

NEW MOTOR VEHICLE BOARD  
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
FOX HILLS AUTO, INC., doing )  
business as AIRPORT MARINA FORD, ) Protest No. PR-1869-03  
Protestant, )  
v. )  
FORD MOTOR COMPANY, )  
Respondent. )

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In the Matter of the Protest of )  
WALKER MOTOR CO., d/b/a BUERGE )  
FORD, ) Protest No. PR-1870-03  
Protestant, )  
v. )  
FORD MOTOR COMPANY, )  
Respondent. )

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In the Matter of the Protest of )  
CRENSHAW MOTORS, INC., d/b/a )  
CRENSHAW FORD, ) Protest No. PR-1871-03  
Protestant, )  
v. )  
FORD MOTOR COMPANY, )  
Respondent. )

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In the Matter of the Protest of )  
) )  
FORD OF SANTA MONICA, INC., d/b/a ) Protest No. PR-1872-03  
SANTA MONICA FORD, ) )  
) )  
Protestant, ) )  
) )  
v. ) )  
) )  
FORD MOTOR COMPANY, ) )  
) )  
Respondent. )

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DECISION

At its regularly scheduled meeting of November 4, 2004, the Public members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 4<sup>th</sup> DAY OF NOVEMBER 2004.


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~~GLENN E. STEVENS~~ *CONSULTANT FRESH*  
*ALING* - President on this matter  
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 FOX HILLS AUTO, INC., doing ) **Protest No. PR-1869-03**  
business as AIRPORT MARINA FORD, )  
13 Protestant, ) **PROPOSED DECISION**  
14 v. )  
15 FORD MOTOR COMPANY, )  
16 Respondent. )

17 In the Matter of the Protest of )  
18 WALKER MOTOR CO., d/b/a BUERGE ) **Protest No. PR-1870-03**  
19 FORD, )  
20 Protestant, )  
21 v. )  
22 FORD MOTOR COMPANY, )  
Respondent. )

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1 In the Matter of the Protest of )  
 2 CRENSHAW MOTORS, INC., d/b/a ) **Protest No. PR-1871-03**  
 3 CRENSHAW FORD, )  
 4 Protestant, )  
 5 v. )  
 6 FORD MOTOR COMPANY, )  
 7 Respondent. )

7 In the Matter of the Protest of )  
 8 FORD OF SANTA MONICA, INC., d/b/a ) **Protest No. PR-1872-03**  
 9 SANTA MONICA FORD, )  
 10 Protestant, )  
 11 v. )  
 12 FORD MOTOR COMPANY, )  
 13 Respondent. )

14 **PROCEDURAL BACKGROUND**

15 1. By letter dated August 4, 2003, Ford Motor Company  
 16 (hereinafter "Ford") gave notice pursuant to Vehicle Code section 3062<sup>1</sup>  
 17 to Protestants Fox Hills Auto, Inc., doing business as Airport Marina  
 18 Ford (hereinafter "Airport Marina"), Walker Motor Co. d/b/a Buerge  
 19 Ford (hereinafter "Buerge"), Crenshaw Motors, Inc., d/b/a Crenshaw  
 20 Ford (hereinafter "Crenshaw"), and Ford of Santa Monica, Inc., d/b/a  
 21 Santa Monica Ford (hereinafter "Santa Monica") of Ford's intention to  
 22 allow Beverly Hills Ford (hereinafter "BHF") to establish a secondary  
 23 new vehicle sales location for Ford Division products in Los Angeles,  
 24 which is within ten miles of each of the Protestants.

25 2. Airport Marina, Buerge, Crenshaw, and Santa Monica filed  
 26 separate protests on August 25, 2003. The four Protests were later  
 27

28 <sup>1</sup> Statutory references are to the California Vehicle Code, unless stated otherwise.

1 consolidated for hearing by Order dated September 17, 2003.

2 3. Ford is a manufacturer and distributor of new motor vehicles  
3 licensed by the California Department of Motor Vehicles. Airport  
4 Marina, Buerge, Crenshaw, and Santa Monica are licensed new motor  
5 vehicle dealers and Ford franchisees doing business at 5880 Centinela  
6 Avenue, Los Angeles, California, 11800 Santa Monica Blvd., West Los  
7 Angeles, California, 5311 Crenshaw Blvd., Los Angeles, California, and  
8 1230 Santa Monica Blvd., Santa Monica, California, respectively.

9 4. A hearing on the merits of the Protests was held on June 1  
10 through June 4, 2004, and resumed on June 26 through 27, 2004, in Los  
11 Angeles, California, before Administrative Law Judge, Kenneth B.  
12 Wilson.

13 5. Norris J. Bishton, Jr., Esq., and Jeffrey S. Gubernick,  
14 Esq., Bishton Gubernick, 6701 Center Drive West, Suite 925, Los  
15 Angeles, California, represented the Protestants.

16 6. Cranston J. Williams, Esq., Baker & Hostetler, LLP, 333  
17 South Grand Avenue, Suite 1800, Los Angeles, California, and Elizabeth  
18 A. McNellie, Baker & Hostetler, LLP, 65 East State Street, Suite 2100,  
19 Columbus Ohio, represented Respondent.

20 7. Protestants presented the testimony of six percipient  
21 witnesses, including James Christian Buerge, Acting General Manager  
22 and part owner of Buerge Ford; Ronald Davis, President and General  
23 Manager of Santa Monica Ford; Raymond Symmons, President and part  
24 owner of Crenshaw Ford; and William A. Hurst, Chief Operating Officer  
25 of Airport Marina Ford. Protestants also called Peter Blacksberg,  
26 President and sole owner of Beverly Hills Ford, and Rick Willems, Ford  
27 Motor Company Market Representation Manager for California Region  
28 South.



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

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

10 **FINDINGS OF FACT**

11 **Preliminary Findings**

12 13. On or about November 3, 1999, Mr. Peter Blacksberg entered  
13 into a Dealer Development Agreement with Ford Motor Company, for the  
14 purchase by Mr. Blacksberg of the former Olympic Ford, a dealership  
15 located at 9231 Olympic Blvd. in the City of Beverly Hills,  
16 California. The purchase was part of a transaction whereby Ford also  
17 purchased from Mr. Blacksberg, and subsequently closed, Paradise Ford  
18 in Montrose, California.

19 14. The facilities comprising what then became Beverly Hills  
20 Ford were situated on six leased parcels along both sides of Olympic  
21 Blvd. A main sales facility was located at 9231 Olympic, with a used  
22 car sales lot diagonally across that street at 9220 and 9224.  
23 Approximately four blocks to the east of the main facility, at 9001  
24 Olympic, there was an additional new vehicle display lot, and opposite  
25 that, at 9000 Olympic, a truck display lot. All combined, the BHF  
26 facility was about 125,500 square feet (2.9 acres) in size, which was  
27 about 49 percent of Ford's minimum facilities guide total land  
28 requirements for a planning volume of 2,300 units.

1 15. Although not part of the BHF facility, BHF had the use on a  
2 monthly basis of additional storage parking nearby at Pico and Beverly  
3 Drive. In addition, Ford permitted BHF to use land owned by Ford at  
4 8955 Olympic. The later was part of a former Lincoln-Mercury  
5 dealership that had been closed following the recent Northridge  
6 Earthquake. Although this property was worth well over \$4.7 million,  
7 Ford charged BHF no rent.<sup>2</sup>

8 16. From late 1999 on, BHF used the property at 9000 and 9001  
9 Olympic for storage, and sporadically for display purposes including a  
10 marketing experiment aimed at reaching homosexual Ford customers in  
11 the West Hollywood area. During this time, all of BHF's sales were  
12 consummated and all records were kept at the main facility at 9231  
13 Olympic.

14 17. Both 9000 and 9001 Olympic were leased from Landmark Group,  
15 LLC. The lease on 9001 Olympic was to expire in 2002. In  
16 contemplating its renewal, Mr. Blacksberg became concerned over the  
17 lessor's proposal to increase the monthly base rent from \$25,000 to  
18 \$30,387.66 over a period of 5 years.<sup>3</sup> Mr. Blacksberg became suspicious  
19 that the lessor was "shopping" him against another potential lessee  
20 and was "moving all over the place" in negotiating a renewal. Driven  
21 by these concerns, and without consulting or informing Ford, Mr.  
22 Blacksberg declined to renew the leases on 9000 and 9001 Olympic and,  
23 in May 2002, entered into a lease on a one-half acre parcel at 9740 W.

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25 <sup>2</sup> In return for the use of the land, Mr. Blacksberg ousted vagrants and protected  
26 the property from condemnation by the City of Beverly Hills.

27 <sup>3</sup> Mr. Blacksberg's testimony concerning the leases was frequently vague and at  
28 variance with some of the documentary evidence. Mr. Blacksberg failed to produce any  
executed lease documents pertaining to the 9000 and 9001 Olympic leases.

1 Pico (hereinafter "Pico") Blvd. instead. Landmark Group continued to  
2 offer the 9001 Olympic property until as late as July 1, 2002, so it  
3 is clear that Mr. Blacksberg's choice of the Pico property over 9000  
4 and 9001 Olympic was the result of his own business decision.

5 Findings as to the Proposed Additional Sales Facility

6 18. The Pico Blvd. property is located one-half mile south and  
7 west of the main facility at 9231 Olympic. The site is 28,000 square  
8 feet in size and consists of a 4,800 square foot building that was  
9 formerly a steak house restaurant. The parcel could accommodate the  
10 storage of up to 100 vehicles and has frontage for the display of 8-12  
11 vehicles.

12 19. Upon securing the lease, Mr. Blacksberg proceeded to remodel  
13 the restaurant and to improve the grounds at an expense of over  
14 \$350,000. It was not until late in 2002 that Mr. Blacksberg notified  
15 Ford that he had abandoned the 9000 and 9001 Olympic properties and  
16 acquired 9740 Pico. Shortly thereafter, Ford advised Mr. Blacksberg  
17 that he could not use the property for new vehicles until Ford had  
18 "cleared the market."<sup>4</sup> Ford was, at that time, very concerned about  
19 the effect the abandonment of the Olympic leases might have on BHF's  
20 profitability. Nevertheless, Ford offered the assistance of its  
21 architects (which Mr. Blacksberg declined) and proceeded to initiate  
22 the process leading to Ford's approval of Pico as a satellite sales  
23 facility.

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27 <sup>4</sup> "Clearing the market" is an industry term for complying with Section 3062.  
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1           20. Meanwhile, Mr. Blacksberg began using the Pico facility for  
2 vehicle storage and for Internet sales.<sup>5</sup> Although Mr. Blacksberg  
3 appears to have known that after replacing his 9000 and 9001 Olympic  
4 facilities with the smaller Pico facility he would be meeting only a  
5 fraction of Ford's minimum facility requirements, he was "so excited  
6 to own my own dealership that I sign things and get kind of caught up  
7 in the zest of the moment and this is my deal and I will do anything  
8 to have it." The "zest of the moment" however, faded quickly as he  
9 realized he no longer had sufficient display area for truck inventory.  
10 He now found it necessary to unload new vehicle deliveries in the  
11 street. His customers and employees became disgruntled about what  
12 they perceived as "downsizing" the facilities. Ultimately, Mr.  
13 Blacksberg was forced to reduce his sales staff by 10 persons.

14           21. During this period, the Pico proposal was wending its way  
15 from Ford's regional offices to and through the various offices at  
16 Ford's headquarters in Dearborn, Michigan. Although no document of  
17 approval was produced in this proceeding, it appears that Dearborn  
18 approved the proposal sometime prior to August 2003.

19           22. On or about August 4, 2003, Ford notified the eight Ford  
20 dealers within a ten-mile radius of the proposed secondary sales  
21 location as required by Section 3062(a)(3). The dealers were invited  
22 to a meeting with Ford on August 25, 2003, at which Ford presented its  
23 arguments in favor of the Pico proposal whereupon the instant protests  
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27 <sup>5</sup> Mr. Blacksberg appeared uncertain as to whether he had sought to obtain a DMV  
28 license and as to such requirement generally.

1 ensued.<sup>6</sup>

2 Findings Relating to Whether the Existing Ford Franchisees Are  
3 Providing Adequate Competition and Convenient Consumer  
4 Care for Ford Vehicles in the Market, Including  
5 The Adequacy of Motor Vehicle Sales and Service Facilities,  
6 Equipment, Supply of Vehicle Parts and  
7 Qualified Service Personnel

8 Adequate Competition

9 23. There are 58 Ford dealers in the Los Angeles urban area.  
10 For marketing purposes, Ford has divided the Los Angeles area into  
11 five sub-units called Multi-Point Areas (MPA), each containing several  
12 Ford dealers.

13 24. The relevant market area (RMA), for the purposes of this  
14 proceeding is an area circumscribed by a circle with a radius of ten  
15 miles, centered on the proposed additional sales location at 9740 Pico  
16 Blvd. in the City of Los Angeles, California. The RMA overlaps the  
17 southern portion of the San Fernando Valley MPA and the northern  
18 portion of the Los Angeles South MPA. The area includes the cities of  
19 Beverly Hills, West Hollywood, Santa Monica, Marina Del Rey, Culver  
20 City, Ladera Heights, Inglewood and portions of Los Angeles,  
21 Hollywood, North Hollywood and El Segundo. There are eight existing  
22 Ford dealers in the RMA. The four protesting dealers are within 3.4  
23 to 5.8 miles of the proposed additional sales location.

24 25. Ford has assigned each of its dealers a Primary Market Area  
25 (PMA) comprised of those census tracts that are generally closer to  
26 that particular Ford dealer than to any other Ford dealer. The  
27 existing PMA for BHF is comprised primarily of Beverly Hills and West  
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<sup>6</sup> The Pico matter had been included in meetings between Ford and individual Ford dealers earlier in 2003 in the context of developing a marketing strategy for the downtown Los Angeles area.

1 Hollywood. These communities can be characterized as having very high  
2 incomes and real-estate values. A reflection of that character is the  
3 complete absence of Chevrolet and Dodge dealerships, which are Ford's  
4 closest competitors. The only brands represented in close proximity  
5 to BHF are Lexus, Infinity, Mercedes-Benz and other luxury cars of  
6 foreign manufacture.<sup>7</sup>

7 26. Ford, being a "mass market" brand, does not offer luxury  
8 models. Yet of all 2003 new car industry registrations in the BHF  
9 PMA, 41.8 percent were in market segments for which Ford does not  
10 offer a product.<sup>8</sup> For the state as a whole only 30 percent were in the  
11 segments in which Ford does not compete.

12 27. In evaluating the performance of a dealer network it is  
13 common in the retail automotive industry to compare the market  
14 penetration (or market share) of each dealer to that of some  
15 comparable group of other dealers. The average of such a group often  
16 serves as a "standard" or a reasonably expected level of performance.

17 28. Protestants presented an analysis showing that the RMA  
18 dealers as a group are performing at 98.95 percent of the expected  
19 level when compared to the Ford dealers in Los Angeles County, and at  
20 98.41 percent when compared to all Ford dealers in California. This  
21 data indicates that in the RMA, Ford sales are at about the expected  
22 level based on Ford's share of the industry market in the segments of  
23 the market in which it offers competitive models.<sup>9</sup>

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25 <sup>7</sup> Protestant's expert witness described Ford's presence in Beverly Hills as  
26 "fighting against the tide that has washed out...all of their traditional  
competitors."

27 <sup>8</sup> In the census tracts closest to the Pico location the percentage of luxury  
registrations was even greater at 54.4 percent.

28 <sup>9</sup> The difference between the RMA performance and the standard represents lost sales,  
which in this case would be less than about 40 vehicles per year. In order for the

1           29. While this market penetration analysis shows Ford is  
2 obtaining its reasonably expected market share in the RMA, "cross-  
3 sell" analysis is needed to show the degree to which those sales were  
4 made by the dealers in the RMA or by Ford dealers in adjacent areas.  
5 Registration data for 2002 and 2003 show that the RMA dealers as a  
6 group accounted for about 38 percent of the sales to customers in the  
7 RMA with the remaining 62 percent sold by other Ford dealers. Given  
8 that the RMA dealers are, by definition, closer to the customers in  
9 the RMA, the initial expectation would be that the RMA dealers should  
10 out-perform dealers who are farther away.

11           30. Lower than expected performance by RMA dealers can sometimes  
12 indicate that the RMA requires better dealer performance or additional  
13 dealerships. In the instant case however, the fact that there are  
14 already eight dealers present suggests that a lack of dealers is not  
15 the issue. More likely is the fact that the RMA overlaps portions of  
16 two Multi-Point Dealer areas. As such, the RMA is an artificial  
17 geographic area, not an actual market itself. It is normal to expect  
18 that the sales occurring within it are the result of the two true  
19 markets extending around and well beyond the artificial ten-mile  
20 circle. In this situation high measures of in-sell would be normal.

21           31. Dealer performance can also be a factor, and in the case of  
22 the RMA dealers, they all share the disadvantage of insufficient  
23 facilities. In the case of BHF in particular, the release of the  
24 Olympic parcels does not seem to have played a role because its share  
25 of sales in its own PMA actually increased from 13.9 percent in 2002  
26

27 RMA dealers to exceed the expected level, they would have to somehow perform better  
28 than the average of the comparison group.

1 (when it had the parcels) to 16.9 percent in 2003 (without them) and  
2 the number of sales by outside dealers actually decreased.

3 Customer Convenience

4 32. One measure of competition and customer convenience widely  
5 used in the retail automobile industry is the average distance between  
6 competing dealers and their customers. For the Los Angeles area as a  
7 whole (including all five Ford MPAs) Ford has more dealers than any  
8 other brand. The shortest average distance is held by Chevrolet at  
9 3.1 miles, with Ford second at an average of 3.2 miles. For the San  
10 Fernando Valley PMA (which includes BHF and the proposed Pico sales  
11 facility) the average is 2.9 miles, shorter than any other line-make  
12 represented there. For the RMA the average distance is even less at  
13 2.2 miles.

14 33. Ford itself has recognized in recent market studies that it  
15 may actually have too many dealers in the Los Angeles area and has  
16 considered in the long-term reducing the dealer count from 58 to 44  
17 (including 4 truck-only dealerships).

18 Adequacy of Facilities<sup>10</sup>

19 34. Ford, as do most other high-volume automakers, uses standard  
20 guidelines for insuring adequate dealer facilities. Ford's facilities  
21 guide shows among other things, the land and building square footages  
22 necessary to serve the expected "planning volume" or the amount of  
23 business a dealership is expected to attract.<sup>11</sup>

24  
25  
26 <sup>10</sup> Since the proposed Pico sales facility would not include vehicle service and  
27 parts the findings here are limited to sales facilities.

28 <sup>11</sup> Ford bases its planning volume on the amount of business necessary to equal  
anticipated market or regional penetration averages.

1 35. Neither BHF nor any of the protesting dealers meet the guide  
2 requirement for land excluding building or for total land and building  
3 area. Only Buerge and Santa Monica meet the building area  
4 requirements, and Santa Monica exceeds it by almost 85 percent. The  
5 often cited and obvious reason for this is the extremely high land  
6 costs in the Los Angeles urban area. Furthermore, these facilities  
7 were originally constructed long ago; BHF, for example in 1960, and  
8 Crenshaw's showroom dates to 1936.

9 36. With Mr. Blacksberg's decision to give up the 9000 and 9001  
10 Olympic leases, BHF tumbled to 12.7 percent of guide for total land  
11 and building, the lowest level of the five dealers. Even with the  
12 addition of the Pico land BHF's compliance level would only increase  
13 by 4.6 percent to 17.3 percent.

14 37. At the same time, Ford has assigned BHF a planning volume of  
15 2,700 units, much higher than any of the Protestants.<sup>12</sup> In contrast,  
16 BHF's expected sales, as calculated by Ford for 2003, was only about  
17 half that figure at 1,441, and BHF's actual performance in 2003 of 753  
18 sales amounted to only about one-quarter of the planning volume. It  
19 is unlikely, given the costs of real estate in the Beverly Hills area  
20 that BHF will ever attain full guide conformance at the assigned  
21 planning volume. At that planning volume BHF would require a 55,000  
22 square foot building on 12 acres of land. For the moment, the  
23 expected sales level would imply a proportionate facilities  
24 requirement of about half the guide requirement. With or without the  
25 Pico property, BHF would have land equal to 30-40 percent of that  
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27 <sup>12</sup> It appears that when Ford's California Region sought approval for the additional  
28 sales location from Ford headquarters, BHF's planning volume was increased from 2,300  
to 2,700 units.

1 amount. BHF would still be the least complying dealer, but in terms  
2 of the facilities guide would be about where it was before giving up  
3 the two Olympic parcels and only a few percentage points below  
4 Crenshaw.

5 Findings Relating to the Effect of Establishing a  
6 New Dealership on the Retail Motor Vehicle  
7 Business and the Consuming Public

8 Impact on Protesting Dealers

9 38. Through their expert witness, Dr. Manuel, Protestants  
10 presented an extensive econometric analysis of the potential impact of  
11 the Pico proposal.<sup>13</sup> Dr. Manuel began by assigning Ford registrations  
12 in the study area to the dealerships with and without the Pico  
13 location based on actual drive time data.<sup>14</sup> Then, using regression  
14 analysis, he established the statistical relationship or probabilities  
15 between actual dealer sales and expected Ford registrations. He then  
16 applied that relationship to the re-distribution of new registrations  
17 in order to predict how the pattern of sales by each dealer would  
18 change in response to the Pico location.

19 39. Next, Dr. Manuel repeated the analysis using registration  
20 address data for a more precise output. In this manner he determined  
21 that Airport Marina would lose 3.1 percent (46 vehicles) of its sales,  
22 Buerge would lose 1.7 percent (14 vehicles), Crenshaw would lose 0.4  
23

24 <sup>13</sup> In the course of reviewing BHF's proposal to add 9740 Pico to its dealership,  
25 Ford prepared a brief "special analysis" wherein Ford concluded that the proposal  
26 would have little or no impact on surrounding dealers. The study does not reveal any  
27 data or analysis in support of that conclusion, other than, perhaps, a determination  
28 that the BHF PMA was performing at less than the average level for the Multi-Point  
Area or the State. Ford initially included a copy of the study among its trial  
exhibits as R-38 but withdrew it during the hearing.

<sup>14</sup> Drive time data was obtained from a computer-based local street and freeway  
network.

1 percent (1 vehicle) and Santa Monica would lose 1.4 percent (9  
2 vehicles) to the Pico location.

3 40. To determine the economic impact of the lost sales, Dr.  
4 Manuel applied the contribution to profit per vehicle for each of the  
5 four dealers from new sales, used car sales and parts and service  
6 based on 2003 financial reports. He thereby determined that Airport  
7 Marina would have a net profit loss of \$138,074. Likewise Buerge  
8 would lose \$63,992, Crenshaw would lose \$6,989 and Santa Monica would  
9 lose \$26,991.

10 41. Next, Dr. Manuel evaluated the effect of the lost profits on  
11 each dealer's 2003 profitability level. Airport Marina is presently  
12 earning a pre-tax return on net worth of 25.6 percent, which is  
13 slightly above the average U.S. dealer return on net worth. After the  
14 loss, Airport Marina would drop below average to 21.1 percent. Buerge  
15 Ford was operating at a loss with a negative return of -8.3 percent.  
16 The additional loss would worsen the situation to a -11.8 percent.  
17 Crenshaw's return would drop from its present level of about half the  
18 U.S. dealer average to 12.7 percent. Santa Monica is barely  
19 profitable at 2.6 percent, and would fall to 1.8 percent  
20 profitability.

21 42. The proposed Pico sales locality would likely have the  
22 result of imposing a combined profit loss on the protesting dealers of  
23 some \$236,000 annually on an on-going basis (see paragraph 40, above).  
24 As noted above, this would result in all of the Protestants being  
25 below U.S. average dealer profitability, and would worsen the  
26 prospects of both Buerge, already operating at a loss and Santa  
27 Monica, on the verge of unprofitability at present. On the other  
28 hand, Ford has projected that BHF's gross income with the Pico

1 location will increase after the first year of operations by nearly  
2 \$600,000.<sup>15</sup>

3 43. In terms of actual sales performance, in 2003, BHF's first  
4 year without either Pico or two of the Olympic lots, BHF's total new  
5 vehicle sales did decline by 11.5 percent, but this was far less than  
6 the 19.8 percent loss of the combined protesting dealers.<sup>16</sup>

7 44. The testimony of Ford's witness, Mr. Moholy established that  
8 BHF's gross profit on a year over basis would decline by about 29  
9 percent without the Pico and Olympic lots. This, however, is  
10 consistent with the declining forecasts for Crenshaw, Buerge, and  
11 Santa Monica. These declining grosses are in sharp contrast to the  
12 region as a whole which are expected to drop by only about two  
13 percent.

14 45. A substantial part of the losses of both the Protestants and  
15 BHF must be attributed to market and facility factors in the downtown  
16 Los Angeles area and to both an overall decline in total industry  
17 sales over the past three years and a declining trend for Ford over  
18 the past seven years. Under such circumstances, the Pico sales lot  
19 would not tend to increase Ford sales in the RMA, but could result in  
20 shifting sales among the RMA dealers.

21 Effect on Customer Convenience

22 46. Customer convenience in the RMA as a whole would not be  
23 affected by the Pico additional sales location. The weighted average  
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25 <sup>15</sup> Ford's projected increase in BHF sales is roughly twice the increase projected by  
26 Protestants.

27 <sup>16</sup> Mr. Blacksberg's total sales loss was net of a 31.1 percent loss in new truck  
28 sales and a 35 percent increase in new car sales. It appears that he was able to  
avoid the full effect of abandoning the lease for his truck sales lot by aggressively  
marketing the Thunderbird model in the Beverly Hills luxury sport market.

1 distance from consumers to Ford dealers in the RMA is already shorter  
2 than for the San Fernando Multi-Point, reflecting the density of  
3 dealers in the RMA. Furthermore, the short one-half-mile distance  
4 between Pico and BHF is not sufficient to change either the shortest  
5 average distance or, for that matter, the current longest distance of  
6 5.8 miles between customers and dealers in the RMA.

7 47. Ford's witness, Mr. Moholy testified that Ford's primary  
8 reason for establishing the secondary sales location at Pico is to  
9 provide sales customers the convenience of completing their  
10 transaction at a single place (presumably, without having to drive to  
11 the main facility on Olympic.) He also acknowledged that many dealers  
12 in the downtown Los Angeles area are forced to operate that way.  
13 This testimony overlooks the fact that BHF often operated in much the  
14 same manner before abandoning 9000 and 9001 Olympic. It also  
15 overlooks the fact that the Pico proposal came before Ford only as  
16 'damage control' after Mr. Blacksberg's economic decision to drop the  
17 more convenient but more expensive facilities on Olympic. Nor has  
18 Ford ever suggested that BHF switch its used car lot from 9224 Olympic  
19 to 9740 Pico, and use 9224 for new vehicle display, which would  
20 require new vehicle buyers to merely walk across the street.<sup>17</sup>

21 Findings Relating to Permanency of Investment

22 48. BHF acquired 9740 Pico Blvd. under the terms of a lease  
23 agreement dated May 1, 2002. The base monthly rent is \$11,200. The  
24 lease term is eight years, ending April 30, 2010. The lessor holds a  
25 right of termination, which can be effective on any date after April  
26

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27 <sup>17</sup> Mr. Moholy may have been mistaken in his belief that establishing a used car lot  
28 on Pico would have been necessarily subject to the Board's jurisdiction under Section  
3062.

1 30, 2007. Therefore, the only period in which the lease can be  
2 considered permanent is between the present and that date, or about  
3 two and one-half years.

4 49. Since acquiring the property, Mr. Blacksberg has expended  
5 \$350,000 for improvements to the building and grounds. The  
6 improvements consisted of fencing, paving, re-painting and modifying  
7 the interior of the former restaurant building to provide office  
8 workspace. At one point, Mr. Blacksberg considered constructing a  
9 vehicle wash-down station on the lot, but abandoned the idea because  
10 the drainage would affect neighboring properties. A large walk-in  
11 freezer that was part of the restaurant was boarded up but left in  
12 place in the building.

13 50. No improvements have been made or planned which are  
14 exclusively useful or necessary for a new vehicle sales facility.<sup>18</sup>  
15 Typically, such improvements would include an enclosed showroom for  
16 new vehicles, a retail product (accessories) display area, and  
17 customer hospitality areas (e.g. customer work space, children's  
18 amusement area, café, lounge space, etc.).

19 51. On the other hand, the investments of the protesting dealers  
20 are well-established, full new vehicle sales and service facilities.  
21 The net worth of the dealerships ranges from \$2 to \$9 million. All  
22 are "Blue Oval" certified and have been in business for several  
23 decades. Each dealership has recently completed or plans to undertake  
24 refurbishment or expansion projects.

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27 <sup>18</sup> As a "satellite" sales location, 9740 Pico would not include parts and service  
28 facilities.

1                    Findings Relating to Whether it Will Be Injurious  
2                    To the Public Welfare for an Additional  
3                    Franchise to Be Established

4            52. That Ford and BHF intend to establish 9740 Pico Blvd. as a  
5 "branch", secondary, or satellite sales facility raises important  
6 issues concerning the public welfare. Section 3062 is made applicable  
7 to franchises establishing a new motor vehicle dealership and to  
8 satellite warranty facilities. A "new motor vehicle dealership" is  
9 defined as *an authorized facility at which a franchisee offers for*  
10 *sale or lease, displays for sale or lease, or sells or leases new*  
11 *motor vehicles.* Thus the Board's jurisdiction under Section 3062 is  
12 invoked whenever a franchisor authorizes a franchisee to establish a  
13 facility for the sale or lease of new motor vehicles. The terms  
14 "branch", "secondary", and "satellite" sales facility are not found in  
15 the New Motor Vehicle Board Law.<sup>19</sup> Accordingly, there is no basis in  
16 law for viewing the proposed Pico sales facility as anything other  
17 than the establishment of a new motor vehicle dealership.

18            53. As set forth in the findings above, the Pico facility will  
19 not include the usual facilities for service, parts, used car sales,  
20 and it represents only a fraction of capital commitment normally  
21 invested in new motor vehicle dealerships. The unavoidable effect of  
22 this would be to allow BHF to sell new motor vehicles from a location  
23 closer to the markets of the Protestants without making an investment  
24 commensurate with the existing full dealerships in the area. Apart  
25 from the obvious unfairness, such an arrangement could lead to

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27            <sup>19</sup> The terms "branch" and "additional" locations appear elsewhere in the Vehicle  
28 Code and in Department of Motor Vehicle regulations pertaining to license  
requirements.

1 predatory competition where an undercapitalized sales facility could  
2 be used to undercut competition.

3 54. Protestants have raised an additional concern with the  
4 present proposed sales facility. Protestants point out that if  
5 established, the Pico facility could, under Section 3062(b)(1), be  
6 relocated to any point in the City of Los Angeles up to one mile from  
7 9740 Pico Blvd. Such a move would be exempt from Section 3062(a),  
8 even though the relocation might bring it even closer to an existing  
9 competitor. There is nothing in the law to prevent a series of such  
10 relocations.<sup>20</sup> In a multi-dealer market such as Los Angeles the  
11 prospects for predatory competition would be numerous if not  
12 inevitable, and the aggrieved dealers would be powerless to seek  
13 relief under Section 3062.<sup>21</sup>

14 55. With specific regard to 9740 Pico, the additional facility  
15 does not arise out of a demonstrated need for additional Ford  
16 representation. High in-sell levels pre-existed the proposal as a  
17 natural consequence of high dealer density but did not give rise to  
18 it. Ford's primary concern is to temporarily reduce the impact on  
19 BHF's decision to forego a portion of its display area on Olympic  
20 Blvd., but an additional facility would impose a financial impact on  
21 the protesting dealers and strike a course toward the possibility of  
22  
23

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24 <sup>20</sup> Leapfrogging below the threshold of Section 3063(a) is almost impossible with  
25 full service dealerships, in part because of the difficulty and capital expense of  
26 relocating. In a case such as 9740 Pico, however, all that would be required would  
27 be a monthly lease and, perhaps a bucket of paint.

28 <sup>21</sup> Presumably, such practices would remain subject to the licensing requirements of  
the Department of Motor Vehicles and to the discretion of the franchisor, but neither  
would provide competing dealers with the notice and protest rights provided under  
Section 3062.

1 future predatory competition should such a precedent be initiated in  
2 the Los Angeles area.

3 Findings Relating to Whether the Establishment of  
4 An Additional Ford Franchise Would Increase  
5 Competition And, Thus, Be in the Public Interest

6 56. In the context of the RMA, an additional sales location at  
7 9740 Pico Blvd. would increase competition, but would not be in the  
8 public interest. Ford's own internal policies provide that satellite  
9 sales locations are "not approved for multiple point dealers."<sup>22</sup>  
10 There are currently no satellite sales locations in any Ford Multi-  
11 Point Dealer Area anywhere in Southern California.

12 57. The Pico proposal would give BHF the benefits of a sales  
13 office closer to the customers of its competing dealers and the  
14 advantage of having two boulevard locations to attract "drive by"  
15 customer attention. At the same time, BHF would cut its rental  
16 expense by about two-thirds compared to its rental expense for the two  
17 Olympic parcels.

18 58. Before abandoning the Olympic parcels, BHF's rent equivalent  
19 cost per new vehicle sold was \$1,308; a figure that was higher than  
20 those of the Protestants and more than twice the average for the San  
21 Fernando Valley and Los Angeles South Multi-Point Areas. By replacing  
22 the Olympic lots with the less expensive Pico lot, BHF's 2003 rent  
23 equivalent expense dropped to \$862, well below those of Airport,  
24 Buerge and Crenshaw, and to within \$39 of Crenshaw's.

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27 <sup>22</sup> It appears that Ford may consider satellite sales facilities warranted in some  
28 rural markets or as a stage in the development of a new point in certain instances.

DETERMINATION OF ISSUES

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2           1.    The existing Ford dealers in the relevant market area are  
3 providing adequate competition and convenient consumer care for Ford  
4 motor vehicles.

5           2.    The establishment of an additional franchise sales facility  
6 in the relevant market area will have an adverse effect on the retail  
7 motor vehicle business in the area, and will not be to the benefit of  
8 the consuming public in the area.

9           3.    Protestants have made a substantial permanent investment in  
10 their dealerships, but the investment in the additional franchise  
11 sales facility is not permanent.

12           4.    It will be injurious to the public welfare for an additional  
13 franchise to be established.

14           5.    The establishment of the additional franchise will increase  
15 competition in a manner that will not be in the public interest.

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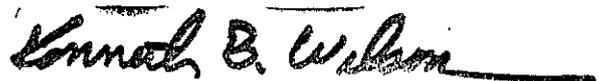
1 PROPOSED DECISION

2 Protestants have met their burden of proof under Vehicle Code  
3 Section 3066(b) to establish that there is good cause not to establish  
4 an additional new motor vehicle sales facility in the relevant market  
5 area. The protest is sustained. Respondent shall not be permitted to  
6 establish the proposed additional franchise sales facility at 9740 W.  
7 Pico Blvd., Los Angeles, California.

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10  
11 I hereby submit the foregoing which  
12 constitutes my proposed decision in  
13 the above-entitled matter, as the  
14 result of a hearing before me and I  
15 recommend this proposed decision be  
adopted as the decision of the New  
Motor Vehicle Board.

16 DATED: October 19, 2004

17  
18  
19 By:



KENNETH B. WILSON  
Administrative Law Judge

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22  
23  
24  
25  
26 Will McGlory, Esq.

27 Chon Gutierrez, Director, DMV  
Mary Garcia, Manager  
28 Occupational Licensing, DMV