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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of ALDON, INC., a California corporation, dba CARSON TOYOTA, and ALDON, INC. a California corporation, dba CARSON SCION, and CABE BROTHERS, a California corporation, dba CABE TOYOTA and CABE SCION, and Protestants, v. TOYOTA MOTOR SALES, U.S.A., INC., a California corporation, Respondent. H.T.L. AUTOMOTIVE, INC., dba HOOMAN TOYOTA OF LONG BEACH and HOOMAN SCION OF LONG BEACH, Intervenor.	CONSOLIDATED MATTERS: PROTEST NO. PR-2339-12 PROTEST NO. PR-2340-12 PROTEST NO. PR-2341-12 **RESPONDENT TOYOTA MOTOR SALES, USA, INC.'S PROPOSED FINDINGS OF FACT AND DECISION**

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 Proposed Findings of Fact and Decision in the above-captioned matter.

PROCEDURAL BACKGROUND

Statement of the Case

1. On August 2, 2012, Toyota Motor Sales, U.S.A., Inc. ("TMS" or "Respondent") notified Protestants Aldon, Inc. dba Carson Toyota and Carson Scion ("Carson Toyota") and Cabe Brothers, Inc. dba Cabe Toyota and Cabe Scion ("Cabe Toyota") of its intent to permit the relocation of H.T.L. Automotive Inc. dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach ("Hooman Toyota" or "Intervenor") from its current location at 4401 E. Pacific Coast Highway in Long Beach, California, to 3399 E. Willow Street and the adjacent property at 2679 Redondo Avenue in Long Beach, California ("Proposed Site").

2. In addition to Protestants, Respondent also provided written notice of Hooman Toyota's proposed relocation to the other Toyota dealers located within the 10-mile Relevant Market Area, including Apaulo, Inc. dba Norwalk Toyota and Norwalk Scion ("Norwalk Toyota") and DWWSB, Inc. dba South Bay Toyota and South Bay Scion ("South Bay Toyota").

3. On or about August 21, 2012, Carson Toyota (PR-2339-12 and PR-2340-12), Cabe Toyota (PR-2341-12), Norwalk Toyota (PR-2342-12), and South Bay Toyota (PR-2343-12) filed timely protests with the California New Motor Vehicle Board ("Board") challenging Hooman Toyota's proposed relocation. These protests were consolidated by Order dated September 10, 2012.

4. Prior to the beginning of depositions in this case, Norwalk Toyota and South Bay Toyota voluntarily dismissed their respective protests, leaving Carson Toyota and Cabe Toyota (collectively referred to as "Protestants") as the two remaining Protestants in this case.

5. A 15-day hearing on the merits of Protests Nos. PR-2339-12, PR-2340-12, and PR-2341-12 was held on June 3-21, 2013, before Administrative Law Judge Victor D. Ryerson.

Parties and Counsel

6. Protestant Cabe Toyota is an authorized Toyota new motor vehicle dealership located at 2895 Long Beach Boulevard, Long Beach, California. (Ex. 1153, pp. TMS-Prod_001043). It is owned by John Cabe (82%), Marilyn Gidden (9%), and Glenda Favilla (9%). (Ex. 1153, pp. TMS-Prod_001042). Cabe Toyota is a “franchisee” within the meaning of Vehicle Code sections 331.1 and 3062(a), and it is represented by Gregory J. Ferruzzo of Ferruzzo & Ferruzzo.

7. Protestant Carson Toyota is an authorized Toyota new motor vehicle dealership located at 1333 East 223rd Street, Carson, California. (RT Vol. XI. 184:2-10; Ex. 1508, pp. TMS-Prod_000749). It is owned by the Albert Skinner Trust (51.01%), the Donna Pennington Multi-Generational Trust (21.21%), Donna Pennington (9.60%), Deborah Pennington Gentry (6.06%), David Pennington (6.06%), and Daniel Pennington (6.06%). (RT Vol. XI. 184:11-17; Ex. 1508, pp. TMS-Prod_000748). Carson Toyota is a “franchisee” within the meaning of Vehicle Code sections 331.1 and 3062(a), and it is represented by Halbert Rasmussen and Franjo Dolenac of Manning, Leaver, Bruder & Berberich.

8. Respondent Toyota Motor Sales, USA, Inc. is a distributor of Toyota brand vehicles and products. It is a “franchisor” within the meaning of Vehicle Code sections 331.2 and 3062(a), and it is represented by Steven McKelvey, S. Keith Hutto, and Steven B. McFarland of Nelson Mullins Riley & Scarborough, LLP.

9. Intervenor Hooman Toyota is an authorized Toyota new motor vehicle dealership located at 4401 E. Pacific Coast Highway, Long Beach, California. (Ex. 1009, pp. TMS-Prod_008734). It is owned by Hooman Nissani (75%) and Kevin Golshan (25%). (RT Vol. XIV. 101:10-22). Hooman

Toyota is a "franchisee" within the meaning of Vehicle Code sections 331.1 and 3062(a), and it is represented by Michael J. Flanagan and Gavin Hughes of the Law Offices of Michael J. Flanagan.

Summary of Witnesses' Testimony and Exhibits Introduced

10. Protestant Cabe Toyota called the following witnesses: (1) John Cabe, Dealer Principal and General Manager; (2) Lillian Moore, Controller; (3) Dan Duddridge, the Operations Director of Cabe Toyota; and (4) expert witness Scott Watkins of the Anderson Economic Group.

11. Protestant Carson Toyota called the following witnesses: (1) Albert Skinner, Dealer Principal; (2) Martin Brylski, President and CEO; and (3) expert witness Dr. John Matthews.

12. Respondent TMS called the following witnesses: (1) Doug Eroh, General Manager, Toyota Los Angeles Region; (2) Mike Durby, Vehicle Production and Planning Manager, Toyota Los Angeles Region; (3) expert witness Herbert Walter; and (4) expert witness Sharif Farhat of Urban Science Applications, Inc.

13. Intervenor Hooman Toyota called the following witnesses: (1) Hooman Nissani, Dealer Principal and General Manager; and (2) expert witness Edward Stockton of The Fontana Group.

14. In addition to the witnesses presented at the hearing, Protestant Cabe Toyota submitted the Declaration of Jim Speck, President of Alant Corporation, dba Circle Imports, Audi, Volkswagen, Volvo, and Porsche. Protestants, Respondent, and Intervenor also jointly submitted select excerpts from the deposition testimony of the following witnesses: (1) Julio Torres, Service Manager at Cabe Toyota; (2) Alfredo Cabaero, General Sales Manager at Carson Toyota; (3) Mike Vogel, Fixed Operations Director at Carson Toyota; (4) Steve Hearne, Vice President of Sales for Lexus, and the former General Manager of the Toyota Los Angeles Region, (5) William Bergen, District Service and Parts Manager for the Toyota Los Angeles Region; (6) Jeff Bracken, Group Vice President and General Manager, Lexus Division, and the former General Manager of the Toyota Los Angeles Region; (7) Jason Kong, Lexus Western Area Vehicle Field Sales Manager, and the former Market Representation

Manager of the Toyota Los Angeles Region; (8) Sam Carillo, Fixed Operations Director at Hooman Toyota; and (9) Patrick O'Donnell, City Council Member for the City of Long Beach.

ISSUES PRESENTED

15. The ultimate issue presented in this case is whether Protestants have met their burden of establishing there is good cause not to permit the proposed relocation of Hooman Toyota.

16. The Vehicle Code expressly contemplates that existing motor vehicle dealers may relocate their dealerships to a new location, and thus it establishes specific procedural and substantive requirements that apply whenever an existing motor vehicle dealer proposes to relocate.

17. Pursuant to Vehicle Code section 3062(a), a franchisor that intends to permit the relocation of an existing motor vehicle dealership must first provide written notice to the Board and each franchisee of the same line-make within the Relevant Market Area ("RMA"), which is defined as the area within a 10-mile radius from the proposed site of the dealership. (Veh. Code § 507).

18. Pursuant to Vehicle Code section 3062, existing dealers of the same line-make within the RMA have the right to protest the proposed relocation so long as the relocation does not fall within a statutory exemption. Specifically, the Vehicle Code establishes several situations in which existing motor vehicle dealers may relocate their dealerships without being subject to protest. One of those statutory exemptions provides that the relocation of an existing motor vehicle dealer is not subject to protest if the proposed location is both within the same city and within one mile of its existing location. (Veh. Code § 3062(b)(1)).

19. When a proposed relocation is subject to protest, existing franchisees within the RMA that file a timely protest challenging the proposed relocation have the burden of proof to establish that there is good cause not to permit the proposed relocation. (Veh. Code § 3066(b)).

20. In determining whether there is good cause not to permit the proposed relocation of an existing motor vehicle dealership, Section 3063 provides that the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

a. Permanency of the investment;

b. Effect on the retail motor vehicle business and the consuming public in the relevant market area;

c. Whether it is injurious to the public welfare for an additional franchise to be established;

d. Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and

e. Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.[1]

PROTESTANTS' CONTENTIONS

21. Protestants contend there is good cause not to permit the proposed relocation of Hooman Toyota. Specifically, Protestants allege there is already adequate competition and Toyota representation in the RMA without Hooman Toyota relocating to an improved location and facility. Protestants also allege that Hooman Toyota is moving farther away from certain of its customers and closer to their dealerships and, therefore, the relocation will reduce customer convenience and harm their businesses.

[1] The plain language of Section 3063 might be construed initially to create some ambiguity as to which factors apply to the relocation of an existing dealership, and which apply solely to the addition of a new dealership. Specifically, subsections (c) and (e) both expressly reference the establishment of an "additional franchise," which raises a question as to whether they apply to a relocation dispute. However, Section 3063 makes clear that the Board "***shall*** take into consideration . . . ***all of the following***" factors in determining whether good cause has been established for not relocating a dealership. Moreover, prior relocation decisions in California have uniformly applied all five of these factors when evaluating relocation cases. *See, e.g.*, *Fremont Toyota v. Toyota Motor Sales, USA, Inc.*, Protest PR-1844-03; *Long Beach Honda v. American Honda Motor Co.*, Protest PR-1835-02. Accordingly, this Proposed Decision will evaluate the proposed relocation of Hooman Toyota taking into consideration all five of the factors set forth in Section 3063. However, if this Proposed Decision did not take into consideration the factors set forth in subsections (c) and (e), it would not affect the outcome of this case.

RESPONDENT'S CONTENTIONS

22. Respondent contends that Protestants cannot meet their burden of proving that there is good cause not to permit the relocation of Hooman Toyota. Respondent alleges that Hooman Toyota is proposing to relocate to a superior facility and location that provides increased visibility, accessibility, convenience, and amenities and, therefore, would benefit consumers and the public interest. Respondent further contends that Toyota's market share in the area surrounding Protestants and Hooman Toyota is depressed, and that there is sufficient sales and service opportunity for Protestants and Hooman Toyota to co-exist successfully in the market (as they have for the past 36 years). In addition, Respondent contends that Hooman Toyota's proposed relocation would have little or no effect on Protestants because it is proposing to relocate a very short distance in a densely populated market, and because Protestants conduct relatively little business in the area surrounding the Proposed Site.

INTERVENOR'S CONTENTIONS

23. Intervenor's contentions are similar to and consistent with those set forth by Respondent. Intervenor contends it is moving to a better facility at a better location and will reduce its rent factor, which will make it better able to serve consumers and the public welfare. Intervenor further contends that its proposed relocation will have little or no impact on surrounding Toyota dealers, including Protestants. Accordingly, Intervenor contends that Protestants cannot meet their burden of proving that there is good cause not to permit its proposed relocation.

FINDINGS OF FACT

Preliminary Findings

24. Cabe Toyota first began operating as an authorized Toyota dealership in 1966. When it first opened, Cabe Toyota was located at 2895 Long Beach Boulevard, Long Beach, California. (RT Vol. I 113:3-7; 114:8-15) (Ex. 1153, pp. TMS-Prod_001043). Cabe Toyota still operates from this

same location today, which is approximately 0.5 miles south of the 405 Freeway on the western side of the City of Long Beach. (RT Vol. II 99:21-100:10).

25. Carson Toyota first opened as an authorized Toyota dealer several years later in 1975. When it began operating, Carson Toyota was located at 1333 East 223rd Street, Carson, California, and Carson Toyota continues to operate from that same location to this day. (RT Vol. XI 184:2-10; 197:4-12). Carson Toyota's dealership facility is 3.6 miles west of Cabe Toyota, and is located directly adjacent to the 405 Freeway. (RT Vol. XI 201:15-17) (Ex. 2056, pp. TMS-Prod_016432).

26. Two years later in 1977, Toyota of Long Beach began operating as an authorized Toyota dealership at 4401 E. Pacific Coast Highway in Long Beach, California. (RT Vol. I 117:9-17; RT Vol. III. 98:7-11). This Toyota dealership, which is now operated by Hooman Nissani and is now known as Hooman Toyota, continues to operate from this same location today, which is 3.1 miles east of Cabe Toyota and 6.7 miles east of Carson Toyota. (Ex. 2056, pp. TMS-Prod_016432).

27. The cities of Long Beach and Carson and are located in the South Bay area of the Los Angeles market, which is a metropolitan area with a very high population density. The Los Angeles metropolitan area 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). Currently, the 10-mile RMA alone has a population of more than 1.92 million people, which is extremely dense for a 10-mile area. (RT Vol. III. 100:21-101:1). In addition, the number of new Toyota vehicle sales has grown significantly since 1977. (RT Vol. II. 54:5-17; Vol. III. 99:2-13; Vol. XI 198:18-24). When these three dealers first began operations, the Toyota brand was selling approximately 100,000 vehicles per year nationwide, and it now has national sales of almost two million vehicles per year. (RT Vol. XI. 198:25-199:8). Toyota's market share also has significantly increased during that time, and currently the Toyota brand has the highest market share of any motor vehicle manufacturer in the South Bay area. (RT Vol. II. 54:10-20).

28. Due to the high level of population density and opportunity for new vehicle sales, there have been eight authorized Toyota dealers within the RMA for some time. (RT Vol. III. 21:4-8). The three Toyota dealerships involved in this action have co-existed successfully and profitably from their facilities in Long Beach and Carson for more than 36 years. (RT Vol. III. 14:8-14; 98:7-20).

29. In January 2008, Hooman Nissani purchased Toyota of Long Beach and began operating the dealership as Hooman Toyota from the same facilities it had occupied for many years. (RT. Vol. XIV. 17:12-21) (Ex. 1009, pp. TMS-Prod_008734). However, these facilities do not comply with TMS's minimum space and appearance standards. (Ex. 1009, pp. TMS-Prod_008736) (RT Vol. X. 40:14-16). The dealership also is located on two non-adjacent parcels of land on a traffic circle. (RT Vol. X. 41:8-25). The vehicle sales facility is located on one side of the traffic circle, and the service facility is located across the street on the other side of the traffic circle. (*Id.*). In addition to these two facilities, Hooman Toyota also has multiple off-site locations that it uses for various functions, including vehicle storage, pre-delivery inspections, and car washes. (RT Vol. X. 42:13-43:8).

30. Accordingly, Hooman Toyota has proposed to relocate from its current dealership facilities to a new location within the City of Long Beach, which is located at 3399 E. Willow Street and 2679 Redondo Ave in Long Beach ("Proposed Site"). (Ex. 1100; Ex. 1166). The Proposed Site is a former Cadillac dealership that is located adjacent to the 405 Freeway, (RT Vol. X. 84:18-21), and is currently vacant but was purpose-built to be a car dealership. (RT Vol. X. 168:11-18).

31. The Proposed Site is 1.14 air miles north of Hooman Toyota's current dealership facility. (RT Vol. X. 88:17-19). Accordingly, the Proposed Site is just outside the 1-mile area in which existing dealers may relocate without protest as set forth in Vehicle Code section 3062(b)(1). The Proposed Site is also located 0.9 air miles closer to each of the Protestants than Hooman Toyota's current location. (Ex 2056, pp. TMS-Prod_016432). As such, the proposed relocation would place Hooman Toyota approximately 2.2 miles east of Cabe Toyota and 5.8 miles east of Carson Toyota. (*Id.*).

32. On June 24, 2011, Hooman Toyota sent TMS a letter formally proposing to relocate the dealership to the Proposed Site. (RT Vol. X. 82:7-83:11) (Ex. 1100). After receiving this proposal, TMS conducted a thorough analysis of the proposed relocation. TMS personnel drove the market and visited all of the dealership facilities at issue in this case, including the Proposed Site. (RT Vol. X. 167:19-168:18). On August 23, 2011, TMS conducted an initial internal market analysis of the proposed relocation, (RT Vol. X. 93:14-95:5) (Ex. 1109), and in February 2012, TMS conducted what it referred to as its formal market analysis of the proposed relocation. (RT Vol. X. 115:21-116:16) (Ex 2056). TMS also retained an independent third party accountant to perform a review of Hooman Toyota's financial and operating records, which verified that Hooman Toyota had the financial wherewithal to support the relocation. (RT Vol. XIII. 226:21-229:6) (Ex. 2059).

33. Based on these market analyses, evaluations of the market, and the information available to it, TMS concluded that the proposed relocation would not have any material effect on other Toyota dealers. (RT Vol. X. 168:19-170:2). Because the success of Toyota dealers is critical to TMS, TMS wants all of its dealers to be successful and would not support the relocation if it would have a material negative effect on surrounding dealers. (RT Vol. X. 169:8-17). TMS also concluded that the proposed relocation would provide a healthy increase to competition, and would be good for consumers. (RT Vol. X. 168:19-170:2). Accordingly, TMS approved Hooman Toyota's request to relocate the dealership to the Proposed Site. (RT Vol. X. 170:6-9) (Exs. 1164; 1165).

34. On August 2, 2012, TMS notified Protestants of its intent to permit Hooman Toyota's proposed relocation, (Ex. 1166), and Protestants both filed protests challenging the proposed relocation. It is undisputed that Protestants are within the 10-mile RMA, that Protestants have standing to protest the proposed relocation, that TMS provide adequate notice of the proposed relocation pursuant to the Vehicle Code, and that Protestants filed timely protests challenging the proposed relocation.

Findings Related to Permanency of Investment
(Veh. Code § 3063(a))

I. Findings Related to Carson Toyota

35. Carson Toyota has been an authorized Toyota dealer at the same location for approximately 38 years. (RT Vol. XI 184:2-10; 197:4-12). Mr. Skinner, the Dealer Principal of Carson Toyota, first acquired the dealership in 1975. (RT Vol. XI. 179:19-22). Since that time, Carson Toyota has been a supporter of the City of Carson, and has provided the City cars for its police department and contributed to a variety of City functions. (RT Vol. XI. 181:11-16). Carson Toyota currently has 139 employees. (RT Vol. XI. 242:9-14).

36. In 2008, Carson Toyota completed construction of a new dealership facility at the same location it has occupied since 1975, which is directly adjacent to the 405 Freeway. (RT Vol. XI. 180:10-15; 201:15-17). Prior to beginning construction, Carson Toyota's dealership facility was considerably outdated and did not comply with TMS's minimum facility guidelines. (RT Vol. XI. 200:21-201:3). Specifically, TMS establishes minimum guidelines for the size of Toyota dealership facilities based on the size of the dealer's market and how many customers it expects the dealer would be able to handle. (RT Vol. X 23:19-24:1). In recognition of its deficient facilities, Carson Toyota made the decision to build an expanded dealership facility, and in doing so, to account for future growth. (RT Vol. XI. 200:21-24).

37. In order to complete this renovation, Carson Toyota demolished its previous dealership facility and built a new facility from the ground up. (RT Vol. XI. 187:2-8). This new facility is larger and more modern that Carson Toyota's previous facility, has many additional features and amenities, and is a significant improvement over its prior facility. (RT Vol. XI. 185:23-186:4; 201:12-202:10). Carson Toyota's new facility greatly exceeds TMS's minimum facility guides. (RT Vol. IX. 173:13-177:23) (Ex. 2038). The new facility also includes an elevated glass-encased showroom that is located

directly beside the 405 Freeway. (RT Vol. XI. 201:15-202:5). This feature, along with its large freeway sign, gives Carson Toyota excellent visibility for customers travelling along the 405 Freeway, which is the major thoroughfare in the area. (RT Vol. X. 31:1-4; RT Vol. XI. 201:15-202:5).

38. Carson Toyota's new dealership facility also fully complies with TMS's "Image USA II" facility standards. (RT Vol. XI. 187:9-11; 201:9-14). Image USA II is a facility design program established by TMS that outlines standards for the appearance of Toyota dealership facilities, including minimum layout, interior design, and other design elements. (RT Vol. X. 21:4-9). The purpose of the Image USA II program is to establish and maintain a consistent appearance for Toyota dealerships, and to promote brand identity with Toyota dealerships. (RT Vol. II. 13:15-23; Vol. X. 21:4-9).

39. In order to complete its renovation, Carson Toyota acquired land from the City of Carson. (RT Vol. XI. 186:7-22). This land and the new dealership facility is owned by a separate but related entity known as Carson Real Estate Leasing, LLC, which is controlled by the owners of Carson Toyota. (RT Vol. XI. 191:2-20). Carson Toyota pays $2,755,378 in rent to its owners through this LLC per year. (RT Vol. XI. 220:23-221:6). At the time it completed construction of its new facility, Carson Toyota also purchased new furniture, fixtures, and equipment for the dealership for about $1 million. (RT Vol. XI. 247:13-18). All told, Carson Toyota invested approximately $30 million in its renovation and expansion of its dealership facility. (RT Vol. XI. 180:10-15).

40. Carson Toyota invested this money and built such a large dealership so that it would have plenty of room to grow and expand its business in the future. (RT Vol. XI. 200:21-24; 202:22-203:7). Carson Toyota also built this new facility to benefit the Toyota brand, benefit its customers, and help it better compete with other brands such as Honda and Nissan. (RT Vol. XI. 202:14-17; 203:8-15).

II. <u>Findings Related to Cabe Toyota</u>

41. Cabe Toyota has been an authorized Toyota dealer at the same location since 1966. (RT Vol. I. 113:3-7; 114:8-15) (Ex. 1153, pp. TMS-Prod_001043). Cabe Toyota is a family-run

dealership, and John Cabe has been the Dealer Principal and General Manager of the dealership since the 1980s, (RT Vol. I. 112:15-17; 115:23-116:21). His son-in-law, Dan Duddridge, is the dealership's Operations Director and has been serving in that capacity for eight years. (RT Vol. IV. 109:11-17).

42. Cabe Toyota has been operating out of these same facilities for many years. (RT Vol. X. 33:3-4). Prior to the commencement of this matter, Cabe Toyota had one of the least competitive and appealing facilities for Toyota dealers. (RT Vol. X. 33:13-16). As of 2012, Cabe Toyota's facility did not comply with TMS's facility guidelines or image standards. (RT Vol. II. 10:17-18). Cabe Toyota's dealership facilities were significantly undersized and did not have sufficient total building space, total land area, space in its service department, and customer parking. (RT Vol. II. 12:9-13:14) (Ex. 2058). Cabe Toyota also operated out of four separate parcels that are narrow and separated by two streets, which presented several challenges. (RT Vol. V. 54:2-6; RT Vol. X. 33:17-24).

43. Because its parts department is located a block away from the service department, Cabe Toyota has runners that go back and forth carrying parts, which makes the dealership less efficient, creates confusion, and increases customer wait times. (Torres Depo. 29:10-30:14). Over the years, Cabe Toyota's customers have expressed concerns about its facilities, including both the sales and service departments. (Vol. II. 14:1-9). Specifically, customers have rated Cabe Toyota's sales and service facilities "red standard," which denotes that the facilities are poor or substandard. (RT Vol. II. 17:21-19:11) (Ex. 2003, TMS-Prod_017004). Customers have also raised concerns with the cleanliness of its dealership facilities, the lack of convenient parking, and the comfort of the service waiting area. (*Id.*). Cabe Toyota's service drive also is "very bad," (RT Vol. II. 89:23-24), and the accessibility for service customers is "very challenging." (RT Vol. IV. 146:15-19).

44. Due to the poor condition of its facility, in 2001, Cabe Toyota entered into a Dealer Agreement in which it acknowledged that its facility was deficient and agreed to cure these deficiencies within 18 months, which would have been in early 2003. (RT Vol. II. 44:11-22) (Ex. 2014, TMS-

Prod_000064). However, Cabe Toyota did not renovate its facility prior to that deadline, and it missed the deadline for complying with TMS's Image USA I program. (RT Vol. II. 44:23-45:23).

45. Following that time, Cabe Toyota entered into a series of subsequent Dealer Agreements over the next ten years in which it agreed to renovate its facilities. (RT Vol. II. 45:18-46:6). In 2010, Cabe Toyota entered into a Dealer Agreement in which it acknowledged that its facility was substantially deficient and agreed to correct these deficiencies by July 1, 2012, but it did not do so. (RT Vol. II. 47: 8-48:15) (Ex. 2044, TMS-Prod_000024). In March 2011, Cabe Toyota entered into another Dealer Agreement acknowledging that its facility was deficient and committing to cure these deficiencies within an established time frame. (RT Vol. II. 49:21-51:7) (Ex. 1087, TMS-Prod_000014). However, once again, it did not comply. (*Id.*).

46. Cabe Toyota eventually broke ground on the renovation of its facility in April 2013, approximately twelve years after its 2001 Dealer Agreement, approximately nine months after receiving the Notice of Relocation, and approximately two months before the beginning of this hearing. (RT Vol. II. 51:13-18; RT Vol. II. 97:18-98:6; RT Vol. V. 132:12-133:25). This renovation will improve the appearance of the facility, and will make Cabe Toyota's operations smoother. (RT Vol. II. 21:6-18).

47. Cabe Toyota's new facility will comply with TMS's Image USA II standards and will have more square footage, additional parking, improved customer waiting area, and a new showroom. (RT Vol. V. 134:21-135:13). The renovation also will provide a better experience for Cabe Toyota's customers and employees, improve customer access to the service department, provide a larger showroom, and create an overall better dealership experience for its customers. (RT Vol. II. 19:25-21:2). Cabe Toyota believes that this renovation will benefit customers, the public, the Toyota brand, and the dealership itself, and Cabe Toyota plans on being able to increase its sales, service, and parts business upon completing its new facility. (RT Vol. II. 23:2—24:2; 81:1-7; RT Vol. V. 135:14-25).

III. Findings Related to Hooman Toyota

48. Hooman Nissani and his partners purchased Toyota of Long Beach in January 2008 for approximately $10.3 million. (Ex. 1007, TMS-Pord_001643). Since that time, the dealership has operated as Hooman Toyota at the same location it has occupied since 1977. (RT Vol. XIV. 17:12-21) (Ex. 1009, pp. TMS-Prod_008734). After purchasing the dealership, Mr. Nissani was able to improve its customer satisfaction scores and sales efficiency. (RT Vol. X. 44:17-45:6). However, the dealership facilities do not comply with TMS's minimum space and appearance standards, (Ex. 1009, pp. TMS-Prod_008736) (RT Vol. X. 40:14-16), and within seven months of operations, Hooman Toyota began to outgrow its facility. (RT Vol. XIV. 24:8-13).

49. Given the lack of space at the dealership, Hooman Toyota made several efforts to expand and renovate its facility in an attempt to accommodate its customers. Hooman Toyota built out its service write-up area to increase the number of service advisor stations from four to seven, and then later closed a hallway and added desks for two additional service advisors. (RT Vol. XIV. 24:14-21; 26:4-20). In order to address issues with customer wait times, Hooman Toyota began providing its service customers with loaner vehicles. (RT Vol. XIV. 24:22-25:3). The dealership also relocated a dumpster that was next to its service facility, which allowed it to increase parking and build an outdoor customer waiting area. (RT Vol. XIV. 27:1-13).

50. Hooman Toyota also moved several of its operations away from its main sales and service facilities to various off-site facilities. Hooman Toyota acquired an off-site service facility, which it uses to take deliveries of new vehicles from Toyota and recondition used vehicles prior to sale. (RT Vol. XIV. 25:4-26:1). Hooman Toyota made the decision to outsource its car wash business to two independent car washes. (RT Vol. XIV. 36:22-37:20). In addition, Hooman Toyota currently uses the Proposed Site for vehicle storage, used vehicle preparation, and heavy-duty parts storage. (RT Vol. XIV. 37:25-38:10). Currently, Hooman Toyota operates out of six different locations: (1) the new and

used car building; (2) the service facility; (3) the new car delivery and used vehicle reconditioning facility; (4) the Proposed Site; (5) one independent car wash; and (6) a separate independent car wash. (*Id.*). All told, Hooman Toyota has invested more than $20.3 million into the dealership since acquiring the store in 2008. (RT Vol. XIV. 109:9-14) (Ex. 252).

51. Despite these accommodations, Hooman Toyota's current facilities continue to present considerable operational issues for the dealership and its customers. Accordingly, Hooman Toyota has proposed to relocate to the former Coast Cadillac location at 3399 E. Willow Street and 2679 Redondo Ave in Long Beach. (Ex. 1100; Ex. 1166). Hooman Toyota has entered into an agreement to lease the Proposed Site for approximately $36,000 per month, and it has an option to purchase the property for $8.25 million. (RT Vol. XIV. 102:6-25; 104:17-106:22) (Ex. 274; 275). As of October 2012, Hooman Toyota had invested more than $610,000 in the Proposed Site, and it has invested more than $21 million in the dealership as a whole since 2008. (RT Vol. XIV. 112:14-113:5; Ex. 253).

Findings Related to the Effect on the Retail Motor Vehicle Business and the Consuming Public in the Relevant Market Area
(Veh. Code § 3063(b))

52. Given that this case involves the relocation of an existing Toyota dealership, the number of competing Toyota dealerships in the RMA will remain the same. Accordingly, the only effects requiring consideration are those involving the potential changes associated with the proposed relocation of Hooman Toyota. *See Fremont Toyota v. Toyota Motor Sales, USA, Inc.*, Protest PR-1844-03.

I. Improvement to Hooman Toyota's Dealership Facilities

53. There is little dispute that the Proposed Site is a superior facility and location compared to Hooman Toyota's current facilities. As set forth above, Hooman Toyota's current dealership facilities do not comply with TMS's minimum space and appearance standards. (Ex. 1009, pp. TMS-Prod_008736) (RT Vol. X. 40:14-16) (Ex. 1500, HoCT001794). Specifically, Hooman Toyota's current facilities are significantly undersized and do not have sufficient building space, land area,

parking, or service department space for customers. (*Id.*). The current facilities also are old, weathered, and unattractive. (RT. Vol. X. 42:1-9).

54. Hooman Toyota's sales and service operations also are currently in two separate facilities located on a traffic circle that is confusing for customers, has limited ingress and egress, and is known for having traffic accidents. (RT. Vol. X. 41:8-15; RT Vol. XIV. 56:23-57:7). The sales facility is located on one side of the traffic circle, and the service facility is located on the other side of the street, which makes it difficult for customers to navigate. (RT. Vol. X. 41:17-25). The dealership also has very little customer parking and a small service drive that can only handle around four or five vehicles at one time. (RT. Vol. X. 41:8-15; RT Vol. XIV. 31:15-32:3). Accordingly, service customers often have to park in the street and wait for service. (RT Vol. XIV. 31:15-32:3). In addition, the dealership's current showroom can only hold one vehicle—a Scion IQ—which is the smallest car Toyota makes. (RT Vol. XIV. 22:23-23:10). The new and used vehicle lots also have limited display space, and Hooman Toyota is only able to display a fraction of its inventory. (RT Vol. X. 42:22-43:8; RT Vol. XIV. 22:23-23:10). As such, customers looking for a vehicle must wait for an employee to travel to an off-site location, pick up the vehicle, and bring it back to the dealership for the customer. (*Id.*).

55. In contrast, the proposed relocation would move Hooman Toyota away from the traffic circle to a new facility adjacent to the 405 Freeway. (RT Vol. X. 84:19-21). Unlike Hooman Toyota's current site, which is old and weathered, the Proposed Site will be updated, more attractive for consumers, and more representative of the Toyota brand. (RT Vol. XIV. 63:6-12). The Proposed Site also is larger than Hooman Toyota's current facility, and it has more space, parking and amenities for customers. (RT Vol. X. 161:21-162:4; RT Vol. IX. 164:25-166:2) (Ex. 1500, pp. HoCT001789).

56. While its current facilities are spread out over several non-contiguous parcels, the Proposed Site would allow Hooman Toyota to consolidate its operations under one roof. (RT Vol. X. 44:9-16). The Proposed Site also will have multiple waiting areas and a child play area for customers.

(RT Vol. XIV. 84:21-85:2; 87:4-6). The service drive can hold 15 to 20 cars, (RT Vol. XIV. 65:3-11), and the Proposed Site will have an on-site car wash for customer vehicles. (RT Vol. XIV. 89:17-20). Accordingly, the new facility will decrease customer wait times, eliminate the need for customers to park in the street, and alleviate customer confusion. (RT Vol. IX. 220:2-22). The Proposed Site also will have improved customer ingress and egress. (RT Vol. X. 44:9-16). These improvements will benefit the consuming public, Hooman Toyota, and the Toyota brand.

II. Effect on Customer Convenience

57. Protestants allege that Hooman Toyota's relocation would move it further away from the customers located to the southeast and, therefore, would have a negative effect on customer convenience. In support of this theory, Cabe Toyota retained Mr. Scott Watkins from the Anderson Economic Group to provide expert testimony related to the proposed relocation. Mr. Watkins is a Senior Consultant for Anderson Economic Group and directs its marketing and industry practice area. (RT Vol. III. 7:16-21). According to Mr. Watkins' analysis, Hooman Toyota's current facilities are located in a retail area along a traffic circle in Long Beach where three major customer thoroughfares intersect. (RT Vol. III. 32:7-34:2). By proposing to relocate north to the 405 Freeway, he asserts that Hooman Toyota would be moving from a site that is well positioned to serve the local community in its PMA to a freeway location that would have a more regional presence. (RT Vol. III. 32:7-35:6).

58. Mr. Watkins then compared the number of customers who would become closer to and further away from the dealership following the proposed relocation. According to his analysis, the proposed relocation would move Hooman Toyota further away from approximately 160,000 people and closer to 28,000 people. (RT Vol. III. 35:7-18). Mr. Watkins also prepared a similar analysis of the relocation's effect on the dealership's distance from the Toyota Units in Operation ("UIO"). UIO refers to the number of Toyota vehicles registered in a particular area, and thus provides one measure of the amount of opportunity for the brand in that particular area. (RT Vol. XIII. 85:17-86:6). TMS

uses a "seven-year UIO" measurement, which reflects the number of Toyota vehicles from the most recent seven model years (i.e. 2007 to 2013) currently in operation in a particular area. (*Id.*). Using this analysis, Mr. Watkins concludes that the proposed relocation would move Hooman Toyota closer to 2,582 Toyota UIO and further away from 11,288 Toyota UIO. (RT Vol. III. 35:23-36:10).

59. Although Mr. Watkins concluded that the relocation would increase customer drive distance, he admitted there are many factors other than drive distance that are important to customer convenience. (RT Vol. III. 190:4-8). These factors include the availability of customer parking, the ease of ingress and egress to the dealership, whether the facilities are under one roof or are separated by a street, the adequacy of customer waiting areas, the number of service bays, the adequacy of parts storage, the number of sales desks, the size of the dealership, the availability of vehicle inventory on-site for customers to view, and a myriad of other factors. (RT Vol. III. 190:4-203:21). Mr. Watkins admitted that as a customer in Long Beach, he would find it more convenient to (1) travel an additional 1.14 miles to visit a dealership with all of its operations under one roof, adequate parking, adequate on-site inventory, shorter wait times, a better service drive, rather than (2) travelling a shorter distance to a dealership that is spread out over multiple sites, has little parking, longer wait times, and insufficient service operations. (RT Vol. III. 209:16-210:9). As such, Mr. Watkins conceded that the short distance of the relocation would be offset by the improved facilities at the Proposed Site.

60. TMS retained Mr. Sharif Farhat from Urban Science to provide expert testimony on motor vehicle retail market and network issues. Urban Science is a consulting company that focuses on analyzing motor vehicle dealer networks, motor vehicle facility sites, and customer relations management for the automobile industry. (RT Vol. XIII. 19:6-25; 20:24-8). Its applications are used on a daily basis to analyze motor vehicle markets for nearly every motor vehicle manufacturer in the world. (RT Vol. XIII. 23:17-24:3; 31:19-32:6). Mr. Farhat has worked at Urban Science since 1986, and he currently serves as the Vice President of Analytical Services. (RT Vol. XIII. 25:21-26:17).

61. With regard to customer convenience, Mr. Farhat analyzed the effect that the proposed relocation would have on customers in Hooman Toyota and Cabe Toyota's Primary Market Areas ("PMA"). A dealer's PMA is a geographic area designated by TMS that is used as a tool to measure the performance of its dealers. (RT Vol. II. 29:8-14). A dealer's PMA is the area where the dealer generally is closer to customers compared to other Toyota dealers or stated differently, the area where it has the geographic advantage over other dealers. (RT Vol. II. 28:23-29:18). Dealers do not have exclusive rights to their PMA, and customers are unaware of the PMA borders for each dealer. (RT Vol. II. 30:7-13). As such, Toyota dealers are not limited to selling vehicles within their own PMA, and they may sell vehicles to customers located anywhere in the United States. (RT Vol. II. 29:19-24).

62. According to Mr. Farhat's analysis, customers in Hooman Toyota's PMA currently must travel an average of 2.7 miles to reach a Toyota dealer, and after the proposed relocation, they would have to travel an additional 0.6 miles on average to reach the nearest dealer. (RT Vol. XIII. 122:11-123:7). Similarly, the average customer in Hooman Toyota and Cabe Toyota's combined PMAs currently travel 2.5 miles to reach the nearest Toyota dealer, and after the proposed relocation, would have to travel approximately 2.9 miles to reach the nearest dealer—a difference of 0.4 miles. (RT Vol. XIII. 126:19-127:11). After this move, the Toyota brand would remain first among all motor vehicle brands for customer convenience within the combined Cabe Toyota and Hooman Toyota PMAs. (*Id.*).

63. Mr. Farhat also testified that there are many important elements of customer convenience other than distance, including the quality of the facilities and customer amenities. (RT Vol. XIII. 123:8-125:22). Based on the challenges at Hooman Toyota's current facility, Mr. Farhat concluded that a 0.4-mile or 0.6-mile difference in drive distance is minimal, and that any negative effects on customer convenience would be far outweighed by the benefits and positive effects that Hooman Toyota's proposed new facility would have on customer convenience. (RT Vol. XIII. 125:23-127:11).

64. Carson Toyota hired Dr. John Matthews, a retired professor from the University of Wisconsin, to provide expert testimony in this case. Dr. Matthews testified that any time an existing dealer relocates, it will move closer to some customers and further away from others. (RT Vol. VIII. 185:20-186:4). He concluded that if Hooman Toyota is permitted to relocate, it would remain in the same general area and the same neighborhood where it has conducted business for many years. (RT Vol. IX. 99:19-24). He also testified that Hooman Toyota would be staying within its same PMA, and would remain in a position to service its clientele. (RT Vol. IX. 99:25-100:8).

65. Based on this testimony, the proposed relocation would have no negative effect on customer convenience, and in fact would improve customer convenience in the RMA. Although Hooman Toyota would be moving farther away from certain customers, the dealership would be moving a total of 1.14 air miles, (RT Vol. X. 88:17-19), which is relatively short distance from its current location. Any marginal inconvenience customers may realize from having to travel a short distance further is outweighed by the benefits of the Proposed Site, and thus the proposed relocation would have a positive effect on customer convenience.

III. Effect of the Proposed Relocation on Carson Toyota

66. Although Protestants also allege there is good cause not to permit Hooman Toyota's proposed relocation because they believe it would harm their businesses, there is very little evidence that the proposed relocation would have any negative effect on Carson Toyota.

67. Carson Toyota's Dealer Principal, Albert Skinner, testified that he believes the proposed relocation would hurt Carson Toyota a little bit and that it may even have to lay off some employees. (RT Vol. XI. 194:12-22; 209:19-210:25). However, Mr. Skinner is only at the dealership once a week or once a month, and his General Manager handles its day-to-day operations. (RT Vol. XI. 211:10-212:3). Mr. Skinner also has no personal knowledge of where Carson Toyota makes it sales, the

amount of sales Hooman Toyota and Carson Toyota make into each other's PMAs, or Hooman Toyota's business practices. (RT Vol. XI. 211:10-16; 212:9-13; 234:6-8).

68. Carson Toyota's General Manager, Marty Brylski, testified that because the Proposed Site is closer to Carson Toyota and adjacent to the 405 Freeway, there is a potential for Carson Toyota to lose business. (RT Vol. XI. 254:13-17). However, Mr. Brylski did not perform any analysis of the potential impact that the proposed relocation might have on Carson Toyota. (243:11-15). Similarly, Carson Toyota's expert witness, Dr. Matthews, did not perform any analysis of Carson Toyota's registrations, the opportunity available to Carson Toyota, or the potential impact that the proposed relocation might have on Carson Toyota. (RT Vol. IX. 94:3-10; 212:24-213:2). Instead, Dr. Matthews concluded it is a "wild card" or an "unknown" if the proposed relocation would cause any harm to Carson Toyota. (RT Vol. IX. 206:1-15).

69. Respondent's expert witness, Sharif Farhat, also could not identify any potential impact to Carson Toyota due to the proposed relocation. (RT Vol. XIII. 141:2-10). Carson Toyota is located approximately six miles away from the Proposed Site, and is in a different market than Hooman Toyota. (*Id.*). Carson Toyota's new vehicle sales are concentrated around the dealer and to the West near the City of Carson and away from the Proposed Site, and it is not conducting a significant amount of business in Long Beach. (RT Vol. XIII. 110:3-11; 141:2-10). In addition, Cabe Toyota is located directly in between Carson Toyota and Hooman Toyota, and Carson Toyota's PMA does not touch or share any common borders with Hooman Toyota's PMA. (Ex. 2056, TMS-Prod_016429). Accordingly, there is no reason to believe its business would be affected by the proposed relocation.

70. Even if the proposed relocation were to have some effect on Carson Toyota, there is no evidence that it would make Carson Toyota unprofitable. TMS retained Herbert Walter to provide expert testimony on the financial condition of Protestants and their ability to compete in the market. Mr. Walter is a financial analyst who previously worked as a consultant for PricewaterhouseCoopers

for thirty-two years. (RT Vol. XII. 9:18-10:12). As a financial consultant, Mr. Walter analyzed company financial statements and business records, including extensive work for businesses in the automotive industry. (RT Vol. XII. 10:9-15). Mr. Walter graduated from the University of Cincinnati with double majors in quantitative analysis and accounting, and a Masters in Business Administration with concentrations in finance and quantitative analysis. (RT Vol. XII. 10:20-11:15). Mr. Walter also is a Certified Public Accountant and a Certified Fraud Examiner. (RT Vol. XII. 11:16-19).

71. As part of his work in this case, Mr. Walter provided expert testimony on Protestants' financial condition, ability to compete, and the opportunities within their existing operations. (RT Vol. XII. 18:6-16). After reviewing Carson Toyota's financial documents, Mr. Walter concluded that Carson Toyota is a large, growing, and profitable dealership. (RT Vol. XII. 116:23-117:7). Carson Toyota's total sales have increased from $90 million in 2009 to more than $130 million in 2012, and its new vehicle sales also have increased during that time. (RT Vol. XII. 118:9-17; 119:5-12) (Ex. 2086, pp. Carson 2-3). Carson Toyota also is highly profitable. In 2011 and 2012, Carson Toyota's net profit before taxes was approximately $2.5 million per year, and Carson Toyota has earned approximately $7 million in profit over the last four years. (RT Vol. XII. 120:6-14) (Ex. 2086, pp. Carson 5).

72. Mr. Walter also concluded that Carson Toyota has significant financial flexibility and financial ability to compete in the market. Mr. Walter's breakeven analysis revealed that in 2012, Carson Toyota sold 1,115 new vehicles more than necessary to cover its fixed costs or break even. (RT Vol. XII. 131:11-132:13) (Ex. 2086, pp. Carson 17). In addition, Carson Toyota's net working capital and cash far exceed TMS's capitalization standards, and Carson Toyota's cash is approximately five times the amount of its monthly expenses. (RT Vol. XII. 132:22-133:11; 133:23-134:13) (Ex. 2086, pp. Carson 18-19). These factors demonstrate that Carson Toyota is a highly profitable dealer that has a significant degree of financial flexibility and the ability to respond competitively to Hooman Toyota's proposed relocation. (RT Vol. XII. 133:14-134:13; 139:14-22).

73. Mr. Walter also found that Carson Toyota has several opportunities to potentially increase its profitability and financial ability to compete. By comparing Carson Toyota's financial statements to those of other Toyota dealers in the same class and region, Mr. Walter demonstrated that Carson Toyota has the opportunity to improve its return on new vehicle sales, (RT Vol. XII. 121:3-14) (Ex. 2086, pp. Carson 6), and cover more of its fixed costs by growing its service business. (RT Vol. XII. 129:11-130:1) (Ex. 2086, pp. Carson 16). As such, Carson Toyota has additional opportunities to further improve its financial flexibility and ability to compete. (RT Vol. XII. 117:8-10). Accordingly, there is no reason to believe that Hooman Toyota's proposed relocation would have any material financial effect on Carson Toyota or make it unprofitable.

IV. Effect of the Proposed Relocation on Cabe Toyota

74. Protestants also allege there is good cause not to permit Hooman Toyota's proposed relocation because they believe it would harm Cabe Toyota and potentially put it out of business. Protestants asserted several different theories and analyses in support of this allegation.

A. Cabe Toyota's Location and PMA

75. Protestants first allege the proposed relocation would harm Cabe Toyota because of the size of its PMA, its position in the market, and its proximity to the Proposed Site. Cabe Toyota is located in between Carson Toyota, which is 3.6 miles to its west, and Hooman Toyota, which is 3.1 miles to its east. (Ex. 2056, TMS-Prod_016432). Cabe Toyota's PMA also is among the smaller PMAs in the Region, and it includes the Port of Long Beach and several lower income areas in the southern portion of its PMA. (RT Vol. IV. 125:17-126:2; 128:4-9).

76. Cabe Toyota alleges that because of the size of its PMA and its proximity to other dealers, it does not have much of a territorial advantage to customers surrounding its dealership. (RT Vol. VIII. 169:12-21). Protestants also allege that these issues make it difficult for Cabe Toyota to capture Toyota sales in its own PMA. (RT Vol. VIII. 182:5-21). In 2012, Cabe Toyota sold 1,514

vehicles nationwide, but only 7.9% of those vehicles (only 120 units) were sold to customers within its PMA. (Ex. 1219, pp. Cabe 01774). At the same time, in 2012, a total of 767 Toyota vehicles were sold within Cabe Toyota's PMA, yet Cabe Toyota made only 15.6% of those sales. (Ex. 1220, pp. Cabe 01777). Indeed, Cabe Toyota currently is making only 37% of its sales within a 10-mile radius of its dealership. (Ex. 2088, pp. R-8). Mr. Duddridge acknowledged that Cabe Toyota is not doing very well capturing the Toyota sales available in its PMA, but he claims this is the result of the size of Cabe Toyota's PMA and its proximity to other Toyota dealers. (RT Vol. IV. 178:16-23).

77. However, the reason Cabe Toyota is not effectively capturing sales in its PMA is not because of its proximity to other dealers or the size of its PMA, but instead is because it has made a conscious business decision to focus on internet marketing that targets customers located at great distances from its dealership. As set forth above, a dealer's PMA is a geographic tool used by TMS to measure the performance of its dealers. (RT Vol. II. 29:8-14). Customers are unaware of the borders of a dealer's PMA, and Cabe Toyota is free to sell vehicles to customers located anywhere in the United States. (RT Vol. II. 29:19-24; 30:7-13). Accordingly, Cabe Toyota's PMA does not limit the geographical area in which it can make sales, and customers are unaware of the borders of its PMA. (RT Vol. II. 30:7-13). Ultimately, Mr. Duddridge admitted that the size of Cabe Toyota's PMA is not a hindrance on its ability to sell vehicles. (RT Vol. X. 186:22-25).

78. In addition, Cabe Toyota, Carson Toyota, and Hooman Toyota have been operating from the same locations and the same PMAs for many years. (RT Vol. III. 14:8-14; 98:7-20). Cabe Toyota's expert witness, Mr. Watkins, acknowledged that these three dealers have been operating in close proximity in this market successfully, profitably, and without harming each other for more than 36 years. (RT Vol. III. 14:8-14; 98:7-20). In fact, Cabe Toyota's Operations Director admitted that 2012 was a record year for new vehicle sales at Cabe Toyota. (RT Vol. IV. 179:11-13). Cabe Toyota

was able to achieve this record level of sales with its exact same PMA and with Carson Toyota and Hooman Toyota in the exact same locations on either side of the dealership. (RT Vol. IX. 131:1-13).

79. Cabe Toyota also used to make a large percentage of its sales within a close proximity of its dealership. Mr. Farhat performed a historical analysis of the number of new vehicle sales made by Cabe Toyota within 10-miles of its dealership from 2007 to present. (Ex. 2088, pp. R-8). In 2007 and 2008, Cabe Toyota made approximately 75% of its sales within ten miles of its dealership. (Ex. 2088, pp. R-8) (RT Vol. IX. 136:12-137:17). In 2009 and 2010, Cabe Toyota made approximately 65% of its sales within 10 miles of its dealership. (Ex. 2088, pp. R-8) (RT Vol. IX. 138:11-139:19). During this time, Cabe Toyota had the same PMA, the same location, and the same competing dealers that it has today. (RT Vol. IX. 137:18-138:5).

80. In 2010, Cabe Toyota made the business decision to start focusing more heavily on internet sales because it believed the internet is the "wave of the future." (RT Vol. II. 38:1-20). Specifically, Cabe Toyota now does the majority of its advertising through internet services such as AutoTrader, Edmunds, and TrueCar, and it has established a business development center dedicated to internet sales. (RT Vol. II. 39:3-11). Cabe Toyota also is in the process of building its internet sales force to increase its percentage of internet sales. (RT Vol. II. 38:21-24).

81. Once Cabe Toyota began focusing on internet sales in 2010, it began selling more vehicles at greater distances from its dealership. (RT. Vol. II. 37:17-38:17). In 2011, Cabe Toyota made less than 50% of its sales within 10 miles of the dealership, and in 2012, it made only 37% of its sales within that 10-mile radius. (RT Vol. IX. 139:23-142:25) (Ex. 2088, pp. R-8). Mr. Cabe and Mr. Duddridge both admitted that Cabe Toyota's focus on internet sales is why it makes the vast majority of its sales at large distances from the dealership. (RT Vol. II. 39:12-24; RT Vol. V. 192:11-23).

82. There also is no evidence that Hooman Toyota's proposed relocation would materially affect Cabe Toyota's sales patterns or the level of competition. Although Hooman Toyota is proposing

to relocate closer to Cabe Toyota, the Proposed Site is only 0.9 miles and 72 seconds of drive time closer to Cabe Toyota than Hooman Toyota's current location. (RT. Vol. III 100:8-17) (Ex. 2056, TMS-Prod_016432). The Proposed Site also is located inside Hooman Toyota's PMA, and Hooman Toyota is not proposing to relocate into Cabe Toyota's PMA. (RT Vol. V. 221:9-11). As such, the proposed relocation would not result in any changes to Cabe Toyota's current PMA. (RT Vol. IV. 128:16-23; RT Vol. X. 113:1-6).

83. Cabe Toyota also makes only a small percentage of its new vehicle sales in the area surrounding the Proposed Site. As set forth above, in 2010, Cabe Toyota made the business decision to begin focusing on internet sales and internet marketing. (RT. Vol. II. 37:17-39:11). Because of this focus, Cabe Toyota makes the majority of its sales at large distances from the dealership instead of in the areas immediately surrounding its facility. (RT Vol. II. 39:12-24; RT Vol. V. 192:11-23). In 2012, Cabe Toyota only made 7.9% of its sales to customers within its own PMA, (Ex. 1219, pp. Cabe 01774), and only 37% of its new vehicle sales to customers within a 10-mile radius of its dealership. (Ex. 2088, pp. R-8) (RT Vol. IX. 139:23-142:25).

84. Cabe Toyota also makes relatively few sales into Hooman Toyota's PMA. As part of its evaluation of the proposed relocation, TMS reviewed the "cross-sell" between Cabe Toyota and Hooman Toyota, which refers to the amount of sales dealers make into the PMAs of other Toyota dealers. (RT Vol. X. 105:14-18). In 2011, Cabe Toyota only made 10.8% of its new vehicle sales into Hooman Toyota's entire PMA. (RT Vol. X. 119:8-22). This percentage decreased in 2012, and Cabe Toyota only made 9.7% of its new vehicle sales into Hooman Toyota's PMA. (Ex. 1219, pp. Cabe 01774). This is a very low amount of cross-sell given the proximity between these two dealers, which indicates that they focus on different markets and customers. (RT Vol. X. 119:23-120:12).

85. TMS also presented several "winner maps," which identify the Toyota dealer that conducts the most business in a particular area, or that "wins" or "dominates" that area. These maps

show that Cabe Toyota is not the dominant dealer for new vehicle sales in any of the census tracts surrounding the Proposed Site, and that Hooman Toyota is already the dominant dealer in those areas. (RT Vol. X. 121:11-122:11) (Ex. 2056, pp. 16437). Similarly, Cabe Toyota is not the dominant dealer for service business in any of the census tracts surrounding the Proposed Site, and Hooman Toyota is already the dominant dealer in those areas. (RT Vol. X. 107:4-16) (Ex. 1109, pp. 17535). Accordingly, Hooman Toyota is not proposing to relocate into an area that is dominated by Cabe Toyota or where Cabe Toyota focuses its sales and service business.

86. In addition, Cabe Toyota has previously demonstrated the ability to operate successfully despite an increase in competition from its neighboring Toyota dealers. In 2008, Carson Toyota completed construction of a new Image USA II compliant facility on the 405 Freeway that greatly increased the size, presence, and visibility of the dealership. (RT Vol. VIII. 72:23-73:9) (RT Vol. XI. 185:23-186:4; 187:9-11; 201:9-14). About that same time, Mr. Nissani purchased Hooman Toyota and significantly improved the sales performance of that dealership from 1,208 vehicles in 2006 to 1,954 vehicles in 2012. (RT Vol. VIII. 73:13-19; RT Vol. VIII. 76:2-79:3; RT Vol. X. 44:17-45:6).

87. Despite this increase in competition from Carson Toyota to the west and Hooman Toyota to the east, Cabe Toyota was able to increase its new vehicle sales performance. (RT Vol. VIII. 82:1-12). Over this same time period, Cabe Toyota's sales increased from 1,148 vehicles in 2006 to 1,514 vehicles in 2012, an increase of more than 360 vehicle sales. (RT Vol. VIII. 81:21-82:12). Indeed, Mr. Duddridge admitted that 2012 was a record year for new vehicle sales at Cabe Toyota. (RT Vol. IV. 179:11-13). Accordingly, it is unlikely that Hooman Toyota's proposed relocation 0.9 miles closer to Cabe Toyota would have a material negative effect on the dealership.

B. Dr. Matthews' Polygon Analysis

88. Carson Toyota's expert witness, Dr. Matthews, performed an analysis of the potential effect of the proposed relocation on Cabe Toyota and its PMA. Dr. Matthews testified that the normal

or "classic" approach for calculating the effect of a proposed relocation would be to identify the census tracts that are currently closer to Cabe Toyota and located in its PMA, but that would "flip" and become closer to Hooman Toyota after the relocation. (RT Vol. VIII. 186:5-17).

89. Dr. Matthews did not perform this "classic" analysis in this case, but instead performed a different analysis that (1) identified the eastern border of Cabe Toyota's PMA and then (2) artificially "moved" that border to the northwest by 0.6 miles, which is half the distance of the proposed relocation. (RT Vol. VIII. 186:18-187:21). Dr. Matthews drew a "polygon" around this area, wherein he alleges Cabe Toyota would lose some of its geographical advantage if Hooman Toyota were permitted to relocate. (RT Vol. VIII. 188:9-25) (Ex. 1500, pp. HoCT_001843). Dr. Matthews then excluded the Port of Long Beach from Cabe Toyota's PMA, and he concluded that if the eastern border of Cabe Toyota's PMA were to move northwest by 0.6 miles as shown in the polygon, Cabe Toyota would lose some of its geographical advantage in 24% of its PMA (excluding the Port of Long Beach). (RT Vol. VIII. 187:22-188:25) (Ex. 1500, pp. HoCT_001843).

90. This analysis is flawed for several reasons. First, Dr. Matthews acknowledged that his polygon analysis is not the normal approach used to identify the impact of a relocation, and he admitted that he has never used this type of "polygon" analysis in any case prior to this action. (RT Vol. IX. 149:3-7). Mr. Farhat from Urban Science further testified that he had never seen this type of analysis performed in any other matter. (RT Vol. XIII. 152:21-25). Accordingly, it appears Dr. Matthews created this analysis for purposes of this particular litigation.

91. Second, Dr. Matthews admitted that his polygon approach only identified areas where Cabe Toyota would lose *some* of its geographical advantage if Hooman Toyota were permitted to relocate. (RT Vol. VIII. 188:9-25; RT Vol. IX. 149:18-25). Dr. Matthews did not analyze which census tracts would actually "flip" and become closer to Hooman Toyota, and he doubts that any of the census tracts would actually become closer to Hooman Toyota. (RT Vol. IX. 128:3-129:7). As such,

the areas identified in Dr. Matthews' polygon would remain closer to Cabe Toyota, and Cabe Toyota would continue to have a geographical advantage in those areas. (RT Vol. IX. 128:3-129:7; RT Vol. XIII. 155:2-14). Dr. Matthews' polygon analysis also does not account for census tracts in which Cabe Toyota would gain a geographic advantage following the proposed relocation. (RT Vol. XIII. 157:7-159:8). As Mr. Farhat testified, when those areas are considered, Cabe Toyota would have a geographic advantage in a larger area after the relocation than it does prior to the relocation. (*Id.*).

92. Finally, Dr. Matthews did not perform any analysis of the number of sales Cabe Toyota actually makes inside his polygon. (RT Vol. IX. 151:23-152:5). Cabe Toyota's sales are not uniformly distributed around the dealership, (RT Vol. IX. 152:6-13), and thus the polygon does not accurately predict the effect of the proposed relocation on Cabe Toyota's sales. TMS's expert witness, Mr. Farhat, calculated the number of sales made by Cabe Toyota in the polygon and determined that between 2009 and 2012, Cabe Toyota only made 2.9% of its sales in that area. (RT Vol. IX. 154:8-155:1). Accordingly, Dr. Matthews' testimony that Cabe Toyota would lose an advantage in 24% of its PMA (excluding the Port of Long Beach) is unreliable, does not accurately represent Cabe Toyota's sales patterns, and exaggerates the effect the relocation may have on Cabe Toyota. (*Id.*).

C. Mr. Watkins' Wedge and Gross Loss Analyses

93. Cabe Toyota's expert witness, Mr. Watkins, also performed an analysis of the potential effect the proposed relocation might have on Cabe Toyota. (*See generally*, Ex. 1227). Mr. Watkins analyzed the distribution of sales made by Cabe Toyota to determine where those sales are located. (RT. Vol. III. 40:7-24). According to his analysis, Cabe Toyota makes more new vehicle sales to the east of its facility than it does to the west. (*Id.*). Mr. Watkins then observed that, in his view, the primary difference between Cabe Toyota's market to the east and west was the presence of Carson Toyota, which is located four miles from Cabe Toyota along the 405 Freeway, whereas there is no comparable dealer on the 405 Freeway to its east. (RT. Vol. III. 40:1-14).

94. In order to evaluate Cabe Toyota's performance in each direction, Mr. Watkins created "wedges" going east and west from its facility. (RT Vol. III. 42:12-21). These wedges were represented by Mr. Watkins as measuring 60 degrees in each direction, although his wedges excluded Cabe Toyota's PMA, the area where it has the geographic advantage to customers. (RT Vol. III. 42:12-21; 53:20-54:2) (Ex. 1227, pp. SW00048). Mr. Watkins then compared the area in the western wedge to the area in the eastern wedge, and he concluded that they are analogous markets with similar populations, income patterns, sales distributions, and dealership coverage. (RT Vol. III. 42:22-44:3).

95. Mr. Watkins testified that Carson Toyota's facility on the 405 Freeway puts it in a position to "intercept" sales to Cabe Toyota's west. (RT Vol. III. 43:21-44:3). He also testified that if Hooman Toyota were permitted to relocate to the 405 Freeway to the east of Cabe Toyota, Hooman Toyota would take an "intercept" position to Cabe Toyota's east analogous to that currently occupied by Carson Toyota to the west. (RT Vol. III. 44:4-22) (Ex. 1227, pp. SW00048).

96. From 2007 to 2012, Cabe Toyota made 14.2% of its sales in the eastern wedge and 5% of its sales into the western wedge toward Carson Toyota. (RT Vol. III. 47:14-23). Mr. Watkins concluded that if Hooman Toyota were permitted to relocate, over time it would intercept customers to the east of Cabe Toyota and reduce Cabe Toyota's sales in that direction to the same extent as it currently makes to the west towards Carson Toyota. (RT Vol. III. 47:24-48:15). If this occurred, Cabe Toyota's sales to the east would decline from 14.2% to 5%, for a total loss of 9.2% of its sales or 488.5 total sales over the six-year period from 2007 to 2012. (RT Vol. III. 48:21-49:12).

97. In his supplemental report, Mr. Watkins analyzed the service business conducted by Cabe Toyota, and he found that Cabe Toyota was performing similar percentages of service business in the eastern and western wedges. (RT Vol. III. 50:5-53:19) (Ex. 1228). As such, Mr. Watkins made a simplifying assumption that his predicted 9.2% reduction in Cabe Toyota's new vehicle sales would occur evenly across all of Cabe Toyota's other operations, including its service business, parts business,

and used car business. (RT Vol. III. 63:18-64:10). Based on his wedge analysis and this simplifying assumption, Mr. Watkins concluded that if Hooman Toyota were permitted to relocate, Cabe Toyota's gross profit would be reduced by 9.2% and that it would lose approximately $455,000 in gross profit based on Cabe Toyota's 2011 financial statements. (RT Vol. III. 63:18-65:14).

98. Based on the evidence at the hearing, Mr. Watkins' analysis does not present a credible assessment of the potential effect of the relocation. Mr. Watkins based his entire analysis on the idea that the 60-degree wedges he developed present analogous markets for Cabe Toyota to the east and west. However, Mr. Watkins did not have any analytical basis for choosing 60-degree angles, but instead chose those angles simply because they are "easy to reference, points of the compass." (RT Vol. III. 113:8-14). Mr. Watkins admitted that if the angle of the wedges were different, it would change the numbers set forth in his analysis. (RT Vol. III. 113:15-19). However, he did not perform any analysis or testing to determine the reasonableness of this angle, and he only evaluated the market based on 60-degree angles. (RT Vol. III. 113:20-24). Moreover, on cross-examination at the hearing, when the angles of the wedges were measured with a protractor, they proved to be 50-degree angles, not 60-degree angles as claimed by Mr. Watkins. (RT Vol. IV. 51:1-52:25).

99. In formulating his wedge analysis, Mr. Watkins also made the decision to exclude Cabe Toyota's PMA from the eastern and western wedges. Mr. Watkins claimed he made this decision because he was more interested in the relocation's effect on Cabe Toyota's business outside its PMA. (RT Vol. III. 53:20-54:2). However, Cabe Toyota is located on the far eastern side of its PMA, and it has more land area in its PMA to the west of its location. (Ex. 1227, pp. SW00048). Mr. Watkins acknowledged that if his analysis had included Cabe Toyota's sales in its PMA, it would change the numbers set forth in his analysis. (RT Vol. III. 152:14-24). However, he did not perform any evaluation of Cabe Toyota's new vehicle registrations in its PMA, the area where it has a geographic advantage, because he did not see the relevance of these registrations. (RT Vol. III. 155:11-20).

100. Moreover, although Mr. Watkins based his analysis on the idea that Carson Toyota occupies an "intercept" position to the west, he did not perform any statistical analysis to determine that the amount of Cabe Toyota sales to the west is due solely to Carson Toyota's facility on the 405 Freeway. (RT Vol. III. 140:13-18). Mr. Watkins also did not analyze Cabe Toyota's sales to the west before Carson Toyota completed construction of its new facility directly adjacent to the 405 Freeway in 2008. (RT Vol. III. 141:1-9) (RT Vol. XI. 180:10-15; 201:15-17). Mr. Watkins admitted that he was not aware of when this facility was completed and that he had incorrectly assumed Carson Toyota had maintained a constant presence on the 405 Freeway. (RT Vol. III. 141:1-143:7). Mr. Watkins further admitted that had he known of this development, he would have wanted to analyze the impact Carson Toyota's renovation had on Cabe Toyota's sales to the west of its store. (RT Vol. III. 148:5-14).

101. Mr. Watkins' wedge analysis also does not account for several other factors. Mr. Watkins acknowledged that Cabe Toyota has two Toyota dealers in the western wedge and no Toyota dealers in the eastern wedge, (RT Vol. III. 156:9-15), which could explain the difference in its sales in those directions. His analysis does not include any evaluation of how many sales Cabe Toyota might gain from customers who would become closer to Cabe Toyota after the proposed relocation, which would change the numbers set forth in his analysis. (RT Vol. III. 163:10-22). Although Mr. Watkins testified that this market is growing and that there will be additional opportunity for sales, (RT Vol. III. 181:5-19), he did not perform any analysis of Cabe Toyota's opportunity to make additional sales. (RT Vol. III. 211:14-19). In addition, his analysis does not account for any increase in Cabe Toyota's sales following the completion of its ongoing facility renovations. (RT Vol. III. 214:8-11).

102. Mr. Watkins' conclusion that Cabe Toyota would lose 9.2% of its business evenly across all of its operations, including its service business, parts business, and used car business, also suffers from several major flaws. Mr. Watkins did not perform any analysis of the location of Cabe Toyota's used vehicle sales, counter parts sales, or wholesale parts sales. (RT Vol. IV. 12:12-19) (RT Vol. IV.

26:11-27:12). He also did not analyze the relative number and location of competing used car dealers or independent repair shops around Cabe Toyota, (RT Vol. IV. 23:1-21; 25:5-9), and he conceded that the proposed relocation would not affect Cabe Toyota's wholesale parts business. (RT Vol. IV. 28:2-9). Mr. Watkins instead made a "simplifying assumption" that any reduction in Cabe Toyota's business would apply uniformly to these departments. (RT Vol. III. 63:18-64:10).

103. Moreover, even if Mr. Watkins' analysis did not suffer from these major flaws, it predicts Cabe Toyota would lose 488.5 sales over a six-year period, which equals about seven sales per month. (RT Vol. III. 210:22-211:13). Mr. Watkins admitted that if this occurred, a loss of seven sales per month would not put Cabe Toyota out of business. (RT Vol. IV. 38:3-39:9). Mr. Watkins also conceded that the proposed relocation would not put Cabe Toyota's investment at risk other than it might not make as much money as it otherwise would have made. (RT Vol. IV. 40:16-21).

D. Mr. Duddridge's Financial Analysis

104. In addition to the analyses performed by Protestants' expert witnesses, Cabe Toyota's Operations Director, Dan Duddridge, performed two separate analyses for this case.

1. <u>New Facility Breakeven Assessment</u>

105. Mr. Duddridge first performed a high-level breakeven analysis of the increase in sales and service business necessary for Cabe Toyota to cover the cost of its facility renovation. (RT Vol. V. 89:13-90:6). According to his analysis, Mr. Duddridge testified that Cabe Toyota is planning to take out a construction loan in the amount of $5,340,000, which would increase its annual rent by $352,512. (RT Vol. V. 90:2-6) (Ex. 1247, pp. 1870). Mr. Duddridge then attempted to calculate the increase in sales and service business necessary to cover this increased rent. (RT Vol. V. 90:7-9). Pursuant to his calculation, Cabe Toyota would need to increase its service and parts business by 29% to cover the full amount of the rent increase, or in the alternative, increase its new vehicle sales business by 35% to cover the full amount of the rent increase. (RT Vol. V. 91:7-11) (Ex. 1247, pp. 1870).

106. Mr. Duddridge next attempted to analyze the amount by which Cabe Toyota's business would increase if it became a top performer in market share in its own PMA. (RT Vol. V. 96:16-25) (Ex. 1247, pp. 1871). According to his calculation, if Cabe Toyota became a top performer in service market share, it would generate $125,661 in additional gross profit in its service department. If Cabe Toyota became a top performer in sales market share in its PMA, it would earn $128,672 in additional gross profit in its sales department. According to his testimony, these increases combined would not cover the full amount of the rent increase associated with Cabe Toyota's renovation. (RT Vol. V. 97:1-10) (Ex. 1247, pp. 1871).

107. Mr. Duddridge's analysis of the cost of Cabe Toyota's renovations is not relevant to whether there is good cause not to permit the proposed relocation. Mr. Duddridge admitted on several occasions that Cabe Toyota's renovation is independent of Hooman Toyota's relocation. (RT Vol. VII. 200:4-19; RT Vol. VIII. 18:16-21). Cabe Toyota entered into a Dealer Agreement agreeing to renovate its facilities in 2001, long before Mr. Nissani acquired Toyota of Long Beach or Hooman Toyota proposed this relocation. (RT Vol. II. 44:11-22) (Ex. 2014, TMS-Prod_000064). As such, Cabe Toyota's renovations are not a consequence of Hooman Toyota's proposed relocation.

108. Mr. Duddridge's analysis also suffers from several fatal flaws. Mr. Duddridge acknowledged that he created this analysis for the purpose of this litigation, and that his objective in this analysis was to show the Board a high number. (RT Vol. VIII. 53:23-54:5). In fact, Mr. Duddridge's analysis appears to overstate the financial effect of Cabe Toyota's renovations in several ways.

109. Although the financial analysis is based on a construction loan in the amount of $5,340,000, Cabe Toyota's estimated construction cost is $4,599,000, about $750,000 less than the loan amount. (RT Vol. VIII. 36:1-6). This additional money is being used to pay off existing financing on property the dealership currently occupies, and it is not part of Cabe Toyota's construction costs. (RT Vol. VII. 204:23-10; RT Vol. VIII. 38:14-40:24). The construction loan also includes

funds to purchase a freeway sign for Cabe Toyota, which Cabe Toyota already was considering before the proposed relocation. (RT Vol. VII. 208:1-9). Accordingly, this analysis includes additional expenses unrelated to Cabe Toyota's efforts to become renovate its facility. (RT Vol. VII. 209:18-22).

110. Although Mr. Duddridge attempted to analyze the amount by which Cabe Toyota would need to increase its business to cover its renovation expenses, he did not account for the amount of business conducted by Cabe Toyota's operations other than new vehicle sales and service. His analysis does not account for Cabe Toyota's used car business, even though it is a major profit center responsible for $1.13 million in gross profit for the dealership annually. (RT Vol. VIII. 54:13-57:11) (Ex. 1247, pp. 1871). The analysis also does not account for parts sales that are not related to a service visit, such as counter sales or wholesale parts. (RT Vol. VIII. 45:1-12) (Ex. 1247, pp. 1871). Wholesale parts is a big part of Cabe Toyota's business, (RT Vol. II. 92:21-93:2), and wholesale parts sales and counter sales account for $812,835 in gross profit annually. (RT Vol. VIII. 46:18-47:11).

111. Mr. Duddridge's analysis of the amount Cabe Toyota would need to increase its new vehicle sales also is flawed. In performing this analysis, Mr. Duddridge determined that Cabe Toyota had made an average of 1,066 new vehicle sales over the past three years, and that Cabe Toyota would need to increase its sales 35% over this average to cover the full costs of the renovation. (RT Vol. VIII. 61:2-20; 65:6-14) (Ex. 1247, pp. 1871). Pursuant to this analysis, Cabe Toyota would need to make an additional 378 sales each year, for a total of 1,439 sales per year to cover the full burden of its renovation. (*Id.*). However, in 2012, Cabe Toyota made 1,507 sales, nearly 70 sales more than the amount Mr. Duddridge concluded would be needed to cover the costs of its renovation. (RT Vol. VIII. 65:15-22). As such, even if Mr. Duddridge's "break even" analysis for Cabe Toyota's renovations was relevant, Cabe Toyota has already achieved the level of sales Mr. Duddridge projected were needed to cover its renovation costs.

2. Analysis of the Effects of its Renovation and the Proposed Relocation

112. Mr. Duddridge's second analysis attempts to evaluate the combined effect that Cabe Toyota's renovations and the proposed relocation would have on its net profit. (Ex. 1243). Like his previous analysis, Mr. Duddridge determined that Cabe Toyota's rent would increase by $352,512 due to its renovation, and he then reduced its net profit to account for this additional expense. (RT Vol. V. 99:22-3) (Ex. 1243). Mr. Duddridge next hypothesized that the proposed relocation would reduce Cabe Toyota's gross profit by 10%, and he reduced its net profit to account for this alleged impact. (RT Vol. V. 100:4-22). According to this analysis, the cost of its renovation and the proposed relocation would cause Cabe Toyota to lose money in each of the years analyzed. (RT Vol. V. 100:4-101:2).

113. Like his first analysis, this one also is flawed in several respects. As discussed above, Cabe Toyota's renovation is independent of Hooman Toyota's proposed relocation and, therefore, is not relevant to whether there is good cause not to permit the proposed relocation. (RT Vol. VII. 200:4-19; RT Vol. VIII. 18:16-21). Even if Cabe Toyota's renovation expenses were relevant, this analysis does not accurately reflect the financial effects of its renovation. As set forth above, Cabe Toyota construction loan includes expenses unrelated to Cabe Toyota's renovation, including the purchase of a freeway sign and paying off already-existing financing on dealership property. (RT Vol. VII. 204:23-10; RT Vol. VII. 208:1-9; RT Vol. VIII. 38:14-40:24). The analysis also does not attempt to account for any increase in business Cabe Toyota may receive from its new facility. (RT Vol. VII. 220:4-7).

114. Mr. Duddridge also based his analysis on his personal expectation that Cabe Toyota would lose 10% of its gross profit if Hooman Toyota were permitted to relocate. (RT Vol. V. 100:4-22). He based this belief on a variety of factors, including Mr. Watkins' report and the belief that Cabe Toyota would lose a proximity advantage in 10% of the census tracts in its PMA. (RT Vol. VIII. 11:22-12:11; 13:5-25). However, Mr. Duddridge did not perform any market analysis to determine that Cabe Toyota might lose 10% of its business. In addition, Mr. Duddridge's analysis attempted to

calculate the effect of the proposed relocation looking backwards from 2006 to 2012, including years when the economy was depressed. (RT Vol. VII. 225:9-14) (Ex. 1243). He did not account for any potential increases in Cabe Toyota's business based on future improvement in sales, the upturn in the economy, Cabe Toyota's renovation, or the fact that Cabe Toyota would gain proximity to customers in certain areas after the proposed relocation. (RT Vol. VIII. 12:12-14; RT Vol. VII. 224:20-226:22).

3. Mr. Walter's Evaluation of Mr. Duddridge's Financial Analyses

115. As part of his work in this case, Mr. Walter reviewed Mr. Duddridge's analyses and analyzed the potential effect of the renovation. In order to evaluate the financial impact of the renovation, assumed Cabe Toyota's annual rent would increase by $352,000 as projected by Mr. Duddridge. Mr. Walter then compared Cabe Toyota's current rent against the average rent for Toyota dealers in the same Region and of the same size (or class) as Cabe Toyota. (RT Vol. XII.110:21-111:1). This analysis revealed that Cabe Toyota's current rent expenses are substantially below average when compared to other Toyota dealers in the same Region and class. (RT Vol. XII. 111:2-19) (Ex. 2087, pp. Cabe Supp 1). In addition, Cabe Toyota's rent expenses would remain below average even after it completed the renovation and its annual rent increased by $352,000. (RT Vol. XII. 111:2-19; 112:10-113:7) (Ex. 2087, pp. Cabe Supp 1-3).

116. Mr. Walter also analyzed the magnitude by which Cabe Toyota's alleged rent increase would affect its overall rent structure. Currently, Cabe Toyota's dealership expenses are approximately $6 million per year or $500,000 per month. (RT Vol. XII. 113:11-24) (Ex. 2087, pp. Cabe Supp 4). According to its allegations, the renovations would increase Cabe Toyota's rent by $352,000 per year or $29,000 per month. (RT Vol. XII. 113:11-114:7). This potential rent increase represents a relatively small portion of its overall expense structure and would not be a critical new expense that will overwhelm the dealership or make it less profitable. (RT Vol. XII. 113:11-114:7).

117. Mr. Walter also testified that Mr. Duddridge's analysis does not account for any reduction in expenses as a result of having an improved dealership facility, such as increased efficiency. (RT Vol. XII. 114:16-115:23). Accordingly, Mr. Duddridge's analysis does not provide a complete and accurate picture of the potential effects of Cabe Toyota's renovation. (*Id.*).

E. Mr. Walter's Analysis of Cabe Toyota's Financial Analysis

118. In addition to reviewing Mr. Duddridge's financial analyses, Mr. Walter also reviewed Cabe Toyota's financial records and provided expert testimony on its financial condition, ability to compete, and the opportunities within its existing operations. (RT Vol. XII. 18:6-16). Mr. Walter concluded that Cabe Toyota is a large, profitable, and growing dealership. (RT Vol. XII. 24:18-25:2). Cabe Toyota's total sales have increased from $25 million in 2009 to more than $60 million in 2012, and its new vehicle sales have almost tripled during that same time period. (RT Vol. XII. 28:2-9; 33:4-13) (Ex. 2086, pp. Cabe 2-3). Although some of this growth may be attributable to the economy, Cabe Toyota's new vehicle sales and sales revenues have grown faster than those of the other Toyota dealers in the same class and Region. (RT Vol. XII. 35:23-36:7).

119. Mr. Walter also concluded that Cabe Toyota has significant financial flexibility and ability to compete in the market. In performing this assessment, Mr. Walter performed a "breakeven" analysis that evaluated how many new vehicles Cabe Toyota must sell to cover its fixed costs or "break even" after accounting for the profits of its service and parts operations. (RT Vol. XII. 69:9-71:2) (Ex. 2086, pp. Cabe 17). In 2012, Cabe Toyota sold 809 new vehicles more than necessary to cover its fixed costs or break even. (RT Vol. XII. 75:1-8). In addition, Cabe Toyota's net working capital and cash exceed TMS's capitalization standards, and Cabe Toyota's levels of cash compare favorably to its monthly expenses. (RT Vol. XII. 77:1-79:9) (Ex. 2086, pp. Cabe 18-19). These factors demonstrate that Cabe Toyota has the financial ability to run the day-to-day operations and has a favorable cash position. (RT Vol. XII. 75:9-76:1; 77:17-22; 79:3-9). In addition, Cabe Toyota has the financial

flexibility and ability to compete in the event Hooman Toyota is permitted to relocate. (RT Vol. XII. 75:9-76:1; 77:17-22; 79:3-9; 89:6-12).

120. Mr. Walter also identified several opportunities for Cabe Toyota to potentially increase its profitability and financial ability to compete. By comparing Cabe Toyota's financial statements to those of other Toyota dealers in the same class and Region, Mr. Walter demonstrated that Cabe Toyota has the opportunity to improve its net profit as a percentage of sales (RT Vol. XII. 38:1-12) (Ex. 2086, pp. Cabe 7), increase its profits per new vehicle sold, (RT Vol. XII. 47:24-48:16) (Ex. 2086, pp. Cabe 8), increase its advertising expenditures to attract more customers, (RT Vol. XII. 53:9-16) (Ex. 2086, pp. Cabe 10), improve salesperson compensation, (RT Vol. XII. 57:16-58:24) (Ex. 2086, pp. Cabe 12), increase its used vehicle sales, (RT Vol. XII. 61:20-62:4) (Ex. 2086, pp. Cabe 13-14), and reduce expenses. (RT Vol. XII. 62:17-66:15). Accordingly, in addition to its current financial flexibility, Cabe Toyota also has opportunities to make changes that would allow it to continue to grow and improve its financial ability to compete. As such, there is no reason to believe that Hooman Toyota's proposed relocation would have any material financial effect on Cabe Toyota or make it unprofitable.

V. <u>Mr. Farhat's Market Analysis</u>

121. In addition to the expert financial analysis performed by Mr. Walter, TMS presented the expert testimony of Sharif Farhat from Urban Science concerning the performance of the dealers and opportunity in the RMA. As set forth above, Mr. Farhat has been working for Urban Science and evaluating motor vehicle dealer networks for 27 years. (RT Vol. XIII. 25:21-26:17). In this case, Mr. Farhat employed an analysis that has been developed and utilized by Urban Science over the past 30 to 35 years and is used on a daily basis in the normal course of business to analyze motor vehicle markets for nearly every motor vehicle manufacturer in the world. (RT Vol. XIII. 23:17-24:3; 31:19-32:6).

122. Mr. Farhat's analysis evaluates the actual new vehicle sales and service performance of the Toyota dealers in the RMA and compares that performance to the opportunity available in the

market. This allows him to evaluate if there is an inadequacy in the market, the potential causes of any inadequacy, the proposed relocation as a solution to any such inadequacy, and the potential impact of the proposed relocation on existing dealers and consumers. (RT Vol. XIII. 29:22-31:4).

123. In order to determine if the dealers in the RMA are adequately serving the market, Mr. Farhat first selected a benchmark against which to compare their performance. Mr. Farhat reviewed several potential benchmarks for measuring the performance of these dealers, and he ultimately selected the average of performance of the Toyota dealers whose PMAs are inside or touch the 10-mile RMA excluding Cabe Toyota and Hooman Toyota's PMAs, which he referred to as the "10-mile PMAs." (RT Vol. XIII. 53:2-54:20). Mr. Farhat selected this benchmark because it is the most locally situated comparison area, and thus better captures consumer preferences in the area, and is an area where Toyota is being adequately represented. (RT Vol. XIII. 53:2-55:1). Mr. Farhat also explained why he excluded the Cabe Toyota and Hooman Toyota PMAs from his comparison area. Because he is measuring the performance of the Toyota brand in the Long Beach area and evaluating if the proposed relocation there is appropriate, it is important to remove the area being studied from the benchmark. Otherwise, the analysis would compare that area to itself, and it would always reach the conclusion that the area being analyzed was performing at the exact level of the benchmark. (RT Vol. XIII. 55:12-25).

124. After selecting his benchmark, Mr. Farhat then performed a "segmentation" analysis, which takes into account the age and models of the particular vehicles being sold in the RMA compared to the comparison area. Segmentation analysis evaluates the types of vehicles being purchased by consumers in the area, and thus it accounts for all consumer preferences and demographic variables in the market. (RT Vol. XIII. 57:4-23; 61:18-62:25).

125. After selecting a benchmark and adjusting for segmentation, Mr. Farhat measured the performance of the Toyota dealers against this benchmark. Mr. Farhat concluded that the entire RMA has been performing below the benchmark average for a long period of time. (RT Vol. XIII. 80:22-

81:7). Mr. Farhat also determined that Hooman Toyota's PMA and Cabe Toyota's PMA are both performing below benchmark average. Within Hooman Toyota's PMA, the Toyota brand is performing approximately at 88.95% of the benchmark. (RT Vol. XIII. 68:24-70:8). Similarly, the Toyota brand is performing at approximately 86.1% of the benchmark in Cabe Toyota's PMA. (RT Vol. XIII. 70:24-72:11). Based on this evaluation, the Toyota dealers in the RMA and the area surrounding the Long Beach PMAs are not making the number of new vehicle sales expected in this area. (RT Vol. XIII. 76:6-81:11). Accordingly, the existing Toyota dealer network is not adequately representing the brand in the Long Beach PMAs or the RMA, and there is additional opportunity that could be captured without harming the existing Toyota dealers. (RT Vol. XIII. 72:15-20; 82:12-21).

126. In addition to evaluating the new vehicle sales performance, Mr. Farhat also analyzed the service performance and opportunity for the dealers involved in this action. In order to conduct this analysis, Mr. Farhat first analyzed the dealer's service market share, which is defined as the percentage of the Toyota UIO in the dealer's PMA that it is capturing for service business. (RT Vol. XIII. 85:15-86:6) (Torres Depo. 69:2-10). In Hooman Toyota's PMA, Hooman Toyota services approximately 30% of the Toyota UIO in its PMA, approximately 27% of the UIO are being serviced by other Toyota dealers, and approximately 43% of the UIO are not being serviced by any Toyota dealer. (RT Vol. XIII. 86:14-6) (Ex. 2088, pp. A-28). This indicates that there are additional UIO in the Hooman Toyota PMA that are available to be captured and serviced by Toyota dealers. (*Id.*).

127. There also is additional service opportunity available in Cabe Toyota's PMA and Carson Toyota's PMA. In Cabe Toyota's PMA, Cabe Toyota is capturing about 20% of the UIO in that PMA, while approximately 30% of the UIO are being serviced by other dealers, and approximately 50% of the UIO are not being serviced by any Toyota dealer. (RT Vol. XIII. 87:9-17). (Ex. 2088, pp. A-29). In Carson Toyota's PMA, Carson Toyota is capturing about 30% of the UIO in that PMA, while approximately 23% of the UIO are being serviced by other dealers, and approximately 46% of the UIO

are not being serviced by any Toyota dealer. (RT Vol. XIII. 87:25-88:11) (Ex. 2088, pp. A-30). This confirms that the existing dealers area are not adequately representing the Toyota brand, and that there is additional service opportunity available for these dealers. (RT Vol. XIII. 88:12-89:4).

128. Mr. Farhat then evaluated the potential causes of this inadequacy. In order to do so, Mr. Farhat began by evaluating the characteristics of the market. As set forth above, there is significant population density in the RMA and the Long Beach area. (RT Vol. XIII. 89:16-90:4). There are currently 607,000 households in the RMA, and from 2010 to 2012, this number has been growing and is projected to grow in the coming years. (RT Vol. XIII. 92:1-94:1). This indicates that there likely will be more opportunity for new vehicle sales and service business in this area. (*Id.*).

129. Mr. Farhat also analyzed the actual Toyota registrations in the Long Beach area and determined that they have increased significantly from 2009 to 2012. Although some of this increase is due to the improvement in the economy, new vehicle sales are expected to continue to grow over the coming years. (RT Vol. XIII. 98:6-101:23). In 2012, there were approximately 14.5 million vehicle registrations nationwide, and this number is expected to grow to 16.3 million registrations in 2015. (RT Vol. XIII. 102:5-17). Indeed, the industry is currently projecting a total of 15.5 million registrations in 2013. (RT Vol. XIII. 102:5-17). Accordingly, even if the Toyota brand does not increase its market share, the number of expected registrations in the market is expected to increase. In regards to the RMA specifically, Mr. Farhat projected that Toyota vehicle sales would increase from 14,800 units in 2012 to approximately 16,692 units based solely on the economy. (RT Vol. XIII. 101:4-102:25).

130. Mr. Farhat also analyzed the dealer count in the RMA. The South Bay market area has one of the highest levels of sales opportunity per dealer of any market in the State of California. (RT Vol. XIII. 103:14-104:12) (Ex. 2088, pp. A-48). Mr. Farhat also compared the number of Toyota dealers in the Long Beach area to the dealer count in the benchmark area, and he determined that 2.5 Toyota dealers in the Long Beach area would be the appropriate dealer count. (RT Vol. XIII. 104:25-

105:19) (Ex. 2088, pp. A-49). Given this calculation, the level of opportunity in the market, and the expected growth, the Toyota brand needs at least two strong dealers in the Long Beach area that are operating out of the right facilities and in the right locations. (RT Vol. XIII. 105:20-106:7).

131. Mr. Farhat next analyzed the ability of the dealers in the RMA to capture sales based on their current locations. Toyota dealers in the RMA have a consistent pattern of being most sales effective within 0 to 4 miles of their location. (RT Vol. XIII. 109:13-22) (Ex. 2088, pp. A-50 to A-69). The reason for this pattern is that customers generally want to go to the nearest dealer, and there is no reason to travel further if the closest dealers offer value, good facilities, and customer service. (*Id.*). Cabe Toyota, however, is significantly less sales effective within 0-4 miles of its location than other dealers. (RT Vol. XIII.115:3-14) (Ex. 2088, pp. A-72 to A-73). This sales pattern demonstrates that Cabe Toyota is less focused on making sales locally and is more focused on making sales throughout the market. (RT Vol. XIII. 115:20-116:10). This focus on sales outside of its local area is the likely cause of the inadequate performance in the Long Beach market. (RT Vol. XIII. 118:7-16).

132. Mr. Farhat next evaluated the proposed relocation of Hooman Toyota as a potential solution to the inadequacy in the market. Mr. Farhat determined that the proposed relocation would be a good solution to the inadequacy in the market because it would place Hooman Toyota in a state-of-the-art facility that is more visible, has its operations consolidated into one location, is larger, has more parking, and would provide a great improvement to customer convenience. (RT Vol. XIII. 128:9-16). Moreover, because Cabe Toyota makes few sales in the area its dealership, Hooman Toyota's relocation 0.9 miles closer to Cabe Toyota likely would not affect its sales. (RT Vol. XIII. 116:11-22).

133. Finally, Mr. Farhat evaluated the potential impact of the proposed relocation on the other dealers in the RMA. In order to do so, Mr. Farhat measured the opportunity available in the market to determine if Hooman Toyota could make additional sales from the Proposed Site without harming other Toyota dealers, particularly Cabe Toyota and Carson Toyota. (RT Vol. XIII. 128:17-129:21).

134. Based on the underperformance of the Toyota dealers in the RMA alone, in 2012, there was opportunity for the existing Toyota dealers to make an additional 1,620 sales without capturing sales from each other. (RT Vol. XIII. 130:20-131:4). In addition to this additional opportunity, another source of potential sales for the dealers in the RMA is insell, or the number of Toyota sales made in the RMA by Toyota dealers located outside the RMA. (RT Vol. XIII. 131:10-20) (Ex. 2088, pp. A-80.1 to A-81.1). These are sales made by less convenient dealers to customers into the RMA. (RT Vol. XIII. 131:21-132:4). In 2012, the total insell into the RMA was 5,695 vehicles. (*Id.*). Excluding the dealers located in the 10-mile PMAs, which provides a more conservative estimate, the total insell into the RMA was 3,800 vehicles. (RT Vol. XIII. 133:3-13) (Ex. 2088, pp. A-81.1).

135. Given the number of lost sales in the RMA and the insell into the RMA, there are more than 5,000 units of additional sales opportunity available to dealers in the RMA. (RT Vol. XIII. 133:22-134:4). In 2012, Hooman Toyota made 1,284 new vehicle sales, but according to the benchmark average, it was expected to make 1,458 sales. (RT Vol. XIII. 135:13-22). If Hooman Toyota improved to average after the proposed relocation, it would make 174 additional sales, which is well within the levels of opportunity available in the market. (*Id.*) (Ex. 2088, pp. A-82). If Hooman Toyota improved to the level of sales made by the largest and most aggressive dealer in the RMA (which is unlikely), it would make an additional 1,259 sales, which is 23.2% of the opportunity available in the market. (RT Vol. XIII. 136:23-137:17) (Ex. 2088, pp. A-83). Accordingly, it is highly unlikely that Hooman Toyota's proposed relocation would negatively affect Cabe Toyota, Carson Toyota, or the other existing Toyota dealers. (RT Vol. XIII. 137:14-25).

136. Cabe Toyota's expert, Mr. Watkins, criticized Mr. Farhat's analysis and his use of a 10-Mile PMA benchmark. Mr. Watkins testified that Mr. Farhat appeared to have selected his benchmark arbitrarily, and that the Long Beach area is well penetrated by the existing dealers. (RT Vol. III. 74:15-75:15). However, Mr. Watkins conceded that the Toyota brand does not penetrate the market in

Long Beach as well as it does in other areas. (RT Vol. III. 74:15-75:15; 102:2-22). In addition, Mr. Farhat testified at length that he tested the reasonableness of his benchmark and confirmed his results by using other more conservative benchmarks, including the San Gabriel market and the Los Angeles metro. (RT Vol. XIII. 53:2-55:7; 73:17-75:17; 83:4-84:9; 138:1-25). Indeed, Carson Toyota's own expert witness, Dr. Matthews, used a very similar comparison area in his report. (RT Vol. IX. 11-24).

137. Dr. Matthews opined that Mr. Farhat's opportunity analysis is inaccurate because it fails to account for the brand preferences of Asians and Hispanics. Dr. Matthews testified that Asian and Hispanic households have a strong preference for Toyota vehicles. (RT Vol. IX. 46:11-47:14). He also stated there are less Asian and Hispanic households in Long Beach, and that once you adjust for this demographic factor, the amount of shortfall or opportunity in the Long Beach area is reduced to 5 vehicles rather than the 1,620 lost sales identified by Mr. Farhat. (RT Vol. I. 47:15-49:10).

138. However, there are several flaws in this analysis. Dr. Matthews acknowledged that this is the first time he has ever used an Asian and Hispanic adjustment together in the same analysis. (RT Vol. IX. 190:4-7). When Dr. Matthews performed this analysis, he calculated the Asian factor first, then calculated the Hispanic factor second. (RT Vol. IX. 200:15-24). However, if Dr. Matthews were to switch the order of his analysis, he would get a different result. (RT Vol. IX. 201:7-14). This factor alone demonstrates the unreliability in Dr. Matthews' calculation.

139. Dr. Matthews also testified that in the business world, it is important to review all demographic factors, including age, education, income, job type, and other similar factors. (RT Vol. IX. 190:8-12). However, Dr. Matthews did not analyze any of those factors, and he did not perform any analysis of the other ethnic groups comprising the Long Beach area. (RT Vol. IX. 190:8-192:8). Because his analysis selectively chooses certain variables and ignores others, it does not provide a complete and accurate picture of the composition of the market or the shortfall in the area. (RT Vol. XIII. 62:8-16)

140. In contrast, Mr. Farhat's segmentation analysis accounts for all demographic factors and variables. (RT Vol. XIII. 61:14-62:25). Specifically, segmentation analysis evaluates the actual types of vehicles being purchased by customers in that particular area and, therefore, accounts for the exact preferences of the consumers in that area in light of their ethnicity, age, education, and income levels. (RT Vol. XIII. 57:4-20; 61:14-62:25). Accordingly, Mr. Farhat's analysis provides a more proven and credible analysis of the consumer preferences and opportunity in the market.

VI. <u>Mr. Stockton's Market Analysis</u>

141. Intervenor retained Mr. Edward Stockton from The Fontana Group to provide expert testimony regarding the Toyota dealer network and the proposed relocation. Mr. Stockton is the Vice President and Director of Economic Services for The Fontana Group, and he serves on the company's Board of Directors. (RT Vol. VI. 9:16-24). Mr. Stockton has been working for The Fontana Group since 1998 and has testified before the Board several times, each time for the Protestant dealer. (RT Vol. VI. 9:14-10:10). Mr. Stockton also indicated that he conducted his analysis in this case exactly as he would have if he was retained by a dealer that was protesting a relocation. (RT Vol. VI. 18:24-8).

142. Mr. Stockton analyzed Toyota's market share in the RMA and the area surrounding Hooman Toyota and Cabe Toyota. He first analyzed the Toyota registrations in the RMA, and Toyota's market share is performing below market average near the center of the RMA around Hooman Toyota and Cabe Toyota. (RT Vol. VI. 46:2-47:7) (Ex. 254, pp. Tab 7 Pages 1-3). Mr. Stockton also performed a more localized analysis of Toyota's market share in the RMA using a regression analysis, which is a statistical tool used to test the relationship of one variable to other variables. (RT Vol. VI. 49:3-50:4). This analysis showed that Toyota's market share becomes lower in close proximity to Cabe Toyota and Hooman Toyota. (RT Vol. VI. 53:3-16) (Ex. 254, pp. Tab 8 Page 2).

143. In order to determine the potential causes of this depressed market share, Mr. Stockton observed the current dealership facilities of Hooman Toyota and Cabe Toyota. Hooman Toyota's

current sales facility has low functionality, especially in comparison to the size of the market. (RT Vol. VI. 56:6-23). The facility has a one-car showroom, limited on-site inventory, porters running cars between locations, long customer wait times, and other efficiency issues. (*Id.*). Similarly, Hooman Toyota's service facility has a very small and short service drive, has customers waiting in the street, a confusing layout for customers, and is narrow and crowded (RT Vol. VI. 56:24-60:22). Overall, the facility is vastly constrained and undersized relative to its volume of business, and results in redundant efforts, excess costs, and other operational deficiencies. (RT Vol. VI. 65:12-66:10). Similarly, Cabe Toyota currently operates out of a small, dated, and lightly branded facility. (Ex. 254). These facility and operational issues are consistent with Mr. Stockton's finding of depressed market share surrounding these dealers, and suggests underinvestment by these two dealers. (*Id.*).

144. Mr. Stockton also analyzed the proposed relocation's effect on customer convenience. Currently, the average Toyota consumer drives 4.29 minutes to reach the nearest Toyota dealership. After the proposed relocation, the average Toyota consumer would have to drive 4.8 minutes, or 0.5 minutes longer, to reach the nearest dealership. (RT Vol. VI.85:25-86:15). This 30-second change in drive time will be unperceivable to customers and will be overwhelmed by the increase in customer convenience afforded by the facility improvements at the Proposed Site. (RT Vol. VI. 86:16-87:19).

145. Mr. Stockton also analyzed the proposed relocation's potential effect on other Toyota dealers in the RMA. In order to do so, he used a gravity model that analyzes each dealer's relative abilities to draw customers depending on the mass of the dealer, the size of the market, and proximity. (RT Vol. VI. 88:15-93:8) (Ex. 254). Applying this model in Los Angeles and Orange Counties, Mr. Stockton determined that the proposed relocation would improve Hooman Toyota's share of proximity in the market by 2.75%. (RT Vol. VI. 99:5-102:8) (Ex. 254, pp. Tab 14 Pages 1-3). This gain would result in a corresponding loss in proximity that would be shared by the other Toyota dealers. Cabe Toyota's share of this reduction in proximity would be approximately -0.5%, and Carson Toyota's

share of this reduction would be -0.35%. (RT Vol. VI. 99:5-102:8) (Ex. 254, pp. Tab 14 Pages 1-3). This model generated very similar results in the 10-Mile RMA, and Cabe Toyota and Carson Toyota both would experience a reduction in proximity of less than 1%. (RT Vol. VI. 102:9-103:16) (Ex. 254, pp. Tab 14 Pages 4-6). Accordingly, the change in proximity due to the proposed relocation would have an insignificant impact on Cabe Toyota or Carson Toyota. (RT Vol. VI. 103:9-16).

146. Mr. Stockton also analyzed the potential effect of the proposed relocation on Cabe Toyota and Carson Toyota's new vehicle sales. In performing this analysis, Mr. Stockton analyzed three separate scenarios to evaluate the potential effect of the proposed relocation. The first scenario evaluated the effect of Cabe Toyota and Carson Toyota based solely on the relocation of Hooman Toyota. (RT Vol. VI. 133:5-6). Under that scenario, the proposed relocation would cause a -0.32% reduction in Cabe Toyota's new vehicle sales and a -0.27% reduction in Carson Toyota's sales. (RT Vol. VI. 134:1-12) (Ex. 254, pp. Tab 17 Page 1).

147. The second scenario assumed Hooman Toyota would be able to improve its sales performance to the level of Carson Toyota and South Bay Toyota, two strong dealers. (RT Vol. VI. 133:5-20). Under that scenario, the proposed relocation would result in a -1.23% reduction in Cabe Toyota's new vehicle sales and a -0.88% reduction in Carson Toyota's sales. (Ex. 254, pp. Tab 17 Page 1). The third scenario assumed Hooman Toyota improved its sales performance but did not take any sales from other brands. (RT Vol. VI. 133:21-25). Under that scenario, the proposed relocation would result in a -2.79% reduction in Cabe Toyota's new vehicle sales and a -1.57% reduction in Carson Toyota's sales. (Ex. 254, pp. Tab 17 Page 1). This minimal effect on Cabe Toyota and Carson Toyota is consistent with the short distance of the relocation, the high dealer density in the RMA, and Cabe Toyota's focus on internet sales. (RT Vol. VI. 139:2-9).

Findings Related to Whether it is Injurious to the Public Welfare for the Franchise to be Relocated
(Veh. Code § 3063(c))

148. Protestants also allege the proposed relocation would be injurious to the public welfare because it would move Hooman Toyota further away from certain of its customers and thus would decrease customer convenience. However, as discussed above, Hooman Toyota is proposing to move a short distance, and that slight move is insignificant and far outweighed by the improvement to its facility and other benefits to the public. (*See* Infra ¶¶ 57-65).

149. The proposed relocation will result in the public having a newly renovated and modern dealership facility that is a significant improvement over Hooman Toyota's current facility. As set forth in detail above, the Proposed Site is located adjacent to the 405 Freeway and has increased freeway access and visibility for customers. (RT Vol. X. 84:19-21). All of Hooman Toyota's operations will be under one roof, and customers no longer will have to cross a busy street to travel between its sales and service operations. (RT Vol. X. 44:9-16). The Proposed Site will have more room for customers, more inventory on site, increased customer amenities, and increased parking, which will reduce customer wait times and alleviate the need for customers to park in the 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) (RT Vol. IX. 220:2-22). The relocation will also move Hooman Toyota off the traffic circle, which is confusing for customers and known for accidents. (RT. Vol. X. 41:8-15; RT Vol. XIV. 56:23-57:7). Illustrative of this fact, Cabe Toyota recently issued an advertisement telling customers to "Avoid the Traffic Circle." (Ex. 2066).

150. In addition to providing the public with improved dealership facilities, if permitted to relocate, Hooman Toyota anticipates hiring additional employees, including employees in higher paying positions, which is beneficial for the community. (RT Vol. XIV. 116:5-24). The proposed relocation would keep Hooman Toyota within the City of Long Beach, and it would be renovating an abandoned building previously used by a Cadillac dealership that has moved to a new location. (RT Vol. XIV.

82:14-24; RT XIII. 168:10-17). By moving to this new facility, Hooman Toyota also anticipates that it will be able to reduce its facility costs, which will allow the dealership to provide more customer benefits, offer customers more discounts and better prices, provide improved employee benefits, and perform additional facility upgrades. (RT Vol. XIV. 198:1-8; 199:22-200:3). Accordingly, the proposed relocation will not have any injurious effect on the public welfare, and in fact will have a positive effect on the public welfare.

Findings Related to Whether the Toyota Franchisees in the Relevant Market Area are Providing Adequate Competition and Convenient Consumer Care for the Motor Vehicles in the Relevant Market Area, Including the Adequacy of Motor Vehicle Sales and Service Facilities, Equipment, Supply of Vehicle Parts, and Qualified Service Personnel (Veh. Code § 3063(d))

151. Protestants allege that the proposed relocation should be denied because the existing Toyota dealers in the RMA are currently providing adequate competition and convenient consumer care. Protestants provided testimony from both of their experts in support of this claim.

I. Adequacy of Sales and Service Performance

152. Protestants' expert witnesses both testified that TMS is currently well represented in the RMA in terms of new vehicle sales. Toyota has more dealers in the RMA than any other manufacturer, and no other manufacturer has two dealerships in the City of Long Beach. (RT Vol. III. 21:18-22:18). There are 54 total dealerships in the RMA, and eight of those are Toyota dealerships. (RT Vol. III. 27:14-25). Accordingly, there is strong inter-brand and intra-brand competition in the RMA. (RT Vol. III. 21:18-22:18). Both of these experts also testified that Protestants and Hooman Toyota are making relatively high levels of retail sales, and that the sales efficiency of all three dealers is above average and exceeding TMS's expectations. (RT Vol. III. 28:5-30:2; RT Vol. VIII. 218:12-24). Accordingly, they allege it is unlikely the dealers are missing any sales in the RMA. (RT Vol. VIII. 218:25-219:8).

153. Although Protestants allege that the existing Toyota dealers are providing adequate representation, Cabe Toyota's expert, Hooman Toyota's expert, and TMS's expert agreed that Toyota's

market share near Cabe Toyota and Hooman Toyota is below average. (RT Vol. III. 75:1-5; RT Vol. XIII. 68:24-72:20; RT Vol. VI. 53:3-16) (Ex. 254, pp. Tab 8 Page 2). As Mr. Farhat demonstrated, there is significant opportunity for the existing Toyota dealers to make additional new vehicle sales in the RMA without capturing sales from each other. (RT Vol. XIII. 130:20-131:4; RT Vol. XIII. 133:3-13) (Ex. 2088, pp. A-81.1). In addition, Cabe Toyota is not adequately capturing the Toyota new vehicle sales within its own PMA and the area surrounding its dealership. (Ex. 1219, pp. Cabe 01774) (Ex. 1220, pp. Cabe 01777). Mr. Duddridge even admitted that Cabe Toyota is not doing very well capturing the Toyota sales available in its PMA. (RT Vol. IV. 178:20-23).

154. In addition, there is significant opportunity for additional service business available for these dealers in the market. As Mr. Farhat determined, there are numerous Toyota UIO in Carson Toyota's PMA, Cabe Toyota's PMA, and Hooman Toyota's PMA that are not currently being captured by those dealers or any other Toyota dealers, and which represents additional service opportunity for those dealers. (RT Vol. XIII. 86:14-89:4) (Ex. 2088, pp. A-28 to A-30). The mangers of Carson Toyota and Cabe Toyota's service departments confirmed this conclusion. Cabe Toyota's service manager admitted that Cabe Toyota's service market share is currently below the average levels for the Region and the Los Angeles metro. (Torres Depo. 76:18-77:13). Moreover, Cabe Toyota currently is not servicing 4,937 of the 6,300 Toyota UIO in its PMA. (Torres Depo.75:23-76:10). Accordingly, Mr. Torres admitted there is significant opportunity for Cabe Toyota to increase its service business. (Torres Depo.76:14-17). Carson Toyota's fixed operations director also testified that if other Toyota dealers are servicing a large percentage of the UIO in its PMA, that would be opportunity for Carson Toyota to improve its service business. (Vogel Depo. 61:2-24). Accordingly, the existing Toyota dealers are not adequately serving the market in regards to new vehicle sales or service.

II. Adequacy of Existing Dealership Facilities

155. Dr. Matthews also opined that the existing Toyota dealer facilities in the RMA are adequate to serve consumers. In support of this conclusion, Dr. Matthews testified that Hooman Toyota's current dealership facilities "looked pretty good" from the outside. (RT Vol. IX. 95:7-11). However, Dr. Matthews admitted that he did not go inside Hooman Toyota's current dealership facilities or observe its operations, and that he had no basis for contradicting other testimony regarding the operational and customer issues associated with those facilities. (RT Vol. IX. 95:14-99:9).

156. Dr. Matthews also opined that Hooman Toyota's proposed facility is too large for the market. Dr. Matthews compared the proposed facility to TMS's facility guides and concluded that the size of the proposed facility is appropriate for a dealer that sells 3,000 or 4,000 new vehicles per year, which is two to three times more than Hooman Toyota. (RT Vol. VIII. 194:16-195:4). Dr. Matthews also reviewed TMS's guidelines for service stalls, which suggest one service stall for every 400 UIO. (RT Vol. VIII. 192:24-193:21). Using this figure, Protestants and Hooman Toyota need a total of 67 service bays to adequately serve the market. (RT Vol. VIII. 193:20-194:2). Following Hooman Toyota's proposed relocation, these three dealers would have a total of 155 service bays, about 90 more than suggested under TMS's guides. (RT Vol. VIII. 192:24-194:15). Dr. Matthews testified that this indicates there will be significant idle capacity in the market, and raises a question as to whether the size of the proposed facility is appropriate for the market. (RT Vol. VIII. 194:9-15; 217:5-25).

157. Finally, Dr. Matthews compared Hooman Toyota's current facility to the proposed facility and determined that the proposed facility is 90% larger than Hooman's current facility. (RT Vol. IX. 191:19-22). Although Dr. Matthews originally believed this larger facility would increase Hooman Toyota's fixed costs, he discovered that Hooman Toyota's fixed costs and rent expenses will actually decrease upon moving into the proposed facility. (RT Vol. VIII. 213:11-214:2). Dr. Matthews stated that if Hooman Toyota's costs decrease following the relocation, it will be able to

cover all of its fixed costs quickly, and he can "imagine a scenario" where Hooman Toyota would attempt to maximize on these savings by charging lower prices. (RT Vol. VIII. 213:2-216:1). Under this scenario, Dr. Matthews suggested that the surrounding dealers would not be able to compete with Hooman Toyota's prices, and they would lose sales and suffer idle capacity at their facilities. (*Id.*). This idle capacity could ultimately render Cabe Toyota's facility unnecessary and redundant. (RT Vol. VIII. 233:16-234:14).

158. Although Protestants allege Hooman Toyota's proposed facility will be much larger than its current facility, it is undisputed that Hooman Toyota's current facility is significantly smaller than TMS's minimum facility guides. (Ex. 1009, pp. TMS-Prod_008736) (RT Vol. X. 40:14-16). Dr. Matthews admitted that Hooman Toyota "needs a larger facility" to comply with TMS's minimum standards, and that the proposed facility will be at or near TMS's facility guides in every respect. (RT Vol. IX. 164:25-166:2) (Ex. 1500, HoCT001789). As discussed above, Hooman Toyota and its customers also have experienced numerous operational issues associated with the inadequate size, layout, and appearance of its current dealership facilities.

159. Although Protestants allege that Hooman Toyota's proposed facility would create a surplus of service stalls in the market, Carson Toyota's recently completed facility has 74 service stalls alone, more than Dr. Matthews claims are necessary for all three of the dealers involved in this case. (Vogel Depo. 70:12-71:71:6) (RT Vol. IX. 167:16-25). Carson Toyota's fixed operations director testified that he is pleased Carson Toyota has that many service stalls and that having more service stalls gives Carson Toyota flexibility, gives it opportunity to grow, and avoids the potential need to expand in the future. (Vogel Depo. 71:13-25). Dr. Matthews also acknowledged that dealers can chose to use service stalls for various purposes, and that dealers may have a legitimate reason for having a larger facility, such as planning for future growth. (RT Vol. IX. 157:11-25; 169:3-11).

160. More importantly, Dr. Matthews did not perform any analysis of Carson Toyota, Cabe Toyota, or Hooman Toyota's service market share, their retention of service customers, whether they are providing adequate service representation, or the amount of service opportunity available in the market. (RT Vol. IX. 170:3-171:6). As set forth previously, there is a significant amount of additional service opportunity available to Carson Toyota, Cabe Toyota, and Hooman Toyota. (RT Vol. XIII. 86:14-89:4) (Torres Depo.76:14-17) (Vogel Depo. 61:2-24). This evidence indicates that the existing Toyota dealers are not providing adequate representation in the market.

161. Finally, Dr. Matthews' opinion that the reduction in Hooman Toyota's fixed costs will negatively affect competition is not credible. In his initial expert report, Dr. Matthews declared that he had determined that the fixed costs of the Hooman facility will increase by approximately 90% in comparison to the current facility. (RT Vol. IX. 102:1-7). Based on this analysis, he opined that Hooman Toyota would be forced to push these additional costs onto the public through higher prices, reduced service, sharp business practices, and personnel cutbacks, which would negatively affect the consuming public. (RT Vol. IX. 106:22-108:21). However, at the hearing, Dr. Matthews admitted that his analysis was based on an assumption and that his assumption was wrong. (RT Vol. IX. 110:19-111:7). Dr. Matthews testified that he now understands Hooman Toyota's fixed costs will actually decrease as a result of the proposed relocation. (RT Vol. VIII. 213:11-214:2). Dr. Matthews also conceded that this reduction in expenses will not negatively affect the public, but he now asserts that it will have a negative effect on competition in the market. (RT Vol. VIII. 213:2-216:1; 218:6-221:8).

162. Accordingly, Dr. Matthews completely changed his position in this case, and he testified that Hooman Toyota's proposed relocation would have negative effects regardless of whether its fixed costs increased or decreased. Moreover, Dr. Matthews admitted that he did not perform any analysis of the actual fixed costs associated with the proposed facility compared to Hooman Toyota's current facility and that he has not calculated how the relocation will affect Hooman Toyota's expenses. (RT

Vol. VIII. 122:21-124:25). As such, Dr. Matthews' opinion that Hooman Toyota's proposed relocation will negatively affect competition is speculative at best.

Findings Related to the Relocation Would Increase Competition and Therefore be in the Public Interest
(Veh. Code § 3063(c))

163. As set forth above, Protestants allege that TMS is already well represented in the RMA and that there is already strong inter-brand and intra-brand competition in the RMA. (RT Vol. III. 21:18-22:18). Protestants allege there is so much competition in the RMA that any additional representation would not enhance competition in any notable way. (RT Vol. III. 37:16-37:16). Protestants also allege that the proposed relocation, if permitted, would negatively affect competition and harm their businesses. However, the evidence at the hearing demonstrated that the proposed relocation would have a positive effect on competition, and therefore would benefit the public.

164. As discussed above, Hooman Toyota's current facilities are significantly undersized, outdated, and inadequate to effectively serve its customers. (*See infra* ¶¶ 54-55). The Proposed Site would be a substantial upgrade over its current facilities and would benefit consumers, Hooman Toyota, and the Toyota brand. (*See infra* ¶¶ 56-57). Similarly, Carson Toyota recently completed a substantial renovation of its dealership facility, and Cabe Toyota is currently in the process of renovating its facility. (*See infra* ¶¶ 36-38; 47-48). Given the fact that Protestants are increasing their competitive position in the market by investing in their facilities, Hooman Toyota's relocation to the proposed facility would give it the opportunity to compete with these dealers on a more equal footing.

165. In addition to facing increased competition from other Toyota dealers, Hooman Toyota and Protestants are currently facing more competitive issues and deeper competition from other brands, including Hyundai, Kia, Ford, Chrysler, and General Motors. (RT Vol. III. 26:9-20). Mr. Watkins admitted that given these competitive issues, it is appropriate for Toyota dealers to take steps to increase their visibility and accessibility to consumers. (RT Vol. III. 187:3-7). Carson Toyota's renovation,

Cabe Toyota's renovation, and Hooman Toyota's proposed relocation will increase the visibility, accessibility, and competitiveness of the Toyota brand.

166. Finally, Hooman Toyota's proposed relocation likely will have no significant impact on Protestants' business. There is substantial opportunity in RMA for additional sales and service business for Protestants and Hooman Toyota. (*See infra* ¶¶ 161-163). Cabe Toyota is not making a significant portion of its sales in the area surrounding the Proposed Site, which reduces the potential that the proposed relocation would negatively affect its business. (*See infra* ¶¶ 80, 85-87). Moreover, even if Mr. Watkins' analysis of the proposed relocation's effect on Cabe Toyota was accepted, he nevertheless admitted the relocation would not put Cabe Toyota out of business. (*See infra* ¶ 103). Accordingly, the proposed relocation would have a positive effect on competition and would benefit the public.

Findings Related to the Other Existing Circumstances
(Prefatory Language in Veh. Code § 3063)

167. Protestants also submitted evidence on several other issues they allege establish good cause not to permit the proposed relocation.

I. Protestants' Investment in Facility Renovations

168. Protestants both allege that they would not have committed to making investments in their dealership facilities had they known that Hooman Toyota would be permitted to relocate. Cabe Toyota's Dealer Principal, John Cabe, testified that he had asked TMS multiple times if Hooman Toyota would be permitted to relocate to the Proposed Site, (RT. Vol. I. 144:24-145:26), and both Mr. Cabe and Mr. Duddridge testified that TMS had advised that Hooman Toyota would not be permitted to do so. (RT. Vol. I. 144:24-145:26; RT Vol. V. 64:11-23). Cabe Toyota also indicated that had it known Hooman Toyota would be permitted to relocate, it would have made some changes to its facility plan. (RT Vol. I. 144:24-145:16). Similarly, Carson Toyota's Dealer Principal, Albert Skinner,

testified that he would not have completed Carson Toyota's renovation had he known Hooman Toyota might relocate to the Proposed Site. (RT Vol. I. 195:25-196:6).

169. Although Protestants allege that they would not have invested in their facilities if they had known about Hooman Toyota's potential relocation, both dealers entered into Dealer Agreements with TMS many years ago in which they agreed to renovate their facilities. Cabe Toyota first entered into a Dealer Agreement in which it acknowledged that its current facilities were deficient and agreed to renovate its facilities in 2001, seven years before Mr. Nissani acquired Toyota of Long Beach. (RT Vol. II. 44:11-22) (Ex. 2014, TMS-Prod_000064). Similarly, Carson Toyota entered into a Dealer Agreement acknowledging that its facilities were deficient and agreeing to renovate in 2005, three years before Mr. Nissani acquired Toyota of Long Beach. (RT Vol. XI. 213:20-214:7).

170. Cabe Toyota also had notice that Hooman Toyota might seek to relocate to the Proposed Site before it broke ground on its renovation. Mr. Duddridge became aware that Hooman Toyota was hoping to relocate to the Proposed Site "very early on" in 2008. (RT Vol. V. 62:25-63:4). In addition, Cabe Toyota did not break ground on its facility until April 2013, approximately nine months after receiving the Notice of Relocation and two months before the beginning of this hearing. (RT Vol. II. 51:13-18; RT Vol. II. 97:18-98:6; RT Vol. V. 132:12-133:25). Despite this notice, Cabe Toyota made the business decision to move forward with its renovation. (RT. Vol. VII. 198:5-13).

171. Finally, Cabe Toyota and Carson Toyota's decisions to renovate their facilities do not preclude Hooman Toyota from improving its facility situation. The Toyota Dealer Agreement contains standard provisions that establish minimum facility standards for its dealers. (RT Vol. X. 18:9-19:4) (Ex. 2012, pp. TMS-Prod_13731). The purpose of this provision is to ensure that all Toyota dealers maintain facilities that are competitive and meet customer expectations. (RT Vol. X. 25:16-26:9). As set forth above, Toyota dealers also are facing more competitive issues and deeper competition from other brands, including Hyundai, Kia, Ford, Chrysler, and General Motors. (RT Vol. III. 26:9-20).

Given this increase in competition from other brands, Carson Toyota's new facility, and Cabe Toyota's ongoing renovation, there is no reason to prohibit Hooman Toyota from relocating to an improved facility that would give it the opportunity to compete with these dealers on equal footing.

II. Cabe Toyota's Prior Relocation Requests

172. Protestants also allege that Hooman Toyota should not be permitted to relocate because Cabe Toyota previously made relocation requests that were rejected by TMS. In 2003, Cabe Toyota proposed to relocate east towards the Signal Hill auto mall. (RT Vol. I. 132:6-32). In April 8, 2009, Cabe Toyota proposed relocating east to the Long Beach gas department site at 2400 East Spring Street, and Cabe Toyota later proposed to relocate east to the former Signal Hill Nissan location at 1800 East Spring Street. (RT Vol. V. 220:1-221:6; 227:4-16). Mr. Cabe and Mr. Duddridge both testified that when they proposed these relocations, TMS informed them that the relocations would not be approved because they were protestable. (RT Vol. I. 132:6-23; RT Vol. V. 54:7-16).

173. However, the evidence demonstrates that TMS encouraged Cabe Toyota to relocate to a better location. In 2004, Mr. Cabe met with the former Los Angeles Region Manager and gave him a tour of a proposed site adjacent to the 405 Freeway where Cabe Toyota planned to relocate. (RT Vol. II. 27:17-24). TMS encouraged Cabe Toyota to look into the proposed site and submit additional information for the site, and it sent Cabe Toyota several letters encouraging the proposal. (RT Vol. II. 27:25-28:10). Although Cabe Toyota was unable to secure that site, TMS also encouraged Cabe Toyota to pursue other land opportunities near the 405 Freeway. (RT Vol. II. 28:11-17).

174. In addition, Cabe Toyota's relocation proposals are distinguishable from Hooman Toyota's proposed relocation. One of Protestants' theories in this case is that the proposed relocation should be denied because it would encroach on Cabe Toyota's PMA. However, each of the potential relocation sites proposed by Cabe Toyota were actually inside Hooman Toyota's PMA. (RT Vol. II. 41:10-42:2; RT Vol. V. 221:1-8; RT Vol. V. 227:7-16). Cabe Toyota also acknowledged that its

proposals were informal and that it never secured financing or rights to the property. (RT Vol. V. 224:18-24; RT Vol. V. 227:4-13).

175. Moreover, each of the relocation sites proposed by Cabe Toyota would have moved the dealership closer to Hooman Toyota. Specifically, the gas company site and the former Nissan facility were approximately 1.5 miles east of Cabe Toyota towards Hooman Toyota. (RT Vol. II. 42:3-18; RT Vol. V. 221:3-6). These proposed sites would have placed Cabe Toyota about two miles away from Hooman Toyota—the same distance Hooman Toyota's proposed relocation would place it from Cabe Toyota. (RT Vol. II. 42:3-18; RT Vol. V. 221:3-6). Accordingly, Cabe Toyota's efforts to relocate closer to Hooman Toyota demonstrate that it believes it can operate successfully while located approximately 2 miles from Hooman Toyota.

III. <u>Internet Leads</u>

176. Cabe Toyota also alleges the proposed relocation will negatively affect the quality and amount of its customer leads. TMS has an Electronic Leads Management System ("ELMS") that provides customer leads to Toyota dealers. (RT Vol. IV. 171:19-23). Although a dealer's PMA is comprised of census tracts, ELMS does not recognize census tracts. (RT Vol. IV. 176:6-20). Internet leads are distributed to Toyota dealers according to zip code. (*Id.*). Cabe Toyota alleges that because it does not have any zip codes that are contained entirely within its PMA, (RT Vol. IV. 166:17-167:4), it must compete with other Toyota dealers for each lead it receives through the ELMS system. (RT Vol. IV. 168:9-18). Mr. Duddridge further alleges that because the proposed relocation would place Hooman Toyota in Cabe Toyota's same zip code, it would move Hooman Toyota into Cabe Toyota's "ELMS PMA." (RT Vol. IV. 176:6-177:10). Mr. Duddridge did not know how this would affect the assignment of leads, but he believes it will complicate the process. (*Id.*).

177. Hooman Toyota's relocation would not have any negative effect on Cabe Toyota's internet leads. Although leads are assigned by zip code, TMS does not assign dealers an "ELMS

PMA" or a "Leads PMA." (RT Vol. XIII. 44:23-45:22). In fact, Mr. Duddridge admitted that he made that term up. (RT. Vol. IX. 106:15-25). TMS simply provides dealers ELMS maps that display the zip codes in and around its actual PMA. (RT Vol. XIII. 44:23-45:22). When customers visit the Toyota website and input their zip codes, the Toyota system displays the Toyota dealers closest to that customer. (*Id.*). Those leads are then assigned to dealers via customer choice, that is, the customer chooses which dealer will receive its particular lead. (RT Vol. XIII. 44:23-45:22; 46:8-47:5).

178. As set forth above, Hooman Toyota is proposing to relocate within its current PMA. (RT Vol. V. 221:9-11). Therefore, while the Proposed Site will be in the same zip code as Cabe Toyota, this zip code is already in Hooman Toyota's current PMA and is already split between Cabe Toyota and Hooman Toyota. (RT Vol. V. 221:9-11; RT Vol. IV. 166:17-167:4). As it currently stands today, both Cabe Toyota and Hooman Toyota already show up as choices for consumer leads in this zip code, and Cabe Toyota is listed as the first option for consumers in that zip code. (RT Vol. XIII. 46:16-47:5) (Ex. 1222, pp. Cabe001824). If the proposed relocation is permitted, Cabe Toyota and Hooman Toyota will both continue to be displayed as choices for consumer leads, and Cabe Toyota will remain listed as the first option for customers in that zip code. (*Id.*). Accordingly, the proposed relocation will not affect Cabe Toyota's receipt of internet leads.

IV. Hooman Toyota's Prior Financial Issues

179. Protestants also allege that there is good cause not to permit the proposed relocation because Hooman Toyota previously experienced several financial and operational issues.

180. In 2008, the United States economy experienced an economic downturn following the collapse of the real estate bubble, Bear Stearns, and Lehman Brothers. (RT Vol. XII. 204:8-19). This economic downturn negatively impacted the motor vehicle industry, and many dealers experienced financial issues. (RT Vol. II. 165:3-8). During that time frame, Hooman Toyota began experiencing several financial and operational deficiencies, including inadequate net working capital, net worth, and

cash on hand; non-compliance with Toyota's standard accounting practices; and the need to seek contributions from outside investors. (RT Vol. XII. 210:25-223:17) (Ex. 1042). TMS consistently monitored Hooman Toyota's financial and operational deficiencies, and demanded compliance with its capitalization and accounting standards. (RT Vol. XII. 223:20-224:18). On June 22, 2011, TMS sent Hooman Toyota a 180-Day Notice to Cure, which notified Hooman Toyota of its operational and financial issues and gave it six months to cure the deficiencies. (RT Vol. X. 68:10-70:11).

181. Although it took Hooman Toyota some time, it ultimately cured all of the operational and financial issues that TMS raised in the Notice to Cure. (RT Vol. X. 73:23-74:2; RT Vol. XII. 225:5-13). In June 2012, TMS retained an independent third party accountant to perform a review of Hooman Toyota's financial and operating records, which verified that Hooman Toyota had cured its operational and financial issues. (RT Vol. XIII. 226:21-229:6) (Ex. 2059). Since that time, Hooman Toyota has not had any financial issues whatsoever, (RT Vol. XII. 230:3-6), and Protestants did not present any evidence that Hooman Toyota's previous financial issues would somehow affect its relocation.[2] Accordingly, those issues are not relevant to the determination of this action and do not establish good cause not to permit Hooman Toyota's proposed relocation.

CONCLUSIONS AND ANALYSIS OF THE GOOD CAUSE FACTORS

182. Carson Toyota has met its burden of establishing that it has made a permanent investment in its dealership. Although Cabe Toyota has had substantially deficient dealership facilities for many years, and has chosen to delay curing the deficiencies in its facilities, it has made and currently is increasing the permanent investment in its dealership. Similarly, Hooman Toyota has demonstrated that

[2] In addition to presenting evidence of Hooman Toyota's prior financial and operational issues, Protestants also claimed that (1) Hooman Toyota has an impermissible sign on the 405 Freeway and (2) operates an impermissible customer "VIP" program that provides its customers with various benefits such as free oil changes, car washes, loaner vehicles, and tires for life. (RT Vol. IV. 151:17-152:19; RT Vol. V. 17:3-17). However, Cabe Toyota acknowledged that it previously attempted to advertise on the same sign, (RT Vol. IV. 152:7-19; RT Vol. XI. 15:4-22), and Cabe Toyota created its own program called the "Value Guarantee" as a competitive response to Hooman Toyota's VIP program. (RT Vol. V. 11:8-12:14). Moreover, Hooman Toyota currently operates this sign on the 405 Freeway and currently operates its VIP program, and neither of these issues are a result of the proposed relocation. Accordingly, they are irrelevant to this action.

it has already made a permanent investment in its dealership, and if permitted to relocate, would continue to make additional permanent investments.

183. Protestants have not sustained their burden of proof to show that Hooman Toyota's proposed relocation would have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area. Hooman Toyota is proposing to move a short distance to a significantly better facility that will provide increased access, convenience, and amenities for consumers. Protestants have not demonstrated that this relocation would harm Carson Toyota, and any effect to Cabe Toyota's business would be minimal. Moreover, there is sufficient opportunity for additional sales and service business available in the RMA for both Protestants and Hooman Toyota to increase their levels of business without negatively affecting the existing Toyota dealers in the RMA.

184. Protestants have not sustained their burden of proof to show that Hooman Toyota's proposed relocation would be injurious to the public welfare. The Proposed Site would provide the public a much-improved dealership facility with improved access, visibility, and amenities for the public. The relocation would also allow Hooman Toyota to hire additional employees and reduce its facility costs, allowing it to provide additional benefits for the consuming public and its employees.

185. Protestants have not sustained their burden of proof to show that the existing Toyota dealers in the RMA are providing adequate competition and convenient consumer care. Although Carson Toyota recently completed construction of a new Toyota dealership facility, Cabe Toyota and Hooman Toyota have had substandard facilities for customers in Long Beach for some time. Cabe Toyota currently is in the process of renovating its Toyota dealership facility, and Hooman Toyota is currently attempting to do the same—both of which will be beneficial for consumers. In addition, Toyota's sales and service market share is depressed in the area surrounding Cabe Toyota and Hooman Toyota, and there is additional sales and service business available to Protestants and Hooman Toyota. As such, the existing dealers in the RMA are not providing adequate competition and convenient care.

186. Protestants have not sustained their burden of proof to show that the proposed relocation would negatively affect competition or the public interest. Hooman Toyota's proposed relocation would significantly improve its dealership facilities, which would put it in a better position to effectively compete with Protestants' newly renovated facilities and the increased competition TMS is facing from other brands. Protestants also have not demonstrated that the relocation would have any material impact to their businesses. Accordingly, the proposed relocation will increase competition and therefore be in the public interest.

DETERMINATION OF ISSUES

187. Protestants have sustained their burden of proof to establish that they have made (or are in the process of making) a permanent investment in their respective dealerships. Hooman Toyota also has made a permanent investment in its dealership, and if permitted to relocate, would continue to make additional permanent investments.

188. Protestants have not sustained their burden of proof to show that the proposed relocation would have an adverse effect on the retail motor vehicle business or the consuming public in the RMA.

189. Protestants have not sustained their burden of proof to show that the proposed relocation would be injurious to the public welfare.

190. Protestants have not sustained their burden of proof to show that the existing Toyota dealers in the RMA are providing adequate competition and convenient consumer care in the RMA, including the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.

191. The proposed relocation will increase competition and therefore be in the public interest.

192. Protestants have not established any existing circumstances that provide good cause for not permitting the proposed relocation of Hooman Toyota.

PROPOSED DECISION

Based on the evidence presented at the hearing and the findings herein, Protestants have not met their burden of proof under Vehicle Code section 3066(b) to establish there is good cause not to permit the relocation of Hooman Toyota from its current location at 4401 E. Pacific Coast Highway, Long Beach, to the Proposed Site at 3399 E. Willow Street and 2679 Redondo Avenue in Long Beach. Accordingly, IT IS HEREBY ORDERED that the Protests in the above-captioned matter are overruled. Respondent is permitted to relocate Hooman Toyota to the Proposed Site.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as the result of a hearing before me, and I recommend this Proposed Decision be adopted as the decision of the New Motor Vehicle Board.

DATED: ________________, 2013

By: ____________________________
VICTOR D. RYERSON
Administrative Law Judge