STATE OF CALIFORNIA

MEMO

To : PUBLIC BOARD MEMBERS **Date:** March 23, 2015

From : WILLIAM G. BRENNAN
ROBIN PARKER

Subject: CONSIDERATION OF TOYOTA MOTOR SALES USA, INC.'S REQUEST FOR EXTENSION OF TIME TO AUDIT PUTNAM MOTORS, INC. dba PUTNAM LEXUS PURSUANT TO VEHICLE CODE SECTION 3065(f)

By letter dated March 20, 2015, Toyota Motor Sales USA, Inc., Lexus Division ("Lexus") requests that the New Motor Vehicle Board grant it permission to conduct a warranty audit from September 2010 to the present "based on a pattern of false claims for warranty and recall service submitted by Putnam Motors, Inc. dba Putnam Lexus ('Putnam Lexus') with the intent to defraud Lexus and Lexus customers." (See Attachment A, Request dated March 20, 2015, p. 1) The period requested is beyond the 9 months provided for in Vehicle Code section 3065 (see Attachment B) and requires a Board order.

According to the request, Lexus recently discovered "that many of the warranty repairs Putnam Lexus represented that it performed--despite being submitted to Lexus [for warranty reimbursement]--were not actually completed on those vehicles…" This included repairs under warranties and various recalls. (Request, p. 1) Lexus indicates that it has confirmed at least 16 "separate instances where Putnam Lexus' service department submitted false claims misrepresenting that it had completed the ALE Safety Recall on customer vehicles". (Request, p. 2; Exhibit A to Osterloh Declaration) Since the ALE Safety Recall was issued in 2010, Putnam Lexus has submitted 859 repair orders. According to Lexus, approximately 70% of those repair orders, either: "(1) contained actual times reported for the repair that are inconsistent with the repairs actually being done [475 repair orders]; (2) were not authorized by the customer [82 repair orders]; (3) are missing in their entirety [25 repair orders]; or (4) contain no indication that an ALE Safety Recall repair was done [76 repair orders]." (Osterloh Declaration, p. 2)

Additionally, Lexus contends that Putnam Lexus did not perform a repair on a timing cover seal in 2011 even though it submitted a warranty claim. (Request, p. 2; Exhibit B to Osterloh Declaration) Exhibit C to the Osterloh Declaration contains e-mails from Putnam Lexus, which according to Lexus outline the facts and evidence related to this issue. Putnam Lexus acknowledges that certain of its service department employees were submitting false claims for recall repairs that were not done, attempted to cover up the non-performance, and "confessed" to that conduct. Lastly, Lexus contends that Putnam Lexus "misled consumers into believing that it had properly performed warranty and recall work on their vehicles when that work was not completed." (Request, p. 3)

The statute provides that "Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis for a period of nine months after a claim is paid or credit issued…If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board" (emphasis added). A warranty audit of Putnam Lexus has not been conducted yet, a chargeback has not been issued, and a protest has not been filed.

Lexus is requesting that the Board issue an order authorizing it to perform an extended audit of Putnam Lexus' warranty and recall claims and records from September 2010 to the present. "Given the number of known and potential instances of false warranty claims and the potential safety concern for California consumers arising from those instances, an extended audit is warranted and necessary" according to Lexus. The extended audit is necessary to: "(1) determine the extent of the fraud and (2) identify customers who may be driving on California roadways without knowing that their vehicles were not properly serviced and/or repaired." (Request, p. 3)

In August 1996, the Board sought public comments on the topic of Board orders pursuant to Vehicle Code sections 3065 and 3065.1. In August 1997, the Office of Administrative Law disapproved of the Board's rulemaking packet with respect to the extended audit period contained in Vehicle Code sections 3065 and 3065.1. The packet was disapproved because it failed to comply with the necessity standard and the clarity standard. At its August 21, 1997, General meeting, the members decided not to resubmit the rulemaking packet but to handle each situation on a case-by-case basis.

Given that there is no procedure in place to handle a request of this nature this matter has been agendized for consideration at the March 25, 2015, General Meeting. Upon reviewing the materials provided and considering oral comment, the Public Members may determine whether to grant the extension as requested by Toyota.

Counsel for Putnam Lexus, Michael M. Sieving, indicated that since the request was received by the Board after 5:00 p.m. on Friday, March 20, he doesn't have enough time to prepare a written response let alone a substantive response. Counsel for Putnam Lexus and Toyota will be at the meeting and available to answer any questions.

If you have any questions or require additional information, please to not hesitate to give me a call at (916) 324-6197 or Robin at (916) 323-1536.

Attachments