

1 Halbert B. Rasmussen, Esq., SBN 108566  
*hrasmussen@manningleaver.com*  
2 Franjo M. Dolenac, Esq., SBN 259036  
*fdolenac@manningleaver.com*  
3 MANNING, LEAVER, BRUDER & BERBERICH  
Attorneys at Law  
4 5750 Wilshire Boulevard Suite 655  
Los Angeles, California 90036  
5 Tel: (323) 937-4730  
Fax: (323) 937-6727  
6  
7 Attorneys for Protestant Aldon, Inc. dba Carson  
Toyota and Aldon, Inc. dba Carson Scion

8  
9 **NEW MOTOR VEHICLE BOARD**

10 **STATE OF CALIFORNIA**

11 In the Matter of the Protests of  
12 ALDON, INC., a California corporation, d.b.a.  
CARSON TOYOTA, and  
13  
14 ALDON, INC., a California corporation, d.b.a.  
CARSON SCION, and  
15  
16 CABE BROTHERS, a California corporation,  
d.b.a. CABE TOYOTA and CABE SCION  
17  
18 APAULO, INC. d.b.a. NORWALK TOYOTA  
and TOYOTA SCION, and  
19  
20 DWWSB, INC. d.b.a. SOUTH BAY TOYOTA  
and SOUTH BAY SCION  
21  
22 Protestants,  
v.  
23 TOYOTA MOTOR SALES U.S.A., INC., a  
California Corporation,  
Respondent.

CONSOLIDATED MATTERS:

PROTEST NO. PR-2339-12

PROTEST NO. PR-2340-12

PROTEST NO. PR-2341-12

PROTEST NO. PR-2342-12

PROTEST NO. PR-2343-12

**PROTESTANT ALDON, INC. DBA  
CARSON TOYOTA AND CARSON  
SCION'S PROPOSED FINDINGS OF FACT**

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

1 **Proposed Findings of Fact**

2 **I. Factual and Procedural Background<sup>1</sup>**

3 **A. Carson Toyota's Historical Background**

4 1. In April 1975, protestant Aldon, Inc., whose shareholders consisted primarily of Albert  
5 Skinner and Donald Pennington, purchased and acquired the Carson Toyota dealership. [RT Vol.  
6 XI, 179:11-22; 197:4-12 (Skinner); Ex. 1506.]<sup>2</sup>

7 2. At that time, it was a very small and struggling dealership in terms of sales and service  
8 located right off of the I-405 freeway at 1333 E. 222rd Street in Carson, California. [RT Vol. XI,  
9 179:11-180:6; 184:2-10 (Skinner); Ex. 1508.]

10 3. Carson Toyota, which is now characterized as a relatively large and strong-performing  
11 dealership, has occupied that same location for over 38 years and still occupies that location today.  
12 [RT Vol. XI, 180:8-9 (Skinner); 241:15-22 (Brylski); Ex. 1508.]

13 4. The Skinner and Pennington families still own the dealership to this day. [Ex. 1508.]

14 5. The Skinner and Pennington families also own a dealership-related entity, Carson Real  
15 Estate Leasing, LLC, which is the entity that was created by the families for purchasing and owning  
16 the real property and facilities from where Carson Toyota operates. [RT Vol. XI, 186:15-22; 191:17-  
17 20; 219:2-12 (Skinner).]

18 6. Mr. Skinner is, and has been since he purchased Carson Toyota, its dealer principal. [RT  
19 Vol. XI, 179:19-22; Ex. 1508.]

20 7. Mr. Skinner started working in the automobile business in 1955 at Cormier Chevrolet  
21 and Central Chevrolet. [RT Vol. XI, 178: 14-21 (Skinner).]

22 8. In 1972, Mr. Skinner purchased his first Toyota dealership in Bellflower, California,  
23 which he owned until 1975. [RT Vol. XI, 179:4-10 (Skinner).]

24 9. He also purchased another Toyota dealership in Brea, California in 1974, which he  
25 unfortunately lost to a fire within one year. [RT Vol. XI, 179:11-18 (Skinner).]

26 \_\_\_\_\_  
27 <sup>1</sup> Findings of Fact are organized under topical headings for readability only and are not to be considered relative to only  
the particular topic under which they appear, but rather may apply to any of the "existing circumstances" or "good  
cause" factors of California *Vehicle Code* section 3063, and should be read cumulatively.

28 <sup>2</sup> The Reporter's Transcript is identified by volume ("I" for the first day of hearing, "II" for the second day of hearing,  
and so on). A total of 195 Exhibits were received into evidence. Attached is an exhibit index for reference only.

1 10. Martin Brylski is, and has been since 2010, Carson Toyota's President and Chief  
2 Operating Officer. [RT Vol. XI, 240:4:9; 241:7-10 (Brylski).]

3 11. Mr. Brylski first joined Carson Toyota in 1984, worked there for approximately two  
4 years before he left, and then rejoined the dealership in 1994 as its sales manager. He then became  
5 its general manager in 1995. [RT Vol. XI, 240:25-241:6 (Brylski).]

6 12. Today, Mr. Brylski is responsible for Carson Toyota's day-to-day operations, including  
7 selling cars, service, and parts, dealing with employee and regulatory compliance issues, and  
8 focusing on business strategy issues such as marketing and advertising. [RT Vol. XI, 241:11-242:1  
9 (Brylski).]

10 13. Carson Toyota employs 139 individuals; 21 are sales associates and 24 are qualified  
11 technicians. [RT Vol. XI, 242:7-20 (Brylski).]

12 14. In May 2004, Carson Toyota commenced its huge \$30 million undertaking to expand  
13 and build brand new facilities at its existing location to become compliant with Toyota Motor  
14 Sales's current facility image guidelines – Image USA II. [RT Vol. X, 30:7-12 (Eroh); RT Vol. XI,  
15 180:10-15, 200:920 (Skinner); Ex. 1523; 2038.]

16 15. In 2007, Carson Toyota demolished all of its facilities to make way for its single-purpose  
17 facility, which was completed in late-2008. [RT Vol. VIII, 72: 2-9 (Duddridge); RT Vol. XI,  
18 186:23-187:18 (Skinner).]

19 16. Today, Carson Toyota's facility is regarded by TMS as a "fantastic facility" and "one of  
20 the finest facilities" within its dealer network. [RT Vol. X, 30:19-24 (Eroh).]

21 17. In terms of performance for 2012 year-end, Carson Toyota generated over \$133 million  
22 in sales, selling 3,170 new Toyota and Scion vehicles and 1,142 used vehicles, and servicing  
23 approximately 24,407 vehicles based on customer-pay and warranty repair orders. [Ex. 1514  
24 (HoCT001888, HoCT001891-1892).]

## 25 **B. Cabe Toyota's Historical Background**

26 18. In February 1969, protestant Cabe Brothers, owned by actual brothers Loy Cabe and Roy  
27 Cabe, purchased Cabe Toyota. [RT Vol. I, 113:8-21 (Cabe); Ex. 1001.]

28

1           19. John Cabe, Loy's son and Ray's nephew, is the dealership's dealer principal and general  
2 manager. [RT Vol. I, 112:15-17 (Cabe).]

3           20. With approximately 26 years of experience in the automobile business, Mr. Cabe became  
4 the general manager of the dealership in 1981. [RT Vol. I, 115:1-22 (Cabe).]

5           21. Mr. Cabe became part owner of Cabe Toyota, along with his two sisters and his uncle,  
6 after his father passed in 1988. Currently, Mr. Cabe and his two sisters own the dealership. [RT Vol.  
7 I, 115:6-15 (Cabe); Ex. 1003.]

8           22. Cabe Toyota is one of the smaller dealers in Toyota's dealer network, but it prides itself  
9 on being family-owned and -operated. Mr. Cabe's wife, sister, and son-in-law, Dan Duddridge, all  
10 work for the dealership. [RT Vol. I, 159:16-160:4 (Cabe).]

11           23. Its employees have extensive experience with very low turnover. Some employees have  
12 worked for the dealership for over 40 years. The dealership employs managers who have been with  
13 it for over 30 years, and mechanics who have worked there for over 25 years. Its average  
14 employee's term is ten years, [RT Vol. I, 159:16-160:4 (Cabe); RT Vol. IV, 123:1-7 (Duddridge).]

15           24. Mr. Duddridge is Cabe Toyota's operations manager, and has held that position from  
16 1996 through 1997 and from 2008 through the present. His responsibilities are to work and  
17 coordinate with the dealership's departmental managers on specific project-oriented issues and  
18 report to Mr. Cabe. [RT Vol. IV, 109:11-111:1 (Duddridge).]

19           25. The dealership originally operated from a single parcel located at 2901 Long Beach  
20 Boulevard in Long Beach, California, which is approximately one-half mile south of the I-405  
21 freeway, and still operates from that location today. [RT Vol. I, 114:8-20 (Cabe).]

22           26. In 2003, Cabe Toyota considered relocating to three different locations, including the  
23 auto mall located in Signal Hill, California, but none of those locations were approved by TMS  
24 either because they were all outside of the statutory protestable one mile distance from Cabe  
25 Toyota's current location, or because it was located within one mile but in a different city. [RT Vol.  
26 I, 132:6-23 (Cabe); RT Vol. V, 53:21-54:20 (Duddridge).]

27           27. Instead, Cabe Toyota decided to acquire parcels surrounding its existing dealership,  
28 some parcels that the dealership already leased, beginning in 2006, and renovate and repurpose its

1 existing buildings as well as build new ones. [RT Vol. I, 131:23-5 (Cabe); RT Vol. V, 56:17-57:7  
2 (Duddridge); Ex. 1209.]

3 28. The dealership now operates its service department from the original parcel, and  
4 expanded its operations by purchasing additional parcels around that original parcel, including 2831  
5 Long Beach Boulevard (used vehicle display and sales office), 2849 Long Beach Boulevard (parts  
6 department), and 2895 Long Beach Boulevard (new vehicle sales office and showroom). [RT Vol. I,  
7 120:6-121:12 (Cabe); Ex. 1153.]

8 29. These multiple parcels are non-contiguous, and are separated by two streets –29th Street  
9 that was successfully partially blocked by Cabe Toyota to provide for a pedestrian right-of-way  
10 separating the sales and service departments and Columbia Street that Cabe Toyota also successfully  
11 narrowed but still remains open to vehicular traffic. [RT Vol. II, 55:9-22 (Cabe); RT Vol. IV,  
12 146:20-147:13; RT Vol. V, 53:21-55:19 (Duddridge); RT Vol. X, 33:17-34:4 (Eroh); Ex. 1209.]

13 30. And in 2010, Cabe Toyota began working closely with TMS to plan renovations to its  
14 facilities comply with its Image USA II facility guidelines. Also in 2010, the dealership began  
15 construction, which at first was classified as lease-hold improvements prior to acquiring the real  
16 property. [RT Vol. I, 121:5-12; 124:14:17; 131:23-135:5 (Cabe); RT Vol. II, 177:13-178:2 (Moore);  
17 RT Vol. X, 33:17-34:4 (Eroh); Ex. 2045.]

18 31. Cabe Toyota is located 3.6 miles (measured by air distance) and 4.1 miles (measured by  
19 drive distance) from Carson Toyota, which takes approximately 5.3 minutes on average to drive.  
20 [Ex. 254 (Tab 4).]

21 32. In terms of performance for 2012 year-end, Cabe Toyota generated over \$61 million in  
22 sales, selling 1,507 new Toyota and Scion vehicles and 495 used vehicles, and servicing  
23 approximately 14,573 vehicles based on customer-pay and warranty repair orders. [Ex. 2000 (TMS-  
24 PROD\_18747, TMS-PROD\_18750-18751).]

### 25 **C. Hooman Toyota's Historical Background**

26 33. Relatively recently in January 2008, intervenor HTL Automotive, Inc. acquired Hooman  
27 Toyota. At the time, it was represented to TMS that Hooman Nissani was the majority owner and  
28

1 that Kevin Golshan and Geraldine Weber were its minority owners. [RT Vol. XIV, 17:20-21  
2 (Nissani); Ex. 1009.]

3 34. Hooman Toyota's current location at the Traffic Circle was first occupied by Palmers  
4 Toyota sometime around 1978 or 1979 and is separated from Cabe Toyota by the geographical  
5 feature Signal Hill. [RT Vol. I, 157:21-158:15 (Cabe); Bracken Depo., 70:17-71:6.]

6 35. Mr. Nissani works for the Hooman Automotive Group, which in addition to the Hooman  
7 Toyota dealership, also owns the Hooman Nissan dealership. [RT Vol. XIV, 9:13-22 (Nissani).]

8 36. Currently, Hooman Toyota is owned only by Mr. Nissani and Mr. Golshan. [RT Vol.  
9 XIV, 9:13-22 (Nissani).]

10 37. Prior to purchasing Hooman Toyota, Mr. Nissani acquired the Century City Pontiac  
11 Buick GMC dealership in 2003. [RT Vol. XIV, 13:15-22 (Nissani).]

12 38. Mr. Nissani only operated that dealership for five years, and it closed in the beginning of  
13 2009. [RT Vol. XIV, 13:23-14:8]

14 39. Even before it opened its doors for business, Hooman Toyota encountered several  
15 financial issues that ultimately required TMS to consult with a third-party auditor to unweave the  
16 dealership's evasive financial disclosures. [RT Vol. X, 294:21-295:19 (Eroh); RT Vol. XII, 215:24-  
17 217:1; 217:22-24; 242:13-243:24 (Durby).]

18 40. And as of June 8, 2012, over three years after opening the dealership, Hooman Toyota  
19 continued to operate without curing all of the financial deficiencies outlined by TMS and its third-  
20 party auditor. [RT Vol. XII, 253:25-254:14 (Durby); Ex. 1560.]

21 41. When it first opened in 2008, Hooman Toyota operated from two parcels on the Traffic  
22 Circle – the sales facility located at 4401 E. Pacific Coast Highway, Long Beach, California and the  
23 service facility located at 1775 Ximeno Avenue, Long Beach, California, which are the same  
24 facilities that the dealership occupies today. [RT Vol. XIV, 17:22-18:7 (Nissani); Ex. 1009 (TMS-  
25 PROD\_013311).]

26 42. Since then, the dealership also operates from the "Orizaba location," which it uses to  
27 deliver its new vehicle inventory, perform pre-delivery inspections, and detail its used vehicles. [RT  
28 Vol. XIV, 33:23-34:13 (Nissani).]

1 43. Over time, Hooman Toyota entered into several short-term leases for off-site storage  
2 facilities, but since it acquired the former Coast Cadillac dealership – the site for the proposed  
3 relocation – the dealership now uses that facility as off-site storage. [RT Vol. XIV, 35:12-36:9;  
4 156:12-22 (Nissani).]

5 44. The dealership utilizes two outside services for car washing, neither of which it owns or  
6 leases, but rather are open services to the public. [RT Vol. XIV, 36:22-25; 156:23-157:22 (Nissani).]

7 45. With respect to its existing sales and service facilities, the dealership performed minor  
8 upgrades since 2008, including adding three service write-up areas to the then-existing four areas,  
9 and building an additional area to move some service write up areas to increase waiting room space.  
10 [RT Vol. XIV, 24:14-21; 26:14-20; 27:1-13 (Nissani).]

11 46. The dealership is located 3.1 miles from Cabe Toyota and 6.7 miles from Carson Toyota  
12 (measured by air distance) and 3.8 miles from Cabe Toyota and 7.7 miles from Carson Toyota  
13 (measured by driving distance), which takes approximately 4.4 minutes and 9.5 minutes on average  
14 to drive from Hooman Toyota to Cabe Toyota and Carson Toyota, respectively. [Ex. 254 (Tab 4).]

15 47. In terms of performance for November 2012 year-to-date, Hooman Toyota generated  
16 over \$72 million in sales, selling 1,781 new Toyota and Scion vehicles and 590 used vehicles, and  
17 servicing approximately 23,829 vehicles based on customer-pay and warranty repair orders. [Ex.  
18 252 (HTL0000003, HTL0000005-0000006).]

19 48. Mr. Nissani attributed much of Hooman Toyota's success to his self-praised VIP  
20 Program, which he first started at his former Buick, Pontiac, GMC store, and which he implemented  
21 upon opening Hooman Toyota. [RT Vol. XIV, 164:7-165:13; 165:18-166:2 (Nissani).]

22 49. Hooman Toyota includes the VIP Program with the purchase of any vehicle from the  
23 dealership, and the services provided that are contingent upon a vehicle purchase include oil  
24 changes, car washes, and replacement tires for life. [RT Vol. XIV, 167:13-168:23 (Nissani); Ex.  
25 1143.]

26 50. Mr. Nissani intends to continue to offer the VIP Program if Hooman Toyota is permitted  
27 to relocate. [RT Vol. XIV, 165:14-17 (Nissani).]

28

1           **D. Hooman Toyota's Proposed Relocation**

2           51. The Carson Toyota, Cabe Toyota, and Hooman Toyota dealerships have coexisted in the  
3 same respective locations and developed their own respective markets over the past 35 years. [RT  
4 Vol. I, 157:21-158:15 (Cabe); RT Vol. III, 14:6-14; 98:17-20 (Watkins); RT Vol. VIII, 73: 20-74:1  
5 (Duddridge); RT Vol. IX, 99:10-13 (Matthews); RT Vol. XI, 197:4-198:2 (Skinner).]

6           52. But Mr. Nissani sought to disrupt that equilibrium upon acquiring Hooman Toyota, and  
7 represented that TMS knew that his "goal from day one has been to relocate this location." [Ex.  
8 1018 (TMS-PROD\_011330).]

9           53. At the latest, on February 12, 2009, Mr. Nissani expressed his desire to relocate Hooman  
10 Toyota specifically to the former Boulevard/Coast Cadillac dealership that is now the subject of this  
11 protest. [Ex. 1018 (TMS-PROD\_011330).]

12           54. Around June 24, 2011, Mr. Nissani formally submitted to TMS Hooman Toyota's  
13 proposal to relocate to the former Cadillac dealership located at 3399 E. Willow Street, Long Beach,  
14 California. [Ex. 1100.]

15           55. The Proposed Relocation is located 2.2 miles from Cabe Toyota and 5.8 miles from  
16 Carson Toyota (measured by air distance) and 2.6 miles from Cabe Toyota and 6.4 miles from  
17 Carson Toyota (measured by driving distance), which takes approximately 2.8 minutes and 8.0  
18 minutes on average to drive from the proposed relocation site to Cabe Toyota and Carson Toyota,  
19 respectively. The relocation would make the Cabe Toyota and Hooman Toyota the closest  
20 dealerships as measured by drive time in the relevant market area and its surrounding area. [Ex. 254  
21 (Tab 4).]

22           56. On July 27, 2012, TMS approved Hooman Toyota's request to move to the Proposed  
23 Relocation contingent on several requirements, including resolution of all protests against the  
24 relocation in Hooman Toyota's favor, complying with TMS's Image USA II facility guidelines,  
25 submission and approval of a pro forma, and deposit of \$500,000 by Hooman Toyota to TMS to  
26 cover the dealership's contribution to TMS's defense of any protest. TMS also approved relocating  
27 Hooman Toyota to 2679 Redondo Avenue, Long Beach, California, which is the property adjacent  
28 to the former Cadillac dealership. [RT Vol. XII, 253:6-9 (Durby); Ex. 1165.]

1 57. By letter dated August 2, 2013, TMS gave notice to the dealers within the statutorily  
2 defined RMA regarding its intention to relocate Hooman Toyota to the Proposed Relocation. [Ex.  
3 1166.]

4 **E. Procedural Background**

5 58. On August 20, 2013, in response to TMS's August 2 letter and notice, Carson Toyota  
6 timely filed this protest with the New Motor Vehicle Board challenging TMS's approval to relocate  
7 Hooman Toyota to the proposed former Cadillac dealership and adjacent property under section  
8 3062.<sup>3</sup>

9 59. Cabe Toyota also timely filed a protest with the New Motor Vehicle Board challenging  
10 TMS's approval to relocate Hooman Toyota to the proposed former Cadillac dealership and  
11 adjacent property under section 3062.

12 60. A hearing was held from June 3 through June 21, 2013 before Victor D. Ryerson,  
13 Administrative Law Judge for the Board, in Sacramento, California. [RT Vol. I-XV.]

14 61. Carson Toyota was represented by Halbert B. Rasmussen and Franjo M. Dolenac of  
15 Manning, Leaver, Bruder & Berberich located at 5750 Wilshire Boulevard, Suite 655, Los Angeles,  
16 California 90036.

17 62. Cabe Toyota was represented by Gregory J. Ferruzzo of Ferruzzo & Ferruzzo, LLP  
18 located at 3737 Birch Street, Suite 400, Newport Beach, California 92660.

19 63. TMS was represented by S. Keith Hutto, Steven A. McKelvey, and Steven B. McFarland  
20 of Nelson, Mullins, Riley & Scarborough, LLP located at 1320 Main Street, 17th Floor, Columbia,  
21 South Carolina 29201.

22 64. Hooman Toyota was represented by Michael J. Flannagan, Gavin M. Hughes, and  
23 Danielle R. Vare of the Law Offices of Michael J. Flannagan located at 2277 Fair Oaks Boulevard,  
24 Suite 450, Sacramento, California 95825.

25 65. The following witnesses were presented for live testimony at the hearing: (1) John Cabe  
26 of Cabe Toyota; (2) Lillian Moore of Cabe Toyota; (3) Scott Watkins, expert witness for Cabe  
27 Toyota; (4) Dan Duddridge of Cabe Toyota; (5) Edward M. Stockton, expert witness for Hooman  
28

---

3 All statutory references are to the California *Vehicle Code* unless otherwise indicated.

1 Toyota; (6) John Matthews, Ph.D., expert witness for Carson Toyota; (7) Doug Erogo of TMS; (8)  
2 Albert Skinner of Carson Toyota; (9) Martin Brylski of Carson Toyota; (10) Herbert Walter, expert  
3 witness for TMS; (11) Michael Durby of TMS; (12) Sharif Farhat, expert witness for TMS; and (13)  
4 Hooman Nissani of Hooman Toyota. [RT Vol. I-XIV.]

5 66. The following deposition transcripts were designated by the parties after the live-  
6 testimony portion of the hearing: (1) William Bergen of TMS; (2) Jeff Bracken of TMS; (3) Alfredo  
7 Cabaero of Carson Toyota; (4) Sam Carrillo of Hooman Toyota; (5) Steven Hearne of TMS; (6)  
8 Jason Kong of TMS; (7) Patrick O'Donnell, third-party witness from the City of Long Beach; (8)  
9 Julio Torres of Cabe Toyota; and (9) Mike Vogel of Carson Toyota.

10 67. On June 27, 2013, ALJ Ryerson, at the request of the parties, conducted a site visit  
11 encompassing the Carson Toyota, Cabe Toyota, Hooman Toyota, and Proposed Relocation  
12 properties and the immediate environs.

## 13 **II. Legal Standard and Contentions**

14 68. In accordance with Section 3062, when a seasonable protest has been filed in response to  
15 a franchisor's notice of its intention to relocate an existing dealership within the RMA, as is present  
16 here, the Board must hold a hearing to determine if "good cause" has been established for not  
17 relocating a franchise for the same line-make. [§ 3063.]

18 69. Franchisee has the burden of proof to establish good cause under Section 3063. [§  
19 3066(c).]

20 70. Under Section 3063, Carson Toyota contends that good cause has been established for  
21 not relocating Hooman Toyota to the Proposed Relocation for the following reasons, among others:

- 22 (a) Carson Toyota and Cabe Toyota both made substantial and permanent investments in  
23 their respective dealerships in reliance on the predictable intrabrand competition  
24 associated with the permanency of the existing configuration of the local dealer network;
- 25 (b) The relocation will have an unpredictable degree of negative impact on the retail motor  
26 vehicle business but a predictable loss of pro-consumer services and a less convenient  
27 dealer network for the consuming public in the relevant market area;

28

1 (c) The relocation will be injurious to the public welfare by creating a less convenient dealer  
2 network, forcing job terminations, forcing cutbacks in pro-consumer services, and  
3 perpetuating illegal, anticompetitive programs such as Hooman Toyota's VIP Program in  
4 an already aggressive competitive RMA;

5 (d) The Toyota dealers in the RMA are providing adequate competition and convenient  
6 consumer care for Toyota vehicles in the RMA, including adequate motor vehicle sales  
7 and services facilities, equipment, supply of vehicle parts, and qualified personnel;

8 (e) When balancing TMS's reckless opportunistic actions with the consequential impact on  
9 its dealer network and the overwhelming anticompetitive effects on its consumers, the  
10 relocation would not increase competition and therefore not be in the public interest.

11 71. The family-owned and -operated Carson Toyota and Cabe Toyota dealerships have  
12 coexisted with the past and present Hooman Toyota dealership at their same respective locations for  
13 over 35 years. [RT Vol. I, 157:21-158:15 (Cabe); RT Vol. III, 14:6-14; 98:17-20 (Watkins); RT Vol.  
14 VIII, 73: 20-74:1 (Duddridge); RT Vol. IX, 99:10-13 (Matthews); RT Vol. XI, 197:4-198:2  
15 (Skinner).]

16 72. Carson Toyota relied on the predictability of this long-standing market configuration to  
17 heavily invest in its facilities at its current location. [RT Vol. XI, 195:18-196:6; 213:20-214:1  
18 (Skinner).]

19 73. Cabe Toyota also relied on the permanency of these dealerships' coexistence to invest in  
20 its facilities at its current location. [RT Vol. II, 56:11-21 (Cabe).]

21 74. Before making substantial investments in its dealership, Cabe Toyota actually asked  
22 TMS, and TMS denied that Hooman Toyota would be moving to the Proposed Relocation. If TMS  
23 confirmed the relocation at that time, Cabe Toyota would have modified its existing plans to  
24 renovate its facilities. [RT Vol. I, 144:19-145:19 (Cabe).]

25 **III. Facts related to permanency of the investment (Veh. Code § 3063(a))**

26 75. Carson Toyota went to great lengths to invest and improve its facilities at its current  
27 location. Though originally the real property owner at the time would not sell the dealer-occupied  
28 property, Carson Toyota enlisted help from the City of Carson's Redevelopment Agency to

1 purchase the property and in turn sell it to the dealership. [RT Vol. XI, 186:7-14 (Skinner); Ex.  
2 1523.]

3 76. The Skinner and Pennington families, through its dealer-related entity Carson Real  
4 Estate Leasing, LLC, purchased that property in May 2004 for approximately \$8.5 million, and  
5 ultimately acquired about ten acres of land for the dealership's facilities. [RT Vol. XI, 203:1-3  
6 (Skinner); Ex. 1523 (TMS-PROD\_004605, ¶ 4.2.1).]

7 77. Carson Toyota, through its dealer-related entity, started construction of its new facilities  
8 around March 2007 by demolishing all of the existing facilities and building a completely new  
9 facility, which was completed around December 2008. [RT Vol. XI, 186:23-187:18; 192:18-193:2  
10 (Skinner); [Ex. 1524 (HoCT000469).]

11 78. The construction costs of the new facility totaled \$20,418,152. [Ex. 1524  
12 (HoCT000470).]

13 79. Upon completion of the new facility, Carson Toyota invested in all new service  
14 equipment, totaling \$1,539,500. [RT Vol. XI, 193:24-194:9 (Skinner); Ex. 1533 (HoCT000537); *see*  
15 *also* Ex. 1514 (HoCT001887, line 62 - \$1,552,742).]

16 80. The dealership also invested in additional building and improvements totaling \$148,891  
17 [Ex. 1514 (HoCT001887, line 61).]

18 81. Carson Toyota invested in new furniture, fixtures, and signs totaling \$1,242,362. [RT  
19 Vol. XI, 193:24-194:9 (Skinner); Ex. 1514 (HoCT001887, line 64).]

20 82. Additional investment in its facility includes parts & accessories equipment, costing  
21 \$230,688. [Ex. 1514 (HoCT001887, line 63).]

22 83. In 2012, Carson Toyota paid monthly rent of \$217,347 to the dealer-related entity,  
23 Carson Real Estate Leasing, LLC. Roughly \$187,000 of the rent was used to cover the monthly  
24 payments on the loans for the real estate acquisition and facility and construction costs invested by  
25 the Skinner and Pennington families. [RT Vol. XI, 222:7-24 (Skinner); Ex. 1514; (HoCT001888 –  
26 line 35).]

27 84. Carson Toyota's original investment in the dealership totaled \$59,400 [RT Vol. XI,  
28 216:7-15; Ex. 1514 (HoCT001887, line 53).]

1 85. And its retained earnings total \$3,665,33, which is calculated by taking the original  
2 retained earnings of \$4,777,663 (line 56) less dividends/drawings of \$3,477,147 (line 57), plus net  
3 profit after taxes of \$2,364,817 (line 75). [Ex. 1514 (HOCT001887).]

4 86. The Skinner and Pennington families' dealer-related investments, though not inclusive,  
5 total \$35,822,044.

6 87. Cabe Toyota went to great lengths to unify its non-contiguous parcels at its existing  
7 location by successfully partially blocking 29th Street to provide for a pedestrian right-of-way  
8 separating the sales and service departments and also successfully narrowing Columbia Street. [RT  
9 Vol. II, 55:9-22 (Cabe); RT Vol. IV, 146:20-147:13; RT Vol. V, 53:21-55:19 (Duddridge); Ex.  
10 1209.]

11 88. In August 2008, the Cabe family purchased a parcel next to its parts building for \$1.8  
12 million. [RT Vol. I, 123:6-13 (Cabe); Ex. 1209.]

13 89. The Cabe family then purchased the real estate upon which the parts building sits and the  
14 corresponding parts building in September 2009 for \$1.4 million. [RT Vol. I, 123:21-124:5 (Cabe);  
15 Ex. 1209.]

16 90. The Cabe family also purchased a property with a house on it, which was eventually torn  
17 down to be utilized to store its inventory, in April 2012 for \$400,000. [RT Vol. I, 123:9-20 (Cabe);  
18 Ex. 1209.]

19 91. In addition to these land acquisitions, the Cabe family intends to invest approximately  
20 \$4.6 million in costs to renovate existing facilities and build new ones. [Ex. 1238 (CABE001851).]

21 92. As of May 2013, the Cabe family has already spent \$613,875 in construction costs. [RT  
22 Vol. II, 151:10-151:24 (Moore).]

23 93. Cabe Toyota's investments already made in land acquisition and facility construction  
24 costs through May 2013 alone, though not inclusive, total \$4,213,875. Cabe Toyota estimates that  
25 an additional \$3,985,125 is required to complete its remodeling based on its proposed loan with  
26 Toyota Financial Services, bringing its total estimated investment to approximately \$8.2 million.

27 ///

28 ///

1 94. As a result of its remodel, Cabe Toyota expects its monthly fixed costs to increase  
2 between \$28,000 and \$31,000 over the next 20 years. [RT Vol. I, 152:1-24; 161:9-18 (Cabe); RT  
3 Vol. III, 65:22-66:6 (Watkins); RT Vol. V, 73:25-74:17 (Duddridge).]

4 95. Hooman Toyota is a relative newcomer to the Toyota family and the relevant market  
5 area, having only acquired the dealership in early 2008. [RT Vol. XIV, 17:20-21 (Nissani); Ex.  
6 1009.]

7 96. But financial troubles started early on for the dealership, even before it opened its doors  
8 for business. [RT Vol. XII, 215:24-217:1; 217:22-24; 242:13-243:24 (Durby).]

9 97. On September 23, 2008, TMS first contacted Mr. Nissani about its concerns regarding  
10 the dealership's financial issues. TMS sent follow-up contacts to Mr. Nissani on October 15, 2008,  
11 November 21, 2008, January 28, 2009, February 9, 2009, March 4, 2009, and March 11, 2009. And  
12 as of the letter dated July 7, 2009 – over a year and a half after the dealership's financial issues  
13 started – Mr. Nissani did not provide TMS with an adequate response to its concerns despite being  
14 characterized by TMS as “very involved” in the dealership as an “owner/operator, someone that’s  
15 there every day and working in the business every day.” [RT Vol. X, 65:1-20 (Eroh); RT Vol. XII,  
16 238:24-239:10; 239:21-240:1 (Durby); Ex. 1035.]

17 98. As a result, TMS conducted a financial review on Hooman Toyota's accounting practices  
18 as far back as 2008, and utilized a third-party accounting firm to conduct the review. TMS does not  
19 typically use a third-party accounting firm to conduct financial reviews of its dealerships; rather,  
20 these firms are utilized in unique instances where there are multiple, reoccurring financial issues  
21 over an extended period of time. [RT Vol. X, 53:5-21; 294:21-295:19 (Eroh); Ex. 1094.]

22 99. First, TMS was concerned with Hooman Toyota's misrepresentation and failure to  
23 initially capitalize the dealership. Hooman Toyota's investors were initially required to capitalize  
24 the dealership with \$7 million, but the full, initial capitalization never happened because the  
25 investors did not have the money and were short by \$2.7 million. This fact was never disclosed by  
26 Mr. Nissani, but rather was discovered by TMS through its own investigation. [RT Vol. X, 45:10-  
27 23; 53:22-54:8; 80:12-18 (Eroh); RT Vol. XII, 215:24-217:1; 217:22-24; 244:2-24 (Durby); Ex.  
28 1042 (TMS-PROD\_013695); Ex. 1548 (TMS-PROD\_009180).]

1           100. TMS also discovered in its financial review that individuals other than Mr. Nissani,  
2 Mr. Golshan, and Ms. Weber gave money to the dealership, but Mr. Nissani never classified those  
3 individuals as investors. And now a lawsuit filed by Hooman Toyota’s “silent investors” is pending  
4 against the dealership, Mr. Nissani, and another investor – Sean Leoni – who has no stated  
5 ownership interest in the dealership. (RT Vol. XII, 246:5-23; Ex. 1548 (TMS-PROD\_009181); Exh  
6 1556 (TMS-PROD\_009639).]

7           101. TMS finds that a dealer’s capitalization is very important especially during an  
8 economic downturn. Dealers require a lot of capital to pay for large ticket items. And it is a “big  
9 concern” for multiple-business owners who take money out of their dealerships to fund their other  
10 less successful ventures. [RT Vol. X, 47:21-48:7; 54:9-55:3 (Eroh).]

11           102. Because of the importance of capitalization, TMS oftentimes imposes net worth  
12 requirements on a dealer. Its purpose is generally to ensure that the dealership maintains its capital  
13 rather than divesting the capital out to some other business. TMS imposed this requirement on  
14 Hooman Toyota. [RT Vol. XII, 237:8-25 (Durby).]

15           103. TMS became even more alarmed when it learned that Mr. Nissani acquired an open  
16 point Nissan store while TMS continued Hooman Toyota’s financial review. [RT Vol. X, 309:6-19  
17 (Eroh).]

18           104. In connection with his other business venture – the Century City Buick, Pontiac,  
19 GMC dealership – Mr. Nissani took that dealership’s used vehicle inventory upon closing and  
20 transferred it to Hooman Toyota. Hooman Toyota then grossly inflated the inventory from its  
21 current market value. [RT Vol. XII, 214:7-21; 215:1-12; 231:15-232:1 (Durby); Ex. 1042 (TMS-  
22 PROD\_013894-013895).]

23           105. The dealership also included and reported to TMS several very expensive, used  
24 vehicles as assets, including a \$350,000 Rolls Royce Phantom, that were actually being used  
25 personally by Mr. Nissani and his partners. [RT Vol. XII, 214:7-21 (Durby); Ex. 1042 (TMS-  
26 PROD\_013894-013895).]

27           106. As a result of overstating the value of its used vehicle assets and failing to initially  
28 capitalize the dealership, Hooman Toyota misrepresented to TMS that it was working above both its

1 net working capital requirements and net worth requirements. [RT Vol. XII, 215:1-12; 221:5-12;  
2 221:13-17 (Durby).]

3 107. TMS characterized these issues as “bad business decisions,” which were then  
4 followed by a series of “bad business decisions” that exacerbated the financial problems that  
5 Hooman Toyota faced. [RT Vol. XII, 241:18-242:8 (Durby).]

6 108. Hooman Toyota’s insufficient capitalization led to “extremely out of the ordinary”  
7 business practices, such as writing checks in advance with the hope of having sufficient funds to  
8 cover them, but then voiding those checks because of insufficient funds. One purpose for these  
9 checks was to payoff vehicles. [RT Vol. X, 52:12-53:4 (Eroh); RT Vol. XII, 221:21-222:10  
10 (Durby).]

11 109. Hooman Toyota’s financial situation became so bad at one point that it was unable to  
12 cover the money that it owed to its floor plan lender for its new vehicle inventory, or in other words,  
13 the dealership sold its new vehicles “out of trust.” As a result, Hooman Toyota’s flooring lender  
14 suspended its flooring. [RT Vol. XII, 211:8-212:7 (Durby); Bracken Depo., 34:14-18.]

15 110. As of December 8, 2009, Hooman Toyota’s finances were so dire that it entertained  
16 seeking a qualified buyer if it was unable to adequately remedy the dealership’s ongoing financial  
17 and operational concerns. [RT Vol. XII, 249:5-23 (Durby); Ex. 1050 (TMS-PROD\_009143).]

18 111. As a solution to these capital issues, Mr. Nissani committed to replacing one of  
19 Hooman Toyota’s initial investors – Geraldine Weber – with a new investor, Jay Zamon, who  
20 supposedly intended to add \$1.25 million in unencumbered capital to the dealership. Despite Mr.  
21 Nissani’s commitment, Mr. Zamon was never added as an investor. [RT Vol. XII, 250:3-8 (Durby);  
22 Ex. 1050 (TMS-PROD\_009143).]

23 112. And much like the mystery of the dealership’s initial capitalization, TMS found an  
24 additional, unsubstantiated \$1,333,017 in the dealership’s stock account. TMS never identified the  
25 source of this capitalization. [RT Vol. XII, 247:14-23; Ex. 1548 (TMS-PROD\_009181).]

26 113. When asked the number of times that TMS consulted Mr. Nissani on these issues,  
27 TMS’s response was “I honestly can’t count. It’s dozens. It’s not a small number.” [RT Vol. XII,  
28 223:23-224:5 (Durby).]

1 114. Despite these numerous consultations, on June 22, 2011, TMS ultimately sent a  
2 Notice to Cure to Mr. Nissani, requiring Hooman Toyota to cure its ongoing financial issues. This  
3 notice is a “serious letter” that provides for curing the deficiencies within a specific timeframe and  
4 also outlines the implications if the deadline is not met. One of the implications is termination. [RT  
5 Vol. X, 68:10-70:11; 295:20-296:10 (Eroh); Ex. 1099.]

6 115. TMS represented and made clear to Mr. Nissani that it would not evaluate its  
7 proposed relocation until Hooman Toyota cured all of its capitalization deficiencies despite Mr.  
8 Nissani’s insistent pleas and optimism. TMS stated, “It goes back to that foundation of the business.  
9 We want the foundation to be strong before we can build on it.” [RT Vol. X, 74:11-24; 85:10-86:14;  
10 86:22-87:24; 92:1-23 (Eroh); Ex. 1099.]

11 116. Because of these significant financial issues, TMS had serious concerns whether  
12 Hooman Toyota could afford the relocation. TMS acknowledged there is an obvious financial  
13 burden related to a proposed relocation. TMS required, and made its relocation approval contingent  
14 on, Hooman Toyota providing a written acknowledgment and commitment for the source of the  
15 relocation and facility construction costs. TMS’s general manager at that time had never seen TMS  
16 impose this requirement before. [RT Vol. X, 89:23-90:7; 255:10-256:12 (Eroh).]

17 117. But as of June 8, 2012 when TMS sent its second extension to its original Notice to  
18 Cure letter – over three years after opening the dealership and one only one month before TMS  
19 approved the relocation – Hooman Toyota continued to operate without curing all of its financial  
20 deficiencies. [RT Vol. XII, 253:25-254:14 (Durby); Ex. 1560.]

21 118. When it first opened in 2008, Hooman Toyota operated from two parcels on the  
22 Traffic Circle – the sales facility located at 4401 E. Pacific Coast Highway, Long Beach, California  
23 and the service facility located at 1775 Ximeno Avenue, Long Beach, California, which are the  
24 same facilities that the dealership occupies today. [RT Vol. XIV, 17:22-18:7 (Nissani); Ex. 1009  
25 (TMS-PROD\_013311).]

26 119. Since then, the dealership also operates from the “Orizaba location,” which it uses to  
27 deliver its new vehicle inventory, perform pre-delivery inspections, and detail its used vehicles. [RT  
28 Vol. XIV, 33:23-34:13 (Nissani).]

1           210. With respect to its existing sales and service facilities, the dealership performed  
2 minor upgrades since 2008, including adding three service write-up areas to the then-existing four  
3 areas, building an additional area to move some service write up areas to increase waiting room  
4 space, and painting, cleaning, and maintenance to the service and parts department. [RT Vol. XIV,  
5 24:14-21; 26:14-20; 27:1-13 (Nissani); Carrillo Depo., 40:9-41:2.]

6           211. Over time, Hooman Toyota entered into several short-term leases for off-site storage  
7 facilities, but since it acquired the Proposed Relocation, the dealership now uses that facility as off-  
8 site storage. [RT Vol. XIV, 35:12-36:9; 156:12-22 (Nissani).]

9           212. Hooman Toyota did not invest any money into improving the facilities at the  
10 Proposed Relocation in any way. [Ex. 253.]

11           213. Mr. Nissani entered into an agreement to lease the Proposed Relocation and  
12 associated facilities. [RT Vol. XIV, 102:6-103:3 (Nissani); Ex. 274 (HTL0001192).]

13           214. The monthly base rent for the Proposed Relocation is \$36,000. [RT Vol. XIV, 104:2-  
14 9 (Nissani); Ex. 274 (HTL0001192).]

15           215. Caliber Bodyworks, Inc. – a third-party body shop – subleases the Proposed  
16 Relocation from Hooman Toyota to use for its body shop business. Caliber’s monthly base rent  
17 under the sublease is \$15,000. [RT Vol. XIV, 65:18-66:3; 103:8-24 (Nissani); Ex. 274  
18 (HTL0001155).]

19           216. The net monthly costs to lease the Proposed Relocation, when accounting for the  
20 Caliber sublease, totals \$21,000. [RT Vol. XIV, 157:23-158:6 (Nissani).]

21           217. Hooman Toyota is expected to realize a fixed costs savings of around 60% if it is  
22 permitted to move to the Proposed Relocation. [RT Vol. VI, 207:21-208:5; RT Vol. VII, 176:17-  
23 177:12 (Stockton).]

24           218. Mr. Nissani never testified that he executed an option to purchase the Proposed  
25 Relocation for \$8,250,000, and the evidence shows an incomplete agreement with no indication of  
26 the parties executing the agreement and no attached and incorporated “Option Agreement”  
27 referenced therein. But Mr. Nissani testified that the seller of the Proposed Relocation represented to  
28 him that this was a “good deal because he thinks it’s worth between \$12 to \$13 million, and based it

1 on if he had to build it all over today.” [RT Vol. XIV, 104:17-25; 106:9-22; 188:2-9 (Nissani); Ex.  
2 275 (HTL0001210).]

3 129. And though TMS approved Hooman Toyota to relocate to the adjacent 2679  
4 Redondo Avenue, Long Beach, California, there is no evidence that Mr. Nissani or Hooman Toyota  
5 committed to that property in any way other than purportedly signing an LOI [Letter of Intent]. [RT  
6 Vol. XIV, 181:18-182:13 (Nissani).]

7 130. Other than the \$1 million tenant improvement allowance provided by the Proposed  
8 Relocation’s landlord, no evidence was provided to show any commitment to fund the Proposed  
9 Relocation renovation, estimated to cost approximately \$2.95 million, despite TMS’s conditioned  
10 approval of the relocation. [RT Vol. XIV, 182:14-183:20; 183:18-184:8 (Nissani); Ex. 1561.]

11 131. Though TMS requires a relocating dealer submit a pro forma, it is TMS’s common  
12 practice to not require its submission before TMS’s relocation approval. And Hooman Toyota did  
13 not submit a Pro Forma. [RT Vol. X, 177:24-178:6; 252:8-253:14 (Eroh); Ex. 1043 (TMS-  
14 PROD\_016417); Ex. 1164 (TMS-PROD\_012929, 012930, 012934).]

15 132. TMS also did not consider any planning potential related to the Proposed Relocation.  
16 [RT Vol. XII, 214:1-2 (Farhat).]

17  
18 **IV. Facts related to effect on the retail motor vehicle business and the consuming public in  
the relevant market area (Veh. Code § 3063(b)).**

19 133. Dealerships require a certain degree of market power to support its operations, build  
20 nice facilities, be able to answer consumer questions, and have large inventories. Their degree of  
21 market power is derived from their degree of territorial protection. [RT Vol. IV, 65:3-12 (Watkins);  
22 RT Vol. VI, 36:5-14 (Stockton); RT Vol. VIII, 168:7-24 (Matthews).]

23 134. In the *United Shoe* case, an entity engaged in anticompetitive practices was able to  
24 provide extensive, uncharged consumer services. When the United States Supreme Court found that  
25 those practices were illegal, the expectation was that competition would increase. But when that  
26 entity lost its market advantage obtained by engaging in those anticompetitive practices, the entity  
27 stopped providing those customer services, and the market actually became less competitive. [RT  
28 Vol. VI, 43:5-44:1 (Stockton); *see* Ex. 254 (Tab 6 p. 33).]

1           135.    Thus, “[a]ny increase in competition will put pressure on other forms of competition.  
2 So if a price is pushed down, then the dealership’s ability to increase service or to provide more  
3 unchanged amenities is under pressure.” This must be considered in any relocation case. [RT Vol.  
4 VI, 45:2-8 (Stockton).]

5           136.    But in reality, no dealership has an exclusive territory. Thus, a dealership relies on a  
6 manufacturer to establish its degree of territorial protection. As a result, there is a friction between  
7 the manufacturer and dealer because of this uneven bargaining power favoring the manufacturer,  
8 which creates an incentive for the manufacturer to behave in an opportunistic fashion. This friction  
9 exists in the real world and is theoretically supported. [RT Vol. VI, 36:21-25; 44:15-24; 137:1-138:3  
10 (Stockton).]

11           137.    Despite this incentive, manufacturers generally cannot simply limit dealer market  
12 power, such as by crowding geographic areas with dealers, because these practices are prohibited by  
13 law in most states. This aspect of the industry distinguishes it from other retail markets. And this is  
14 one reason why the New Motor Vehicle Board exists – to protect a dealership’s territorial distinction  
15 in those instances where the manufacturers act opportunistically. [RT Vol. VI, 138:14-140:20  
16 (Stockton).]

17           138.    With respect to Toyota, it assigns dealerships with a Primary Market Area based on a  
18 dealerships geographical proximity to census tracts. TMS does not restrict its dealers to sales within  
19 its PMA, and they can pursue business beyond their assigned market. And the interest of TMS is to  
20 quantitatively sell as many automobiles as it can. As a result, dealerships experience a lot of cross-  
21 sell or cross-shopping where one dealer will capture sales in another dealer’s PMA. [RT Vol. II,  
22 29:19-30:13 (Cabe); RT Vol. X, 125:17-126:6; 126:16-19; 220:2-11 (Eroh); RT Vol. XIII, 43:12-  
23 44:5 (Farhat).]

24           139.    Dealerships enjoy the best market advantage when their assigned territory, or PMAs  
25 here, are large and square, rectangular, or round, because it provides them a territory in which they  
26 can be active at its center. In contrast to a long and narrow PMA, a typical, optimal shaped PMA  
27 provides a dealership with a market advantage by being in the center and spatially separated from  
28 other dealers. [RT Vol. VIII, 180:18-181:11 (Matthews).]

1           140. Proximity advantage is important to dealers, because they prefer to sell to buyers  
2 who are close to their respective stores to obtain those buyers' future service business. [RT Vol.  
3 VIII, 227:3-14 (Matthews).]

4           141. Toyota is among the highest ranked brands in terms of market share in the country,  
5 and it was even the highest ranked brand in the years 2008 and 2009, but its ranked slipped in the  
6 following years. As of 2012, it is ranked third with 12.7% market share in the nation, only 0.1%  
7 behind Chevrolet. [Ex. 1227 (SW000052).]

8           142. Toyota performs much better in California than nationally, and it is ranked first in the  
9 state with 21.1% market share in 2012. [RT Vol. II, 54:10-20 (Cabe); Ex. 1227 (SW000052).]

10           143. Toyota penetrates the market even better in Southern California with a 26.25%  
11 market share in the Los Angeles Markets (defined as Los Angeles-South Bay, San Fernando,  
12 Orange County, Inland Empire, and San Gabriel) without the Hooman Toyota and Cabe Toyota  
13 PMAs, and a 28.21% market share in the 10 Mile PMAs (defined as the full PMAs that fall wholly  
14 or partially within the RMA) without the Hooman Toyota and Cabe Toyota PMAs. The Los  
15 Angeles Metro area is one of the best-performing Toyota markets in the country, and it sets quite a  
16 high standard. [RT Vol. III, 83:23-85:1 (Watkins); Ex. 2088 (pp. A-2, A-3, A-8).]

17           144. TMS characterizes the Los Angeles market as "a very good market," "a critical  
18 market," and "a successful market" that "has been doing well for decades." [RT Vol. XIII, 41:4-17  
19 (Farhat).]

20           145. Because of this high market share, Toyota dealers face an extraordinarily high level  
21 of competition amongst each other, or intrabrand competition, that results in more "cannibalization"  
22 of their sales from other Toyota dealers. [RT Vol. VII, 165:19-166:5 (Stockton).]

23           146. And Toyota dealers recognize this level of competition: "Seems like when the people  
24 come, they pretty much know they want to buy a Toyota because Toyota is a great car and has a  
25 great reputation." These dealers want the public to know that they are a Toyota dealer. [RT Vol. II,  
26 106:10-17; 112:22-113:17 (Cabe).]

27 ///

28 ///

1 147. In response to this highly competitive market, the dealers offer programs like free car  
2 washes and the VIP Program to differentiate themselves from other Toyota dealers. [RT Vol. III,  
3 37:21-38:8; 59:9-13; 66:13-67:3 (Watkins).]

4 148. Toyota delineates twelve geographic regions in the United States, but two of those  
5 are overseen by private distributors while the remaining ten fall under TMS's management. The Los  
6 Angeles region is one of those ten that TMS manages, and it encompasses the southern half of  
7 California from roughly Santa Barbara, Bakersfield, and Bishop south to the San Diego-Mexico  
8 border. 76 dealers fall within the Los Angeles region. [RT Vol. X, 16:22-17:20 (Eroh).]

9 149. A total of eight Toyota dealers are located within the RMA, and they include Carson  
10 Toyota, Cabe Toyota (Long Beach), Hooman Toyota (Long Beach), South Bay Toyota (Gardena),  
11 Penske Toyota (Downey), Norwalk Toyota, Power Toyota Cerritos, and Power Toyota Buena Park.  
12 Twelve Toyota dealers' PMAs lie within the RMA, and include in addition to the ones already  
13 mentioned, DCH Toyota of Torrance, Toyota Place (Garden Grove), Elmore Toyota (Westminster),  
14 and Toyota of Huntington Beach. [RT Vol. III, 61:24-62:19 (Watkins); Ex. 1109 (TMS-  
15 PROD\_017526); Ex. 1227 (SW000039); Ex. 2088 (pp. A-3, A-4); Ex. 254 (Tab 6 p. 33).]

16 150. Toyota has the most dealers within the RMA compared to competitive group  
17 franchises, followed by Honda with six, Nissan with five, Ford and Chevrolet with four each,  
18 Hyundai, Chrysler, Dodge, Jeep, and Ram with three each, Buick, GMC, Volkswagen, Kia, and  
19 Mazda with two each, and Kia, Fiat, Subaru, Mini, and Mitsubishi with one each. The total  
20 competitive franchises in the RMA equal 56. [RT Vol. III, 27:21-28:4 (Watkins); Ex. 2088 (p. A-  
21 5).]

22 151. The RMA is densely populated with approximately two million people and  
23 approximately 600 thousand households. The population level in the RMA is expected to rise only  
24 modestly at a rate of less than 3% over five years. [RT Vol. III, 23:20-24:5; RT Vol. XIII, 48:17-  
25 49:1; 91:10-25 (Farhat); [Ex. 2088 (pp. A-32, A-33, A-38).]

26 152. Several census tracts within the RMA have little to no population or registrations  
27 because of large commercial, industrial, and government areas such as the Port of Long Beach,  
28 Long Beach Naval Complex, the Long Beach Airport, and the Seal Beach National Wildlife Refuge,

1 and of course there is the Pacific Ocean as a geographical barrier to the south. [RT Vol. VIII,  
2 166:16-167:1 (Matthews); RT Vol. III, 23:3-19; 205:8-21 (Watkins); Ex. 1109 (TMS-  
3 PROD\_017529).]

4 153. Toyota's market share within the RMA is also high at 24.9% in 2012 – higher than  
5 the California average and about double the national average. [RT Vol. III, 102:6-14; 186:1-5  
6 (Watkins); Ex. 1227 (SW000055).]

7 154. The RMA is concentrated with several large and highly competitive Toyota dealers,  
8 especially those surrounding Cabe Toyota. [RT Vol. III, 69:21-25 (Watkins).]

9 155. The RMA dealers' market penetration of Toyota vehicles is among the highest, if not  
10 the highest, in the country. Both individual Toyota dealers within the RMA (with the exception of  
11 Penske Toyota) and the RMA dealers collectively exhibit more than adequate market sales  
12 penetration even when compared to aggressive benchmarks. [RT Vol. III, 29:3-17 (Watkins); Ex.  
13 1227 (SW000055-56); Ex. 2088 (p. A-26.1).]

14 156. Cabe Toyota's PMA is a long narrow shape where its areas of responsibility lie at the  
15 top and very bottom of the geography. The PMA is exactly one census tract wide at the waist with a  
16 distance of about 1.2 miles and a distance of about seven miles from north to south. Its PMA is  
17 largely dominated by the Port of Long Beach and lower income households to the south. As a result,  
18 Cabe Toyota does not have location advantages within its own PMA because of the extremes in  
19 terms of the PMA's shape. By contrast, its surrounding dealers are more regularly shaped with the  
20 dealer located at the center of the PMA. It is bordered by Carson Toyota at 3.6 air miles to the west,  
21 Hooman Toyota at 3.1 air miles to the southeast, and Power Toyota Cerritos at 6.3 miles to the  
22 north. Cabe Toyota has a difficult time competing within its PMA because of relative locations of its  
23 competitive dealers and its relatively small size of its PMA. [RT Vol. III, 79:20-81:3 (Watkins); RT  
24 Vol. VIII, 181:12-182:21 (Matthews); Ex. 254 (Tab 4 p. 1); Ex. 1109 (TMS-PROD\_017526); Ex.  
25 1237; Ex. 1500 (HoCT001796).]

26 157. Cabe Toyota is separated from Hooman Toyota by the geographical feature known as  
27 "Signal Hill." [RT Vol. I, 147:18-24 (Cabe); RT Vol. XIV, 79:13-79:18; 145:5-146:12 (Nissani).]

28 158. Cabe Toyota does not have its own exclusive zip code. [RT Vol. II, 60:9-11 (Cabe).]

1 159. It has the least number of Toyota registrations in 2012 out of all 33 PMAs in the Los  
 2 Angeles-South Bay, Orange County, and San Gabriel markets. It also has the smallest number of  
 3 expected registrations measured at the Los Angeles-South Bay, Orange County, and San Gabriel  
 4 markets in 2012 within those markets. With respect to units in operation, Cabe Toyota has the  
 5 smallest number out of any dealer in the Los Angeles region. [RT Vol. IV, 69:11-20 (Watkins); RT  
 6 Vol. VIII, 183:1-185:11 (Matthews); RT Vol. X, 234:24-235:5 (Eroh); Ex. 1500 (HoCT001838-  
 7 1839).]

8 160. The size of Cabe Toyota's PMA was also influential in TMS's decision to approve  
 9 the relocation, because Hooman Toyota was not moving to an area within Cabe Toyota's PMA. If  
 10 Hooman Toyota requested to relocate within Cabe Toyota's PMA, the relocation would have been a  
 11 "non-starter." [RT Vol. X, 97:17-98:3; 298:10-299:20 (Eroh).]

12 161. The following table shows the actual facility measures for the Carson Toyota, Cabe  
 13 Toyota, and Hooman Toyota facilities compared to their respective TMS recommended facility  
 14 standards in 2012. [Ex. 1521 (HoCT001886); Ex. 2006 (TMS-PROD\_020042); Ex. 2008 (TMS-  
 15 PROD\_020056).]

Dealership	Measure	Actual	Rec.	Variance	Percent
<b>Carson Toyota</b>	Interior Vehicle Display (units)	8	8	0	0%
	Total Parts Department (sq. ft.)	13,462	4,580	8,882	194%
	Required Service Stalls (units)	74	23	51	222%
	Total Service Department (sq.ft.)	57,720	18,195	39,525	217%
	Total Parking Spaces (units)	770	1,046	-276	-26%
	Total Developed Adjusted Land (sq.ft.)	507,080	418,856	88,224	21%
<b>Cabe Toyota</b>	Interior Vehicle Display (units)	5	4	1	25%
	Total Parts Department (sq. ft.)	15,700	3,040	12,660	416%

	Required Service Stalls (units)	25	14	11	79%
	Total Service Department (sq.ft.)	10,425	13,740	-3,045	-22%
	Total Parking Spaces (units)	204	374	-170	-45%
	Total Developed Adjusted Land (sq.ft.)	96,611	165,550	-69,039	-42%
	Interior Vehicle Display (units)	5	6	-1	-17%
	Total Parts Department (sq. ft.)	5,937	5,160	777	15%
	Required Service Stalls (units)	27	26	1	4%
	Total Service Department (sq.ft.)	17,670	20,470	-2,800	-14%
	Total Parking Spaces (units)	340	569	-229	-40%
	Total Developed Adjusted Land (sq.ft.)	134,119	249,720	-115,601	-46%

162. [Number Reserved]

163. As reflected in Dr. Matthews' "dot map" analysis showing registrations for selected dealerships within the Los Angeles Metro area of the kind he performed for about 100 cities and thousands of dealers, the expectation would be to find a concentration of "dots" or registrations associated with a dealer relatively close to the location of the dealer's store and an attenuated concentration of dots the further the distance from the store. These "dots" reflect the market power, or territorial advantage, that is associated with territorial distance between dealers. [RT Vol. VIII, 162:3-163:3; 164:13-24 (Matthews); Ex. 1500 (HoCT001823-1835).]

164. Carson Toyota's dot map analysis shows the highest concentration of registrations right around where Carson Toyota is located and within the 5-mile circle surrounding its location. Carson Toyota also sells in the surrounding areas. [RT Vol. VIII, 163:10-164:3 (Matthews); Ex. 1500 (HoCT001824).]

1           165. Carson Toyota's dot map analysis generally follows the pattern for the dealers within  
2 the Los Angeles Metro area selected by Dr. Matthews. [RT Vol. VIII, 164:9-168:6 (Matthews); Ex.  
3 1500 (HoCT001825-1835).]

4           166. Hooman Toyota's dot map analysis generally shows the same pattern as Carson  
5 Toyota and the other select dealers with a high concentration of registration closest to the dealership  
6 and within the 5-mile circle. [RT Vol. VIII, 165:24-166:2 (Matthews); Ex. 1500 (HoCT001828).]

7           167. But Cabe Toyota's dot map analysis shows a much less concentration of registrations  
8 around the dealership compared to the other select dealers. Dr. Matthew's attributes this observation  
9 to its lack of territorial advantage from its neighboring dealers. [RT Vol. VIII, 168:25-169:21  
10 (Matthews); Ex. 1500 (HoCT001823).]

11           168. As determined by the dot map analysis, (1) the Proposed Relocation will put more  
12 pressure on Cabe Toyota to extract sales from its immediate territory; and (2) Cabe Toyota will have  
13 an even less of an already small territorial advantage, because every one of Cabe Toyota's census  
14 tracts within its PMA will be no more than 6 miles from both Carson Toyota and Hooman Toyota.  
15 [RT Vol. VIII, 168:8-16 (Matthews).]

16           169. Cabe Toyota's PMA is long and narrow with its area of responsibility only at the top  
17 and bottom of the PMA's geography in contrast to the surrounding dealers that have a more normal-  
18 shaped PMA with the dealers generally located at the center. Cabe Toyota's difficulty in capturing  
19 sales within its own PMA is a symptom of its abnormally-shaped PMA, a highly competitive  
20 market, and its relative distance to the surrounding dealers which ultimately diminishes its territorial  
21 advantage. [RT Vol. VIII, 181:12-182:21; 219:20-222:8 (Matthews); Ex. 1500 (HoCT001836-  
22 1837).]

23           170. The PMA of Cabe Toyota is smaller than almost any other dealership known, and, as  
24 a result, traditional approaches to market analysis that assume territorial market power would not  
25 accurately reflect the impact from the Proposed Relocation, because Cabe Toyota's territorial  
26 market power is minimal. [RT Vol. VIII, 231:14-232:22; 226:19-227:13 (Matthews).]

27 ///  
28 ///

1           171. A “frontier analysis” is the appropriate means to determine Hooman Toyota’s  
2 encroachment on Cabe Toyota’s PMA resulting from the Proposed Relocation. [RT Vol. VIII,  
3 185:12-186:17; 229:18-230:20 (Matthews).]

4           172. A “frontier” or line delineates between the pre-relocation Cabe Toyota and Hooman  
5 Toyota PMAs. The Proposed Relocation would be 1.2 miles in a northwesterly direction closer than  
6 Hooman Toyota’s current location, and the “frontier” therefore moves 6/10th of a mile (half the  
7 distance of the move) in that direction and the 4.8 square mile census tract containing the Port of  
8 Long Beach should for analysis be removed from Cabe Toyota’s PMA because there are virtually  
9 no registrations in that tract. [RT Vol. VIII, 186:18-188:14 (Matthews); Ex. 1500 (HoCT001843).]

10           173. Such movement of the “frontier” establishes that the area of encroachment into Cabe  
11 Toyota’s PMA from the Proposed Relocation accounts for roughly 3.2 square miles. After removing  
12 the Port of Long Beach census tract, Cabe Toyota PMA has a total area of approximately 13.2  
13 square miles, which accounts for roughly 24% of Cabe Toyota’s PMA. [RT Vol. VIII, 188:9-189:11  
14 (Matthews); Ex. 1500 (HoCT001843).]

15           174. This degree of encroachment is places Cabe Toyota at risk because it renders Cabe  
16 Toyota’s PMA smaller and increases the narrowness of its already odd shape. This presents a  
17 serious threat to Cabe Toyota’s viability, because it is unreasonable to expect Cabe Toyota to rely  
18 on capturing more sales outside of its PMA. [RT Vol. VIII, 189:1-11; 234:15-25 (Matthews); Ex.  
19 1500 (HoCT001772, 1773, 1774).]

20           175. The public interest is best served by systems that are correctly sized for the task,  
21 efficient, and absent of high idle time costs. The public community is not well-served when it is  
22 asked, for instance, to pay for an excess number of hospitals far beyond the needs of the community,  
23 too many schools that are underused and excessively costly to support, too many shopping center  
24 that stand empty/partially filled. The public interest is not in the increase of even more capacity  
25 when the current capacity is more than adequate. [Ex. 1500; (HoCT001774).]

26           176. Comparison of the existing Hooman Toyota facilities with the Proposed Relocation  
27 facilities enables determination of whether the Proposed Relocation facilities will serve the needs  
28

1 and provide the appropriate capacity for dealer network and consuming public based on TMS's  
2 2012 facility standards. [RT Vol. VIII, 189:13-21 (Matthews); Ex. 1500 (HoCT001845).]

3 177. The average ratio or overall change of the facility measures used by TMS from the  
4 Hooman Toyota facility to the Proposed Relocation facility would be 1.90. In other words, the  
5 Proposed Relocation facility would almost double in size and capacity from the current facilities.  
6 [RT Vol. VIII, 191:19-192:3 (Matthews); Ex. 1500 (HoCT001794, 1845, 1862).]

7 178. The number of service bays among Carson Toyota, Cabe Toyota, and expected at the  
8 Proposed Relocation combined reflect a total of 155 service bays among the three. But based on  
9 TMS's 2012 guidelines only 66 or 67 service bays are required based on the number of units in  
10 operation in the three PMAs. This results in an excess capacity of 99 service bays. [RT Vol. VIII,  
11 192:24-194:15; 233:9-234:14 (Matthews); Ex. 1500 (HoCT001804, 1845).]

12 179. The size of the Proposed Relocation facilities would be appropriate for a dealership  
13 that sells approximately 4,000 new vehicle units based on TMS's 2012 facility guidelines. But based  
14 on an average of new unit sales from 2009 through 2012, Hooman Toyota only sold roughly 1,500  
15 new units per year. [RT Vol. VIII, 195:17-197:16 (Matthews); Ex. 1500, (HoCT001845).]

16 180. Every dealer, like every other business person, acts in the dealer's self-interest by  
17 acting in a reasonable and legal manner as a profit maximizer. [RT Vol. VIII, 195:17-197:16  
18 (Matthews).]

19 181. Based on representation Hooman Toyota will significantly reduce its fixed costs if it  
20 moves to the Proposed Relocation, Hooman Toyota would be expected to cover its fixed costs  
21 relatively quickly. Assuming that Hooman Toyota recovers his fixed costs half way through the  
22 year at the Proposed Relocation because they will be roughly half of what they were at the current  
23 location, Hooman Toyota can be expected to slash his prices to reach the expected number of new  
24 unit sales that the Proposed Relocation facility can accommodate. [RT Vol. VIII, 213:11-215:15  
25 (Matthews).]

26 ///

27 ///

28 ///

1 (a) "Q. Do you expect a cost savings as a result of the relocation?

2 A. A tremendous savings, yes." [RT Vol. XIV, 198:1-3 (Nissani).]

3 (b) "Q. Do you think you will be a more effective competitor as a result of the cost  
4 savings you will realize from the relocation with respect to new vehicle sales against  
5 all competitors?

6 A. Sure. By offering better deals, yes.

7 Q. What about for service?

8 A. Absolutely." [RT Vol. XIV, 199:22-200:3 (Nissani).]

9 182. The surrounding dealers will not be able to effectively compete against Hooman  
10 Toyota at the Proposed Relocation, because they will not be able to match Hooman Toyota's  
11 expected price cuts. [RT Vol. VIII, 215:16-16:2 (Matthews).]

12 183. The historical evidence shows that the additional facility capacity from the Proposed  
13 Relocation is unnecessary, because the dealer network within the RMA supported a much larger  
14 automobile market. Five years ago, the RMA dealers supported a level of sales around 37,000  
15 Toyota vehicles. The current level of sales in the same geography is approximately 30,000 Toyota  
16 vehicles. Therefore, the RMA dealer network has a proven ability to market and support at least  
17 37,000 Toyota vehicles, and can support an additional 7,000 vehicles in its current configuration.  
18 Notably these historical figures reflect sales before Carson Toyota introduced its much larger  
19 existing facility in the dealer network, which suggests that the RMA dealers may actually be able to  
20 service and support 40,000 vehicles. The additional capacity that the Proposed Relocation will bring  
21 is, at best, premature for the Los Angeles dealer network. [RT Vol. VIII, 225:18-227:2 (Matthews);  
22 Ex. 1500 (HoCT001770, 1771).]

23 184. Experts agree that there would be good cause not to establish a relocation if the  
24 proposed relocation were to plan for 5,000 additional sales, but there are only 1,000 sales available,  
25 as this would be a significant potential impact on the marketplace. [RT Vol. XIII, 35:6-21 (Farhat).]

26 185. Because there is no significant shortfall of Toyota sales, the additional sales that  
27 Hooman Toyota is expected to capture at the Proposed Relocation for its own profit maximization  
28 will come from the surrounding Toyota dealers. Therefore, the idle time cost stemming from the

1 Proposed Relocation facility's surplusage will be pushed on to the surrounding dealers, particularly  
2 Carson Toyota and Cabe Toyota, because Hooman Toyota will be a more effective competitor. [RT  
3 Vol. VIII, 215:6-216:2; 236:3-20 (Matthews); Ex. 1500 (HoCT001774).]

4 186. Cabe Toyota's threatened viability, based on the Proposed Relocation's  
5 encroachment to Cabe Toyota and redundancy of Cabe Toyota-provided service, creates uncertainty  
6 within the dealer network. This degree of uncertainty is compounded by the unknown burden of  
7 bearing the idle time costs from the excess capacity that the Proposed Relocation will bring to the  
8 dealer network. In turn, the dealers will push these idle time costs onto the public through lower  
9 levels of services, sharper business practices, or personnel cutbacks. [RT Vol. VIII, 235:1-22;  
10 121:9-24 (Matthews); Ex. 1500 (HoCT001773, 1774).]

11 187. TMS's Sales Rejecter Study Report for Cabe Toyota shows that the number one  
12 reason a buyer did not purchase a new vehicle from Cabe Toyota was because of price, which is  
13 certainly impacted by the pricing behavior of surrounding, competitive dealerships. [RT Vol. IV,  
14 183:16-184:25; RT Vol. V, 195:25-196:11 (Duddridge); Ex. 1179 (CABE000515).]

15 188. Carson Toyota has not been as profitable in past years due, in large part, to its  
16 significant rise in fixed costs from the over \$30 million in facility investments. Cabe Toyota expects  
17 a rise in its monthly fixed costs between \$28,000 and \$31,000 stemming from its remodeling costs.  
18 [RT Vol. I, 152:1-24; 161:9-18 (Cabe); RT Vol. III, 65:22-66:6 (Watkins); RT Vol. V, 73:25-74:17  
19 (Duddridge); RT Vol. XI, 247:24-248:9 (Brylski).]

20 189. If Carson Toyota were to effectively compete after Hooman Toyota relocated to the  
21 Proposed Relocation, Carson expects that it would probably terminate about 25 of its employees and  
22 potentially cut other consumer provided services to eliminate costs. [RT Vol. XI, 194:12-22; 196:7-  
23 17 (Skinner).]

24 190. The Proposed Relocation is less convenient than the current Hooman Toyota  
25 location. The current location is well-positioned in a population center around income-qualified  
26 households, and it serves the Long Beach community well by being visible and accessible  
27 specifically to that community. The Proposed Relocation is located off of the I-405 freeway, which  
28 is more appropriate for a "regional reach dealership," and away from potential and actual customers

1 in an area that is surrounded by the Long Beach Airport and commercial and industrial areas. [RT  
2 Vol. III, 32:22-33:12; 34:7-24; 35:7-18; 35:23-36:10; 71:12-21 (Watkins); Ex. 1227 (SW000046,  
3 47).]

4 191. The Proposed Relocation would create an analogous market to the east of Cabe  
5 Toyota as the market currently exists to its west with Carson Toyota on the I-405 freeway. The  
6 Proposed Relocation is expected to “intercept” Toyota customers traveling on the I-405 from the  
7 east that would otherwise have been captured by Cabe Toyota but for the Proposed Relocation. [RT  
8 Vol. III, 40:25-41:14; 43:21-44:17; 47:24-48:7; 48:12-15 (Watkins); Ex. 1228 (SW000048).]

9 192. Based on this interception, Cabe Toyota will lose its proximity advantage in the  
10 analogous east market resulting in an expected conservative loss of about 9.2% of its sales or  
11 \$455,000 in profits based on Cabe Toyota’s 2011 gross sales. [RT Vol. III, 49:7-50:4; 62:20-63:17;  
12 65:15-65:21; 67:22-68:12 (Watkins); Ex. 1228 (SW000059).]

13 193. Dealerships act in their self-interest to maximize profit. [RT Vol. VI, 68:15-69:8;  
14 71:7-11 (Stockton).]

15 194. Cabe Toyota less effectively draws customers in the area around its dealership than  
16 other dealerships in the market. [RT Vol. VII, 84:13-85:11 (Stockton).]

17 195. Based on average drive time, Cabe Toyota and the Proposed Relocation would be the  
18 closest dealers between each other amongst all the dealers within the RMA and surrounding area.  
19 [Ex. 254 (Tab 4 p. 2).]

20 196. Hooman’s expert acknowledges that Cabe Toyota could lose 10.6% of registrations  
21 at the California average if Hooman Toyota moved to the Proposed Relocation. This analysis is  
22 based on the change in expected registrations for each dealer as determined by customer  
23 convenience using drive time as a measure of proximity before and after the relocation. Drive time  
24 is the most predictive measure of actual consumer behavior. [RT Vol. VI, 82:24-83:14; 85:1-85:10  
25 (Stockton); Ex. 254 (Tab 11 p. 1).]

26 197. The Proposed Relocation is in a *less* convenient location relative to Hooman  
27 Toyota’s consumers. [RT Vol. VI, 86:4-86:15; RT Vol. VII, 125:1-18 (Stockton); Ex. 254 (Tab 12  
28 pp. 1).]

1            198.    The Proposed Relocation is in a *less* convenient location relative to them. [RT Vol.  
2 VI, 87:1-87:11; RT Vol. VII, 125:1-18 (Stockton); Ex. 254 (Tab 12 p. 2).]

3            199.    Though the theory is disputed, Mr. Stockton's model shows that Hooman Toyota  
4 would increase its share of Toyota sales amongst dealers in Los Angeles and Orange County and the  
5 census tracts touching the RMA based on drive time at the expense of both Carson Toyota and Cabe  
6 Toyota. [RT Vol. VI, 96:17-97:15; 99:11-22; 101:17-25; 102:1-8 (Stockton); Ex. 254 (Tab 14 pp.1-  
7 6).]

8            200.    Even upon further extension of Mr. Stockton's disputed model, he expects Cabe  
9 Toyota, Carson Toyota, and South Bay Toyota all to lose sales as a result of the Proposed  
10 Relocation. And because Toyota dealers face a higher level of intrabrand competition, there is less  
11 likelihood of incremental Toyota registrations, or in other words, the availability of interbrand  
12 competition. [RT Vol. VI, 134:1-18; RT Vol. VII, 165:19-166:5; 167:10-169:10 (Stockton); Ex. 254  
13 (Tab 17 p. 1).]

14           201.    TMS's expert Mr. Farhat corroborated both Mr. Stockton's and Mr. Watkins's  
15 findings; the Proposed Relocation will be less convenient for customers in both Hooman Toyota's  
16 PMA and combined Hooman Toyota and Cabe Toyota PMAs. Though the Toyota brand is currently  
17 ranked first in customer convenience in Hooman Toyota's PMA, Toyota will drop down a rank  
18 behind Ford as a result of the Proposed Relocation. [RT Vol. XIII, 122:1-17; 122:23-123:4; 126:19-  
19 25 (Farhat); Ex. 2088 (pp. A-76, A-77).]

20           202.    Mr. Farhat's analysis shows that the RMA dealers' market penetration is slightly  
21 better than the five Los Angeles Markets without Long Beach PMAs benchmark, which Mr. Farhat  
22 identified as 26.25% market share for 2012 year-to-date – over 1% higher than the California  
23 average. [RT Vol. XIII, 211:19-212:8 (Farhat); Ex. 2088 (pp. A-8, A-26.1).]

24           203.    In terms of service business, proximity in terms of both place of residence and place  
25 of employment, is an important factor and an even more important factor than new vehicle sales.  
26 [RT Vol. II, 112:7-19 (Cabe); RT Vol. IV, 68:1-14 (Watkins); RT Vol. VII, 93:10-94:12 (Stockton);  
27 RT Vol. XIII, 198:16-19 (Farhat).]

28

1           204.   Generally, the impact on parts and service sales is proportionate to impact on new  
2 vehicle sales in the long-run, but in the short-term the impact lags. [RT Vol. VII, 82:25-83:12  
3 (Stockton).]

4           205.   With respect to Cabe Toyota's service business, Mr. Stockton opined that the  
5 negative impact from the Proposed Relocation would follow fairly closely to the negative impact on  
6 its new vehicle sales. [RT Vol. VII, 94:19-95:1 (Stockton).]

7           206.   Cabe Toyota will experience a negative impact of anywhere between 7.3% to 12.8%,  
8 which average is approximately proportionate to the negative impact that he found as to Cabe  
9 Toyota's new vehicle sales. [RT Vol. III, 53:7-19 (Watkins); Ex. 1228 (SW000068-71).]

10           **V.    Facts related to whether it is injurious to the public welfare for the relocated franchise**  
11           **to be established (Veh. Code § 3063(c))**

12           207.   The Proposed Relocation will be a less convenient location for customers within  
13 Hooman Toyota's PMA, the combined Hooman Toyota and Cabe Toyota PMAs, and the RMA. [RT  
14 Vol. III, 67:4-21 (Watkins); RT Vol. VI, 82:24-83:14; 85:1-85:10; 87:1-87:11; RT Vol. VII, 125:1-  
15 18 (Stockton); RT Vol. XIII, 211:19-212:8 (Farhat); Ex. 254 (Tab 11 p. 1, Tab 12 p. 2); Ex. 2088  
16 (pp. A-8, A-26.1).]

17           208.   Diminishing market power and increasing competition may have unintended  
18 consequences that may force retailers cut pro-consumer services to effectively compete. The  
19 Proposed Relocation will create idle costs and shift them from Hooman Toyota to its surrounding  
20 dealers, and that the dealers will offset these costs by cutting jobs and pro-consumer services.  
21 Carson Toyota already expects a negative impact from the Proposed Relocation, and therefore  
22 expects to also cut jobs and services to effectively compete. [RT Vol. VI, 43:5-44:1 (Stockton); RT  
23 Vol. VIII, 235:1-22; 121:9-24 (Matthews); RT Vol. XI, 194:12-22; 196:7-17 (Skinner); Ex. 1500  
24 (HoCT001773, 1774); *see* Ex. 254 (Tab 6 p. 33).]

25           209.   The relevant market area is highly competitive, and in response, the dealers offer  
26 programs like free car washes and the VIP Program to differentiate themselves from other Toyota  
27 dealers. [RT Vol. III, 37:21-38:8; 59:9-13; 66:13-67:3 (Watkins).]

28

1 210. It is unlawful for any licensed dealer to “[a]dvertise free merchandise, gifts, or  
2 services provided by a dealer contingent on the purchase of a vehicle. ‘Free’ includes merchandise  
3 or services at a price for sale at a price less than the seller’s cost of the merchandise or services.” [§  
4 11713.1(h).]

5 211. It is also unlawful for any licensed dealer to “[u]se ‘rebate’ or similar words,  
6 including, but not limited to, ‘cash back,’ in advertising the sale of a vehicle unless the rebate is  
7 expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or  
8 distributor directly to the purchaser of the vehicle or the assignee of the retail purchaser. [§  
9 11713.1(j).]

10 212. Hooman Toyota advertises its VIP Program through fliers in its showroom and  
11 service area, banners throughout the store, and in its television advertising. The Program offers  
12 services such as oil changes, car washes, and replacement tires contingent on a vehicle purchase  
13 from the dealership. [RT Vol. XIV, 165:18-166:2; 167:13-168:23 (Nissani); Ex. 1143.]

14 213. Therefore, the VIP Program is unlawful under Section 11713.1(h).

15 214. Hooman Toyota also advertises a buyer’s substantial cost savings or “cash back”  
16 from the VIP Program. And the VIP Program is provided directly by Hooman Toyota – not Toyota  
17 or TMS. [RT Vol. XIV, 165:18-166:2; (Nissani); Ex. 1143 (“you save \$6747”).]

18 215. Therefore, the VIP Program is also unlawful under Section 11713.1(j).

19 216. But Hooman Toyota still intends to continue to offer the VIP Program at the  
20 Proposed Relocation. [RT Vol. XIV, 165:14-17 (Nissani).]

21 **VI. Facts related to whether the franchisees of the same line-make in that relevant market**  
22 **area are providing adequate competition and convenient consumer care for the motor**  
23 **vehicles of the line-make in the market area which shall include the adequacy of motor**  
24 **vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified**  
25 **service personnel (Veh. Code § 3063(d))**

26 217. Toyota’s market share within the RMA is high at 24.9% in 2012 – higher than the  
27 California average and about double the national average. [RT Vol. III, 102:6-14; 186:1-5  
28 (Watkins); Ex. 1227 (SW000055).]

29 218. The RMA dealers’ market penetration of Toyota vehicles is among the highest, if not  
30 the highest, in the country. Both individual Toyota dealers within the RMA (with the exception of

1 Penske Toyota) and the RMA dealers collectively exhibit more than adequate market sales  
2 penetration even when compared to the aggressive 5 Los Angeles Markets without Long Beach  
3 PMAs benchmark. The market penetrations are as follows:

- 4 • Carson Toyota: 254.2% (September 2012 YTD)
- 5 • Cabe Toyota: 193.7% (December 2012 YTD)
- 6 • Hooman Toyota: 124.9% (December 2012 YTD)
- 7 • RMA Dealers: 115.3% (2012)
- 8 • RMA Dealers: 114.2% (2007-2012)
- 9 • RMA Dealers: 101.2% (at 5 Los Angeles Markets without Long Beach PMAs average,  
10 September 2012 YTD).

11 [RT Vol. III, 29:3-17 (Watkins); Ex. 1227 (SW000055-56); Ex. 1521 (HoCT001883); Ex. 2006  
12 (TMS-PROD\_020039); Ex. 2008 (TMS-PROD\_020053); Ex. 2088 (p. A-26.1).]

13 219. The RMA performs well given the substantial cross-sell typically prevalent in metro  
14 areas. Dr. Matthews found that the average number of dealers selling into one of the PMAs of the  
15 10-mile dealers (as defined by Mr. Farhat) is around 49 and in one case is around 62. An even more  
16 detailed look shows that the average number of dealers that sell within a census tract of the Los  
17 Angeles-South Bay, Orange County, and San Gabriel markets is 10.32. [RT Vol. X, 69:17-72:4;  
18 75:12-76:4 (Matthews); Ex. 1500 (HoCT001846-1848).]

19 220. Viewing insell (pump in) alone is not indicative of “opportunity” for sales, which is  
20 why Dr. Matthews analyzed the RMAs outsell (pump out) to determine whether the RMA dealers  
21 are providing adequate competition. And he found that the RMA dealers (as defined by Mr. Farhat)  
22 have sold more outside of the RMA (pump out), by a factor of almost 3,000 sales in September  
23 2012 YTD, than other dealers outside of the RMA have sold inside the RMA (pump in) for every  
24 year from 2007 through September 2012 YTD. A more in-depth look at the Carson Toyota, Cabe  
25 Toyota, and Hooman Toyota dealers shows that these three dealers follow the same pattern as the  
26 RMA in that they have a net pump out of 550 sales, about 34% more than its Toyota competitors  
27 pump in into their collective PMAs. The RMA dealers, and Carson Toyota, Cabe Toyota, and  
28

1 Hooman Toyota particularly, are competing with other Toyota dealers very effectively. [RT Vol. IX,  
2 72:5-73:8; 73:12-75:11 (Matthews) (Ex. 1500 (HoCT001846, 1849).]

3 221. There is also no shortfall within the combined Cabe Toyota and Hooman Toyota  
4 PMAs. A statistically significant correlation between a high percentage of Asian households in a  
5 census tract and Toyota's success in terms of greater market share. When adjusting the segmentation  
6 analysis for this effect, the purported shortfall in registrations is virtually nonexistent of 18. [RT  
7 Vol. VI, 147:17-148:7; RT Vol. IX, 42:22-43:8; 48:14-49:1; 62:25-63:4; 67:11-68:2; Ex. 1500  
8 (HoCT001857-1858); Ex. 1566.]

9 222. Dr. Matthews, Mr. Watkins, and Mr. Stockton agree, and Mr. Farhat's analysis  
10 shows, that the RMA dealers provide adequate and high competition in terms of new vehicle sales  
11 within the RMA. [RT Vol. III, 60:12-23; 66:13-67:3 (Watkins); RT Vol. VI, 181:19-182:12  
12 (Stockton); RT Vol. VIII, 218:12-219:8 (Matthews); RT Vol. XIII, 211:13-212:8 (Farhat); Ex. 2088  
13 (p. A-26.1).]

14 223. The Toyota brand is the highest ranked in terms of customer convenience measured  
15 by average distance to the nearest dealer in both Hooman Toyota's PMA and the combined Hooman  
16 Toyota and Cave Toyota PMAs compared to other fifteen competitors [RT Vol. XIII, 122:1-17;  
17 126:19-25 (Farhat); Ex. 2088 (pp. A-76, A-77).];

18 224. The PMAs within the RMA rank second on average among competitive brands. A  
19 Toyota customer within the RMA only has to drive 3.1 miles on average to reach the nearest Toyota  
20 dealer. [Ex. 2088 (A-78).]

21 225. And customer surveys generally indicate satisfied consumers, at least those that  
22 patronize Carson Toyota, Cabe Toyota, and Hooman Toyota. TMS provides guidelines to interpret  
23 its customer survey scores. Reaching a "green" standard indicates that the dealership is doing well in  
24 that area of measure. "Yellow" means caution, and "red" indicates an area of concern that the dealer  
25 needs to focus on. [RT Vol. V, 21:2-11 (Duddridge).]

26 226. TMS's sales diagnostics surveys show that the three dealers are performing well and  
27 that customers are happy. Carson Toyota is within the "green" standard on all measures. Cabe  
28 Toyota is in the "red" standard as to its facilities, which it is in the process of remodeling. Hooman

1 Toyota shows that it is in the “yellow” standard for four measures, but the ones that relate to its  
 2 facilities, i.e. “facilities” and “product presentation,” it is within approximately 1% of reaching the  
 3 “green” standard. The following table shows the October 2012 YTD sales diagnostic customer  
 4 survey scores:

Dealership	Measure	Actual	Green Std.	Variance	Percent
<b>Carson Toyota</b>	Facilities	98.02	90.71	7.31	8.06%
	Initial Contact	95.86	94.66	1.20	1.27%
	Product Presentation	94.49	92.36	2.13	2.31%
	Purchase Options	91.87	87.86	4.01	4.56%
	Vehicle Delivery	92.77	90.85	1.92	2.11%
	Follow-Up	91.88	91.87	0.01	0.01%
	Contact Outcome	78.37	76.55	1.82	2.38%
<b>Cabe Toyota</b>	Facilities	82.03	90.71	-8.68	-9.57%
	Initial Contact	95.50	94.66	0.84	0.89%
	Product Presentation	94.69	92.36	2.33	2.52%
	Purchase Options	94.74	87.88	6.86	7.81%
	Vehicle Delivery	94.02	90.85	3.17	3.49%
	Follow-Up	93.62	91.87	1.75	1.90%
	Contact Outcome	85.94	76.55	9.39	12.27%
<b>Hooman Toyota</b>	Facilities	89.53	90.71	-1.18	-1.30%
	Initial Contact	95.00	94.66	0.34	0.36%
	Product Presentation	91.83	92.36	-0.53	-0.57%
	Purchase Options	85.76	87.86	-2.10	-2.39%
	Vehicle Delivery	91.70	90.85	0.85	0.94%
	Follow-Up	92.00	91.87	0.13	0.14%
	Contact Outcome	73.05	76.55	-3.50	-4.57%

21 [Ex. 2003 (TMS-PROD\_017024); Ex. 2004 (TMS-PROD\_017028); Ex. 2005 (TMS-  
 22 PROD\_017052).]

23 227. The three dealers perform much better in terms of service, though Mr. Stockton  
 24 opined that his concerns with Hooman Toyota’s facilities lie more with its service facility. All three  
 25 dealers are within the “green” standard on all customer survey measures for service except Carson  
 26 Toyota, which only has one measure within the “yellow” standard. The following table shows the  
 27 October 2012 YTD service diagnostic customer survey scores:

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

Dealership	Measure	Actual	Green Std.	Variance	Percent
<b>Carson Toyota</b>	Facilities	91.14	83.47	7.67	9.19%
	Initial Contact	90.58	87.70	2.88	3.28%
	Service Appointments	88.74	86.07	2.67	3.10%
	Service Reception and Write-Up	88.33	85.41	2.92	3.42%
	Parts Operation	87.80	85.90	1.90	2.21%
	Quality Repair	88.75	85.62	3.13	3.66%
	Follow-Up	85.36	84.47	0.89	1.05%
	Contact Outcome	62.50	68.71	-6.21	-9.04%
<b>Cabe Toyota</b>	Facilities	93.56	83.47	10.09	12.09%
	Initial Contact	90.79	87.79	3.00	3.42%
	Service Appointments	89.26	86.07	3.19	3.71%
	Service Reception and Write-Up	90.03	85.41	4.62	5.41%
	Parts Operation	89.61	85.90	3.71	4.32%
	Quality Repair	90.80	85.62	5.18	6.05%
	Follow-Up	86.21	84.47	1.74	2.06%
	Contact Outcome	76.59	68.71	7.88	11.47%
<b>Hooman Toyota</b>	Facilities	86.31	83.47	2.84	3.40%
	Initial Contact	91.97	87.79	4.18	4.76%
	Service Appointments	91.39	86.07	5.32	6.18%
	Service Reception and Write-Up	89.53	85.41	4.12	4.82%
	Parts Operation	92.65	85.90	6.75	7.86%
	Quality Repair	91.00	85.62	5.38	6.28%
	Follow-Up	87.50	84.47	3.03	3.59%
	Contact Outcome	76.13	68.71	7.42	10.80%

[RT Vol. VII, 148:8-20 (Stockton); Ex. 2003 (TMS-PROD\_017024); Ex. 2004 (TMS-PROD\_017028); Ex. 2005 (TMS-PROD\_017052).]

228. Based on the table above, the dealerships generally meet TMS's facility guidelines.

[Ex. 1521 (HoCT001886); Ex. 2006 (TMS-PROD\_020042); Ex. 2008 (TMS-PROD\_020056).]

1 229. The notable deficiencies among all three dealers – parking and land requirements  
 2 (Cabe Toyota and Hooman Toyota) – are typical based on the limitations of a metro market where  
 3 land is scarce. Understanding these limitations, TMS will overlook the land requirements. [RT Vol.  
 4 V, 66:9-66:23 (Duddridge).]

5 230. But even if there are facility deficiencies, a good indicator of whether a dealership  
 6 has overcome those deficiencies is review customer survey scores to determine if customers are  
 7 satisfied despite the deficiencies, and also review the dealer’s sales and financial performance. [RT  
 8 Vol. IV, 80:10-81:15 (Watkins).]

9 231. The facilities are adequate even when considering reasonable sales levels that might  
 10 occur in the future. [RT Vol. VIII, 212:22-213:10 (Matthews).]

11 232. Based on TMS’s guidelines, Carson Toyota, Cabe Toyota, and Hooman Toyota  
 12 provide adequate, qualified and expert technicians. The following table shows that all three  
 13 dealership greatly exceed TMS’s technician skill level guidelines on all measures for October 2012:

Dealership	Measure	Certified				Expert			
		Actual	Rec.	Var.	Percent	Actual	Rec.	Var.	Percent
Carson Toyota	Engine	11	4	7	175%	8	3	5	167%
	Drivetrain	11	4	7	175%	7	3	4	133%
	Chassis	12	4	8	200%	9	3	6	200%
	Electrical	12	4	8	200%	7	3	4	133%
	Hybrid	7	3	4	133%				
Cabe Toyota	Engine	9	3	6	200%	6	2	4	200%
	Drivetrain	8	3	5	167%	3	2	1	50%
	Chassis	9	3	6	200%	3	2	1	50%
	Electrical	9	3	6	200%	4	2	2	100%
	Hybrid	3	2	1	50%				
Hoomant Toyota	Engine	11	3	8	267%	7	2	5	250%
	Drivetrain	9	3	6	200%	5	2	3	150%
	Chassis	10	3	7	233%	5	2	3	150%
	Electrical	11	3	8	267%	5	2	3	150%
	Hybrid	5	2	3	150%				

14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27 [Ex. 2003 (TMS-PROD\_017006); Ex. 2004 (TMS-PROD\_017030); (Ex. 2005 (TMS-  
 28 PROD\_017054.)]

1 **VII. Facts related to whether the establishment of an additional franchise would increase**  
2 **competition and therefore be in the public interest (Veh. Code § 3063(e))**

3 233. There is a friction between the manufacturer and dealer because of this uneven  
4 bargaining power favoring the manufacturer, which creates an incentive for the manufacturer to  
5 behave in an opportunistic fashion. This friction is not only an academic idea, it also exists in the  
6 real world. [RT Vol. VI, 36:21-25; 44:15-24; 137:1-138:3 (Stockton).]

7 234. Dealer's perceive the reservations of rights in dealer agreements as allowing  
8 franchisors to "do whatever they want to do. That's the problem." [RT Vol. XI, 214:8-25 (Skinner).]

9 235. TMS has never terminated a dealer for not complying with either facility or Image II  
10 requirements, and has never enforced the requirement against Hooman Toyota other than by simply  
11 including it in its dealer agreement. [RT Vol. X, 23:12-23:17 (Eroh); Bracken Depo., 72:6-73:11.]

12 236. TMS referenced the significance of the recession during the years 2008 through 2011  
13 that affected the automobile industry as a whole and TMS's dealers particularly. [RT Vol. II,  
14 164:20-165:8 (Cabe); RT Vol. III, 183:4-18 (Watkins); RT Vol. X, 60:7-62:7 (Eroh); RT Vol. XII,  
15 209:7-20 (Durby).]

16 237. In addition to the recession, Toyota experienced other significant issues that  
17 generally affected the brand's sales, including the tsunami in 2011 affecting its supply chain, the bad  
18 press from the unintended accelerations, and increase competition from the Korean brands. [RT Vol.  
19 III, 186:12-187:2 (Watkins); RT Vol. XII, 204:8-205:16 (Durby); RT Vol. XIII, 103:1-7 (Farhat).]

20 238. Site Request policies and procedures require a market study and corresponding  
21 recommendation to be performed before any approval is given to a relocation request. [RT Vol. X,  
22 251:8-252:7 (Eroh); Ex. 1043 (TMS-PROD\_016417).]

23 239. But TMS has not conducted a market study of the area since March 1993. [RT Vol.  
24 X, 303:15-304:10 (Eroh); *see* Ex. 1007 (TMS-PROD\_001645).]

25 240. TMS originally informed Mr. Nissani that it would not approve the Proposed  
26 Relocation because it was over one mile from its current location, it was closer to Cabe Toyota, and  
27 Hooman Toyota still faced its capitalization and financial issues. [RT Vol. X, 87:25-89:22 (Eroh);  
28 Ex.1102.]

1           241. TMS represented and made clear to Mr. Nissani that it would not evaluate its  
2 proposed relocation until Hooman Toyota cured all of its capitalization deficiencies despite Mr.  
3 Nissani's insistent pleas and optimism. TMS stated, "It goes back to that foundation of the business.  
4 We want the foundation to be strong before we can build on it." [RT Vol. X, 74:11-24; 85:10-86:14;  
5 86:22-87:24; 92:1-23 (Eroh); Ex. 1099.]

6           242. And then TMS verified to Mr. Nissani that it would not support the Proposed  
7 Relocation because of the responses it received from multiple dealers and other relevant factors. [RT  
8 Vol. X, 188:11-189:13, 199:25-200:19; 281:18-25 (Eroh); Ex. 1147.]

9           243. TMS was consistently concerned about Hooman Toyota's financial wherewithal to  
10 undertake the Proposed Relocation. [RT Vol. X, 92:24-93:13 (Eroh); Ex. 1102.]

11           244. Because of these significant financial issues, TMS had serious concerns whether  
12 Hooman Toyota could afford the relocation. TMS acknowledged there is an obvious financial  
13 burden related to a proposed relocation. TMS required, and made its relocation approval contingent  
14 on, Hooman Toyota providing a written acknowledgment and commitment for the source of the  
15 relocation and facility construction costs. TMS's general manager at that time had never seen TMS  
16 impose this requirement before. [RT Vol. X, 89:23-90:7; 92:24-93:13 255:10-256:12 (Eroh); Ex.  
17 1102.]

18           245. Other than the \$1 million tenant improvement allowance provided by the Proposed  
19 Relocation's landlord, no evidence was provided to show any commitment to fund the Proposed  
20 Relocation renovation, estimated to cost approximately \$2.95 million, despite TMS's conditioned  
21 approval of the relocation. [RT Vol. XIV, 182:14-183:20; 183:18-184:8 (Nissani); Ex. 1561.]

22           246. Yet TMS undertook the Proposed Relocation review though it was concurrently  
23 performing its continued financial review of Hooman Toyota. [RT Vol. X, 122:19-123:21 (Eroh).]

24           247. TMS conditionally approved the Proposed Relocation upon Mr. Nissani depositing  
25 \$500,000 to cover TMS's defense costs for any potential protests. [RT Vol. X, 284:1-285:8 (Eroh);  
26 Ex. 1157; Ex. 1165.]

27           248. As of June 8, 2012. Hooman Toyota had not yet cured all of the financial deficiencies  
28 outlined by TMS and its third-party auditor. [RT Vol. XII, 253:25-254:14 (Durby); Ex. 1560.]

1           249. But on July 27, 2012, TMS approved the Proposed Relocation. [RT Vol. XII, 253:6-9  
2 (Durby); Ex. 1165.]

3           250. Under California law, it is unlawful for any manufacturer or distributor to limit or  
4 constrain a dealer's right to file a protest under Section 3062 except if a voluntary waiver agreement  
5 provides for "[t]he planning potential used to establish the proposed dealership's facility, personnel,  
6 and capital requirements," and "[a]n approximation of projected vehicle and parts sales, and number  
7 of vehicles to be serviced at the proposed dealership." [§ 11713.3(g)(3)(H)(i).]

8           251. The policies and procedures also require a pro forma for any relocation, and the pro  
9 forma is required before approval: "Even if the relocation is adjacent to the existing store, a site  
10 request is required because Pro Forma and Facility reviews are necessary to obtain a complete site  
11 approval." [RT Vol. X, 252:8-24 (Eroh); Bracken Depo., 82:6-16; Ex. 1043 (TMS-PROD\_016416-  
12 016417, 016425).]

13           252. TMS did not produce or analyze any projected sales, planning potential, or pro  
14 forma, nor does Mr. Nissani have any estimates of this information. [RT Vol. XIII, 213:15-214:2  
15 (Farhat); RT Vol. XIV, 202:8-203:1 (Nissani); Ex. 1164 (TMS-PROD\_012929-012930).]

16           **A. Summary Analysis of the Good Cause Factors and Determination of Issues**

17           253. Carson Toyota and Cabe Toyota relied on the permanency and stability of the  
18 existing dealer network in making substantial investments in their dealerships at their current  
19 locations. [RT Vol. II, 56:11-21 (Cabe); RT Vol. XI, 195:18-196:6; 213:20-214:1 (Skinner).]

20           254. Since its inception, Hooman Toyota has demonstrated fiscal irresponsibility,  
21 instability, and unreliability, especially when compared to Carson Toyota and Cabe Toyota. [RT  
22 Vol. XII, 215:24-217:1; 217:22-24; 242:13-243:24; 253:25-254:14 (Durby) Ex. 1560.]

23           255. The evidence supports an uncertain degree of negative impact on the dealer network:

24           (a) The Proposed Relocation's 24% encroachment on Cabe Toyota's PMA threatens  
25 Cabe Toyota's viability. [RT Vol. VIII, 189:1-11; 234:15-25 (Matthews); Ex. 1500  
26 (HoCT001772, 1773, 1774).];

27           (b) Hooman Toyota's drastic fixed cost reduction will allow it compete more effectively  
28 and shift the idle time costs from its excessive capacity onto the dealer network that

1 is already competing in a highly competitive market with no perceived shortfall. [RT  
2 Vol. VIII, 215:6-216:2; 236:3-20 (Matthews); Ex. 1500 (HoCT001774).]; and

3 (c) The Proposed Relocation will result in lost sales and service business for both Carson  
4 Toyota and Cabe Toyota in a saturated market with high intrabrand competition and  
5 marginal opportunity for interbrand competition. [RT Vol. III, 49:7-50:4; 62:20-  
6 63:17; 65:15-65:21; 67:22-68:12 (Watkins); RT Vol. VI, 82:24-83:14; 85:1-85:10;  
7 134:1-18; RT Vol. VII, 165:19-166:5; 167:10-169:10 (Stockton); [Ex. 254 (Tab 11  
8 p. 1; Tab 17 p. 1); Ex. 1228 (SW000059).]

9 256. The Proposed Relocation will be injurious to the public by establishing a less  
10 convenient dealer network and promoting unfair competition:

11 (a) Mr. Watkins, Mr. Stockton, and Mr. Farhat all agree that the Proposed Relocation  
12 will be less convenient for consumers. [RT Vol. III, 32:22-33:12; 34:7-24; 35:7-18;  
13 35:23-36:10; 71:12-21 (Watkins); RT Vol. VI, 86:4-86:15; 87:1-87:11; RT Vol. VII,  
14 125:1-18 (Stockton); RT Vol. XIII, 122:1-17; 122:23-123:4; 126:19-25 (Farhat); Ex.  
15 254 (Tab 12 pp. 1-2); Ex. 1227 (SW000046, 47).]; Ex. 2088 (pp. A-76, A-77)]

16 (b) As a result of the expected excess capacity, the dealer network will push idle time  
17 costs onto the public through lower levels of services, sharper business practices, or  
18 personnel cutbacks. [RT Vol. VIII, 235:1-22; 121:9-24 (Matthews); Ex. 1500  
19 (HoCT001773, 1774).]

20 (c) This highly competitive market has already forced the dealers to engage in unfair  
21 competitive practices, such as the VIP Program, and Mr. Nissani intends to continue  
22 with the Program if the Proposed Relocation is allowed. [RT Vol. XIV, 165:14-17;  
23 165:18-166:2; 167:13-168:23 (Nissani); Ex. 1143.]

24 257. TMS acted opportunistically to enforce its otherwise unenforceable imaging  
25 standards upon Carson Toyota, Cabe Toyota, and Hooman Toyota, by recklessly approving the  
26 relocation without any consequence to itself;

27 ///

28 ///

- 1 (a) TMS did not conduct a market study, and has not conducted a study in over 20 years  
2 despite significant changes to the automobile market and Toyota brand. [RT Vol. X,  
3 303:15-304:10 (Eroh); *see* Ex. 1007 (TMS-PROD\_001645).]
- 4 (b) TMS approved the Proposed Relocation only one month after extending Hooman  
5 Toyota's Notice to Cure time period though it first required the dealership to  
6 establish fiscal responsibility, and then only agreed to approve the relocation after  
7 originally rejecting it upon Mr. Nissani contributing one-half million dollars to its  
8 defense costs. [RT Vol. X, 74:11-24; 85:10-86:14; 86:22-87:24; 92:1-23; 284:1-  
9 285:8 (Eroh); RT Vol. XII, 253:6-9; 253:25-254:14 (Durby); Ex. 1099; Ex. 1157; Ex.  
10 1165.]
- 11 (c) TMS did not analyze any pro forma or planning potential before approving the  
12 relocation though its own policies and procedures require a pro forma and the  
13 California Legislature finds both to be materially important. [RT Vol. X, 252:8-24  
14 (Eroh); RT Vol. XIII, 213:15-214:2 (Farhat); RT Vol. XIV, 202:8-203:1 (Nissani);  
15 Bracken Depo., 82:6-16; Ex. 1043 (TMS-PROD\_016416-016417, 016425); Ex. 1164  
16 (TMS-PROD\_012929-012930).]

17 258. And any acute customer complaints or marginal facility deficiencies are illusory, and  
18 overcome by the aggregate consumer survey scores that show otherwise. [Ex. 2003 (TMS-  
19 PROD\_017024); Ex. 2004 (TMS-PROD\_017028); Ex. 2005 (TMS-PROD\_017052).]

20 259. Protestant has met its burden of proof under Vehicle Code section 3063, as to each  
21 subdivision thereof, i.e., (a) through (e).

22 260. The Protest should be sustained and TMS not allowed to relocate Hooman Toyota to  
23 the Proposed Location.

24 **VIII. Facts related to evidentiary matters**

25 261. Throughout the hearing, the relevance threshold imposed by the ALJ for "showing  
26 good cause" was constrained in an unarticulated manner. [RT Vol. V, 27:7-28:16; RT Vol. IX,  
27 54:11-54:12; 76:6-10; 80:9-12; 82:3-7; 85:19-86:7; RT Vol. X, 244:19-245:17; RT Vol. XIV,  
28 118:5-119:21; 142:2-145:3; 151:5-153:5; 158:15-160:6; 161:3-162:7; 200:4-201:17 (Ryerson).]

1           262. Evidentiary rulings at the hearing also suggest that a more stringent burden of proof  
2 standard was applied here on the mistaken belief that the standard for a relocation protest differed  
3 and was much higher than the standard for an establishment protest under the same statute. [RT Vol.  
4 I, 89:15-93:13; II, 6:10-8:14; RT Vol. VII, 149:16-150:24 (Ryerson).]

5           263. The ALJ granted a motion to strike Dr. Matthews’s “optimal location” analysis for  
6 purposes of illustrating consumer convenience under his ruling excluding evidence of potential  
7 alternative locations for the Proposed Relocation on testimony of locations that were neither  
8 potential nor alternative. [RT Vol. VIII, 172:5-176:19; RT Vol. IX, 197:2-198:14; RT Vol. X; 8:7-  
9 21 (Ryerson).]

10           264. Additionally, a motion in limine was granted excluding evidence of alternative  
11 facilities locations, with the understanding that Hooman’s existing location was one of the  
12 alternative facilities to be excluded. It is contended by Protestant that this ruling is inconsistent with  
13 the proper evidentiary standard for protests under Vehicle Code section 3062 and was prejudicial to  
14 Protestant’s case.

15  
16 DATE: August 15, 2013

MANNING, LEAVER, BRUDER & BERBERICH

17  
18 BY   
19 Franjo M. Dolencac, Esq., Attorneys for  
20 Protestant Aldon Inc. dba Carson Toyota and  
21 Carson Scion

22  
23  
24  
25  
26  
27  
28

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
252	11/30/2012	Hooman Investments and Balance Sheet Month Ending 11/30/12-ATTORNEY'S EYES ONLY	HTL 0000002-0000007	14
253	10/1/2012	Hooman Toyota Investment in New Facility- ATTORNEY'S EYES ONLY	HTL 0000001	14
254	2/1/2013	Expert Report of Edward Stockton		6, 7, 9, 13
255	3/1/2013	Supplemental Expert Report of Edward Stockton		6
259	various	Hooman Toyota Employee List	HTL 000266-000267	14
260	7/8/1998	Lease between Bixby Land Co. and North East Long Beach Dealer's Advertising Association re: electric sign	HTL 0000268-0000285	14
264		Sketch of PCH Properties	HTL 000614	14
266		Hooman Toyota Site Plan	HTL 000623-000625	14
267	7/2/1905	Minimum Facility Guides and Standards	HTL 000627-000635	14
268	1/11/2012	Letter from Chayo to Eroh re: Shares and Certificates	HTL 000636-000638	14
270	9/14/2011	First Amendment to Lease 3399 E. Willow St.	HTL 000859-000860	14
271	10/25/2011	First Amendment to Lease 3399 E. Willow St.	HTL 000981	14
272		Vehicle Service Surveys	HTL 001029-001139	14
273	6/12/12, 8/9/12, 8/22-8/23/12	Architectural Drawings and Related Correspondence (use in conjunction with 1008)	HTL 001140-001145, 001151-001154	14
274	10/5/2012	Standard Industrial Commercial Lease 3399 Willow Ave.	HTL 001155-001209	14
275	9/1/2011	Options to Purchase, Extend and Guaranty 3399 Redondo/Willow Ave.	HTL 001210-001213	14
276	10/26/2012	News Article re: "Traffic Circle Problem"	HTL Supp 0000132-0000135	14
278	8/2012-9/2012	Materials re: Electronic Sign	HTL Supp 0000152-0000159	14
280		Stockton Rebuttal to Watkins Calculation		6
281		Matthews Back-Up Date Example		6, 7
282		Stockton Calculation of Matthews Asian and Hispanic Factors		6, 7, 9
283		Stockton Regressions Using Matthews Asian and Hispanic Factors		7
284		Stockton Rebuttal to Matthews Gravity-Model Criticism		10
285	*Nov 2012	Hooman Toyota Financial Statement		14
286		Stipulated Binder of Photographs		15
1001	2/1/1969	Dealer Selling Agreement between Toyota Motor Distributors and Loy G. Cabe and Roy L. Cabe dba Cabe Bros	TMS-PROD_000219 - 000222	1
1003	3/8/2004	Cabe Brothers, Inc.'s Toyota Dealer Agreement	TMS-PROD_000035 -041	1
1007	12/7/2007	Market Representation Transmittal, Dec. 7, 2007, re: Hooman to buy Toyota Long Beach - Hooman's Business Plan - Hooman's auto business background ( <i>see doc #001640</i> )	TMS-PROD_001637 - 001648	8

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1009	1/9/2008	Toyota Dealer Agreement between HTL Automotive, Inc. and Toyota Motor Sales U.S.A., Inc.	TMS-PROD_008731 - 008738 or TMS-PROD_013308-013315	10, 14
1013	12/1/2008	January - December 2008 Cabe Financial Statement	CABE 000351 - 356	1, 2
1016	2/9/2009	Letter from Jeff Bracken to Hooman Nissani re: 1/21/09 meeting and Hooman's interest in improving his financial situation and "remaining as our dealer"	TMS-PROD_011333 - 011335	10
1017	2/11/2009	Email from Dennis Thornhill to Jeff Bracken re Long Beach and relocation options for Hooman Toyota ("likelihood of success [of relocation] seems challenging")	TMS-PROD_013807 - 013809	10
1018	2/12/2009	Letter from Hooman Nissani to Jeff Bracken responding to 2/9/09 letter and discussing possible changes to Hooman Toyota's operation	TMS-PROD_011329 - 011330	10
1030	5/29/2009	Emails between Doug Eroh, Jeff Bracken, and Michelle Brown re Hooman's failure to pay-off customer trade-in vehicle	TMS-PROD_013564 - 013566	10
1035	7/7/2009	Letter from Jeff Bracken to Hooman Nissani re dealership's ongoing financial reporting irregularities and concern about dealership's financial status	TMS-PROD_009276 - 009278	12
1039	7/8/2009	Note to File from Mike Durby re Adding Body Shop to Hooman Toyota Dealer Agreement	TMS-PROD_011323 - 011324	10, 12
1042	7/27/2009	Note to File from Mike Durby re: contact with Hooman Nissani at Hooman Toyota on 7/24/2009 at 2:00 pm; discussed the following areas of concern: 1) total operating cash; 2) new vehicle equity; 3) used vehicle inventory value; 4) capital stock increase; and 5) Toyota Rent-A-Car	TMS-PROD_013893 - 013897	10, 12
1043	8/17/2009	Toyota's forms for site request / approval	TMS-PROD_016415 - 016427	10
1048	12/1/2009	January - December 2009 Cabe Financial Statements	CABE 000277 - 283	1, 2
1050	12/8/2009	Letter from Jeff Bracken to Hooman Nissani re: 12/2/09 meeting discussing September 2009 financial review	TMS-PROD_009143 - 009145	12
1054	4/19/2010	Letter from Spencer Illingworth to John Cabe re approval of renewal of 1 year Toyota Dealer Agreement	TMS-PROD_003590	1
1058	7/7/2010	Emails between Dan Duddrige and Timothy Morris re: Advertising issue with attached Hooman advertisement	CABE 001693 - 1694	11
1070	9/20/2010	TMS Image USA II - Dealer Enrollment Form for Cabe Toyota	TMS-PROD_003321 - 003325	1
1072	12/1/2010	January - December 2010 Cabe Financial Statement	CABE 000205 - 210	1, 2
1076	12/16/2010	Letter from Mike Durby to Hooman Nissani re failure to cure deficiencies	TMS-PROD_008766 - 008767	12
1084	3/21/2011	Letter from Steve Hearne to Hooman Nissani extending Toyota Dealer Agreement for three months	TMS-PROD_001615	15
1087	3/25/2011	Cabe Brothers, Inc.'s Toyota Dealer Agreement (March 2011 to March 2012)	TMS-PROD_000010 - 000016	1

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1089	5/3/2011	Letter from Lillian Moore to Carolyn Carpenter verifying agreement with Cruiser Properties re lease of dealership property	TMS-PROD_003360	1, 2
1094	5/16/2011	Letter from Steve Hearne to Hooman Nissani re: concerns over dealership's financial condition and highly suspicious transactions	TMS-PROD_010370 - 010371	10
1095	5/24/2011	Note to File from Mike Durby re: meeting at Hooman Nissani's request to discuss the TMS expectations regarding the dealer's response to demand letter sent May 16, 2011	TMS-PROD_010359 - 010360	12
1097	5/27/2011	Letter from Hooman Nissani to Steve Hearne re: May 12 meeting with TMS and responding to individual questions and concerns	TMS-PROD_010303 - 010307	10
1098	6/20/2011	Letter from Steve Hearne to Hooman Nissani extending Hooman's Toyota Dealer Agreement for a period of 1 month	TMS-PROD_001614	15
1099	6/22/2011	Letter from Steve Hearne to Hooman Nissani re: 180 - Day Notice to Cure	TMS-PROD_013244 - 013248	10
1100	6/24/2011	Letter from Hooman Nissani to Steve Hearne re: "official request to procure authorization from Toyota Motor Corporation to relocate Hooman Toyota"	TMS-PROD_010280 - 010282	10
1102	7/11/2011	Letter from Steve Hearne to Hooman Nissani re: TMS reply to Hooman's 6/27/2011 Request to Relocate. Letter states "This would be problematic because, among other reasons: The proposed locate is closer to Cabe Toyota (2.18 miles away vs. the current 3.08 miles); - No fewer than seven dealers would have the right to protest a relocation to this site; Hooman Toyota's capitalization issues make the viability of a relocation questionable."	TMS-PROD_010278 - 010279	10
1103	7/20/2011	Letter from Steve Hearne to Hooman Nissani extending Toyota Dealer Agreement for one month	TMS-PROD_001612	15
1105	8/3/2011	Letter from Steve Hearne to Hooman Nissani re: 180-Day Notice to Cure Follow-up, and concerns over the loan nature of the proposed capital investments	TMS-PROD_013261 - 013266	15
1109	8/23/2011	Geography Review of Possible Relocation Site for Hooman Toyota of Long Beach, prepared by Dowd Walker of Retail Market Development	TMS-PROD_017524 - 017541	3, 10
1110	8/25/2011	Letter from Steve Hearne to Hooman- one month extension on Toyota Dealer Agreement signed by Dawn Mercer (new expiration date: 10/8/2011)	TMS-PROD_010187	15
1111	9/7/2011	Letter from Steve Hearne to Hooman Nissani responding to Hooman's 8/15/2011 letter: "your letter contains a number of statements ... but in fact advises us of no information or action sufficient to satisfy Hooman Toyota's defaults under its Toyota Dealer Agreement."	TMS-PROD_010181 - 010182	15

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1115	9/22/2011	Letter from Steve Hearne to Hooman Nissani extending Toyota Dealer Agreement for one month	TMS-PROD_001608	15
1116	9/27/2011	Letter from Hooman Nissani to Steve Hearne re: providing confirmation of \$1,000,000 deposit	TMS-PROD_010046 - 010047	10
1117	10/7/2011	Email from Hooman Nissani to Steve Hearne and Doug Eroh requesting a phone call to explain letters because Hooman doesn't understand TMS's "intent"	TMS-PROD_009823	10
1118	11/15/2011	Letter from Mike Durby to Hooman Nissani re net working capital deficiency	TMS-PROD_009656	10, 12
1119	11/16/2011	Hooman Toyota of Long Beach Relocation Project Update binder	TMS-PROD_009657 - 009813	10
1122	12/1/2011	January - December 2011 Cabe Financial Statement	CABE 000133 - 138	1, 2, 7
1138	12/2/2011	Letter from Doug Eroh to Hooman Nissani re review of materials submitted on 11/16/11 by Hooman in response to financial review	TMS-PROD_009648 - 009649	10
1139	12/18/2011	Letter from Steve Hearne to Hooman Nissani extending Toyota Dealer Agreement for one month	TMS-PROD_009647	15
1141	12/22/2011	Letter from Steve Hearne to Hooman Nissani re: "extension of 180-day notice to cure." "Hooman Toyota's material failure to perform adequately its obligations under the Dealer Agreement, including the following: (1) its failure to maintain a net worth of \$7 million; (2) its failure to establish and maintain net working capital sufficient to meet TMS' minimum capitalization standards; (3) its apparent misrepresentations regarding the initial capitalization of the dealership; (4) numerous questionable financial and accounting practices; (5) its failure to provide dealership facilities that meet TMS's minimum standards; and (6) several apparent unauthorized ownership changes."	TMS-PROD_009635 - 009636	15
1143	1/1/2012	Hooman Toyota's VIP Customer Privileges marketing materials	CABE 001829 - 1830	5, 14
1145	1/17/2012	Letter from Steve Hearne to Hooman Nissani extending Toyota Dealer Agreement for one month (expiration: 3/8/2012)	TMS-PROD_010719	15
1147	2/9/2012	Letter from Steve Hearne to Hooman Nissani responding to Hooman's 1/13/2012 letter "regarding the allegations in Kahrobaies' lawsuit and out continued concerns about Hooman Toyota's ownership structure, capitalization, and proposed relocation." ★★	TMS-PROD_010711 - 010712	10
1150	2/23/2012	Letter from Michael Flanagan to Steve Hearne re: issues Hooman has encountered in seeking approval for relocation - "somewhat perplexed" by the concerns set forth in 2/9/2012 letter	TMS-PROD_012962 - 012964	10

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1152	3/16/2012	Emails between Carolyn Carpenter and Dan Duddridge re: Hooman	CABE 001689 - 1690	5
1153	3/19/2012	Cabe Toyota Dealer Agreement for period 03/21/12 - 03/20/18	CABE 001040 - 1074	1
1156	4/18/2012	Letter from S. Hearne to John Cabe	TMS-PROD_003431 - 003435	4, 5
1157	4/25/2012	Letter from Steve Hearne to Hooman Nissani re: pending audit of Hooman Toyota's financial and ownership records and request for attorneys' fees to defend protests of proposed relocation	TMS-PROD_010678 - 010679	10
1162	6/29/2012	Appraisal of Real Property Report re Cabe Toyota, 2895 Long Beach Blvd, Long Beach, CA, prepared by Cushman & Wakefield for Toyota Financial Services	CABE 000357 - 483	1
1164	7/26/2012	Site Request Transmittal re: "complete relocation of all operations to meet facility guidelines and develop an Image USA II compliant facility" for Hooman Toyota. Michael Tanioka listed as regional contact. Executed by Steve Hearne.	TMS-PROD_012925 - 012934	10
1165	7/30/2012	Relocation Approval	TMS-PROD_010620 - 010622	10
1166	8/2/2012	Notice of Relocation	TMS-PROD_003429 - 003430	1
1167	8/14/2012	Emails between Doug Eroh and Dan Duddridge re "Your Prius at Cabe Toyota" forwarding customer communication	CABE 001745 - 1752	11
1170	9/24/2012	Emails between Ray Sandoval and Dan Duddridge re: TFS' 1 Year TAC and 3/3 Short Term VSA Used Car Product Pre Load Program	CABE 001841 - 1842	5, 8
1174	10/16/2012	Emails from Dan Duddridge to Evan Nelson, Jason Kong and John Cabe re Google Ads	CABE 001754	11
1176	11/1/2012	Cabe Dealer Retention Rate/District Retention Rank Charts (Registrations as of 8/12)	CABE 000512 - 514	11, 12
1179	11/21/2012	Sales Rejecter Study Report for Cabe Toyota (8/25/12 - 11/21/12)	CABE 000515 - 519	4, 5
1182	11/30/2012	Toyota Service Opportunity Access for Retention (SOAR) Service Market Share (SMS) Hot Spot Map re: Cabe Toyota for period 01/10/11 - 10/31/12	CABE 000502	7, 8, 11
1184	12/3/2012	President's Award Status - Cabe Toyota	CABE 001092	4
1185	12/5/2012	Email from Dan Duddridge to Jason Kong re: Leads	CABE 001764	4
1188	12/11/2012	Bar chart showing leads generated by buyatoyota.com to Cabe Toyota vs. average leads delivered to other dealers	CABE 000509	4, 13
1189	12/11/2012	Google Maps: "Toyota Long Beach"	CABE 001111	5
1190	12/11/2012	Yelp.com: "Toyota Long Beach"	CABE 001112	5
1192	12/11/2012	Toyota Dealer Digital Solutions (ELMS) - Lead Volume Benchmark for period 1/1/2012 - 12/11/2012	CABE 001827 - 1828	4

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1196	7/4/1905	Cabe Toyota's Advertising Expense Spreadsheet for 2012	CABE 000505 - 507	2, 11
1197	2007-2012	Cabe Toyota "Dealer At A Glance Reports"	TMS-PROD_017004 - 017027	5, 8
1198	2007-2012	Hooman Toyota "Dealer At A Glance Reports"	TMS-PROD_017052 - 017075	5, 8
1200	2011-2012	Cabe Facility Improvement Cost Summary	CABE 000652 - 653	2
1201	1/24/2013	Emails between Gary Tulanian and Dan Duddridge re: SOAR and customer referrals	CABE 001843 - 1844	4
1202	2/1/2013	Service Market Share (SMS) and Service Customer Retention (SCR) Ranking Metro Dealers (59 Dealers) & Single-Point Dealers (17 Dealers)	CABE 001826	7, 8, 11, 13
1203	3/9/2013	E-mail exchange between Dad Duddridge and Hooman Nissani, re: contact info	CABE 001075 - 1077	5
1204	5/1/2013	Online reviews for Hooman Toyota (reviews by Jeffrey Goldberg, Tami Pelt, and Melissa S.)	CABE 001831-1840	5
1209		Drawing of Existing Cabe Property, and additional properties purchased by Cabe	CABE 001825	1, 5, 11
1213		Cabe Toyota's sales and management employee list	CABE 001556	14
1215		Toyota Lost Sales Shade Map	CABE 001770	5
1218		Dealer Digital Solutions (ELMS) Map re leads delivered to Cabe Toyota	CABE 001773	8
1219		Cabe Toyota "Pump Out" Report	CABE 001774 - 1776	4, 5, 8, 10, 11
1220		Cabe Toyota "Pump In" Report	CABE 001777 - 1779	4, 5, 8, 10, 11
1221		Map of Ten-Mile Radius RMA	CABE 001823	4
1222		"Locate A Dealer" results for Long Beach, CA	CABE 001824	4, 11
1223		Dealer Digital Solutions (ELMS) Map re leads delivered to Cabe Toyota (brand vs. 3rd party vs. TFS/LFS)	CABE 001789	4, 12, 13
1224		Cabe Toyota Financial Summary & Rent Impact	CABE 001817 - 1818	8, 11
1225		Cabe Toyota New Facility Cost Breakeven Assessment (to be replaced by updated version produced by Dan Duddridge)	CABE 001821 - 1822	8
1226		Photographs of Hooman Toyota Signs	CABE 001845 - 1847	4
1227	2/8/2013	Analysis of Proposed Dealership Relocation and Good Cause Criteria authored by Scott Watkins	SW 000001 - 0059	3, 4, 5, 6, 12
1228	3/4/2013	Supplemental Materials and Report of Analysis of Proposed Dealership Relocation and Good Cause Criteria authored by Scott Watkins	SW 000060 - 0098	3, 4, 5
1231	4/22/2013	Map entitled "Ten-Mile Radius RMA and Primary Market Areas, with Road Network"	SW 000299 - 0300	3
1232	4/17/2013	Map entitled "Ten-Mile Radius RMA and Primary Market Areas, Satellite Image"	SW 000301	3, 4
1233	4/22/2013	Map entitled "2011 Population Density in the Ten-Mile Radius RMA and Primary Market Areas"	SW 000302	3, 4

## ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1234	4/22/2013	Map entitled "2011 Median Household Income in the Ten-Mile Radius RMA and Primary Market Area"	SW 000303	3
1235	4/22/2013	Map entitled "Cabe PMA Census Tracts Considered for Reassignment"	SW 000304	3, 4
1236	4/22/2013	Map entitled "Cabe PMA Census Tracts and Market Conditions"	SW 000305	3
1237	4/24/2013	Cabe PMA Census Tracts and Market Conditions	SW 000307	3, 4
1238	5/1/2013	Toyota Financial Services Summary of Proposed Terms and Conditions Presented to John Cabe	CABE 001850 - 1857	1, 7, 8
1241		Email from Jeffrey Winklepleck to Dan Duddridge re: requirements for a static, freeway-oriented freestanding sign	CABE 001848 - 1849	4
1242	5/9/2013	Email from Saitong (Toyota) to Duddridge	CABE 001858 - 1859	1, 5, 7
1243	2006-2012	Financial Spreadsheet	CABE 001860	5, 7, 8, 11, 12
1245	7/4/1905	2012 Sales Society / Sales Excellence Award Recognition List	CABE 001862 - 1868	
1247		New Facility Cost Breakdown Assessment	CABE 001870 - 1871	5, 7, 8, 11
1248	2/1/2013	Toyota Pump-In for February 2013	CABE 001872 - 1874	11, 14
1249		Long Beach Zip Code Map	CABE 001875	5, 9, 11
1250	5/22/2013	Toyota Retail Sales Ranking	CABE 001876	5
1254		Printout of Hooman Toyota of Long Beach internet information - Buy a Toyota Search	CABE 001880	4
1256		MM Zip in PMA	CABE 001884	11
1258		Total Customers by Zip CABE PMA	CABE 001887	4, 5, 7, 11
1260	*Nov 2012	Cabe Toyota Financial Statement	CABE 000061 - 66	7
1261	5/21/2013	Cabe Toyota Construction Account	CABE 001889 - 1892	2
1263	1/2/2009	Toyota Dealer Retail Sales Ranking		14
1264		Declaration of Jim Speck		15
1500	N/A	An Analysis of the Impact of the Proposed Move of Hooman Toyota of Long Beach by John P. Matthews, PH.D.	HoCT001769-001867	7, 8, 9, 10
1506	4/30/1975	Carson Toyota Dealer Agreement	TMS-PROD_000847-000850	11
1508	4/22/2009	Carson Toyota Dealer Agreement	TMS-PROD_000746-000752	11
1510	2008	Carson Toyota Financial Statement	HoCT000059-000064	11
1511	2009	Carson Toyota Financial Statement	HoCT000053-000058	11
1512	2010	Carson Toyota Financial Statement	HoCT000047-000052	11
1513	2011	Carson Toyota Financial Statement	HoCT000041-000046	11
1514	2012	Carson Toyota Financial Statement	HoCT001887-001892	11
1515	2007	Carson Toyota Dealer Performance Evaluation	TMS-PROD_004449-004456	11
1516	2008	Carson Toyota Dealer Performance Evaluation	TMS-PROD_004457-004464	11

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
 ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
1521	Oct-12	Carson Toyota Dealer Performance Evaluation	HoCT001881-001886	11
1523	5/18/2004	Restated and Amended Disposition and Development Agreement Between Carson Development Agency and Carson Real Estate Leasing, LLC	TMS-PROD_004597-004654	11
1524	10/5/2004	First Amendment to the Restated and Amended Disposition and Development Agreement Between Carson Development Agency and Carson Real Estate Leasing, LLC	TMS-PROD_004582-004596	11
1526	12/26/2006	Construction Loan Agreement Between Carson Real Estate Leasing, LLC and Bank of America, N.A.	HoCT000432-HoCT000480	11
1533	2/26/2008	Master Lease Agreement Between Aldon, Inc. and Bank of America Leasing & Capital, LLC	HOCT000528-000540	11
1548	11/19/2009	Letter from Jeff Bracken to Hooman Nissani, Kevin Golshan, and Geraldine Weber re November 9, 2009 Meeting and Findings of Financial Review	TMS-PROD_009180-009185	12
1550	7/22/2010	Letter from Mike Durby to Hooman Nissani re July 15, 2010 Meeting and September 2009 Financial Review	TMS-PROD_008880-008883	12
1554	10/6/2011	Letter from Steve Hearne to Hooman Nissani Responding to September 9, 2011 Letter re Hooman Toyota	TMS-PROD_009829-009835	12
1555	12/19/2011	TMS Sales Contact Report for Hooman Toyota	TMS-PROD_009643-009646	14
1556	12/21/2011	Letter from Douglas Eroh to Hooman Nissani re Kahrobaie Lawsuit	TMS-PROD_009639-009642	12
1560	6/8/2012	Letter from Steve Hearne to Hooman Nissani re Follow-Up to June 8, 2012 Notice to Cure Letter	TMS-PROD_001606-001607	10, 12
1561	7/11/2012	Letter from Dennis Flynn to Hooman Nissani re Review of Proposed Design and Layout for Proposed Relocation	TMS-PROD_013042	14
1562	7/27/2012	Retail Market Development re Willow Street and Redondo Avenue Site Relocation Approval	TMS-PROD_012923-012924	10, 12
1563	7/30/2012	Letter from Steve Hearne to Hooman Nissani re Toyota Approval of Hooman Toyota Proposed Relocation	TMS-PROD_013039-013041	14
1566		Matthews Segmented Analysis for Cabe PMA with Asian Factor Correction		9
2000		2007-2012 YE Financial Statements (Cabe Toyota)	TMS-Prod 17367-72 TMS-Prod 17391-96 TMS-Prod 17415-20 TMS-Prod 17439-44 TMS-Prod 17463-68 TMS-Prod 18746-51	2, 8, 11
2003		2007-2012 YE Dealer at a Glance Reports (Cabe Toyota)	TMS-Prod 17008-11 TMS-Prod 17012-15 TMS-Prod 17016-19 TMS-Prod 17020-23 TMS-Prod 17024-27 TMS-Prod 17004-07	2, 5, 14

## ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

Exhibit No.	Date	Description	Bates Range	Volume
2004		2007-2012 YE Dealer at a Glance Reports (Carson)	TMS-Prod 17032-35 TMS-Prod 17036-39 TMS-Prod 17040-43 TMS-Prod 17044-47 TMS-Prod 17048-51 TMS-Prod 17028-31	14
2005		2007-2012 YE Dealer at a Glance Reports (Hooman)	TMS-Prod 17056-59 TMS-Prod 17060-63 TMS-Prod 17064-67 TMS-Prod 17068-71 TMS-Prod 17072-75 TMS-Prod 17052-55	14
2006		2008- Jan 2013 YE Dealer Performance Evals (Cabe)	TMS-Prod 03454-60 TMS-Prod 03461-67 TMS-Prod 03468-74 TMS-Prod 03475-81 TMS-Prod 20037-43	2, 8, 9, 14
2008		2008- Jan 2013 YE Dealer Performance Evals (Hooman)	HoCT 0117-22 HoCT 0123-28 HoCT 0686-90 HoCT 0691-97 HoCT 0698-99	8, 14
2010		2011-2012 Shareholder Distributions (Carson Toyota)	HoCT 0731-32	11
2012		Toyota Dealer Agreement Standard Provisions	TMS-Prod 13722-63	10
2014	6/1/2001	Cabe Toyota Dealer Agreement	TMS-Prod 0059-66	2
2021	8/3/2006	Interoffice Memo (Toyota of Long Beach)	TMS-Prod 12541-49	
2026	6/6/2007	Contact Report (Toyota of Long Beach)	TMS-Prod 12035-39	
2032	12/17/2008	Letter from Mike Durby to John Cabe (DP)	TMS-Prod 03632	2
2034	1/23/2009	Letter from Mike Durby to John Cabe (DP)	TMS-Prod 03625	2
2038	4/20/2009	2009 Toyota Facility Standards (Carson Toyota)	TMS-Prod 01171	9
2040	1/25/2010	Letter from Mike Durby to John Cabe (DP)	TMS-Prod 03610	2
2043	03/2010 (approx)	Letter from John Cabe to Spencer Illingworth	TMS-Prod 03602-03	4, 11
2044	4/9/2010	Cabe Toyota Dealer Agreement	TMS-Prod 0020-27	2
2045	07/2010	Gensler Drawings for Cabe Toyota	CABE 00631 - 49	5
2052	9/21/2011	Cabe Contact Report	TMS-Prod 14566-69	8, 11
2053	11/2011 (approx)	TMS Service Retention Chart	TMS-Prod 018881	5
2056	2/27/2012	Market Analysis of Possible Relocation Site	TMS-Prod 16428-40	5, 10, 11
2057	3/3/2012	Cabe Sales Contact Report	TMS-Prod 14611-1	11
2058	3/20/2012	2012 Facility Standards (Cabe Toyota)	TMS-Prod 03445	2
2059	6/21/2012	Independent Auditor's Report by Parke-Guptill	TMS-Prod 10659-69	12
2062	*10/2012	Service Retention and Market Share Chart	TMS-Prod 16836-44	4, 10, 11
2063	1/31/2013	Cabe Toyota Rent Chart (from Moore Deposition)	unlabeled	2
2065	5/16/2013	Cabe VIP Program	HTL_Sup 142-43	8, 11

ALDON, INC. DBA CARSON TOYOTA CARSON SCION v. TOYOTA MOTOR SALES U.S.A., INC. PROTEST NO. PR-2339-12; PR-2340-12  
ADMITTED EVIDENCE MERITS HEARING EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>	<b>Bates Range</b>	<b>Volume</b>
2066	5/16/2013	Cabe A void the Traffic Circle Ad	HTL_Sup 144-51	4, 7, 11
2086	N/A	Herbert Walter Expert Witness Report	unlabeled	12
2087	N/A	Walter Rebuttal to Duddridge	Cabe Suppl 1-4	12
2088	N/A	Sharif Farhat Expert Witness Report	unlabeled	13
2089	N/A	Farhat Rebuttal to Duddridge	unlabeled	13

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**

I, the undersigned, declare and say as follows:

I am 18 years of age or older, employed at the business noted above my signature which is in the county where any mailing herein stated occurred, and not a party to the within action.

On August 15, 2013, I caused to be served the document(s) listed below my signature under the heading "Document(s) Served" by placing a copy of the document(s) (or the original, if so noted below) in individual envelopes for each of the parties listed below my signature under the heading "Parties Served" (except for fax-only service), addressed to them at their last known addresses in this action exactly as shown (excepting parenthetical references to their capacity), there being U.S. Mail delivery service to those addresses used for service by mail, and by sealing said envelopes, and on the same day, as marked with "X," by --

placing each envelope for collection and processing for mailing following my firm's ordinary business practice with which I am readily familiar and under which on the same day correspondence is so placed for mailing it is deposited in the ordinary course of business with the U.S. Postal Service at my business address, 1st-class postage fully prepaid.

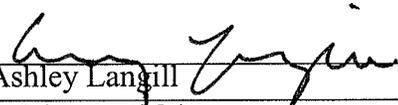
electronically sending  by email or  by fax each page of each document and this proof of service to the parties served at their last known email address or fax numbers as listed below from a email or fax system located at my business address which reported no errors and which, if by fax, produced a transmission confirmation report, a true copy of which is attached hereto. [use only if electronic service authorized or as a supplement.]

depositing each envelope into the U.S. mail with 1st-class postage fully prepaid at a mail box or collection facility in the city and state of my business address. "Parties Served" lists all parties and counsel served in the within matter, and their respective capacities. [required for federal cases, including bankruptcy, among others]

depositing each envelope at a drop box or other facility in the city and state of my business address within the time and pursuant to procedures readily familiar to me necessary for delivery  by Federal Express on the morning of the next business day or  by courier on the same day. [use only if overnight or courier service authorized or as a supplement.]

personal delivery by  travelling to the address shown on the envelope and delivering it there during normal business hours or  handing the documents to the person served.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on August 15, 2013 at my business address, 5750 Wilshire Blvd., Suite 655, Los Angeles, California 90036, in the County of Los Angeles.

  
Ashley Langill

**Document(s) Served (exact title)**  
**PROTESTANT ALDON, INC. DBA CARSON TOYOTA AND CARSON SCION'S PROPOSED FINDINGS OF FACT**

**Parties Served (exact envelope address)**  
**See Attached Service List**

**Certificate of Service  
Service List**

Michael J. Flanagan, Esq.  
Gavin M. Hughes, Esq.  
LAW OFFICES OF MICHAEL J. FLANAGAN  
2277 Fair Oaks Blvd., Suite 450  
Sacramento, CA 95825  
(916) 646-9138 (fax)  
Email: lawmjf@msn.com

*Attorneys for H.T.L. Automotive Inc., dba Hooman  
Toyota of Long Beach and Hooman Scion of Long  
Beach*

New Motor Vehicle Board  
**Email: nmvb@nmvb.ca.gov**  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, CA 95811  
  
(Send **ORIGINAL** Via US Mail)

Gregory J. Ferruzzo, Esq.  
James P. Barone, Esq.  
Vasko R. Mitzev, Esq.  
FERRUZZO & FERRUZZO, LLP  
3737 Birch Street, Suite 400  
Newport Beach, CA 92660  
(949) 608-6994 (fax)  
Email: gferruzzo@ferruzzo.com

*Attorneys for Protestants Cabe Toyota and Cabe  
Scion*

Steven A. McKelvey, Jr., Esq.  
S. Keith Hutto, Esq.  
Steven B. McFarland, Esq.  
NELSON MULLINS RILEY &  
SCARBOROUGH, LLP  
1320 Main Street, 17<sup>th</sup> Floor  
PO Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 255-9043 (fax)  
Email: steve.mckelvey@nelsonmullins.com  
keith.hutto@nelsonmullins.com  
steven.mcfarland@nelsonmullins.com

*Attorneys for Respondent Toyota Motor Sales,  
U.S.A., Inc.*