

1 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 PH AUTOMOTIVE HOLDING CORPORATION ) Protest No. PR-1945-05  
13 dba PACIFIC HONDA, )  
14 Protestant, ) PROPOSED DECISION

15 v. )  
16 AMERICAN HONDA MOTOR CO., INC., )  
17 Respondent. )

18 In the Matter of the Protest of )  
19 CUSH AUTOMOTIVE GROUP dba CUSH ) Protest No. PR-1946-05  
20 HONDA SAN DIEGO, )  
21 Protestant, )

22 v. )  
23 AMERICAN HONDA MOTOR CO., INC., )  
24 Respondent. )

25 In the Matter of the Protest of )  
26 TIPTON ENTERPRISES, INC., dba ) Protest No. PR-1947-05  
27 TIPTON HONDA, )  
28 Protestant, )

v. )  
AMERICAN HONDA MOTOR CO., INC., )  
Respondent. )

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11	In the Matter of the Protest of	)	
12	PH AUTOMOTIVE HOLDING CORPORATION	)	Protest No. PR-1945-05
	dba PACIFIC HONDA,	)	
13		)	
	Protestant,	)	PROPOSED DECISION
14		)	
	v.	)	
15	AMERICAN HONDA MOTOR CO., INC.,	)	
16		)	
	Respondent.	)	
17	In the Matter of the Protest of	)	
18	CUSH AUTOMOTIVE GROUP dba CUSH	)	Protest No. PR-1946-05
	HONDA SAN DIEGO,	)	
19		)	
	Protestant,	)	
20		)	
	v.	)	
21	AMERICAN HONDA MOTOR CO., INC.,	)	
22		)	
	Respondent.	)	
23	In the Matter of the Protest of	)	
24	TIPTON ENTERPRISES, INC., dba	)	Protest No. PR-1947-05
	TIPTON HONDA,	)	
25		)	
	Protestant,	)	
26		)	
	v.	)	
27	AMERICAN HONDA MOTOR CO., INC.,	)	
		)	
	Respondent.	)	
28		)	

1	In the Matter of the Protest of	)	
2	BALL AUTOMOTIVE GROUP dba BALL	)	Protest No. PR-1948-05
	HONDA,	)	
3	Protestant,	)	
4	v.	)	
5	AMERICAN HONDA MOTOR CO., INC.,	)	
6	Respondent.	)	

7  
PROCEDURAL BACKGROUND

8           1. By letters dated March 11, 2005, to PH Automotive Holding  
9 Corporation dba Pacific Honda, ("Pacific Honda"), Tipton Enterprises,  
10 Inc., dba Tipton Honda, ("Tipton Honda"), and Ball Automotive Group  
11 dba Ball Honda, ("Ball Honda"), and March 14, 2005, to Cush Automotive  
12 Group dba Cush Honda San Diego, ("Cush Honda"), Respondent American  
13 Honda Motor Co., Inc. (hereinafter referred to as "AHM" or "Honda")  
14 gave notice pursuant to California Vehicle Code<sup>1</sup> section 3062 of its  
15 intention to establish a new Honda franchise at Costa Bella and Lemon  
16 Grove Avenue in Lemon Grove, California which is within 10 miles of  
17 the Protestants.

18           2. The New Motor Vehicle Board ("Board") received AHM's notice  
19 on March 17, 2005.

20           3. On March 24, 2005, timely protests were filed by Protestants  
21 Pacific Honda, protest number PR-1945-05; Cush Honda, protest number  
22 PR-1946-05; Tipton Honda, protest number PR-1947-05; and Ball Honda,  
23 protest number PR-1948-05.

24           4. Pursuant to stipulation by the parties the Board entered an  
25 order dated April 4, 2005 consolidating all of the above-named  
26 protests.

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27  
28 <sup>1</sup> All statutory references are to the California Vehicle Code, unless otherwise indicated.

1           5. Pursuant to Section 3066, a ten (10) day hearing was held  
2 before Administrative Law Judge Marilyn Wong between September 19-23,  
3 26-30, 2005 at the Board offices in Sacramento, California.

4           6. Protestants are represented by Michael J. Flanagan of the  
5 Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite  
6 450, Sacramento, California and Jonathan A. Michaels of Burkhalter,  
7 Michaels, Kessler & George, 4 Park Plaza, Suite 850, Irvine,  
8 California.

9           7. Respondent AMH is represented by Wallace M. Allan and Eric  
10 Y. Kizirian of O'Melveny & Meyers LLP, 402 South Hope Street, Los  
11 Angeles, California.

12           8. Upon submission of post-hearing briefs by the parties the  
13 matter was deemed submitted on December 23, 2005.

14           9. Protestants called as their expert witness Ernest H. Manuel,  
15 Jr., Ph.D., President of the Fontana Group, Inc., an automobile  
16 industry-consulting firm. Other witnesses included: AHM employees  
17 Michael J. Lynch (Honda's western zone sales manager), William Green  
18 (Honda's manager of market planning), and Christopher Brabham (former  
19 assistant manager in Honda's market planning department); Gary Sorter;  
20 Edward Schafer, employee of the San Diego Association of Governments  
21 known as SANDAG; and Richard David Vann, Sunroad Asset Management  
22 Company employee. Protestants submitted the deposition testimony of  
23 Richard Colliver, Executive Vice-President of AHM with counter-  
24 designations submitted by Respondent. Party witnesses included John  
25 Ball, President of Ball Automotive Group; Michael Peterson, General  
26 Manager for Tipton Honda; Wayne B. Meyerowitz ("Meyer"), Executive  
27 Vice-President of Sunroad Auto Holding Corporation and President of  
28 Sunroad Automotive Division which owns Pacific Honda and Kearny Mesa

1 Ford; and John Turja, General Manager for Cush Honda.

2 10. Respondent called as its expert witness James A. Anderson,  
3 President of Urban Science Applications Inc., an automobile-consulting  
4 firm. Other witnesses included: Gary Sorter; Graham Mitchell, City  
5 Manager of Lemon Grove; and Man-Chong (Manny) Chang employee of DCH  
6 Management Services. Party witnesses for AHM included Michael J.  
7 Lynch and William Green.

8 11. On December 22, 2005, Judge Wong visited the proposed site  
9 in Lemon Grove and the following dealerships with their respective  
10 representatives and AHM present: Tipton Honda with Michael Lynch of  
11 AHM and Michael Peterson present; Ball Honda with Michael Lynch and  
12 John Ball present; Cush Honda of San Diego with Michael Lynch and John  
13 Turja present; the proposed Lemon Grove location with Michael Lynch,  
14 Gary Sorter, employee of DCH Automotive<sup>2</sup> ("DCH") and Norm Reeves,  
15 Temecula, and Jonathan Michaels, Esq. present. The trier of fact  
16 drove by the Pacific Honda dealership.

17 ISSUES PRESENTED

18 12. Under Section 3062(a)(1) a franchisor is not permitted to  
19 establish an additional motor vehicle dealership, where a timely  
20 protest has been filed, until there has been a finding of whether or  
21 not good cause exists for not permitting the establishment. Under  
22 Section 3066(b) the franchisee has the burden of proof to establish  
23 that there is good cause not to enter into a franchise establishing an  
24 additional motor vehicle dealership.

25 13. In determining whether there is good cause for the  
26 establishment of an additional franchise, Section 3063 requires the

27 \_\_\_\_\_  
28 <sup>2</sup> DCH Automotive is the company that was awarded the Lemon Grove point.

1 Board consider the existing circumstances, including but not limited  
2 to:

- 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 additional  
7 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  
10 consumer care for the motor vehicles of the line-make in the  
11 market area which shall include the adequacy of motor vehicle  
12 sales and service facilities, equipment, supply of vehicle parts,  
13 and qualified service personnel.
- 14 e) Whether the establishment of an additional franchise would  
15 increase competition and therefore be in the public interest.

16 CONTENTIONS OF THE PROTESTANTS

17 14. Protestants contend that each of them will experience  
18 substantial negative impacts on sales, service and profitability if  
19 the establishment of a new dealership in Lemon Grove is permitted.

20 15. Protestant Tipton Honda contends that it will be  
21 particularly devastated by the establishment of the Lemon Grove  
22 dealership and will have the viability of its business threatened.  
23 Protestants argue that the protest must be sustained even if it is  
24 shown that Tipton Honda is the only dealer that will suffer  
25 significant financial losses which will threaten its continued  
26 existence.

27 16. Protestants contend that the Lemon Grove relevant market  
28 area ("RMA") is not experiencing sufficient population or household

1 growth to support the establishment of an additional dealership.<sup>3</sup>

2 17. Protestants contend that the proposed general manager for  
3 the dealer operator who was awarded the proposed Lemon Grove point  
4 unfairly obtained the right to the point through his relationship with  
5 AHM management.

6 18. Protestants contend that the Orange County metro standard  
7 used by AHM to measure the protesting dealers' performance is  
8 inappropriate because the household incomes in the Orange County metro  
9 are significantly higher than the household incomes in the Lemon Grove  
10 RMA, and consumers in the Lemon Grove RMA prefer to purchase domestic  
11 vehicles over imports. [See paragraphs 50-51]

12 a) FINDINGS OF FACTS RELATING TO PERMANENCY OF INVESTMENT  
13 [Section 3063(a)]

14 Tipton Honda

15 19. Michael Peterson, who testified on behalf of Tipton Honda,  
16 is the general manager and President of Tipton Honda. Mr. Peterson  
17 has been employed at Tipton Honda since 1993 and is a minority  
18 shareholder in the business. Harold B. Tipton is the majority owner  
19 of Tipton Honda.

20 20. Tipton Honda has been in business since 1970. It was the  
21 first Honda dealer in the San Diego area. Since the 1980's Tipton  
22 Honda has been located at 889 Arnele Avenue, El Cajon.

23 21. The dealership has a five-year lease with the Tipton Family  
24 Trust; the lease expires in 2010. The dealership property, including  
25

26  
27 <sup>3</sup> The "relevant market area" is an area within a radius of 10 miles from the site of  
28 a potential new dealership. Section 507.

1 storage lots, is approximately six acres. The value of the land is  
2 estimated at around \$5 million.

3 22. Tipton Honda has spent over \$1,350,000 for capital  
4 improvements in the past six years. In 1999 approximately \$800,000  
5 was spent to renovate the facilities and to bring the dealership into  
6 compliance with Honda's image program. In 2000, \$250,000 was spent to  
7 build a 2,000 square foot parts building. In 2002, new service bays  
8 were added at a cost of \$200,000. In 2005, the dealership added a car  
9 wash facility for its service customers at a cost of \$100,000.

10 Ball Honda

11 23. John Ball, who testified on behalf of Ball Honda, is the  
12 President of Ball Automotive Group. Mr. Ball has worked at Ball Honda  
13 since 1979.

14 24. Ball Honda has been operating as a Honda dealer since 1972.  
15 In 2002, Ball Honda moved to its current location at 2135 National  
16 City Boulevard, National City, where it built new facilities in  
17 compliance with Honda's image program.

18 25. Mr. Ball is the majority shareholder of Ball Automotive; his  
19 father John David Ball owns the remaining shares. Ball Automotive  
20 also owns dealerships of the following line-makes: Mitsubishi, Acura,  
21 and GMC Truck.

22 26. Ball Automotive expended approximately \$2.3 million for both  
23 the land and construction costs of its new facilities. The real  
24 property is approximately five acres. The land and buildings are  
25 owned by Ball Leasing Company which is owned by the elder John Ball  
26 and his wife. Ball Honda rents from Ball Leasing Company.

27 ///

28 ///

1           Cush Honda<sup>4</sup>

2           27. John Turja, testifying on behalf of Cush Honda, has been its  
3 general manager for 7 ½ years. Steve Cushman owns Cush Honda.

4           28. Cush Honda has been in operation since 1993. In 1998 it  
5 moved to its current location at 5812 Mission Gorge, San Diego.

6           29. The current facility, a former Nissan store, is located on  
7 about 5 acres of land with about 5,000 square feet of facilities  
8 space. In 2004 the buildings owned by the dealership were valued at  
9 \$2.3 million.

10          30. The property is leased from a separate entity unrelated to  
11 the dealership, although the dealership does have an option to  
12 purchase the property.

13           Pacific Honda

14          31. Wayne B. Meyer, who testified on behalf of Pacific Honda, is  
15 the Executive Vice-President of Sunroad Auto Holding Corporation and  
16 President of Sunroad Automotive Division. Pacific Honda is owned by  
17 Sunroad Auto Holding Corporation. The parent corporation, Sunroad  
18 Holding Corporation, is owned by Aaron Feldman.

19          32. Sunroad Auto Holding Corporation has owned Pacific Honda and  
20 Kearny Mesa Ford since the 1980's. It also owns a Toyota dealership  
21 in Tijuana, Mexico and is building a Toyota dealership in Chula Vista  
22 which is scheduled to open in the spring of 2006.

23          33. Pacific Honda is located at 4761 Convoy Street in Kearny  
24 Mesa. The dealership occupies multiple sites in the area.

25 \_\_\_\_\_  
26 <sup>4</sup> On January 13, 2006, the Board received a letter from UnitedAuto stating that it  
27 had purchased Cush Automotive Group including Cush Honda and sought to dismiss  
28 Protest No. PR-1946-05. As of the signing of this Proposed Decision, a request for  
dismissal has not been received and therefore, Cush Honda is included in this  
Proposed Decision.

1 34. In March of 2004, Sunroad acquired an additional 2.2 acre  
2 parcel and has begun construction of a new 16,000 square foot Honda  
3 store. With its recent land acquisition, Pacific Honda now occupies  
4 six acres of land.

5 35. The recent land acquisition and construction undertaking  
6 will cost \$9 million bringing the total value of assets devoted to  
7 Honda to \$17.5 million.

8 Proposed Lemon Grove Site

9 36. DCH is currently leasing the property at Costa Bella and  
10 Lemon Grove Avenue, Lemon Grove. If the establishment is approved,  
11 DCH will enter into a 34-year lease with an option to purchase the  
12 property for \$6.4 million at the landowner's option or upon his  
13 demise. The size of the property is 4.2 acres; off-site parking  
14 which, has not yet been designated, will add another two acres to the  
15 property available for the dealership.

16 37. If the protest is overruled DCH plans to invest an  
17 additional \$8-\$8.5 million to construct new Honda facilities.

18 GENERAL FINDINGS PERTAINING TO ALL PROTESTANTS

19 38. Dr. Ernest Manuel, expert witness for Protestants, urges the  
20 Board to consider additional categories under a permanency of  
21 investment analysis. These include expenditures for employee training,  
22 advertising, and policy expenses, which are used to enhance goodwill  
23 for the dealership and the brand.

24 39. The additional categories do not need to be adopted or  
25 addressed in these protests as each protesting dealer has shown that  
26 it has a substantial and permanent investment without using these  
27 categories.

28 ///

1                    b) FINDINGS OF FACT RELATING TO THE EFFECT ON THE  
2                    RETAIL MOTOR VEHICLE BUSINESS AND THE CONSUMING  
3                    PUBLIC IN THE RELEVANT MARKET AREA  
4                    [Section 3063(b)]

4            40. James A. Anderson is President of Urban Science  
5 Applications, Inc. ("Urban Science"). Urban Science primarily works  
6 for manufacturers in the automotive industry and has clients that  
7 include: General Motors, Ford, DaimlerChrysler, Volkswagen, Nissan,  
8 Toyota, Honda, Mazda, Mitsubishi, Hyundai, Kia, Suzuki, and BMW.

9            41. Urban Science's three practice areas are network, site, and  
10 customer analysis. Network analysis measures dealer performance and  
11 determines the appropriate number and location of outlets necessary to  
12 adequately serve the market area.

13           42. Site analysis measures individual dealer performance; and  
14 customer analysis is used to increase dealer sales of new vehicles.

15           43. Urban Science was retained in this case by AHM to determine  
16 if Honda is adequately represented by the dealer network in the San  
17 Diego metro and Lemon Grove RMA. If Honda representation was found to  
18 be inadequate, then Mr. Anderson was asked to determine the likely  
19 cause.

20           44. If the Lemon Grove add point is an appropriate solution to  
21 Honda's inadequate representation, then Mr. Anderson was asked to  
22 evaluate what the likely impact of the establishment of the Lemon  
23 Grove point would be upon the protesting dealers. He was also asked  
24 to determine the impact upon consumers and the Honda brand.

25           45. Mr. Anderson used the following six steps to analyze dealer  
26 networks: 1) define the geographic area of analysis; 2) develop a  
27 standard to measure dealer performance and opportunity available to  
28 the network; 3) measure the performance of the network; 4) determine

1 the cause of inadequate performance; 5) develop a proposed solution;  
2 and, 6) assess the impact of the proposed solution on performance.

3 46. Dealers within AHM's network are assigned geographical areas  
4 known as "ASAs" or Areas of Statistical Analysis. Honda's definition  
5 of ASA: "A portion of a Multiple Point Market in which one Honda  
6 dealer is located. Determined by analyzing air distance to the next  
7 closest Honda dealer(s), cross-sell data and market characteristics  
8 such as traffic and shopping patterns, geographical barriers, road  
9 network, and competition." A Honda dealer's ASA is a group of census  
10 tracts nearest that dealer where it enjoys a competitive advantage  
11 over all other Honda dealers not in the ASA. This advantage is solely  
12 based on its location where customers are closer and have better  
13 access to that dealer than to any other dealer.

14 47. A metropolitan market such as San Diego is larger than an  
15 ASA and may contain several ASAs. In metro markets, customers have  
16 better access to multiple dealers. Honda's definition of Metro Market  
17 is "A geographical area that includes two or more dealers for the same  
18 manufacturer."

19 48. Once the geographic areas of analysis are defined, in this  
20 case the Lemon Grove RMA and ASA, as well as the ASAs for the  
21 protesting dealers, and the San Diego metro, the next step is to  
22 devise an appropriate standard to measure dealer performance and  
23 opportunity available to the dealer network.

24 49. Dealer performance is measured against comparison areas  
25 which are adjusted for variables that can affect penetration such as  
26 consumer preference. A comparison area must be independent of the  
27 area being studied and be adequately represented.

28 50. The Orange County metro area was selected by Mr. Anderson as

1 a comparison area, because it is an independent area, adequately  
 2 represented, and adjacent to the San Diego metro. Both state and  
 3 national standards were also considered, although they are more  
 4 conservative standards with lower penetration rates.

5 51. The Orange County metro and California State standard have  
 6 similar penetration rates; however the state standard is more  
 7 conservative because it includes both underperforming areas and  
 8 adequately performing areas. The similarity of these standards is an  
 9 indication that the Orange County metro standard is a reasonable and  
 10 appropriate measure.

11 52. For the 2002 through 2004 calendar years, the penetration  
 12 rates for the Orange County metro compared with the state and national  
 13 standards are as follows:

AHM PENETRATION PERCENTAGE COMPARISON COMPETITIVE REGISTRATIONS RETAIL PASSENGER VEHICLE			
<u>YEAR</u>	<u>Orange County Metro</u>	<u>California</u>	<u>National</u>
2002*	21.95%	20.40%	13.98%
2003	22.92%	22.45%	16.28%
2004	22.14%	21.93%	16.26%

20 \* Includes Honda Prelude and Small Sporty Segment  
 21 Small Sporty Segment not included in 2003 and 2004

22 53. Performance standards are adjusted for consumer preferences  
 23 in the local market. Segmentation analysis adjusts for these  
 24 differences by separating all new vehicles sold and registered in the  
 25 marketplace into segments of like vehicles. Like vehicles refer to  
 26 physical and performance characteristics, as well as consumer  
 27 perception, and are named by size, price, and function.

1           54. In looking at the Honda brand, the Honda Insight is  
2 identified within the sub-small segment of cars; the Civic is within  
3 the small car segment; the Accord is within the mid-size segment; the  
4 S2000 is within the sport luxury segment; the CR-V and Element are  
5 within the mini-SUV segment; the Pilot is within the compact SUV  
6 segment; and the Odyssey is within the compact van segment.

7           55. Honda's definition of a competitive segment is "A group of  
8 vehicle models that have been identified to most directly compete with  
9 and are cross-shopped against a particular Honda vehicle." An example  
10 of the competitive products within a segment would include the Civic  
11 in the small segment competing against vehicles such as the Chevrolet  
12 Cavalier, Mitsubishi Lancer, Pontiac Sunfire and Toyota Corolla.

13           56. Segmentation analysis further adjusts for demographic  
14 characteristics that influence consumer choice. Demographic  
15 differences in the marketplace and their impact upon new vehicle sales  
16 are expressed by the types of vehicles which consumers actually  
17 purchase. Segmentation analysis takes into account popularity shifts  
18 within segments which may be affected by demographic characteristics,  
19 such as income and family size.

20           57. For example, Honda does not have a vehicle that competes in  
21 the luxury car segment. If sales of luxury cars are greater in higher  
22 income areas, then Honda's performance in this area would be  
23 significantly reduced. In a hypothetical situation where all the  
24 registrations in an ASA are luxury cars then the expected registration  
25 for the Honda dealer would be zero.

26           58. Similarly if consumers prefer mid-sized cars over small  
27 cars, this preference would be demonstrated in the registrations in  
28 the marketplace for that particular segment of cars.

1           59. The Orange County metro standard adjusted through  
 2 segmentation analysis is a reasonable standard to measure dealer  
 3 performance in the Lemon Grove RMA and ASA.

4           60. AHM's performance in the Lemon Grove RMA, based on the  
 5 Orange County standard from 2002 through 2004 as expressed as a  
 6 percentage of effectiveness with 100% being the expected average, is  
 7 as follows:

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE RMA AS A PERCENT OF EXPECTED*			
	<u>2002</u>	<u>2003</u>	<u>2004</u>
Net Registration Loss	1,612	961	927
% Effectiveness w/In-Sell <sup>5</sup>	77.9%	85.5%	87.6%
% Effectiveness of RMA Dealers' Contribution	56.5%	61.1%	62.8%

13 \*Orange County Metro Average Adjusted for Local Segment Popularity

14           61. Although the Lemon Grove ASA is geographically smaller than  
 15 the Lemon Grove RMA, when applying the same analysis to the Lemon  
 16 Grove ASA the results are similar.

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE ASA AS A PERCENT OF EXPECTED*			
	<u>2002</u>	<u>2003</u>	<u>2004</u>
Net Registration Loss	362	188	244
% Effectiveness w/In-Sell	73.1%	84.8%	82.3%
% Effectiveness of RMA Dealers' Contribution	57%	63.6%	63.6%

22 \*Orange County Metro Average Adjusted for Local Segment Popularity

23           62. Similar results are obtained when AHM's performance in the  
 24 Lemon Grove RMA is compared to California State standards. Although  
 25 registration effectiveness is greater, it still falls short of 100%.

26 ///

27 \_\_\_\_\_  
 28 <sup>5</sup> Honda defines in-sell as: "Identifies Honda registrations within a market that were sold by dealers located outside the market area."

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE RMA AS A PERCENT OF CALIFORNIA REPRESENTED MARKETS*			
	2002	2003	2004
Net Registration Loss	1,060	815	864
% Effectiveness w/In-Sell	84.3%	87.4%	88.3%
% Effectiveness of RMA Dealers' Contribution	61.2%	62.4%	63.4%

\*California Represented Markets' Average Adjusted for Local Segment Popularity

63. AHM's performance in the Lemon Grove ASA when compared to California State standards yields the following:

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE ASA AS A PERCENT OF CALIFORNIA REPRESENTED MARKETS*			
	2002	2003	2004
Net Registration Loss	262	161	231
% Effectiveness w/In-Sell	79%	86.7%	83.1%
% Effectiveness of RMA Dealers' Contribution	61.5%	65%	64.2%

\*California Represented Markets' Average Adjusted for Local Segment Popularity

64. Based on the significant shortfall in registrations, Mr. Anderson concludes that Honda is inadequately represented in the Lemon Grove RMA and Lemon Grove ASA. This is also the case when the same analysis is applied to the South County market and the San Diego metro. South County had a shortfall of 977 registrations in 2004 and the San Diego metro had a shortfall of 1,837 registrations in 2004.

65. The inadequate representation reflects the fact that the existing dealer network has failed to capture the opportunities for sales available in the Lemon Grove RMA and can be attributed to dealer network factors such as number of dealers, location of dealers or operations of existing dealers.

66. The San Diego metro includes the four protesting dealers, plus Hoehn Honda, Carlsbad; Poway Honda, Poway; Cush Honda Escondido,

1 Escondido; and Fuller Honda, Chula Vista. An open point in Vista and  
2 the proposed Lemon Grove add point were included in the San Diego  
3 metro.

4 67. Mr. Anderson doubts that the San Diego metro operates for  
5 consumers as one contiguous, well-connected market. Based on cross-  
6 sell<sup>6</sup> data, Mr. Anderson has created an additional area called South  
7 County, from which the protesting dealers and the proposed Lemon Grove  
8 point are expected to conduct most of their sales.

9 68. South County dealers include Tipton Honda, Ball Honda, Cush  
10 Honda-San Diego, Pacific Honda and Fuller Honda. Most of the sales by  
11 these dealers occur in the South County area in the following  
12 percentages: Tipton Honda at 85.3%; Ball Honda at 89.8%; Cush Honda at  
13 88.9%, Pacific Honda at 73.9%, and Fuller Honda at 90.1%.

14 69. Between 1990 and 2004, the Lemon Grove RMA and ASA have  
15 experienced moderate but steady population and household growth  
16 trends. This trend is projected to continue through 2009. The San  
17 Diego metro and South County will also experience population growth.  
18 South County is where the protesting dealers will most likely compete  
19 with Lemon Grove for sales.

20 70. The median household income of a Honda customer is \$77,000.  
21 Both the Lemon Grove RMA and the San Diego metro have a number of  
22 households with incomes of \$77,000 or greater.

23 71. The income level of most Honda buyers is between \$35,000 and  
24 \$90,000. The Lemon Grove area is projected to have one of the largest  
25 population increases in the \$50,000 and higher income categories.

26

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27 <sup>6</sup> Cross-sell occurs when customers from one ASA go to another to buy and dealers in  
28 the other ASA sell to customers in the first ASA. There is a two-way flow of  
customers between two dealers in different ASAs.

1           72. Dr. Manuel testified that the Orange County metro is not a  
2 good benchmark to evaluate dealer performance, because Orange County  
3 has households with significantly higher incomes than the San Diego  
4 metro. He believes that income is a significant factor in accounting  
5 for AHM's high performance in the Orange County metro and AHM's poor  
6 performance in the Lemon Grove RMA.

7           73. Dr. Manuel also testified that AHM's segment definitions  
8 include Honda models which tend to be preferred by higher income  
9 buyers than domestic models in the same segment and is thereby causing  
10 the domestic preference in the RMA.

11           74. According to Mr. Anderson the process of segmentation  
12 analysis accounts for both income differences and domestic preference  
13 in the market place. [See paragraph 56 page 13]

14           75. Mr. Anderson demonstrated how segmentation adjusts for both  
15 these characteristics by examining other areas such as Sacramento,  
16 Davis, Elk Grove, the Bay Area, El Cerrito, and Dublin, all of which  
17 have similar household incomes and sizes to the Lemon Grove RMA, but  
18 where AHM has higher penetration rates.

19           76. The next step in Mr. Anderson's analysis requires the  
20 examination of the dealer network to determine whether it is the  
21 source of poor performance in the Lemon Grove RMA and the San Diego  
22 Metro. The following lists dealer count of AHM and its competitors.

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Dealer Count Comparison  
AMERICAN HONDA MOTOR CO., INC.

<u>Manufacturer</u>	<u>Dealers within Lemon Grove RMA</u>	<u>Dealers in San Diego Metro</u>
FORD	6	13
CHEVROLET	5	12
SCION	5	9
TOYOTA	5	9
BUICK	3	7
CHRYSLER	4	7
DODGE TRUCK	4	7
HONDA	4	8
JEEP	4	7
GMC TRUCK	3	7
HYUNDAI	3	6
ISUZU	3	3
KIA	3	5
MAZDA	3	5
NISSAN	3	7
PONTIAC	3	7
SATURN	3	5
VOLKSWAGEN	3	8
BMW	2	5
MITSUBISHI	2	4
SUBARU	2	3
SUZUKI	2	4
AUDI	1	3
LINCOLN, MERCURY	1	2
MERCEDES-BENZ	1	3
PORSCHE	0	2
MINI	0	1
Total	78	159

77. An analysis of the dealer count in the Lemon Grove RMA shows that Honda should increase its present dealer count from four to five dealers. The lower dealer count for AHM relative to its competition is the most likely cause of market share below the Orange County metro.

78. The result of too few dealers is relatively poor customer convenience and weak intrabrand competition among the Honda dealer

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1 network, which leads to weak interbrand<sup>7</sup> competition against Honda's  
 2 competitors. Brand visibility obtained by adding an outlet would  
 3 increase both interbrand and intrabrand competition.

4 79. The sales effectiveness of the Protestants and the proposed  
 5 Lemon Grove dealer is demonstrated by two-mile concentric rings around  
 6 the dealerships. One hundred percent equals the entire brand  
 7 opportunity. The chart below represents the percentage of opportunity  
 8 each dealer captures within each two-mile ring.

9

SAN DIEGO METRO DEALER REGISTRATIONS AS A PERCENT OF EXPECTED* REGISTRATIONS VS DISTANCE FROM DEALERSHIP					
Mile Radius	Tipton	Ball	Cush	Pacific	Lemon Grove**
2 miles	44.4%	30.7%	34.6%	45.0%	38.3%
4 miles	35.9%	29.2	28.2%	34.8%	31.7%
6 miles	31.3%	19.4%	20.3%	30.6%	25.0%
8 miles	16.8%	14.6%	16.8%	24.7%	18.4%
10 miles	9.2%	8.8%	12.8%	18.6%	12.8%
12 miles	6.9%	4.4%	10.9%	11.4%	8.7%
14 miles	5.4%	3.2%	8.5%	8.6%	6.6%
16 miles	4.5%	2.7%	6.3%	8.9%	5.7%
18 miles	3.3%	3.1%	3.7%	7.7%	4.7%
20 miles	4.5%	2.3%	3.2%	7.5%	4.8%

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19  
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21  
22 \* Orange County Metro Adjusted for Census Tract Segment Popularity

\*\*Projected percentage based on the average of the four dealers.

23  
24 80. Protestants capture the highest percentages of sales within  
 25 a six-mile radius of their dealership, with the exception of Pacific  
 26 Honda, which captures its highest percentages within an eight-mile

27  
28 <sup>7</sup> Intrabrand competition is market competition among dealers of the same line-make.  
 Interbrand competition is market competition among dealers of other line-makes.

1 radius.

2 81. A consequence of too few dealers in the RMA allows  
3 competitors to offer higher levels of customer convenience, which is  
4 measured by accessibility to dealerships. Customer convenience can be  
5 measured as the average distance consumers must go to the nearest  
6 dealer of a particular line-make. The chart below illustrates the  
7 average distances for Honda and its competitors.

8

9

CUSTOMER CONVENIENCE ANALYSIS BASED ON 2004 COMPETITIVE REGISTRATIONS LEMON GROVE ASA	
Manufacturer	Average Distance to Nearest Dealer (Miles)
Toyota	3.0
Buick	3.2
GMC	3.2
Pontiac	3.2
Ford	3.6
Chevrolet	3.7
Chrysler	3.8
Jeep	3.8
Dodge	3.8
Isuzu	3.8
Volkswagen	3.9
Hyundai	3.9
Mazda	4.7
Kia	4.8
Honda	4.9

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21 82. The likely cause of the inadequate Honda performance is too  
22 few dealers, which means that Honda is unable to offer adequate levels  
23 of customer convenience compared to its competitors in the Lemon Grove  
24 ASA. An inadequate dealer network results in inadequate levels of  
25 customer convenience. A solution to increase dealer count is  
26 appropriate, in that it addresses the need for improved customer  
27 convenience particularly in areas where population and households are  
28 growing.

1 83. Solutions to inadequate dealer count rely on an optimal  
2 location analysis. An optimal location analysis evaluates and selects  
3 the location that provides the highest level in improvement of  
4 customer convenience for all customers in the area being studied.  
5 Under this analysis, the proposed Lemon Grove site is located in an  
6 area that enhances customer convenience and will improve customer  
7 convenience as expressed in average drive distances from its current  
8 4.9 miles to 2.9 miles in the Lemon Grove ASA.

9 84. Dr. Manuel testified that based on his data an optimal  
10 location for an additional dealership would be located in Del Mar.  
11 Mr. Sorter testified that due to zoning restrictions, additional car  
12 dealerships are no longer permitted in Del Mar or in nearby Carmel  
13 Valley.

14 85. The next step in Mr. Anderson's process is to consider the  
15 impact of the proposed Lemon Grove site on the existing dealers. This  
16 requires a projection of reasonable sales performance by the new  
17 dealer and then a determination of whether the sales opportunities  
18 available to the new dealer will occur at the expense of the existing  
19 dealers.

20 86. Sales opportunities are available to a dealer through  
21 interbrand competition or conquest sales, and intrabrand competition  
22 or in-sell sales. Gross registration losses are those opportunities  
23 or registrations made by Honda's competitors and are the result of  
24 interbrand competition. Intrabrand competition caused by in-sell are  
25 lost opportunities because consumer studies show that the reasons  
26 consumers do not purchase from the most convenient dealer selling that  
27 same line-make are price, selection, service or sales approach. The  
28 assumption is that the dealer is able to control any or all of these

1 factors and thereby attract more customers.

2 87. As indicated on the chart below, using the Orange County  
3 metro standard, the total gross lost opportunity in the RMA in 2004  
4 was 3,073 registrations.<sup>8</sup> The gross lost opportunity consisted of  
5 1,206 gross registration loss from interbrand competition and 1,867  
6 registration loss from in-sell.

7

IMPACT REPORT			
DECEMBER 2004 YTD			
PASSENGER VEHICLE REGISTRATIONS			
Distance from Proposed Lemon Grove Location (miles)	Lemon Grove RMA Expected** Registrations	Average RMA Dealer Penetration of Expected Passenger Vehicles Registrations	Projected Retail Registrations for Lemon Grove Location*
0 - 2	469	38.25%	179
2 - 4	1,289	31.67%	408
4 - 6	1,762	25.02%	441
6 - 8	2,144	18.41%	395
8 - 10	1,821	12.76%	232
Projected Registrations within 10 Miles of Proposed Lemon Grove Location			1,655

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16 Source of Registrations:

17 Gross Registration Loss at Expected\*\* 1,206

18 In-Sell Registrations 1,867

19 Total Lost Opportunity 3,073

20 Projected Registrations as a Percent of Lost  
Opportunity at the Proposed Location 53.9%

21 \* Assumes the proposed Lemon Grove dealer will have the same penetration profile as  
the average RMA dealer

22 \*\* Orange County Metro Adjusted for Census Tract Segment Popularity

23

24 88. If the proposed new dealer achieves sales effectiveness equal  
25 to the average sales effectiveness by two-mile rings its sales would

26

27 <sup>8</sup> Mr. Anderson defines gross lost opportunity as lost opportunity within a market.  
28 Net lost opportunity is lost opportunity in a market after offsetting market losses  
with market gain.

1 total 1,655. Even with these sales there would still be ample  
 2 opportunity of 1,418 sales available to RMA dealers. Using a  
 3 penetration rate which is the average of the RMA dealers, the proposed  
 4 Lemon Grove dealer would capture 53.9% of the lost opportunity. If  
 5 the proposed dealer performed as well as the strongest dealer, which  
 6 is Pacific Honda, then it would capture 2,068 of the lost opportunity  
 7 or 67.3%, which would still leave 1,000 registrations available to the  
 8 existing dealers.

9 89. This data is expressed in the chart below. Pacific Honda  
 10 has the highest penetration numbers and therefore its numbers are  
 11 being used to show the effect upon the RMA if the proposed dealer  
 12 performs at that same level.

LEMON GROVE RMA DECEMBER 2004 PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	53.9%	59.2%
Pacific Honda Penetration Profile	67.3%	74.0%

20  
 21 90. All of the penetration figures are expressed in both gross  
 22 and net registration loss. It is Dr. Manuel's position that net  
 23 registration loss should be considered when performing impact  
 24 analysis, whereas Mr. Anderson believes that gross registration loss  
 25 should be used. The inclusion of both gross and net registration loss  
 26 show the expected performance of the Lemon Grove dealer based on both  
 27 viewpoints.

28 ///

1 91. For South County the results of impact assessment are as  
2 follows:

SOUTH COUNTY DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SOUTH COUNTY USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	53.3%	66.4%
Pacific Honda Penetration Profile	68.0%	84.7%

11 92. For the San Diego metro the results of impact assessment are  
12 as follows:

SAN DIEGO METRO DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SAN DIEGO METRO USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	45.7%	56.4%
Pacific Honda Penetration Profile	58.3%	72.0%

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22 ///  
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93. Using the California State standard an impact analysis yields the following results:

LEMON GROVE RMA DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALERS AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	<u>Gross</u> <u>Registration Loss</u>	<u>Net Registration</u> <u>Loss</u>
Average Lemon Grove RMA Dealer Penetration Profile	54.6%	60.6%
Pacific Honda Penetration Profile	68.2%	75.7%

SOUTH COUNTY DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SOUTH COUNTY USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	<u>Gross</u> <u>Registration Loss</u>	<u>Net Registration</u> <u>Loss</u>
Average Lemon Grove RMA Dealer Penetration Profile	54.2%	68.9%
Pacific Honda Penetration Profile	69.2%	87.9%

SAN DIEGO METRO DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SAN DIEGO METRO USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	<u>Gross</u> <u>Registration Loss</u>	<u>Net Registration</u> <u>Loss</u>
Average Lemon Grove RMA Dealer Penetration Profile	46.7%	58.7%
Pacific Honda Penetration Profile	59.7%	75.0%

94. All of the dealers have been in business for many years with loyal customers. Financial data from 2000 through 2004 show that all of the protesting dealers are financially strong and profitable.

1 95. Contrary to Dr. Manuel's analysis which does not include a  
2 "stimulated competitive response", Mr. Anderson believes that if the  
3 Protestants react positively to the increased competition they will  
4 not lose sales, and they could increase sales.

5 96. Protestants can react to the increased competition by  
6 adopting defensive strategies such as the reduction of profits per new  
7 vehicle sold that are in excess of the zone average, and/or increase  
8 their advertising dollars to bring expenditure rates up to zone,  
9 and/or improve their sales effectiveness through the reduction of  
10 dealership expenses to conform with zone averages.

11 97. AHM prepares a monthly report called the 2020 report, which  
12 takes data from all its dealers' financial statements. The 2020  
13 report shows dealers performance against average benchmarks.  
14 Comparisons are made to zone averages which are based on all dealers  
15 in the state and to group averages which are based on dealerships of  
16 similar sizes.

17 98. Total expenses as a percentage of operating income would be  
18 one performance indicator in the 2020 report. This would allow a  
19 dealer to compare its expenses to others in the zone and group and by  
20 doing so, it could compare its own efficiency to other dealers.  
21 Operating expenses are significant because they are largely within the  
22 control of the dealer.

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2004 EXPENSES AS A PERCENTAGE OF OPERATING INCOME

<u>Zone Average</u>	<u>Tipton</u>	<u>Cush</u>	<u>Pacific</u>	<u>Ball</u>
88.7%	98.6%	83.3%	72%	84.7%

YTD JUNE 2005 EXPENSES AS A PERCENTAGE OF OPERATING INCOME

<u>Zone Average</u>	<u>Tipton</u>	<u>Cush</u>	<u>Pacific</u>	<u>Ball</u>
88.4%	93%	78.6%	70.2%	85.6%

99. It is apparent that Tipton Honda's expenses as a percentage of operating income are far above that of the zone average and its percentage is the highest among the other protesting dealers. A reduction in the expense percentage could lead to increased profitability of the dealership.

100. Tipton Honda's advertising budget is the lowest of all the protesting dealers. Its percentage of advertising in service is also low which may account for the under utilization of its service facilities. Advertising is another expenditure which is under the control of the dealership and is a means of increasing sales and service activity.

101. Tipton Honda has the lowest sales effectiveness calculated by dividing the dealer's total nationwide sales by the expected Honda registrations within the dealer's ASA. Tipton's 2004 percentage of sales effectiveness of 77% is the lowest among the protesting dealers. If Tipton Honda were to perform like the average dealer in the Orange County metro with a 100% sales effectiveness, it would have to increase its sales by 539 units. The additional sales would result in an increase of \$600,000 profit.

1           102. Dr. Manuel assumes that new vehicle sales losses will  
2 automatically translate into lost profits and thereby threaten the  
3 viability of the dealership. However Mr. Anderson does not believe  
4 that this is an inevitable outcome and in fact the reverse could occur  
5 where profits can increase with fewer sales or profits could decline  
6 with increased sales. For example Ball Honda sold 358 fewer vehicles  
7 than Tipton Honda in 2004 but was nearly four times more profitable.  
8 During the period of 2000 through 2004 each Protestant experienced one  
9 year in which new car sales decreased compared to the year before, yet  
10 profits increased. Profitability is dependent, in part, on the  
11 efficiency and effectiveness of the management of the business.

12           103. As part of the evaluation process Mr. Anderson looked at  
13 recent case studies of add points. The first involves the Family  
14 Honda add point in Rancho Santa Margarita which opened in January 2001  
15 and is adjacent to the San Diego metro. Family Honda made 1,408 sales  
16 in 2002 and the other Honda dealers in the area increased their sales  
17 from 5,322 to 5,620. In-sell declined from 53% to 46%. In this case  
18 the addition of a new dealer stimulated competition making the dealer  
19 network more interbrand competitive.

20           104. The next case study is the Shack-Findlay Honda add point in  
21 the Las Vegas metro which opened in 1999. By 2000 the dealership sold  
22 1,531 vehicles while other Honda dealers increased their sales from  
23 2,555 units to 3,042. In-sell was reduced from 10% to 5.3%.

24           105. The third case study involved the relocation of Vista Honda  
25 to Ventura. After the relocation, Honda's effective registrations  
26 increased from 75% in 1996 to 96.7%. In 1998 sales by Vista Honda  
27 increased from 374 units to 1,010. Honda dealers' registrations  
28 increased from 3,070 in 1996 to 4,460 in 1998. In-sell registrations

1 decreased from 28.8% in 1996 to 20.9% in 1998.

2 106. The final case study is the Rick Case Honda add point in  
3 Davie, Florida in March 2002. Honda's registration went from 72.2% in  
4 2001 to 120.8% in 2003. Although the other Honda dealers experienced  
5 a decline in sales of 164 units, in-sell registrations decreased from  
6 34.8% to 19.3%.

7 107. Dr. Manuel presented several case studies in order to show  
8 the negative impact upon existing dealers when a new dealer was  
9 introduced into the area. While these case studies were of interest,  
10 there were too many variables and exceptions to make a direct  
11 correlation between the establishment of the new dealers and the  
12 resulting loss of business to the existing dealers.

13 108. In summary Mr. Anderson concluded that Honda has not been  
14 adequately represented in the Lemon Grove ASA and RMA, South County  
15 and San Diego metro. The consequences of too few dealers are  
16 inadequate customer convenience and inadequate intrabrand competition  
17 which leads to inadequate interbrand competition.

18 109. The economic and market conditions, including growth in the  
19 area support the addition of a new dealership. The proposed Lemon  
20 Grove dealership location is very close to the optimal location and  
21 has good accessibility from the highway system.

22 110. There is sufficient lost opportunity from interbrand  
23 registrations and in-sell opportunity to permit the Lemon Grove  
24 establishment without necessarily taking sales away from the  
25 protesting dealers.

26 **c) FINDINGS OF FACT RELATING TO WHETHER THE ESTABLISHMENT OF AN**  
27 **ADDITIONAL FRANCHISE WILL BE INJURIOUS TO THE PUBLIC WELFARE**  
28 **[Section 3063(c)]**

111. Protestants failed to offer credible evidence that any of

1 the dealerships, particularly Tipton Honda, would go out of business  
2 as a result of the establishment of the Lemon Grove point.

3 112. Although Dr. Manuel testified extensively as to projected  
4 losses for the dealers, by his own admission, he did not believe that  
5 three of the four Protestants would suffer significant losses that  
6 would threaten the viability of their businesses.

7 113. With respect to Tipton Honda which is the least profitable  
8 of the protesting dealers, Dr. Manuel did not consider factors within  
9 the control of the dealership that could increase the profitability of  
10 the dealership even in the face of increased competition.

11 114. It has not been shown that the establishment of a Honda  
12 dealership in Lemon Grove will result in the closure of any of the  
13 protesting dealerships, and therefore there has been no showing of  
14 injury to the public welfare. In fact, from the perspective of the  
15 City of Lemon Grove and its residents, the addition of the dealership  
16 in Lemon Grove will be beneficial to the public welfare.

17 115. Graham Mitchell is the City Manager of Lemon Grove. Mr.  
18 Mitchell testified that the city has adopted a master plan for mixed  
19 use for the downtown area which includes 800 units of housing and  
20 50,000 square feet of retail space. The area is adjacent to the  
21 proposed Honda site. Parts of the city are being rezoned to increase  
22 density which should attract more residents. There are plans in the  
23 immediate future to develop 440 units of housing. In order to  
24 generate tax revenues the city is seeking to attract car dealerships  
25 and big-box stores. Mr. Mitchell believes that SANDAG's population  
26 growth estimates for Lemon Grove are between 2 and 2- $\frac{1}{2}$ % lower than the  
27 city's.

28 116. Mr. Mitchell believes that a well-built beautiful Honda

1 dealership will create a new gateway to the city, while replacing a  
2 blighted industrial site. The location of a new Honda dealership  
3 could stimulate further downtown development.

4 117. The establishment of a Honda dealership in Lemon Grove would  
5 benefit the community of Lemon Grove through sales tax revenues  
6 projected at \$640,000-\$800,000 annually and property taxes of \$30,000-  
7 \$50,000 annually. Tax revenues generated by the dealership would  
8 subsidize salaries for firefighters, police officers, and  
9 administrative staff.

10 118. The proposed new dealership will initially have 75-80  
11 employees and could have as many as 125-130 employees. The  
12 dealership will be four stories high with good visibility from the  
13 freeways. There will be 24 service stalls with future expansion plans  
14 to 40 stalls. The second floor of the facility would be made  
15 available for non-profit organizations to use as meeting rooms.

16 119. DCH, which will be the owner of the proposed dealership, is  
17 a minority owned business which promotes AHM's objectives of  
18 increasing minority owned businesses.

19 d) FINDINGS OF FACT RELATING TO WHETHER THE EXISTING HONDA DEALERS  
20 IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION  
21 AND CONVENIENT CONSUMER CARE FOR HONDA MOTOR VEHICLES, INCLUDING  
22 ADEQUATE MOTOR VEHICLE SALES AND SERVICE FACILITIES, EQUIPMENT,  
23 SUPPLY OF VEHICLE PARTS, AND QUALIFIED SERVICE PERSONNEL  
24 [Section 3063(d)]

25 Tipton Honda

26 120. Tipton Honda underwent remodeling efforts to bring its  
27 facility into compliance with the Honda image program. The remodel  
28 plan contemplated future growth and expansion.

121. Tipton Honda's service facility, with 26 service stalls,  
including 22 lifts, exceeds AHM's requirements. The service facility

1 processes around 2,000 repair orders monthly but has the capacity for  
2 twice as much work. Its service center is open six days a week, and  
3 its sales department seven days a week. Tipton Honda exceeds AHM's  
4 requirements for showroom size, storage size, parts department  
5 inventory, and flooring requirements.

6 122. QDS scores are AHM's measure of customer satisfaction in  
7 sales. TSI scores are AHM's measure of customer satisfaction in  
8 service. Tipton Honda's year-end QDS and TSI scores met or exceeded  
9 district and zone averages over the past four years.

10 123. In 2000 AHM established its EXCELL program, an acronym which  
11 stands for Exceeding Customer's Expectations for Life. This is a  
12 voluntary program which is used to monitor and improve customer  
13 satisfaction. Tipton Honda has an employee for the EXCELL program  
14 whose responsibility is to track the program. Tipton Honda has  
15 received EXCELL certification from AHM since it joined the program.

16 124. Tipton Honda is ranked 179 nationwide among 1,014 Honda  
17 dealers.

18 Ball Honda

19 125. The new Ball Honda facility has 30 service stalls including  
20 20 lifts, and employs 14 Honda technicians. The service facility  
21 exceeds AHM's guidelines. The service facility is open daily. Ball  
22 Honda has a separate body shop with 18 stalls and three paint booths.  
23 The facility also has two quick lube stalls.

24 126. Ball Honda's year-end QDS scores from 2000 through 2004, met  
25 or exceeded district and zone averages, except for the year 2000 when  
26 it fell below both district and zone. For the same period Ball  
27 Honda's TSI scores, met or exceeded district and zone averages, except  
28 for 2002 when it fell below district and zone.

1 127. Ball Honda has received Honda's EXCELL certification for the  
2 past two years. Mr. Ball's daughter Jennifer is the EXCELL manager.

3 128. Ball Honda is ranked 312 nationally among Honda's 1,014  
4 dealers.

5 Cush Honda

6 129. Cush Honda has won the prestigious Honda President's Award  
7 in the years 1999, 2000, 2002, and 2003. The President's Award  
8 recognizes the top 20% of the dealers in the country. Cush Honda also  
9 received the Honda Masters Award in 2000 and 2001 for outstanding  
10 sales achievements. Cush Honda ranks 94 among all 1,014 Honda dealers  
11 nationwide.

12 130. Cush Honda's remodeled facilities include 33 (25 are Honda  
13 dedicated) service stalls with 28 of the stalls with lifts. The  
14 service department is opened six days a week. Cush Honda employs  
15 seven service technicians and 18 sales persons. Cush Honda's  
16 remodeled facilities exceed AHM's guidelines for both sales and  
17 service facilities.

18 131. The year-end QDS and TSI scores for Cush Honda met or  
19 exceeded district and zone averages from 2000 through 2004. Cush Honda  
20 had one of the initial pilot programs for the EXCELL program and since  
21 then has enjoyed continuous EXCELL certification.

22 Pacific Honda

23 132. Pacific Honda has been the number one dealer in San Diego  
24 for the past 15 years and ranks 33 nationwide out of 1,014 dealers.  
25 Like Cush Honda, Pacific Honda has won both the President's Award and  
26 the Masters Award on multiple occasions.

27 133. The service and parts facility includes 28 covered service  
28 bays, five service advisor stations, customer lounge, retail and

1 wholesale parts departments and three-bay express lube facility.  
2 Across the street there are eight more bays exclusively dedicated to  
3 Honda. Nearby there is a three-acre storage facility with a service  
4 bay for pre-delivery inspection. Pacific has a total of 40 service  
5 stalls and lifts, and 36 service technicians. The service department  
6 is open seven days a week. Pacific Honda has 30 new-car sales  
7 persons, ten used-car sales personnel and four people employed in  
8 finance.

9 134. The year-end QDS and TSI scores for Pacific Honda met or  
10 exceeded district and zone averages for most of the past four years.

11 135. Pacific Honda, like the other dealers, is EXCELL certified.

12 OTHER FACTS PERTAINING TO PROTESTANTS

13 136. Cush Honda, Pacific Honda and Tipton Honda exceed Honda's  
14 land and building requirements. The service capacity of Tipton Honda  
15 and Cush Honda each exceed Honda requirements, and both dealerships  
16 are capable of expanding their service hours to handle additional  
17 Honda business.

18 137. The monthly parts supply per dealership between 2003 through  
19 March 2005 are as follows: Ball Honda and Cush Honda are comparable  
20 to group and district average; Pacific Honda was comparable in 2003  
21 and exceeded group and district average in 2004 through March 2005;  
22 and, Tipton Honda exceeded both group and district average for the  
23 entire time period.

24 138. Notwithstanding the fact that the dealers provide more than  
25 adequate service facilities, equipment, parts inventory and qualified  
26 service personnel, the Lemon Grove RMA has not been adequately served  
27 in terms of Honda new vehicle sales, nor have the protesting dealers  
28 provided adequate competition or convenient customer care, as set

1 forth in Section (b) which is incorporated by reference herein.

2 e) FINDINGS OF FACT RELATING TO WHETHER THE  
3 ESTABLISHMENT OF AN ADDITIONAL DEALERSHIP WILL INCREASE  
4 COMPETITION AND THEREFORE BE IN THE PUBLIC INTEREST  
5 [Section 3063(e)]

6 139. Mr. Anderson gave the opinion that increasing the size of  
7 the dealer network would promote intrabrand competition which would in  
8 turn promote interbrand competition.

9 140. The intrabrand and interbrand competition will benefit  
10 consumers in the Lemon Grove RMA, South County and San Diego metro as  
11 consumers will be able to shop in a more competitive environment.

12 141. Competition created by adding another Honda dealer will  
13 further enhance customer convenience by giving consumers closer access  
14 to Honda dealers. The distance for consumers to travel to their  
15 nearest Honda dealer would be reduced from the current 4 miles to 2.9  
16 miles.

17 142. Mr. Anderson stated that one of the ways existing dealers  
18 could positively respond to the increased competition would be to  
19 price their vehicles more competitively, which if they chose to do so  
20 would benefit the consuming public.

21 143. Based on their past relationship with DCH, AHM expects that  
22 DCH will be a strong competitor in the marketplace. DCH owns 33  
23 dealerships throughout the United States, with twelve stores of  
24 various line-makes in California. DCH owns multiple Honda and Acura  
25 dealerships on both the East and West coasts.

26 144. The proposed Lemon Grove general manager, Gary Sorter, is a  
27 strong candidate with many years of experience in retail auto sales in  
28 the San Diego area. Mr. Sorter has started two dealerships including  
a Hyundai store which he owned. Mr. Sorter was the general manager of

1 Pacific Honda for 13 years and helped that dealership become the  
2 largest volume dealer in San Diego.

3 145. Protestants complain that DCH offers cars for sale below  
4 invoice. However, Mr. Chang, Sr. Vice President and Regional Manager  
5 of DCH, denied the allegation stating that DCH does offer sales at  
6 invoice but does not sell below invoice as Honda's Dealer Marketing  
7 Allowance Policy penalizes dealers at 1% of invoice for selling below  
8 invoice.

9 f) FINDINGS OF FACTS RELATING TO EXISTING CIRCUMSTANCES

10 146. Protestants contend that the proposed Lemon Grove site is in  
11 a blighted neighborhood which is too poor to support a dealership.  
12 Upon a site visit the trier of fact observed an industrial site with  
13 aged and decaying buildings. The yard of one of the residents is  
14 overgrown with vegetation and strewn with abandoned vehicles. Another  
15 tenant, a feed store, had a small array of caged farm animals on the  
16 property.

17 147. It is apparent from the testimony of the Lemon Grove City  
18 Manager that they are making every effort to improve the city and to  
19 remove blight. It is equally apparent that the City of Lemon Grove  
20 views the establishment of the new dealership as a step towards this  
21 goal with the anticipation that the new dealership will act as a  
22 catalyst for further growth and development in the area.

23 148. Citing Longo Toyota in El Monte which sells 20,000 cars  
24 annually, AHM has shown that dealers in communities that are perceived  
25 as poor can be successful.

26 149. Protestants contend that the location of the proposed site  
27 generates safety issues because of its proximity to trolley tracks and  
28 its single driveway for entrance and exit.

1 150. DCH plans to install a sidewalk along the tracks which will  
2 lead to the service area. Mr. Sorter believes that access to the  
3 trolley will improve customer access to the dealership.

4 151. The Lemon Grove site is located near the off-ramp to the 94  
5 Freeway. The land is very close to the freeway with only one  
6 entrance. Traffic exiting the freeway can cause gridlock for  
7 customers entering or exiting the dealership.

8 152. Upon visiting the Lemon Grove site, the trier of fact found  
9 the off-ramp and entrance to the property extremely difficult to  
10 negotiate. The off-ramp is relatively short and requires the driver  
11 to maneuver quickly through traffic into the far left lane to turn  
12 onto the property.

13 153. DCH has preliminarily addressed this problem by hiring  
14 traffic engineers who will work with Caltrans and the City of Lemon  
15 Grove on the issue of ingress and egress. The plans will include  
16 creating a three-lane off-ramp off the 94 Freeway with a median strip  
17 and specific turn lanes into the dealership.

18 154. A more serious contention raised by Protestants is whether  
19 or not Gary Sorter obtained special treatment from AHM's management  
20 resulting in the award of the Lemon Grove point.

21 155. In 2000 AHM conducted a market study identifying Vista as an  
22 open point. No candidate has ever been selected for this point and  
23 Protestants contend that AHM changed its focus from Vista to Lemon  
24 Grove because AHM wanted to award Mr. Sorter the Lemon Grove point.

25 156. AHM representative, Mr. Lynch testified that AHM deferred  
26 action on the Vista open point to give the two North County dealers an  
27 opportunity to remedy facility deficiencies which both of them did. In  
28 2000 AHM recommended that Cush Honda-Escondido separate its dual

1 facilities and build an exclusive Honda showroom which it did. AHM  
2 recommended that Hoehn Honda move to the Carlsbad Auto Center which it  
3 did.

4 157. Protestants argue that they too should have the same  
5 opportunity of improvement as the North County dealers had. However,  
6 the two situations are entirely different. The North County dealers  
7 required facility upgrades, but this is not the case with Protestants.  
8 For the reasons set forth in Section (b) of this decision, facility  
9 upgrades alone will not cure the inadequate representation of Honda in  
10 the Lemon Grove RMA or South County.

11 158. Protestants contend that AHM abandoned its 2000 Market Study  
12 for an open point in Vista in favor of creating an add point in Lemon  
13 Grove through its June 2004 Market Study. While the decision to  
14 conduct the June 2004 Market Study may have been influenced by the  
15 opportunity of available land in Lemon Grove, which was made known to  
16 AHM in September 2003 by Gary Sorter<sup>9</sup>, the final decision to create  
17 the Lemon Grove add point rested on market studies showing Honda's  
18 inadequate representation in South County. It should be noted that  
19 AHM has not established a new Honda dealership in San Diego in 15  
20 years. The Market Study found the lost opportunity in South County is  
21 2,886 as opposed to the loss in North County of 1,551. Additionally  
22 Honda's competitors like Toyota are evenly matched one for one in  
23 North County, but Honda is outnumbered by the same competitor in South  
24 County.

25 159. After discovering the property in Lemon Grove, Mr. Sorter  
26 approached other dealers with the prospect of jointly submitting an

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28 <sup>9</sup> The parties offered conflicting testimony as to the timing of the decision by AHM  
to conduct the 2004 Market study.

1 application for the Lemon Grove point. Mr. Meyer of Pacific Honda,  
2 testified that Mr. Sorter stated that if he (Mr. Sorter) was involved  
3 in the application it would be "unbeatable." Mr. Meyer also testified  
4 that Mr. Sorter had represented to another Sunroad executive that "he  
5 had the deal in his back pocket." Richard Vann of Sunroad also  
6 testified that Mr. Sorter said of the Lemon Grove point "it was his  
7 deal to have."

8 160. Although the statements attributed to Mr. Sorter are  
9 credible, at worst, it represents puffing and was most likely an  
10 exaggeration and embellishment of his role in identifying the Lemon  
11 Grove site. The statements of Mr. Sorter, with no other evidence, do  
12 not support the claim that DCH and Mr. Sorter were awarded the Lemon  
13 Grove point out of favoritism, or that the decision of AHM to  
14 establish the dealership in Lemon Grove was motivated by a desire to  
15 provide a franchise for Mr. Sorter, rather than for sound business  
16 reasons.

17 161. According to AHM's representative Mr. Lynch, 18 applications  
18 were submitted by prospective candidates for the Lemon Grove point.  
19 AHM management interviewed eight applicants. The four finalists were  
20 rated in ten categories which included: overall reputation and proven  
21 success, access to local management, capitalization, ability to raise  
22 capital, past customer satisfaction ratings, the proposed general  
23 manager, the proposed facility and site and their compatibility with  
24 Honda's philosophy.

25 162. DCH and Mr. Aaron Feldman, owner of Protestant Pacific Honda  
26 were the two finalists. DCH was ultimately chosen for the following  
27 reasons. In AHM's past relationship DCH has been very supportive of  
28 AHM's initiatives including the Honda image program, and the EXCELL

1 program. DCH has multiple Honda and Acura stores on both the East and  
2 West coasts. DCH is experienced in racially diverse markets. DCH and  
3 Aaron Feldman qualify as minority-owned businesses which satisfy a  
4 goal of Honda's to expand its minority ownership. DCH had previously  
5 negotiated the purchase of multiple dealers in Temecula. DCH's  
6 proposed general manager, Gary Sorter, is well qualified and known to  
7 Honda for running the most successful store in San Diego for 13 years.  
8 DCH was able to secure the Lemon Grove property contingent upon AHM's  
9 approval, and DCH~~s~~ had the ability to finance the project. DCH  
10 embraces one of AHM's core principles of respect for the individual.  
11 DCH exhibited passion in pursuing the project.

12 163. The selection of DCH to be the Lemon Grove dealer was done  
13 through a fair and thorough process. Protestants have failed to offer  
14 credible evidence to support their contention the DCH and Mr. Sorter  
15 received special treatment in the selection process from AHM.

16 DETERMINATION OF ISSUES

17 164. Protestants have failed to prove that there is good cause  
18 not to permit the establishment of the proposed Honda dealership in  
19 the Lemon Grove relevant market area at Costa Bella and Lemon Avenue,  
20 Lemon Grove, California.

21 A. Protestants have established that their investments are  
22 permanent, but have failed to establish that their investments would  
23 be adversely affected by the establishment of the Lemon Grove  
24 dealership. [Section 3063(a)];

25 B. Protestants have failed to meet their burden of proof that  
26 the establishment would have an adverse effect on the retail motor  
27 vehicle business and the consuming public in the relevant market area.  
28 The establishment of the proposed additional new dealership in the

1 Lemon Grove relevant market area would benefit the retail motor  
2 vehicle business by increasing intrabrand and interbrand competition.  
3 The consuming public will benefit from the increased competition. The  
4 proposed additional dealership would increase customer convenience.

5 [Section 3063(b)]

6 C. Protestants failed to prove that the establishment of an  
7 additional dealer would be injurious to the public welfare. [Section  
8 3063(c)]

9 D. Protestants failed to establish that there is adequate  
10 competition and convenient consumer care in terms of sales.  
11 Protestants have established that their service facilities, equipment,  
12 supply of vehicle parts, and qualified personnel are adequate and  
13 exceed the guidelines set forth by AHM. [Section 3063(d)]

14 E. Protestants failed to meet their burden of proof that the  
15 establishment of an additional dealer would not increase competition,  
16 and therefore would not be in the public interest. [Section 3063(e)]

17 F. Protestants failed to prove that AHM's award of the add  
18 point was based on anything other than a fair selection process.  
19 [Section 3063(f)]

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