

HAND DELIVERED

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RECEIVED
JUL 31 2015
NEW MOTOR VEHICLE BOARD

FILED
NEW MOTOR VEHICLE BOARD
DATE 7-31-15
BY [Signature]

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 PUTNAM MOTORS, INC., dba PUTNAM
12 LEXUS,

13 Protestant,

14 v.

15 TOYOTA MOTOR SALES, U. S. A, INC.,

16 Respondent.

Protest No.: PR-

PROTEST PR-2428-15

[Vehicle Code Section 3065]

17
18 Protestant, PUTNAM AUTOMOTIVE GROUP, INC., dba PUTNAM LEXUS ("Putnam" or
19 "Protestant") through its attorney, files this protest under the provisions of California Vehicle Code
20 section 3065 and alleges as follows:

21 1. Protestant is a new motor vehicle dealer selling and servicing the Lexus brand of motor
22 vehicles, and is located at 390 Convention Way, Redwood City, California 94063-1405. Protestant's
23 telephone number is (650) 363-8500.

24 2. Respondent TOYOTA MOTOR SALES, U. S. A., INC. ("TMS" or "Respondent") is a
25 distributor of the Lexus brand of motor vehicles, and is the franchisor of Protestant. Respondent's
26 address is 209 Technology Drive, Irvine, California 92618, with a telephone number of (949) 727-
27 1977.
28

1 3. On or about June 12, 2015, Putnam submitted to TMS a request for increase in the
2 labor rate schedule for the warranty diagnostics, repairs and servicing performed by Putnam on behalf
3 of TMS and for which TMS is legally required to reimburse Putnam. Putnam included with its request
4 all documentation sufficient to justify the increase requested.

5 4. By letter dated July 13, 2015, TMS advised Putnam's that it was denying the requested
6 increase in the warranty reimbursement labor rate. Few if any of the grounds listed by TMS in its
7 letter denying the increase have any relationship on whether the current warranty reimbursement
8 schedule is reasonable with respect to the compensation allowed to Putnam. Attached hereto and
9 marked as Exhibit A is a true and correct copy of the letter of denial from TMS.

10 5. The current warranty labor rate paid by TMS to Putnam is unreasonably low,
11 inadequate and unfair in consideration of Putnam's effective labor rate charged its various retail
12 customers and other relevant criteria as set forth in Vehicle Code Section 3065.

13 6. In addition to the foregoing, Putnam performs various Safety Recall and Servicing
14 work pursuant to the policies and procedures developed by TMS. Under these policies and
15 procedures, Putnam (and other dealers) are required to a designated number of the service technicians
16 attend and complete Core Technical Classes that are administered by TMS. According to the TMS
17 policies and procedures, Putnam (and other dealers) are not eligible for warranty reimbursement for
18 Safety Recall and Servicing work unless the dealer is in full compliance with the technician training
19 requirements imposed by TMS. The technician training requirements of TMS change from time to
20 time.

21 7. In an effort to fully comply with the TMS training requirements discussed above,
22 Putnam has sought to enroll a number of its technicians in the TMS training classes. For many
23 months, TMS has responded that the training classes are "full", and the Putnam technicians have been
24 "waitlisted" until some unspecified future class. Many of the Putnam technicians have been waiting
25 for a substantial period of time for TMS training classes to become available with no firm commitment
26 from TMS as to when, if ever, these technicians will be able to attend the TMS required classes.

1 8. Putnam does not dispute the policy of TMS to require that the dealership technicians
2 receive adequate training. However, TMS requires complete compliance with its training guidelines in
3 order for Putnam to be eligible for reimbursement of the Safety and Recall Servicing claims. Putnam
4 is obligated by contract and statute to perform this service work. TMS has not devoted adequate
5 resources to its training program to ensure that these technicians receive the mandatory training in a
6 reasonable time. The implementation of the TMS policies and procedures in this regard has resulted in
7 an unreasonable situation whereby Putnam is required to perform these services and is not eligible to
8 submit claims to TMS for reimbursement for these services due to the fact that TMS refuses or has
9 failed to provide the technician training as required by the policies and procedures it seeks to enforce.
10

11 9. Protestant and its attorney desire to appear before the Board and estimate that the
12 hearing in this matter will take 10 days to complete.

13 10. A Pre-Hearing Conference is requested.

14 WHEREFORE, Protestant prays as follows:

- 15 1. That the Board conduct a hearing on this matter pursuant to Vehicle Code Sections
16 3065, 3066 and 3067.
- 17 2. That the Board sustain this protest and order Respondent to correct the failure of
18 TMS to provide adequate and reasonable compensation to Putnam based upon
19 Putnam's request for an increase in its warranty reimbursement labor rate.
- 20 3. That the Board sustain this protest and order Respondent to correct the failure of
21 TMS to provide adequate and reasonable compensation to Putnam based upon the
22 implementation of the training policies and procedures of TMS related to the Safety
23 and Recall Warranty Work in a manner consistent with California Law, and
- 24 4. For such other and further relief as the Board deems appropriate.

25 DATED: July 31, 2015

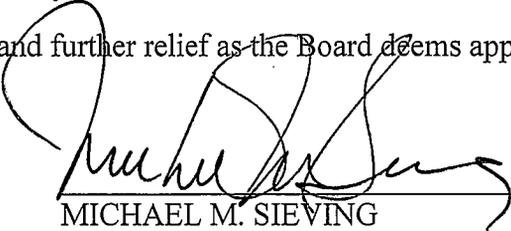
26 
27 MICHAEL M. SIEVING
28 Attorney for Protestant
PUTNAM MOTORS, INC., dba PUTNAM LEXUS

EXHIBIT A



July 13, 2015

VIA ELECTRONIC MAIL AND
FEDERAL EXPRESS/OVERNIGHT DELIVERY
marty@putnamlexus.com

Marty Putnam, President
Putnam Lexus
390 Convention Way
Redwood City, CA 94063

Re: Request for Adjustment to Warranty Labor Reimbursement Rate

Dear Mr. Putnam:

Thank you for your recent request for Lexus, a Division of Toyota Motor Sales, U.S.A., Inc. ("Lexus") to consider an adjustment to the warranty labor reimbursement rate of Putnam Lexus ("Dealer"). Dealer submitted its request under Lexus Warranty Policy & Procedures, including Policy 7.4, and Lexus has reviewed Dealer's submission under these Policies. Lexus' review is also in accord with California law, and Lexus' March 21, 2014 filing with the California New Motor Vehicle Board.

We have carefully reviewed the information you have submitted, and regret that Lexus is unable to accommodate your request, or provide any adjustment to Dealer's warranty labor reimbursement rate. This decision by Lexus is based on the fact that your submission does not satisfy Lexus' policies. The Repair Orders and other information submitted, and the computations based thereon, do not comply with Policy 7.4. Examples of these deficiencies are summarized below, and are examples only, and not meant to include each and every deficiency in the submission. Lexus is providing this information so that you will be fully informed, although it has no obligation to do so.

1. **Market Survey Analysis** – Dealer's submission listed Carlsen Audi's retail labor rate as \$205.00, and its warranty labor rate as \$195.00. Lexus called Carlsen Audi to verify these rates and was informed that the retail labor rate for this dealer is \$200.00 and the warranty labor rate is \$165.00. When these corrected rates for Carlsen Audi are included, the average retail labor rate is \$196.19 and the average warranty labor rate is \$167.52.

2. **Repair Order Worksheet** – Dealer's repair order worksheet contained the following deficiencies:

A. **Failure to include eligible Repair Orders and repairs.** Repair Orders 323989, 324050, and 324127 were for customer-paid Alignments. These repairs should have been included on Dealer's worksheet and in the rate calculation. Repair Order 323996 was included on dealer's worksheet, but Dealer failed to include the customer-paid Alignment repair on the worksheet or in the rate calculation.

B. **Inclusion of Ineligible Repair Orders and repairs.** Repair Orders 324019, 324041, and 324114 are for bulb replacements. Maintenance Operations, including light bulbs, are specifically excluded from the calculation of Dealer's effective labor rate in Policy 7.4. Repair Order 324072 indicates that an independent body shop reported that the AFS light was on, but Dealer's technician reported that the AFS light was not on, and no repair was done. In addition, the Repair Order indicates that the body shop would be billed, not the customer. This Repair Order should not have been included in Dealer's worksheet because no repair work was done, and it was not a customer-pay repair.

C. **Failure to include discounts.** Repair Orders 323992, 323995, 324003, 324004, 324010, 324057, and 324150 contain discounts that were improperly excluded from Dealer's rate calculation. Under Policy 7.4, any miscellaneous labor discounts that appear on Repair Orders in Dealer's submission must be counted as a reduction of

the Dealer's overall labor rate for the repair included in the submission. As an example, Repair Order 323992 on Dealer's worksheet indicated a total labor amount of \$1,669.63, which reflected a discount of \$87.87 off the total labor charges of \$1,757.50. The total miscellaneous labor discounts on the Repair Order totaled \$175.75, so Dealer's worksheet should have listed \$1,581.75 as the labor amount.

D. Inclusion of incorrect labor time. Repair Order 323996 listed .1 as the labor time. In the National Service History, the labor time is listed as .2, so .2 should have been included in Dealer's calculation, not .1.

Based on the deficiencies noted above, which include examples and not a complete recitation of all errors, Dealer's submission and its warranty labor rate calculation are erroneous and do not comply with Lexus' policies. In addition, Dealer's Competitive Market Survey contains erroneous rates for Carlsen Audi and its average retail and warranty labor rates are erroneous. Therefore, Lexus denies Dealer's request for an adjustment to its warranty labor reimbursement rate.

It is Dealer's responsibility to submit a complete and accurate request and Lexus has no obligation to correct Dealer's submission. Although under no obligation to do so, Lexus has corrected some of the errors in Dealer's submission, and has calculated Dealer's effective labor rate as \$158.10, which is below Dealer's current approved warranty labor rate of \$160.00. In addition, Dealer's current approved warranty labor rate of \$160.00 is well within the range of rates of the competitive luxury brand dealers listed by Dealer in the Market Survey, and is only \$7.52 less than the average warranty labor rate for all of these dealers. These are additional reasons for Lexus' decision to deny Dealer's request for an increase in its warranty labor reimbursement rate.

In your June 10, 2015 submission, you include Repair Orders for the month of May, 2015. You acknowledge that these Repair Orders are not within the February time period elected by Lexus as the start date for the Repair Orders included in Dealer's submission, as provided in Policy 7.4. However, you claim that the May Repair Orders reflect a recent increase in Dealer's labor rate after the February Repair Orders included in the submission, and "support the requested rate increase."

Under Policy 7.4, Lexus specifies a date range for the Repair Orders to be included in the submission. Lexus selects the date range for the Repair Orders so that a representative sample of Repair Orders is obtained. This may also lessen the chance that labor rates in the submission Repair Orders have been increased in anticipation of a dealer's submission.

Dealer must complete the Repair Order Worksheet using Repair Orders within the selected date range. For Dealer's submission, Lexus specified a date range for the Repair Orders beginning on Monday, February 9, 2015, and continuing on subsequent days until the requisite 30 Repair Orders were obtained. Dealer then completed the worksheet utilizing Repair Orders within this date range.

Under Policy 7.4, Lexus' review of Dealer's submission is limited to the Repair Orders within the specified date range. Therefore, Lexus has no obligation to consider the May Repair Orders in reviewing Dealer's submission. However, so that Dealer will be fully informed, and despite having no obligation to do so, Lexus has reviewed the May Repair Orders and has determined that they do not support Dealer's requested rate increase to \$185.00.

Dealer submitted May Repair Orders in a date range from May 16, 2015 to May 19, 2015 and beginning with Repair Order 330813 and ending with Repair Order 330999. However, 13 of the 30 Repair Orders listed by Dealer on the worksheet were not provided. In addition, 3 Repair Orders were entered twice on the worksheet, and only 14 of the required 30 Repair Orders were included on the worksheet. These deficiencies, in addition to Lexus not specifying a date range for the Repair Orders, render the May Repair Orders and worksheet invalid, and they do not support in any way Dealer's requested warranty labor rate increase.

Although under no obligation, Lexus also reviewed the "in between" May Repair Orders that were not part of the worksheet, and has determined that 3 of these Repair Orders had wheel alignments that should have been included in the worksheet, but were marked "internal."

In summary, based on the above, Lexus respectfully denies Dealer's request for a warranty labor rate increase, and Dealer's warranty labor rate will remain at \$160.00.

Sincerely,

LEXUS A DIVISION OF TOYOTA MOTOR SALES, USA



Mark Egger
Customer Services Operations Manager
Lexus Western Area

cc: Bruce Zellmer, Warranty Field Operations Manager

ME/ 51025

PROOF OF SERVICE

STATE OF CALIFORNIA)
NEW MOTOR VEHICLE BOARD)

I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not a party to the within action; my business address is 8865 La Riviera Drive, Unit B, Sacramento, California 95826.

On this date, July 31, 2015, I served the foregoing documents described as:

PROTEST [Vehicle Code Section 3065]

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

 X (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

 (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

 (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

 (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

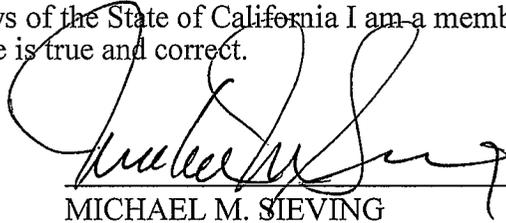
 (By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

 (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

By ATT E-Mail I caused the above-entitled documents to be served through ATT E-Mail addressed to all parties appearing on the ATT E-Mail electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the ATT E-Mail pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management

Order. I have complied with California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is available for review and copying at the request of the court or any party.

I declare under penalty of perjury under the laws of the State of California I am a member of the State Bar of California and that the above is true and correct.



MICHAEL M. SIEVING

SERVICE LIST

Mark Eggar
Customer Service Operation Manager
Lexus Western Area
209 Technology Drive,
Irvine, California 92618