [See Ex 1150, pp. 2-3]

18 Toyota would agree to support the relocation if Hooman Nissani agreed to pay the legal costs to
19 defend the anticipated protests. [See Ex 1157, p. 2]

20 Other than a brief review of the pump in pump out report, Toyota only spent a few hours
21 reviewing the site proposal info. [Doug Eroh, RT Vol. 10, 202:6-19]

22 Cabe Toyota Value Guarantee Program was a response to the competitive pressures of Hooman
23 Toyota's VIP program, which it began offering to its customers in 2008. [Dan Duddridge, RT Vol. 5,
24 11:8 - 12:14]

25 Cabe Toyota's Value Guarantee benefits are provided to customers who complete their service
26 at Cabe Toyota. [Dan Duddridge, RT Vol. 5, 15:22]

27 Unlike Hooman Toyota's VIP Program, Cabe Toyota's Value Guarantee program is not
28 contingent upon the sale of a vehicle. [Dan Duddridge, RT Vol. 5, 19:13-19]

1 Cabe Toyota relies on the Better Business reviews and are used by Cabe Toyota to compare /
2 monitor consumer ratings of Cabe Toyota and its competitors, such as Hooman Toyota. [Dan
3 Duddridge, RT Vol. 5, 29:8-18]

4 Cabe Toyota strives to maintain high internet reviews, such as Yelp, from its customers. [Dan
5 Duddridge, RT Vol. 5, 31:19 - 37:23; see **Ex 1190**]

6 Cabe Toyota uses consumer online reviews to gauge its reputation and customer satisfaction
7 performance. [Dan Duddridge, RT Vol. 5, 40:12 - 53:9; see **Ex 1204**]

8 **4. DETERMINATION OF ISSUES**

9 Protestant Cabe Toyota has proven that there is good cause to not allow the relocation of Hooman
10 Toyota to the proposed location of 3399 East Willow Street and 2679 Redondo Avenue, Long Beach,
11 California 90806.

12 Protestant Cabe Toyota has proven that its investment in its dealership is permanent. Cabe
13 Toyota has proven that the proposed relocation of Hooman Toyota to a site along the 405 freeway only
14 2.2 miles away from Cabe Toyota will substantially jeopardize Cabe Toyota's investment (Vehicle
15 Code Section 3063(a)).

16 Protestant Cabe Toyota has proven that the relocation of Hooman Toyota to the proposed site will
17 have a negative effect on the retail motor vehicle business and the consuming public in the relevant
18 market area (Vehicle Code Section 3063(b)).

19 Protestant Cabe Toyota has proven that it will likely be injurious to the public welfare for
20 Hooman Toyota to be relocated to the proposed site (Vehicle Code Section 3063(c)).

21 Protestant Cabe Toyota has proven that the Toyota franchisees in the relevant market areas are
22 providing adequate competition and convenient consumer care for Toyota motor vehicles in the market
23 area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts
24 and qualified service personnel (Vehicle Code Section 3063(d)).

25 Protestant Cabe Toyota has proven that the relocation of Hooman Toyota to the proposed site
26 would not create or increase favorable competition that would be in the public interest (Vehicle Code
27 Section 3063(e)).

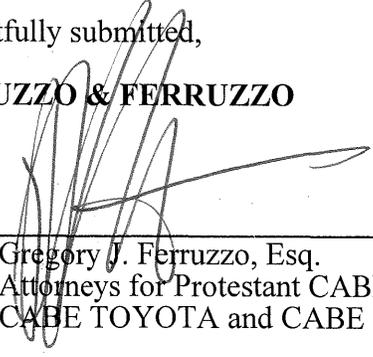
28 ///

1 **5. PROPOSED DECISION**

2 The protest of Cabe Toyota is sustained. TMS is not permitted to relocate Hooman Toyota to
3 3399 East Willow Street and 2679 Redondo Avenue, Long Beach, California 90806.

4
5 DATED: August 15, 2013

Respectfully submitted,
FERRUZZO & FERRUZZO

6
7 By: 
8 Gregory J. Ferruzzo, Esq.
9 Attorneys for Protestant CABE BROTHERS dba
10 CABE TOYOTA and CABE SCION

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
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

PROOF OF SERVICE

STATE OF CALIFORNIA)
)ss.
COUNTY OF ORANGE)

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

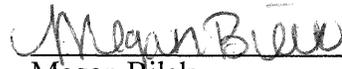
On August 15, 2013, I served the foregoing document described as:

PROTESTANT CABE TOYOTA'S PROPOSED FINDINGS OF FACT

on all interested parties in said action by:

- BY ELECTRONIC MAIL: I caused such document to be transmitted via electronic mail ("e-mail") pursuant to the ATTACHED SERVICE LIST.
- STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- 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.

Executed on August 15, 2013, at Newport Beach, California.



Megan Bilek

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 & 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 & 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 & 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 Ph: 916-445-1888 Fax: 916-323-1632 E-mail: nmvb@nmvb.ca.gov</p>	