

1 **NELSON MULLINS RILEY & SCARBOROUGH, LLP**

2 PATRICIA R. BRITTON (Cal. Bar No. 100375)

3 Email: patricia.britton@nelsonmullins.com

4 Atlantic Station, 201 17th St. NW, Suite 1700

5 Atlanta, GA 30363

6 Telephone: (404) 322-6000

7 Facsimile: (404) 322-6050

8 STEVEN A. MCKELVEY, JR. (*admitted pro hac vice*)

9 E-Mail: steve.mckelvey@nelsonmullins.com

10 STEVEN B. MCFARLAND (*admitted pro hac vice*)

11 E-Mail: steven.mcfarland@nelsonmullins.com

12 1320 Main Street / 17th Floor

13 Post Office Box 11070 (29211-1070)

14 Columbia, SC 29201

15 (803) 799-2000

16 Attorneys for Respondent

17 Toyota Motor Sales, U.S.A., Inc.

18 **STATE OF CALIFORNIA**
19 **NEW MOTOR VEHICLE BOARD**

20 In the Matter of the Protest of

21 PUTNAM MOTORS, INC. dba PUTNAM)
22 LEXUS,)

23 Protestant,)

24 v.)

25 TOYOTA MOTOR SALES, U.S.A., INC.,)

26 Respondent.)

27 **REPLY IN SUPPORT OF MOTION TO**
28 **DISMISS AMENDED PROTEST**

Protest No. PR- 2428-15

29 Respondent Toyota Motor Sales USA, Inc. (“TMS”) hereby files this Reply in Support
30 of its Motion to Dismiss the Amended Protest filed by Protestant Putnam Motors, Inc. dba
31 Putnam Lexus (“Protestant” or “Putnam Lexus”).

ANALYSIS

I. The Board does not have Jurisdiction to Adjudicate Disputes seeking an Increase in the Warranty Labor Rate paid to an Individual Dealer.

In its Amended Protest and again in its Opposition, Putnam Lexus acknowledges it is not challenging the warranty reimbursement schedule or formula filed by TMS with the New Motor Vehicle Board (“Board”) or the time paid to dealers for completing repairs under that schedule. Instead, the Amended Protest is seeking an increase in the specific warranty labor rate paid by TMS to Putnam Lexus based on the application of the schedule or formula. Although the Vehicle Code does not contain any language authorizing dealers to file a protest seeking an increase in their individual labor rate, or authorizing the Board to adjudicate such a dispute or award the relief sought, Putnam Lexus makes several arguments in attempt to establish the Board has jurisdiction to hear this dispute. Each of these arguments fails.

A. Sections 3050, 3066, and 3067 do not give the Board a Duty or Plenary Authority to Adjudicate Every Dispute between a Manufacturer and a Dealer that is Characterized as a “Protest.”

The Protestant’s Opposition first claims the Board has jurisdiction to entertain this dispute on the grounds that Section 3050 of the Vehicle Code makes it the Board’s “duty” to hear any protest presented by a dealer, and because Sections 3066 and 3067 provide a general procedure for the Board to hear and decide protests filed by dealers. This argument, however, significantly overstates the scope and function of these statutory provisions.

Although these provisions give the Board jurisdiction to entertain *certain* protests, they do not give the Board plenary authority to adjudicate *all* disputes filed by a dealer that are characterized as a “protest.” California courts have repeatedly held that the Board is a quasi-judicial agency of limited jurisdiction, and that “it does not have plenary authority to resolve any and all disputes which may arise between a franchisor and a franchisee.” *See, e.g., Mazda*

1 *Motor of Am., Inc. v. California New Motor Vehicle Bd.*, 110 Cal. App. 4th 1451, 1457 (Ct.
2 App. 2003); *Hardin Oldsmobile v. New Motor Vehicle Bd.*, 52 Cal. App. 4th 585, 589 (Ct.
3 App. 1997). The Board’s jurisdiction to preside over disputes instead is limited to those
4 specifically committed to its jurisdiction by statute. *Mazda Motor of Am., Inc.*, 110 Cal. App.
5 4th at 1457 (“The Board’s jurisdiction to preside over claims is limited by its statutory
6 authorization.”). Indeed, Section 3050 itself repeatedly makes clear that the Board’s jurisdiction
7 is limited to “those matters specifically committed to its jurisdiction” and that it is authorized to
8 hear and decide protests pursuant to Section 3065 only “*within the limitations and in*
9 *accordance with the procedure provided.*” Veh. Code § 3050(a) and (d) (emphasis added).
10

11 These provisions therefore do not give the Board an unqualified “duty” or unqualified
12 jurisdiction to adjudicate disputes as the Protestant claims. Instead, the Board’s jurisdiction to
13 hear disputes—including this one—turns on whether the claims and allegations raised by Putnam
14 Lexus fall with the Board’s authority “within the limitations and in accordance with the
15 procedure provided” pursuant to Section 3065, the specific statute enacted by the Legislature to
16 address the Board’s authority related to warranty reimbursement. As set forth in TMS’s Motion
17 to Dismiss and discussed below, Section 3065 does not confer such authority.
18

19 **B. Section 3065 does not give the Board Jurisdiction to Adjudicate Protests**
20 **Seeking an Increase in an Individual Dealer’s Warranty Labor Rate.**

21 In its Opposition, the Protestant repeatedly claims that Section 3065 “clearly” and
22 “specifically” gives dealers the right to file a protest challenging the amount of compensation it
23 receives for performing warranty work and seeking an increase in its warranty labor rate. This
24 argument, however, is wholly unsupported by the plain language of Section 3065. That
25 provision gives the Board authority to adjudicate protests on three defined issues only:
26

- 27 • It permits a dealer to file a protest challenging “the *reasonableness of the warranty*
28 *reimbursement schedule or formula*” on file with the Board and to order the

1 manufacturer to “correct the failure by *amending or replacing the warranty*
2 *reimbursement schedule or formula* and implementing the correction *as to all*
3 *franchisees of the franchisor that are located in this state.*” Veh. Code § 3065(a) and
4 (b) (emphasis added).

- 5 • It permits a dealer to file a protest challenging “a *reduction* in time and compensation
6 applicable to specific parts or labor operations.” *Id.* § 3065(a) (emphasis added).
- 7 • It permits a dealer to protest a manufacturer’s disapproval or chargeback of warranty
8 claims submitted by the dealer. *Id.* § 3065(d)(6) and (e)(6).

9 None of these provisions—or any other provisions in Section 3065—give dealers the right to file
10 a protest seeking an increase in their individual warranty labor rate as paid by a franchisee, or
11 gives the Board authority to order a manufacturer to increase a dealer’s labor rate. Had the
12 Legislature intended to provide such a right and give the Board such jurisdiction, it could have
13 done so.¹ It did not. Putnam Lexus’s Amended Protest therefore does not fall within the scope
14 of Section 3065 or the Board’s authority “within the limitations and in accordance with the
15 procedure provided” under Section 3065, and it should be dismissed for lack of jurisdiction.

16 **C. The Limited Remedies set forth in Section 3065 are Relevant to Jurisdiction**
17 **and Make Clear the Board Lacks Jurisdiction to Adjudicate this Dispute.**

18 In its Opposition, Putnam Lexus concedes the only remedy available under Section 3065
19 related to warranty labor compensation is that the Board may order TMS to correct any
20 deficiencies in its schedule or formula “*by amending or replacing the warranty reimbursement*
21 *schedule or formula* and implementing the correction *as to all franchisees of the franchisor*
22 *that are located in this state.*” *Id.* § 3065(b) (emphasis added). Nevertheless, the Protestant
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24
25 ¹ Many other states have enacted statutes that expressly give the state agency authority to hear
26 disputes regarding a dealer’s warranty labor rate, and authorize the agency to order the
27 manufacturer to adopt a particular warranty rate for an individual dealer. *See, e.g.,* Tex. Occ.
28 Code Ann. § 2301.403; Conn. Gen. Stat. § 42-133s(b); Del. Code Ann. tit. 6, § 4903(b)(4). As
set forth in detail above, however, the California Legislature has not enacted such a provision.

1 claims—without citation to any authority—that this limitation on remedies is “premature” and
2 “does not affect the subject matter jurisdiction of the Board over this Amended Protest.”

3 Directly contrary to this claim, however, California courts have expressly held that the
4 remedies authorized to be awarded are “fundamental” to determining subject matter jurisdiction.
5 “The granting of relief, which a court under no circumstances has any authority to grant, has
6 been considered an aspect of fundamental jurisdiction.” *Plaza Hollister Ltd. P’ship v. Cnty. of*
7 *San Benito*, 72 Cal. App. 4th 1, 20, 84 Cal. Rptr. 2d 715 (1999). Indeed, “[a] judgment is void
8 on its face if the trial court exceeded its jurisdiction by granting relief that it had no power to
9 grant.” *John Siebel Associates v. Keele*, 188 Cal. App. 3d 560, 564, 233 Cal. Rptr. 231, 232
10 n. 3 (Ct. App. 1986). The limited remedies set forth in Section 3065 therefore are directly
11 relevant to the issue of subject matter jurisdiction and make clear that the Board lacks authority
12 to adjudicate Protest seeking an increased warranty labor rate.
13
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15 The Protestant also claims that because individual dealers are located in unique PMAs
16 and are entitled to different compensation rates for warranty work, each dealer must have a right
17 to protest its individual labor rate or Section 3065 would be rendered meaningless. This
18 argument misses the point. Although manufacturers must compensate dealers for warranty work
19 and compensate different dealers at different rates based on a variety of factors, this does not
20 mean the Legislature gave the Board authority to adjudicate disputes over individual dealer
21 compensation. As discussed above, the Board’s jurisdiction to adjudicate disputes is limited to
22 its statutory authority, and nothing in Section 3065 gives the Board authority to decide disputes
23 regarding the labor rate paid to an individual dealer. Simply stated, that authority was left for
24 another forum—not s reserved for the Board. Putnam Lexus’s Amended Protest therefore
25 should be dismissed for lack of jurisdiction.
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1 **II. The Board Lacks Jurisdiction to Adjudicate the Compensation Paid to Putnam**
2 **Lexus for Certain Warranty Repairs performed by Certain of its Technicians.**

3 In addition to alleging the Board has jurisdiction to decide whether TMS is compensating
4 Putnam Lexus for warranty work at a sufficient labor rate, the Amended Complaint also alleges
5 the Board has jurisdiction to determine whether TMS is providing the dealer sufficient
6 compensation for certain warranty repairs performed by certain of its technicians who have not
7 yet been trained to complete those repairs. This allegation is based on Section 3065(a), which
8 states that a franchisor’s schedule or formula shall be reasonable with respect to the time and
9 compensation allowed for warranty work “and all other conditions of the obligation.”
10

11 Although Putnam Lexus claim this provision gives the Board jurisdiction to adjudicate
12 its claims related to technician training, the plain language of this provision makes clear that it is
13 limited to dealer protests challenging the reasonableness of the “condition” itself—not the
14 application of that condition to individual dealers. Indeed, as discussed above, the only remedy
15 provided under this section is for the Board to enter an order requiring a manufacturer to
16 “amend or replace” the warranty reimbursement schedule or formula “as to all franchisees” in
17 the state. Veh. Code § 3065(b). This simply is not what Putnam Lexus is seeking here.
18

19 The “condition” to warranty reimbursement at issue is the requirement that technicians
20 responsible for completing repairs must be adequately trained before performing those repairs on
21 customer vehicles. Although the Protestant appears to suggest otherwise in an attempt to
22 manufacturer jurisdiction, Putnam Lexus is not disputing this condition to warranty
23 reimbursement, and has expressly admitted this condition is reasonable and appropriate. (Initial
24 Protest ¶ 8). Instead, Putnam Lexus is seeking to challenge the “implementation” of this
25 condition “as applied” to Putnam Lexus only—and even acknowledges that it is seeking an
26 adjudication of whether TMS is providing “adequate, fair, and reasonable compensation to
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28

1 Protestant.” (Am. Protests ¶ 8) (Opposition at 8). Just like Putnam Lexus’s claim related to its
2 warranty labor rate, however, nothing in Section 3065 authorizes a dealer to protest the
3 application or implementation of the reimbursement schedule or formula (including any
4 conditions therein) to one individual dealer or authorizes the Board to adjudicate whether one
5 dealer is receiving sufficient compensation for warranty work pursuant to that schedule.
6 Accordingly, the Board lacks jurisdiction to adjudicate this claim, and it should be dismissed.
7

8 **CONCLUSION**

9 For the reasons set forth above and in its Motion to Dismiss, TMS respectfully requests
10 that the New Motor Vehicle Board enter an Order dismissing the Amended Protest filed by
11 Putnam Lexus in its entirety for lack of subject matter jurisdiction.
12

13 DATED: November 16, 2015

NELSON MULLINS RILEY &
SCARBOROUGH, LLP

14
15
16 By: 
17 Steven B. McFarland

PROOF OF SERVICE
PUTNAM MOTORS, INC. dba PUTNAM LEXUS v.
TOYOTA MOTOR SALES USA, INC.
Protest No. PR-2428-15

STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

At the time of service, I was over 18 years of age and not a party to the action. My business address is 1320 Main Street, 17th Floor, Columbia, South Carolina 29201.

On November 16, 2015, I served the following document(s):

TOYOTA MOTOR SALES, U.S.A., INC.'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS AMENDED PROTEST

I served the documents on the following persons at the following addresses:

New Motor Vehicle Board
1507 – 21st Street, Suite 330
Sacramento, CA 95811
E-Mail: nmvp@nmvp.ca.gov

Michael M. Sieving, Esquire
8865 La Riveriera Drive, Unit B
Sacramento, CA 95826
msievinglaw@att.net
COUNSEL FOR PROTESTANT

The documents were served by the following means:

- BY ELECTRONIC MAIL:** I caused such document to be transmitted via electronic mail pursuant to the parties listed on the Proof of Service.
- (BY U.S. MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and (specify one): Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.
- Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business VIA EXPRESS DELIVERY, in a sealed envelope of package.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2015 at Columbia, South Carolina.

/s/ Steven B. McFarland
Steven B. McFarland