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March 20, 2015

Via Email and Federal Express

California New Motor Vehicle Board

1507 21st Street, Suite 300

Sacramento, CA 95811

Re: Request for Extended Warranty Audit Period Pursuant to Cal. Veh. Code. § 3065(f)
Putnam Motors, Inc. dba Putnam Lexus

Dear Board Members:

I am writing on behalf of Toyota Motor Sales, U.S.A., Inc., Lexus Division (“Lexus”) to request authorization to conduct a warranty audit for an extended time period 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 consumers.

RELEVANT FACTS

Putnam Lexus is an authorized Lexus dealer engaged in the business of selling and servicing Lexus vehicles at 390 Convention Way, Redwood City, California 94063. Pursuant to its Dealer Agreement, Putman Lexus has performed warranty service and repairs on Lexus vehicles for many years, and has submitted numerous claims for reimbursement to Lexus for warranty work that it allegedly performed on consumer vehicles. Lexus recently discovered, however, that many of the warranty repairs Putnam Lexus represented that it performed—despite being submitted to Lexus—were not actually completed on those vehicles at all. This includes warranty claims for repairs allegedly performed under consumer warranties and repairs allegedly performed under various recalls issued by Lexus.

By way of example, in September 2010, Lexus issued a recall for a spring valve replacement known as the “ALE Safety Recall.” Following the issuance of this recall, Putnam Lexus submitted multiple claims to Lexus for warranty work that it allegedly completed on customer vehicles under the ALE Safety Recall, and it received reimbursement from Lexus for that warranty work. Contrary to these claims, however, another independent dealer informed Lexus that while performing service on a customer vehicle it discovered an ALE Safety Recall had not been performed on that vehicle, even though the Lexus service database showed that

Putnam Lexus had completed the repair. Lexus verified that the ALE Safety Recall had not been completed on that vehicle as represented, and it discovered that Putnam Lexus had attempted to cover up its conduct by applying a layer of black sealant over the factory-gray sealant original to the vehicle.

Lexus investigated this issue over the following months and has now confirmed at least **sixteen separate instances** where Putnam Lexus' service department submitted false claims misrepresenting that it had completed the ALE Safety Recall on customer vehicles. In many of those cases, Putnam Lexus also attempted to cover up the non-performance of those repairs. A redacted list of those vehicles is attached to this letter as Exhibit A. Moreover, since the ALE Safety Recall was issued in 2010, Putnam Lexus has submitted a total of 859 repair orders claiming that it has completed those repairs on customer vehicles. Approximately seventy percent of those repair orders, however, either (1) contained actual times reported for the repair that are inconsistent with the repairs actually being done; (2) were not authorized by the customer, (3) are missing in their entirety, or (4) contain no indication that an ALE Safety Recall repair was done. Accordingly, in addition to the sixteen confirmed instances of false ALE Safety Recall claims submitted by Putnam Lexus, many more instances of uncompleted repairs likely exist and remain undiscovered.

These uncompleted ALE Safety Recall repairs are a prevalent example of the false warranty submissions by Putnam Lexus, and fortunately, they happened to be brought to light by another Lexus dealer who was working on a customer vehicle. Unfortunately, however, this issue is not limited to the ALE Safety Recall. Since the ALE Safety Recall issue was uncovered, another Lexus dealer has contacted Lexus and advised that it discovered additional warranty work claimed to have been performed by Putnam Lexus that simply were not done, and which appeared to be covered up. Specifically, Putnam Lexus submitted a warranty claim representing that it had performed a repair on a timing cover reseal in June 2011, which requires the dealer to remove the timing cover and reseal it. Although it claimed to have completed this repair, Putnam Lexus did not remove the timing cover at all, and it again applied a black sealant over the original timing cover itself. A redacted copy of the relevant repair orders and photographs are attached as Exhibit B.

These materials demonstrate a pattern of false warranty claims submitted by Putnam Lexus and that many other instances likely exist where the dealership has falsely claimed that it completed repairs for consumers who continue to drive on California roadways with unrepaired vehicles. Moreover, Putnam Lexus does not dispute that its service department has submitted false claims to Lexus. Attached to this letter as Exhibit C is an email and memorandum prepared by Putnam Lexus outlining the facts and events related to this issue. In those materials, Putnam Lexus acknowledges that certain of its service department employees submitted false warranty claims to Lexus for recall repairs that were not done, attempted to cover up the non-performance of those repairs, and "confessed" to that conduct. Putnam Lexus also concedes that those claims were fraudulent. Putnam Lexus expressly characterizes the conduct of its

service department employees as “fraud” and as “crimes,” and it acknowledges that Lexus is a victim of that fraud because it paid for warranty work that simply was not performed.

In addition to submitting false claims with the intent to defraud Lexus, Putnam Lexus misled consumers into believing that it had properly performed warranty and recall work on their vehicles when that work was not completed. Indeed, in its memorandum, Putnam Lexus repeatedly concedes that the “victims potentially damaged the most are those guests driving around in cars in which the ALE safety recall has not been performed.”

GROUND FOR AN EXTENDED AUDIT PERIOD

The Vehicle Code authorizes a franchisor to audit a franchisee’s warranty claims and records for a period of nine (9) months after the claim is paid or the credit is issued, and to issue chargebacks for any improper claims. In addition to this nine-month audit period, Section 3065(f) of the Vehicle Code expressly authorizes a franchisor to obtain an order from the Board authorizing a longer period for an audit and any resulting chargeback “if a false claim was submitted by a franchisee with the intent to defraud the franchisor.”

In this case, there is no credible dispute that Putnam Lexus’ service department has submitted multiple false claims with the intent to defraud Lexus. As set forth in detail above, Lexus currently has identified at least sixteen separate instances where Putnam Lexus submitted false warranty claims for ALE Safety Recall repairs that it simply did not perform, hundreds of additional instances where those repairs appear questionable, and other instances of false warranty claims outside of that particular recall. Putnam Lexus also concedes that its dealership employees committed fraud and took affirmative steps to cover up their fraud, and that Lexus was a victim of that fraud because it was duped into paying for warranty work that was not completed. This is the very definition of a false claim submitted with the intent to defraud.

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 of Putnam Lexus’s warranty claims and submissions is warranted and 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. Although this issue appears to permeate deeper than the ALE Safety Recall, all of the instances of fraud and potential fraud discovered by Lexus to date pertain to repairs completed at or since the time that recall was issued in September 2010. Accordingly, Lexus respectfully requests 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 present.

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Thank you in advance for your consideration of this serious issue, and we look forward to discussing this issue with you at the upcoming Board meeting on March 25, 2015. In the interim, please feel free to contact me if you have any questions or comments.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steven A. McKelvey, Jr.", with a long horizontal flourish extending to the right.

Steven A. McKelvey, Jr.

SAM:sbm
Enclosure(s)

cc: Michael Sieving, Esq.