

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
COLONIAL DODGE,) Protest No. PR-1584-97
Protestant,)
vs.)
CHRYSLER CORPORATION, a Delaware)
corporation,)
Respondent.)

In the Matter of the Protest of)
LA MESA DODGE WORLD, INC. dba) Protest No. PR-1585-97
CARL BURGER'S DODGE WORLD,)
Protestant,)
vs.)
CHRYSLER CORPORATION, a Delaware)
corporation,)
Respondent.)

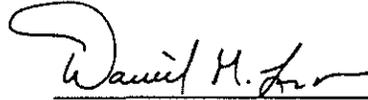
In the Matter of the Protest of)
KEARNY MESA DODGE,) Protest No. PR-1586-97
Protestant,)
vs.)
CHRYSLER CORPORATION, a Delaware)
corporation,)
Respondent.)

DECISION

At its regularly scheduled meeting of December 8, 1998, the Public members of the Board met and considered the administrative record and proposed decision in the above-entitled matter. On December 14, 1998, the Public members convened in closed Executive Session. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 15th DAY OF DECEMBER 1998.



DANIEL M. LIVINGSTON
President
New Motor Vehicle Board

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of)
12 COLONIAL DODGE,) Protest No. PR-1584-97
13 Protestant,)
14 vs.) PROPOSED DECISION

15 CHRYSLER CORPORATION, a Delaware)
16 corporation,)
17 Respondent.)

18 In the Matter of the Protest of)
19 LA MESA DODGE WORLD, INC. dba) Protest No. PR-1585-97
20 CARL BURGER'S DODGE WORLD,)
21 Protestant,)
22 vs.)

23 CHRYSLER CORPORATION, a Delaware)
24 corporation,)
Respondent.)

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26 ///
27 ///
28 ///

1	In the Matter of the Protest of)	
2	KEARNY MESA DODGE,)	Protest No. PR-1586-97
3)	
	Protestant,)	
4	vs.)	
5	CHRYSLER CORPORATION, a Delaware)	
6	corporation,)	
7)	
	Respondent.)	

8

9

PROCEDURAL BACKGROUND

10 1. By letter dated June 24, 1997, Respondent Chrysler Corporation
 11 ("CHRYSLER") notified Protestants COLONIAL DODGE, KEARNY MESA DODGE, and
 12 LA MESA DODGE of its intent to establish a Dodge franchise in the
 13 Mission Valley Auto Circle, which is within ten miles of each of the
 14 Protestants. The additional outlet would be owned and managed by John
 15 A. Hine, Jr. ("Hine"), a current Chrysler/Plymouth dealer in the Mission
 16 Auto Circle, San Diego, California.

17 2. COLONIAL DODGE, KEARNY MESA DODGE, and LA MESA DODGE filed
 18 separate Protests pursuant to California Vehicle Code § 3062¹ on
 19 July 9, 1997. The three Protests were later consolidated for hearing by
 20 Order dated August 26, 1997.

21 3. CHRYSLER is a manufacturer of new motor vehicles headquartered
 22 in Auburn Hills, Michigan, and is licensed by the California Department
 23 of Motor Vehicles. COLONIAL DODGE, KEARNY MESA DODGE, and LA MESA DODGE
 24 are licensed new motor vehicles dealers and CHRYSLER franchisees doing
 25 business at 2829 National City Boulevard, National City, California,
 26

27
 28 ¹ All statutory references contained herein are to the
 California Vehicle Code, unless otherwise indicated.

1 4910 Kearny Mesa Boulevard, San Diego, California, and 8355 Hercules
2 Street, La Mesa, California, respectively.

3 4. A Hearing on the merits of the Protests was held on January 26
4 through January 30, 1998, and on February 5, 1998, before the Honorable
5 J. Keith McKeag, Administrative Law Judge. Scott Metzger and Catriona
6 Morrison Cahill of Duckor, Spradling & Metzger appeared for the
7 Protestants, and Mark Kennedy and Gwen Young, then of Parcel, Mauro,
8 Hultin & Spaanstra, P.C., and currently of Wheeler, Trigg & Kennedy,
9 P.C., represented Respondent.

10 5. Shortly after the close of the Hearing, on or about
11 February 13, 1998, Roger Sather ("Sather"), then sole shareholder of
12 KEARNY MESA DODGE and owner of the facilities from which the dealership
13 is operated, entered into a Stock Purchase Agreement with United Auto
14 Group ("UAG"). Under that Agreement, Sather sold the stock of the
15 corporations operating his Dodge, Mazda, and Lexus dealerships to UAG,
16 and UAG is to lease Sather's facilities from him. On July 13, 1998, the
17 parties submitted the Stock Purchase Agreement to the Board, stipulating
18 to its admissibility into evidence as the final Hearing exhibit.

19 6. Following the Hearing, the parties agreed to delay filing
20 post-hearing briefs in order to pursue settlement discussions. No
21 settlement having been reached, a new briefing schedule was set, post-
22 hearing briefs were filed and the matter was submitted for decision on
23 October 7, 1998.

24 ISSUES PRESENTED

25 7. Section 3062 provides that a franchisor shall not establish a
26 protested additional dealership if the California New Motor Vehicle
27 Board ("Board"), after hearing, finds that there is good cause for not
28 permitting the establishment. In determining good cause, § 3063

1 requires the Board to consider existing circumstances, including, but
2 not limited to, all of the following:

3 (a) Permanency of the investment;

4 (b) Effect on the retail motor vehicle business and the consuming
5 public in the relevant market area;

6 (c) Whether it is injurious to the public welfare for an
7 additional franchise to be established;

8 (d) Whether the franchisees of the same line-make in that relevant
9 market area are providing adequate competition and convenient customer
10 care for the motor vehicles of the same line-make in the market area
11 which shall include the adequacy of motor vehicle sales and service
12 facilities, equipment, supply of vehicle parts, and qualified service
13 personnel; and,

14 (e) Whether the establishment of an additional franchise would
15 increase competition and therefore be in the public interest.

16 8. The protesting dealers bear the burden of proving that there
17 is good cause for not permitting the establishment (§ 3066(b)).

18 9. Protestants presented the testimony of seven witnesses: Lane
19 Pearson, dealer principal of COLONIAL DODGE; James Boaz, dealer
20 principal of LA MESA DODGE; Roger Sather, former dealer principal of
21 KEARNY MESA DODGE; Doug Shaddle, Account Manager for National Decision
22 Systems, a market research firm; George Belch, Ph.D., a marketing
23 professor at San Diego State University; Douglas Anderson, a certified
24 public accountant; and, as an adverse witness, Nick Verna, Chrysler Los
25 Angeles Zone Manager.

26 10. CHRYSLER presented the testimony of eight witnesses: Mike
27 McDowell and (by deposition) Vincent Kreizinger, Chrysler Service
28 District Managers; William Gonzales, Chrysler Sales District Manager;

1 Sheri Whitesides, Chrysler Customer Relations Manager; Nick Verna; John
2 A. Hine, Jr., Chrysler's candidate for the Dodge dealership in Mission
3 Valley and currently a Chrysler-Plymouth, Mazda, and Pontiac dealer at
4 the same location; Deborah Morgan, Chrysler's Corporate Market Review
5 and Planning Specialist within the Chrysler Market Representation
6 Department; and, Laura Riccio, with Price Waterhouse L.L.P.'s Corporate
7 Finance, Recovery, and Disputes Department, currently
8 PricewaterhouseCoopers.

9 **FINDINGS OF FACT**

10 **A. BACKGROUND**

11 11. CHRYSLER divides its market into "sales localities," then
12 further subdivides the sales localities into "trading zones," around
13 each dealer. The relevant market area² ("RMA") involved in this
14 proceeding is located in Chrysler's San Diego Sales Locality, which
15 contains five trading zones: Mission Valley (where the proposed new
16 dealership would be located); National City; La Mesa; Kearny Mesa (where
17 the three Protestants are located); and, Poway.

18 12. In the past, there have been other Dodge dealers in or near
19 the Mission Valley Trading Zone. Since the last Dodge dealer in that
20 area closed in 1989, CHRYSLER performed a formal market study in 1992
21 and determined that representation should be re-established, but that
22 action should be deferred until after mid-1995. Another formal market
23 study in 1995 again determined that a Dodge dealership should be
24 established in the Mission Valley Trading Zone.

25 13. In 1994, when KEARNY MESA DODGE began to expand its
26

27 ² The term "relevant market area" is defined at § 507 as "...any
28 area within a radius of 10 miles from the site of a potential new
dealership."

1 facilities, its owner, Sather, asked the Chrysler Zone Manager what
2 CHRYSLER's plans were for additional Dodge points in the market. The
3 Zone Manager, Nick Verna ("Verna"), told Sather that Chrysler did not
4 then have any such plan, and that he would give Sather advance notice if
5 CHRYSLER's plans changed. The testimony of Sather and Verna is in
6 conflict as to whether Sather was advised of CHRYSLER's change of plans
7 in July 1996. There is no question that Sather, and the other
8 Protestants, were given notice by way of the June 24, 1997, letter
9 referred to in Paragraph 1 above.

10 B. FINDINGS RELATING TO PERMANENCY OF INVESTMENT (§ 3063(a))

11 14. COLONIAL DODGE has been in existence since 1991. Its 1997
12 year-end financial statement reflects liquid assets, i.e., those which
13 could be converted to cash within one year, of over \$4.3 million, and
14 illiquid assets of over \$440,000. It has a remodeled dealership, a
15 sales and service staff, special tools and equipment, and is subject to
16 a site control agreement with CHRYSLER which limits the use of the
17 facilities to a Dodge dealership.

18 15. LA MESA DODGE has been in existence since 1952. Its
19 December 31, 1997, financial statement reflects liquid assets of over
20 \$9.7 million and illiquid assets of over \$720,000. It is in the process
21 of remodeling the dealership, has a sales and service staff, special
22 tools and equipment, and is subject to a site control agreement with
23 CHRYSLER which limits the use of the facilities to a Dodge dealership.

24 16. KEARNY MESA DODGE has been in existence since 1973. Its
25 December 31, 1997, financial statement reflects liquid assets of over
26 \$7.6 million and illiquid assets of over \$920,000. It has a remodeled
27 and expanded dealership (at a cost of approximately \$1.7 million to
28 date), a sales and service staff, special tools and equipment, and is

1 subject to a site control agreement with CHRYSLER which limits the use
2 of the facilities to a Dodge dealership. The dealership was recently
3 sold to UAG, which continues to operate a Dodge dealership on the site.

4 C. FINDINGS RELATING TO THE EFFECT OF ESTABLISHING A NEW
5 DEALERSHIP ON THE RETAIL MOTOR VEHICLE BUSINESS AND THE
6 CONSUMING PUBLIC (§ 3063(b))

7 17. CHRYSLER'S proposed dealer-candidate is Hine, the current
8 dealer principal of Hine Chrysler/Plymouth, Mazda, Pontiac. The
9 proposed dealership will be located in the Mission Valley Auto Circle,
10 which flanks both sides of the I-8 freeway, between the I-805 and SR-
11 163. The Mission Valley Auto Circle has representation by many major
12 manufacturers, including Ford, Lincoln-Mercury, Chevrolet, Buick, GMC
13 Truck, Cadillac, Hummer, and Hine's Pontiac and Mazda franchises. Other
14 manufacturers in the Mission Valley Trading Zone include Jeep/Eagle,
15 Ford (2 additional), Chevrolet (1 additional), Oldsmobile, Cadillac (1
16 additional), Toyota (2 additional), Nissan, Honda, Subaru, Volkswagen (2
17 additional), and Audi.

18 18. The proposed location in Mission Valley, by the shortest
19 route, is: 6.9 drive miles from KEARNY MESA DODGE, to the north and
20 east of Mission Valley; 10.8 drive miles from COLONIAL DODGE, to the
21 south; and, 9.0 drive miles from LA MESA DODGE, directly to the east of
22 the proposed site. Drive times between the existing dealers and the
23 proposed site range from ten to nineteen minutes in one direction.

24 19. The three Protestants are all located in or near auto
25 dealership clusters: KEARNY MESA DODGE is located on the service drive
26 to SR-163, facing the freeway; LA MESA DODGE is in a retail shopping
27 area, facing the I-8 freeway; and, COLONIAL DODGE is on National City
28 Boulevard in the middle of the "Mile of Cars" auto cluster, one of the
largest clusters in San Diego County.

1 20. There are 89 dealers in the RMA, of which three are Dodge
2 dealers (the Protestants). To reach the National Average or State of
3 California average Dodge dealer counts relative to other manufacturers,
4 6.6 and 4.4 Dodge dealers, respectively, would be expected in the RMA,
5 as opposed to the current three.

6 21. Eight other manufacturers, both car and truck, have four or
7 more outlets in the RMA, compared to Dodge's three, including not only
8 Ford (7 outlets), Chevrolet (5 outlets), and Toyota (5 outlets), but
9 also Volkswagen (5 outlets - of which two are located in the Mission
10 Valley Trading Zone), and Jeep-Eagle (4 outlets).

11 22. The two largest and most modern of the eight regional shopping
12 centers in the San Diego Sales Locality are located in the Mission
13 Valley Trading Zone. Both are on I-8, with the Mission Valley Center
14 directly across the highway from the Mission Valley Auto Circle. The
15 location of regional malls not only is a draw for additional dealership
16 customers, but also reflects the marketing decisions of large national
17 retailers as to where to properly position themselves in a market.

18 23. The proximity of the Hine dealership to I-8, a major east-west
19 freeway, and SR-163 and I-805, the primary north-south freeway, will
20 provide good access to the consuming public when comparison shopping,
21 purchasing new and used vehicles, and returning for service.

22 24. Each of the areas adjacent to the existing dealers and the
23 proposed Hine Dodge site have relatively heavy daily traffic volume; the
24 Mission Valley Auto Circle's traffic count is the highest of the four
25 facilities. In each case, traffic counts have increased substantially
26 over the last several years.

27 25. A common method used by automobile marketing analysts to
28 assess the performance of the existing dealers in a market area, is to

1 compare the retail market penetration of those dealers to a reasonable
2 standard, such as the average penetration rate obtained by other dealers
3 selling that line-make on a national, state, or other geographic area or
4 dealer-group basis. This method accounts for local market consumer
5 preferences by calculating the popularity of each vehicle segment in the
6 comparison area and adjusting that figure to reflect consumer
7 preferences in the local market for specific vehicle types.

8 26. CHRYSLER, in this case, presented comparisons between the
9 existing San Diego locality Dodge dealers and the adjusted National
10 Average, California Average, Southern California Average, and the
11 average for CHRYSLER's Top 100 Markets (multi-dealer metropolitan
12 markets across the United States).

13 27. When compared to the adjusted National Average, the San Diego
14 Sales Locality's actual market share in the 1994 through 1996 period was
15 in the range of 50% to slightly over 60% of expected market share. In
16 terms of vehicle registrations, this represents a difference of from
17 1,800 to 2,300 units per year in lost sales. When compared to the other
18 geographic areas mentioned above for the same time period, the San Diego
19 Sales Locality's actual penetration is closer to expected penetration,
20 but still significantly below the expected level. Of the 97 CHRYSLER
21 Sales Localities in California, San Diego ranks 95th in penetration
22 based on the State of California adjusted average in terms of actual
23 versus expected registrations.

24 28. Another method used to analyze the effectiveness of dealers in
25 a market is to measure the level of sales into the subject market by
26 other Dodge dealers located outside the area, i.e., "insell." CHRYSLER
27 presented uncontradicted testimony that insell is typically around 10%.
28 In the San Diego market, insell was over 25%, which indicates an

1 ineffective dealer network. The excessive sales made by dealers located
2 outside the market area are further sales opportunities lost by the
3 dealers within the market which could be captured by an effective dealer
4 network.

5 29. CHRYSLER presented uncontradicted testimony that, based on an
6 analysis of each of the existing dealers' penetration performance in the
7 RMA by two-mile interval rings around their dealerships and their
8 overall penetration rates, and applying those three profiles to the
9 proposed Hine Dodge location, the projected retail registrations for
10 Hine would range between 450 and 739, for average projected retail
11 registrations of 569 units. Had Hine been in business and achieved that
12 sales level in 1996, he would have absorbed 24.6% (based on KEARNY MESA
13 DODGE's penetration profile) to 40.4% (based on COLONIAL DODGE's
14 penetration profile) of the lost opportunity in the RMA based on the
15 adjusted National Average Standard. Since the total lost opportunity in
16 1996 for all existing dealers in the RMA was 1,831 units against the
17 National Average adjusted, the projected number of registrations for
18 Hine of 569 demonstrates there would still be a large loss of
19 opportunity, or 1,262 units, for the Protestants to pick up and increase
20 their retail sales. It also demonstrates that no sales would
21 necessarily be taken away from the existing Dodge dealers.

22 30. Protestant's expert witness, Dr. George Belch ("Belch"),
23 stated his opinion that the proposed new dealership would not make sales
24 from the sales presently being lost by the existing dealers, but would
25 "cannibalize" from the sales now made by the existing dealers. He based
26 this opinion on his conclusion that population growth and automobile
27 registrations are relatively flat in the San Diego area, and his belief
28 that the San Diego market is, therefore, saturated, i.e., operating at

1 100% demand capacity. He did not, however, explain what basis or
2 criteria he used to determine if saturation exists as to any sort of
3 product or, in particular, what the basis was for a determination that
4 the San Diego new motor vehicle market is operating at 100% demand
5 capacity. Further, Belch offered no foundation for his estimates of
6 "cannibalization rates" from the existing dealers.

7 31. While the San Diego Sales Locality's present population of
8 just under 2,000,000 people is expected to increase over the next five
9 years by only around 4%, this represents an increase of about 80,000
10 people, and the Mission Valley Trading Zone presently contains over 20%
11 of the Locality's total population. The existing and anticipated growth
12 for the population age 16 and over, the car-buying public, is
13 essentially the same, i.e., a stable population, with low percentage
14 growth but with a substantial number of people being added to the
15 market.

16 32. Geographic areas within the San Diego Sales Locality where
17 population is anticipated to move and grow include: (a) areas south and
18 east of COLONIAL DODGE, outside of the RMA, (b) south and east of LA
19 MESA DODGE, about equally within and outside of the RMA, and (c) south
20 of the proposed MISSION VALLEY site, inside the RMA. Sather of KEARNY
21 MESA DODGE further testified that the Scripps Ranch development, which
22 lies about halfway between KEARNY MESA DODGE and POWAY DODGE to the
23 north and outside of the RMA, will be the site of substantial new
24 residential development.

25 33. Household growth and the dispersion and density of households
26 in the San Diego Sales Locality essentially mirrors the population
27 trends. In terms of households, the Mission Valley Trading Zone has a
28 higher percentage of the households in the sales locality, 25.3%, than

1 of absolute population. Again, although anticipated to remain low in
2 growth, the San Diego Sales Locality is expected to add nearly 30,000
3 additional households by the year 2002, for a total of about 737,000
4 households.

5 34. Approximately 57% of the households in the San Diego Sales
6 Locality, or just under 400,000 households, have income of \$35,000 or
7 greater, with the average household income per trading zone ranging from
8 \$43,800 in Mission Valley to \$75,700 in the Kearny Mesa Trading Zone.
9 Annual household income of \$35,000 or greater generally separates used
10 car buyers from new car buyers. Here, the percent of households
11 exceeding that income is greater than the percent of all households
12 nationwide.

13 35. Since 1990, annual average employment in San Diego County has
14 steadily increased to a total employed of just under 1,500,000 people in
15 1997. Employment, just as households with qualifying income, is an
16 important statistic, as it is people who have jobs that generally
17 consider buying a new vehicle. Yet another reflection of the buying
18 public is the number of retail car and truck industry registrations in
19 the RMA and sales locality over the last several years and where those
20 buyers reside, which, like population and households, has been
21 relatively stable during those years.

22 36. CHRYSLER'S market representation expert witness, Deborah
23 Morgan ("Morgan"), testified that the addition of a Dodge dealer in
24 Mission Valley would likely have the effect of stimulating competition
25 both intrabrand and interbrand, given (a) the substantial degree of lost
26 opportunity in the RMA and sales locality, (b) the greater number of
27 outlets by competitors in the sales locality, and (c) the lack of Dodge
28 representation in Mission Valley, which contains one of the four major

1 auto clusters in the RMA, the two largest retail shopping centers in San
2 Diego, and one-quarter of the total population in the RMA, among other
3 factors. In Morgan's opinion, an additional dealer positioned in the
4 market in Mission Valley will increase consumer awareness of the Dodge
5 brand by its presence in a major auto cluster among its competitors and
6 by the increased advertising dollars into the local media, and will
7 provide an additional, convenient place to shop for Dodge vehicles for
8 the population living, working and shopping in that area. That
9 increased brand awareness should then stimulate increased Dodge sales,
10 both by the new dealer and, importantly, by the existing dealers,
11 particularly given the relatively high level of cross-selling by the
12 existing dealers (and therefore cross-shopping by consumers) within the
13 entirety of the RMA.

14 37. In support of her opinion, Morgan presented two case studies
15 involving the recent establishment of new Dodge dealers in Milwaukee and
16 Phoenix. In each case, there were lost sales opportunities prior to the
17 establishment, and the establishment of the new dealer resulted in
18 increased interbrand competition, with Dodge achieving a higher
19 percentage of total industry registrations, and reduced inselling over a
20 three year period. The Milwaukee case study was especially pertinent,
21 since it involved a stable, low growth market similar to San Diego. In
22 the Milwaukee study, Dodge penetration increased after the
23 establishment, reflecting increased interbrand competition, and the
24 sales by the existing Dodge dealers increased, reflecting increased
25 intrabrand competition.

26 D. FINDINGS RELATING TO WHETHER IT WILL BE INJURIOUS TO THE
27 PUBLIC WELFARE FOR AN ADDITIONAL FRANCHISE TO BE
28 ESTABLISHED (§ 3063(c))

38. Hine, the dealer principal of the proposed Dodge franchise,

1 has been in the automotive business for the last 30 years, since he was
2 11 years old. His father had owned a Pontiac dealership since 1942,
3 first in Illinois, and ultimately at its present site (the proposed
4 Dodge site) in Mission Valley, until his death in 1995. Hine's father
5 acquired a Mazda franchise in 1970, adjacent to the proposed Dodge site,
6 and he and Hine acquired a Chrysler/Plymouth franchise in 1993. Hine
7 has been President of the dealership corporation since 1981. Chrysler
8 has been very pleased with Hine's record as a Chrysler-Plymouth dealer.
9 Hine has been active in many dealer organizations, having served on the
10 National Pontiac Dealer Council as its President and a director, on the
11 New Car Dealers Association since 1981, both as its president and as a
12 Board member, and on various committees of other organizations.

13 39. Both Hine's father in 1984 and Hine in 1991 were Time Magazine
14 quality dealer award winners, an award given to one candidate per year
15 by the members of about 67 different dealer associations to those
16 dealers that the members best feel serve the community and the industry.
17 Hine Chrysler/Plymouth was the first dealer in the San Diego Sales
18 locality to be validated under Chrysler's new Five-Star Award process.
19 In 1997, Hine Chrysler/Plymouth Mazda Pontiac was voted the best dealer
20 in San Diego by the readers of the San Diego Union Tribune.

21 40. Hine's facilities, located on nine acres, are very modern and
22 well-maintained, having recently been renovated. Currently, new vehicle
23 display for Hine's three franchises are in a contiguous, 6,200 square
24 foot building in the front portion of the property. The used car
25 showroom is on the east end of the property separated from the other
26 showrooms by a driveway and vehicle display lot. The service facilities
27 are in the middle, rear section of the property, containing a total of
28 130 service, body shop and paint shop detail bays. The property also

1 contains a 28,000 square foot parts warehouse on one and one half of the
2 nine acre site. The facilities also include a collision repair center,
3 with its offices and waiting room in an annex west of the new vehicle
4 showrooms, a retail parts/accessories boutique, and an expanded customer
5 waiting lounge.

6 41. If awarded the Dodge franchise, Hine intends to convert the
7 current, 4,000 square foot used car showroom at the east end of the
8 property into the sales showroom for Dodge. His used car operation will
9 be operated from the back of the building. Hine plans an extensive
10 remodeling of the building to increase the total square footage of the
11 building from 4,000 to over 5,000 square feet. Hine's design plans
12 include elimination of the driveway in front of the building to create
13 an outer apron for the outdoor display of new Dodges and customer
14 parking around a new center drive. Hine intends to increase the service
15 bays at the back of that building from four to six for use as Dodge new
16 vehicle prep stalls. The parcel on which the new and used Dodge sales
17 facilities will be is three and one-half acres. The facilities meet
18 CHRYSLER guidelines.

19 42. Hine currently has 60 mechanical service stalls and employs 29
20 mechanical technicians, for a 50% stall utilization. Hine will have a
21 dedicated service lane for Dodge vehicles and nine Dodge service
22 advisors, who currently are trained in Chrysler/Plymouth. Sixteen
23 stalls will be "dedicated" to Dodge, but Hine intends to use any other
24 stall for Dodge service overflow. The service area has three heavy-duty
25 truck lifts and four post lifts, including a front-end alignment
26 machine, that would handle the Dodge truck weight and allow alignment of
27 the new Dodge alignment configuration. Several of the technicians have
28 diesel engine experience and will be trained on Dodge-specific engines

1 if awarded the franchise.

2 43. Hine has committed to all of Chrysler's new dealer programs
3 and purchases, in the event he is awarded the Dodge franchise, including
4 its new dealer training program for dealer principals and managers, the
5 local Dodge Dealer Advertising Association and the Dodge California
6 Truck Marketing Program. He has committed to make an initial parts
7 purchase of \$100,000 and special tools required to service all Dodge
8 vehicles and to all Dodge-specific service training available to his
9 technicians, many of whom are already trained in Dodge products, given
10 the present ability to cross-service all Chrysler product vehicles.

11 44. Hine currently meets CHRYSLER's working capital requirements
12 for Chrysler/Plymouth and has sufficient working capital to meet the
13 minimum \$5,400,000 working capital required for the Dodge franchise.

14 45. Hine testified that he is committed to and has continually
15 strived for customer satisfaction, recognizing that it is and has been
16 the key to the dealership's success. To this end, his dealerships make
17 use of a variety of sales video and brochure aids used in the showrooms
18 to assist customers and make them comfortable with the new and used car
19 buying process: a VIP Gold Card for all new car purchasers, entitling
20 them to specials on service, discounts on rental cars and accessories;
21 free shuttle service to work, home, and to the regional shopping centers
22 nearby (which is pooled with the six other dealerships/15 franchises in
23 the Mission Valley Auto Circle); and other perks. Hine testified that
24 he attempts to instill that same mission in his employees, by, for
25 example, the dealerships' mission statement to all new employees and
26 regular meetings to reinforce that message. Hine's successful efforts
27 are reflected in the dealer's consistently high customer satisfaction
28 scores on both sales and service surveys. The dealership has many long-

1 time employees among its total of 221 employees, many of which are key
2 managers who have been with him for over 30 years, and many others for
3 ten to 20 years.

4 46. Hine also conducts Right From the Start Seminars every month
5 except December for all new vehicle purchasers, not only to familiarize
6 the customer with the various services and departments the dealership
7 has to offer and meet the management, but to begin to develop the bond
8 between dealer and customer to foster repeat business.

9 47. Hine implemented a "bottom line," or one-price, no haggle
10 pricing system in February 1994, which he has continued to date and has
11 also implemented with used cars. Hine believes that policy
12 differentiates the dealership from its competition and provides a low-
13 pressure, alternative buying experience to what they would find in other
14 dealerships.

15 48. Hine advertises extensively, with approximately 80% of its
16 advertising dollars spent on television and the balance in print
17 advertising, promoting both the dealership itself and specific vehicles
18 in well-polished, professional productions. Hine also posts a Web page
19 on the Internet, which not only covers the dealership's philosophy and
20 various departments, but also states the price of 90 to 100 used
21 vehicles then in stock, so the consumers can comparison shop price-wise
22 from their homes.

23 E. FINDINGS RELATING TO WHETHER THE EXISTING DODGE
24 FRANCHISEES ARE PROVIDING ADEQUATE COMPETITION AND
25 CONVENIENT CUSTOMER CARE, INCLUDING THE ADEQUACY OF
FACILITIES, EQUIPMENT, VEHICLE PARTS SUPPLY, AND
QUALIFIED SERVICE PERSONNEL (§ 3063(d))

26 49. CHRYSLER made no contention that any of the Protestants have
27 inadequate sales or service facilities, equipment or parts supply, or
28 that any of them did not have qualified service personnel.

1 50. As stated in Paragraphs 25-27 above, the existing Dodge
2 dealers are performing below the National, California, Southern
3 California, and Chrysler Top 100 Markets averages in retail market
4 penetration. As stated in paragraph 28 above, the existing Dodge
5 dealers are allowing a high level of insell to occur. Each of these
6 findings indicates that the existing Dodge dealer network is providing
7 less than adequate retail sales competition in the RMA.

8 51. CHRYSLER measures customer satisfaction in at least three
9 ways: Sales Satisfaction Index ("SSI"), which measures a new car
10 buyer's satisfaction with the sale experience; Customer Satisfaction
11 Index ("CSI"), which measures satisfaction with a dealer's service; and
12 Fix-It-Right ("FIR"), which measures specifically how that customer's
13 service repair was handled at the dealer. The measures result from
14 answers to questions on surveys sent to each dealer's new vehicle
15 purchasers and warranty service customers. The responses are then
16 quantified for each dealer and averaged for various dealer groupings on
17 a monthly basis. To better compare dealers, they are grouped with
18 similarly sized dealers in terms of sales volume into five groups within
19 each Zone and scores reported to the dealers both in comparison to the
20 National Average and to the dealer's Zone Group Average.

21 52. Protestants' CSI scores reflect: (a) with the exception of
22 March through July 1997, LA MESA DODGE's CSI scores have been below Zone
23 Group Average during the two years, 1996 and 1997; (b) in every month in
24 those two years, KEARNY MESA DODGE's scores were at or below Zone Group
25 Average; and, (c) in 14 months out of same the 24-month period, COLONIAL
26 DODGE's scores were below Zone Group Average, with above-average months
27 spread throughout the two years. All three dealers performed even worse
28 on the FIR score component. Hine's Chrysler/Plymouth scores during that

1 same period reflect the opposite. In every month of 1996, that
2 dealership met or exceeded the Zone Group Average and only fell at or
3 below the average in three months of 1997. Likewise, Hine's FIR scores
4 were above Zone Group Average in all but four months of the same two
5 year period.

6 53. Protestants' SSI, or sales satisfaction scores, reflect the
7 following: (a) LA MESA DODGE was above Zone Group Average in only three
8 of the 24 months of 1996 and 1997; (b) with the exception of a few
9 months in 1997, KEARNY MESA DODGE's scores likewise were below Zone
10 Group Average; and (c) COLONIAL DODGE's scores, with the exception of
11 one month in 1996 and two in 1997, also were below Zone Group Average.
12 Hine's scores again show the opposite: with the exception of one month,
13 its scores were all above the Zone Group Average, and significantly so
14 from June 1996 through April 1997.

15 F. FINDINGS RELATING TO WHETHER THE ESTABLISHMENT OF AN
16 ADDITIONAL DODGE FRANCHISE WOULD INCREASE COMPETITION
AND, THUS, BE IN THE PUBLIC INTEREST(\$ 3063(e))

17 54. As shown in Paragraphs 25-28 above, the existing Dodge dealers
18 are not competing at an adequate level, as measured by either intrabrand
19 or interbrand standards.

20 55. Protestants do not dispute that the establishment of the
21 proposed new dealer will increase competition. To the contrary,
22 Protestants fear that it will increase competition too much, and result
23 in economic damage to their dealerships. This fear, however, does not
24 appear to be realistic since, as shown in Section C above, there is
25 sufficient lost opportunity in the existing market to support the
26 proposed new dealer's anticipated sales. When coupled with the
27 anticipated increased interbrand sales due to a stronger dealer network
28 and increased product visibility in the market, it is possible that

1 there will be an actual increase in the sales of the existing dealers
2 and the proposed new dealer.

3 **G. FINDINGS RELATING TO OTHER EXISTING CIRCUMSTANCES**

4 56. While a dispute exists as to the date on which CHRYSLER
5 advised Sather, the then-owner of KEARNY MESA DODGE, of CHRYSLER'S
6 intention to fill the long-standing Mission Valley open point, i.e., in
7 July 1996 as CHRYSLER contends, or in June 1997, as Protestants contend,
8 resolution of the dispute is not required here.

9 57. Protestants do not contend that CHRYSLER was untruthful in
10 1994 when it advised Sather that it had no present intention to fill the
11 point. Their only contention seems to be that they, and KEARNY MESA
12 DODGE in particular, should have been given notice of CHRYSLER'S
13 intention to fill the open point at some time earlier than June 1997,
14 when formal notification was made. They did not, however, offer
15 evidence of any substantial detriment they suffered by reason of the
16 asserted delay in notification. KEARNY MESA DODGE continued its
17 remodeling even after official notice was given by CHRYSLER, and the
18 present owner of that dealership purchased it after the Hearing in this
19 matter was concluded, presumably with full knowledge of CHRYSLER'S
20 desire to fill the open point.

21 **DETERMINATION OF ISSUES**

22 58. Protestants have made substantial permanent investments. The
23 dealerships have been in existence for several years, are housed in
24 appropriate facilities, and have the personnel, equipment, and financial
25 resources to remain in business for the foreseeable future. They have
26 each also made very substantial investments in the liquid assets
27 necessary to operate automobile dealerships.

28 59. The establishment of an additional Dodge franchise in the RMA

1 would not adversely affect Protestants. Respondent established that
2 substantial additional sales opportunity exists in the RMA, sufficient
3 to support the proposed new dealership and the existing dealers. Much
4 of that sales opportunity is presently lost due to inadequate market
5 penetration by the existing dealer network. The consuming public would
6 benefit from the increased interbrand and intrabrand competition which
7 will ensue from the establishment of an additional dealer, and from the
8 added convenience occasioned by the location of the additional dealer.

9 60. Protestants did not demonstrate that it would be injurious to
10 the public welfare for an additional franchise to be established.

11 61. The existing Dodge dealers in the RMA have adequate sales and
12 service facilities, equipment, supply of vehicle parts, and qualified
13 service personnel. However, Protestants' SSI and CSI scores have been
14 shown to be inadequate since 1996, and the Protestants' sales
15 performance has been shown to be inadequate for an even longer period.

16 62. The establishment of an additional Dodge franchise in the RMA
17 would increase competition and, therefore, be in the public interest.

18 63. The asserted delay in providing notice of intention to
19 establish an additional dealer did not result in any detriment to
20 Protestants sufficient to constitute good cause to not allow the
21 establishment of the additional dealer.

22 CONCLUSION

23 64. Protestants have not met their burden of proof under § 3066(b)
24 to show that there is good cause not to enter into a franchise
25 establishing the proposed additional new motor vehicle dealership.

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27 ///
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