

Maurice Sanchez, Bar No. 101317  
Lisa M. Gibson, Bar No. 194841  
BAKER & HOSTETLER LLP  
600 Anton Boulevard, Suite 900  
Costa Mesa, California 92626-7221  
Telephone: 714.754.6600  
Facsimile: 714.754.6611  
Email: [msanchez@bakerlaw.com](mailto:msanchez@bakerlaw.com)  
[lgibson@bakerlaw.com](mailto:lgibson@bakerlaw.com)

Attorneys for Respondent  
NISSAN NORTH AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of:

SANTA CRUZ NISSAN, INC., dba SANTA  
CRUZ NISSAN,

Protestant,

v.

NISSAN NORTH AMERICA, INC.,

Respondent.

Protest No. PR-2358-13

**RESPONDENT'S BRIEF ON REMAND**

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Respondent, Nissan North America, Inc., (“Respondent” or “Nissan”) files this Brief on Remand in support of its proposal for the conditions to be imposed by the Board on Protestant, for the purposes of assuring performance of binding contractual agreements in the Nissan Dealer Sales and Service Agreement (“Dealer Agreement”) of Santa Cruz Nissan, Inc., dba Santa Cruz Nissan (“Protestant” or “SCN” ), or for otherwise serving the purposes of Article 4 of Chapter 6 of the Vehicle Code, as provided in Vehicle Code Section 3067(a)..

## **I. INTRODUCTION**

At its meeting on July 15, 2014 the Board conditionally sustained the Protest and remanded the matter to ALJ Hagle with the following instructions in its order dated July 17, 2014 (“Order”):

The ALJ shall recommend conditions for the Board to impose consistent with Section 3067<sup>1</sup> and establish a time frame for Protestant to comply with those conditions. The ALJ shall have discretion, if deemed necessary, to order additional evidence, briefing, and/or arguments.

The events occurring during the Board meeting on July 15, 2014 are particularly pertinent for understanding the Board’s remand of the proposed decision, and in order to impose appropriate conditions with which Protestant must comply. At the meeting, Ms. Robin Parker announced the Board’s decision as being carried by three votes to remand and impose conditions on the dealer; Board member Ms. Doi separately concurred with the majority, but wanted further clarification as to whether Administrative Law Judge Hagle had applied Vehicle Code section 11713.13(G)(1)(B); and the fifth board member, Mr. Lizarraga, opposed the proposed decision. Notably, not a single board member voted to either (i) unconditionally sustain the Protest, or (ii)

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<sup>1</sup> Vehicle Code section 3067 permits the Board to impose conditions upon its decisions so long as the conditions are such as they meet the following language:

...Conditions imposed by the board shall be for the purposes of assuring performance of binding contractual agreements between the franchisees and franchisors or otherwise serving the purposes of this article...

adopt the proposed decision. (RT Board Hearing 45:3-16). The conditions to be proposed to the Board after remand, therefore, are not necessarily restricted by the conclusions or findings in the proposed decision.

Also during the July 15, 2014 Board meeting, in response to Protestant's counsel's request for more detail on the conditions and time frame to be imposed on Protestant, Board President Mr. Glenn Stevens replied: "You're going to have to hit certain condition marks that the ALJ is going to set". (RT Board Hearing 46: 23-24). Board member Mr. Brooks further remarked that Protestant's Nissan sales were not growing commensurate with the market and although they had implemented some marketing strategies, it sounded like they were implemented "under a gun" of a termination. (RT Board Hearing 29:2-7). Mr. Brooks also disclosed to Protestant that he "...felt, personally [it] almost malpractice in how [Protestant] run[s] [its] business in terms of Nissan." (Clarification in brackets added) (RT Board Hearing 45:21-23).

The Order also stated that the parties were strongly encouraged to engage in settlement discussions and to appear at a MSC with a Board appointed ALJ. Accordingly, the parties participated in an MSC before ALJ Marilyn Wong ("ALJ Wong") on August 19, 2014 prior to which each party submitted proposed conditions to further the settlement discussions. Further, Respondent drafted and on August 21, 2014 sent to counsel for Protestant a [Proposed] Stipulated Decision of the Board, which contained a detailed settlement proposal. In a telephonic conference hearing on August 22, 2014, despite Protestant's counsel stating that it couldn't digest and respond to the Proposed Stipulated Decision before the briefing and oral argument before ALJ Hagle on August 25 and 26, 2014 respectively, ALJ Wong stated that she would remain available to schedule additional telephonic conferences for the purposes of assisting

settlement discussions. Counsel for both parties agreed that settlement discussions could continue until September 5, the date the proposed decision after remand is to be issued, and Protestant's counsel stated the discussions could continue until the Board's meeting on September 17, to consider the proposed decision after remand. Settlement discussions, therefore, have not formally been terminated by either the parties or ALJ Wong.

## **II. FINDINGS OF THE PROPOSED DECISION**

The Notices of Default and Notice of Termination issued by Nissan to Protestant make quite clear that the grounds asserted by Nissan for termination related to prolonged inadequate sales performance of Santa Cruz Nissan. The proposed decision included several findings that relate to Protestant's failure to meet its sales performance obligations under the Dealer Agreement. These findings do not, contrary to Protestant's argument, indicate a wholesale rejection of Nissan's right to use sales effectiveness measurements and standards to evaluate Protestant's performance. For example, the proposed decision contains the following statements with their respective numbered paragraph in the proposed decision:

- a) Respondent contends that "Santa Cruz Nissan has breached the parties' Dealer Agreement by its "unsatisfactory sales penetration performance". Since 2006, Santa Cruz Nissan has failed to meet "...100% regional sales effectiveness [i.e., "100% RSE"]..." which is "...the minimum compliance level per Dealer's Sales and Service Agreement". (Paragraph 39 of Proposed Decision)
- b) The proposed decision attached certain pertinent provisions of the Dealer Agreement as Exhibit A.<sup>2</sup>
- c) Section 3.B. of the Dealer Agreement describes the calculations Nissan will take to evaluate dealers' sales performance...Nissan current use of "performance metrics" for evaluations is a reasonably foreseeable extension of the calculations described in the [dealer] agreement. (Paragraph 111 of Proposed Decision).
- d) RSE may be used as a standard, even in termination cases, as long as its limitations are recognized and "rigid performance metrics" are tempered with the kinds of inquiries required by Section 3.D. of the Dealer Agreement. (Paragraph 126 of Proposed Decision).

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<sup>2</sup> Exhibit A of the proposed decision is also attached hereto as Exhibit A.

e) Santa Cruz Nissan’s sales figures and RSE scores are the following:

| Year | Number of Sales  | RSE Score            |
|------|------------------|----------------------|
| 2005 | 366              | 113.70%              |
| 2006 | 237              | 68.30%               |
| 2007 | 304              | 84.40%               |
| 2008 | 202              | 81.80%               |
| 2009 | 152              | 56.30%               |
| 2010 | 150              | 45.90%               |
| 2011 | 204              | 51.60%               |
| 2012 | 173              | 32.00%               |
| 2013 | 246 <sup>3</sup> | No data <sup>4</sup> |

(Paragraph 128 of Proposed Decision) (Footnotes added.)

- f) Nissan’s RSE calculations from 2009 through 2011, even though based on the overlarge “West Region”, provide information that may be considered in regard to protestant’s sales performance in its PMA during those years. It appears that there were sales opportunities in the Santa Cruz market which protestant failed to capture: it fell significantly below the average opportunity sales figures: 56.3% in 2009, 45.9% in 2010 and 51.6% in 2011. (Paragraph 130 of Proposed Decision).
- g) In sales effectiveness rankings of all Nissan dealers in the “West Region” in 2009, Santa Cruz Nissan ranked 178/194; in 2010 it ranked 188/197; and in 2011 it ranked 188/195. The bar graphs<sup>5</sup> reflect Santa Cruz Nissan’s performance in context and, for the years 2009 to 2011, show Santa Cruz Nissan to be a poor sales performer. (Paragraph 136 of the Proposed Decision). (Footnote added.)
- h) As of August 2013, Nissan abandoned RSE in favor of the California Region (SSER) standard. (Paragraph 116 of Proposed Decision)
- i) Neither Lee Courtright nor James Courtright challenged Nissan’s observations over the years that Santa Cruz’s sales performance was deficient, in fact, [they] agreed with the assessment. (Paragraph 145 of the Proposed Decision) (Clarification in brackets added).

<sup>3</sup> Per Protestant’s reported sales figures.

<sup>4</sup> Such data currently exist but did not at the time the Notice of Termination was issued (dated January 14, 2013, Joint Exhibit 4) which is attached hereto as Exhibit B, or at the time of commencement of the merits hearing on January 27, 2014.

<sup>5</sup> Bar charts (Exh. 200.C NNA04721-4723) referenced in proposed decision are attached hereto as Exhibit C.

- j) It is true that Santa Cruz Nissan is a below-average performer and that the deficiencies are due to an insufficient level of resources to accomplish the task, no sense of urgency to change the situation, and no one in charge capable of executing plans for improvement. (Paragraph 189 of the Proposed Decision).
- k) The failure to be open for service on Saturdays does not comply with one of the provisions of the Dealer Agreement; however, this is not [to] a great extent. (Paragraph 200 of the Proposed Decision). (Clarification in brackets added).

### III. ANALYSIS

#### A. The Nissan Dealer Agreement Governs The Conditions On Remand.

The Board has directed ALJ Hagle to make “recommended conditions for the Board to impose consistent with Section 3067 and establish a time frame for Protestant to comply with those conditions.” (Order at 1b). Under Veh. Code Section 3067, the Board “. . . shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. *Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article.*” (emphasis added). Hence, while the California Legislature has given the Board authority to issue a conditional order, Vehicle Code section 3067 also limits the Board’s power in such orders to enforcing binding contractual provisions (or to serving the non-contractual purposes of Article 4 of Chapter 6 of the Vehicle Code, e.g., to serve the public). The Board is not authorized to rewrite the contractual terms between the parties. *See, BMW of North America v. New Motor Veh. Bd.* (1984) 162 Cal. App. 3d 980, 994 (Board exceeds its jurisdiction if it purports to rewrite the terms of the franchise agreement).

In particular, the issue of Protestant’s sales performance deficiencies is governed by the terms of the parties’ Nissan Dealer Agreement. (Joint Exh. 1). Therefore, any conditional order that the Board intends to issue must comply with the reasonable sales performance criteria as Nissan may develop from time to time, as set forth in the Dealer Agreement. (Section 3.B of Dealer Agreement). As a result, any proposed condition to be considered on remand must comport with Nissan’s current sales performance standard for dealers, which is SSER (State Sales Effectiveness in Represented markets), as recognized in the proposed decision at paragraph

116 and any other recommended conditions must also support this existing contractual requirement.

**B. Any Conditional Order Requirements Imposed By The Board Must Be Supported By Substantial Evidence.**

Furthermore, any conditions imposed by the Board must be supported by substantial evidence, as any decision will be subject to review by the Superior Court on a substantial evidence standard. Code Civ. Proc. § 1094.5(c); *Kawasaki Motors Corp. v. Superior Court* (2000) 85 Cal. App. 4th 200, 205; *British Motor Car Distributors, Ltd. v. New Motor Vehicle Board* (1987) 194 Cal. App. 3d 81, 90.

A hearing on the merits was held on January 27 – 31, 2014; February 3-7, 2014; and March 6 and 7, 2014. The record for this Protest leaves off with Protestant’s sales performance against “RSE” (Regional Sales Effectiveness”) for calendar year 2012 (173 unit sales at 32% RSE) and only raw sales of 246 units for calendar year 2013 (as reported by Protestant). There has been no evidence of Protestant’s 2013 sales performance as it compares to Nissan’s current sales performance standard of SSER.<sup>6</sup> The SSER standard is what every Nissan dealer in California is contractually obligated to meet under Section 3 of the Dealer Agreement, as stated in the proposed decision issued on July 3, 2014. (Paragraph 116 of Proposed Decision).

As a result, ALJ Hagle can neither assess (i) whether Protestant’s 2013 year-end raw sales of 246 units is reasonable as compared with the business available to Protestant, nor (ii) whether Protestant has met its contractual obligations under the Dealer Agreement. Additionally, 2013 data is now stale; demand for new vehicles in general and Nissan vehicles in particular have significantly increased in the state, the area and the district since that time. Nissan should not, therefore, be precluded from showing current data (as of May, 2014) or the most current data (as of June, 2014) in order to argue what sales conditions would be reasonably placed on Protestant prospectively. However, it is clear that any performance standard to be met

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<sup>6</sup> It is for this reason that Respondent urged ALJ Hagle to re-open the hearing in this case, so that the evidence could be updated with a comparison of Protestant’s recent sales performance as compared to SSER. ALJ Hagle declined to allow additional evidence to be submitted supplementing the record.

by Protestant must be based on SSER.

**C. Nissan Provided Ample Evidentiary Support For Protestant's Failure to Meet Its Contractual Obligations With Regard To Sales Performance.**

The proposed decision also failed to include an uncontradicted and overwhelming amount of relevant evidence in the record, as demonstrated by the citations to the record below:

- a) Santa Cruz Nissan was not even close to sales effective under any applicable standard: District, California, West Region, or U.S.<sup>7</sup> (Exh. 200.B NNA04700 - 4701)
- b) In sales effectiveness rankings of all Nissan dealers in California, Santa Cruz Nissan ranked 95/99 in 2009; 97/99 in 2010; 96/98 in 2011; and, 98/99 in 2012. (Exh. 200.C NNA04725, NNA04727-4729).<sup>8</sup>
- c) The 2012 changes in Santa Cruz's Primary Market Area ("PMA") resulted from Nissan conducting a comprehensive review of all Nissan Dealer PMAs on a national basis. The national PMA audit was conducted after the 2010 US census, and assignment of census tracts were based on criteria such as: air distance, drive distance, natural boundaries, buyer shopping patterns, and other objective factors. Detailed maps and census tract data were provided to Protestant.<sup>9</sup> (Joint Exh. 1 NNA00082)
- d) The 2012 PMA change made an immaterial change in Protestant's RSE. In 2012, the RSE score of 32.0% would have been 40.1%, or only approximately 8 basis points higher, but still significantly below the average of 100%.<sup>10</sup> (Exh. 200.E NNA04743)
- e) Santa Cruz Nissan is the closest and most convenient dealer to the census tracts representing Watsonville based on drive distance and time.<sup>11</sup> (Exh. 200.E. NNA04738 – 4739)
- f) The census tracts representing Watsonville are almost evenly split between Santa Cruz Nissan and Gilroy Nissan in Gilroy, CA (and not My Nissan in Salinas, CA) if assigned to the nearest dealer based on air distance.<sup>12</sup> (Exh. 200.E. NNA04737)
- g) The reason that Jim Courtright believed that the PMA was incorrectly drawn is because the census tracts in Watsonville were in the southern part of Santa Cruz County, which, according to Mr. Courtright, has a population which is "educationally, economically, ethnically and geographically different" from the northern part of the County. (RT VII, 27:21 - 28:2)

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<sup>7</sup> Chart (Exh. 200.B NNA04700 - 4701) showing Santa Cruz retail sales penetration compared to District, California, West Region and US is attached hereto as Exhibit D.

<sup>8</sup> Bar charts (Exh. 200.C NNA04725, NNA04727-4729) are attached hereto as Exhibit E.

<sup>9</sup> Documents (Joint Exh. 1 NNA00082-86) are attached hereto as Exhibit F.

<sup>10</sup> Bar chart (Exh. 200.E NNA04743) showing Santa Cruz RSE using prior PMA definition is attached hereto as Exhibit G.

<sup>11</sup> Charts (Exh. 200.E. NNA04738 – 4739) are attached hereto as Exhibit H.

<sup>12</sup> Chart (Exh. 200.E NNA04737) is attached hereto as Exhibit I.

- h) The City of Watsonville, which, as of the last Census, is included in Protestant's Primary Market Area, has an 81% Hispanic population, in which 74% speak a language other than English at home, according to U.S. Census Bureau figures, of which a Request for Administrative Notice was granted;
- i) After the Notice of Default was issued, Santa Cruz Nissan failed to amend the dealership's annual sales objective, which had been written on a white board just two months before. (RT XII, 111:21 – 112:2)
- j) Santa Cruz Nissan failed to make or submit a written plan of sales improvement for the dealership to any Nissan representative despite it being requested by Ms. Novoa (Nissan's Dealer Sales Operations Manager). (RT XII, 24:25 – 25:6).
- k) Santa Cruz Nissan failed to set a separate sales objective set for Nissan, despite the gravity of the situation. (RT XI, 116:4 – 117:14)
- l) Santa Cruz Nissan failed to set a separate sales goal set for any individual salesperson to sell Nissan vehicles, so that a salesperson could theoretically meet their sales goals by selling any of the other 3 line-makes at the dealership, and not sell a single Nissan vehicle. (RT XI, 116:4 – 117:14)
- m) Santa Cruz Nissan failed to have a method of tracking the "ups" for Nissan (or for any other brand) at the dealership, in order to determine whether the increased advertising expenditure was effective in generating customer traffic at the dealership. (RT XII, 126:23 – 129:2).
- n) In 2005, when Protestant last achieved sales performance above 100% RSE, it was from the current location of the dealership with the current owners and managers. (RT II, 157: 20 – 158: 4).
- o) Starting with the April 27, 2007 letter and through June, 5 2012, Nissan sent Protestant 8 poor sales performance letters that identified that Dealer's sales performance was less than average as compared to all other Nissan dealers in Protestant's Sales Region. (Resp Exh. 206).
- p) Based on the years of continued monitoring Protestant's sales performance as compared with all other Nissan dealers in Protestant's Sales Region, using a standard of Regional Sales Effectiveness, Nissan determined that Protestant's sales performance deficiencies were prolonged, severe and chronic. (RT I, 110: 2-7; 113: 5-12; 119: 7-13).
- q) Ms. Novoa (Nissan's Dealer Operations Manager) backed out the Prius numbers out of the RSE calculations to show Jim Courtright that Protestant was still deficient and Prius was not skewing the numbers. (Resp. Exh. 209 at bates stamp NNA01015.)
- r) Many markets in addition to Santa Cruz have an out-commute pattern: Selma, San Rafael, Dublin, Redwood City, Petaluma. A heavy out-commute pattern is not a reason for poor service retention. (RTVIII, 122:13 - 123:25).

- s) The Honda and Toyota dealers in the Santa Cruz market have the same out-commute problem that Protestant faces. Those dealers would have the same issues as Protestant in selling vehicles to customers that work in the San Jose area. (RT XI, 86:3 – 87:10). Yet those competitive dealers substantially outperform Santa Cruz Nissan. (RT I, 81: 11- 82:10).
- t) During her tenure as Nissan’s Dealer Operations Manager, Ms. Novoa knew that the Nissan dealers in Salinas, San Jose, West San Jose, Dublin and Fremont all had Spanish speaking sales staff. (RT II, 305: 15-25 – 306:1)
- u) Ms. Novoa remembers recommending that Protestant should have at least one fluent speaking Hispanic bilingual sales consultant on the floor and/or on the internet to accommodate those customers that did not speak English. During conversations with Protestant, she recalls that the Courtright’s mentioned they did not have any Spanish speaking staff members. (RT II, 304: 22-25 – 305: 1-4, 317: 12-25 – 318: 1-11).
- v) Jim Courtright refused to accept additional allocations of vehicles because of color or trim level despite having a deficiency of the model in inventory. (RT II, 277:11 – 278:13)
- w) Santa Cruz Nissan failed to hire any Hispanic salespersons until shortly before the merits hearing (and failed to employ any salesperson who speaks Spanish for at least 6 years prior to that). (RT XI, 72:5 – 23).
- x) Section 3.F of the Dealer Agreement requires Protestant to maintain a sales organization that includes a sufficient number of qualified and trained sales managers and sales people to enable Dealer to effectively fulfill its sales performance responsibilities. (Joint Exh 1.NNA05626).<sup>13</sup>
- y) In the year 2012, including sales people and one sales manager, Protestant had a total of 7 people who could sell vehicles, fewer than it had in 2008. (RT XI, 68:23 – 69:14).
- z) Santa Cruz Nissan failed to change the dynamic (either by changing the advertising or the salespeople) when the dealership was not getting sufficient customer traffic at the sales closing ratio being achieved in order to meet the sales objectives *set by Protestant* for the dealership. (RT XI, 116:4 – 117:14).

**D. Using Any Sales Measurement (such as Raw Sales Figures) As Opposed to 100% SSER to Impose Conditions Requires the Record to be Reopened to Allow Evidence of Protestant’s Current Performance against SSER for California.**

Despite producing an initial report, a rebuttal report and even a surrebuttal report in this matter, Protestant’s expert, Ted Stockton, ultimately admitted he could not calculate a reliable

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<sup>13</sup> Section 3.F of the Dealer Agreement is attached hereto as Exhibit J.

estimate of the business available to SCN in the Santa Cruz PMA. (RT IX, 252: 4-9). In terms of setting conditions for sales performance, the only evidence in the record of expected sales performance methodology was provided by Respondent and Respondent's expert, Mr. John Frith.

In order to arrive at an expected performance in the market, Mr. Frith's methodology makes segment-adjusted calculations for product popularity in the market. If the segment adjustments were not made, a manufacturer could erroneously come to the conclusion that a dealer was underperforming (or performing above average) when in fact because of the product mix that the consumers prefer in that particular market, the dealer is actually performing at expectations. (RT III, 228:17 – 229:9). So, using the West Region market share or RSE by segment as applied to the Santa Cruz PMA competitive group registrations (adjusted for product popularity), it would be expected that 540 new Nissans would have been registered in the Santa Cruz PMA for calendar year 2012. Based on Santa Cruz Nissan's total retail sales (whether sold within or outside the PMA) of 173 for this same period, Protestant had achieved only 32% of the opportunity available to it in the PMA. This shortfall was not made up by other Nissan dealers outside the PMA. (RT III, 248:12- 252:1)

John Gardner notified Protestant in his contact at SCN on September 26, 2013 that Nissan made a change in the market penetration metrics from RSE to SSER. (Exh. 212 at NNA00562). Evidence was presented at the merits hearing in this Protest that 2012 Nissan car and truck retail sales penetration in California Markets was 9.03% and Protestant's 2012 Retail Sales Penetration was 2.88%. (Exh. 200.B, NNA04701). New evidence would show that as of May, 2014 Nissan's 12-month rolling retail sales penetration in California Markets was 11.15% and Protestant's was 3.85%. (Exhibit K attached hereto). The gap, therefore, is actually increasing between Protestant's retail sales penetration and that of SSER for California (approximately 6 basis points difference in 2012 versus approximately 7 basis points as of May, 2014).

As a result, conditions imposed by the Board in order to assure Protestant *prospective* compliance with the Dealer Agreement will need to reflect both Protestant's and Nissan's current sales performance (in California's represented markets - SSER). Setting a sales condition based on 2013 sales or 2012 sales penetration cannot account for the current rate of sales increase for Nissan vehicles. For example, setting a condition that Protestant sell 500 vehicles annually would represent a shortfall of approximately 265 vehicles using current sales performance data for all dealers in California (12-month rolling expected for Santa Cruz is 765 vehicles as of May, 2014 and slightly higher using the most current data as of June, 2014). The record should be reopened, therefore, for the purposes of supporting any condition that sets any sales performance objectives other than achieving average sales penetration performance against the current SSER standard (or 100% SSER).

Even if the record is not reopened, however, the Board should impose 100% of SSER as a standard to be met by Protestant, as based on the current state of the record, SSER was found to be the current standard used by Nissan to measure dealer performance (Paragraph 116 of Proposed Decision), and as future sales both of Protestant and of competing dealers will necessarily not be known until such time as they occur or don't occur. Therefore, the proposed decision and the Board's ultimate decision should still set a condition that Protestant achieve 100% of SSER on a timetable. See table set forth in Proposed Conditions section below:

**E. Prior Board Decisions Regarding Termination have Set Conditions that Directly Relate to Remedying the Gravamen of Respondent's Contentions.**

There are seven final decisions from past termination protests that may provide helpful guidance on how the Board sets conditions for Protestant to meet.<sup>14</sup> In every instance, the conditions were directly related to remedying the gravamen of Respondent's contentions under the terms of the dealer agreement:

- a) University Ford Chrysler Plymouth v. Chrysler (PR-448-83) conditionally sustained the protest provided Protestant: (i) relocated to a suitable existing or new facilities

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<sup>14</sup> These decisions are not cited herein as precedent, but rather only to provide guidance.

within 2 years and (ii) in the interim modified the existing facility. Respondent contended that Protestant relocated and “dualled” franchise without its prior authorization.

- b) Brian Chuchusa’s Jeep, dba Brian Chuchusa’s Four Wheel Drive Center v. American Motor Sales Corporation (PR-871-87, P-146-87) conditionally sustained the protest provided Protestant performed its contractual warranty obligations to all customers, including customers that did not purchase their vehicle from Protestant. Respondent contended that Protestant repeatedly refused to provide warranty repair service to owners of AMC vehicles because the owners did not purchase their AMC vehicle from Protestant.
- c) Tara Motors dba Toyota of El Cajon v. Toyota Motors Distributors, Inc.; (PR-976-88) overruled the protest and conditionally sustained the termination provided Protestant: (i) within 90 days appointed a new General Manager approved by Toyota, (ii) within 1 year, sold a 10% interest to a buyer approved by Toyota, and (iii) within 3 years, the buyer owned at least 51% of dealership. Respondent contended that Protestant had unilaterally changed General Managers without the prior approval of Toyota resulting in a management dispute adversely affecting dealership operations.
- d) West Covina Motors dba Clippinger Chevrolet v. General Motors (PR-2213-10) conditionally sustained the protest provided Protestant: (i) within 80 days establish flooring or submit a buy/sell, or (ii) on the 81st day Protestant terminated. Respondent contended that Protestant failed to comply with a stipulated settlement agreement to obtain flooring in 90 days or submit a buy/sell.
- e) Laidlow’s Harley Davidson Sales, Inc. dba Laidlow’s Harley Davidson v. Harley Davidson Motor Company (PR-2299-11) conditionally sustained the protest provided Protestant complied with Harley Davidson’s Non-Retail Sales Policy for 3 years. Respondent contended that Protestant failed to comply with its Non-Retail Sales Policy.

- f) Riverside Motorcycle, Inc. dba Skip Fordyce Harley Davidson v. Harley Davidson Motor Company (PR-2310-11) conditionally sustained the protest provided Protestant reimbursed Harley Davidson for audit and legal expenses resulting from audit finding Protestant violated the Non-Retail Sales Policy. Respondent contended that Protestant per its audit failed to comply with its Non-Retail Sales Policy.
- g) Burbank Kawasaki, Inc. v. Kawasaki Motors Corp., USA (PR-2328-12, PR-2333-12) conditionally sustained the protest provided Protestant: (i) within 45 days establish flooring in the amount of \$885,219 (failure to do so resulted in termination); (ii) stock an inventory of 75 motorcycles during peak times (Board reserved the right to determine if a failure would result in termination); and, (iii) use its best efforts to sell 150 motorcycles annually (Board reserved the right to determine if a failure would result in termination). Respondent contended that Protestant failed to maintain adequate flooring to run its business, and failed to stock or sell adequate amounts of Kawasaki products.

#### **IV. PROPOSED CONDITIONS.**

Allowing Protestant to operate under conditions which do not directly hold Protestant accountable for measurable sales improvement, compared to the business available (Vehicle Code section 3061(a)) and within a specified period of time, will result in business as usual and a continued failure of Protestant to serve the public (Vehicle Code section 3061(d)). The Board remanded the protest so that the ALJ recommend conditions for the Board's approval in order to assure Protestant complies with its contractual responsibilities to promote and sell Nissan vehicles, in addition to serving the public interest. Protestant's 2012 sales performance was the worst in the state of California (except for a recently appointed dealer) and this fact remains unchanged to this date.<sup>15</sup> Protestant must not only fundamentally change its poor business practices, but also must improve Nissan sales to at least average dealer performance in California. Based on the gravamen of Respondent's contentions (i.e., that Protestant has severely

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<sup>15</sup> May 2014 SSER attached as Exhibit K.

breached its sales performance obligations under the Dealer Agreement for many years), Respondent seeks conditions that will result in Protestant achieving sales performance objectives on the basis of such reasonable criteria as Nissan develops from time to time, as required by the Dealer Agreement. At this time, the sales criteria for all Nissan dealers are SSER and is defined below. (Exh. 212 at NNA00562). Respondent proposes the following conditions:

1. The sales performance standard will be the same as set for all Nissan dealers, i.e., SSER. SSER is calculated by dividing a dealer's nationwide Nissan sales by the dealer's "expected" Nissan sales. A dealer's expected sales are calculated by dividing the total of all Nissan dealer sales in the state (here California) by the total competitive registrations in represented PMAs in the state each month for each segment in which Nissan offers a product. That calculation creates a sales penetration standard for each segment for each month. The dealer's expected sales for a given month and in a given segment is calculated by multiplying the sales penetration standard by the segment competitive registrations in the dealer's PMA. Adding the expected sales for each segment provides a dealer's total expected sales for the month. Adding the monthly calculations together provides the dealer's expected sales for the applicable period (i.e. rolling 3 month, rolling 12 month or calendar year to date). A dealer's SSER for each applicable period is expressed as a percentage of the dealer's Nissan sales made anywhere in the U.S., compared to the dealer's "expected" sales, with a 100% SSER reflecting a dealer achieving its expected sales.
2. Protestant must achieve average sales performance of Nissan dealers in i.e., 100% segment-adjusted SSER, within two years, with milestones on a timetable as set forth below. SSER is a uniformly applied standard and one that takes into consideration local product popularity preferences, shopping habits, geographic and demographic conditions in the State of California. (Section 3.B of Dealer Agreement).
3. In order that Protestant show progress toward achievement of 100% SSER within 2 years, Protestant must achieve performance milestones in "stair steps" of 3 months at a time. Protestant will, therefore, be required to meet or exceed the following SSER scores by no later than the end of the subject month/year. Commencing with September 30, 2015, should Santa Cruz Nissan not meet or exceed each of the four (4) 12-month rolling State Sales Effectiveness in Represented markets ("SSER") scores set forth in the 1<sup>st</sup> chart below (as measured with the most current data then available by the timeframes indicated, then upon written notice by Nissan to Santa Cruz Nissan, it will trigger a cure period of three (3) months during which Santa Cruz Nissan must either (i) meet or exceed the next incremental 12-month rolling SSER score set forth in the chart or (ii) timely produce a complete buy/sell application package involving all of its stock or assets to an independent third party acceptable to Nissan, as set forth herein, by no later than close of business on the last day of the cure period, or Protestant's Dealer Agreement shall be deemed automatically terminated. Below is the chart showing the 12-month rolling SSER scores and the time-frame to achieve the scores for the period commencing with September 30, 2014:

| Month/Year | SSER Score |
|------------|------------|
| 12/31/2014 | 45%        |
| 03/31/2015 | 55%        |
| 06/30/2015 | 65%        |
| 09/30/2015 | 80%        |

4. Commencing with September 30, 2015, should Protestant not meet or exceed each of the four (4) 12-month rolling SSER scores for the timeframes set forth in the 2<sup>nd</sup> chart below, then it will trigger a sale period of no more than 90 days during which Protestant must timely produce a complete buy/sell application package involving the sale of all of its stock or assets to an independent third party acceptable to Respondent by close of business on the last day of the sale period or Protestant's Dealer Agreement shall be deemed automatically terminated. For avoidance of doubt, there is no cure period for failure to achieve the required SSER score during the second twelve (12) month period commencing after 9/30/2015, there is only a period providing an opportunity to sell. Should Protestant fail to sell, then Protestant's Dealer Agreement will be deemed automatically terminated. Below is the chart showing the 12-month rolling SSER scores and the timeframes to achieve the scores for the period commencing after September 30, 2015 and lasting until September 30, 2016:

| Month/Year       | SSER Score |
|------------------|------------|
| After 09/30/2015 | 80%        |
| 12/31/2015       | 80%        |
| 03/31/2016       | 80%        |
| 06/30/2016       | 80%        |
| 09/30/2016       | 100%       |

5. If the 100% of SSER condition is met in a timely manner, it must be maintained by Protestant annually for a period of two consecutive calendar years. (Section 3.B of Dealer Agreement).
6. Protestant must undertake the necessary sales and marketing promotion activities to achieve these objectives. (See Section 3.A. of Exhibit A). In order to do so, Protestant

must spend at least (on a per unit sold basis) for advertising (dedicated to only the Nissan brand vehicles) an amount equal to the 2013 NADA average<sup>16</sup> per unit advertising expense for all dealerships (or \$616 per unit sold). Protestant must achieve this spending level each month for the period of time starting now through September, 2015. Nissan will require that it be able to verify this advertising amount, using the appropriate advertising line that appears on the monthly financial statements submitted to Nissan. Protestant must also provide the supporting invoices, tear sheets or any other reasonable documentation necessary and required by Nissan to prove that the subject advertising was dedicated to promoting only the Nissan brand of vehicles.

7. Protestant must at all times employ a sufficient number of qualified and trained sales persons to achieve this objective. (See Exhibit J, Section 3.F of Dealer Agreement).
8. Protestant must recognize and serve all current and potential Nissan customers in its PMA as being part of its assigned territory, regardless of their educational, economic, ethnic or geographic status, and take all necessary steps to serve those customers, including employing adequate numbers of sales staff that speak the predominant languages spoken by the public in its PMA (including Spanish), and adequately advertise and market in the predominant languages spoken in all parts of its PMA. (See Section 3.A of Exhibit A).
9. Protestant must conduct its dealership operations during hours which are reasonable and convenient for customers during such days and hours as competitive dealers are customarily and lawfully open in Protestant's primary market area, including opening for service on Saturdays. (See Section 6 of Exhibit A).
10. The failure by Protestant to meet any one of above conditions, including the failure to meet any 3-month "stair step" sales objective provided above, except as otherwise expressly provided, will result in the immediate termination of Protestant's Nissan franchise.

These conditions will ensure that Protestant meets its obligations to promote and sell Nissan products, and to serve the public in its Primary Market Area.

Dated: August 25, 2014

BAKER & HOSTETLER LLP

By: 

Maurice Sanchez  
Lisa M. Gibson

Attorneys for Respondent  
NISSAN NORTH AMERICA, INC.

<sup>16</sup> NADA Data, page 18 attached hereto as Exhibit L.

# Exhibit A

## THE DEALER AGREEMENT

The "Standard Provisions" of the "Nissan Dealer Sales and Service Agreement" provide, in pertinent part, the following:

### Section 1. Definitions

....

G. "Competitive Vehicles" shall mean those new vehicles which are considered by Seller [Nissan] to be directly competitive with Nissan Vehicles.

....

N. "Primary Market Area" shall mean the geographic area which is designated from time to time as the area of Dealer's sales and service responsibility for Nissan Products... Seller reserves the right, in its reasonable discretion, to issue new, superseding "Notices of Primary Market Area" to Dealer from time to time.

....

Q. "Executive Manager" shall mean the person named as Executive Manager in ... this Agreement upon whose personal qualifications, expertise, reputation, integrity, experience, ability and representations that he or she shall devote his or her primary efforts to and have full managerial authority and responsibility for the day-to-day management and performance of Dealer, Seller has relied in entering into this Agreement.

....

### Section 3. Vehicle Sales Responsibilities of Dealer

#### A. General Obligations of Dealer.

Dealer shall actively and effectively promote through its own advertising and sales promotion activities the sale at retail ... of Nissan Vehicles to customers located within Dealer's Primary Market Area. Dealer's Primary Market Area is a geographic area which Seller uses as a tool to evaluate Dealer's performance of its sales obligations... Seller may, in its reasonable discretion, change Dealer's Primary Market Area from time to time.

#### B. Sales of Nissan Cars and Nissan Trucks.

Dealer's performance of its sales responsibility for Nissan Cars and Nissan Trucks will be evaluated by Seller on the basis of such reasonable criteria as Seller may develop from time to time, including for example:

1. Achievement of reasonable sales objectives which may be established from time to time by Seller for Dealer as standards of performance;

**Exhibit A**

2. Dealer's sales of Nissan Cars and Nissan Trucks in Dealer's Primary Market Area and/or metropolitan area in which Dealer is located, as applicable, or Dealer's sales as a percentage of:

- (i) registrations of Nissan Cars and Nissan Trucks;
- (ii) registrations of Competitive Vehicles;

....

3. A comparison of Dealer's sales and/or registrations to sales and/or registrations of all other Authorized Nissan Dealers combined in Seller's Sales Region and District in which Dealer is located. . . ; and

4. A comparison of sales and/or registrations achieved by Dealer to the sales or registrations of Dealer's competitors.

....

#### D. Additional Factors for Consideration

Where appropriate in evaluating Dealer's sales performance, Seller will take into account such reasonable criteria as Seller may determine from time to time, including, for example, the following: the Dealership Location; the general shopping habits of the public in such market area; the availability of Nissan vehicles to Dealer . . . ; any special local marketing conditions that would affect Dealer's sales performance differently from the sales performance of other Authorized Nissan Dealers; the recent and long term trends in Dealer's sales performance; the manner in which Dealer has conducted its sales operations (including advertising, sales promotion, and treatment of customers); and the other factors, if any, directly affecting Dealer's sales opportunities and performance.

....

#### H. Evaluation of Dealer's Sales Performance

Seller will periodically evaluate Dealer's performance of its [sales] responsibilities... Dealer shall have the opportunity to comment, in writing, on such evaluations. Dealer shall promptly take such action as may be required to correct any deficiencies in Dealer's performance of its [sales] responsibilities...".

#### Section 6. Other Seller and Dealer Responsibilities

....

#### D. Hours of Operations.

Dealer recognizes that the service and maintenance needs of the owners of Nissan Products and Dealer's own responsibilities to actively and effectively promote the sale of Nissan Products can be met only if Dealer keeps its Dealership Facilities open and conducts all of its Dealership Operations ... during hours which are reasonable and convenient for Dealer's

**Exhibit A**

customers. Accordingly, Dealer shall maintain its Dealership Facilities open for business and shall conduct all Dealership Operations required under this Agreement during such days and hours as automobile dealers' sales and service facilities are customarily and lawfully open in Dealer's Primary Market Area...

Section 12. Termination

....

B. Termination by Seller for Non-Performance by Dealer.

1. If, based upon the evaluations thereof made by Seller, Dealer shall fail to substantially fulfill its responsibilities with respect to:

a. Sales of new Nissan Vehicles and the other responsibilities of Dealer set forth in Section 3 of this Agreement;

....

Seller shall notify Dealer of such failure and will review with Dealer the nature and extent of such failure and the reasons which, in Seller's or Dealer's opinion, account for such failure.

Thereafter, Seller will provide Dealer with a reasonable opportunity to correct the failure. If Dealer fails to make substantial progress towards remedying such failure before the expiration of such period, Seller may terminate this Agreement by giving Dealer notice of termination...

Exhibit A

# Exhibit B



NISSAN NORTH AMERICA, INC.

West Region  
20 Pacifica  
Suite 1200  
Irvine, CA 92618

Via Certified Mail -- Return Receipt Requested

Personal and Confidential

January 14, 2013

Mr. Ernest L. Courtright  
Principal Owner  
Santa Cruz Nissan  
1616 Soquel Avenue  
Santa Cruz, CA 95062

Re: Notice of Termination Pursuant to the Nissan Dealer Sales and Service Agreement and Pursuant to Section 3060(a)(1)(A) of the California Vehicle Code

Dear Mr. Courtright:

**NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.**

Effective February 2, 1989, the Nissan Motor Corporation in U.S.A., now known as Nissan North America, Inc. ("Nissan" or "Seller") and Santa Cruz Nissan ("Dealer"), entered into a Nissan Dealer Sales and Service Agreement (the "Agreement") establishing Dealer as an authorized dealer of Nissan Products. Dealer agreed under the terms and conditions of the Agreement, to assume certain obligations and responsibilities as a Nissan Dealer, in exchange for the rights granted to it under the Agreement. Nissan has determined that Dealer has failed to comply with its obligations under the Agreement.

On March 19, 2012, Nissan sent a letter to provide Dealer with formal written Notice of Default pursuant to section 12.B of the Agreement. The Notice of Default outlined the severity of Dealer's substantial and material breaches of the Agreement and gave the Dealer an opportunity to improve and cure these breaches of the Agreement. To allow Dealer additional time to meet its contractual obligations and cure the material breaches of the Agreement, Nissan extended the time frame to cure the outlined defaults by letter dated October 5, 2012 (this extension and the Notice of Default will be collectively referred to as the "NOD"). Since the issuance of the NOD, Dealer has not taken necessary action to cure the substantial and material breaches that led to the NOD, no substantial and sustained

Mr. Ernest L. Courtright, Principal Owner  
Santa Cruz Nissan  
January 14, 2013

progress towards improvement or compliance with Dealer's obligations under the Agreement has been made, and the severity of these defaults continues.

Notwithstanding the additional time provided, as of the date of this letter; Dealer has failed to cure the defaults outlined in the NOD as extended. Accordingly, Nissan hereby gives notice of its intent to terminate Dealer's Agreement pursuant to Section 12.B of the Standard Provisions of the Agreement and Section 3060(a)(1)(A) of the California Vehicle Code, effective sixty (60) days from receipt of this notice.

As outlined in the NOD, the factors listed below, separately or jointly, constitute good cause for this Notice of Termination.

Unsatisfactory Sales Penetration Performance

Section 3 of the Standard Provisions of the Agreement provides the sales responsibilities of the Dealer, as follows:

*"Section 3. Vehicle Sales Responsibilities of Dealer*

*A. General Obligations of Dealer.*

*Dealer shall actively and effectively promote through its own advertising and sales promotion activities the sale at retail (and if Dealer effects, the leasing and rental) of Nissan Vehicles to customers located within Dealer's Primary Market Area. Dealer's Primary Market Area is a geographic area which Seller uses as a tool to evaluate Dealer's performance of its sales obligations hereunder. . . .*

*B. Sales of Nissan Cars and Nissan Trucks.*

*Dealer's performance of its sales responsibility for Nissan Cars and Nissan Trucks will be evaluated by Seller on the basis of such reasonable criteria as Seller may develop from time to time, including for example:*

- 1. Achievement of reasonable sales objectives which may be established from time to time by Seller for Dealer as standards for performance;*
- 2. Dealer's sales of Nissan Cars and Nissan Trucks in Dealer's Primary Market Area and/or the metropolitan area in which Dealer is located, as applicable, or Dealer's sales as a percentage of:
  - (i) registration of Nissan Cars and Nissan Trucks;*
  - (ii) registration of Competitive vehicles;*
  - (iii) registration of Industry Cars;*
  - (iv) registration of vehicles in the Competitive Truck Segment;**
- 3. A comparison of Dealer's sales and/or registrations to sales and/or registrations of all other Authorized Nissan Dealers combined in Seller's Sales Region and District in which Dealer is located. . ."*

Mr. Ernest L. Courtright, Principal Owner  
 Santa Cruz Nissan  
 January 14, 2013

The NOD summarized Dealer's sales penetration performance in both the competitive car and competitive truck segments with a comparison of the average regional sales penetration in the total competitive vehicle segments and demonstrated Dealer's failure to comply with these performance obligations. The following provides an update of Dealer's sales penetration performance since the issuance of the NOD.

**Retail Sales Penetration: Santa Cruz Nissan  
 Competitive Sales Penetration as a Percentage**

| Santa Cruz Nissan - Santa Cruz, CA | Oct-12<br>R-12 | CY 2011 | CY 2010 | CY 2009 | CY 2008 |
|------------------------------------|----------------|---------|---------|---------|---------|
| Dealer Sales Penetration           | 3.40%          | 5.41%   | 4.75%   | 5.30%   | 6.26%   |
| Regional Sales Penetration         | 8.87%          | 10.02%  | 9.38%   | 8.86%   | 7.45%   |
| Segment Adjusted RSE               | 37.3%          | 51.6%   | 45.9%   | 56.3%   | 81.8%   |
| Dealer Vehicle Sales               | 194            | 204     | 160     | 152     | 202     |
| Projected Sales at 100% RSE        | 520            | 396     | 327     | 270     | 247     |
| Net Unit Gain/(Loss)               | (326)          | (192)   | (177)   | (118)   | (45)    |
| Regional Ranking                   | 191/196        | 187/194 | 181/196 | 175/194 | 106/138 |
| State Ranking                      | 98/99          | 95/97   | 95/98   | 93/96   | 90/102  |

The above data demonstrates Dealer's prolonged failure to adequately represent Nissan in the Santa Cruz market or to fulfill its responsibilities regarding sales of Nissan vehicles under Section 3 of the Agreement. As described in more detail in the NOD, Nissan has been counseling Dealer regarding declining sales penetration performance for many years. Dealer's sales penetration for at least the past six (6) full calendar years, has not met 100% regional sales effectiveness. Dealer now ranks 191 of 196 in the West Region and 98 of 99 dealers in the State of California. Dealer's sales penetration performance has continued to decline since the issuance of the NOD.

Since the issuance of the NOD, Nissan continued to meet with Dealer to discuss the deficient sales penetration performance. During many of these contacts, the Dealer Operations Manager ("DOM"), Area General Manager ("AGM"), and/or Regional Vice President ("RVP") discussed with Dealer the inadequate sales penetration performance. Additionally, Nissan has also communicated in writing with Dealer regarding Nissan's serious concerns with Dealer's poor sales penetration and operational deficiencies. Notwithstanding the communications regarding the need for improved performance, Dealer's performance has not improved, and as of the date of this notice remains alarmingly below regional average. As an alternative response to the NOD deficiencies, Dealer submitted a Buyer Assist Letter dated September 18, 2012, indicating Dealer's willingness to divest of the Nissan dealership assets. However, to date, Nissan has yet to receive any proposed asset purchase agreement.

For the reasons stated in the NOD, and without waiving any additional breaches of the Agreement which may exist or occur, Nissan asserts that Dealer has breached the Agreement in a manner that warrants termination of your Agreement in accordance with the terms thereof. Accordingly, Nissan hereby gives notice of its intent to terminate Dealer's Agreement pursuant to Section 12.B of the Standard Provisions of the Agreement and Section 3060(a)(1)(A) of the California Vehicle Code, effective sixty (60) days from receipt of this notice.

Mr. Ernest L. Courtright, Principal Owner  
Santa Cruz Nissan  
January 14, 2013

**Termination Requirements:**

As of the effective date of termination, you must refrain from the further distribution and sale of new Nissan Products, remove from your place of business and discontinue use of all signs, trademarks or trade names of Nissan used by you in connection with the sale and distribution of Nissan Products, refrain from any further advertising or publicity referring to Nissan Products, Nissan Motor Co., Ltd., or Nissan North America, Inc., return to Nissan all advertising materials provided by Nissan to you free of charge and otherwise comply fully with all of the provisions of the Nissan Dealer Sales and Service Agreement regarding a dealer's duties upon termination.

Termination of the Nissan Dealer Sales and Service Agreement terminates any rights provided to Dealer under the Agreement to use Nissan trademarks and/or trade dress, including, without limitation, Dealer's Nissan signage. Pursuant to Section 15.1 of Dealer's NREDF Sign Program - Lease and Maintenance Agreement ("Sign Lease"), termination of Nissan's Sales and Service Agreement shall constitute a default under the Sign Lease. As such, Nissan Motor Acceptance Corporation ("NMAC") shall be entitled to pursue its rights set forth within Section 15.2 of the Sign Lease, including, without limitation, the right to terminate the Sign Lease (on behalf of NMAC, this document constitutes written notice of termination of the Sign Lease), the right to recover past and future Rents owed by Dealer under the Sign Lease, and the right to recover Rents and other amounts owed directly from Dealer's NNA Non-Vehicle Account. Further, pursuant to Sections 6.1, 15.2 and 15.5 of the Sign Lease, Nissan, NMAC and/or their designated Supplier shall have the right (with or without notice to Dealer) to enter Dealer's premises and disassemble, pack and crate (at Dealer's cost and expense) all signs subject to the Sign Lease and remove said signs from Dealer's possession and/or premises. The Sign Lease shall govern the terms and conditions under which Dealer's Nissan signage shall be removed from Dealer's Dealership Facilities.

Termination of the Nissan Dealer Sales and Service Agreement also terminates any Dealer Equipment Lease and/or Software License between Dealer and Nissan. You will be advised in writing of your obligations under that license and the procedures for returning the software and/or equipment to Nissan.

Within thirty (30) days from the effective date of termination, you should deliver to Nissan's West regional office a detailed inventory listing any items referred to in Sections 12.B.2 and 12.B.3 of the Standard Provisions, and requesting that Nissan fulfill any repurchase obligations that it may have thereunder or under any applicable state law and of which you wish to take advantage.

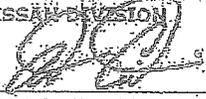
Nissan does not waive any additional breaches of the Agreement that may exist now or in the future, or to its right to issue a Notice of Termination or Notice of Default as to such breach or breaches at a later time.

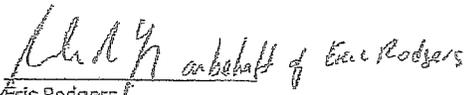
If any clarification or assistance is required regarding the foregoing, please contact the West Region - North Regional Vice President, Eric Rodgers.

Mr. Ernest L. Courtright, Principal Owner  
Santa Cruz Nissan  
January 14, 2013

Sincerely,

NISSAN NORTH AMERICA, INC.  
NISSAN DIVISION

  
Albert Castignetti  
Vice President  
General Manager, Nissan Division

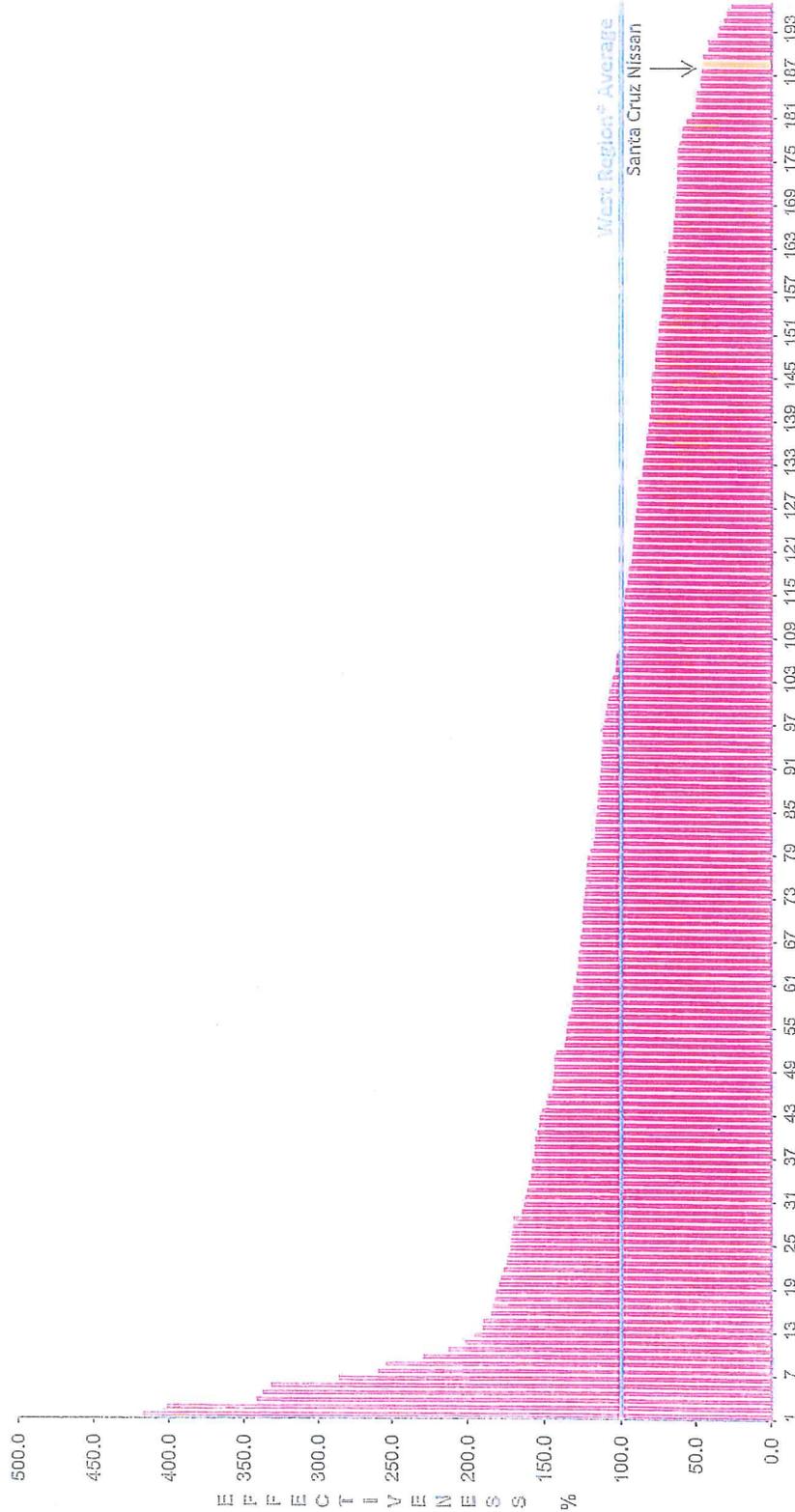
  
Eric Rodgers  
Regional Vice-President  
West Region - North

cc: California New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, CA 95814

# Exhibit C



### West Region Nissan Dealers' Retail Sales Effectiveness to West Region\* Average December 2010 CYTD



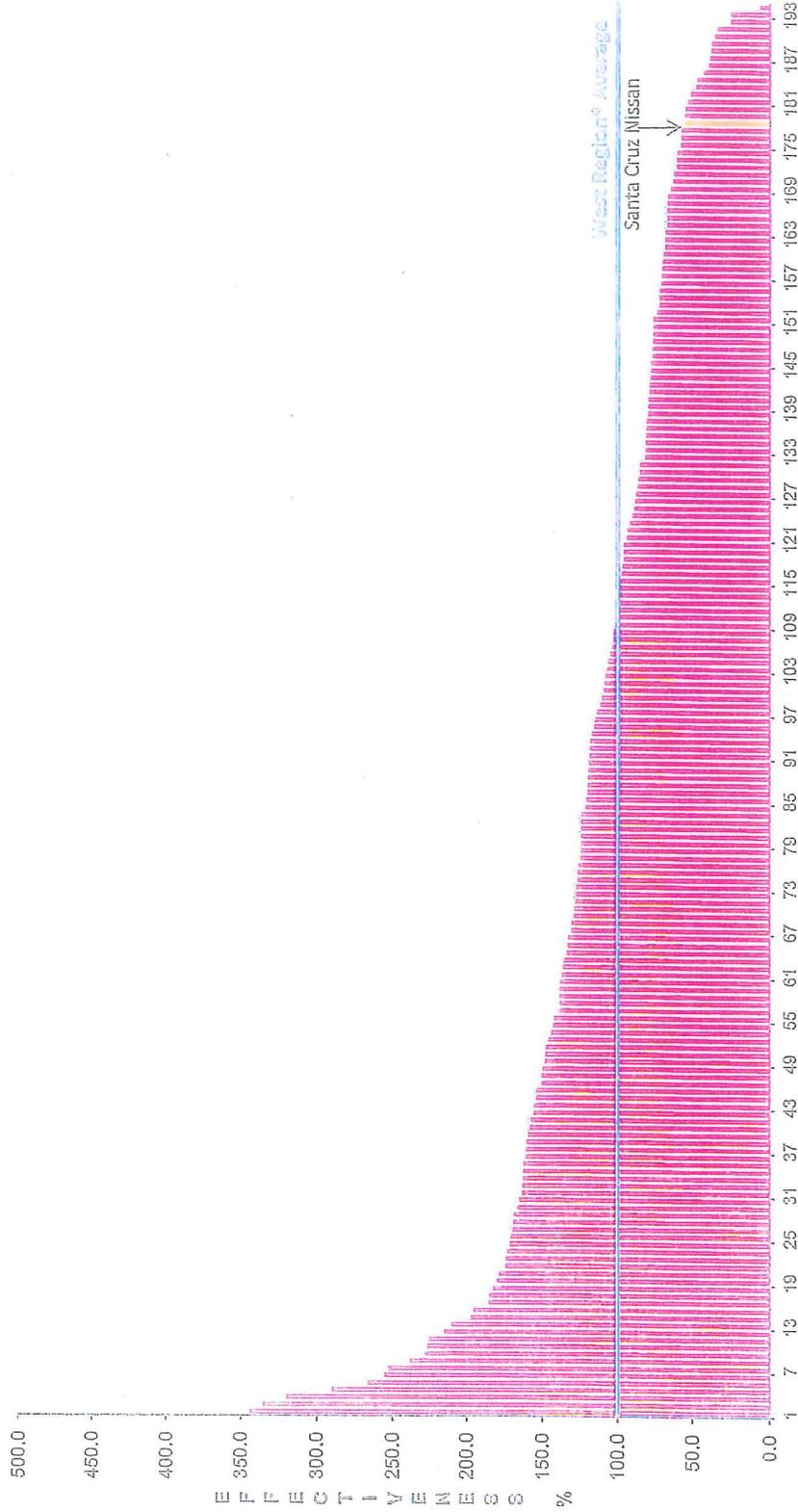
Data By: Nissan Dealer Performance Measurement (DPM)  
Data Ref: Dec 2010 CYTD

\* Average Sales Penetration of Nissan Dealers in the West Region Adjusted for Local Segment Popularity

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# Nissan North America

## West Region Nissan Dealers' Retail Sales Effectiveness to West Region\* Average December 2009 CYTD



\* Average Sales Penetration of Nissan Dealers in the West Region Adjusted for Local Segment Popularity  
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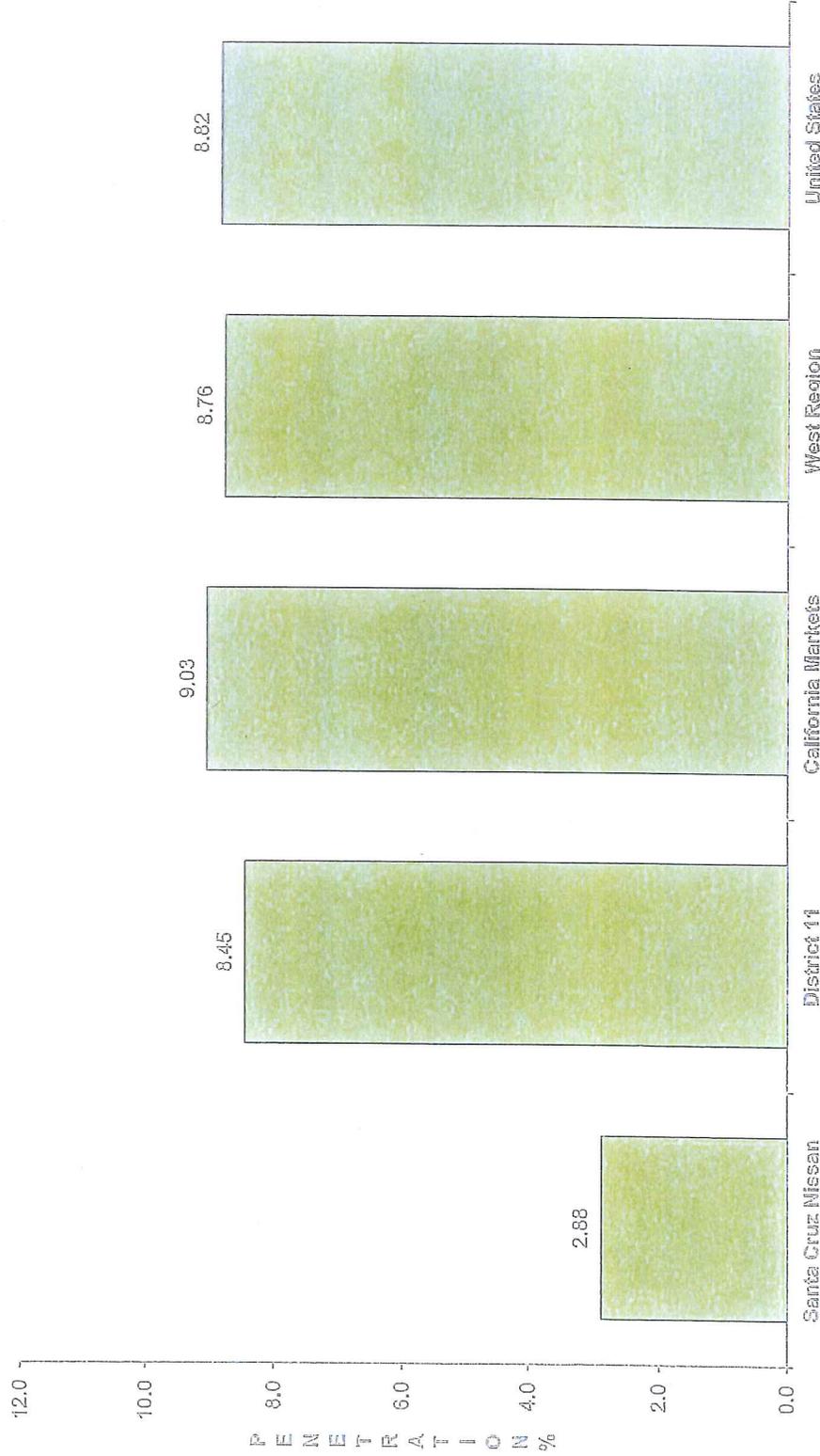
Data By: Nissan Dealer Performance Measurement (DPM)  
 Data Ref: Dec 2009 CYTD

WEST REGION SCIENCE  
 3000 N. RIVER ROAD, SUITE 200, ANAHEIM, CA 92805

# Exhibit D



### Retail Sales Penetration Comparison of Competitive Industry December 2012 CYTD



Data By: Nissan Sales Performance Report (SPR)  
Data Ref: Dec 2012 CYTD  
URBAN SCIENCE  
Urban Science Applications Inc. (UASAP)

Confidential

Nissan Car and Truck  
Retail Sales Penetration Comparison of Competitive Industry

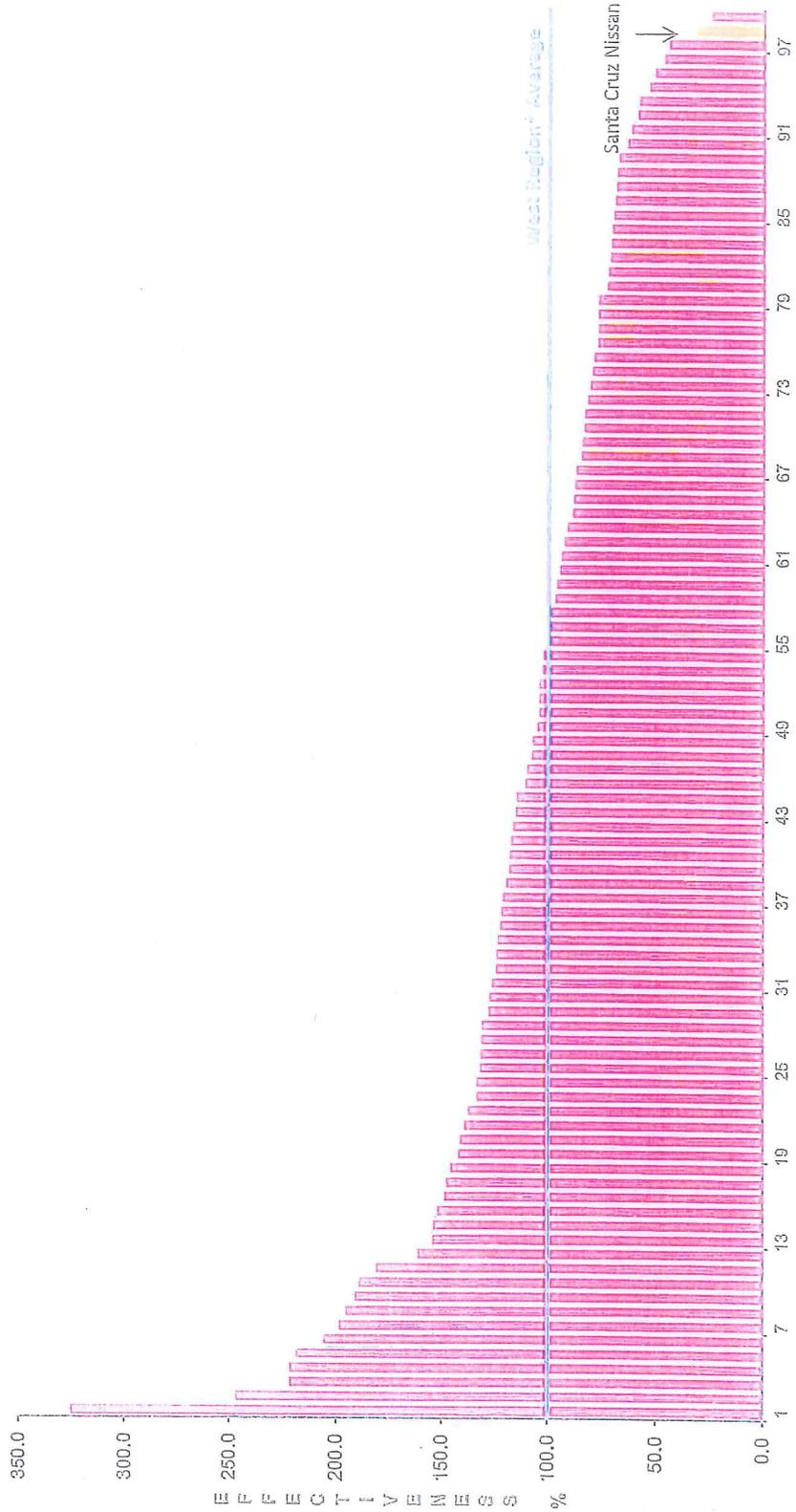
| Year         | Santa Cruz<br>Nissan | District 09 | District 11 | California<br>Markets | Northwest<br>Region | West Region | United<br>States |
|--------------|----------------------|-------------|-------------|-----------------------|---------------------|-------------|------------------|
| 2008         | 6.28                 | 7.98        | -           | 9.74                  | 7.45                | -           | 8.95             |
| 2009         | 5.30                 | -           | 7.76        | 9.26                  | -                   | 8.86        | 8.96             |
| 2010         | 4.75                 | -           | 8.73        | 9.62                  | -                   | 9.39        | 9.52             |
| 2011         | 5.41                 | -           | 10.32       | 10.39                 | -                   | 10.02       | 9.48             |
| Oct 2012 R12 | 3.40                 | -           | 8.57        | 9.16                  | -                   | 8.87        | 8.85             |
| 2012         | 2.88                 | -           | 8.45        | 9.03                  | -                   | 8.76        | 8.82             |

Note: Nissan regions realigned in 2009  
Source: USAI using Nissan Sales Penetration Reports, Dealer Performance Measurement (DPM) Reports, and Nissan Sales Performance Reports (SPR)  
Geog Ref: Month End Basefiles  
712911

# Exhibit E



### California Nissan Dealers' Retail Sales Effectiveness to West Region\* Average December 2012 CYTD



Data By: Nissan Sales Effectiveness Report (SER)  
Data Ref: Dec 2012 CYTD

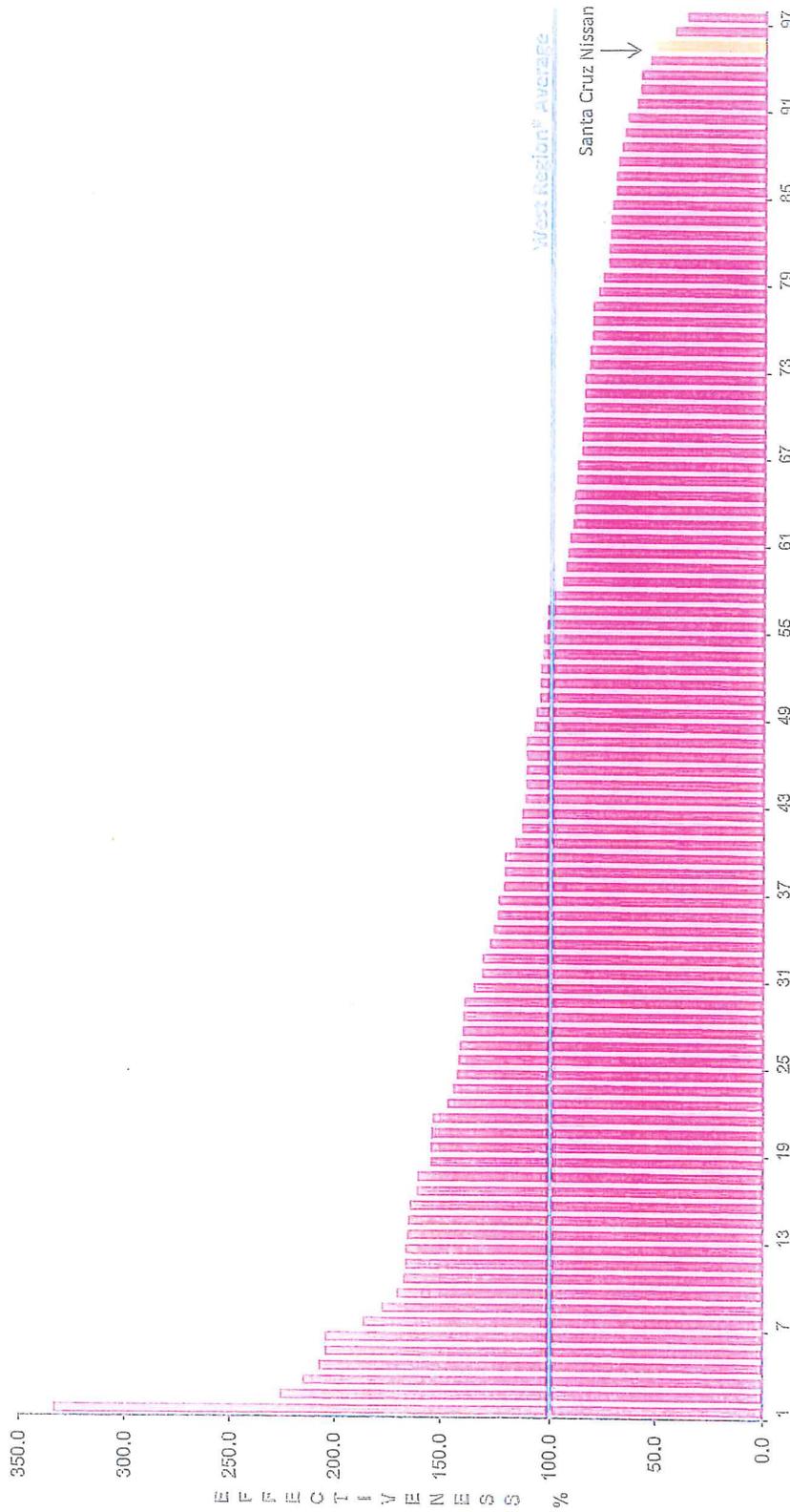


\* Average Sales Penetration of Nissan Dealers in the West Region Adjusted for Local Segment Popularity  
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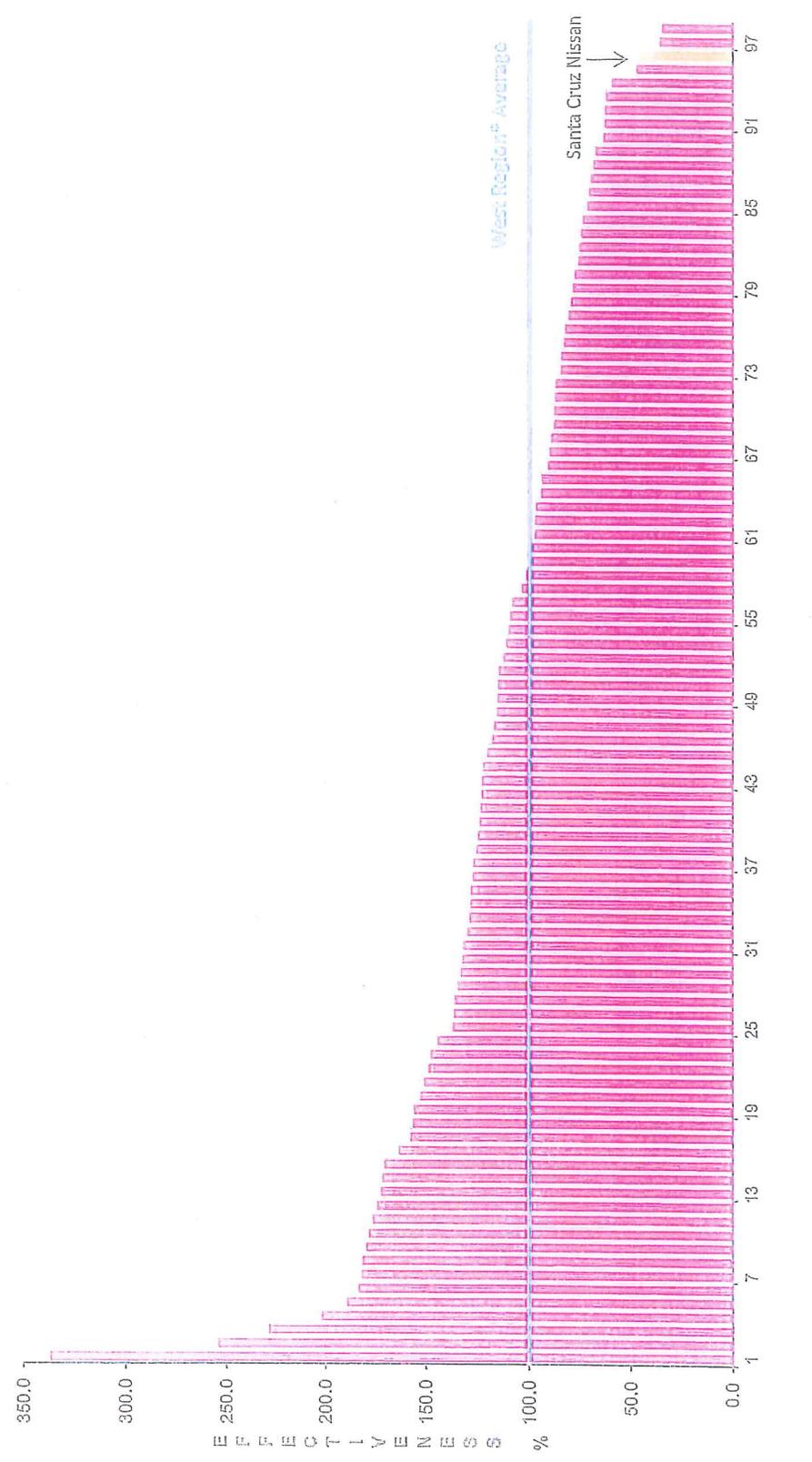
### California Nissan Dealers' Retail Sales Effectiveness to West Region\* Average December 2011 CYTD



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 \* Average Sales Penetration of Nissan Dealers in the West Region Adjusted for Local Segment Popularity  
 Data By: Nissan Sales Effectiveness Report (SER)  
 Data Ref: Dec 2011 CYTD  
 U.S. DEPARTMENT OF COMMERCE  
 ECONOMIC ANALYSIS  
 SURVEILLANCE AND RESEARCH



### California Nissan Dealers' Retail Sales Effectiveness to West Region\* Average December 2010 CYTD



\* Average Sales Penetration of Nissan Dealers in the West Region Adjusted for Local Segment Popularity  
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 Data By: Nissan Dealer Performance Measurement (DPM)  
 Data Ref: Dec 2010 CYTD  
 Social Number: 710991



# Exhibit F

NISSAN

NISSAN NORTH AMERICA, INC.  
Corporate Office  
P.O. Box 58501  
Franklin, TN 37068-5001  
Telephone: 615-725-1000

May 3, 2012

VIA FEDERAL

Mr. Ernest L. Courtright  
Santa Cruz Nissan 063B  
1616 Soquel Ave  
Santa Cruz, CA 95062

Re: Changes to Primary Market Area

Dear Mr. Courtright,

This letter is to inform you that Nissan North America, Inc. (Nissan) has revised your Primary Market Area (PMA) as provided in section I.N of the standard provisions of your Dealer Sales and Service Agreement.

Every 10 years the US government releases new Census figures as called for by the constitution. The recently released 2010 census data reflect population shifts and other demographic trends that have occurred throughout the nation over the previous 10 years of time.

As a result, Nissan has completed a comprehensive review of all Nissan Dealer PMAs on a national basis. In addition to incorporating the revised census data, Nissan also reviewed your PMA based on additional criteria such as: air distance, drive distance, natural boundaries, buyer shopping patterns, and other objective factors. As a result of this review, the attached documents provide information detailing the PMA revisions and your new PMA geography. As you know, your PMA is an evaluation tool and does not affect where you sell vehicles.

Attached you will find the following:

- 1.) Notice of PMA that includes all census tract detail in your new PMA geography
- 2.) PMA Map outlining your new PMA, the census tracts and related geography with major road systems

If you have any questions, please contact your Dealer Operations Manager.

Regards,



Patrick W. Doody  
Director, Market Representation  
Nissan North America, Inc.

11\_06310

NNA00082



### NOTICE OF PRIMARY MARKET AREA

Pursuant to Section 1.N of the Standard Provisions of the Nissan Dealer Sales & Service Agreement (the "Agreement"), the area described by 2010 census tracts in Exhibit A to this Notice, shall be deemed to be the Primary Market Area of the Dealer identified below. Exhibit A is incorporated by reference into this Notice.

This Primary Market Area will be used by Nissan North America, Inc. ("Seller"), to the extent applicable, in the establishment and evaluation of vehicle sales responsibilities of Dealer under Section 3 of the Agreement.

To the extent deemed relevant thereto, such Primary Market Area may also be employed in the establishment or amendment of Guides for the Dealership Facilities and other matters relating to Dealer's dealership operations.

The Primary Market Area described in Exhibit A hereto will be employed by Seller for the foregoing purposes until superseded by a new Notice of Primary Market Area issued to Dealer by Seller. This Notice of Primary Market Area cancels and supersedes any previous Notice of Primary Market Area furnished to Dealer by Seller.

This Notice of Primary Market Area is effective as of May 16, 2012, or such later date, as may be required by any applicable statute.

**DEALER:**  
Santa Cruz Nissan

Doing Business As:

City:  
Santa Cruz

State:  
CA

Dealer Code:  
0633

**SELLER:**  
NISSAN DIVISION  
NISSAN NORTH AMERICA, INC.

  
By: Albert Castignetti  
Vice President  
General Manager, Nissan Division

  
By: Eric Rodgers  
Regional Vice President  
West Region North

(File this Addendum with Current Sales & Service Agreement)

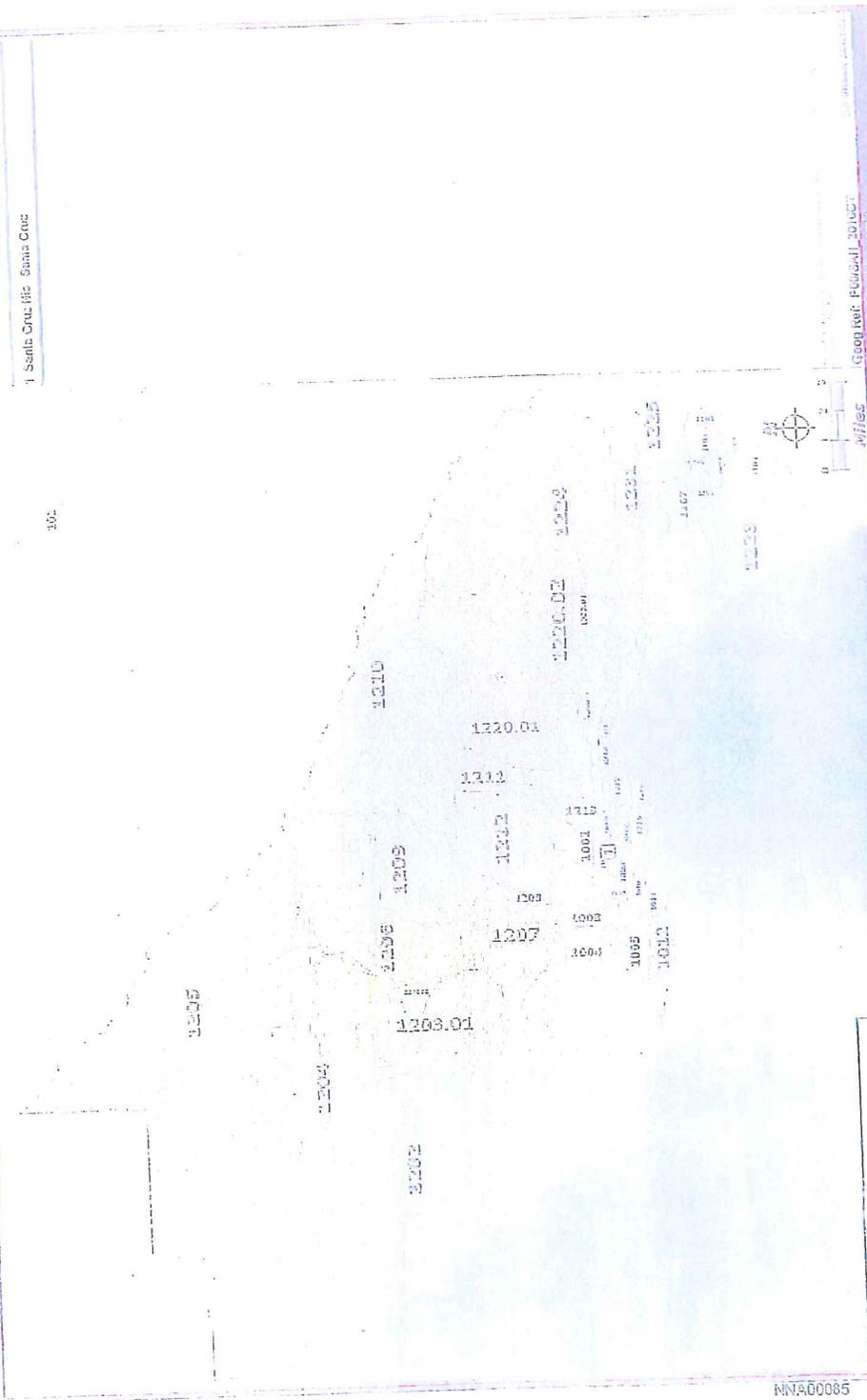


Santa Cruz CA

Nissan North America

DMV MAP

1 Santa Cruz Hic Santa Cruz



Dealer Code 003B

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NNA00085

*Exhibit A*  
To  
*Notice of Primary Market Area*

Dealer Name and Code: Santa Cruz Nissan  
Geog. Ref.: SAN\_2010CT

083B

This Exhibit A is incorporated by reference in and is a part of the Notice of Primary Market Area issued to the above named Dealer effective 5/16/2012.

County: 08037 - SANTA CRUZ

CALIFORNIA

|         |         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|---------|
| 1001.00 | 1002.00 | 1003.00 | 1004.00 | 1005.00 | 1006.00 | 1007.00 |
| 1008.00 | 1009.00 | 1010.00 | 1011.00 | 1012.00 | 1101.00 | 1102.00 |
| 1103.00 | 1104.00 | 1105.01 | 1105.02 | 1106.00 | 1107.00 | 1202.00 |
| 1203.01 | 1203.02 | 1204.00 | 1205.00 | 1206.00 | 1207.00 | 1208.00 |
| 1209.00 | 1210.00 | 1211.00 | 1212.00 | 1213.00 | 1214.01 | 1214.02 |
| 1214.03 | 1215.00 | 1216.00 | 1217.00 | 1218.00 | 1220.01 | 1220.02 |
| 1220.03 | 1221.00 | 1222.01 | 1222.02 | 1222.03 | 1223.00 | 1224.00 |
| 1225.00 | 1231.00 |         |         |         |         |         |

Total Tracts for this PMA: 51

This Exhibit shows the 2010 Census Tracts that compose the Dealer's Primary Market Area. Each full or partial County and the individual 2010 Census Tracts within those full or partial Counties that are included in the Dealer's assigned market are included for reference. Data on the Dealer's market is collected by Nissan based on this geography including the related levels of geography as required for full data collection.

The PMA (Primary Market Area) Map is attached for reference and shows by the area in the yellow tone the Dealer's assigned market as described by 2010 Census Tracts.

# Exhibit G



**Santa Cruz Nissan Retail Sales Effectiveness  
to Northwest/West Region\* Average  
2011 and Prior PMA Definition**



Data By: R.L. Polk & Co., Nissan Sales Penetration Report; and  
Nissan Sales Performance Report (SPR)

Geog Ref: H00-NISS\_SCRUZ\_FRG\_2011, H10-NISS\_SCRUZ\_FRG\_2011



\* 2000 Census Tracts for 2008 - 2011; 2010 Census Tracts for 2012

\* Average Annual Sales Penetration of Nissan Dealers in the Northwest/West Region Adjusted for Local Segment Popularity

# Exhibit H

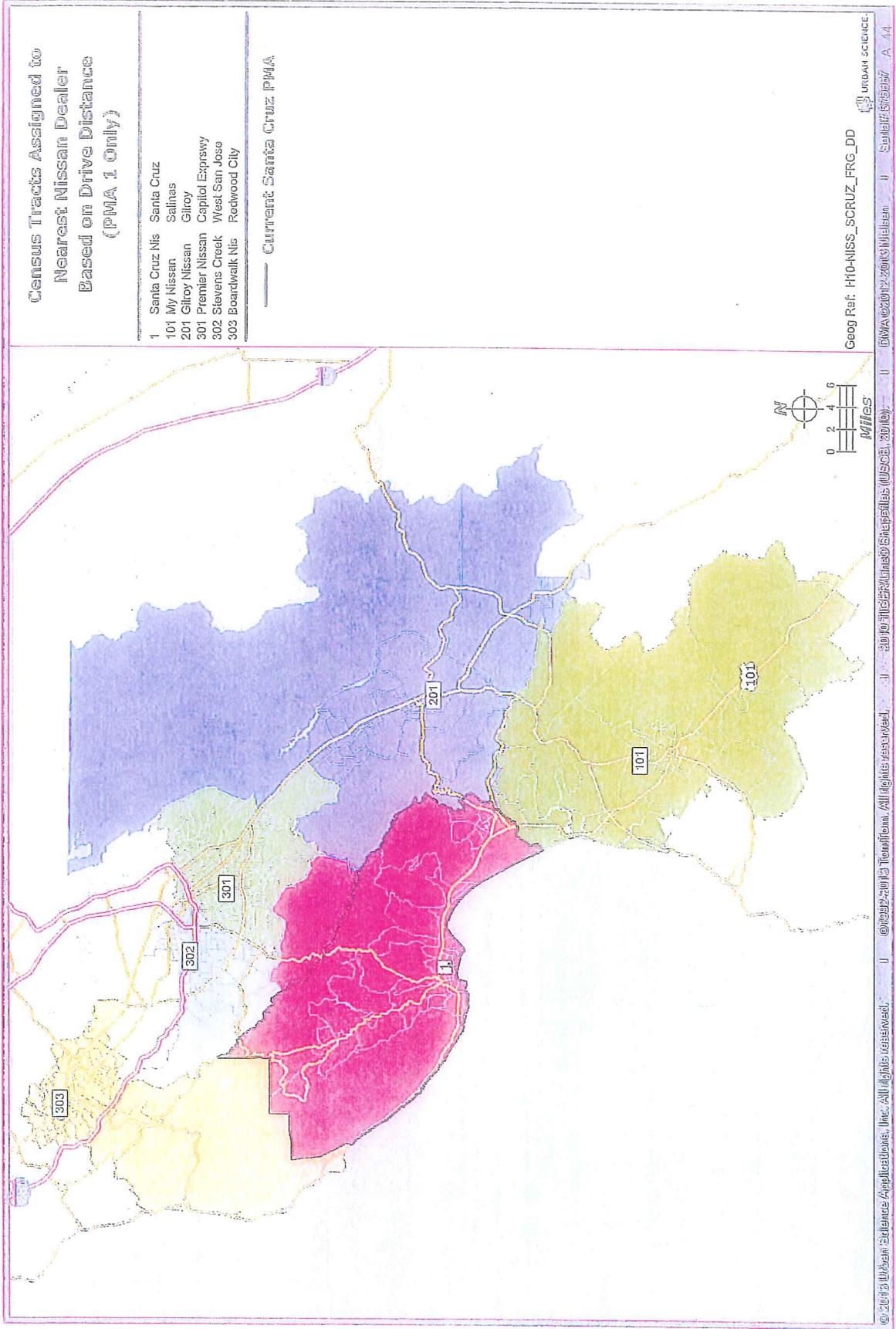
NNA04738

Confidential

Nissan North America



# Santa Cruz Market + Fringe



NNA04739

# Santa Cruz Market

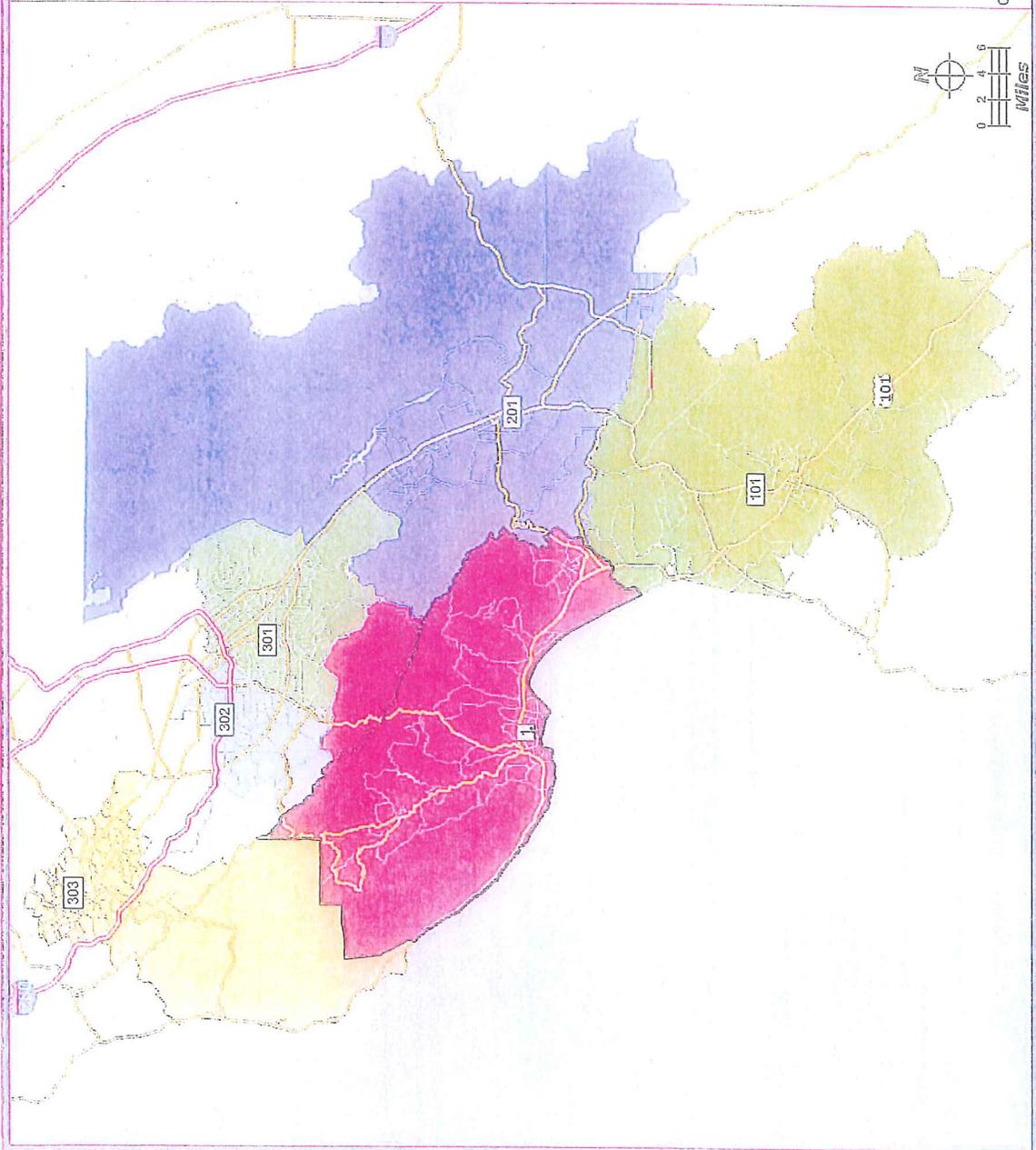
Confidential

Nissan North America

## Census Tracts Assigned to Nearest Nissan Dealer Based on Drive Time (PMA 1 Only)

- 1. Santa Cruz, Nis. Santa Cruz
- 101 My Nissan Salinas
- 201 Gilroy Nissan Gilroy
- 301 Premier Nissan Capitol Expwy
- 302 Stevens Creek West San Jose
- 303 Boardwalk Nis Redwood City

— Current Santa Cruz PMA



Geog Ref: H10-NISS\_SCRUZ\_FRG\_DT  
 URBAN SCIENCE  
 10/15/2011 10:22:00 AM 10/15/2011 10:22:00 AM 10/15/2011 10:22:00 AM 10/15/2011 10:22:00 AM

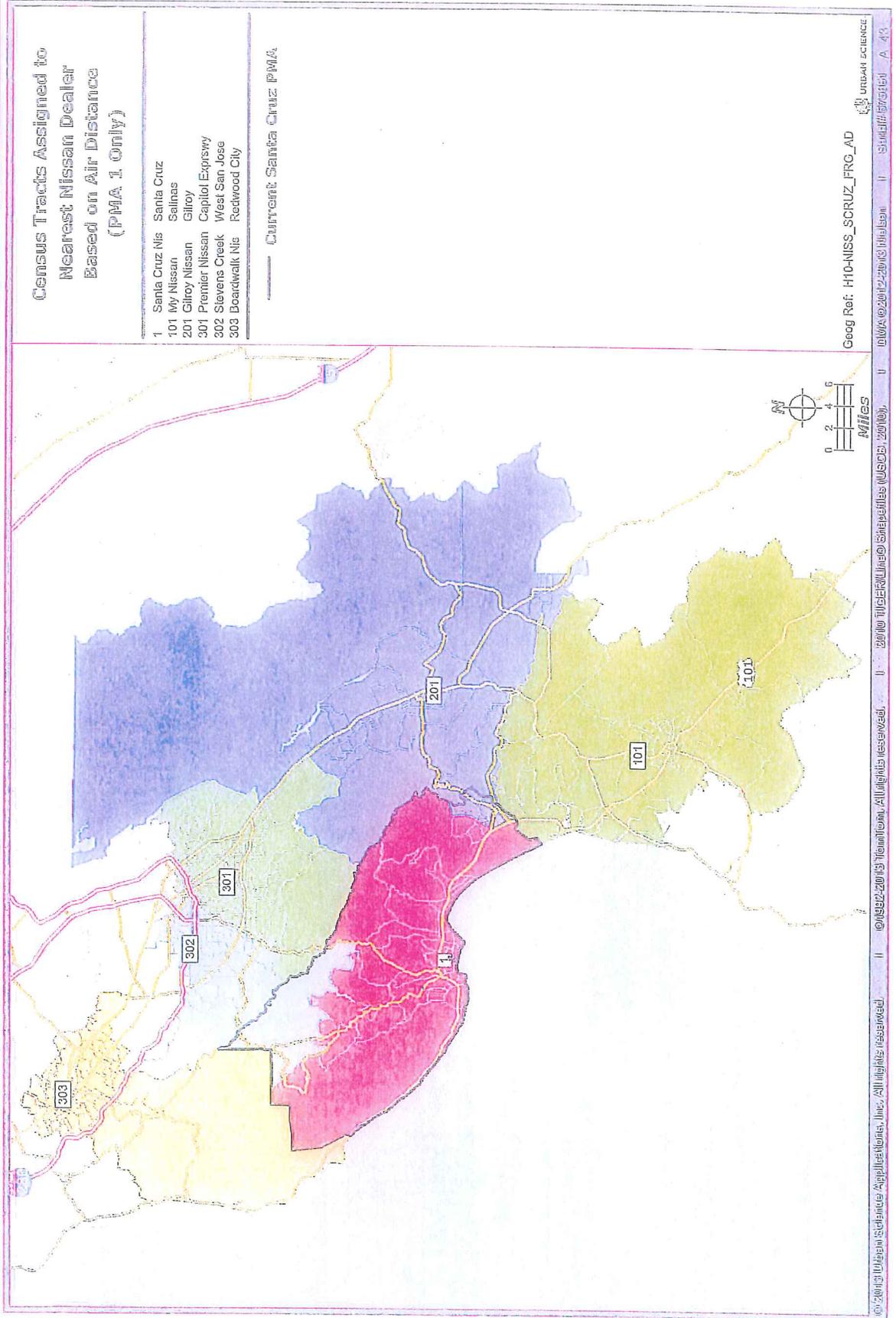
# Exhibit I

Confidential

NNA04737

Nissan North America

Santa Cruz Market + Fringe



# Exhibit J

availability of Nissan Vehicles to Dealer and to other Authorized Nissan Dealers; any special local marketing conditions that would affect Dealer's sales performance differently from the sales performance of other Authorized Nissan Dealers; the recent and long term trends in Dealer's sales performance; the manner in which Dealer has conducted its sales operations (including advertising, sales promotion, and treatment of customers); and the other factors, if any, directly affecting Dealer's sales opportunities and performance.

**E. Used Motor Vehicle Sales.**

Dealer shall engage in used motor vehicle operations as and to the extent reasonably required for Dealer to effectively perform its responsibilities for the sale of Nissan Vehicles. Subject to requirements and guidelines established by Seller, Dealer shall be entitled to identify such used motor vehicle operations as a part of its Dealership Operations and to apply the Nissan Marks relating to used motor vehicle operations.

**F. Dealer Sales Personnel.**

Dealer shall organize and maintain a sales organization that includes a sufficient number of qualified and trained sales managers and sales people to enable Dealer to effectively fulfill its responsibilities under this Section 3. Seller may, from time to time, comment on or advise Dealer concerning the qualifications, performance and ability of Dealer's sales personnel as the same affect Dealer's performance of its obligations under this Section 3.

**G. Assistance Provided by Seller.**

**1. Sales Training Courses.**

Seller will offer from time to time sales training courses for Dealer sales personnel. Based on its need therefor, Dealer shall, without expense to Seller, have members of Dealer's sales organization attend such training courses and Dealer shall cooperate in such courses as may from time to time be offered by Seller.

**2. Sales Personnel.**

To further assist Dealer, Seller will provide to Dealer advice and counsel on matters relating to new vehicle sales, sales personnel training and management, merchandising, and facilities used for Dealer's vehicle sales operations.

**H. Evaluation of Dealer's Sales Performance.** Seller will periodically evaluate Dealer's performance of its responsibilities under this Section 3. Evaluations prepared pursuant to this Section 3.H will be discussed with and provided to Dealer, and Dealer shall have an opportunity to comment, in writing, on such evaluations. Dealer shall promptly take such action as may be required to correct any deficiencies in Dealer's performance of its responsibilities under this Section 3.

**Section 4. Determination of Dealer Representation**

**A. Development of Market Studies.**

Seller may, from time to time and in its sole discretion, conduct studies of various geographic areas to evaluate market conditions. Such market studies may, where appropriate, take into account such factors as geographical characteristics, consumer shopping patterns, existence of other automobile retail outlets, sales opportunities and service requirements of the geographic area in which Dealer's Primary Market Area is located, trends in marketing conditions, current and prospective trends in population, income, occupation, and such other demographic characteristics as may be determined by Seller to be relevant to its study. Such studies will make recommendations concerning the market, the Dealership Facilities, and the Dealership Location. Prior to conducting a study which includes the geographic area in which Dealer's

# Exhibit K

Sales Effectiveness Report - Represented\*\*  
May 2014 Report Month  
California State Breakout

\*Data in this report is based on represented PMA's.  
All data segment-adjusted. Expected value is rounded to the nearest whole number. Analysis does not consider NV (LCV) model sales.  
All data reflects full months of operations only. Report will not include dealers that opened in Report Month.  
All data reflects PMA's based on 2010 Census tract geography.

| Rank | Region Name | DMA Name          | District Code | Market Name     | PMA Name       | Dealer Code | PV    | Open Date | Dealer Name       | Public Dealer State | Twelve Month Rolling |             |  |  | Three Month Rolling |              |  |  |                |
|------|-------------|-------------------|---------------|-----------------|----------------|-------------|-------|-----------|-------------------|---------------------|----------------------|-------------|--|--|---------------------|--------------|--|--|----------------|
|      |             |                   |               |                 |                |             |       |           |                   |                     | Dealer Sales         | CPTV Regis. | Seg. Adj. Expected Sales @ State Rep. (AVG. \$SER) | Seg. Adj. Sales Eff. @ State Rep. (AVG. \$SER) | Net Gain /Loss      | Dealer Sales | Seg. Adj. Expected Sales @ State Rep. (AVG. \$SER) | Seg. Adj. Sales Eff. @ State Rep. (AVG. \$SER) | Net Gain /Loss |
| 1    | West        | LOS ANGELES, CA   | 03            | Los Angeles     | Duarte         | 5380        | 609   | 1/7/13    | Niss of Duarte    | CA                  | 2,088                | 6,607       | 743  | 280.9%   | 1,345               | 650          | 221  | 293.7%   | 1              |
| 2    | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Ontario        | 102C        | 1,170 | 3/10/70   | Empire Nissan     | CA                  | 2,710                | 10,392      | 1,175  | 230.7%   | 1,535               | 831          | 360  | 230.7%   | 2              |
| 3    | West        | SAN FRANCISCO, CA | 10            | Petaluma CA     | Petaluma       | 322         | 1,141 | 5/1/97    | North Bay Nis     | CA                  | 1,167                | 4,920       | 546  | 213.8%   | 621                 | 209          | 150  | 192.4%   | 4              |
| 4    | West        | SACRAMENTO, CA    | 12            | Fairfield CA    | Fairfield CA   | 5249        | 724   | 3/8/10    | Momentum Nissan   | CA                  | 855                  | 4,159       | 452  | 189.1%   | 403                 | 224          | 132  | 169.7%   | 8              |
| 5    | West        | LOS ANGELES, CA   | 06            | Los Angeles     | Cerritos       | 3387        | 1,852 | 2/24/99   | Cerritos Nissan   | CA                  | 2,491                | 12,155      | 1,330  | 187.2%   | 1,161               | 728          | 399  | 482.5%   | 6              |
| 6    | West        | SAN FRANCISCO, CA | 11            | San Fran SIM    | Fremont        | 5242        | 1,031 | 12/30/09  | Premier Nissan    | CA                  | 1,696                | 8,545       | 926  | 183.2%   | 770                 | 536          | 272  | 197.3%   | 3              |
| 7    | West        | LOS ANGELES, CA   | 03            | Los Angeles     | L.A. North     | 042B        | 1,463 | 5/13/70   | Universal City    | CA                  | 3,485                | 17,103      | 1,957  | 178.1%   | 1,528               | 1,074        | 574  | 187.0%   | 5              |
| 8    | West        | YUMA, CA          | 09            | Imperial CA     | Imperial       | 071A        | 759   | 11/27/01  | Rogers and Rogers | CA                  | 1,057                | 5,785       | 631  | 167.4%   | 426                 | 322          | 195  | 165.4%   | 6              |
| 9    | West        | MONTREY, CA       | 11            | Salinas CA      | Salinas        | 2803        | 1,186 | 5/31/00   | My Nissan         | CA                  | 913                  | 5,018       | 554  | 164.9%   | 359                 | 323          | 182  | 177.1%   | 7              |
| 10   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Puente Hills   | 5258        | 1,387 | 5/6/10    | Puente Hills Nis  | CA                  | 2,509                | 14,436      | 1,594  | 157.4%   | 915                 | 736          | 488  | 150.8%   | 14             |
| 11   | West        | LOS ANGELES, CA   | 03            | Los Angeles     | West Covina    | 5078        | 1,748 | 12/7/06   | West Covina Nis   | CA                  | 1,959                | 11,311      | 1,259  | 155.6%   | 700                 | 618          | 390  | 158.3%   | 10             |
| 12   | West        | PALM SPRINGS, CA  | 05            | Cathedr City CA | Cathedral City | 5236        | 886   | 11/4/09   | Palm Spgs Nis     | CA                  | 1,368                | 7,744       | 884  | 154.7%   | 484                 | 423          | 275  | 154.1%   | 12             |
| 13   | West        | SACRAMENTO, CA    | 12            | Fairfield CA    | Vacaville      | 5253        | 430   | 4/1/10    | Nis/Vacaville     | CA                  | 730                  | 4,450       | 474  | 154.1%   | 256                 | 215          | 140  | 154.1%   | 11             |
| 14   | West        | LOS ANGELES, CA   | 03            | Los Angeles     | El Monte       | 5278        | 871   | 8/25/10   | Ross Nissan       | CA                  | 1,660                | 10,218      | 1,155  | 143.7%   | 505                 | 517          | 364  | 142.2%   | 16             |
| 15   | West        | SAN DIEGO, CA     | 07            | San Diego       | National City  | 2036        | 2,856 | 2/13/97   | Mossy Nissan NC   | CA                  | 1,951                | 11,726      | 1,358  | 143.6%   | 593                 | 611          | 421  | 145.0%   | 15             |
| 16   | West        | LOS ANGELES, CA   | 06            | Los Angeles     | Buena Park     | 5093        | 2,873 | 2/13/07   | Buena Park Nis    | CA                  | 2,825                | 18,713      | 2,052  | 137.7%   | 773                 | 826          | 629  | 131.2%   | 21             |
| 17   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Fontana        | 5159        | 1,858 | 4/1/08    | Fontana Nissan    | CA                  | 1,742                | 10,975      | 1,266  | 137.6%   | 476                 | 459          | 392  | 117.0%   | 31             |
| 18   | West        | SACRAMENTO, CA    | 12            | Sacramento      | Elk Grove      | 3773        | 1,525 | 8/28/03   | Nis/Elk Grove     | CA                  | 1,681                | 11,364      | 1,227  | 137.0%   | 454                 | 454          | 366  | 124.0%   | 28             |
| 19   | West        | LOS ANGELES, CA   | 02            | Oxnrd Vntra CA  | Oxnrd          | 2887        | 2,288 | 4/20/00   | Team Nissan       | CA                  | 2,087                | 14,122      | 1,567  | 133.2%   | 520                 | 677          | 482  | 140.3%   | 17             |
| 20   | West        | SACRAMENTO, CA    | 12            | Sacramento      | Roseville CA   | 2648        | 1,821 | 12/23/98  | Future Nissan     | CA                  | 1,787                | 12,833      | 1,358  | 131.5%   | 429                 | 496          | 496  | 128.8%   | 24             |
| 21   | West        | LOS ANGELES, CA   | 03            | Los Angeles     | Carson         | 5230        | 1,322 | 9/21/09   | Carson Nissan     | CA                  | 1,710                | 12,104      | 1,326  | 129.0%   | 384                 | 522          | 388  | 134.6%   | 19             |
| 22   | West        | SAN DIEGO, CA     | 07            | San Diego       | Escondido      | 3397        | 1,786 | 2/13/97   | Mossy Nissan Es   | CA                  | 1,501                | 10,660      | 1,181  | 127.1%   | 320                 | 465          | 353  | 131.8%   | 20             |
| 23   | West        | LOS ANGELES, CA   | 06            | Los Angeles     | Heimet         | 5181        | 740   | 8/11/08   | Pedder Nissan     | CA                  | 1,683                | 11,540      | 1,359  | 123.8%   | 324                 | 542          | 438  | 123.8%   | 29             |
| 24   | West        | FRESNO, CA        | 11            | Fresno          | Selma CA       | 3671        | 794   | 1/11/00   | Selma Nissan      | CA                  | 774                  | 6,099       | 626  | 123.5%   | 148                 | 297          | 193  | 153.5%   | 13             |
| 25   | West        | SAN FRANCISCO, CA | 11            | San Fran SIM    | Sunnyvale      | 5263        | 1,090 | 6/21/10   | Nis Sunnyvale     | CA                  | 1,642                | 12,392      | 1,357  | 121.0%   | 285                 | 451          | 390  | 115.8%   | 33             |
| 26   | West        | LOS ANGELES, CA   | 06            | Los Angeles     | Huntington Bch | 5163        | 1,361 | 4/29/08   | Surf City Niss    | CA                  | 1,077                | 8,422       | 890  | 121.0%   | 487                 | 329          | 262  | 125.4%   | 27             |
| 27   | West        | LOS ANGELES, CA   | 06            | Los Angeles     | Long Beach No  | 5285        | 1,047 | 11/19/10  | Hooman Nissan     | CA                  | 1,685                | 12,443      | 1,401  | 120.2%   | 284                 | 506          | 418  | 121.1%   | 30             |
| 28   | West        | SACRAMENTO, CA    | 12            | Tracy CA        | Tracy          | 2494        | 916   | 4/12/02   | Tracy Nissan      | CA                  | 761                  | 5,950       | 645  | 118.0%   | 116                 | 199          | 186  | 106.9%   | 38             |
| 29   | West        | SAN DIEGO, CA     | 07            | San Diego       | Kearny Mesa    | 3283        | 1,374 | 2/13/97   | Mossy Nissan Km   | CA                  | 1,875                | 14,329      | 1,594  | 117.6%   | 281                 | 609          | 465  | 130.9%   | 22             |
| 30   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Redlands       | 3378        | 1,487 | 6/26/96   | Metro/Redlands    | CA                  | 1,250                | 9,551       | 1,067  | 117.2%   | 183                 | 443          | 327  | 135.4%   | 18             |
| 31   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Riverside      | 3753        | 1,468 | 3/30/01   | Riverside Nis     | CA                  | 1,254                | 9,395       | 1,070  | 117.1%   | 184                 | 383          | 343  | 111.8%   | 34             |
| 32   | West        | PALM SPRINGS, CA  | 05            | Indio CA        | Indio          | 3247        | 1,154 | 7/26/00   | Torre Nissan      | CA                  | 1,215                | 9,525       | 1,059  | 114.7%   | 156                 | 425          | 325  | 130.7%   | 23             |
| 33   | West        | SAN DIEGO, CA     | 07            | San Diego       | Oceanside      | 3383        | 2,734 | 9/30/99   | Mossy Nissan Os   | CA                  | 2,426                | 19,322      | 2,156  | 112.5%   | 270                 | 743          | 640  | 116.0%   | 32             |
| 34   | West        | FRESNO, CA        | 11            | Visalia CA      | Visalia        | 3259        | 1,199 | 3/8/94    | Visalia Nissan    | CA                  | 984                  | 8,542       | 894  | 110.1%   | 90                  | 292          | 268  | 109.1%   | 36             |
| 35   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Moreno Valley  | 3405        | 1,498 | 4/29/11   | Rayway Nissan     | CA                  | 1,467                | 11,776      | 1,377  | 106.6%   | 90                  | 552          | 434  | 127.3%   | 25             |
| 36   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | San Bernardino | 3472        | 1,195 | 7/14/03   | Nis of San Bern   | CA                  | 1,104                | 8,423       | 1,037  | 106.6%   | 67                  | 365          | 348  | 104.9%   | 39             |
| 37   | West        | SAN FRANCISCO, CA | 11            | San Fran SIM    | Redwood City   | 3822        | 856   | 3/28/02   | Boardwalk Nis     | CA                  | 1,041                | 8,716       | 986  | 105.6%   | 55                  | 301          | 275  | 109.3%   | 35             |
| 38   | West        | LOS ANGELES, CA   | 05            | Los Angeles     | Montclair      | 300         | 2,724 | 12/3/70   | Metro/Montclair   | CA                  | 2,246                | 19,644      | 2,214  | 104.4%   | 32                  | 696          | 670  | 103.9%   | 40             |
| 39   | West        | MONTREY, CA       | 11            | Seaside CA      | Seaside        | 3905        | 448   | 7/15/03   | Cardinale Nis     | CA                  | 409                  | 3,531       | 409  | 100.0%   | 0                   | 153          | 121  | 126.2%   | 26             |
| 40   | West        | FRESNO, CA        | 11            | Fresno          | Fresno         | 3495        | 1,681 | 1/20/98   | Lithia Nissan     | CA                  | 966                  | 8,719       | 970  | 99.8%  | (4)                 | 279          | 328  | 85.2%  | 61             |
| 41   | West        | SAN FRANCISCO, CA | 11            | San Fran SIM    | West San Jose  | 2785        | 1,342 | 11/20/89  | Stevens Creek     | CA                  | 1,339                | 12,335      | 1,348  | 99.3%  | (9)                 | 363          | 391  | 92.8%  | 52             |
| 42   | West        | SACRAMENTO, CA    | 12            | Modesto CA      | Modesto        | 2731        | 1,823 | 7/28/89   | Central Vly Nis   | CA                  | 1,190                | 11,417      | 1,199  | 99.2%  | (9)                 | 339          | 364  | 93.2%  | 50             |

Sales Effectiveness Report - Represented\*\*  
May 2014 Report Month  
California State Breakout



\*Data in this report is based on represented PIMAs.  
All data segment-adjusted. Expected value is rounded to the nearest whole number. Analysis does not consider NY (LCV) model sales.  
All data reflects full months of operations only. Report will not include dealers that opened in Report Month.  
All data reflects PIMAs based on 2010 Census tract geography.

| Rank | Region | DMA Name          | District Code | Market Name     | PIMA Name       | Dealer Code | PV    | Open Date | Dealer Name        | Public Dealer State | Twelve Month Rolling |             |  |   | memo: Three Month Rolling |              |             |  |   |
|------|--------|-------------------|---------------|-----------------|-----------------|-------------|-------|-----------|--------------------|---------------------|----------------------|-------------|--|---|---------------------------|--------------|-------------|--|---|
|      |        |                   |               |                 |                 |             |       |           |                    |                     | Dealer Sales         | CPTV Regis. | Seg. Adj. Sales @ State Rep. Avg. (\$SSER) | Seg. Adj. Sales Eff. @ State Rep. Avg. (\$SSER) | Net Gain /Loss            | Dealer Sales | CPTV Regis. | Seg. Adj. Sales @ State Rep. Avg. (\$SSER) | Seg. Adj. Sales Eff. @ State Rep. Avg. (\$SSER) |
| 43   | West   | SAN DIEGO, CA     | 07            | San Diego       | W San Diego     | 5400        | 1,020 | 9/27/13   | Pacific Nissan     | CA                  | 829                  | 7,021       | 836  | 99.2%   | (7)                       | 336          | 359         | 93.7%                                      | 49  |
| 44   | West   | EUREKA, CA        | 10            | Eureka CA       | Eureka          | 211A        | 277   | 6/8/72    | McCrea Nissan      | CA                  | 213                  | 1,860       | 216  | 98.5%   | (3)                       | 70           | 71          | 98.6%                                      | 43  |
| 45   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | Glendale CA     | 3341        | 1,497 | 10/27/95  | Glendale Nissan    | CA                  | 2,243                | 20,343      | 2,300                                      | 97.5%   | (57)                      | 657          | 681         | 96.5%                                      | 45  |
| 46   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | Concord CA      | 5417        | 632   | 2/1/14    | Autocom Nis Con    | CA                  | 281                  | 2,414       | 289  | 97.2%   | (8)                       | 521          | 523         | 99.7%                                      | 42  |
| 47   | West   | LOS ANGELES, CA   | 02            | Los Angeles     | Van Nuys        | 5393        | 1,354 | 7/2/13    | Nis of Van Nuys    | CA                  | 1,455                | 13,059      | 1,501                                      | 97.0%   | (46)                      | 569          | 571         | 99.7%                                      | 41  |
| 48   | West   | SAN DIEGO, CA     | 07            | San Diego       | El Cajon        | 3439        | 2,184 | 6/13/97   | Mossy Nissan Ec    | CA                  | 1,816                | 16,792      | 1,891                                      | 96.0%   | (75)                      | 569          | 571         | 99.7%                                      | 41  |
| 49   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | San Leandro     | 3788        | 912   | 9/26/01   | San Leandro Nis    | CA                  | 621                  | 5,814       | 650  | 95.5%   | (29)                      | 173          | 202         | 85.5%                                      | 60  |
| 50   | West   | CHICO, CA         | 10            | Chico CA        | Chico           | 024B        | 621   | 3/21/66   | Chico Nissan       | CA                  | 439                  | 4,448       | 474  | 92.6%   | (35)                      | 124          | 135         | 92.2%                                      | 53  |
| 51   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | Downey          | 5154        | 1,484 | 2/13/08   | Downey Nissan      | CA                  | 2,199                | 20,619      | 2,379                                      | 92.4%   | (180)                     | 692          | 768         | 90.1%                                      | 54  |
| 52   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | Hayward         | 5191        | 936   | 12/2/08   | Hayward Nissan     | CA                  | 981                  | 9,698       | 1,066                                      | 92.0%   | (85)                      | 357          | 328         | 108.7%                                     | 37  |
| 53   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | Gardena         | 153C        | 1,639 | 2/2/70    | Gardena Nissan     | CA                  | 1,096                | 10,621      | 1,206                                      | 90.9%   | (110)                     | 362          | 381         | 94.9%                                      | 46  |
| 54   | West   | FRESNO, CA        | 11            | Merced CA       | Merced          | 3445        | 557   | 6/26/97   | Rezarri Nissan     | CA                  | 389                  | 3,917       | 429  | 90.8%   | (40)                      | 90           | 130         | 69.5%                                      | 76  |
| 55   | West   | CHICO, CA         | 10            | Redding CA      | Redding         | 5274        | 553   | 8/2/10    | Crown Nissan       | CA                  | 434                  | 4,420       | 485  | 89.4%   | (51)                      | 117          | 136         | 85.8%                                      | 59  |
| 56   | West   | LOS ANGELES, CA   | 06            | Los Angeles     | Tustin          | 5338        | 1,392 | 12/29/11  | Tustin Nissan      | CA                  | 1,397                | 14,799      | 1,581                                      | 88.4%   | (184)                     | 420          | 451         | 93.2%                                      | 51  |
| 57   | West   | SANTA BARBARA, CA | 02            | Santa Maria CA  | Santa Maria     | 3763        | 821   | 5/4/01    | Santa Maria Nis    | CA                  | 551                  | 5,731       | 626  | 88.0%   | (75)                      | 146          | 197         | 74.0%                                      | 68  |
| 58   | West   | LOS ANGELES, CA   | 06            | Los Angeles     | Orange          | 5162        | 2,159 | 4/29/08   | Stadium Nissan     | CA                  | 2,019                | 20,805      | 2,295                                      | 88.0%   | (276)                     | 693          | 707         | 98.1%                                      | 44  |
| 59   | West   | LOS ANGELES, CA   | 02            | Los Angeles     | Mission Hills   | 5248        | 1,820 | 2/22/10   | Nis Mission His    | CA                  | 1,799                | 18,175      | 2,045                                      | 87.9%   | (246)                     | 570          | 638         | 89.3%                                      | 56  |
| 60   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | Downtown LA     | 249         | 2,110 | 8/6/68    | Nis Downtown LA    | CA                  | 2,837                | 27,520      | 3,229                                      | 87.5%   | (392)                     | 886          | 1,013       | 87.5%                                      | 57  |
| 61   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | Antioch         | 3570        | 1,179 | 11/24/98  | Antioch Nissan     | CA                  | 788                  | 8,516       | 931  | 84.7%   | (143)                     | 213          | 300         | 71.0%                                      | 73  |
| 62   | West   | SANTA BARBARA, CA | 02            | Santa Barbr CA  | Santa Barbara   | 3630        | 846   | 7/30/99   | S Barbara Nis      | CA                  | 564                  | 5,874       | 668  | 84.5%   | (104)                     | 158          | 191         | 82.7%                                      | 63  |
| 63   | West   | BAKERSFIELD, CA   | 02            | Bakersfield CA  | Bakersfield     | 3810        | 2,125 | 12/21/01  | Nis Bakersfield    | CA                  | 1,405                | 16,389      | 1,710                                      | 82.2%   | (305)                     | 361          | 519         | 69.6%                                      | 75  |
| 64   | West   | SAN FRANCISCO, CA | 10            | Fairfield CA    | Vallejo         | 246         | 662   | 11/16/66  | Vallejo Nissan     | CA                  | 462                  | 5,000       | 568  | 81.3%   | (106)                     | 163          | 173         | 94.3%                                      | 48  |
| 65   | West   | LOS ANGELES, CA   | 06            | Los Angeles     | Corona          | 5367        | 1,492 | 8/29/12   | Corona Nissan      | CA                  | 1,038                | 12,600      | 1,357                                      | 80.2%   | (269)                     | 223          | 408         | 54.7%                                      | 89  |
| 66   | West   | SACRAMENTO, CA    | 12            | Sacramento      | Folsom          | 5347        | 988   | 3/30/12   | Fut Nis Folsom     | CA                  | 655                  | 7,795       | 818  | 80.0%   | (163)                     | 162          | 230         | 70.6%                                      | 74  |
| 67   | West   | SAN FRANCISCO, CA | 11            | San Fran SM     | Capitol Exprswy | 5222        | 2,744 | 8/13/09   | Premier Nissan     | CA                  | 1,755                | 20,005      | 2,199                                      | 79.8%   | (444)                     | 529          | 650         | 81.4%                                      | 64  |
| 68   | West   | SAN DIEGO, CA     | 07            | San Diego       | Poway           | 3899        | 1,506 | 6/2/03    | Mossy Nis Poway    | CA                  | 973                  | 11,330      | 1,225                                      | 79.5%   | (252)                     | 289          | 344         | 84.1%                                      | 62  |
| 69   | West   | SACRAMENTO, CA    | 12            | Sacramento      | Davis           | 3917        | 649   | 9/9/03    | Hanlees Nissan     | CA                  | 436                  | 5,045       | 549  | 79.4%   | (113)                     | 136          | 152         | 89.5%                                      | 55  |
| 70   | West   | SAN FRANCISCO, CA | 10            | Santa Rosa CA   | Santa Rosa      | 3979        | 830   | 3/17/05   | Nissan Santa Ro    | CA                  | 830                  | 9,428       | 1,051                                      | 78.9%   | (221)                     | 243          | 324         | 75.0%                                      | 66  |
| 71   | West   | SACRAMENTO, CA    | 12            | Sacramento      | Shingle Spgs    | 2434        | 712   | 11/7/08   | Shingle Spg Nis    | CA                  | 352                  | 4,220       | 450  | 78.2%   | (98)                      | 89           | 121         | 73.4%                                      | 70  |
| 72   | West   | LOS ANGELES, CA   | 05            | Victorville CA  | Victorville     | 3951        | 1,452 | 7/21/04   | Valley HI Nis      | CA                  | 953                  | 10,958      | 1,235                                      | 77.2%   | (282)                     | 274          | 378         | 72.5%                                      | 72  |
| 73   | West   | LOS ANGELES, CA   | 02            | Los Angeles     | Simi Valley     | 3037        | 1,099 | 1/27/97   | First Nissan       | CA                  | 638                  | 7,891       | 859  | 74.3%   | (221)                     | 193          | 259         | 74.4%                                      | 67  |
| 74   | West   | LOS ANGELES, CA   | 06            | Los Angeles     | Irvine          | 5112        | 1,316 | 5/31/07   | OC Nis-Irvine      | CA                  | 960                  | 12,411      | 1,331                                      | 72.1%   | (371)                     | 276          | 380         | 72.6%                                      | 71  |
| 75   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | South Bay       | 090A        | 1,476 | 3/19/03   | AN Nis South Bay   | CA                  | 1,254                | 16,036      | 1,746                                      | 71.8%   | (492)                     | 447          | 518         | 86.3%                                      | 58  |
| 76   | West   | LOS ANGELES, CA   | 06            | Los Angeles     | Costa Mesa      | 3540        | 1,720 | 6/30/98   | Connell Nissan     | CA                  | 1,052                | 13,323      | 1,445                                      | 71.4%   | (413)                     | 314          | 426         | 73.6%                                      | 69  |
| 77   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | Millbrae        | 5324        | 728   | 9/8/11    | Nis of Burlingam   | CA                  | 597                  | 7,808       | 853  | 70.0%   | (256)                     | 160          | 246         | 64.9%                                      | 79  |
| 78   | West   | SANTA BARBARA, CA | 02            | San Ls Obspp CA | San Ls Obispo   | 3741        | 858   | 12/22/00  | Coast Nissan       | CA                  | 369                  | 4,850       | 538  | 68.5%   | (169)                     | 100          | 153         | 65.3%                                      | 78  |
| 79   | West   | LOS ANGELES, CA   | 02            | Palmdale CA     | Palmdale        | 3728        | 1,768 | 8/31/01   | Antelope Vly       | CA                  | 908                  | 11,421      | 1,347                                      | 67.4%   | (439)                     | 284          | 447         | 63.5%                                      | 81  |
| 80   | West   | SAN FRANCISCO, CA | 10            | San Fran SM     | Richmond CA     | 3392        | 833   | 10/17/96  | Hanlees Hilltop    | CA                  | 488                  | 6,349       | 727  | 67.1%   | (239)                     | 169          | 224         | 75.5%                                      | 65  |
| 81   | West   | SACRAMENTO, CA    | 12            | Sacramento      | East Sacramento | 5126        | 2,066 | 7/30/07   | Maitla's Nis Sac   | CA                  | 1,121                | 15,009      | 1,683                                      | 66.6%   | (562)                     | 275          | 487         | 56.5%                                      | 87  |
| 82   | West   | LOS ANGELES, CA   | 03            | Los Angeles     | Alhambra        | 5424        | 1,840 | 3/18/14   | Alhambra Nissan    | CA                  | 1,121                | 4,073       | 479  | 66.4%   | (161)                     | 318          | 479         | 66.4%                                      | 77  |
| 83   | West   | SAN FRANCISCO, CA | 10            | Napa CA         | Napa            | 247         | 532   | 11/4/65   | Napa Nissan        | CA                  | 291                  | 4,038       | 451  | 64.5%   | (160)                     | 90           | 139         | 64.9%                                      | 80  |
| 84   | West   | LOS ANGELES, CA   | 02            | Los Angeles     | Valencia        | 5281        | 1,623 | 10/1/10   | Nissan of Valencia | CA                  | 829                  | 12,208      | 1,314                                      | 63.1%   | (485)                     | 234          | 388         | 60.3%                                      | 85  |



**Sales Effectiveness Report - Represented\***  
**May 2014 Report Month**  
**California State Breakout**

Confidential Internal Document  
 New Report (\$SER)

\*Data in this report is based on represented PMAs.  
 All data segment-adjusted. Expected value is rounded to the nearest whole number. Analysis does not consider NV (LCV) model sales.  
 All data reflects full months of operations only. Report will not include dealers that opened in Report Month.  
 All data reflects PMAs based on 2010 Census tract geography.

|      |             |                   |               |               |                |             |       |           |                 |                                     |       |                | Twelve Month Rolling |                 |  |                | Three Month Rolling |                 |                                  |      |  |  |
|------|-------------|-------------------|---------------|---------------|----------------|-------------|-------|-----------|-----------------|-------------------------------------|-------|----------------|----------------------|-----------------|--|----------------|---------------------|-----------------|----------------------------------|------|--|--|
| Rank | Region Name | DMA Name          | District Code | Market Name   | PMAs           | Dealer Code | PV    | Open Date | Dealer Name     | Public Dealer                       | State | Dealer Sales   | CPTV Regis.          | State Rep. Avg. | Seg. Adj. Expected Sales @ State (\$SER) | Net Gain /Loss | Dealer Sales        | State Rep. Avg. | Seg. Adj. Expected Sales @ State | Rank |  |  |
| 85   | West        | SAN FRANCISCO, CA | 11            | Gilroy CA     | Gilroy         | 3242        | 483   | 12/21/09  | Gilroy Nissan   |                                     | CA    | 353            | 5,220                | 571             | 61.8%                                    | (218)          | 104                 | 174             | 59.9%                            | 86   |  |  |
| 86   | West        | LOS ANGELES, CA   | 06            | Temecula CA   | Temecula       | 3774        | 2,283 | 7/17/01   | Quality Nissan  |                                     | CA    | 1,170          | 17,642               | 1,936           | 60.4%                                    | (766)          | 373                 | 591             | 63.2%                            | 83   |  |  |
| 87   | West        | SAN FRANCISCO, CA | 10            | San Fran SM   | Walnut Creek   | 5416        | 759   | 2/1/14    | Autocom Nis Wal |                                     | CA    | 165            | 2,468                | 289             | 57.2%                                    | (124)          | 140                 | 227             | 61.8%                            | 84   |  |  |
| 88   | West        | LOS ANGELES, CA   | 06            | Los Angeles   | Garden Grove   | 2793        | 1,879 | 3/17/00   | OC Nissan - GG  |                                     | CA    | 819            | 12,898               | 1,446           | 56.5%                                    | (627)          | 227                 | 443             | 51.2%                            | 92   |  |  |
| 89   | West        | LOS ANGELES, CA   | 06            | Los Angeles   | San Juan Capis | 5392        | 0     | 7/15/13   | Ocean Nis SJ Ca |                                     | CA    | 472            | 8,030                | 856             | 55.1%                                    | (364)          | 139                 | 289             | 48.1%                            | 94   |  |  |
| 90   | West        | SACRAMENTO, CA    | 12            | Stockton CA   | Stockton       | 5403        | 902   | 10/1/13   | Nis of Stockton | <input checked="" type="checkbox"/> | CA    | 410            | 6,691                | 743             | 54.8%                                    | (338)          | 209                 | 329             | 63.4%                            | 82   |  |  |
| 91   | West        | SAN FRANCISCO, CA | 10            | San Fran SM   | Colma          | 2261        | 1,522 | 11/16/84  | Serramonte Nis  | <input checked="" type="checkbox"/> | CA    | 830            | 13,665               | 1,539           | 53.9%                                    | (709)          | 248                 | 458             | 54.1%                            | 90   |  |  |
| 92   | West        | SAN DIEGO, CA     | 07            | San Diego     | Chula Vista    | 5377        | 1,565 | 12/12/12  | Nis Chula Vista |                                     | CA    | 715            | 12,404               | 1,378           | 51.9%                                    | (665)          | 217                 | 419             | 51.8%                            | 91   |  |  |
| 93   | West        | FRESNO, CA        | 11            | Fresno        | Clovis CA      | 5224        | 785   | 8/18/09   | Nissan of Clovi |                                     | CA    | 404            | 7,555                | 806             | 50.1%                                    | (402)          | 99                  | 245             | 40.5%                            | 96   |  |  |
| 94   | West        | SAN FRANCISCO, CA | 11            | San Fran SM   | Dublin CA      | 5130        | 1,260 | 8/29/07   | Dublin Nissan   |                                     | CA    | 600            | 12,620               | 1,319           | 45.5%                                    | (719)          | 99                  | 368             | 26.9%                            | 99   |  |  |
| 95   | West        | SAN FRANCISCO, CA | 10            | San Fran SM   | Oakland        | 5394        | 939   | 8/30/13   | Autocom Nissan  |                                     | CA    | 536            | 9,795                | 1,486           | 45.2%                                    | (650)          | 240                 | 470             | 51.1%                            | 93   |  |  |
| 96   | West        | SAN FRANCISCO, CA | 10            | San Fran SM   | San Rafael     | 5397        | 640   | 9/10/13   | Nissan Marin    |                                     | CA    | 276            | 5,340                | 623             | 43.9%                                    | (352)          | 144                 | 258             | 55.7%                            | 88   |  |  |
| 97   | West        | LOS ANGELES, CA   | 05            | Barstow CA    | Barstow        | 2136        | 179   | 4/7/83    | Soutar's        |                                     | CA    | 57             | 1,239                | 141             | 40.4%                                    | (84)           | 19                  | 44              | 42.9%                            | 95   |  |  |
| 98   | West        | MONTEREY, CA      | 11            | Santa Cruz CA | Santa Cruz     | 0638        | 621   | 3/20/72   | Santa Cruz Nis  |                                     | CA    | 260            | 6,664                | 765             | 34.0%                                    | (505)          | 76                  | 230             | 33.1%                            | 97   |  |  |
| 99   | West        | SAN FRANCISCO, CA | 10            | San Fran SM   | San Francisco  | 5394        | 1,071 | 2/24/12   | Nissan San Fran | <input checked="" type="checkbox"/> | CA    | 497            | 15,434               | 1,830           | 27.2%                                    | (1,333)        | 164                 | 543             | 30.2%                            | 98   |  |  |
|      |             |                   |               |               |                |             |       |           |                 |                                     |       | <b>117,925</b> | <b>1,060,329</b>     |                 |  |                |                     | <b>35,533</b>   |                                  |      |  |  |

California State Totals And Sales Pen



**Sales Effectiveness Report - Represented\*\***  
**May 2014 Report Month**  
**Colorado State Breakout**

Confidential Internal Document  
 New Report (SSER)

\*Data in this report is based on represented PIMAs.  
 All data segment-adjusted. Expected value is rounded to the nearest whole number. Analysis does not consider NY (LCV) model sales.  
 All data reflects full months of operations only. Report will not include dealers that opened in Report Month.  
 All data reflects PIMAs based on 2010 Census tract geography.

| Rank | Region Name | DMA Name          | District Code | Market Name       | PIMA Name       | Dealer Code | PV    | Open Date | Dealer Name       | Public Dealer                       | State | Twelve Month Rolling                |             |  |                             | Three Month Rolling |              |  |                      |                |  |
|------|-------------|-------------------|---------------|-------------------|-----------------|-------------|-------|-----------|-------------------|-------------------------------------|-------|-------------------------------------|-------------|--|-----------------------------|---------------------|--------------|--|----------------------|----------------|--|
|      |             |                   |               |                   |                 |             |       |           |                   |                                     |       | Dealer Sales                        | CPTY Regis. | Seg. Adj. Expected Sales @ State Rep. Avg. | Seg. Adj. Sales Eff. (SSER) | Net Gain /Loss      | Dealer Sales | Seg. Adj. Expected Sales @ State Rep. Avg. | Seg. Adj. Sales Eff. | Rep. Avg. Rank |  |
| 1    | Central     | DENVER, CO        | 11            | Denver            | Englewood       | 5041        | 645   | 3/31/06   | Larry Miller      |                                     | CO    | 1,075                               | 6,715       | 653  | 164.6%                      | 422                 | 325          | 172  | 138.5%               | 1              |  |
| 2    | Central     | COLORADO SPRING   | 11            | Pueblo CO         | Pueblo          | 3977        | 418   | 3/1/05    | Dave Solon Nis    |                                     | CO    | 443                                 | 2,951       | 282  | 157.0%                      | 161                 | 116          | 86   | 135.0%               | 3              |  |
| 3    | Central     | DENVER, CO        | 11            | Greeley CO        | Greeley         | 172         | 609   | 9/4/63    | Einrich Nissan    |                                     | CO    | 723                                 | 5,521       | 484  | 149.5%                      | 239                 | 212          | 152  | 139.0%               | 2              |  |
| 4    | Central     | ALBUQUERQUE, NV   | 13            | Durango CO        | Durango         | 1998        | 217   | 5/27/03   | Economy Nissan    |                                     | CO    | 221                                 | 1,707       | 168  | 131.5%                      | 53                  | 59           | 46   | 127.3%               | 5              |  |
| 5    | Central     | GRAND JUNCTION, I | 13            | Montrose CO       | Montrose        | 2477        | 154   | 4/10/87   | Montrose Nissan   |                                     | CO    | 142                                 | 1,128       | 111  | 127.8%                      | 31                  | 42           | 32   | 131.0%               | 4              |  |
| 6    | Central     | DENVER, CO        | 11            | Longmont CO       | Longmont        | 5082        | 640   | 12/18/06  | Valley Nissan     |                                     | CO    | 675                                 | 5,898       | 570  | 118.4%                      | 105                 | 174          | 161  | 107.8%               | 8              |  |
| 7    | Central     | DENVER, CO        | 11            | Denver            | Boulder         | 3748        | 668   | 2/12/01   | Boulder Nissan    |                                     | CO    | 708                                 | 6,031       | 602  | 117.6%                      | 106                 | 200          | 169  | 118.2%               | 6              |  |
| 8    | Central     | DENVER, CO        | 11            | Denver            | Centennial      | 3524        | 2,417 | 10/31/00  | AN Niss Arapahoe  | <input checked="" type="checkbox"/> | CO    | 1,687                               | 16,870      | 1,618                                      | 104.3%                      | 69                  | 480          | 445  | 108.0%               | 7              |  |
| 9    | Central     | COLORADO SPRING   | 11            | Colorado Spring   | N Colorado Spgs | 5017        | 1,235 | 12/15/05  | Woodmen Nissan    |                                     | CO    | 1,021                               | 10,392      | 980  | 104.1%                      | 41                  | 281          | 266  | 105.7%               | 9              |  |
| 10   | Central     | DENVER, CO        | 11            | Denver            | Aurora CO       | 014C        | 1,603 | 10/4/84   | Tynan's Nissan    |                                     | CO    | 1,747                               | 17,552      | 1,715                                      | 101.9%                      | 32                  | 527          | 499  | 105.5%               | 10             |  |
| 11   | Central     | DENVER, CO        | 11            | Denver            | Wheat Ridge     | 5356        | 1,384 | 7/3/12    | Empire Lakewood   |                                     | CO    | 1,152                               | 12,251      | 1,208                                      | 95.3%                       | (56)                | 339          | 341  | 99.4%                | 11             |  |
| 12   | Central     | DENVER, CO        | 11            | Ft Collins CO     | Ft Collins      | 2216        | 971   | 3/26/84   | Tynan's Nissan    |                                     | CO    | 798                                 | 9,047       | 856  | 93.2%                       | (58)                | 233          | 256  | 91.1%                | 12             |  |
| 13   | Central     | COLORADO SPRING   | 11            | Colorado Spring   | S Colorado Spgs | 5018        | 1,030 | 12/15/05  | S Colorado Spgs   |                                     | CO    | 763                                 | 9,495       | 872  | 87.5%                       | (109)               | 221          | 256  | 86.5%                | 13             |  |
| 14   | Central     | GRAND JUNCTION, I | 13            | Grand Junction CO | Grand Junction  | 3262        | 389   | 4/6/94    | Jim Fuoco Mtr     |                                     | CO    | 248                                 | 3,145       | 289  | 85.8%                       | (41)                | 67           | 88   | 75.8%                | 14             |  |
| 15   | Central     | DENVER, CO        | 11            | Denver            | Littleton       | 5149        | 1,336 | 12/12/07  | AN Niss Southwest | <input checked="" type="checkbox"/> | CO    | 534                                 | 9,022       | 879  | 68.7%                       | (345)               | 149          | 251  | 59.5%                | 15             |  |
| 16   | Central     | DENVER, CO        | 11            | Denver            | Federal Heights | 3525        | 1,980 | 5/21/99   | AN Niss 104       | <input checked="" type="checkbox"/> | CO    | 909                                 | 16,185      | 1,558                                      | 53.4%                       | (649)               | 270          | 475  | 56.9%                | 16             |  |
|      |             |                   |               |                   |                 |             |       |           |                   |                                     |       | 12,846                              | 133,590     | 1,558                                      | 53.4%                       | (649)               | 3,695        |  |                      |                |  |
|      |             |                   |               |                   |                 |             |       |           |                   |                                     |       | Colorado State Totals And Sales Pen |             |  |                             |                     |              |  |                      |                |  |

# Exhibit L



# Advertising and the Dealership

Franchised new-car dealerships spent \$7.6 billion on advertising in 2013, up 6.1 percent from \$7.2 billion the previous year.

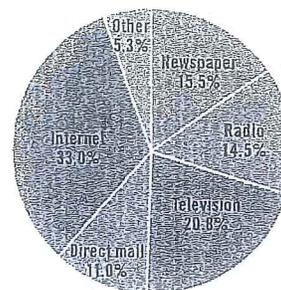
Average ad expense per new-vehicle retained fell to \$616, down 0.8 percent. For various advertising (newspapers, radio, television, direct mail, Internet and other), dealer advertising for newspaper, print and radio has declined since 2003—with newspaper advertis-

ing declining the most, down more than 30 percentage points. Internet advertising increased the most since 2003, up nearly 30 percentage points.

The average dealership spent 33 percent of advertising on the Internet in 2013, up from 26.5 percent. Radio advertising fell to 14.5 percent, from 15.9 percent. Television advertising increased slightly to 20.8 percent, from 20.2 percent.

## Advertising expenditures, by medium, 2013

Percent of total



Source: NADA

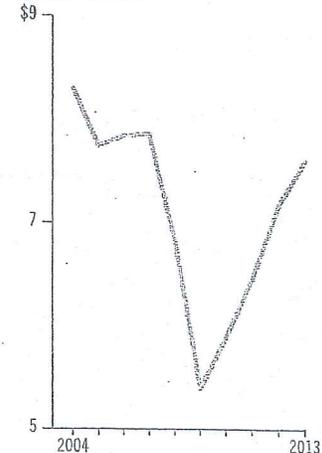
## Estimated advertising expenses per dealership in 2013

| By media used                           | Average of all dealerships | 1-149            | 150-399          | 400-749          | 750 or more      |
|---|----------------------------|------------------|------------------|------------------|------------------|
| Newspapers                              | \$66,253                   | \$26,910         | \$32,907         | \$47,892         | \$81,020         |
| Radio                                   | \$65,690                   | \$19,336         | \$28,770         | \$62,840         | \$91,617         |
| Television                              | \$97,657                   | \$17,451         | \$36,598         | \$92,694         | \$162,376        |
| Direct Mail                             | \$46,208                   | \$11,064         | \$19,999         | \$39,139         | \$75,002         |
| Internet                                | \$111,822                  | \$26,828         | \$52,798         | \$95,557         | \$172,453        |
| Other                                   | \$42,114                   | \$11,046         | \$21,364         | \$35,249         | \$61,476         |
| <b>Total</b>                            | <b>\$429,744</b>           | <b>\$112,635</b> | <b>\$192,436</b> | <b>\$373,371</b> | <b>\$643,942</b> |
| Total advertising as a % of total sales | 1.04%                      | 1.11%            | 1.05%            | 1.01%            | 0.92%            |
| Total advertising per new vehicle sold  | \$616                      | \$862            | \$616            | \$517            | \$410            |

Source: NADA

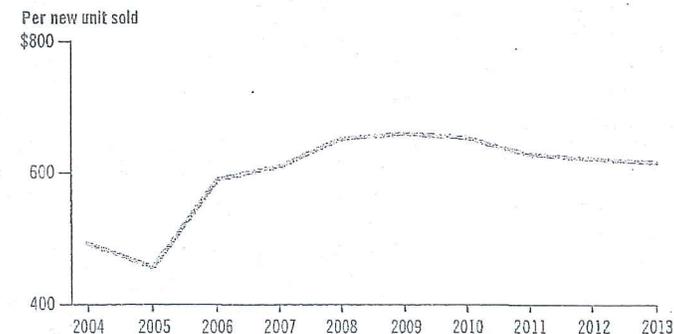
## Total dealership advertising expenditures

In billions of dollars



Source: NADA

## Total dealership advertising



Source: NADA

**PROOF OF SERVICE**

I, Elly Cordero, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On August 25, 2014, I served a copy of the within document(s):

**RESPONDENT'S BRIEF ON REMAND**

- X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- X by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 12:00 p.m. and the transmission was reported as complete and without error.

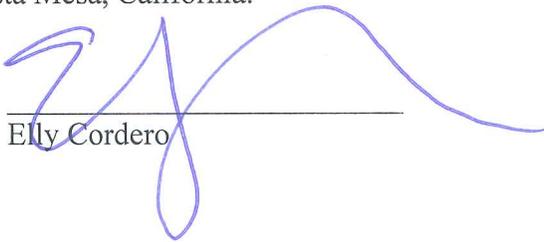
Michael J. Flanagan, Esq.  
Gavin M. Hughes, Esq.  
LAW OFFICES OF MICHAEL J. FLANAGAN  
2277 Fair Oaks Boulevard, Suite 450  
Sacramento, CA 95825  
Telephone: (916) 646-9100/Facsimile: (916) 646-9138  
Email: [lawmjf@msn.com](mailto:lawmjf@msn.com)

*Counsel for Protestant*  
SANTA CRUZ NISSAN,  
INC., dba SANTA CRUZ  
NISSAN

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 25, 2014, at Costa Mesa, California.

  
\_\_\_\_\_  
Elly Cordero