

1 NEW MOTOR VEHICLE BOARD  
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**CERTIFIED MAIL**

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of  
12 KM3G INC., d/b/a PUTNAM KIA OF  
13 BURLINGAME,  
14 Protestant,  
15 v.  
16 KIA AMERICA INC.,  
17 Respondent.

**Protest No. PR-2803-22**

**PROPOSED DECISION**

18  
19 **PROCEDURAL BACKGROUND**<sup>1</sup>

20 **Statement of the Case**

21 1. On September 15, 2022, KM3G, Inc., doing business as Putnam Kia of Burlingame  
22 (protestant or Putnam Kia) filed Protest No. PR-2803-22 against Kia America, Inc. (respondent or Kia)  
23 with the New Motor Vehicle Board (Board) pursuant to Vehicle Code section 3065.4<sup>2</sup> [establishment or  
24 modification of warranty reimbursement schedule].

25 2. The protest alleged that respondent failed to comply with section 3065.2 by denying  
26

27 <sup>1</sup> Citations throughout this Proposed Decision refer to oral testimony by exhibit number (Exh) and page(s), and by  
reporter's transcript (RT) volume by Roman Numeral, page, and line. Other documents in the record are identified  
by their titles, as specifically denoted in the text.

28 <sup>2</sup> Hereinafter, unless otherwise indicated, all section references are to the California Vehicle Code.

1 protestant’s submission for an increased labor rate on the basis that it was materially inaccurate or  
2 potentially fraudulent in that protestant used time allowances identified as “sold hours” on protestant’s  
3 repair orders<sup>3</sup> to make its calculations. [Protest, ¶ 9]

4 3. A hearing on the merits was held on October 9-13, 2023, and February 12-15, 2024,  
5 before Administrative Law Judge Diana Woodward Hagle.

6 4. On June 13, 2024, the hearing was resumed telephonically, which concluded with the  
7 admission of Exhibits P-126 and R-256.

8 5. On July 10, 2024, protestant filed a Motion to Strike Portions of Respondent’s Post-  
9 Hearing Reply Brief, alleging that respondent had improperly cited portions of the Proposed Decision  
10 in *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company* (Protest No. PR-2759-21).  
11 Following the filing of respondent’s opposition brief and protestant’s reply brief, a Zoom hearing  
12 before the administrative law judge was held on August 5, 2024, which concluded with an order  
13 granting in part and denying in part protestant’s motion.

14 6. On June 26, 2024, in order to allow Administrative Law Judge Woodward Hagle to  
15 preside over the hearing on protestant’s Motion to Strike, the parties stipulated to the following  
16 extensions of time: for the issuing, signing and finalizing of the Proposed Decision, from July 25, 2024,  
17 to October 10, 2024; and for the Board to act on the Proposed Decision from August 23, 2024, to the  
18 next regularly scheduled Board meeting on November 1, 2024. [Veh. Code § 3067; Government Code  
19 §11517] This stipulation was amended to allow the Proposed Decision to be signed and finalized by  
20 5:00 p.m. (Pacific Time) on Tuesday, October 15, 2024.

21 **Parties and Counsel**

22 7. Protestant Putnam Kia is a Kia dealership located at 2 California Drive in Burlingame,  
23 California 94010. [Protest, ¶ 1] It is a “franchisee” of respondent within the meaning of sections 331.1,  
24 3065.2, and 3065.4, and is an automotive repair dealer licensed by the Bureau of Automotive Repair,  
25 State of California (BAR). [Exh P-126]

26 \_\_\_\_\_  
27 <sup>3</sup> Repair Order is defined by the parties as: “[a] document generated by a dealership’s service department in  
28 connection with the repair or diagnosis of a customer’s motor vehicle, reflecting *inter alia* the repair services  
performed on the motor vehicle and the related charges. (Glossary, p. 3)

1 8. Protestant is represented by the Law Offices of Gavin M. Hughes by Gavin M. Hughes,  
2 Esquire, and Robert A. Mayville, Jr., Esquire, 4360 Arden Way, Suite 1, Sacramento, California 95864.

3 9. Respondent Kia America is a “franchisor” of protestant within the meaning of sections  
4 331.2, 3065.2, and 3065.4.

5 10. Respondent is represented by Hogan Lovells US LLP by John J. Sullivan, Esquire, 390  
6 Madison Avenue, New York, New York 10017; and by Jonathan R. Stulberg, Esquire, 1999 Avenue of  
7 the Stars, Suite 1400, Los Angeles, California 90067.

8 **ISSUES PRESENTED**

9 11. Did respondent fail to comply with Vehicle Code section 3065.2 (Establishment or  
10 Modification of Retail Labor Rate) by the following:

11 A. Rejecting protestant’s interpretation of the word “hours” as “sold hours” in the statutory  
12 phrase “the total number of hours that generated those [labor] charges”<sup>4</sup> and therefore denying its  
13 request for a higher warranty reimbursement schedule? [Veh. Code § 3065.2(a)(2)]

14 B. Determining that protestant’s submission of its retail labor rate was “materially  
15 inaccurate” or “fraudulent”?

16 **BURDEN OF PROOF**

17 12. In a section 3065.4 protest, the franchisor has the burden of proof to show that it  
18 complied with section 3065.2 and that the franchisee’s determination of its retail labor rate as submitted  
19 to the franchisor is materially inaccurate or fraudulent. [Veh. Code § 3065.4(a)]

20 13. The standard is preponderance of the evidence, which is met if the proposition is more  
21 likely to be true than not true---i.e., if there is greater than 50 percent chance that the proposition is true.

22 **APPLICABLE LAWS**

23 **Vehicle Code sections 3065.2 and 3065.4**

24 14. Section 3065.2 presumes that for non-warranty (“consumer-pay” or “retail”) vehicle  
25 repairs and services, the franchisee will establish prices competitive with other options available to  
26 \_\_\_\_\_

27 <sup>4</sup> The full text of section 3065.2(a)(2) is “[t]he franchisee shall calculate its retail labor rate by determining the  
28 total charges for labor from the qualified repair orders submitted and dividing that amount by the total number of hours that generated those charges.” (Emphasis added.)

1 consumers in its marketing area, while still maximizing its profitability and enhancing its reputational  
2 status. Warranty compensation, the reasoning goes, should equal the franchisee’s pricing decisions in  
3 its retail market.

4 15. Section 3065.2 builds on prior law<sup>5</sup> by empowering the franchisee to initiate periodic  
5 requests to its franchisor for higher warranty reimbursement labor rates based on the franchisee’s  
6 customer-pay repair orders showing, among other things, “charges for labor” and the “number of  
7 hours” generating those charges.

### 8 **Overview of Section 3065.2**

9 16. New motor vehicle dealerships (franchisees) are required, usually by dealer  
10 agreements, to perform repairs and other services on vehicles covered by the manufacturer’s  
11 (franchisor’s) warranty at no charge to the customer. In return, the franchisor must reimburse the  
12 franchisee for such warranty work, including the labor involved. Labor is reimbursed at a specified  
13 hourly warranty rate.

14 17. Section 3065.2 codifies a procedure setting forth a detailed mechanism for the  
15 franchisee to establish or modify its current retail labor rate (customer-pay rate) as a basis for a new  
16 warranty labor rate (reimbursement rate) from the franchisor.<sup>6</sup> The statutory goal is for the parties “to  
17 determine a reasonable warranty reimbursement schedule.” [Veh. Code § 3065.2(a)]

18 18. Summarized in broad terms, the franchisee submits to the franchisor all repair orders  
19 the franchisee has completed in a 90-day consecutive period chosen by the franchisee.<sup>7</sup> From this  
20 group, the franchisee will have selected “qualified” customer-pay repair orders and, using this  
21 selection, calculated its requested retail labor rate. To make the calculation, the franchisee must  
22 determine “the total charges for labor from the qualified repair orders submitted and [divide] that  
23 amount by the total number of hours that generated those charges.” [Veh. Code § 3065.2(a)]

24 \_\_\_\_\_  
25 <sup>5</sup> Prior to the addition of sections 3065.2 and 3065.4 in 2020, language in section 3065(b) provided that: “In  
26 determining the adequacy and fairness of the [warranty] compensation, the franchisee’s effective labor rate  
charged to its various retail customers may be considered together with other relevant criteria.”

27 <sup>6</sup> Warranty Labor Rate as defined by the parties is: “The price per hour that is paid by the franchisor to the  
franchisee for the performance of repairs covered under the manufacturer’s warranty.” (Glossary, p. 3)

28 <sup>7</sup> Qualified repair orders are required to be “from a period occurring not more than 180 days before the  
submission.” [Veh. Code § 3065.2(b)]

1           19.     A “‘qualified repair order’ is a repair order, closed at the time of submission, for work  
2 that was performed outside of the period of the manufacturer’s warranty and paid for by the  
3 customer, but that would have been covered by a manufacturer’s warranty if the work had been  
4 required and performed during the period of warranty.” [Veh. Code § 3065.2(j)] The statute excludes  
5 labor charges pertaining to specific types of repairs, including routine maintenance, or situations,  
6 such as vandalism. [Veh. Code § 3065.2(c)]

7           20.     The next step is for the franchisor to review the documents the franchisee has  
8 submitted (the franchisee’s selection of “qualified repair orders”), and to evaluate the calculations  
9 made by the franchisee in support of its requested retail labor rate. If the franchisee’s requested retail  
10 labor rate is substantially higher than the franchisee’s current warranty labor rate, the franchisor has  
11 30 days from receipt of the franchisee’s submission to request a supplemental set of repair orders.  
12 Specifically, the franchisor may request “all repair orders closed within the period of 30 days  
13 immediately preceding, or 30 days immediately following, the set of repair orders previously  
14 submitted by the franchisee.” [Veh. Code § 3065.2(d)(4)]

15           21.     The franchisor may contest the franchisee’s requested retail labor rate on the grounds  
16 that it is materially inaccurate or fraudulent. The franchisor must notify the franchisee of the contest  
17 within 30 days after receiving the submission from the franchisee or, if the franchisor requested a  
18 supplemental set of repair orders, within 30 days after receiving the supplemental set of repair orders.  
19 The notification must include “a full explanation of any and all reasons for the allegation” of material  
20 inaccuracy and/or fraud, “evidence substantiating the franchisor’s position, a copy of all calculations  
21 used by the franchisor in determining the franchisor’s position, and a proposed adjusted retail labor  
22 rate . . .”. [Veh. Code § 3065.2(d)(1)]

23           22.     If a franchisor fails to comply with the requirements of Section 3065.2, “or if a  
24 franchisee disputes the franchisor’s proposed adjusted retail labor rate,” section 3065.4 authorizes the  
25 franchisee to file a protest with the Board for a declaration of the franchisee’s retail labor rate. [Veh.  
26 Code § 3065.4(a)] Until the Board renders a decision, the franchisor must pay the franchisee at the  
27 franchisor’s proposed adjusted retail labor rate starting the 30<sup>th</sup> day after the franchisor’s receipt of  
28

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1 the franchisee's initial submission.<sup>8</sup> [Veh. Code § 3065.2(d)(3)]

2 **Text of Sections 3065.2 and 3065.4**

3 23. Section 3065.2 provides in pertinent part as follows:

4 (a) A franchisee seeking to establish or modify its retail labor rate . . . to determine a  
5 reasonable warranty reimbursement schedule shall, no more frequently than once per  
6 calendar year, complete the following requirements:

7 (1) The franchisee shall submit in writing to the franchisor whichever of the following is  
8 fewer in number:

9 (A) Any 100 consecutive qualified repair orders completed, including any nonqualified  
10 repair orders completed in the same period.

11 (B) All repair orders completed in any 90-consecutive-day period.

12 (2) The franchisee shall calculate its retail labor rate by determining the total charges for  
13 labor from the qualified repair orders submitted and dividing that amount by the total  
14 number of hours that generated those charges.

15 . . .  
16 (4) The franchisee shall provide notice to the franchisor of its retail labor rate and retail  
17 parts rate calculated in accordance with this subdivision.

18 (b) For purposes of subdivision (a), qualified repair orders submitted under this  
19 subdivision shall be from a period occurring not more than 180 days before the  
20 submission. Repair orders submitted pursuant to this section may be transmitted  
21 electronically. A franchisee may submit either of the following:

22 (1) A single set of qualified repair orders for purposes of calculating both its retail labor  
23 rate and its retail parts rate.

24 (2) A set of qualified repair orders for purposes of calculating only its retail labor rate or  
25 only its retail parts rate.

26 (c) Charges included in a repair order arising from any of the following shall be omitted  
27 in calculating the retail labor rate and retail parts rate under this section:

28 . . .  
(3) Routine maintenance, including, but not limited to, the replacement of bulbs, fluids,  
filters, batteries, and belts that are not provided in the course of, and related to, a repair.

(4) Replacement of or work on tires, including front-end alignments and wheel or tire  
rotations.

(d) (1) A franchisor may contest to the franchisee the material accuracy of the retail  
labor rate or retail parts rate that was calculated by the franchisee under this section within  
30 days after receiving notice from the franchisee or, if the franchisor requests  
supplemental repair orders pursuant to paragraph (4), within 30 days after receiving the  
supplemental repair orders. If the franchisor seeks to contest the retail labor rate, retail  
parts rate, or both, the franchisor shall submit no more than one notification to the  
franchisee. The notification shall be limited to an assertion that the rate is materially  
inaccurate or fraudulent, and shall provide a full explanation of any and all reasons for the  
allegation, evidence substantiating the franchisor's position, a copy of all calculations used  
by the franchisor in determining the franchisor's position, and a proposed adjusted retail  
labor rate or retail parts rate, as applicable, on the basis of the repair orders submitted by  
the franchisee or, if applicable, on the basis provided in paragraph (5). After submitting  
the notification, the franchisor shall not add to, expand, supplement, or otherwise modify  
any element of that notification, including, but not limited to, its grounds for contesting  
the retail labor rate, retail parts rate, or both, without justification. A franchisor shall not

<sup>8</sup> The parties may also enter into a voluntary written agreement to establish a warranty reimbursement schedule.  
[Veh. Code §3065(b)]

1 deny the franchisee's submission for the retail labor rate, retail parts rate, or both, under  
2 subdivision (a).

3 . . .  
4 (3) In the event the franchisor provides all of the information required by paragraph (1)  
5 to the franchisee, and the franchisee does not agree with the adjusted rate proposed by the  
6 franchisor, the franchisor shall pay the franchisee at the franchisor's proposed adjusted  
7 retail labor rate or retail parts rate until a decision is rendered upon any board protest filed  
8 pursuant to Section 3065.4 or until any mutual resolution between the franchisor and the  
9 franchisee. The franchisor's proposed adjusted rate shall be deemed to be effective as of  
10 the 30th day after the franchisor's receipt of the notice submitted pursuant to subdivision  
11 (a).

12 (4) If the franchisor determines from the franchisee's set of repair orders submitted  
13 pursuant to subdivisions (a) and (b) that the franchisee's submission for a retail labor rate  
14 or retail parts rate is substantially higher than the franchisee's current warranty rate, the  
15 franchisor may request, in writing, within 30 days after the franchisor's receipt of the  
16 notice submitted pursuant to subdivision (a), all repair orders closed within the period of  
17 30 days immediately preceding, or 30 days immediately following, the set of repair orders  
18 submitted by the franchisee. If the franchisee fails to provide the supplemental repair  
19 orders, all time periods under this section shall be suspended until the supplemental repair  
20 orders are provided.

21 (5) If the franchisor requests supplemental repair orders pursuant to paragraphs (1) and  
22 (4), the franchisor may calculate a proposed adjusted retail labor rate or retail parts rate, as  
23 applicable, based upon any set of the qualified repair orders submitted by the franchisee, if  
24 the franchisor complies with all of the following requirements:

25 (A) The franchisor uses the same requirements applicable to the franchisee's submission  
26 pursuant to paragraph (1) of subdivision (a).

27 (B) The franchisor uses the formula to calculate retail labor rate or retail parts as  
28 provided in subdivision (a).

(C) The franchisor omits all charges in the repair orders as provided in subdivision (c).

29 . . .  
30 (h) When a franchisee submits for the establishment or modification of a retail labor  
31 rate, retail parts rate, or both, pursuant to this section, a franchisee's retail labor rate or  
32 retail parts rate shall be calculated only using the method prescribed in this section. . . .

33 . . .  
34 (i) As used in this section, a "qualified repair order" is a repair order, closed at the time  
35 of submission, for work that was performed outside of the period of the manufacturer's  
36 warranty and paid for by the customer, but that would have been covered by a  
37 manufacturer's warranty if the work had been required and performed during the period of  
38 warranty.

24. Section 3065.4 provides as follows:

39 (a) If a franchisor fails to comply with Section 3065.2, or if a franchisee disputes the  
40 franchisor's proposed adjusted retail labor rate or retail parts rate, the franchisee may file a  
41 protest with the board for a declaration of the franchisee's retail labor rate or retail parts  
42 rate. In any protest under this section, the franchisor shall have the burden of proof that it  
43 complied with Section 3065.2 and that the franchisee's determination of the retail labor  
44 rate or retail parts rate is materially inaccurate or fraudulent.

45 (b) Upon a decision by the board pursuant to subdivision (a), the board may determine  
46 the difference between the amount the franchisee has actually received from the franchisor  
47 for fulfilled warranty obligations and the amount that the franchisee would have received  
48 if the franchisor had compensated the franchisee at the retail labor rate and retail parts rate  
as determined in accordance with Section 3065.2 for a period beginning 30 days after  
receipt of the franchisee's initial submission under subdivision (a) of Section 3065.2. The  
franchisee may submit a request to the franchisor to calculate the unpaid warranty

1 reimbursement compensation and the franchisor shall provide this calculation to the  
2 franchisee within 30 days after receipt of the request. The request for the calculation will  
3 also be deemed a request for payment of the unpaid warranty reimbursement  
4 compensation.

5 **Automotive Repair Act**  
6 **Business & Professions Code Sections 9880, et seq.**<sup>9</sup>

7 25. Putnam Kia, an automotive repair dealer licensed by BAR, is subject to the laws and  
8 regulations of that agency relating to vehicle repairs and services:

9 A. Upfront pricing in writing for labor and parts for a specific job, together with  
10 written customer authorization, is required for non-warranty repairs and services. For any  
11 increase in the original estimate, customer authorization must be obtained and memorialized. A  
12 notation is required on the invoice memorializing oral consent for increasing the original  
13 estimate, as set forth in the notation on the work order. [Bus. & Prof. Code § 9884.9(a)(1); 16  
14 Cal. Code Regs., tit. 16, §§ 3352(a), 3353(a)]

15 B. All work done must be recorded on an invoice with descriptions of service  
16 work and parts, with one copy given to the customer and one copy retained by the dealer. [Bus.  
17 & Prof. Code § 9884.8]

18 C. Each dealer shall maintain records for at least three years. [Bus. & Prof. Code §  
19 9884.11]

20 D. “Preventative maintenance services” relate to replacing light bulbs, wiper blades,  
21 specified filters, and belts, and topping off fluids. A written estimate is not required for  
22 preventative maintenance services if authorized by the customer and either (1) the service is  
23 free; or (2) the total price is conspicuously displayed and acknowledged by the customer. [Bus.  
24 & Prof. Code §§ 9880.1(j), 9884.9(e)]

25 **IDENTIFICATION OF WITNESSES**

26 **Protestant’s Witnesses**<sup>10</sup>

27 **Jeff Korenak, Director of Implementation, FrogData LLC**

28 26. Jeff Korenak has been employed by FrogData LLC (FrogData) since 2020. His prior

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<sup>9</sup> Code references in this section are to the California Business & Professions Code.

<sup>10</sup> This section also identifies a critical percipient witness not called to testify, Robin Brantley.



1 employment was in sales and management at dealerships in the Upper Midwest and Texas, as well as in  
2 Christian education and insurance sales. In Austin, he was a service advisor for two years at the Audi  
3 store and for two months at the Toyota store next door. [RT VIII 7:4-11:1, 129:16-130:13]

4 27. As Director of Implementation for FrogData’s “WarrantyBoost+” program, he oversees  
5 analysts in the United States and India, does “client relations,” and is involved in labor rate  
6 submissions. He has been involved in about 1,200 warranty rate submissions (about 400 in California),  
7 including about 120-125 Kia submissions (between 25 and 30 in California). [RT VIII 10:15-13:21,  
8 33:3-34:2]

9 28. Jeff Korenak generally described FrogData’s procedures for its dealership clients in  
10 regard to warranty labor rate submissions and his actions and communications on behalf of Putnam Kia  
11 personnel. [RT VIII 10:15-22, 11:5-13:21; see generally RT VIII, pp. 6-217]

12 29. Mr. Korenak identified Robin Brantley as FrogData’s “lead analyst” on the Putnam Kia  
13 labor rate submission. Despite her involvement, Robin Brantley was not called as a witness.<sup>11</sup> Nor was  
14 credible evidence introduced about her qualifications, training, the procedures she followed or her  
15 communications, if any, with Putnam Kia. When asked about the training she might have received in  
16 preparing a California labor rate submission, Mr. Korenak testified, “I think she started the day before I  
17 did . . . [W]e figured it out on our own . . . . FrogData has a manual. . .”. [RT VIII 13:22-14:16, 31:16-  
18 18, 47:23-25, 48:25-49:15]

19 **Kent Putnam, Putnam Kia Dealer Principal**

20 30. Kent Putnam is the dealer principal of Putnam Kia and “about 15” other franchised  
21 vehicle dealerships in the Putnam Automotive Group (“Group”). He is Chief Executive Officer of  
22 KM3G, Inc. He is not involved in the day-to-day operations of the dealership, relying on CFO Andrey  
23 \_\_\_\_\_

24 <sup>11</sup> When asked by the ALJ why Robin Brantley was not a witness, protestant’s counsel stated “[w]ell, this is Kia's  
25 burden . . . if they think that’s important to meeting their burden, they certainly could have sought her out and  
26 deposed her.” [RT VIII 48:5-13] Respondent’s counsel countered that Jeff Korenak, in his deposition, never  
27 mentioned Robin Brantley. [RT VIII 50:13-16]

28 Nothing appears in the record showing that respondent’s counsel was given Robin Brantley’s name and role as  
FrogData’s “lead analyst” in the Putnam Kia submission. She was not listed as a witness in protestant’s  
Preliminary Witness List (filed 3-16-23), Final Witness List (filed 5-19-23), or Merits Hearing Witness List  
(filed 10-6-23).

1 Kamenetsky for “pretty much everything.” [Exh P-101; RT VII 121:3-23, 123:22-124:11; see generally  
2 RT VII, pp. 119-165]

3 31. Mr. Putnam generally described Putnam Kia’s policies that service advisors were  
4 directed to use in pricing for non-warranty repair work. He noted that “routine maintenance” is “a very,  
5 very competitive” market and is priced differently than repairs and implied that diagnostic work was  
6 priced differently. [RT VII 135:10-137:22, 152:21-153:7, 158:5-12]

7 32. Mr. Putnam described significant changes in raising labor rates at Group dealerships in  
8 response to the passage of section 3065.2. [RT VII 135:10-136:19, 141:3-142:18, 145:12-22, 152:12-  
9 153:11]

10 33. Kent Putnam had no contacts with Jeff Korenak of FrogData and was not involved in the  
11 submission of repair orders on March 22, 2022, or the selection or review of the documents beforehand.  
12 Although his name appears as signatory on a number of letters during the process, he did not draft  
13 them, although he did review them. [Exh J-3.001-.003; RT XII 127:2-129:14]

14 **Andrey Kamenetsky, CFO and Group Operations Manager, Putnam Dealerships**

15 34. Since about April or May of 2020, Andrey Kamenetsky has been employed by Putnam  
16 Automotive, Inc. as “Group Operations Manager,” responsible for overseeing warranty labor rate  
17 submissions to franchisors for dealerships owned by Kent Putnam. The CFO duties were added in  
18 2022. [RT IX 10:18-12:6, 108:5-25] Previously, beginning in 1993, he worked as a sales associate at  
19 Putnam Toyota, was later promoted to General Sales Manager and, from 2003 to 2020, was a partner  
20 and General Manager at the dealership. [RT IX 7:15-8:9, 10:1-7; see generally RT IX, pp. 6-155]

21 35. Mr. Kamenetsky was in charge of Putnam Kia’s warranty rate submission and was the  
22 only individual in contact with Jeff Korenak of FrogData although his reported contacts were few in  
23 number. [RT IX 14:2-21] Mr. Kamenetsky was not involved in “extracting” repair orders from Putnam  
24 Kia’s dealer management systems (DMS) nor in finding “optimal” date ranges for submission or  
25 selecting the date of submission. [RT IX 14:2-22, 34:21-35:4] He did not review the repair orders or the  
26 spreadsheet in the March 22, 2022, submission or the supplemental repair orders later provided to Kia.  
27 [RT IX 38:23-39:8, 79:1-12]

28 ///



1 41. Among Mr. Nardini’s other duties as National Manager for Warranty, Technical, and  
2 Service Operations, he oversees the Warranty Operations Team, the Technical Support Team, and the  
3 service garage. [RT I 46:1-47:17]

4 42. As described by Mr. Nardini, establishing reasonable LTS allowances for warranty  
5 repairs starts with model design and factory production, technician tests at the factory, then validations  
6 by technicians at the Kia service garage, overseen by Mr. Nardini. [RT I 47:5-17, 67:25-68:15; II  
7 335:21-25, 336:8-16]

8 43. Mr. Nardini described the Warranty Support Team procedures in reviewing and  
9 approving requests from Kia franchisees for warranty labor rate increases. [RT I 47:18-23]

10 44. Based on his experience with warranty policies, procedures and repair orders, Mr.  
11 Nardini testified as to Kia’s position on the lack of accuracy of Putnam Kia’s submission. [See  
12 generally RT I, pp. 45-97; II, pp. 98-342; III, pp. 353-566; IV, pp. 576-812; V, pp. 813-918] However,  
13 he had only minimal contact with the Putnam Kia warranty submission and was unable to testify from  
14 personal knowledge about certain aspects of the submission. [RT II 332:9-33:2, 334:7-21]

15 45. Oscar Rodriguez, the Warranty Manager for Kia, appears to be the primary person  
16 acting for Kia in regard to the Putnam Kia submission. He initially reviewed Putnam Kia’s submission  
17 and, either alone or with others, drafted the denial letter to Putnam Kia and prepared Kia’s spreadsheet  
18 with its proposed adjusted retail labor rate. Yet Oscar Rodriguez was not called as a witness. [RT II  
19 171:25-172:3, 331:23-332:1, 332:9-33:2, 334:7-21]

## 20 **FINDINGS OF FACT**<sup>15</sup>

### 21 **Preliminary Findings**

22 46. Putnam Kia, a franchisee of Kia, is a motor vehicle dealership located at 2 California  
23 Drive, Burlingame, CA 94010. It sells vehicles and performs vehicle repairs and services. Putnam Kia  
24 is part of the Putnam Automotive Group, which operates “about 15” other vehicle franchises in  
25 Northern California--- Chrysler, Dodge, Jeep, RAM, Honda, Ford, Subaru, Toyota, Chevrolet, Cadillac,  
26 \_\_\_\_\_

27 <sup>15</sup> References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to  
28 reach a finding and are not intended to be all-inclusive. Findings of fact are organized under topical headings for  
readability only and are not to be considered relative to only the particular topic under which they appear.

1 Buick, GMC, Mazda, Volvo, Volkswagen, and Nissan. [Stipulation of Facts, ¶¶ 1, 2 and 4; RT Vol VII  
2 121:2-10; Vol IX 118:2-17] It is licensed as an automotive repair dealer by the Bureau of Automotive  
3 Repair, State of California; Putnam Kia’s license was issued on July 22, 2021. [Exh P-126]

4 47. Kent Putnam is the dealer principal for Putnam Kia, as well as the owner and  
5 “technically . . . the CEO.” He is also dealer principal of the other dealerships in the Putnam  
6 Automotive Group. [Exh J-2.001; RT VII 121:3-23, 123:22-25]

7 48. Putnam Kia and Kia signed a Dealer Sales and Service Agreement (Dealer Agreement)  
8 on September 1, 2021, which established the Kia franchise. Putnam Kia began operations on or about  
9 that date. Among other things, the Dealer Agreement obligated Putnam Kia to “render warranty service  
10 on eligible Kia Products . . .” and Kia agreed “to compensate [Putnam Kia] for all warranty work,  
11 including labor, diagnosis and genuine Kia parts and accessories, in accordance with procedures and at  
12 rates to be announced from time to time by [Kia] and in accordance with applicable law.” [Stipulation  
13 of Facts, ¶¶ 3 and 5; Exh J-1.004, .023; RT I 65:15-66:7; RT II 338:25-339:7] Putnam Kia is located in  
14 Kia’s “District WE04,” a Northern California geographic area consisting of 14 authorized Kia  
15 dealerships, generally encompassing the metropolitan areas of San Francisco, Oakland and San Jose.  
16 [Glossary, p 2; RT IV 788:22-789:1]

17 49. The Dealer Agreement did not establish an initial reimbursement rate for Putnam Kia’s  
18 warranty work.

### 19 **Kia’s Warranty Program**

20 50. Every automobile manufacturer is obligated to provide a warranty on their new  
21 vehicles. [I 51:4-7] In the Vehicle Code, “warranty” statutorily applies not only to “new vehicle”  
22 warranties but also to a number of other vehicle warranties.<sup>16</sup>

23 51. Kia’s new vehicle warranties cover parts and labor for certain repairs for specified  
24 periods of time. “There are different coverages. There is the regular coverage. There is power train  
25 coverage. There is emissions coverage. There [are] a lot of different coverage[s] available to the

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26  
27 <sup>16</sup> “‘Warranty’ includes a new vehicle warranty, a certified preowned warranty, a repair pursuant to a technical  
28 service bulletin on a vehicle covered under the period of warranty, a repair pursuant to a customer service  
campaign on a vehicle covered under the period of warranty, and a recall conducted pursuant to Sections 30118  
to 30120, inclusive, of Title 49 of the United States Code.” [Veh. Code § 3065.25(b)]

1 consumer under the Kia warranties.” [RT I 51:4-16, 76:10-14]

2 52. Kia’s dealer intranet is “Kdealer+.” [RT II 125:11-18] Kia’s “Warranty and Consumer  
3 Information Manual” (Manual), a 115-page policy statement of Kia’s warranty program coverage is  
4 found in Kdealer+. [Exhs R-230, pp. 1, 4, 6-8, 10-12 (2021 Manual); R-231, pp. 1, 4, 6-8, 10-12 (2022  
5 Manual)]

6 53. Although Basic Warranty coverage is 60 months/60,000 miles (whichever comes first),  
7 the power train warranty (in the engine, the transaxle, axles, transmission, differentials, and propeller  
8 shafts) is longer than the basic coverage; while other components have shorter coverages (audio/  
9 entertainment systems, batteries and brake and clutch linings, as examples). [Exhs R-230, pp. 1, 4, 6-8;  
10 R-231, pp. pp. 1, 4, 6-8]

11 54. Even if the vehicle is presented within the lesser of 60 months or 60,000 miles, Kia’s  
12 “[Basic Limited] Warranty does not cover wear and maintenance items.” Also excluded from coverage  
13 are vehicles which have been improperly maintained or misused by overloading, racing or driving over  
14 hazardous objects; vehicles damaged in accidents or natural disasters; and altered, modified or rewired  
15 vehicles. “Normal Deterioration” is not covered, which is described as “[r]eplacement or repair of parts  
16 intended to wear including the friction wear parts of the brakes, including brake pads and shoes, spark  
17 plugs, belts, clutch linings, filters, wiper blades, bulbs except HID bulbs, fuses, and other wear and  
18 consumable items.” [Exhs R-230, pp. 6, 10-11; R-231, pp. 6, 10-11]

19 55. Kia pays its dealers for warranty claims twice a month, on the 15<sup>th</sup> and the 30<sup>th</sup>. [RT I  
20 67:16-24]

21 **Putnam Kia’s Initial Warranty Reimbursement Rate**

22 56. Since Putnam Kia’s initial warranty labor reimbursement rate was not established in the  
23 Dealer Agreement, it was set by Kia’s market survey. The hourly rate of \$225.27 (rounded up to  
24 \$225.30) became effective on Putnam Kia’s first day of operation, on or about September 1, 2021.  
25 [Exh J-2.001-.002; RT IX 27:13-28:19, 31:13-16, 154:8-19]

26 57. Before the dealership opened, Kia sent Putnam Kia its Warranty Labor Rate Market  
27 Analysis survey form, requesting “competitive labor rates” of seven other line-makes in the market:  
28 Ford, Honda, General Motors (Chevrolet/Cadillac), Hyundai, Mazda, Nissan and Toyota. Like Kia,

1 these are “mass market” brands, not “luxury” line-makes like Porsche, where labor rates “can be  
2 double” those at non-luxury dealerships. [Exh J-2.001-.002; RT I 87:12-89:15, 90:3-91:4; RT V  
3 819:15-820:2; RT IX 28:11-19, 31:7-12]

4 58. Protestant understood that it was expected to complete the form by finding out the retail  
5 and warranty rates of other dealers in the market as part of its “package” for the new dealership. It  
6 declined to do so, using information exclusively from dealerships in the Putnam Automotive Group.  
7 [RT V 820:16-19; RT IX 30:20-31:2]

### 8 **Kia’s Calculation of Warranty Reimbursement Payments**

9 59. Kia pays its dealers for warranty work on a per-repair basis, with the amount of the  
10 reimbursement calculated by the dealership, then submitted to Kia for payment. The amount is the  
11 product of the multiplication of the time allowance for the repair (expressed in hours, or portions  
12 thereof) by the dealership’s labor rate (for Putnam Kia, \$225.30). [RT II 127:7-10] Dealers must use  
13 the time allowances found in Kia’s LTS factory guides in their calculations. [RT I 67:16-68:15; RT II  
14 126:12-127:14; RT IX 27:1-5]

15 60. Only franchisors set time allowances, found in popularly called “factory time guides”  
16 or “labor time guides.” They must be “reasonable and adequate for a qualified technician to perform  
17 the work or services.”<sup>17</sup> [Veh. Code § 3065(a)(1); Glossary, pp. 2-3; RT I 68:11-15, 83:9-20]

### 18 **Kia’s Establishment of “Time Allowances”**

19 61. Kia’s time allowances are published in the “LTS” section of its dealer intranet site  
20 Kdealer+. [RT II 125:11-18]

21 62. Each time allowance is given in “6-minute increments,” or tenths of an hour, and  
22 “includes all the time it takes to make a repair, including inspection, cleaning, and adjustment time” as  
23 well as “nominal diagnostic time.” [Exhs P-120.001,<sup>18</sup> R-232, p. 1; RT Vol II 125:11-21]

24 63. To establish labor times for repairs in various components of a vehicle, Kia starts its  
25 inquiry even before the manufacturing process begins. “[A lot of those] processes and procedures that

26  
27 <sup>17</sup> A franchisee may submit a written request for modification of a franchisor’s uniform time allowance for a  
28 specific warranty repair or for additional time allowance for either diagnostic or repair work on a specific vehicle  
covered under the warranty subject to the requirements of Section 3065(a)(1).

<sup>18</sup> Exhibit P-120 includes LTS pages for a number of vehicle repairs.

1 are associated with the . . . repair of different components on the vehicle . . . are set up initially . . .  
2 before manufacture and during manufacture.” As part of the process, technicians working in Kia’s  
3 “service garage” perform confirmations of factory-provided “time studies” for specific repairs,  
4 especially “those related to certain types of repairs or extensive repairs.” If the factory “labor hours” are  
5 validated by the technicians’ reviews, Kia will approve the “labor hours” assigned to the specifically  
6 identified repairs and they become the “time allowances” for those repairs. [RT I 46:1-6, 47:5-17,  
7 67:25-68:15; RT II 335:13-336:16]

8         64. Kia assigns each repair or replacement a “labor operations code” which, in turn,  
9 corresponds to the time allowance which the dealer will use in its claim to Kia for warranty  
10 reimbursement for performing the repair. In Kdealer+, the dealership’s service advisor or technician  
11 will input the VIN (vehicle identification number) and model (which is all the information needed to  
12 display information specific to the model), then a brief description of the repair or replacement. This  
13 will lead to a numerical “labor op code” (or “codes”), a description of the repair, the time allowance for  
14 the repair in 6-minute increments (tenths of an hour), a description of any part needed, plus descriptions  
15 and numerical identifiers of courses which Kia requires technicians to complete before undertaking the  
16 repair. [Exh P-123; RT I 66:20-67:2; II 126:9-127:3; V 835:7-16; VI 9:5-19; VII 62:9-17]

17         65. Kia has defined for its dealers the skill level (course work completion) needed for a  
18 “qualified” technician to perform a particular repair, as that term is used in section 3065(a)(1). For  
19 example, in order to “R & R” (repair and replace) a Body Control Module in a 2016 Kia Sorrento, a  
20 technician is required to have completed “Intro to Kia Automotive Electrical Course & Test,” “Intro to  
21 Kia Circuit Diagram Analysis Course & Test,” “Body Network Diagnosis Course,” and “Automotive  
22 Electrical Diagnosis Course.” [Exhs P-123, R-205, R-253]

23         66. If a technician encounters a difficult or complex diagnostic problem<sup>19</sup> involving an  
24 extraordinary length of time to diagnose, or requires technical support from Kia, and the LTS hours  
25 assigned to the task will be exceeded, the dealership may request additional “XTT time” from Kia. This

26 \_\_\_\_\_  
27 <sup>19</sup> For non-warranty work, if a dealer finds that its original estimate is “insufficient,” and the work is not yet  
28 done, the dealer may contact the customer to obtain “[w]ritten consent or authorization for an increase in the  
original estimated or posted price. . . .” [Bus. & Prof. Code § 9884.9]



1 stands for extra time on top of standard labor operations. If granted, Kia will compensate the dealer for  
2 the “additional time . . . based on the actual hours the technician spends [on the repair].” [Exh R-232,  
3 pp. 1-2; RT I 68:16-69:23, 69:21-23, 71:22-74:7; II 247:6-249:3; III 372: 4-15, 23-25] Without XTT  
4 approval, the dealership is paid only the LTS time for the repair. [RT III 371:24-72:3, 372:16-22]  
5 Putnam Kia has never applied for XTT time, complaining that the procedures for accessing it are too  
6 complex [RT III 374:22-375:24; RT VII 21:25-23:25]; even if its complaint may be justified, Kia does  
7 offer a simplified procedure if the dealership request is .9 hour or less. [Exh R-232; RT I 73:14-74:7;  
8 see also II 155:10-156:2, 249:14-23; III 374:10-377:16]

9 67. Kia considers its time allowances to be reasonable, and no evidence was presented to the  
10 contrary. [RT II 336:5-7] That Putnam Kia professes to use Kia’s LTS hours to price its non-warranty  
11 repair work is evidence of the reasonableness and adequacy of those time allowance hours for this  
12 dealer. [RT II 337:8-22; RT V 943:15-23; VII 136:4-8, 140:5-9]

### 13 **Kia’s Establishment of Hourly “Labor Rates” for Warranty Work**

14 68. Unlike time allowance hours, it is the hourly “labor rate”<sup>20</sup> which varies among  
15 dealerships, thereby causing differences in the product of the multiplier, the warranty payment. [Exhs  
16 R-237-R-240]

17 69. Kia’s Warranty Support Team, headed by James Nardini, is responsible for the setting of  
18 warranty reimbursement rates for individual dealers. The team receives dealer requests and performs  
19 labor rate review and approvals. [RT I 47:18-23]

20 70. In California, previously established Kia dealerships may request increases in their  
21 warranty reimbursement labor rates in the following ways:

22 A. By following the procedure set forth in section 3065.2;

23 B. By completing Kia’s “Warranty Labor Rate Market Analysis” market survey of  
24 dealers in their competitive areas; or

25 C. By entering into a voluntary written agreement with the franchisor. [Veh. Code  
26

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27 <sup>20</sup> Per section 3065.2, the variable rate is a “retail” or “customer-pay” labor rate calculated from prices  
28 established by the franchisee to its retail customers for out-of-warranty repairs. It is variable because each  
dealer establishes the prices it charges to customers for repairs, and therefore its “rates.” [Section 3065(b)]

1 §3065(b); Exh J-2.001-.002; RT I 87:12-22, 88:7-16]

2 71. Kia franchisees in the same district as Putnam Kia which were approved for warranty  
3 labor rate increases pursuant to section 3065.2 were the following:

4 A. Kia of Vacaville, former rate unknown, receiving \$176.80/hour (as of April 1,  
5 2022). [Exh P-116.005; RT II 293:18-294:1; RT IV 768:24-769:4];

6 B. Capitol Kia, formerly receiving \$206.30/hour (as of June 23, 2022), thereafter  
7 receiving \$236.10/hour (as of June 25, 2023). [Exhs P-116.003, R-238; RT II 286:12-287:18];  
8 and

9 C. Jim Bone Kia of Santa Rosa, formerly receiving \$163.50/hour (as of August 4,  
10 2022), thereafter receiving \$188.10/hour (as of August 25, 2023). [Exhs P-116.002, R-237; RT  
11 II 284:6-285:18].

12 72. Kia franchisees in the same district as Putnam Kia which were approved for warranty  
13 labor rate increases by submitting market survey forms are the following:

14 A. Concord Kia, formerly receiving \$194.10/hour (as of April 16, 2021), thereafter  
15 increased to \$210.00/hour (as of January 16, 2023). [Exhs P-116.009, R-239; RT II 295:8-17,  
16 296:2-9; IV 773:16-23, 781:8-11]

17 B. Dublin Kia, formerly receiving \$184.70 (as of August 25, 2021), thereafter  
18 receiving \$199.30/hour (as of April 22, 2023). [Exhs P-116.010, R-240; RT II 296:21-297:4];

19 C. Kia of Marin, former rate unknown, receiving \$180.40/hour (as of February 16,  
20 2022). [Exh P-116.001; RT II 283:18-284:5]; and

21 D. Oakland Kia, former rate unknown, receiving \$216.00/hour (as of June 2, 2022.)  
22 [Exh P-116.004; RT II 289:7-15; RT V 899:25-900:10].

23 **FINDINGS REGARDING NON-WARRANTY REPAIRS**

24 73. Kia dealerships have complete discretion in setting competitive market prices for  
25 “customer pay” (“retail pay”) repairs and services.<sup>21</sup> No restrictions or directions are imposed by Kia.

26 \_\_\_\_\_  
27 <sup>21</sup> The stipulated Glossary defines Customer Pay Repair Order as “[a] repair order written by the dealership’s  
28 service department for services to be paid for by a retail customer and not by the manufacturer under a  
warranty.” [Glossary, p. 2]

1 The Automotive Repair Act requires repair dealers to keep a copy of a retail repair order invoice for  
2 three years and to give one copy to the customer; there is no requirement to provide a copy to the  
3 franchisor, nor was any evidence presented that Kia received copies of these invoices. [Bus. & Prof.  
4 Code §§ 9884.8, 9884.11; RT I 81:16-24; RT II 332-2-8; RT III 387:6-8; RT VII 137:24-138:2, 147:13-  
5 22, 153:23-154:16]

6 74. Section 3065.2 is silent in regard to customer-pay pricing: a franchisee may set any price  
7 for any repair at any time without running afoul of the statute.

8 75. However, as licensed automotive repair dealers, franchisees such as Putnam Kia are  
9 subject to BAR rules and regulations. For example, repair dealers must provide upfront pricing on a  
10 written work order: “The automotive repair dealer shall give to the customer a written estimated price  
11 for labor and parts necessary for a specific job . . . No work shall be done and no charges shall accrue  
12 before authorization to proceed is obtained from the customer.” [Bus. & Prof. Code § 9884.9(a)]

13 76. Repair dealers must obtain documented approval for any increases in the original  
14 estimated price; describe on the invoice “all service work done and parts supplied” with subtotal prices  
15 for each stated separately; give the customer the invoice and keep one copy; and keep all records for  
16 three years. Written estimates are not required for “preventative maintenance services” if a price is  
17 posted and acknowledged by the customer. [Bus. & Prof. Code §§ 9884.8, 9884.9(a), 9884.11]

18 **Putnam Kia’s Dealer Management System (DMS)**

19 77. Putnam Kia’s DMS is a computer software program which manages the dealership’s  
20 business. CDK is the DMS used at Putnam Kia. It is used in both warranty and non-warranty service  
21 operations: “[i]t is basically how you write up repair orders, how you sell cars. All the paperwork that is  
22 done is through this system.” [RT V 987:24-988:15] It is the repository where customer records and  
23 repair orders are kept. FrogData extracted accounting copies of repair orders from Putnam Kia’s DMS  
24 for its submission. [RT VIII 11:11-19, 12:13-24, 16:22-17:8, 17:21-19:5, 26:20-27:13, 73:22-74:8,  
25 133:6-24; RT IX 78:3-8]

26 78. Each iteration of a repair order (work order, invoice, accounting copy) displays different  
27 information depending upon when it was produced. [Bus. & Prof. Code §§ 9884.8, 9884.9(a)(1); Exh  
28 122.001-.012; RT II 149:9-15, VI 131:24-132:7, 136:5-137:12, 144:6-18, 147:2-149:23] Putnam Kia

1 does not disclose to customers their hourly labor rates or the number of actual hours spent on the repair  
2 or service. [RT VII 146:14-147:6]

3 79. Typically prepared by the service advisor, a work order describes the customer  
4 complaint(s), an estimate and the customer's authorization for work that is specifically identified. Each  
5 complaint, service or concern is separately documented on "repair lines," designated alphabetically (A,  
6 B, C, etc.). Subsequent entries (technician's narratives of diagnostic and repair work, for example) are  
7 entered on the specific repair lines to which they relate. [Bus. & Prof. Code § 9884.9; Cal. Code Regs.,  
8 tit. 16, §§ 3352(a), 3353(a); see for example Putnam Kia Repair Order No. 10280 in Exh P-122]

9 80. The invoice is the bill the customer is expected to pay. Charges for labor, parts and sales  
10 tax are listed separately. [Cal. Code Regs., tit. 16, §§ 3352(c), 3356(j)] Although the invoice presented  
11 to the customer contains the total charge for labor, it does not evidence how the labor charge was  
12 computed as it does not contain the number of hours charged to the customer nor the hourly rate being  
13 charged for labor. For example, if the labor charge is shown on the invoice as \$500, the customer does  
14 not know if the \$500 is for 1 hour or 5 hours or some other time.

15 81. The accounting copy is the final repair order produced, closing the transaction. It  
16 contains additional information not appearing on the earlier customer copies. For some repair lines, it  
17 displays two fields where data may be entered, "A/HRS" (Actual Hours) and "S/HRS" (Sold Hours).

18 82. Actual Hours (A/HRS), the amount of time spent by a service technician to perform a  
19 repair on a motor vehicle [Glossary, p. 2], reflects actual technician time recorded on a repair order.  
20 Each technician is expected to "clock in" and "clock out" on a time clock on a specific repair line while  
21 working on a repair or service. At completion, the DMS system will total the technician times, then the  
22 hours (and/or portions thereof) will be replicated under A/HRS for the appropriate repair line. [RT I  
23 70:1-11, 150:10-19, 152:19-153:1; VI 48:10-16; VII 102:8-18; IX 17:1-6]

24 83. Sold Hours (S/HRS), the time allowance for a repair that Putnam Kia records on  
25 the accounting copy of the repair order [Glossary, p. 3], are the labor hours sold to the customer. [Exh  
26 J-7.003; RT I 116:24-117:2] Putnam Kia professes to use sold hours to determine the price charged to  
27 the customer in advance of the work, at the time of the "write up" before any work is actually  
28 performed and before any particular technician is assigned to perform the job. [Exh J-7.003] Unlike

1 A/HRS times, entries under S/HRS are not based on data from other parts of the repair order and  
2 recorded, but are manually entered by the dealership. [RT II 118:6-11]

3 **Putnam Automotive Group’s Policies Regarding**  
4 **Non-Warranty Repairs**

5 84. Before section 3065.2 went into effect on January 1, 2020, dealerships then in the  
6 Putnam Automotive Group generally priced repairs using retail labor rates between \$220/hour and  
7 \$250/hour, multiplied by time allowances in commercial guides (independent third-party guides).  
8 [Glossary, p. 2; RT VII 135:10-13, 141:15-19, 141:24-142:2]

9 85. In 2020 or 2021, in response to section 3065.2, Kent Putnam instructed his dealerships  
10 to raise labor rates to between \$420/hour and \$460/hour, but only for those retail repairs which would  
11 meet the statutory requirements for submission to franchisors for higher warranty rates. [RT VII  
12 141:20-142:21]

13 86. Putnam Automotive Group as a business also decided to use manufacturers’ (factory)  
14 time guides on all repairs. The time allowance hours in factory guides are generally smaller than those  
15 in commercial guides. [RT VII 135:10-13, 137:2-9, 155:21-156:3, 157:1-23] In this industry, according  
16 to Kent Putnam, it’s very normal and customary just to take the manufacturer’s time guide and multiply  
17 it, and then times it by your labor rate, and that would be the price the customer gets. [RT VII 155:21-  
18 156:3, 156:12-17]

19 87. From its opening, Putnam Kia’s managers were instructed to use the same labor rate  
20 pricing as the other Putnam dealerships: for retail repairs which could be submitted to Kia per section  
21 3065.2 for higher warranty rates, Putnam Kia’s service advisors were expected to price those repairs  
22 using a labor rate of \$440/hour. [RT VII 136:9-137:1, 137:10-23 145:19-22]

23 88. The new, increased labor rates used in pricing repairs did not mean that the dealerships  
24 raised prices. [RT VII 138:11-17, 155:11-12] According to Kent Putnam, “[a]ll auto repair is  
25 competitive. People shop their price, so of course we have to be competitive. And like I said, we didn’t  
26 raise the price to our customers. We just changed how we calculated it.” Kent Putnam explained that  
27 this was accomplished by doing some “basic math” and “a little basic algebra.” [RT VII 136:15-18,  
28 137:14-19, 155:5-12]

1 89. But the calculation still must result in a competitive price to the customer and  
2 dealerships have complete discretion in what repairs are charged a certain per-hour rate for customer-  
3 pay. [RT VII 154:13-16] Although the dealerships in the Putnam Automotive Group have policies to  
4 use just the factory time guides in retail pricing and to not use multiples of those time guides, the  
5 “amount [*sic*] of hours is [Putnam Kia’s] discretion,” implying that time allowances in factory time  
6 guides may not be followed if the calculation produces a non-competitive price. [RT VII 155:5-14,  
7 156:12-17]

8 **Diagnostic-Only Jobs**

9 90. Similarly, for diagnostic-only jobs, service advisors were instructed to quote to  
10 customers a “flat fee” of \$250.00, with a “sold hour” time of .5 hour (\$500/hour). [RT V 954:24-  
11 955:19] Kent Putnam implied that diagnostic work was priced differently from other repairs. [RT VII  
12 142:3-13]

13 **FINDINGS REGARDING PUTNAM KIA’S SUBMISSION TO KIA**

14 91. On March 22, 2022, Putnam Kia submitted to Kia documents in support of its request  
15 pursuant to section 3065.2 for a higher warranty labor rate. The package consisted of a letter signed by  
16 Kent Putnam,<sup>22</sup> 538 closed repair orders from Putnam’s files, and selected repair orders, each of which  
17 Putnam represented to be “qualified” under the statute. An attached spreadsheet captioned “Putnam Kia  
18 of Burlingame California Dealer # CA323 Labor Analysis 03-16-2022,” showed the data and  
19 calculations based on information from the “qualified” repair orders. [Exh J-3.001-.005; RT VII 128:4-  
20 17, 129:21-130:2]

21 92. The spreadsheet listed 31 line-items<sup>23</sup> (“Counts”), repair orders upon which Putnam Kia  
22 based its submission. [RT II 137:8-10] It was arranged in columns, each with identifiers. “Labor Sale  
23 Hours” (“Sold Hours”) totaled 21.4 and “Net Labor Charges” totaled \$9,577.01. By dividing the labor  
24 charges by the sold hours, Putnam arrived at a “Labor Rate” of \$447.52. [Exh J-3.002-.003; RT VIII  
25 39:11-40:7] This was an increase of \$222.25/hour over Putnam Kia’s current warranty labor rate of  
26 \_\_\_\_\_

27 <sup>22</sup> Only reviewed by him, authored by FrogData. [RT VII 128:4-17]

28 <sup>23</sup> Numbered 1-29: two Counts were repeated without increasing the Count number because two repair orders showed two different repairs on the same vehicle on the same visit: #10180 and #10529. [Exh J-3.002]

1 \$225.27/hour, which had been set fewer than seven months earlier when the Kia franchise that had been  
2 awarded to Mr. Putnam opened in September 2021. [Stipulation of Facts, ¶¶ 6-9, 11; Exhs J-2.001, J-  
3 3.001-.003, R-201]

4 93. FrogData was exclusively responsible for the submission. No Putnam Kia personnel  
5 participated in the collection of, or any review of, the submitted repair orders or the calculations in  
6 FrogData’s Labor Analysis. [RT IX 14:2-22, 34:21-35:4] Kent Putnam did not work directly with  
7 FrogData in preparing the submission. [RT VII 128:22-129:14] Andrey Kamenetsky did not review any  
8 of the documents in the submission, nor was any evidence presented that Rad Reyes played any part in  
9 Putnam Kia’s submission. [RT IX 13:12-18, 14:19-22, 104:2-10]

10 94. Putnam Kia contracted with FrogData for its services on February 16, 2022. [RT VIII  
11 214:24-216:13]

12 95. FrogData is a “big data platform company.” Its “WarrantyBoost+” program performs  
13 “data analytics” for car dealerships, then uses the results for franchisee warranty reimbursement filings  
14 across the country. [RT VIII 10:3-22]

15 96. Robin Brantley was FrogData’s “lead analyst” on the Putnam Kia labor rate submission.  
16 As lead analyst, she would have been in charge of gathering data (repair orders) from the dealership  
17 within a certain date range; determining from those repair orders the “optimal range of dates” to support  
18 the labor rate request; analyzing the repair orders within the optimal range to sort out “qualified” repair  
19 orders meeting the definition of such in section 3065.2(j), and communicating with her client during the  
20 process. [RT VIII 13:22-14:4, 31:16-18, 47:23-25, 119:14-25, 133:19-134:15]

21 97. However, Robin Brantley was not called as a witness, so there is no testimonial evidence  
22 in the record regarding the preparation of the spreadsheet attached to the March 22, 2022 submission  
23 letter.

24 98. FrogData typically performs the following services for its clients:

25 A. FrogData will connect electronically to the dealership’s computer system,  
26 remotely accessing its DMS. FrogData prefers to collect customer repair records themselves,  
27 without dealership involvement in the collection process, so it can move faster and more  
28 efficiently. FrogData needs only the accounting copy of a customer’s repair order to do its

1 analysis.

2 B. Receiving dealership data in a digital format enables FrogData to find, in the  
3 dealership's customer-pay records, the date range with the highest retail labor rate. This "range  
4 selection analysis" looks at historical data typically going back 180 days searching for an  
5 elevated or "high point" range, "the most optimal date[s]" to support warranty reimbursement  
6 requests.

7 C. With the optimal date range identified, selected information from the repair  
8 orders is converted into "a very large spreadsheet format" which is, in turn, broken down into  
9 "analysis format." The focus of FrogData's analysis is whether the repair is "qualified" or not  
10 within the meaning of section 3065.2(j), although Jeff Korenak professed to have no information  
11 about Kia's Warranty Program. The final product is an Excel spreadsheet using information  
12 from the dealership's "qualified" repair orders.

13 D. To get the dealership's "effective retail labor rate," FrogData uses repair orders it  
14 has identified as "qualified" from the optimal date range it identified and divides the "labor sale  
15 hours" ("Sold Hours") by the "net labor charges" (customer payments).

16 E. Sold Hours (S/HRS) are entered by a dealership on accounting copies of repair  
17 orders. Jeff Korenak did not "specifically" know how Putnam Kia determined Sold Hours, since  
18 hours entered on repair orders (and how they are arrived at by the dealership) are irrelevant to  
19 FrogData's work, but he implied that Sold Hours were "negotiated" by dealers to achieve "an  
20 end result."

21 F. Even though Actual Hours ("A/HRS") typically appear on accounting copies of  
22 repair orders, and are accessible to FrogData, those hours do not appear on a FrogData-generated  
23 Excel spreadsheet. According to Jeff Korenak, Actual Hours are not part of the "formula" used  
24 by FrogData which, he believes, is based on section 3065.2.

25 [RT VIII 11:11-19, 15:16-17:8, 17:21-18:25, 19:1-5, 28:25-29:8, 32:18-33:2, 34:3-35:23, 46:4-16,  
26 135:16-19, 189:22-190:8]

27 99. FrogData provides its dealership clients with not only a "filtered" spreadsheet that may  
28 be submitted for warranty labor rate purposes, but also with the entire set of all repair orders FrogData



1 considered, also in Excel format. FrogData does this so that dealerships have source material “to make  
2 sure there’s no mistakes.” [RT Vol VIII 45:7-46:16]

3 **Kia’s Request for 30 Days’ Additional Repair Orders**

4 100. By letter to Kent Putnam dated April 20, 2022, Oscar Rodriguez, Kia’s Warranty  
5 Operations Manager, requested that Putnam Kia produce “all repair orders closed within the period of  
6 30 days immediately following the set of repair orders previously submitted by the Dealership.” The  
7 reason, according to the letter, was that Putnam Kia’s requested labor rate (\$447.52/hour) was  
8 “substantially higher” than its current labor rate (\$225.30/hour). [Exh. J-4.001-.002; Stipulation of  
9 Facts, ¶¶ 13-14; RT IV 577:5-19; see also RT Vol. IX 77:21-78:8]

10 101. Upon receiving Kia’s letter requesting the additional repair orders, Andrey Kamenetsky  
11 immediately passed it on to Jeff Korenak at FrogData, with instructions to extract 30 days of raw  
12 unanalyzed repair orders from Putnam Kia’s DMS and to transmit the documents back to Kia in their  
13 preferred method. Andrey Kamenetsky’s expectation was that Jeff Korenak “would have instructed his  
14 team to extract the data.” [RT IX 77:14-78:12]

15 102. Jeff Korenak confirmed that Putnam Kia forwarded Kia’s request to him for response.  
16 [RT VIII 61:17-62:3]

17 **Putnam Kia Provided Supplemental Repair Orders to Kia**

18 103. Jeff Korenak acknowledged that Andrey Kamenetsky had forwarded Kia’s request to him  
19 to prepare and send a response on Putnam Kia’s behalf. He understood that he was to retrieve and  
20 assemble copies of Putnam Kia’s repair orders falling between certain dates after the original  
21 submission and send them to Kia, along with a transmittal letter. He was “familiar with the  
22 manufacturers requesting . . . [an] additional 30 days, whether it’s preceding or following.” [RT VIII  
23 61:17-62:3; IX 77:21-78:12]

24 104. FrogData’s data team would have gone into Putnam Kia’s DMS and pulled the  
25 accounting copies of closed repair orders for the 30-day period starting February 1, 2022, through

26 ///

27 ///

28 ///

1 March 2, 2022; this produced sequential repair orders numbered 10637 through 10845.<sup>24</sup> [Stipulation of  
2 Facts, ¶¶ 15-17; RT VIII 64:13-20, 72:11-19, 73:17-74:8] Jeff Korenak then “organized them, you  
3 know, to make sure that everything was there. I would have downloaded them onto a thumb drive, put  
4 it into a FedEx envelope, attached the letter that is [Joint Exhibit] J-5 signed by Kent Putnam, printed  
5 that, put it in a FedEx envelope and sent it to Kia.” [RT VII 132:21-133:2, VIII 61:17-62:8, 63:2-5,  
6 67:9-11, 67:23-68:13] No calculations or analyses, like those done with the earlier Putnam Kia  
7 submission, were performed by FrogData before the repair orders were sent to Kia. There were no  
8 reviews for “qualified” repair orders, no creations of spreadsheets, and “no calculations whatsoever”  
9 regarding labor rates. [RT VIII 72:11-73:16]

10 105. On April 27, 2022, the repair orders were sent to Kia with a cover letter. [Exh. J-5.001;  
11 Stipulation of Facts, ¶¶ 15-16; RT IV 579:4-11; VIII 63:12-20; IX 78:18-79:4] According to Jeff  
12 Korenak, “[s]o the only thing we send in is accounting copies. So it would be an accounting copy of the  
13 closed repair order showing where all the monies were paid and what accounts they would go to,  
14 indicating that it's closed, you can't make any more modifications to it. You can't -- yeah, it's just – it's  
15 done. It's fine. The customer paid. They're gone. They got their car.” [RT VIII 73:17-74:8]

16 106. Although Kent Putnam did not draft the transmittal letter (FrogData did), he reviewed it  
17 before he signed it. [RT VII 132:5-133:2] Andrey Kamenetsky did not review any of the repair orders  
18 sent to Kia, nor did he know how FrogData sent them to Kia. [RT IX 79:5-80:2]

### 19 **Kia's Calculation of a “Proposed Adjusted Retail Labor Rate”**

20 107. By letter dated May 26, 2022, Kia's Warranty Operations Manager Oscar Rodriguez  
21 denied Putnam's labor rate request, characterizing the increase to \$447.52/hour from \$225.30/hour as  
22 “materially inaccurate and potentially fraudulent.” He attached a spreadsheet of Kia's own  
23 calculations, which yielded a significantly lower retail labor rate than Putnam Kia's submission.<sup>25</sup>  
24 [Stipulation of Facts, ¶¶ 18, 19; Exh J-6.001-.005; RT II 171:12-21; RT IV 584:13-585:11; RT IX  
25 80:10-81:4]

26  
27 <sup>24</sup> Putnam's 90-day submission was a repair order range beginning with RO #10099 dated 11/03/2021 and ending  
with RO #10636 dated 01/31/2022. [Exh J-5.001]

28 <sup>25</sup> Although Oscar Rodriguez signed the letter and “the content was reviewed between Oscar and the [Kia] legal  
teams . . . .,” he was not called as a witness. [RT II 332:9-334:21; V 861:18-863:2]

1           108. According to Kia, Putnam Kia’s submission was “materially inaccurate” in three  
2 respects:

3           A. Putnam Kia used “book times” in its calculations that were “in the aggregate, far  
4 fewer than the actual number of hours that generated the charges on the repair orders.” (Kia  
5 understood that “book times” were Putnam Kia’s “sold hours,” which it had entered on the  
6 accounting copy of its repair order as “S/HRS”, while “actual hours” were the technician’s  
7 recorded time to complete the diagnosis, appearing on repair orders as “A/HRS.”) [Exh. J-  
8 6.001-.003; RT IV 588:5-24] An example was a diagnostic-only job for which Putnam Kia  
9 charged the customer \$250.00. Although the technician’s actual time was 3.29 hours  
10 (“A/HRS”), Putnam Kia used .50 hour (“S/HRS”) in its calculations. Using “A/HRS” resulted  
11 in a retail rate of \$75.99/hour, while using “S/HRS” yielded \$500.00/hour. Putnam Kia did not  
12 explain why it chose to use “S/HRS” instead of “A/HRS” in its submission or what criteria it  
13 used to arrive at the “S/HRS” figure. [Exhs J-6.001-.003, R-205; RT IV 588:5-595:18]

14           B. Putnam Kia failed to include in its calculations certain repairs involving brakes,  
15 batteries and bulbs, which Kia contended were “qualified,” as defined by section 3065.2(j).  
16 James Nardini and Kia’s Warranty Manager, after review, added these repairs to the  
17 spreadsheet, highlighted in red. [Exh J-6.002, .004-.005; RT II 173:18-174:3]

18           C. Putnam Kia included a transaction which did not include a repair. Although  
19 Putnam Kia ordered a part for a customer and charged \$250 for doing so, the customer declined  
20 repair service. Putnam Kia “booked” (Kia’s term) .10/hour which appeared on the accounting  
21 copy of its repair order as “sold hours” (“S/HRS”) resulting in an hourly rate of \$2,500. [Exhs J-  
22 6.002, R-211.001]

23           109. Kia concluded that Putnam Kia’s submission was “potentially fraudulent” asserting that  
24 the requested rate did not reflect “fair and reasonable compensation” in that it was more than \$200/hour  
25 higher than the highest rate paid to any other California Kia dealer and approximately \$200/hour higher  
26 than the retail rates charged by luxury dealerships in Putnam Kia’s own market. Moreover, Kia found it  
27 “difficult to believe” that a customer would pay \$250 to a dealership just for ordering a part. [Exh. J-  
28 6.002; RT IV 758:12-759:21]

1 110. In addition to making additions to, and at least one subtraction from, Putnam Kia's  
2 spreadsheet and using slightly different dates,<sup>26</sup> Kia amended Putnam Kia's spreadsheet by adding an  
3 "A/HRS" column, reflecting information absent from the Putnam submission but present on many of  
4 the supporting repair orders. Kia characterized "A/HRS" times as "the actual number of hours that  
5 generated the charges on the repair orders . . . .," tracking the language of section 3065.2(a)(2). With  
6 the change and using the added A/HRS resulted in a total of 43.94 hours; Kia's inclusive date revisions  
7 also increased the total amount of charges to \$11,815.08. [Stipulation of Facts, ¶ 20; Exh J-6.004-.005]

8 111. Kia's "proposed adjusted retail labor rate" of \$268.89/hour was based on the result it  
9 obtained by dividing the total charges (\$11,815.08) from 37 repair orders written during the 90-day  
10 period by the "A/HRS" (43.94 hours) shown on those repair orders. [Section 3065.2(d)(5); Stipulation  
11 of Facts, ¶ 21; Exh J-6.004-6.005]

12 112. Kia has been paying Putnam Kia at the rounded-up rate of \$268.90/hour since May 28,  
13 2022. [Section 3065.2(d)(3); Stipulation of Facts, ¶ 23]

14 **Putnam Kia Responds to Kia's "Proposed Adjusted Retail Labor Rate"**

15 113. By letter on June 15, 2022, Putnam Kia responded to Kia's May 26, 2022, denial letter.  
16 The letter addressed Kia's stated concerns and proposed a settlement, with rates higher than the  
17 \$268.90/hour rate proposed by Kia. Although signed by Kent Putnam, Andrey Kamenetsky authored  
18 the letter with the help of Jeff Korenak. [Exh J-7.001-.013; RT VIII 71:17-24; IX 91:2-8]

19 114. Andrey Kamenetsky stated that Putnam Kia used "sold hours" in its submission because  
20 it is "sold hours" that it uses to price repairs to customers. "Actual hours" are unknown at the beginning  
21 of the job and will vary depending upon the skill of the technician and other unforeseen factors and the  
22 customer must not "participate financially" in these variables. [RT IX 82:14-83:3, 95:13-96:6]

23 115. Under a caption entitled **"Sold hours vs actual hours and how customer pricing is**  
24 **determined,** he wrote, "[f]or consistency, the labor rate and hours 'sold' that are charged to the  
25 customer and establish the effective rate are established **at the time of write up before the work is**  
26 \_\_\_\_\_

27 <sup>26</sup> The 90 days between November 12, 2021 and February 10, 2022. [Stipulation of Facts, ¶ 20] Putnam's  
28 submission used different dates because they were more easily retrieved and organized by FrogData's computer  
program, according to Jeff Korenak. [RT VIII 20:8-24]

1 **actually performed and before any particular technician is assigned to perform the job . . .** The  
2 actual price charged to the customer in advance of the work being performed **does not change** based on  
3 the ‘actual hours’ it took to complete, and as such ‘actual hours’ do not determine the charges the retail  
4 customer pays.” [Bolded and underlined portions in original.] [Exh J-7.003]

5 116. Andrey Kamenetsky did not state what data, information or standard that Putnam Kia  
6 uses to establish “sold hours” for a particular repair or service, although he wrote that they “are most  
7 similar to how the manufacturer pays on warranty reimbursement . . .”<sup>27</sup> [Exh J-7.006]

8 117. Andrey Kamenetsky disagreed with Kia’s addition of repair orders for brake pads and/or  
9 rotor replacements, which he generally felt were maintenance items and therefore not “qualified.” He  
10 also questioned Kia’s inclusion of repair orders for batteries and a light bulb. [RT IX 84:12-22, 86:5-  
11 21, 99:12-16]

12 118. Andrey Kamenetsky agreed with Kia that Repair Order #10298 (Exh 211)<sup>28</sup> should be  
13 removed from Putnam Kia’s submission since it was only a charge (\$250) for ordering a part, but “no  
14 qualified repair . . .” However, he failed to address why Putnam Kia had “booked” .10 hour as “S/HRS”  
15 on the accounting copy for the task and had included the repair order in its original submission. [RT IX  
16 86:22-87:20, 101:23-102:5]

17 119. Although not raised by Kia, Andrey Kamenetsky’s letter also revealed that “the  
18 customer’s own notes in his [online] service appt reservation . . .” disclosed that his 2016 Kia Sorrento  
19 had been “MODIFIED” [emphasis in letter] with 2020 Kia Telluride Wheels and TPMS system. This  
20 would have voided the warranty so that Repair Order #10158 should not have been included in Putnam  
21 Kia’s original submission. [Exhs J-7.005, R-205] Andrey Kamenetsky did not address why Putnam Kia  
22 included the repair order in its original submission.

23 120. Putnam Kia expressed hope, in a “good faith partnership” that the parties could resolve  
24 their differences “in a cooperative, collaborative, and expedient manner.” Putnam Kia proposed two  
25 possible resolutions: one labor rate for \$343.03/hour and another for \$436.51/hour.

26 \_\_\_\_\_  
27 <sup>27</sup> Andrey Kamenetsky did not state in the letter that Putnam uses “factory guide times” to determine “sold  
28 hours.” [RT IX 98:5-13]

<sup>28</sup> Repair Orders #10280 (Exhs P-122 and R-210) and #10298 (Exh R -211) are for the same vehicle.



1           126. Repair orders in a franchisee’s submission must show the prices the dealership<sup>29</sup> has  
2 charged customers for labor in the previous six months, as shown on “actual invoices.” But for the  
3 labor of technicians, the charges would not have been “generated.”

4           127. Actual labor hours are typically processed with DMS software at dealerships and are  
5 reasonably accurate:

6           A. Technicians contemporaneously record work on a specific job. A time clock will  
7 note the technician’s ID and record the “punch time,” then convert it to six-minute increments.  
8 The system may not be exact to the minute: Putnam does not require a technician to clock on  
9 and off a job for a bathroom break or to take a phone call, and occasionally technicians record  
10 their time on the wrong repair line or forget the time clock altogether. [RT I 69:24-70:11; II  
11 220:18-23; V 928:23-929:2]

12           B. After completion of the repair, DMS software totals technicians’ actual hours for  
13 each repair line, then replicates those numbers under the A/HRS input field on the same repair  
14 line of the accounting copy of the repair order. No evidence was presented that A/HRS entries  
15 are entered in any other manner except by automatic transfer by the DMS from recorded  
16 technician labor times. A/HRS are used in judging employee efficiencies and performance and,  
17 for “flat rate” technicians, to pay them.

18           **“Sold Hours” are Inappropriate to be Used as a Statutory Standard**

19           128. In support of its argument that “sold hours” are “hours” in section 3065.2(a)(2), Putnam  
20 Kia asserts that since upfront pricing is legally required and actual hours are not known when pricing  
21 estimates, actual hours cannot be used in a statute relating to warranty labor reimbursement rates. The  
22 argument is a logical fallacy, a *non sequitur*, because the conclusion (actual hours cannot be used in the  
23 statute) cannot be inferred from the premise (actual hours cannot be used to estimate prices). Moreover,  
24 as noted above, section 3065.2 is focused exclusively on “completed” transactions, when actual hours  
25 are known and recorded and whatever initial pricing decisions the dealership had made were long past.

26           129. Franchisees, in submissions, must show two reasonably verifiable numbers to support a  
27 \_\_\_\_\_

28 <sup>29</sup> Previous to the submission, customer-pay repair orders have been in the franchisee’s exclusive possession.

1 new and higher warranty labor rate: actual charges for labor paid by customers and the “hours that  
2 generated those labor charges.” Actual labor times are electronically processed by DMS software from  
3 a technician (with a unique ID number) to time clock (with a recorded date and time) to entry under  
4 A/HRS on the accounting copies of repair orders. Since A/HRS are based on data from other parts of  
5 the repair order, they may be verified by looking at the time clock entries, the description of the repair,  
6 the parts used, and the technician notes of actions taken and decisions made.

7 130. There is nothing in a repair order which validates S/HRS accuracy. Unlike A/HRS,  
8 entries under S/HRS are not based on data from other parts of the repair order but are entered manually  
9 from unknown sources, appearing on accounting copies of repair orders, but not on Work Orders or  
10 Invoices or any other documents. [Exh P-122.003, .004, .011] There is no identification in the repair  
11 order of the person entering the hours, of the date and time of entry, how they were calculated, or of  
12 any other information supporting the accuracy of the entry.

13 131. The parties’ definition of Sold Hours (S/HRS) as “[t]he time allowances for a repair that  
14 Putnam Kia records on the Accounting Copy of the Repair Order” [Glossary, p. 3], is unhelpful,  
15 revealing nothing about facts on which those “time allowances” might be based.

16 132. Putnam Kia’s argument is that “sold hours” are LTS factory hours, with a labor rate  
17 multiplier of \$440.00/hour, are used to price retail repair estimates. This pricing policy, Putnam Kia  
18 claims, has been the direction of the Putnam Group CEO and senior personnel to service advisors since  
19 the beginning of the Putnam Kia franchise.

20 133. Testimony of Kent Putnam is:

21 Q. [MR. HUGHES] “What have you instructed the managers at the Putnam Kia  
22 store in regard to how they should be pricing customer-pay repairs?”

23 A. [MR. PUTNAM] I instructed them to use the factory time guide on all repairs.

24 Q. Okay. And what about the hourly rate, the customer-pay hourly rate for Putnam  
25 Kia? Do you know what that is?

26 A. Yes.

27 Q. What is it?

28 A. 440 an hour.”



1 [RT VII 136:4-14]

2 134. Testimony of Andrey Kamenetsky is:

3 Q. [MR, SULLIVAN] “There’s also been testimony at this hearing that the Putnam  
4 Auto Group has a policy to use the manufacturer's time allowances when pricing  
5 jobs. Do you recall that testimony?

6 A. [MR. KAMENETSKY] I do.

7 Q. Okay. And specifically with respect to Putnam Kia, there’s been testimony that  
8 the policy is for the dealership to use the Kia LTS time allowances multiplied by  
9 \$440; is that right?

10 A. That is correct.”

11 [RT IX 127:2-11]

12 135. However, when pressed by respondent’s counsel, Andrey Kamenetsky admitted the  
13 following:

14 Q. [MR. SULLIVAN]: “Okay. But there is, in fact, no written policy to that effect,  
15 correct?”

16 A. [MR. KAMENETSKY]: Correct.

17 Q. And you don't know whether Putnam Kia actually follows that policy on any  
18 consistent basis, right?

19 A. It’s a guideline. So it’s just that; it’s a guideline.”

20 Q. You don't monitor it yourself?

21 A. I don't.

22 Q. You've been at this hearing, and you've seen that there have been several  
23 deviations from that policy, right?

24 A. Yes.”

25 [RT IX 127:12-20]

26 ///

27 ///

28 ///

1 136. Testimony of Rad Reyes follows:

2 Q. [MR. HUGHES] “Mr. Reyes, do you see that we have actual hours on the ROs  
3 and we have the S/ hours on the ROs?

4 A. [MR. REYES] Yes.

5 Q. What does the S/ hours refer to?

6 A. The sold hours refer to what the customer will be charged for.

7 Q. Okay. Maybe we should give some further background on that. How does  
8 Putnam Kia's service advisor price a job? When a customer comes in for a non-  
9 routine maintenance repair, how does the service advisor determine the price to the  
10 customer and how do they use the LTS system?

11 A. So they use the LTS to figure out the labor times. The labor time, which would  
12 be the sold hours. And then the sold hours are multiplied by 440. And then you  
13 also get the price of the parts for the job. And then those are combined, and that  
14 estimate is given to the customer before the work is done.

15 Q. And how do the service advisors use actual hours to charge a customer for a  
16 service repair?

17 A. They don't. It's based off of the sold hours.”

18 [RT VI: 17:4-24]

19 137. In fact, the foregoing testimony is untrue or misleading. Using the formula described by  
20 the CEO and others was routinely either disregarded, ignored or unknown by service advisors in pricing  
21 retail repairs to customers. It is also inconsistent with the testimony of Kent Putnam that no retail  
22 customer will be charged a higher rate due to the claimed increase in the hourly labor rate.

23 138. In the submission, actual charges for repairs had to be multiplied by “sold hours,” not  
24 LTS hours, to guarantee that the fictional retail labor rate of \$440.00/hour would be the result. The  
25 following repair orders are examples showing where the “formula” (LTS hours x \$440/hour) was not  
26 followed:

- 27 ■ Repair Order No. 10165B [Exhs P-121.002, R-249.001-.002; RT VI 23:20-26:4]

28 ///

- 1           ▪ Repair Order No. 10180B [Exhs P-121.002, R-250.001; RT VI 27:7-29:22]<sup>30</sup>
- 2           ▪ Repair Order No. 10352A [Exhs P-121.002, R-254.001; RT VI 55:13-24]<sup>31</sup>
- 3           ▪ Repair Order No. 10404A [Exhs P-121.002, R-255.001; RT VI 56:9-58:16]
- 4           ▪ Repair Order No. 10415A [Exhs P-121.002, R-256.001; RT VI 58:17-61:16]
- 5           ▪ Repair Order No. 10426D [Exhs P-121.002, R-257.003; RT VI 71:15-73:20]
- 6           ▪ Repair Order No. 10486A [Exhs P-121.002, R-259.001; RT VI 84:14-86:4]<sup>32</sup>
- 7           ▪ Repair Order No. 10529B [Exhs P-121.002, R-260.002; RT VI 89:2-91:8]<sup>33</sup>
- 8           ▪ Repair Order No. 10581A [Exhs P-121.002, R-263.001; RT VI 101:24-107:16]

9           139. Jeff Korenak agreed that in order to determine whether a repair was “qualified” or not,  
10 one would first have to look at the manufacturer’s warranty, but he admitted that FrogData did not have  
11 a copy of Kia’s warranty program. [RT VIII 135:7-19] According to Jeff Korenak, FrogData’s  
12 guidance was to retrieve hours in the S/HRS input field, and ignore A/HRS hours, also displayed on  
13 repair orders. [RT VIII 169:4-171:2] As for the reason for the policy, he referred to the statute and to  
14 FrogData’s “formula,” although he did not “specifically” know how Putnam Kia arrived at Sold Hours  
15 because “that is irrelevant to FrogData’s work,” but implied that Sold Hours were “negotiated” by  
16 dealers to achieve “an end result . . .”. [RT VIII 28:25-29:8, 32:18-33:2, 46:4-16]

17           140. Putnam Kia’s desired “end result” is to achieve a warranty reimbursement labor rate of  
18 \$440/hour. To accomplish this, its retail repair orders must prove its ability to make sales to customers  
19 at a labor rate of around \$440/hour, but Putnam Kia could not make this showing using actual charges  
20 and actual hours.

21           141. Using “sold hours” is an unreliable, unobjective standard: a dealer can manipulate the  
22 entry by “selling” whatever number of hours may be calculated to reach its desired labor rate,  
23 irrespective of its actual sales and actual hours and true labor rates. Reducing the number of sold hours

24 \_\_\_\_\_  
25 <sup>30</sup> Rad Reyes testified that the service advisor’s failure to use LTS hours as sold hours here was “[p]robably a  
mistake. They—you know, they’re instructed to use the LTS.” [RT VI 29:17-22]

26 <sup>31</sup> Again, with sold hours different from LTS hours, Rad Reyes testified, “the service advisor did not follow  
directions. Looks like a gross mistake.” [RT VI 55:21-24]

27 <sup>32</sup> Rad Reyes could not explain why the service advisor sold the hours at 1.5, testifying “he could have been  
trying to oversell . . . he is a salesman . . . [t]hat’s definitely not what he should have done.” [RT VI 85:23-86:4]

28 <sup>33</sup> “Definitely” the service advisor’s mistake, according to Rad Reyes. [RT VI 91:1-12]

1 allows Putnam Kia to competitively price the charge to a retail customer and at the same time maintain  
2 its claim that the hourly labor rate has been increased to \$440. Adopting Putnam Kia’s argument would  
3 allow franchisees to dictate the warranty labor rate that franchisors must pay, however divorced from  
4 the actual number of hours that generate the charges.

5 **Putnam Kia’s Submission on March 22, 2022 Failed to Conform to Section 3065.2**

6 142. To create the spreadsheet, Frog Data had abstracted information from a select group of  
7 repair orders (those “qualified” and compliant with section 3065.2) in Putnam Kia’s DMS. To justify a  
8 higher warranty labor rate, Putnam Kia needed to prove, through these repair orders, that it had  
9 received payments for labor from its retail customers for repairs performed at a certain labor rate.

10 143. On March 22, 2022, in sending the above-described documents and calculations to Kia,  
11 Putnam Kia represented, either expressly or by implication, that the information it submitted was true  
12 and correct and that the submission met the requirements of section 3065.2. In fact, as discussed above,  
13 those representations were untrue, (and thus materially inaccurate) as Putnam Kia had included repair  
14 orders which failed to conform to section 3065.2, and which inflated Putnam Kia’s retail labor rate.

15 144. Non-conforming repair orders include the following:

16 **Diagnostic-Only Repair Orders (And Some with Other Disqualifiers)**

17 145. “Diagnostics” is not a separate warranty-covered service so, absent a repair, diagnostic-  
18 only entries are not “qualified” under section 3065.2. “According to Kia Service Policy, all established  
19 labor operations in the Kia LTS contain nominal diagnostic time . . . *Unless otherwise noted, repair*  
20 *time also includes Diagnostic Time.*” [Italics in original.] [Exh R-232, p. 1]

21 146. Putnam Kia’s policy is that diagnostic work is charged to customers at a “flat fee” of  
22 \$250.00 and a Sold Hours entry time of 0.5 of an hour, irrespective of the actual time the technician  
23 spends on the diagnostic task. [RT VII 172:12-173:1] Customers, after receiving a diagnosis,  
24 sometimes return days later for the repair or replacement, and the diagnostic fee previously paid may be  
25 either be folded into the estimate for the repair, or not---Putnam Kia appears to have no consistent  
26 policy in this regard. [RT VI 188:3-190:11]

27 147. Several of Putnam Kia’s submitted repair orders were diagnostic-only jobs (and some of  
28 those also presented other “qualified” issues). Service advisor Rad Reyes, sometime in 2023, was given

1 a list of the repair orders represented by the 31 line-items of the submission and instructed to look up  
2 Kia's LTS warranty times for each. There were several which had no LTS warranty time that he  
3 discovered: Repair Order Nos. 10148, 10153, 10158, 10180 (one of two entries), 10298, 10300, 10454,  
4 and 10617. [Exh 121.002; RT VI 8:2-9:19, 120:10-121:20]

5 148. The following are examples:

6 A. Repair Order #10298

7 149. Repair Order #10298 was listed in Putnam Kia's March 22<sup>nd</sup> submission and used in its  
8 calculations, with a claimed labor rate of \$2,500.00/hour. [Exhs J-3.002 (count 10), R-211, P-121.002]

9 150. On May 26, 2022, Kia challenged the inclusion of this repair order. [Exh J-6.002]

10 151. On June 15<sup>th</sup> (three months after the submission), Putnam Kia conceded the error, stating  
11 that "[w]e agree that the vendor FrogData should not have included this RO in our submission . . ."  
12 [Exh J-7.009]

13 152. Even though Mr. Kamenetsky indicated that this repair order should have been  
14 cancelled, it was included in Putnam Kia's March 22<sup>nd</sup> submission, which led to a clearly out-of-line  
15 result.

|    |   |   |
|----|---|---|
| 16 | Open/Close Dates:                       | 7 DEC – 10 DEC 21                         |
| 17 | Repair/Service:                         | Diagnostic - Part ordered then cancelled. |
| 18 | Customer Paid:                          | \$250.00                                  |
| 19 | Labor Sale Hours (S/HRS): <sup>34</sup> | 0.10                                      |
| 20 | Sold Labor Rate:                        | \$2,500.00/hour                           |
| 21 | Actual Hours (A/HRS): <sup>35</sup>     | 0.00                                      |
| 22 | Labor Rate:                             | Ineligible for submission.                |
| 23 | LTS Warranty Time Allowance:            | None ("Diagnostic" per Exh P-121.002)     |

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25 ///

26 \_\_\_\_\_  
27 <sup>34</sup> Hereinafter in this section, "Labor Sale Hours" (Sold Hours) will be referenced as S/HRS, as they appear on  
the accounting copies of the repair order submitted on March 22, 2022.

28 <sup>35</sup> Hereinafter in this section, "Actual Hours" will be referenced as A/HRS, as they appear on the accounting  
copies of the repair order submitted on March 22, 2022.

1 B. Repair Order #10158

2 153. Repair Order #10158 was listed in Putnam Kia’s March 22<sup>nd</sup> submission and used in its  
3 calculations, with a claimed labor rate of \$500.00/hour. [Exhs J-3.002 (count 4), R-205, P-121.002]

4 154. This repair order was for an ineligible diagnostic-only job. Moreover, the vehicle had  
5 been modified, voiding the Kia warranty, a fact undisclosed by Putnam Kia until June 15, 2022, only  
6 mentioned in passing in a letter to Kia from Kent Putnam. [Exh J-7.005] The same vehicle returned  
7 several weeks later (see Repair Order #10300 below).

|    |                                |                                       |
|----|--------------------------------|---------------------------------------|
| 8  | Open/Close Dates:              | 12 NOV-23 NOV 21                      |
| 9  | Repair/Service:                | “Diagnose and advise”                 |
| 10 | Customer Paid:                 | \$250.00                              |
| 11 | S/HRS:                         | 0.50                                  |
| 12 | Sold Labor Rate (\$250/0.50):  | \$500/hour                            |
| 13 | A/HRS:                         | 3.29                                  |
| 14 | Actual Labor Rate (\$250/3.29) | \$75.99/hour                          |
| 15 | LTS Warranty Time Allowance:   | None (“Diagnostic” per Exh P-121.002) |

16 C. Repair Order #10300

17 155. Repair Order #10300 was listed in Putnam Kia’s March 22<sup>nd</sup> submission and used in its  
18 calculations, with a claimed labor rate of \$440.00/hour. [Exhs J-3.002 (count 11), R-253, P-121.002]

19 156. This repair order was for an ineligible diagnostic-only job. This repair order is for the  
20 same vehicle as Repair Order #10158 above, presented several weeks later. The vehicle had been  
21 modified, voiding the Kia warranty, a fact undisclosed by Putnam Kia until June 15, 2022, only  
22 mentioned in passing in a letter to Kia from Kent Putnam. [Exh J-7.005]

23 157. Moreover, according to hearing testimony of Rad Reyes, the technician entered A/HRS  
24 on repair line B in error, instead of repair line A, a material fact, also undisclosed by Putnam Kia,  
25 which could not have been known by Kia. [RT VI 73:23-75:8]

26 ///

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28 ///

1 Open/Close Dates: 08 DEC-09 DEC 21  
 2 Repair/Service: “Diagnose and advise”  
 3 Customer Paid: \$440.00  
 4 S/HRS: 1.00  
 5 Sold Labor Rate (\$440/1.00): \$440/hour  
 6 A/HRS: 2.56  
 7 Actual Labor Rate (\$440/2.56) \$171.88/hour  
 8 LTS Warranty Time Allowance: None (“Diagnostic” per Exh P-121.002)

9 **Other Non-Conforming Repair Orders**

10 A. Repair Order #10571

11 158. Repair Order #10571 was listed in Putnam Kia’s March 22<sup>nd</sup> submission and used in its  
 12 calculations, with a claimed labor rate of \$467.93/hour. [Exhs J-3.002 (count 23), R-244, P-121.002]

13 159. Undisclosed documents under Putnam Kia’s exclusive control showed that the cost of  
 14 the repair was covered by an extended warranty. This was unknown until the last day of the hearing  
 15 when Putnam Kia’s counsel disclosed the ineligibility and the reason for it. [Exhs P-118.013, P-  
 16 124.002, P-125; RT IX 50:9-51:3, 73:19-74:7] Therefore, this repair order was ineligible as it was not a  
 17 customer-pay repair.

18 Open/Close Dates: 21 JAN-27 JAN 22  
 19 Repair/Service: Sunroof motor  
 20 Customer Paid: \$608.31  
 21 S/HRS: 1.30  
 22 Sold Labor Rate (\$608.31/1.30): \$467.93/hour  
 23 A/HRS: 2.87  
 24 Actual Labor Rate (\$608.31/2.87) \$211.95/hour  
 25 LTS Warranty Time Allowance: 2.40

26 B. Repair Order #10153

27 160. In addition to being not a “qualified” repair because diagnostics without repairs are not  
 28 covered by Kia’s warranty, this repair order was misleading because it was incomplete, as Putnam Kia

1 failed to reference an undisclosed related repair order, #10246 [Exhs R-270, R-271]. [Exhs J-3.002  
2 (count 3), R-248, P-121.002] Jeff Korenak conceded, “[l]ooks like we missed it.” [RT VIII 153:2-12]

|    |                                |                                       |
|----|--------------------------------|---------------------------------------|
| 3  | Open/Close Date:               | 11 NOV – 12 NOV 21                    |
| 4  | Repair/Service:                | Diagnostic – check power window.      |
| 5  | Customer Paid:                 | \$132.00                              |
| 6  | S/HRS:                         | 0.30                                  |
| 7  | Sold Labor Rate (\$132/0.30):  | \$440/hour                            |
| 8  | A/HRS:                         | 0.98                                  |
| 9  | Actual Labor Rate (\$132/0.98) | \$134.69/hour                         |
| 10 | LTS Warranty Time Allowance:   | None (“Diagnostic” per Exh P-121.002) |

11 **The Consequences of Putnam’s Failure to Conform its Submission to the**  
12 **Express Requirements of Section 3065.2**

13 161. When presented with a question of statutory construction, the primary task of a court is  
14 to determine the legislature’s intent, giving the language its usual and ordinary meaning, in order to  
15 promote, rather than defeat, the general purpose of a statute. Courts must select the construction that  
16 comports most closely with the apparent intent of the Legislature, with a view to promoting rather than  
17 defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd  
18 consequences. [*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977-978; *Malek v. Blue Cross of*  
19 *California* (2004) 121 Cal.App.4th 44, 64]

20 162. Here, legislative intent is unequivocally stated in the first sentence of the statute: the  
21 goal is “to determine a reasonable warranty reimbursement schedule . . .” [Section 3065.2(a)] The  
22 legislature has mandated a step-by-step process that franchisors and franchisees “shall” follow to reach  
23 that legislatively stated goal, with each step building on the previous step. “It is well settled that the  
24 word ‘shall’ is usually construed as a mandatory term. (citation omitted) This is particularly true here to  
25 construe the statute as optional would render it ineffective, a construction that we must avoid.” [*Malek*  
26 *v. Blue Cross of California, supra*, 121 Cal.App.4<sup>th</sup> at p. 48] A legislative analyst reviewing proposed  
27 section 3065.2, commented that “the purpose of the bill . . . is to create a standardized formula for  
28 reimbursement rates. . . .” [Assem. Com. on Transportation, Rep. on Assem. Bill No. 179 (2019-2020



1 Reg. Sess.) Apr. 22, 2019, pp. 1, 5]

2 163. The statute’s “standardized formula” starts with clearly mandatory acts a franchisee  
3 must accomplish before submission. The franchisee’s completion of those acts is a condition precedent  
4 to its submission to the franchisor: franchisees must select a sampling of repair orders, ensure that all  
5 are “qualified” by being warranty-covered, and eliminate those that the legislature stated should be  
6 omitted.

7 164. Putnam Kia failed or refused to perform the mandatory acts directed by the legislature.  
8 As a result, the spreadsheet submitted to Kia on March 22, 2022, was replete with errors and invalid  
9 entries, as shown by the examples discussed above.

10 165. For preparation of its section 3065.2 submission, Putnam Kia outsourced all statutory  
11 responsibilities to FrogData LLC and its “Warranty Boost+” program. FrogData’s business model  
12 overvalues speed in execution, overreliance on computerization, and minimal or no consultation with  
13 its clients, the dealerships. Evidence supports the conclusion that FrogData had an imperfect  
14 understanding of Kia’s warranty program and California law. With repair orders apparently  
15 unexamined and unreviewed for errors or omissions, Putnam Kia allowed FrogData to submit to Kia  
16 repair orders and calculations, which Putnam Kia represented, either expressly or by implication, met  
17 the requirements of section 3065.2. In fact, that representation was untrue.

18 166. The burden of insuring that a submission is accurate is on the proponent, the franchisee.  
19 However, Putnam Kia’s counsel tries to shift the burden to Kia, addressing his client’s “obvious” error  
20 of including a line-item with a \$2,500/hour labor rate: the inclusion, he stated, was an “isolated  
21 example of a cancelled repair” and that “a [retail labor rate] of \$2,500---this is obviously not reflective  
22 of what Putnam is actually charging customers. Nevertheless, this error was easily redressed because  
23 the statute permits Kia to do its own calculation [citing section 3065.2(d)(5)].” (Emphasis added.)

24 [Protestant’s Post-Hearing Opening Brief, p. 19, lines 19-26]

25 167. Under no interpretation of section 3065.2 is it possible to articulate a statutory right of  
26 Putnam Kia to shift the burden to Kia---and to the Board---to find and correct errors in its own  
27 submission after the date that it has chosen to initiate the statutory process. It is Putnam Kia’s  
28 responsibility to ensure the accuracy of its own submission. It is no answer for Putnam Kia to say that

1 “this error was easily redressed” after submitting “obviously” and admittedly false information.

2 168. The franchisee’s submission is the building block for future negotiations to achieve the  
3 statutory goal. Where, as here, the information in the building block is profoundly flawed, it is  
4 impossible for the franchisor to meaningfully respond and go forward with the process that the  
5 legislature has envisioned.

6 169. To interpret section 3065.2 to allow a franchisee to begin the statutory process absent a  
7 requirement that the franchisee make a scrupulous examination of the documents and calculations in the  
8 submission inevitably “leads to absurd consequences,” as has happened here. It is absurd that Putnam’s  
9 errors in the initial phase of the process---which it could have easily remedied---have inevitably led to a  
10 lengthy and costly hearing before the Board with little or no assurance of resolution.

11 170. Moreover, the purpose of the legislation has been frustrated. The legislature’s clear  
12 intent has been to ensure the expeditious, accurate and final resolution of a dealership’s new warranty  
13 labor rate. This is beneficial for both the franchisee and franchisor. But that sought-after finality cannot  
14 be accomplished without demands for accuracy in the original submission.

15 171. Finally, the statute accords both parties rights and responsibilities. The franchisee’s right  
16 to initiate a submission to a franchisor may only be asserted in the context of the statutory scheme the  
17 legislature has enacted. That right may not be viewed in isolation. Putnam Kia does not have the right  
18 to submit any repair orders and calculations it wishes, with impunity. To allow it to do so completely  
19 abrogates the rights of the franchisor to respond and contest the submission, and no interpretation of  
20 section 3065.2 should permit it.

21 172. There is an implicit legislative determination that the rights of both parties be  
22 safeguarded. This being so, Putnam’s failure to comply with the clear, precisely stated and mandatory  
23 requirements of the statute compels the conclusion that it may not claim any right or interest from the  
24 process. Even though section 3065.2 is silent on the effect of a franchisee’s non-compliance, to hold  
25 otherwise totally fails to protect rights the franchisor has been accorded by the statute and would lead to

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28 ///

1 the “absurd consequences” discussed above.<sup>36</sup> [*Malek v. Blue Cross of California, supra* at p. 64]

2 173. Equitable remedies may be employed by administrative agencies and support the above  
3 conclusion. [*Lentz v. McMahon* (1979) 49 Cal.3d 393, 405-406] Equitable estoppel, applicable here,  
4 prevents a person from asserting a right bestowed by statute or other rule of law where, because of his  
5 conduct, it would be unconscionable to allow him to do so. [*Eucasia Schools Worldwide, Inc. v. DW*  
6 *August Co.* (2013) 218 Cal.App.4th 176, 182] Similarly, the equitable doctrine of unclean hands---“no  
7 one can take advantage of his own wrong”---is also supportive. [Civ. Code § 3517] It demands that a  
8 plaintiff act fairly in the matter for which he seeks a remedy. “He must come into court with clean  
9 hands or he will be denied relief, regardless of the merits of his claim.” [*Aguayo v. Amaro* (2013) 213  
10 Cal.App.4th 1102, 1110]

11 174. Where, as here, a statute does not provide any consequence for noncompliance, the  
12 inquiry is to look at legislative intent. “In the absence of express language, the intent must be gathered  
13 from the terms of the statute construed as a whole, from the nature and character of the act to be done,  
14 and from the consequences which would follow the doing or failure to do the particular act at the  
15 required time.” [*In re Charles B.* (1986) 189 Cal.App.3d 1204, 1209] The consequences of Putnam  
16 Kia’s action in initiating the statutory process with flawed information have been injurious, as detailed  
17 above, undermining the statutory intent. Its failure to comply with “a particular procedural step”  
18 invalidates the express legislative goal. [*In re C.T.* (2002) 100 Cal.App.4th 101, 111] To find that  
19 Putnam Kia may not claim any advantage here is not disproportionately harsh given the circumstances  
20 of its action. [*Malek v. Blue Cross of California* (2004), *supra*, 121 Cal.App.4th 44, 71-72]

### 21 CONCLUSIONS OF LAW

22 175. In regard to the sole allegation of the protest, that respondent Kia America failed to  
23 comply with section 3065.2 by denying protestant’s submission for an increased labor rate on the basis  
24 that it was materially inaccurate or fraudulent in that protestant used “sold hours” to make its  
25 calculations, respondent has sustained its burden of proof, as follows:

26 A. Kia complied with section 3065.2 by timely responding to protestant’s submission in

27  
28 <sup>36</sup> This result comports with Putnam’s failure to satisfy the condition precedent of ensuring the accuracy of its submission, as discussed above.

1 conformity with statutory requirements.

2 B. Kia established that the phrase “actual hours” is the correct interpretation of the word  
3 “hours” in the statutory phrase “the total number of hours that generated those [labor] charges” and that  
4 protestant’s use of “sold hours” in its calculations was materially inaccurate.

5 C. Kia established that by using “sold hours,” Putnam Kia inaccurately claimed that  
6 \$440/hour was the labor rate it generally charged its customers for retail repairs, then submitted that  
7 claim as a basis for a higher warranty labor rate from Kia. Putnam Kia manipulated the number of  
8 hours charged because it needed to show that the price to the customer did not go up after it changed its  
9 pricing policies in response to the passage of section 3065.2.

10 D. Section 3065.4 gives the Board discretion to calculate and declare an appropriate retail  
11 labor rate under section 3065.2. In this matter, given the material inaccuracy of the submission’s data,  
12 that discretion is more reasonably exercised by declining to calculate and declare a rate.

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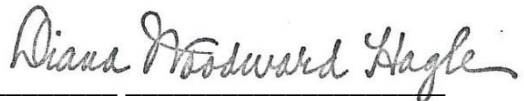
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1 **PROPOSED DECISION**

2 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED that the  
3 protest filed herein in *KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.*, Protest No.  
4 PR-2803-22, is overruled.

5  
6 I hereby submit the foregoing which constitutes  
7 my Proposed Decision in the above-entitled matter,  
8 as the result of a hearing before me, and I  
9 recommend this Proposed Decision be adopted as  
10 the Decision of the New Motor Vehicle Board.

11 DATED: October 15, 2024

12 By:   
13 DIANA WOODWARD HAGLE  
14 Administrative Law Judge  
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27 Steve Gordon, Director, DMV  
28 Kimberly Matthews, Branch Chief,  
Industry Services Branch, DMV