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March 24, 2015

New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, California 95811

Re: Request of Toyota Motor Sales, U. S. A., Inc., Lexus  
Division for Extended Warranty Audit Period for  
Putnam Motors, Inc., dba Putnam Lexus

Dear Board Members:

Please be advised that I represent Putnam Motors, Inc., dba Putnam Lexus (“Putnam”) with respect to the request by Toyota Motors Sales, U.S.A., Inc., Lexus Division (“Lexus”) for an order from the Board extending warranty audit period for Putnam pursuant to Vehicle Code Section 3065(f). This matter was recently added to the agenda for consideration at the General Meeting of the Board scheduled for tomorrow.

Initially, I first received a copy of Lexus’ request and supporting documents after the close of business on Friday, March 20<sup>th</sup>. As such, there has been virtually no time to research the factual contentions made by Lexus in support of its request. As such, please do *not* consider this letter as Putnam’s substantive response to the documents submitted by Lexus. However, given the fact that this matter is on the Board’s agenda, I felt it was necessary to provide at least an initial response.

As the Board knows quite well, Vehicle Code §3065 details the mechanism and procedures for the Board to resolve warranty chargeback and reimbursement disputes (in addition to other specified warranty disputes) between franchisees and franchisors. Section 3065(e)(1) allows a franchisor to audit warranty records for a period of 9 months after a claim is paid or credit issued. Section 3065(f) allows the Board to extend that 9-month statutory period only if “a false claim was submitted by a franchisee with the intent to defraud the franchisor”. Lexus now seeks a Board order to extend the period for approximately 4 years, back to September of 2010, based upon its contention that the materials submitted by Lexus establish the element of fraud required for obtaining such a Board order.

In an effort to establish “the intent to defraud the franchisor”, Lexus cites 16 instances (out of 859 repair orders) submitted by Putnam regarding a valve spring recall referred to as the “ALE Safety Recall” in which claims were submitted by Putnam on work which was *purportedly* not done, as well as one instance in which Putnam claimed work on a timing belt cover reseal which was *allegedly* not completed. With respect to the ALE Safety Recall claims, Putnam has fully cooperated with Lexus to determine whether the work was completed. Putnam technicians have examined a large percentage of the vehicles subject to the recall and determined that there were very few that needed additional repairs. A complete internal review of these claims by Putnam, as well as a comprehensive response to the contentions made by Lexus in the present request, will take several months to complete, far longer than the 3 days afforded by this request.

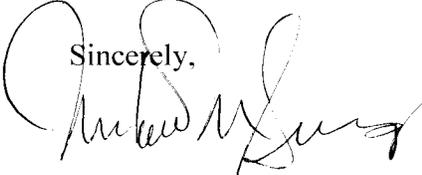
Concerning the timing cover reseal claim, the only “evidence” submitted by Lexus to support its fraud claim consists of photographs which purport to show black sealant around the exterior of the timing belt cover. There was no evidence offered as to who placed the sealant around the cover, when it was done, whether the sealant was improper or in any way inconsistent with Lexus’ service policies, or whether Putnam had anything to do with application of the sealant. There is simply no evidence of “fraud” regarding this claim.

Putnam is a long-established Lexus dealer with an impeccable reputation. Allegations of fraud against Putnam (or any dealer) is a serious matter which requires serious consideration. Even more important is the request by Lexus for an actual determination by this Board that fraud has been in fact been committed (a prerequisite to the application of Section 3065(f)), which could have devastating consequences upon the dealer. Lexus is attempting to have this Board pre-adjudicate this matter, under what can only be described as the most expeditious of circumstances given the late filing of its request, and have this Board determine that Putnam engaged in fraud, based upon the meager showing in its request. Due process requires much more. Putnam should be given the opportunity to research the issues and provide a substantive response to the Lexus allegations.

Both Marty Putnam, the dealer principal of Putman, and I will be present at the General Board meeting tomorrow to discuss this matter and answer any questions the Board members may have. We will suggesting at a minimum that this matter be postponed until the next Board meeting, to allow time for Putnam to provide a substantive response to request filed by Lexus. In the meantime, Lexus is free to conduct its audit based upon the statutory time limit of nine months as contained in Section 3065, and supplement its request based upon any evidence they may discovery during the course of this audit.

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I look forward to discussing this most important matter with the members of the Board.

Sincerely,  


MICHAEL M. SIEVING

MMS:  
cc: Steven McKelvey, Esq.