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12 **STATE OF CALIFORNIA**

13 **NEW MOTOR VEHICLE BOARD**

14 In the Matter of the Protests of)

15 ALDON, INC., a California corporation,)

16 dba CARSON TOYOTA, and)

17 ALDON, INC. a California corporation, dba)

18 CARSON SCION, and)

19 CABB BROTHERS, a California)

20 corporation, dba CABB TOYOTA and)

21 CABB SCION, and)

22 APAULO, INC., dba NORWALK)

23 TOYOTA and NORWALK SCION, and)

24 DWWSB, INC., dba SOUTH BAY)

25 TOYOTA and SOUTH BAY SCION,)

Protestants,)

v.)

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

RESPONDENT TOYOTA MOTOR SALES, USA, INC.'S POST HEARING OPENING BRIEF

1 H.T.L. AUTOMOTIVE, INC., dba)
2 HOOMAN TOYOTA OF LONG BEACH)
3 and HOOMAN SCION OF LONG BEACH,)
4)
5)
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Intervenor.)

Pursuant to the Order Establishing Post-Hearing Briefing Schedule and the Notice Regarding Post-Hearing Briefs, Respondent Toyota Motor Sales, USA, Inc. hereby submits its Post-Hearing Opening Brief in the above-captioned matter.

BACKGROUND INFORMATION

This case involves the proposed relocation of Hooman Toyota approximately 1.14 miles away from its current facility to a new location within the City of Long Beach. Hooman Toyota and the two Protestants, Cabe Toyota and Carson Toyota, are all located in the City of Long Beach and the City of Carson, which are in the South Bay area of the Los Angeles metropolitan area. The Los Angeles metro is the largest automotive market in the country, and it has a population of about 15 million people. (RT. Vol. XIII 39:18-40:2). The South Bay area similarly has a very high population density and high demand for automobiles. The 10-mile RMA alone has a population of more than 1.92 million people, which is extremely dense for a 10-mile area—especially one that includes portions of the Pacific Ocean. (RT Vol. III. 100:21-101:1). In addition, the Toyota brand currently has the highest market share of any manufacturer in the South Bay area. (RT Vol. II. 54:10-20).

Due to the large amount of consumers and opportunity in this area, these three Toyota dealers have been operating in close proximity for many years. Cabe Toyota began operating at its current site in Long Beach in 1966, and about nine years later, Carson Toyota began operating approximately 3.6 miles to its west in the City of Carson. (RT Vol. I 113:3-7; 114:8-15) (Ex. 1153, pp. TMS-Prod_001043) (RT Vol. XI 184:2-10; 197:4-12). In 1977, Toyota of Long Beach (now known as Hooman Toyota) began operations at its current location, which is about 3.1 miles east of Cabe Toyota and 6.7 miles east of Carson Toyota. (RT Vol. I 117:9-17; RT Vol. III. 98:7-11) (Ex. 2056, pp. TMS-

1 Prod_016432). Accordingly, these three dealerships have operated successfully and profitably from
2 their facilities within 6.7 miles of each other for more than 36 years. (RT Vol. III. 14:8-14; 98:7-20).

3 It is undisputed that the population and the number of Toyota sales have grown significantly
4 since 1977. (RT Vol. II. 54:5-17; Vol. III. 99:2-13; Vol. XI 198:18-24). When these three dealers
5 first began operations, the Toyota brand was selling approximately 100,000 vehicles per year
6 nationwide, and it is now selling almost two million vehicles nationally per year. (RT Vol. XI. 198:25-
7 199:8). However, the Toyota facilities in the area have failed to keep pace with this significant growth.

8 Prior to 2008, customers in Long Beach and the City of Carson were being served by three
9 Toyota dealerships with outdated, undersized, and inadequate facilities. In May 2008, Carson Toyota
10 became the first of these three dealers to address its facilities when it opened an expanded and renovated
11 facility. Carson Toyota's new dealership facility greatly exceeds Toyota's minimum guides, is located
12 on the 405 Freeway, and is highly visible, accessible, and attractive for Toyota customers. (RT Vol.
13 XI. 173:13-177:23; 185:23-186:4; 201:12-202:10) (Ex. 2038).

14 Similarly, Cabe Toyota has been operating out of one of the most deficient and least appealing
15 Toyota dealership facilities in the Region for many years. (RT Vol. X. 33:13-16). In 2001, Cabe
16 Toyota entered into a Dealer Agreement in which it acknowledged that its facilities were substantially
17 deficient and agreed to remedy these deficiencies within 18 months. (RT Vol. II. 44:11-22) (Ex. 2014,
18 TMS-Prod_000064). Despite this express agreement and multiple subsequent agreements to the same
19 effect, when it suited Cabe Toyota, it made the decision not to complete the renovations it had
20 committed to make. (RT Vol. II. 96:1-14). Indeed, Cabe Toyota did not break ground on its facility
21 renovation until April 2013, twelve years after its 2001 Dealer Agreement, nine months after receiving
22 the Notice of Relocation, and approximately two months before the beginning of this hearing. (RT Vol.
23 II. 51:13-18; RT Vol. II. 97:18-98:6; RT Vol. V. 132:12-133:25).

1 In January 2008, Hooman Nissani purchased Toyota of Long Beach and began operating the
2 dealership as Hooman Toyota from the same facilities it had occupied since 1977. (RT. Vol. XIV.
3 17:12-21) (Ex. 1009, pp. TMS-Prod_008734). However, these facilities do not comply with TMS's
4 minimum space and appearance standards, and they present numerous operational and convenience
5 issues for Hooman Toyota and its customers. (Ex. 1009, pp. TMS-Prod_008736) (RT Vol. X. 40:14-
6 16). As set out below, Hooman Toyota's current facilities are significantly undersized and do not have
7 adequate building space, land area, space in the service area, or sufficient parking for customers. (RT
8 Vol. IX. 159:1-160:22) (Ex. 1500, HoCT001794). Given the lack of space and consumer parking,
9 service customers often have to park in the street and wait for service. (RT Vol. XIV. 31:15-32:3).
10 The dealership also has to store most of its vehicle inventory at off-site storage facilities, which means
11 that customers looking for a specific vehicle often must wait for an employee to travel to an off-site
12 location, pick up a particular vehicle, and bring it back to the dealership. (RT Vol. XIV. 22:23-23:10).

13 In addition to these space constraints, Hooman Toyota's current dealership facilities are spread
14 out over six separate, non-contiguous parcels of land. (RT Vol. XIV. 37:25-38:10). Its main sales and
15 service facilities are located in two different buildings that are separated by a four-lane street, which
16 forces customers and employees to walk across a busy street to navigate between the two facilities.
17 (RT. Vol. X. 41:17-25). In order to deal with its lack of space, Hooman Toyota also has acquired
18 several off-site locations to perform various dealership functions, such as storage for new vehicle
19 inventory, storage for heavy-duty parts, reconditioning used vehicles, and washing customer vehicles.
20 (RT Vol. XIV. 25:4-26:1; 36:22-38:10; 109:9-14). This layout makes the dealership less efficient,
21 increases its operating expenses, and increases customer wait times. (RT Vol. VI. 65:15-66:10).

22 Given these operational and customer issues at its current facility, Hooman Toyota has proposed
23 to relocate from its current dealership facilities in Long Beach to a new facility located at 3399 E.
24 Willow Street and 2679 Redondo Ave in Long Beach ("Proposed Site"). (Ex. 1100; Ex. 1166). The
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1 Proposed Site is a former Cadillac dealership that is located adjacent to the 405 Freeway, (RT Vol. X.
2 84:18-21), and which is currently vacant but was purpose-built to be a car dealership. (RT Vol. X.
3 168:11-18). The Proposed Site is located 1.14 air miles north of Hooman Toyota's current dealership
4 facility, (RT Vol. X. 88:17-19), and would place Hooman Toyota a mere 0.9 air miles and 72 seconds
5 of drive time closer to each of the Protestants. (RT. Vol. III 100:8-17) (Ex. 2056, TMS-Prod_016432).

6 Moreover, Hooman Toyota's relocation to the Proposed Site would alleviate all of the customer
7 service and operational issues associated with its current facilities. The Proposed Site meets TMS's
8 facility guides in nearly every respect and has more square footage, more parking, a larger service
9 drive, and more customer amenities than the current facilities. (RT Vol. X. 44:9-16; 161:21-162:4; RT
10 Vol. XIV. 65:3-11; RT Vol. IX. 220:2-22) (Ex. 1500, HoCT001789). As such, the Proposed Site will
11 improve customer ingress and egress, alleviate customer confusion, decrease customer wait times, and
12 alleviate the need for customers to park and wait in the middle of the street. (*Id.*).

13 The improved layout and location of the Proposed Site also would significantly increase
14 customer access and convenience. While Hooman Toyota's current facilities are spread out over
15 several non-contiguous parcels, the Proposed Site would allow the dealership to consolidate its
16 operations under one roof. (RT Vol. X. 44:9-16). The proposed relocation also would move Hooman
17 Toyota away from the traffic circle and adjacent to the 405 Freeway. (RT Vol. X. 44:9-16; 84:19-21).
18 As such, the Proposed Site will make the dealership's operations more efficient, allow it to better serve
19 customers, and eliminate the need for customers to cross a busy four-lane road to travel between its
20 main facilities. Accordingly, the proposed facility will allow Hooman Toyota to better serve customers
21 in this area and more adequately represent the Toyota brand.

22 After Hooman Toyota formally proposed relocating to the Proposed Site, TMS conducted a
23 thorough analysis of the proposed relocation. TMS personnel drove the market and visited all of the
24 dealership facilities at issue in this case, including the Proposed Site. (RT Vol. X. 167:19-168:18).
25

1 TMS also conducted two separate market analyses of the proposed relocation to evaluate its effect on
2 consumers, the public, and other Toyota dealers. (RT Vol. X. 93:14-95:5; 115:21-116:16) (Exs. 1109
3 and 2056). Based on these evaluations and analyses, TMS concluded that the proposed relocation
4 would greatly benefit the Toyota consumers in the market and would not have any material adverse
5 effects on other Toyota dealers. (RT Vol. X. 168:19-170:2). Indeed, the success of Toyota dealers is
6 critical to TMS, and thus TMS wants all of its dealers to be successful and would not support the
7 relocation if it would have a material negative effect on surrounding dealers. (RT Vol. X. 169:8-17).

8 In August 2012, Carson Toyota and Cabe Toyota both filed Protests challenging Hooman
9 Toyota's proposed relocation. Ironically, although Carson Toyota has recently completed construction
10 of a new facility on the 405 Freeway and Cabe Toyota has committed to renovating its current facility,
11 Protestants allege that Hooman Toyota should not be permitted to relocate to a superior facility at the
12 Proposed Site because they allege it would be harmful to competition. Protestants also claim that even
13 though these three dealers have been operating successfully in close proximity for more than three
14 decades, Hooman Toyota's relocation to a site that is just 0.9 miles and 72 seconds closer to their
15 dealerships somehow would harm their businesses. However, as set forth in detail below, Protestants
16 have failed to establish that the proposed relocation would have any negative effect on their business.
17 Instead, the evidence conclusively demonstrates that Hooman Toyota's relocation to the Proposed Site
18 would benefit consumers, have a positive effect on competition, and serve the public interest.

19 ARGUMENT

20 The Vehicle Code expressly contemplates that existing motor vehicle dealers may relocate their
21 dealerships to a new location. As such, the Vehicle Code establishes specific procedural and
22 substantive requirements that apply whenever an existing motor vehicle dealer proposes to relocate.
23 Pursuant to Vehicle Code section 3062(a), a franchisor that intends to permit the relocation of an
24 existing motor vehicle dealership must first provide written notice to the Board and each franchisee of
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1 the same line-make within the Relevant Market Area (“RMA”), which is defined as the area within a
2 10-mile radius from the proposed site of the dealership. (Veh. Code § 507).

3 The Vehicle Code then establishes several statutory thresholds that must be addressed before
4 another dealer is even permitted to challenge the proposed relocation. The existing dealer must first
5 establish that it is within the 10-mile RMA of the proposed site of the dealership. In addition, the
6 proposed relocation must not fall within any of the statutory exemptions to protest set forth under the
7 Vehicle Code. One of those statutory exemptions provides that the relocation of an existing motor
8 vehicle dealer is not subject to protest if the proposed location is both within the same city and within
9 one mile of its existing location. (Veh. Code § 3062(b)(1)).

10 This statutory exemption reflects a legislative presumption that a dealer’s relocation such a short
11 distance within the same city will not have an adverse effect on neighboring dealers. This exemption,
12 however, does not place any limitation on the distance by which an existing dealer may relocate.
13 Indeed, the Vehicle Code expressly permits dealers to relocate to a new site that is in a different city or
14 more than one mile away from its current facility. In such cases, the legislature does not require the
15 relocating dealer (or the approving manufacturer) to prove there is good cause for its proposed
16 relocation, but instead requires the dealer challenging the proposed relocation to prove there is good
17 cause **not** to permit the proposed relocation. (Veh. Code § 3066(b)).

18 In this case, Hooman Toyota is proposing to relocate within the City of Long Beach, the same
19 city where it has operated since 1977. Moreover, the Proposed Site is approximately 1.14 miles away
20 from its existing facility, or a mere 250 yards beyond the 1-mile exemption. Accordingly, Protestants
21 in this case have the burden of proving there is good cause not to permit Hooman Toyota’s proposed
22 relocation this short distance away from its current facility. In determining whether there is good cause
23 not to permit the proposed relocation, Vehicle Code section 3063 provides that the Board shall take
24 into consideration the existing circumstances, including, but not limited to, all of the following:
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- 1 • Permanency of the investment;
- 2 • Effect on the retail motor vehicle business and the consuming public in the
- 3 relevant market area;
- 4 • Whether it is injurious to the public welfare for an additional franchise to be
- 5 established;
- 6 • Whether the franchisees of the same line-make in that relevant market area are
- 7 providing adequate competition and convenient consumer care for the motor
- 8 vehicles of the line-make in the market area which shall include the adequacy of
- 9 motor vehicle sales and service facilities, equipment, supply of vehicle parts, and
- 10 qualified service personnel; and
- 11 • Whether the establishment of an additional franchise would increase competition
- 12 and therefore be in the public interest.

13 As set forth below, Protestants have wholly failed to meet their burden of proving that there is
14 good cause not to permit Hooman Toyota’s proposed relocation.

15 **I. Protestants and Hooman Toyota Have Made or are in the Process of Making a Permanent**
16 **Investment in their Dealerships.**

17 TMS does not contest that both Protestants have made or are in the process of making a
18 permanent investment in their respective dealerships. Carson Toyota has been operating as an
19 authorized Toyota dealer since 1975. (RT Vol. XI 184:2-10; 197:4-12). In 2008, Carson Toyota
20 completed construction of a new Toyota dealership facility, which greatly exceeds TMS’s facility
21 standards. (RT Vol. IX. 173:13-177:23) (Ex. 2038). This new facility also significantly improves the
22 appearance of the dealership, provides additional features and amenities for its customers, and gives
23 Carson Toyota excellent visibility for customers travelling along the 405 Freeway. (RT Vol. X. 31:1-4;
24 RT Vol. XI. 201:9-202:5).

25 Similarly, Cabe Toyota has been operating as an authorized Toyota dealership since 1966. (RT
Vol. I. 113:3-7; 114:8-15). However, Cabe Toyota’s dealership facilities have been woefully deficient
and among the least competitive and appealing Toyota facilities for many years. (RT Vol. X. 33:13-
16). Despite entering into a series of Dealer Agreements dating back to 2001 wherein Cabe Toyota

1 acknowledged that its facilities were substantially deficient and agreed to cure these deficiencies, Cabe
2 Toyota made the decision not to comply with the provisions in these agreements for more than twelve
3 years. (RT Vol. II. 44:11-22; 96:1-14) (Ex. 2014, TMS-Prod_00064). (Ex. 1087, TMS-Prod_00014)
4 (Ex. 2044, TMS-Prod_00024). Indeed, Cabe Toyota did not break ground on a renovation of its
5 facilities until April 2013, approximately twelve years after its 2001 Dealer Agreement, approximately
6 nine months after receiving the Notice of Relocation, and approximately two months before the
7 beginning of this hearing. (RT Vol. II. 51:13-18; RT Vol. II. 97:18-98:6; RT Vol. V. 132:12-
8 133:25). As such, although Cabe Toyota has delayed making this permanent investment in its
9 dealership, it appears it is currently in the process of doing so.

10 In addition to Protestants, Hooman Toyota also has made a substantial and permanent
11 investment in its dealership operations. Mr. Nissani purchased Hooman Toyota in January 2008 for
12 approximately \$10.3 million. (Ex. 1007, TMS-Pord_001643). Since that time, Hooman Toyota has
13 invested significant time, money, and effort making arrangements to address its facility deficiencies.
14 Hooman Toyota has expanded its service write-up area to increase the number of service advisor
15 stations, (RT Vol. XIV. 24:14-21; 26:4-20), relocated a dumpster to increase parking and build an
16 outdoor customer waiting area, (RT Vol. XIV. 27:1-13), and began providing its service customers
17 with loaner vehicles to address the lack of available parking. (RT Vol. XIV. 24:22-25:3). Hooman
18 Toyota also secured several off-site facilities where it could perform various dealership functions, such
19 as storage for new vehicle inventory, storage for heavy-duty parts, reconditioning used vehicles, and
20 washing customer vehicles. (RT Vol. XIV. 25:4-26:1; 36:22-38:10; 109:9-14).

21 In addition to these accommodations, Hooman Toyota also has made a significant investment in
22 the Proposed Site. As of October 2012, Hooman Toyota had invested more than \$610,000 in the
23 Proposed Site. (RT Vol. XIV. 14-113:5) (Ex. 253). Hooman Toyota also has an agreement to lease
24 the Proposed Site for approximately \$36,000 per month, and it has an option to purchase the property
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1 for \$8.25 million. (RT Vol. XIV. 102:6-25; 104:17-106:22) (Ex. 274; 275). All told, Hooman
2 Toyota has invested more than \$21 million in the dealership since 2008. (RT Vol. XIV. 112:14-113:5)
3 (Ex. 253). Accordingly, although Protestants have made or are making a permanent investment in their
4 dealerships, Hooman Toyota also has made a substantial and permanent investment in its dealership.

5 **II. The Proposed Relocation will Benefit the Consuming Public and Will Have No Material**
6 **Adverse Effect on the Retail Motor Vehicle Business in the RMA.**

7 **A. Hooman Toyota's Proposed Site will Significantly Benefit Consumers.**

8 There is little dispute that the Proposed Site is a significant improvement over Hooman Toyota's
9 current facilities and, therefore, will provide numerous benefits to the consuming public. As set forth
10 above, Hooman Toyota's current dealership facilities are deficient and do not comply with TMS's
11 minimum space and appearance requirements. (RT Vol. X. 40:14-16) (Ex. 1500, HoCT001794). Its
12 current facilities are significantly undersized and have about half the land and building area needed to
13 adequately serve customers, inadequate space in the service department, and woefully deficient
14 customer parking. (RT Vol. IX. 159:1-160:22) (Ex. 1500, HoCT001794). Given the lack of space and
15 consumer parking, service customers often have to park in the street and wait for service. (RT Vol.
16 XIV. 31:15-32:3). In addition, the dealership currently has room in its showroom for only one
17 vehicle, and it has to store the majority of its vehicle inventory at off-site storage facilities. (RT Vol.
18 XIV. 22:23-23:10). As such, customers often must wait for employees to travel to an off-site location,
19 pick up a particular vehicle, and bring it back to the dealership for the customer. (*Id.*).

20 The layout of Hooman Toyota's current facility also presents several challenges for Hooman
21 Toyota and its customers. Hooman Toyota's main sales and service facilities are located on a traffic
22 circle that is confusing for customers, has limited ingress and egress, and is known for having traffic
23 accidents. (RT. Vol. X. 41:8-15; RT Vol. XIV. 56:23-57:7). In addition, its sales and service
24 operations are located in two different buildings that are separated by a four-lane street, which forces
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1 customers and employees to walk across a busy street to navigate between the two facilities. (RT. Vol.
2 X. 41:17-25). Given the space constraints at the dealership, Hooman Toyota also utilizes four
3 additional off-site facilities for various dealership functions, such as storage for new vehicle inventory,
4 storage for heavy-duty parts, reconditioning used vehicles, and washing customer vehicles. (RT Vol.
5 XIV. 25:4-26:1; 36:22-38:10; 109:9-14). This layout makes the dealership less efficient, increases its
6 operating expenses, and increases customer wait times. (RT Vol. VI. 65:15-66:10).

7 Hooman Toyota's Proposed Site would alleviate all of these concerns and provide an
8 exponentially improved experience for consumers. Instead of being spread out across multiple parcels
9 of property around a traffic circle, the Proposed Site would allow Hooman Toyota to consolidate its
10 operations under one roof in a new facility adjacent to the 405 Freeway. (RT Vol. X. 44:9-16; 84:19-
11 21). The Proposed Site is larger than Hooman Toyota's current facility and will have a larger service
12 drive and more customer parking, which will improve customer ingress and egress and alleviate the
13 need for customers to park and wait in the middle of the street. (RT Vol. X. 44:9-16; 161:21-162:4;
14 RT Vol. XIV. 65:3-11; RT Vol. IX. 164:25-166:2; 220:2-22). The Proposed Site also will have more
15 customer amenities and conveniences, including multiple waiting areas, a child play area, and an on-
16 site car wash. (RT Vol. XIV. 84:21-85:2; 87:4-6; 89:17-20). These improvements will benefit the
17 consuming public, Hooman Toyota, and the Toyota brand.

18 Given these facility improvements, the proposed relocation also will significantly increase
19 customer convenience. Protestants allege that Hooman Toyota's relocation will move it further away
20 from customers to the south and therefore will make the dealership less convenient. However,
21 Hooman Toyota is proposing to relocate a total of 1.14 miles away from its current facility, and the
22 average consumer in its PMA will only have to travel an additional 0.5 miles or 30 seconds to reach
23 the new facility. (RT Vol. XIII. 122:11-123:7; 126:19-127:11; RT Vol. VI. 86:16-87:19). This
24 minimal change in drive time is significantly outweighed by the numerous benefits and improvement to
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1 consumer convenience afforded by the proposed facility. (RT Vol. XIII. 125:23-127:11). Indeed,
2 Cabe Toyota’s own expert witness admitted that if he were a customer in Long Beach, he would find it
3 more convenient to (1) travel an additional 1.14 miles to visit a dealership with all of its operations
4 under one roof, adequate parking, adequate on-site inventory, shorter wait times, a better service drive,
5 rather than (2) travel a shorter distance to a dealership that is spread out over multiple sites, has little
6 parking, longer wait times, and insufficient service operations. (RT Vol. III. 209:16-210:9).
7 Accordingly, Protestants’ claim that the Proposed Site somehow would not benefit consumers or would
8 be less convenient for the public is meritless and contradicted by their very own market expert.

9 **B. The Proposed Relocation Will Have No Material Adverse Effect on Protestants.**

10 In addition to greatly benefitting the consuming public, Hooman Toyota’s proposed relocation
11 will have no meaningful adverse effect on Cabe Toyota or Carson Toyota.

12 1. The Proposed Relocation Will Have No Material Adverse Effect on Carson Toyota.

13 Carson Toyota presented almost no evidence that the proposed relocation would negatively
14 affect its business. Carson Toyota’s Dealer Principal testified that he “feels” the proposed relocation
15 would hurt Carson Toyota “a little bit,” and that it may have to lay off some employees following the
16 proposed relocation. (RT Vol. XI. 194:12-22; 209:19-210:25). However, he is only at the dealership
17 about once a week or once a month, and he admittedly has no personal knowledge of where Carson
18 Toyota makes its sales, the amount of sales Hooman Toyota and Carson Toyota make into each other’s
19 PMAs, or Hooman Toyota’s business practices. (RT Vol. XI. 211:10-212:13; 234:6-8).

20 Similarly, Carson Toyota’s General Manager could only speculate that because the proposed
21 relocation would move Hooman Toyota closer to its dealership and adjacent to the 405 Freeway, there
22 is “a potential” it might harm Carson Toyota. (RT Vol. XI. 254:13-17). However, he did not
23 perform any analysis of the potential impact that the proposed relocation might have on Carson Toyota.
24 (243:11-15). Carson Toyota’s own expert witness could not even identify any harm to the dealership as
25

1 a result of the proposed relocation, and instead testified that it is a “wild card” or an “unknown” if the
2 proposed relocation would cause any harm to Carson Toyota. (RT Vol. IX. 206:1-15).

3 Even if the proposed relocation were to have some minimal effect on Carson Toyota, which is
4 doubtful, it certainly would not render Carson Toyota unprofitable. Carson Toyota is an extremely
5 large and profitable dealership. In 2012 alone, Carson Toyota made more than \$130 million in total
6 sales and \$2.5 million in net profit. (RT Vol. XII. 118:9-17; 120:6-14) (Ex. 2086, pp. Carson 2;
7 Carson 5). Its net working capital and cash far exceed TMS’s capitalization standards, and its cash is
8 approximately five times the amount of its monthly expenses. (RT Vol. XIII. 132:22-133:11; 133:23-
9 134:13) (Ex. 2086, pp. Carson 18-19). Carson Toyota also sold 1,115 new vehicles more than
10 necessary to cover its fixed costs or break even. (RT Vol. XIII. 131:11-132:13) (Ex. 2086, pp.
11 Carson 17). As such, Carson Toyota is highly profitable, has a significant amount of financial
12 flexibility, and is more than capable of competing with Hooman Toyota following the relocation.

13 2. The Proposed Relocation Will Have No Material Adverse Effect on Cabe Toyota.

14 There also is little evidence that Hooman Toyota’s proposed relocation would have any
15 meaningful effect on Cabe Toyota or its business. Cabe Toyota claims that because Hooman Toyota is
16 proposing to move closer to its facility, the proposed relocation will significantly affect its business.
17 However, Cabe Toyota’s expert witness admitted that Cabe Toyota and Hooman Toyota have been
18 operating profitably and successfully within 3.1 miles of each other for more than 36 years. (RT Vol.
19 III. 14:8-14; 98:7-20). As set forth above, these dealers are located in the Los Angeles metropolitan
20 area, which is an extremely densely populated area and is the largest automotive market in the country.
21 (RT Vol. III. 100:21-101:1; RT. Vol. XIII 39:18-40:2). In addition, the Toyota brand has the highest
22 market share of any motor vehicle manufacturer in the South Bay area. (RT Vol. II. 54:10-20). There
23 is no evidence that the slight relocation of Hooman Toyota 0.9 miles and 72 seconds of drive time
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25

1 closer to Cabe Toyota will somehow change this dynamic or greatly affect Cabe Toyota's business.
2 (RT. Vol. III 100:8-17) (Ex. 2056, TMS-Prod_016432).

3 This is particularly true given the undisputed fact that Cabe Toyota makes a relatively small
4 percentage of its new vehicle sales in the area surrounding the Proposed Site. Each Toyota dealer is
5 assigned a Primary Market Area ("PMA"), which is the area in which customers are generally closer
6 to that dealer than they are to any other Toyota dealer. Despite having the geographical advantage in
7 this area, in 2012, Cabe Toyota made **only 7.9%** of its new vehicle sales into its PMA. (Ex. 1219, pp.
8 Cabe 01774). Cabe Toyota also made **only 37%** of its sales to customers located **within a 10-mile**
9 **radius** of its dealership. (Ex. 2088, pp. R-8). Accordingly, the vast majority of its sales are made at
10 great distances from the dealership, not in the area where Hooman Toyota is proposing to relocate.

11 Cabe Toyota's Dealer Principal and Operations Director both admitted that Cabe Toyota makes
12 the vast majority of its sales at large distances from the dealership, and they both admitted this is
13 because Cabe Toyota has made the business decision to focus on internet sales. (RT Vol. II. 39:12-24;
14 RT Vol. V. 192:11-23). Specifically, Cabe Toyota does the majority of its advertising through internet
15 services such as AutoTrader, Edmunds, and TrueCar, and it has established a business development
16 center dedicated to internet sales. (RT Vol. II. 39:3-11). Cabe Toyota also is in the process of
17 building its internet sales force to increase its percentage of internet sales, (RT Vol. II. 38:21-24), and
18 thus it likely will make even less sales near the Proposed Site in the future. Accordingly, Hooman
19 Toyota's proposed relocation will not have any material effect on Cabe Toyota's operations.

20 Even if the proposed relocation were to have some minimal effect on Cabe Toyota, however, it
21 certainly would not make Cabe Toyota unprofitable or go out of business. Like Carson Toyota, Cabe
22 Toyota is a large and profitable dealership with the financial ability to compete in the market. In 2012,
23 Cabe Toyota made \$60 million in sales and hundreds of thousands of dollars in net profit after owner
24 bonuses. (RT Vol. XII. 28:2-9; 37:7-16) (Ex. 2086, pp. Cabe 2). Cabe Toyota's net working capital
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1 and cash both exceed TMS's capitalization standards. (RT Vol. XII. 77:1-79:9) (Ex. 2086, pp. Cabe
2 18-19). Cabe Toyota also sold 809 new vehicles more than necessary to cover its fixed costs or break
3 even. (RT Vol. XII. 75:1-8). As such, Cabe Toyota has a significant amount of financial flexibility
4 and is more than capable of competing with Hooman Toyota following the relocation.

5 3. There is Substantial Opportunity for Additional New Vehicle Sales and Service
6 Business Available in the RMA.

7 In addition, there is a significant amount of additional opportunity available in the RMA for
8 Cabe Toyota, Carson Toyota, and Hooman Toyota to increase their sales and service business without
9 harming other Toyota dealers. In order to analyze the performance of its dealers and the opportunity
10 available in the RMA, TMS presented the testimony of Sharif Farhat from Urban Science who is a
11 leading expert in motor vehicle network analysis. Mr. Farhat has worked for Urban Science for 27
12 years and currently serves as its Vice President of Analytical Services. (RT Vol. XIII. 25:21-26:17).

13 Mr. Farhat determined that Toyota's market share in the RMA has been performing below
14 expected levels for a long period of time. (RT Vol. XIII. 80:22-81:7). He also determined that this
15 market share deficiency is even larger in Cabe Toyota and Hooman Toyota's PMAs. (RT Vol. XIII.
16 70:24-72:11). This fact is undisputed. Cabe Toyota's own expert witness conceded that the Toyota
17 brand does not penetrate the market in Long Beach as well as it does in other areas. (RT Vol. III.
18 74:15-75:15; 102:2-22). Accordingly, the existing Toyota dealers are not adequately representing the
19 brand in the Long Beach PMAs or the RMA, and there is opportunity for additional sales that could be
20 captured without harming any existing Toyota dealers. (RT Vol. XIII. 72:15-20; 82:12-21).

21 Moreover, the additional opportunity in the RMA far exceeds any reasonable amount by which
22 Hooman Toyota could increase its sales due to the proposed relocation. If the Toyota dealers in the
23 RMA were performing simply at the average level expected for the market, there would be opportunity
24 for those dealers to make an additional 1,620 sales without capturing sales from each other. (RT Vol.
25 XIII. 130:20-131:4). In addition, the Toyota dealers in the RMA have the opportunity to capture an

1 additional 3,800 to 5,600 sales from other, less convenient Toyota dealerships that are currently
2 making sales into the RMA. (RT Vol. XIII. 131:10-133:13) (Ex. 2088, pp. A-80.1 to A-81.1).

3 If Hooman Toyota were to improve its sales to average level expected in this market following
4 the relocation, it would make an additional 174 sales, which is well within the levels of opportunity
5 available in the market. (RT Vol. XIII. 133:22-134:4) (Ex. 2088, pp. A-82). Even if Hooman Toyota
6 were able to improve to the level of sales made by the largest and most aggressive dealer in the RMA,
7 its additional sales would only amount to 23.2% of the opportunity available in the market. (RT Vol.
8 XIII. 136:23-137:17) (Ex. 2088, pp. A-83). Accordingly, there is so much opportunity for additional
9 new vehicle sales business in the RMA that Hooman Toyota's proposed relocation will not negatively
10 affect Cabe Toyota, Carson Toyota, or any other existing Toyota dealers.

11 In addition to having sufficient opportunity for additional new vehicle sales, there also is
12 significant opportunity for additional service business in the RMA. The term "service market share" is
13 defined by TMS as the percentage of the Toyota units in operation ("UIO") that a dealer is capturing
14 within its PMA. (Torres Depo. 69:2-10). Cabe Toyota's current service market share is about 20%,
15 meaning that Cabe Toyota is only capturing about 20% of the UIO in its PMA. (RT Vol. XIII. 87:9-
16 17). (Ex. 2088, pp. A-29). Approximately 30% of the UIO are being serviced by other Toyota
17 dealers, and thus nearly 50% of the UIO are not being serviced by any Toyota dealer. (*Id.*).
18 Accordingly, Cabe Toyota has enough opportunity to more than double the amount of service business
19 it performs in its PMA without taking service business from any other Toyota dealer.

20 Carson Toyota and Hooman Toyota are performing markedly better than Cabe Toyota, but
21 there is still a large amount of service opportunity available in their PMAs. Hooman Toyota currently
22 services approximately 30% of the Toyota UIO in its PMA, while approximately 27% of the UIO are
23 being serviced by other Toyota dealers and 43% are not being serviced by any Toyota dealer. (RT
24 Vol. XIII. 86:14-87:6) (Ex. 2088, pp. A-28). Similarly, Carson Toyota is capturing about 30% of the
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1 UIO in its PMA, while approximately 23% of the UIO are being serviced by other dealers and 46%
2 are not being serviced by any Toyota dealer. (RT Vol. XIII. 87:25-88:11) (Ex. 2088, pp. A-30). As
3 such, there is a significant amount of additional service opportunity available for these dealers.

4 The managers of Carson Toyota and Cabe Toyota's service departments confirmed this
5 conclusion. Cabe Toyota's service manager admitted that its service market share is currently below
6 the average levels for the Region and the Los Angeles metro and that Cabe Toyota currently is not
7 servicing 4,937 of the 6,300 Toyota UIO in its PMA. (Torres Depo.75:23-77:13). Accordingly, he
8 admitted there is significant opportunity for Cabe Toyota to increase its service business. (Torres
9 Depo. 76:14-17). Carson Toyota's fixed operations director also testified that if other Toyota dealers
10 are servicing a large percentage of the UIO in its PMA, that would be opportunity for Carson Toyota
11 to improve its service business. (Vogel Depo. 61:2-24). This further confirms that there is enough
12 service opportunity available in the RMA for Hooman Toyota to increase its service business without
13 harming Cabe Toyota, Carson Toyota, or any other existing Toyota dealers.

14 4. Protestants' Expert Witnesses Did Not Provide Accurate or Credible Evaluations of
15 the Effect of Hooman Toyota's Proposed Relocation.

16 Although Protestants each retained experts who testified that the proposed relocation would
17 adversely affect their clients, their analyses were not credible and suffered from multiple fatal flaws.

18 *a. Carson Toyota's Expert Analyses Should be Disregarded.*

19 Carson Toyota's expert witness proffered two separate theories and analyses of how the
20 proposed relocation allegedly would affect Cabe Toyota. Carson Toyota's expert witness first
21 performed a "fixed cost" analysis that compared the size of the proposed facility to the size of Hooman
22 Toyota's current facility. In his initial report, Dr. Matthews concluded that the proposed facility would
23 be 90% larger than Hooman Toyota's current facility, and therefore would increase Hooman Toyota's
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1 fixed costs by 90%. (RT Vol. IX. 191:19-22; RT Vol. VIII. 213:11-214:2).¹ Dr. Matthews alleged
2 that this purported increase in costs would harm consumers because it would force Hooman Toyota to
3 pass these expenses on to consumers through higher prices and decreased customer service.

4 At the hearing, however, Dr. Matthews “flip-flopped” and completely changed his position.
5 Instead of Hooman Toyota’s fixed costs **increasing** by 90%, Dr. Matthews learned that Hooman
6 Toyota’s fixed costs will actually **decrease** upon moving into the proposed facility. (RT Vol. VIII.
7 213:11-214:2). Dr. Matthews then testified that this decrease in Hooman Toyota’s fixed costs would
8 also be harmful—this time to competition—because it would give Hooman a competitive advantage
9 over other Toyota dealers. (RT Vol. VIII. 213:2-216:1). This opinion simply is not credible. Dr.
10 Matthews admitted his initial conclusion that Hooman Toyota’s fixed costs would increase was based
11 on a mere assumption and that his assumption was wrong. (RT Vol. IX. 110:19-111:7). He also
12 conceded that even after discovering his assumption was wrong, he still did not perform any analysis of
13 the actual fixed costs associated with the Proposed Site or calculate how the proposed relocation would
14 affect Hooman Toyota’s expenses. (RT Vol. VIII. 122:21-124:25). As such, Dr. Matthews’ opinion
15 regarding the relocation’s effect on Hooman Toyota’s fixed costs is unreliable and speculative at best.

16 Dr. Matthews also performed a second analysis (which the parties referred to as a “polygon”
17 analysis) in an attempt to determine the geographical effect of the proposed relocation on Cabe Toyota.
18 In performing this analysis, he identified the eastern border of Cabe Toyota’s PMA and then artificially
19 “moved” that border to the northwest by 0.6 miles, half the distance of the proposed relocation. (RT
20 Vol. VIII. 186:18-187:21). Dr. Matthews drew a “polygon” around this area, which is the area where
21 he alleges Cabe Toyota would lose a portion of its geographical advantage if Hooman Toyota were
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23 ¹ Dr. Matthews also testified that the proposed facility is too large. (RT Vol. VIII. 194:16-195:4). However, Hooman
24 Toyota’s current facility is significantly smaller than TMS’s minimum facility guides, (Ex. 1009, pp. TMS-Prod_008736)
25 (RT Vol. X. 40:14-16), and he conceded that Hooman Toyota “needs a larger facility” simply to comply with TMS’s
minimum standards. (RT Vol. IX. 164:25-166:2) (Ex. 1500, HoCT001789). Dr. Matthews also conceded that the proposed
new facility would be just at or near TMS’s facility guides in every respect. (*Id.*).

1 permitted to relocate. (RT Vol. VIII. 188:9-25) (Ex. 1500, pp. HoCT_001843). Excluding the Port of
2 Long Beach, Dr. Matthews then concluded that if Hooman Toyota were permitted to relocate, Cabe
3 Toyota would lose some percentage of its geographical advantage in 24% of its PMA (excluding the
4 Port of Long Beach). (RT Vol. VIII. 187:22-188:25) (Ex. 1500, pp. HoCT_001843).

5 This analysis is similarly flawed. First, Dr. Matthews admitted that he has **never** used this
6 analysis in any case prior to this action. (RT Vol. IX. 149:3-7).² Accordingly, it appears Dr. Matthews
7 specifically created this new analysis for the sole purpose of this litigation. Dr. Matthews also admitted
8 that his “polygon” analysis is not the normal or “classic” approach for calculating the effect of a
9 proposed relocation. (RT Vol. VIII. 186:5-17). The classic approach is to identify the census tracts that
10 are currently closer to Cabe Toyota and located in its PMA, but that would “flip” and become closer to
11 Hooman Toyota after the relocation. (RT Vol. VIII. 186:5-17). Dr. Matthews admitted that he did not
12 perform this analysis, and he doubts any of the census tracts would actually become closer to Hooman
13 Toyota. (RT Vol. IX. 128:3-129:7). He further acknowledged that the area contained in his polygon
14 actually would remain closer to Cabe Toyota, and thus Cabe Toyota would continue to have a
15 geographical advantage in those areas. (RT Vol. IX. 128:3-129:7; RT Vol. XIII. 155:2-14).

16 Most importantly, Dr. Matthews did not perform any analysis of the number of sales Cabe
17 Toyota actually makes inside his polygon. (RT Vol. IX. 151:23-152:5). Cabe Toyota’s sales are not
18 uniformly distributed around the dealership, and thus the polygon does not accurately predict the
19 proposed relocation’s effect on Cabe Toyota’s sales. (RT Vol. IX. 152:6-13). Mr. Farhat calculated
20 the number of sales made by Cabe Toyota in the polygon and determined that between 2009 and 2012,
21 Cabe Toyota only made 2.9% of its sales in that area. (RT Vol. IX. 154:8-155:1). Accordingly, Dr.
22 Matthews’ testimony that Cabe Toyota would lose an advantage in 24% of its PMA does not accurately
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25 ² Mr. Farhat from Urban Science also testified that he had never seen this type of analysis performed in any other matter.
(RT Vol. XIII. 152:21-25).

1 represent Cabe Toyota's sales patterns and significantly exaggerates the effect the relocation may have
2 on Cabe Toyota. (*Id.*). For these reasons, Dr. Matthews' expert testimony is unreliable, based on
3 admittedly false assumptions, and should be discarded in its entirety.

4 *a. Cabe Toyota's Expert Analyses Should be Disregarded.*

5 Although Cabe Toyota's expert witness also performed an analysis of the potential effect of the
6 proposed relocation on Cabe Toyota, his analysis also is not credible and is flawed in several major
7 respects. In order to evaluate Cabe Toyota's sales patterns, Mr. Watkins created "wedges" going east
8 and west from Cabe Toyota's current location, which he represented measured 60 degrees in each
9 direction. (RT Vol. III. 42:12-21; 53:20-54:2) (Ex. 1227, pp. SW00048). Using these wedges, Mr.
10 Watkins testified that from 2007 to 2012, Cabe Toyota made 14.2% of its sales in the eastern wedge
11 and 5% of its sales into the western wedge toward Carson Toyota. (RT Vol. III. 47:14-23).

12 Mr. Watkins also hypothesized that the sole reason for this difference is that Carson's Toyota's
13 new facility on the 405 Freeway puts it in a position to "intercept" sales from Cabe Toyota's west. (RT
14 Vol. III. 43:21-44:3). He concluded that if Hooman Toyota relocated to the 405 Freeway, it would
15 take an intercept position to Cabe Toyota's east analogous to that occupied by Carson Toyota to the
16 West. (RT Vol. III. 44:4-22) (Ex. 1227, pp. SW00048). Mr. Watkins used this reasoning to conclude
17 that if Hooman Toyota relocated, Cabe Toyota's sales to the east would decline from 14.2% to 5%, for
18 a total loss of 9.2% of its sales or 488.5 total sales over the six-year period from 2007 to 2012. (RT
19 Vol. III. 48:21-49:12). Mr. Watkins then analyzed Cabe Toyota's service business, and he found that
20 Cabe Toyota was performing similar percentages of service business in the eastern and western wedges.
21 (RT Vol. III. 50:5-53:19) (Ex. 1228). As such, Mr. Watkins made a "simplifying assumption" Cabe
22 Toyota would lose 9.2% of its gross profit evenly across all of its other operations, and that it would
23 lose \$455,000 in gross profit based on its 2011 financial statements. (RT Vol. III. 63:18-65:14).

1 Mr. Watkins' wedge analysis suffers from numerous fatal flaws. Although Mr. Watkins based
2 his entire analysis on the idea that the 60-degree wedges present analogous markets for Cabe Toyota to
3 the east and west, he did not have **any** analytical basis for choosing 60-degree angles. (RT Vol. III.
4 113:8-14). He admitted that he chose those angles simply because they are "easy to reference, points
5 of the compass," (RT Vol. III. 113:8-14), and that he did not perform **any** analysis or testing to
6 determine the reasonableness of this angle. (RT Vol. III. 113:20-24). Mr. Watkins also admitted that
7 if the angle of the wedges were different, it would change the numbers set forth in his analysis. (RT
8 Vol. III. 113:15-19). However, when the angles were measured with a protractor on cross-
9 examination, they proved to be 50-degree angles, **not** 60-degree angles as represented by Mr. Watkins.
10 (RT Vol. IV. 51:1-52:25). Accordingly, the entire basis of Mr. Watkins' analysis—and therefore his
11 entire analysis—is inaccurate and completely unreliable.

12 This is just one of the many fatal flaws in Mr. Watkins' wedge analysis:

- 13 • Mr. Watkins excluded Cabe Toyota's PMA from the eastern and western wedges. (RT Vol. III.
14 53:20-54:2). However, Cabe Toyota is located on the far eastern side of its PMA. (Ex. 1227,
15 pp. SW00048). By excluding Cabe Toyota's PMA, Mr. Watkins eliminated more land area and
16 sales to the west and, therefore, artificially decreased the number of sales Cabe Toyota makes to
17 the west compared to the east.
- 18 • Although Mr. Watkins based his analysis on the idea that Carson Toyota occupies an "intercept"
19 position to the west, he did not perform any statistical analysis to determine that the amount of
20 Cabe Toyota sales to that direction is due solely to Carson Toyota's facility on the 405 Freeway.
21 (RT Vol. III. 140:13-18).
- 22 • Mr. Watkins acknowledged that Cabe Toyota has two Toyota dealers in the western wedge and
23 no Toyota dealers in the eastern wedge, (RT Vol. III. 156:9-15), which could explain the
24 difference in its sales in those directions.
- 25 • In 2008, Carson Toyota completed construction of a brand new facility on the 405 Freeway.
However, Mr. Watkins incorrectly assumed Carson Toyota had maintained a constant presence
on the 405 Freeway. (RT Vol. III. 141:1-143:7). He did not analyze the difference between
Cabe Toyota's sales to the west **before** Carson Toyota completed construction of its new
facility, and Cabe Toyota's sales in that direction **after** Carson completed that renovation. (RT
Vol. III. 141:1-9) (RT Vol. XI. 180:10-15; 201:15-17). Mr. Watkins further admitted that had

1 he known of this development, he would have wanted to analyze the impact Carson Toyota's
2 renovation had on Cabe Toyota's sales to the west of its store. (RT Vol. III. 148:5-14).

- 3 • His analysis does not include any evaluation of how many sales Cabe Toyota might gain from
4 customers who would become closer to Cabe Toyota after the proposed relocation, which would
5 change the numbers set forth in his analysis. (RT Vol. III. 163:10-22).
- 6 • Mr. Watkins testified that this market is growing and that there will be additional opportunity
7 for sales, (RT Vol. III. 181:5-19), but he did not perform any analysis of Cabe Toyota's
8 opportunity to make additional sales. (RT Vol. III. 211:14-19). He also does not account for
9 any increase in Cabe Toyota's sales due to its facility renovations. (RT Vol. III. 214:8-11).

10 Mr. Watkins' claim that Cabe Toyota would lose 9.2% of its gross profit evenly across all of its
11 operations is similarly flawed and unreliable. Mr. Watkins admitted that he made a "simplifying
12 assumption" that any decline in Cabe Toyota's sales would apply uniformly to all of its other
13 departments. (RT Vol. III. 63:18-64:10). He did not perform any analysis of the location of Cabe
14 Toyota's used vehicle sales, counter parts sales, or wholesale parts sales. (RT Vol. IV. 12:12-19) (RT
15 Vol. IV. 26:11-27:12). He also did not analyze the relative number and location of competing used car
16 dealers or independent repair shops around Cabe Toyota, (RT Vol. IV. 23:1-21; 25:5-9), and he
17 conceded that the proposed relocation would not affect Cabe Toyota's wholesale parts business. (RT
18 Vol. IV. 28:2-9). As such, Mr. Watkins' opinion that Cabe Toyota would lose 9.2% evenly across all
19 of its operations admittedly is a mere "assumption" and is speculative at best.

20 Even if his analysis was not severely flawed and based on mere assumptions, Mr. Watkins
21 concedes that the proposed relocation would not put Cabe Toyota out of business. Mr. Watkins
22 predicts Cabe Toyota would lose 488.5 vehicle sales over a six-year period, which equals about eighty-
23 one vehicles per year or seven vehicles per month. (RT Vol. III. 210:22-211:13). As Mr. Walter
24 testified, in 2012 alone Cabe Toyota sold 809 new vehicles more than necessary to cover its fixed costs
25 or break even—about 728 more vehicles than Mr. Watkins concluded Cabe Toyota would lose per year
if Hooman Toyota relocated. (RT Vol. XII. 75:1-8). Indeed, Mr. Watkins admitted that if this loss
occurred, it would not put Cabe Toyota out of business. (RT Vol. IV. 38:3-39:9). Mr. Watkins also

1 conceded that the proposed relocation would not put Cabe Toyota’s investment at risk other than it
2 might not make as much money as it otherwise would have made. (RT Vol. IV. 40:16-21).

3 As such, although there is significant evidence that Hooman Toyota’s proposed relocation would
4 greatly benefit the consuming public, there is no evidence that Hooman Toyota’s proposed relocation
5 would have any material effect on Carson Toyota or Cabe Toyota, much less put them out of business.

6 **III. Hooman Toyota’s Proposed Relocation Would Not be Injurious to the Public Welfare.**

7 In addition to benefitting the consuming public, Hooman Toyota’s proposed relocation also will
8 have a positive effect on the public welfare. As set forth above, the proposed relocation will result in
9 the public having a newly renovated and modern Toyota dealership facility that is a significant
10 improvement over Hooman Toyota’s current facility. The Proposed Site is located adjacent to the 405
11 Freeway and has increased freeway access and visibility for customers. (RT Vol. X. 84:19-21). All of
12 Hooman Toyota’s operations will be under one roof, and customers no longer will have to cross a busy
13 street to travel between its sales and service operations. (RT Vol. X. 44:9-16). The Proposed Site will
14 have more room for customers, more inventory on site, increased customer amenities, and increased
15 parking, which will reduce customer wait times and alleviate the need for customers to park in the
16 street. (RT Vol. X. 161:21-162:4) (RT Vol. XIV. 63:6-12; 65:3-11; 84:21-85:2; 87:4-6; 89:17-20)
17 (RT Vol. IX. 220:2-22). The relocation will also move Hooman Toyota off the traffic circle, which is
18 confusing for customers and known for accidents. (RT. Vol. X. 41:8-15; RT Vol. XIV. 56:23-57:7).
19 Illustrative of this fact, Cabe Toyota recently issued an advertisement telling customers to “Avoid the
20 Traffic Circle.” (Ex. 2066).

21 Hooman Toyota also anticipates that the proposed relocation would allow it to both hire
22 additional employees and place them in higher paying positions, which increases employment, increases
23 the local tax base, and is beneficial for the community. (RT Vol. XIV. 116:5-24). The proposed
24 relocation would keep Hooman Toyota within the City of Long Beach, and it would be occupying an
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1 abandoned building previously used by a Cadillac dealership. (RT Vol. XIV. 82:14-24; RT XIII.
2 168:10-17). In addition, the relocation also will reduce Hooman Toyota's facility costs, which will
3 allow the dealership to provide more customer benefits, offer customers more discounts and better
4 prices, provide improved employee benefits, and perform additional facility upgrades. (RT Vol. XIV.
5 198:1-8; 199:22-200:3).

6 Although Protestants allege the relocation would move Hooman Toyota further away from
7 certain of its customers, the average consumer in its PMA will only have to travel an additional 0.5
8 miles or 30 seconds to reach the new facility. (RT Vol. XIII. 122:11-123:7; 126:19-127:11; RT Vol.
9 VI. 86:16-87:19). As set forth above, this hardly-noticeable change in drive time is significantly
10 outweighed by the improvement to Hooman Toyota's dealership facilities and the plethora of benefits it
11 would have on the public welfare, including improved customer access, increased employment, and
12 other factors. Accordingly, the proposed relocation will not have any injurious effect on the public
13 welfare, and in fact will have a positive effect on the public welfare.

14 **IV. The Existing Toyota Dealers in the RMA are not Providing Adequate Competition**
15 **and Convenient Consumer Care.**

16 Protestants next allege that the proposed relocation is unnecessary and should be denied
17 because the existing Toyota dealers in the RMA are currently providing adequate competition
18 and convenient consumer care. Contrary to this claim, however, it is clear that consumers in
19 the RMA and the Long Beach area currently are not receiving adequate representation in new
20 Toyota sales, Toyota service business, or Toyota dealership facilities.

21 Toyota's market share in the RMA has been below expected levels for a long period of
22 time and is even more deficient in Cabe Toyota and Hooman Toyota's PMAs. (RT Vol. XIII.
23 70:24-72:11; RT Vol. XIII. 80:22-81:7). In fact, Cabe Toyota's expert, Hooman Toyota's
24 expert, and TMS's expert all agreed that Toyota's market share in the area surrounding Cabe
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1 Toyota and Hooman Toyota is below expected. (RT Vol. III. 75:1-5; RT Vol. XIII. 68:24-
2 72:20; RT Vol. VI. 53:3-16) (Ex. 254, pp. Tab 8 Page 2). Similarly, Cabe Toyota's Operations
3 Director conceded that Cabe Toyota is not adequately capturing the Toyota sales available in its
4 PMA. (RT Vol. IV. 178:20-23). That fact is clear. In 2012, Cabe Toyota only made 15.6%
5 of the 767 new Toyota sales made into its PMA. (Ex. 1220, pp. Cabe 01777). Stated
6 differently, 84.4% of the customers in Cabe Toyota's PMA were forced to drive to less
7 convenient Toyota dealerships to purchase vehicles. Accordingly, the existing Toyota dealers
8 are not providing adequate new vehicle sales representation in the RMA or the Long Beach area.

9 These dealers also are not providing adequate representation for service business in the
10 market. As discussed above, Cabe Toyota is only capturing service business from about 20% of
11 the UIO in its PMA. (RT Vol. XIII. 87:9-17). (Ex. 2088, pp. A-29). In stark contrast, nearly
12 50% of the UIO in its PMA are not being serviced by any Toyota dealer. Based on these
13 figures, Cabe Toyota's service manager admitted that the dealership is not adequately capturing
14 the available service business in its PMA, and that there is significant opportunity for Cabe
15 Toyota to increase its service business. (Torres Depo. 75:23-77:13). Although Carson Toyota
16 and Hooman Toyota are performing somewhat better, nearly 45% of the customers in their
17 PMAs still are not being serviced by any Toyota dealer. (RT Vol. XIII. 86:14-88:11) (Ex.
18 2088, pp. A-28 and A-30). It is clear that the existing Toyota dealer network in the RMA is not
19 providing adequate or effective service representation for consumers.

20 The existing dealership facilities also are insufficient to adequately serve customers in
21 Long Beach. Although Carson Toyota recently completed construction of a new facility, Toyota
22 customers in Long Beach have been served by two inadequate dealership facilities for many
23 years. Cabe Toyota entered into a Dealer Agreement in 2001 in which it agreed to construct
24 improved dealership facilities. (Ex. 2014, TMS-Prod_000064). Although the deficiencies with
25

1 its facility are well documented, Cabe Toyota made the conscious decision not to do so until
2 breaking ground in April 2013, twelve years later and approximately two months before the
3 beginning of this hearing. (RT Vol. II. 51:13-18; RT Vol. II. 96:1-98:6; RT Vol. V. 132:12-
4 133:25). Similarly, it is undisputed that Hooman Toyota's current facilities are small, outdated,
5 inconvenient, and suffer from many customer and operational issues. (*See Infra II.A.*).

6 These facility deficiencies have manifested themselves through (1) admittedly inadequate
7 Toyota market share in the Long Beach area; (2) Cabe Toyota's admitted failure to adequately
8 capture sales in its own PMA; (3) a significant number of Toyota customers who admittedly are
9 not receiving service by any dealer; and (4) significant opportunity for each of these dealers to
10 increase their sales and service business. Given these undisputed circumstances, the existing
11 Toyota dealers simply are not providing adequate representation and consumer care in the RMA.

12 **V. The Proposed Relocation Would Increase Competition and be in the Public Interest.**

13 Protestants next allege that Hooman Toyota's proposed relocation will not enhance competition,
14 but will increase competition in a negative way. Specifically, they allege the Toyota brand is already
15 well represented in the RMA and that any additional representation would not enhance competition.
16 (RT Vol. III. 21:18-22:18; 37:16-37:16). Contrary to these claims, however, Hooman Toyota's
17 proposed relocation would increase competition in a positive way and would benefit the public.

18 As discussed above, Hooman Toyota's current facilities are inadequate to serve its customers
19 effectively. (*See infra* ¶¶ 54-55). The Proposed Site would be a substantial upgrade over its current
20 facilities and would greatly benefit consumers, Hooman Toyota, and the Toyota brand. (*See infra* ¶¶
21 56-57). This Proposed Site also would increase the competitiveness of Hooman Toyota and the Toyota
22 brand. Cabe Toyota's expert witness admitted that Toyota currently is facing more competitive issues
23 and deeper competition from other brands, including Hyundai, Kia, Ford, Chrysler, and General
24 Motors, (RT Vol. III. 26:9-20). Given these competitive issues, Cabe Toyota's expert also admitted it
25

1 is appropriate for Toyota dealers to take steps to increase their visibility and accessibility to consumers.
2 (RT Vol. III. 187:3-7).

3 Although Protestants' allege that Hooman Toyota's relocation to an improved facility would
4 somehow negatively affect competition, both Protestants have either completed renovations or are in the
5 process of renovating their own facilities. In 2008, Carson Toyota completed a brand new, state-of-the-
6 art dealership facility overlooking the 405 Freeway. (RT Vol. XI. 180:10-15; 201:15-202:10). Cabe
7 Toyota currently is in the process of renovating its dealership facility to comply with TMS standards,
8 improve the appearance of the facility, and make its operations smoother. (RT Vol. II. 21:6-18).
9 Therefore, in actuality, Hooman Toyota's relocation to the Proposed Site would give it the opportunity
10 to compete with these dealers on equal footing, which is exactly what Protestants are trying to avoid.
11 Indeed, it is Protestants—not Hooman Toyota—who are attempting to stunt competition in the market.

12 Moreover, as discussed above, the proposed relocation would have no material effect on
13 Protestants. Neither of the Protestants conducts a significant portion of business in the area around the
14 Proposed Site. (Ex. 1219, pp. Cabe 01774) (Ex. 2088, pp. R-8) (RT Vol. XIII. 110:3-11; 141:2-10).
15 There also is substantial opportunity in RMA for Protestants and Hooman Toyota to conduct additional
16 sales and service business without harming each other. (RT Vol. XIII. 86:14-88:11; 130:20-133:10)
17 (Ex. 2088, pp. A-28 to A-30; A-80.1 to A-81.1). In sum, the proposed relocation would not have a
18 negative effect on competition, but instead would improve competition and benefit the public interest.

19 CONCLUSION

20 Protestants have not met their statutory burden of proving there is good cause not to permit
21 Hooman Toyota's proposed relocation. Hooman Toyota is proposing to relocate a short distance in a
22 densely populated market, and it is proposing to relocate to a superior dealership facility that will
23 greatly improve customer access, customer convenience, and the overall dealership experience for
24 consumers. In addition, Protestants have failed to establish that the proposed relocation would have any
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1 material effect on their businesses. Instead, there is significant additional opportunity for new vehicle
2 sales and service business in the RMA, and all three dealers can improve their business without
3 negatively affecting each other. Accordingly, TMS respectfully requests that the ALJ enter an Order
4 denying their Protests and permitting Hooman Toyota's proposed relocation.

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6 DATED: August 15, 2013

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