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New Motor Vehicle Board

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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

KM3G INC., d/b/a PUTNAM KIA OF
BURLINGAME,

Protestant,

v.

KIA AMERICA INC.,

Respondent.

PROTEST NO: PR-2803-22

PROTESTANT'S POST-REMAND
HEARING SUMMARY

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INTRODUCTION

Pursuant to the Board's Order Establishing Post-Remand Hearing Summary dated May 16, 2025, Protestant KM3G, Inc., d/b/a Putnam Kia of Burlingame ("Putnam Kia") submits its Post-Remand Hearing Summary. Putnam Kia first summarizes the procedural history relevant to discussion of the disputed repair orders in a calculation of Putnam's retail labor rate based on actual hours. Putnam Kia maintains and does not waive arguments the statutory phrase "the total number of hours that generated those charges" refers to sold hours in the repair orders and not actual hours. Nonetheless, pursuant to the order of Administrative Law Judge Diana Woodward Hagle ("ALJ"), Putnam provides a calculation of Putnam's retail labor rate based on actual hours herein. Putnam proposes consideration of Kia's Denial and proposed adjusted retail labor rate with corrections thereto supports a \$350.35 per hour labor rate. In the alternative, if Putnam's retail labor rate is calculated pursuant to the ALJ's direction using actual hours, the ALJ's directive to only consider the seven ROs from Exhibit R-277, and the ALJ's anticipated determinations as to ROs 10581, 10617, and 10631, the retail labor rate should be \$303.30 per hour or in the alternative \$301.47 per hour.

PROCEDURAL BACKGROUND

The hearing on remand was in response to the Board's Order of Remand, dated November 5, 2024 ("Remand Order"). The Remand Order required the ALJ provide a determination pursuant to subdivision (a) of Vehicle Code section 3065.4¹ "for a declaration of the franchisee's retail labor rate." The Order also provided:

Additionally, the ALJ *is to reconsider* paragraph 120 on page 29, lines 23-25 and paragraphs 161-174 in the subheading entitled "[t]he Consequences of Putnam's Failure to Conform its Submission to the Express Requirements of Section 3065.2" on page 40, line 13 through page 43, line 20.

[Remand Order, 2:8-11 (emphasis added).]

On January 14, 2025, the parties participated in a conference call with the ALJ to discuss the remand proceedings. At that time, the ALJ instructed the parties to retain experts to provide analysis and testimony showing the calculation of a retail labor rate in accordance with Section 3065.2 and based

¹ References to statutory code sections are to the California Vehicle Code unless otherwise stated.

1 upon the record evidence. The ALJ cautioned Protestant that any analysis based upon the use of hours
2 sold in place of actual technician hours employed may be ignored. It was not clear whether the ALJ
3 intended to reconsider paragraphs 120 and 161-174, as required by the Remand Order.

4 Paragraphs 161-174 of the Proposed Decision subject to the Remand Order found Putnam's
5 original submission and calculation of its retail labor rate to be inconsistent with Section 3065.2. These
6 paragraphs reference "[t]he consequences of Putnam Kia's action in initiating the statutory process with
7 flawed information have been injurious, *as detailed above*" [Proposed Decision, ¶ 174 (emphasis
8 added).] The reference in these paragraphs to other paragraphs throughout the Proposed Decision show
9 none of the Proposed Decision is part of any final decision by the Board and should be subject to
10 reconsideration during the remand proceeding.

11 The Remand Hearing was conducted for three days commencing on May 12, 2025. Both
12 Respondent and Protestant presented expert witnesses. During the hearing, the ALJ refused to permit
13 Protestant to present evidence concerning the subject matter discussed in paragraphs 161-174 under the
14 subheading entitled "[t]he Consequences of Putnam's Failure to Conform its Submission to the Express
15 Requirements of Section 3065.2" on page 40, line 13 through page 43, line 20. [See REMAND Vol. III,
16 350:3-353:3; *see also* REMAND Vol. III, 360:13-361:6.]²

17 Protestant's expert, Michael Volkman, prepared an independent calculation of Putnam's retail
18 labor rate based upon Putnam's initial submission and the expanded time period selected by Kia. [See
19 REMAND Vol. III, 354:12-16 (Mr. Volkman confirming he prepared an analysis based on Putnam's
20 initial submission); REMAND Vol. III, 364:18-365:17 (Mr. Volkman confirming he prepared an
21 analysis of the time period and set of ROs selected by Kia when responding to Putnam's submission).]
22 Mr. Volkman was prepared to present testimony concerning his review of the initial Putnam submission
23 and the alterative calculation provided by Kia. Protestant was prohibited from introducing evidence
24 concerning Mr. Volkman's report and analysis. [REMAND Vol. III, 360:13-361:6 (the ALJ directing
25

26 ² Reference to a "REMAND Vol." refers to the three volumes of transcripts created during the remand
27 hearing. Reference to "RT Vol." refers to the volumes of transcripts created during the original merits
28 hearing before the remand. When citing exhibits, the page number of the exhibit is referenced using
the following format "Exh. J-6.003" where the J-6 refers to the exhibit number and the .003 refers to
the page of that exhibit.

1 examination away from the accuracy of Putnam’s submission to a determination of an actual hour based
2 rate calculation); REMAND Vol. III, 416:17-23 and 419:1-21 (the ALJ precluding Putnam from eliciting
3 answers concerning Kia’s Denial); *see also* REMAND Vol. III, 425:11-426:9 (admitting pages 1, 3, and
4 6 of Mr. Volkman’s export report and not admitting the remainder of the report).]

5 Instead, Mr. Volkman’s testimony was limited to an analysis the ALJ ordered to be performed at
6 the close of hearing on Monday, May 12, 2025. [REMAND Vol. I, 130:14-131:17.] Over Putnam’s
7 objections, the ALJ required Mr. Volkman to perform a calculation using actual technician hours in place
8 of the industry standard of using hours sold. [*Id.*] Moreover, Mr. Volkman’s testimony was further
9 limited to a discussion of eight (8) repair orders (one of which is no longer in dispute for purpose of the
10 actual hour based retail labor rate calculation as directed by the ALJ).³ [REMAND Vol. III, 350:3-
11 351:14; *see also* REMAND Vol. III, 352:25-353:3 (the ALJ qualifying Mr. Volkman as an expert
12 pursuant to Evidence Code section 720 concerning eight repair orders).] Putnam was precluded from
13 asking if Mr. Volkman would ordinarily do an analysis of a retail labor rate based on actual hours or
14 whether he saw any problems with using actual hours to perform calculations of retail labor rate
15 submissions. [REMAND Vol. III, 367:14-19 and 423:1-10.]

16 Putnam Kia preserves and does not waive the following arguments in providing this Remand
17 Hearing Summary: The Board’s Remand Order suggests the Board was concerned with the Proposed
18 Decision’s disregard for the *statutory burden placed on Kia* to demonstrate its alternative calculation
19
20
21

22 ³ The ALJ qualified Mr. Volkman pursuant to Evidence Code section 720 “in regard to the eight line
23 items that are in dispute.” [REMAND Vol. III, 352:25-353:3.] Evidence Code section 720 provides
24 for an expert to be qualified as to “the subject to which his testimony relates.” [Evid. Code, § 720,
25 subd. (a) (emphasis added).] “A properly qualified expert may offer an opinion *relating to a subject*
26 that is beyond common experience, if that expert’s opinion will assist the trier of fact.” [*Property*
27 *California SCJLW One Corp. v. Leamy* (2018) 25 Cal.App.5th 1155, 1163 (quoting *Bushling v.*
28 *Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510) (emphasis added).] Eight repair orders is
not properly a subject for purposes of an expert witness providing an expert opinion. Putnam
maintains, based on Mr. Volkman’s extensive experience in the service departments of new motor
vehicle dealers and the review of repair order and labor rate submission, he was qualified to provide an
expert opinion as to all the repair orders in the submission and as to Kia’s practices in handling labor
rate submissions. [Exh. P-127.003 (setting forth Mr. Volkman’s 49 years of relevant experience).]

1 was performed in conformance with the requirements of Section 3065.2. The refusal to reconsider this
2 subject matter on remand is fatal to any subsequent proposed decision.⁴

3 I. PUTNAM MAINTAINS AND DOES NOT WAIVE ITS ARGUMENT THE BOARD
4 CANNOT DISREGARD KIA'S STATUTORY BURDEN PURSUANT TO SECTION 3065.2;
5 APPLYING AN ACTUAL HOUR BASED ANALYSIS TO STATUTORY CORRECTIONS
6 TO KIA'S PROPOSED ADJUSTED RETAIL LABOR RATE CALCULATION SUPPORTS
7 A \$350.35 PER HOUR RETAIL LABOR RATE.

8 Vehicle Code section 3065.4 sets the burdens of proof in this Protest proceeding. [Veh. Code, §
9 3065.4, subd. (a).] "In any protest under this section, the franchisor shall have the burden of proof that
10 it complied with Section 3065.2 and that the franchisee's determination of the retail labor rate or retail
11 parts rate is materially inaccurate or fraudulent." The Proposed Decision at paragraphs 161-174 shifts
12 these burdens of proof to Protestant. The burden shifting is inconsistent with the Legislature's clear
13 direction regarding which party must meet burdens of proof in this protest.⁵

14 Here, pursuant to Vehicle Code section 3065.2, subdivision (d)(5), Kia chose to calculate a
15 proposed adjusted retail labor rate. [Exh. J-6.003-.005.] The Board's analysis of Putnam's retail labor
16 rate should therefore start with Kia's proposed adjusted retail labor rate and whether it complied with
17 Section 3065.4. [See Veh. Code, § 3065.2, subd. (d) (1) and (5) (providing Kia the option of providing
18 a proposed adjusted retail labor rate and imposing the same requirements); Veh. Code, § 3065.4, subd.
19 (a) (requiring Kia to prove it complied with Section 3065.2, including subsections (d) (1) and (5)
20 therein).]

21 Kia's proposed adjusted retail labor rate was \$268.89 based on a calculation relying on actual
22 hours. During post-hearing briefing, Kia admitted it should not have included the brake, bulb, and
23 battery repairs in its proposed adjusted retail labor rate. [See Respondent's Post Hearing Brief at 25:9-
24 10 (Kia stipulating to the removal of the remainder of brake, bulb, and battery repairs challenged by

25 ⁴ Putnam also preserves all other objections and offers of evidence during the course of the Protest.
26 Nothing in this Brief should be interpreted as Putnam waiving any argument it raised during the
27 Remand Hearing or the prior merits hearing. Putnam is providing actual hour-based calculations of
28 retail labor rates solely because of the direction and order of the ALJ at the Remand Hearing.

⁵ Putnam also notes the burden shifting is inconsistent with the final sentence of Section 3065.2, subd.
(d)(1) which explicitly states, "A franchisor shall not deny the franchisee's submission for the retail
labor rate, retail parts rate, or both, under subdivision (a)." [Veh. Code, § 3065.2, subd. (d)(1).] The
Board overruling Putnam's protest based on an alleged failure to conform to subdivision (a) is
inconsistent with this directive of the allocation of burdens of proof in Section 3065.4.

1 Putnam Kia).] In effect, this removes from Kia's proposed adjusted retail labor rate calculation all the
2 red entries⁶ except those concerning RO 10679, 10680, and 10712. Removing these repair orders from
3 Kia's proposed adjusted retail labor rate reduces the actual hours in Kia's proposed adjusted retail labor
4 rate by 13.09 hours, reduces total charges by \$2,997.52, and calculates a \$285.82 proposed adjusted
5 retail labor rate based on actual hours. [Exh. J-6.004-.005.] Kia violated Section 3065.2 because it
6 included repair orders in its calculation of a proposed adjusted retail labor rate it now admits should have
7 been excluded.

8 Additionally, the proposed adjusted retail labor rate in Kia's Denial:

9 (1) misrepresents the actual hours in RO 10180, Line B to be 1.1 hours when the actual hours are
10 0.02 hours [Exh. R-250.001];

11 (2) misrepresents the actual hours in RO 10191, Line C to be 0.2 hours when the actual hours are
12 0.02 hours [Exh. R-251.006];

13 (3) includes RO 10158, Line A which is not a qualified repair order pursuant to the Proposed
14 Decision (RO 10158, Line A is listed with 3.29 actual hours and \$250.00 charges in Exh. J-6.004)
15 [Proposed Decision at ¶ 119; *see also* Exh. R-276.001 (Ms. Heinemann's report excluding RO
16 10158, Line A as not qualified)];

17 (4) includes RO 10300, Line A which is not a qualified repair order pursuant to the Proposed
18 Decision (RO 10300, Line A is listed with 1.0 actual hours and \$440.00 charges in Exh. J-6.004)
19 [Proposed Decision at ¶ 147 (*see also* ¶ 119 for RO 10158 concerning the same vehicle as RO
20 10300); *see also* Exh. R-276.001 (Ms. Heinemann's report excluding RO 10300, Line A as not
21 qualified)];

22 (5) includes RO 10454, Line A which is not a qualified repair order pursuant to the Proposed
23 Decision (RO 10454, Line A is listed with 1.02 actual hours and \$100.00 charges in Exh. J-6.004)
24 [Proposed Decision at ¶ 147; *see also* Exh. R-276.001 (Ms. Heinemann's report excluding RO
25 10454, Line A as not qualified)];

27 ⁶ I.e., those RO lines appearing in red in Exhibit J-6.004-.005. Specifically, ROs 10168, 10181, 10263,
28 10271, (RO 10298 is already excluded from the calculated rate and should remain excluded,) 10334,
10468, 10474, 10527, 10590, 10592, 10638, 10646, 10655. [Exh. J-6.004-.005.]

(6) includes RO 10571, Line A which is not a qualified repair order pursuant to the Proposed Decision (RO 10571, Line A is listed with 2.87 actual hours and \$608.31 charge in Exh. J-6.005) [see Proposed Decision at ¶¶ 158-159; see also Exh. R-276.001 (Ms. Heinemann's report excluding RO 10571, Line A as not qualified)];

(7) misrepresents the actual hours in RO 10585, Line A to be 0.3 hours when the actual hours are 0.26 hours [Exh. R-264.001];

(8) misrepresents the actual hours in RO 10590, Line E to be 1.0 hours when the actual hours are 0.99 hours [Exh. R-265.004];

(9) misrepresents the actual hours in RO 10591, Line A to be 1.4 hours when the actual hours are 1.14 hours [Exh. R-266.001]; and

(10) includes RO 10617, Line A which is not a qualified repair order pursuant to the Proposed Decision (RO 10617, Line A is listed with 0.3 actual hours and \$132.00 charges in Exh. J-6.005) [see Proposed Decision at ¶ 147; see also Exh. R-276.001 (Ms. Heinemann's report excluding RO 10617, Line A as not qualified)].

Making these additional adjustments reduces the actual hours calculated for Kia's proposed adjusted retail labor rate by 10.05 and reduces total charges by \$1,530.31. Combining these adjustments with the foregoing adjustments of 13.09 hours and total charges of \$2,997.52 reduces the actual hours in Kia's proposed adjusted retail labor rate calculation to 20.80 actual hours and \$7,287.25 or a proposed adjusted retail labor rate of \$350.35 per hour. This is the rate Kia would have calculated in the Denial had it endeavored to comply with the requirements of Section 3065.2 by not including routine maintenance repairs known to be excluded by statute. This rate also corrects misrepresentations of what the actual hours are based on the ROs relied on by Kia.⁷

Putnam Kia continues to maintain "the total number of hours generating those charges" referenced in Vehicle Code section 3065.2 refers to the hours used to charge Putnam's customers and

⁷ Attached hereto as Appendix 2 through Appendix 4 are charts showing the ROs which are part of the actual hour calculated rates discussed in this brief. Appendix 2 is a chart showing the ROs, RO date, actual hours, net labor charges, and line by line labor rate values for the ROs relied on to calculate the \$350.35 per hour rate. The ROs are the ROs Kia used for its proposed adjusted retail labor rate with the above described revisions thereto.

1 not actual technician hours performing the repair. However, if the Board is to apply actual hours instead,
2 Putnam argues the Board needs to work from Kia's proposed adjusted retail labor rate set forth in the
3 Denial to determine a retail labor rate. Kia exercised its statutory right to calculate a proposed adjusted
4 retail labor rate pursuant to Section 3065.2, subdivisions (d) (1) and (5). Kia's statutory burden to show
5 its proposed adjusted retail labor rate complied with Section 3065.2 cannot be disregarded. Correcting
6 Kia's inconsistencies with Section 3065.2 in calculating a proposed adjusted retail labor and also
7 applying an actual hour-based calculation, results in a proposed adjusted retail labor rate of \$350.35 per
8 hour.⁸

9 II. PUTNAM MAINTAINS AND DOES NOT WAIVE ITS ARGUMENT THE BOARD
10 CANNOT ADOPT A PROPOSED DECISION THAT INTERPRETS "THE TOTAL NUMBER
11 OF HOURS GENERATING THOSE CHARGES" TO MEAN THE ACTUAL TECHNICIAN
HOURS.

12 California would be the only state in the country to require the use of actual technician hours in
13 the calculation of a dealer's retail labor rate. Moreover, California franchisees are prohibited from
14 generating customer charges based on actual hours.⁹ [Cal. Bus. & Prof. Code, § 9884.9, subd. (a).] There
15 is no support for the notion the Legislature intended actual hours to be used in calculating a retail labor
16 rate pursuant to Section 3065.2. Nevertheless, the Proposed Decision appears to find Putnam's
17 submission failed to comply with the requirements of Section 3065.2 because it did not perform a
18 calculation using actual technician hours.

21 ⁸ The ALJ precluded Putnam from asking questions of both experts relevant to Kia's proposed adjusted
22 retail labor rate. [REMAND Vol. II, 222:10-223:6 (ALJ precluding Putnam from asking Kia's expert
23 about Kia's Denial and proposed adjusted retail labor rate calculation—the ALJ stating, "We're not
24 going there" in response to a request Kia's expert turn to Exhibit J-6 pages 4 and 5 during the cross-
examination); REMAND Vol. III, 416:17-23 and 419:1-21 (the ALJ precluding Putnam from eliciting
answers concerning Kia's Denial during the examination of Putnam Kia's expert).]

25 ⁹ "The automotive repair dealer shall give to the customer a written estimated price for labor and parts
26 necessary for a specific job, except as provided in subdivision (e). No work shall be done and no
27 charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be
28 made for work done or parts supplied in excess of the estimated price, or the posted price specified in
subdivision (e), without the oral or written consent of the customer that shall be obtained at some time
after it is determined that the estimated or posted price is insufficient and before the work not
estimated or posted is done or the parts not estimated or posted are supplied." [Cal. Bus. & Prof. Code,
§ 9884.9, subd. (a).]

1 Mr. Volkman was prepared to testify to his experience with Kia and other franchisors and the
2 fact that in every instance the calculation was performed using sold hours. Since the enactment of
3 Section 3065.2 effective January 1, 2020, Kia has exclusively used “hours sold” to perform the
4 calculation required by Section 3065.2, with the exception of Putnam. [RT Vol. III, 412:25-413:9 (Mr.
5 Nardini testifying he was not aware of any labor rate submission except for Putnam’s where Kia
6 calculated a labor rate using actual hours instead of sold hours on repairs); *see also* RT Vol. VIII, 34:3-
7 8 (Mr. Korenak testifying in all the labor rate submission he has been involved in, he has never based
8 the calculation of a retail labor rate on the actual hours) and 35:24-36:7 (No state requires the use of
9 actual hours in determining a labor rate).]

10 Mr. Volkman was also prepared to testify to his experience in other states with statutory language
11 similar to Section 3065.2. In every state where Mr. Volkman has been involved with a labor rate analysis
12 for Kia and other manufacturers, actual technician hours have never been used. [REMAND Vol. III,
13 343:21-344:2; *see also* Exh. P-127.006 (listing each of the states in which Mr. Volkman has reviewed
14 warranty labor rate submissions and the OEMs for which he has prepared the submissions).] Putnam
15 Kia prepared an appendix to this Brief examining the states listed in Mr. Volkman’s expert report, citing
16 the statutory references to the required retail labor rate calculations or division of hours into customer
17 charges appear,¹⁰ a quotation of relevant language from the state’s statute, and what type of hours (sold
18 or actual) Kia uses to process retail labor rate submissions in that state. The appendix is attached hereto
19 as Appendix 1.

20 Review of Appendix 1 shows across the 33 states listed in Mr. Volkman’s expert report, while
21 the language concerning what hours are to be used in the division vary from “total number of hours that
22 produced the charges” (Alabama) to “the number of hours of labor spent to generate the retail sales”
23 (South Carolina) to other variations, the type of hours Kia uses in each state to calculate retail labor rates
24 remains consistent—it is always (except in the case of Putnam Kia) based on sold hours.

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26
27 ¹⁰ Both references to a retail labor rate or division to arrive at a rate in the statutes require a type of
28 hours (actual or sold) be used when calculating a dealership’s retail labor rate. The rate is always
determined by a division of customer charges and hours to generate a dollar per hour rate.

1 Mr. Volkman was also prepared to testify concerning the issues concerning the use of actual
2 hours in calculating a retail labor rate. He was precluded from providing such testimony by the ALJ.¹¹
3 [REMAND Vol. III, 423:1-20.]

4 III. PUTNAM MAINTAINS AND DOES NOT WAIVE ITS ARGUMENT THE PROPOSED
5 DECISION INCORRECTLY FINDS THE USE OF SOLD HOURS PRESENTS AN
6 UNOBJECTIVE STANDARD.

7 The Proposed Decision's determination that sold hours present an unobjective standard is
8 demonstrably false. *The objective standard is the franchisor's time guide.* Anything below the repair
9 hour values the franchisor has determined to be fair and reasonable provides the rebuttable presumption
10 of being unreasonable. In contrast, where the dealer uses hours that are the same or greater than the
11 hours the manufacturer has determined to be reasonable, there can be no claim of abuse.

12 Mr. Volkman included in his report a chart showing the Kia factory guide hours for select repairs
13 and the sold hours used by Putnam for the same repairs. The chart also included a comparison of what
14 Kia is proposing to pay Putnam for warranty repairs, what Putnam's requested rate would require Kia to
15 pay, and what the customers are actually paying. This provides compelling demonstrable evidence
16 Putnam is not attempting to require Kia to pay more than what customers already pay for the same repair.
17 The chart lays bare the fact that Kia is attempting to use actual hours as a means to pay Putnam
18 considerably less than what customers pay for the same repair—this is contrary to the Legislative intent
19 behind Section 3065.2.¹² This chart shows Putnam's requested retail labor rate would still result in
20 warranty compensation slightly less than what customers are actually paying for the same repair.
21
22

23 ¹¹ The ALJ referred to the Proposed Decision several times during the remand hearing as “the Board’s
24 decision.” [See, e.g., REMAND Vol. I, 96:2-17.] Pursuant to the Remand Order from the Board, the
25 Proposed Decision was remanded to the ALJ for further findings. The Board has not adopted any part
26 of the Proposed Decision to date.

27 ¹² Putnam Kia offered into evidence and asked Mr. Volkman questions concerning Mr. Volkman’s
28 analysis contained in Attachment G of Mr. Volkman’s rebuttal report, Exhibit P-128. The ALJ
sustained objections to questions and the admission of Attachment G and precluded Putnam from
offering evidence concerning the amounts customers actually paid on the ROs relevant to Putnam’s
submission and what Kia proposes it pay for warranty labor concerning the same repairs pursuant to its
LTS. [REMAND Vol. III, 419:23-421:24.]

1 **DISCUSSION**

2 Setting aside, but not waiving, the foregoing arguments concerning the calculation of a retail
3 labor rate pursuant to Section 3065.2, Putnam provides the following summary of the seven disputed
4 repair orders from the expert calculations (*see* Exhibits R-276 and P-129) as they apply to the calculation
5 of a retail labor rate based on actual hours. [*See* Order Establishing Post-Remand Hearing Summary,
6 2:3-6.] The seven ROs are ROs 10152, Line B (Exh. R-272); RO 10246, Line B (Exh. R-271); RO
7 10291, Line A (Exh. R-252); RO 10426, Line B (Exh. R-257); RO 10581, Line A (Exh. R-263); RO
8 10617, Line A (Exh. R-267); and RO 10631, Line F (Exh. R-214). Concerning RO 10320, Line A, (also
9 listed in Exhibit R-243), the Parties agree the RO should be included in the calculation. [*See* REMAND
10 Vol. III, 392:9-394:9.] Putnam also discusses ROs 10180, Line B and 10191, Line C which are qualified
11 ROs relevant to issues in the actual hour retail labor rate calculation concerning the seven ROs listed in
12 Exhibit R-276.¹³

13 Putnam first discusses ROs 10152, Line B; 10246, Line B; 10291, Line A; and 10426, Line B.
14 Putnam maintains each of these repair lines should be excluded from a retail labor rate calculation
15 because there are no charges to the customer on these lines of these repair orders. As a result, including
16 these lines averages in four entries of \$0.00 per hour effective labor rates into the calculation of Putnam's
17 retail labor rate. If they are included in the calculation, ROs 10180, Line B and 10191, Line C should
18 also be included in the calculation—Putnam Kia has never advocated for an actual hours-based
19 calculation, but these ROs contain actual hours and are qualified repair orders that cannot just be ignored
20 for purpose of the calculation. [*See, infra*, Part I.]

21 Putnam then discusses ROs 10581, Line A; 10617, Line A; and 10631, Line F, which, based on
22 rulings during the course of the remand hearing, Putnam anticipates the ALJ including or excluding, as
23 applicable, based on the calculations in Ms. Heinemann's expert report. Putnam maintains its position
24 concerning each of the ROs, however, includes or excludes the ROs from the rates calculated in Part I
25
26

27 ¹³ The ALJ suggested discussion of ROs 10180, Line B and 10191, Line C be raised in post-hearing
28 briefing. [REMAND Vol. II, 245:1-246:11; *see also* REMAND Vol. II, 282:10-288:9 (the ALJ
permitting examination of Ms. Heinemann concerning ROs 10180, Line B and 10191, Line C).]

as the ALJ's rulings appear to indicate will be the ALJ's final determination for purposes of revising the Proposed Decision. [*See, infra*, Part II.]

I. ROS 10152, LINE B; 10246, LINE B; 10291, LINE A; AND 10426, LINE B ARE REPAIR LINES WITHOUT CUSTOMER CHARGES AND SHOULD BE EXCLUDED FROM THE CALCULATION OF PUTNAM'S RETAIL LABOR RATE.

As shown in Exhibits R-276 and R-277, Kia's expert included ROs 10152, Line B; 10246, Line B; 10291, Line A; and 10426, Line B in her calculation of a retail labor rate for Putnam. Each of these repair lines, however, do not contain any customer charges. [Exh. R-276 and R-277.] As a result, including them in the calculation of a retail labor rate only dilutes and thereby improperly reduces Putnam's calculated retail labor rate by increasing the total actual hours without a corresponding increase of the customer charges.

Section 3065.2's definition of a "qualified repair order" requires the repair order to be for work "paid for by the customer." [Veh. Code, § 3065.2, subd. (j).] The customer did not pay for ROs 10152, Line B; 10246, Line B; 10291, Line A; and 10426, Line B—the customer charges for these lines is \$0.00. [Exh. R-276 and R-277; *see also* Exh. R-272, R-271, R-252, and R-257.]

Kia argues these repair lines must be combined with other repair lines with customer charges to total the actual hours related to the ultimate repair. However, this argument is inconsistent with the statutory intent expressed in subdivision (h) which precludes calculations utilizing any other method including "Imposing any method related to the establishment of a retail labor rate or retail parts rate that is unreasonable or time consuming, or require the use of information that is unreasonable or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement." [Veh. Code, § 3065.2, subd. (h)(2).] Combining repair lines to arrive at a retail labor rate is a transaction-by-transaction calculation expressly prohibited by Section 3065.2.

For example, Kia proposes RO 10152, Line B be read in relation to Line 10183, Line A. [*See, e.g.*, Exh. R-277 (first entry).] However, RO 10152, Line B in Exhibit R-272 concerns an RO opened on November 11, 2021, and closed on November 12, 2021. [Exh. R-272; REMAND Vol. II, 227:12-17.] The customer did not pay anything at that time. [REMAND Vol. II, 227:18-22.] RO 10152 was closed and final well before RO 10183 was even opened—RO 10183 was opened on November 17,

2021, and closed on November 18, 2021. [Exh. R-208.] The customer had no obligation to pay anything concerning Line B of RO 10152 when the RO closed on November 12, 2021. RO 10183, Line A should not be read in conjunction with RO 10152, Line B when calculating Putnam's retail labor rate.

In addition, the repair lines with \$0.00 charged to Putnam's retail customer should be excluded because they are not a permissible means of calculating Putnam's retail labor rate. Ms. Heinemann admits Putnam's retail labor rate is not zero dollars per hour. [REMAND Vol. II, 232:13-15.] The dealership is a for-profit motor vehicle dealership which charges customers for the labor of its technicians. Averaging in RO repair lines where customers are not charged does not accurately reflect Putnam's retail labor rate. Including these repair lines effectively includes outliers with the lowest rate available to Kia (\$0.00/hour) to reduce the calculation of Putnam's retail labor rate.

Mr. Volkman properly excluded ROs 10152, Line B; 10246, Line B; 10291, Line A; and 10426, Line B from his calculation of Putnam's retail labor rate. Mr. Volkman explained the diagnosis relevant for RO 10152, Line B would have involved pressing a button to check the fuel door switch. [REMAND Vol. III, 372:12-374:11.] It did not require approximately 18 minutes to check the switch and the 0.28 actual hours would have involved other activities at the dealership including pulling and parking the car not reflective of the diagnosis. [*Id.*]

Similarly, Mr. Volkman excluded RO 10246, Line B from his calculation because there are no customer charges, and it is unclear whether the 0.55 actual hours in the tire pressure entry for the RO reflects diagnostic time. [REMAND Vol. III, 381:6-382:18.] Mr. Volkman excluded RO 10291, Line A because there is no retail charge associated with it. [REMAND Vol. III, 384:12-385:18.] Diagnosis for the vehicle would have involved opening the hood, looking at the engine, and seeing the valve cover dripping—requiring significantly less time than 0.58 actual hours. [*Id.*] Mr. Volkman excluded RO 10426, Line B because there is no retail charge associated with it. [REMAND Vol. III, 394:11-396:4.] Putnam did not charge the customer to have a technician press a button and determine it to be working. [REMAND Vol. III, 399:9-25.]

As supported by the foregoing discussion, ROs 10152, Line B; 10246, Line B; 10291, Line A; and 10426, Line B should be excluded from the calculation of Putnam Kia's retail labor rate. If, over

Putnam's arguments, these outlier rates of \$0.00 per hour are included in the calculation, there is no legitimate reason to exclude ROs 10180, Line B and 10191, Line C from the calculation.

A. Putnam's retail labor rate calculated based on actual hours and the expert testimonies and including outlier entries is \$303.30.

ROs 10180, Line B and 10191, Line C concern qualified repairs. Ms. Heinemann admits RO 10180, Line B is a qualified repair. [Exh. R-273.023; REMAND Vol. II, 288:11-21.] Ms. Heinemann nonetheless excludes the repair line from her calculation because the "implied rate relative to the labor charges is \$24,200 per hour." [REMAND Vol. II, 288:22-289:3.] In effect, Ms. Heinemann only excludes the repair because the labor rate calculated from the repair is an outlier. [REMAND Vol. II, 289:10-16.]

Similarly, Ms. Heinemann admits RO 10191, Line C is a qualified repair. [Exh. R-273.025; REMAND Vol. II, 291:2-7.] Ms. Heinemann only excluded the repair because the labor rate calculated from the repair implies a \$13,200 per hour rate and is an outlier. [REMAND Vol. II, 291:8-19.]

If the lowest possible outliers (\$0.00 per hour repair lines) are included in the calculation of Putnam's retail labor rate, there is no legitimate reason to exclude high outliers for purposes of the calculation. If the low outliers are included in the calculation, the high outliers for qualified repairs should be included as well. These examples show the problems inherent with using actual hours to determine a retail labor rate and provide yet another reason why the use of actual hours cannot be the standard adopted in California. Again, sold hours are the industry standard for pricing customer repairs and the objective standard by which to consider sold hours is the factory time guide values.

If both the \$0.00 per hour labor charge entries are included in the calculation as well as the entries for ROs 10180, Line B and 10191, Line C, the labor rate as calculated by Ms. Heinemann increases by 0.04 actual hours and \$748.00 totaling 21.4 actual hours and \$6,490.70 labor charges. [Exh. R-276.] These support a retail labor rate of \$303.30 per hour.¹⁴

¹⁴ Attached hereto as Appendix 3 is a chart showing the ROs relied on to reach this calculated rate, the open date of the RO, the actual hours from the RO, the net labor charges, and the line by line actual hour labor rate. The chart is based on Exhibit R-276.001 as adjusted by the foregoing discussion.

1 **B. Putnam's retail labor rate calculated based on actual hours and the expert**
2 **testimonies and avoiding outlier entries is \$301.47.**

3 Alternatively, and more consistent with subdivision (j) of Section 3065.2, ROs 10152, Line B;
4 10246, Line B; 10291, Line A; and 10426, Line B should be excluded from the calculation of Putnam
5 Kia's retail labor rate. This reduces the actual hours in Ms. Heinemann's calculation by 1.53 hours
6 without changing the labor charges (reducing the total actual hours to 19.83 hours). [Exh. R-276 and R-
7 277.]

8 In addition, while the repairs in ROs 10180, Line B and 10191, Line C are outliers when
9 calculated using actual hours, they remain qualified repairs and cannot be wholly excluded simply
10 because they calculate an unusually high rate when dividing the customer charges by actual hours while
11 remaining consistent with subdivision (j) of Section 3065.2. Instead, the sold hours for these two repairs
12 should be used for purposes of a calculation which excludes outliers generated through the use of actual
13 hours.¹⁵

14 The sold hours for RO 10180, Line B are 1.1 hours. [Exh. R-250.001.] Divided into the \$484.00
15 charges shows Putnam charged the customer \$440.00 per hour. [*Id.*] The sold hours for this repair line
16 are more than Kia's LTS for the same repair and a lower hourly rate than Kia's LTS would imply for the
17 same repair. [Exh. P-120.003; *see also* RT Vol. III, 532:12-19 (Mr. Nardini agreeing with the 0.7 hour
18 total from the LTS hours and a 0.4 hour difference compared to the sold hours); RT Vol. VI, 195:1-19.]

19 Similarly, the sold hours for RO 10191, Line C are 0.6 hours. [Exh. R-251.006.] Divided into
20 the \$264.00 charges shows Putnam charged the customer \$440.00 per hour. [*Id.*] Kia's LTS of 0.6 hours
21 exactly matches the sold hours charged to the customer for this repair line. [Exh. P-120.005; *see also*
22 Exh. P-121.002; RT Vol. VI, 35:3-10 and 36:6-37:13.]

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27 ¹⁵ While the Order Establishing Post-Remand Hearing Summary indicated the summaries are to be
28 based on actual hours, during the remand hearing, the ALJ indicated, "I can see one situation, possibly
 two, where are reference to sold hours might be, I might allow." [REMAND Vol. III, 363:12-14.]

Further adding the 1.7 hours and \$748.00 charges to the 19.83 actual hours above and the \$5,742.70 charges from Exhibit R-276 totals 21.53 hours and \$6,490.70 labor charges. Dividing \$6,490.70 labor charges by 21.53 hours supports a \$301.47 per hour retail labor rate.¹⁶

II. PUTNAM MAINTAINS RO 10581, LINE A SHOULD BE EXCLUDED FROM A RETAIL LABOR RATE CALCULATION AND ROS 10617, LINE A AND 10631, LINE F SHOULD BE INCLUDED IN A RETAIL LABOR RATE CALCULATION.

A. **RO 10581, Line A should be excluded from a retail labor rate calculation based on the expert opinion of Mr. Volkman.**

Mr. Volkman testified RO 10581, Line A should be excluded from a retail labor rate calculation because the replacement of the reverse light is unrelated to the customer complaint concerning the downhill indicator light remaining lit.¹⁷ [Exh. R-263.001; REMAND Vol. III, 400:1-402:4.] Bulb replacements are excluded from retail labor rate calculations as routine maintenance repairs in Vehicle Code section 3065.2, subdivision (c)(3), and this reverse light replacement unrelated to the issue concerning the downhill indicator light remaining lit should be excluded from a retail labor rate calculation.

During the remand hearing, the ALJ precluded the expert witnesses from testifying or reaching conclusions outside the administrative record. [See REMAND Vol. III, 408:25-409:3 (“I’ll make the same comment that I’ve made in regard to Ms. Heinemann. Too bad these two witnesses weren’t part of the case in chief.”)] As a result, based on discussions during the remand hearing, Putnam anticipates the ALJ may not reach the merits of Mr. Volkman’s expert opinion and conclude the opinion was not part of the administrative record.

However, Mr. Volkman’s expert opinion is based on the record evidence—i.e., the repair order which has been admitted into evidence—and his expert opinion based on an extensive background of reviewing repair orders as an auditor for OEMs as well as working in and for the service departments for new motor vehicle dealerships. The ALJ ordered the parties to provide expert witnesses to review

¹⁶ Attached hereto as Appendix 4 is a chart showing the ROs relied on to reach this calculated rate, the open date of the RO, the hours from the RO, the net labor charges, and the line by line labor rate. The chart is based on Exhibit R-276.001 as adjusted by the foregoing discussion.

¹⁷ Bulb replacements are excluded from retail labor rate calculations as routine maintenance repairs in Vehicle Code section 3065.2, subdivision (c)(3).

1 the administrative record and provide expert opinions. It is artificial and inconsistent with the order to
2 permit expert testimony but then limit the expert's testimony concerning admitted exhibits because the
3 experts did not testify at the initial hearing. The experts were testifying on the record and supplementing
4 the administrative record with their testimony during the remand hearing—the administrative record was
5 reopened on remand and relevant evidence, in the form of Mr. Volkman's expert opinions, should not
6 be excluded. Excluding the RO, as advocated for by Putnam, reduces the actual hours in any calculation
7 of a retail labor rate discussed above by 0.92 hours and reduces the labor charges by \$125.00. [Exh. R-
8 263.]

9 **B. RO 10617, Line A should be included in a retail labor rate calculation based on the**
10 **expert opinion of Mr. Volkman.**

11 Mr. Volkman testified RO 10617, Line A should be included in a retail labor rate calculation
12 because there is a repair indicated in the RO, specifically, a wiring repair where the technician plugged
13 a connector in properly and then reset the adaptives. [Exh. R-267.001; REMAND Vol. III, 406:6-408:1.]
14 Because RO 10617, Line A is not purely diagnostic and instead contains a repair, it should be included
15 as a qualified repair order.¹⁸

16 During the remand hearing, the ALJ stated concerning this RO and Mr. Volkman's testimony,
17 "Well, all I can say is you didn't prove it at the hearing; you didn't have a Mr. Volkman there. Had you
18 had Mr. Volkman there —" and further in response to a request for clarification, "Well, your witness
19 didn't say what Mr. Volkman is saying now. Interesting as it is now, we're bound by the record as it was
20 presented at the hearing in chief.... It's fascinating now, it's wonderful, but it's not part of the record."
21 [REMAND Vol. III, 410:5-16.]

22 However, Mr. Volkman's expert opinion is based on the record evidence—i.e., the repair order
23 which has been admitted into evidence—and his expert opinion based on an extensive background of
24 reviewing repair orders as an auditor for OEMs as well as working in and for the service departments
25 for new motor vehicle dealerships. Mr. Volkman's testimony is part of the record because the

26 ¹⁸ The Proposed Order is ambiguous concerning whether RO 10617, Line A is a qualified repair or
27 should be excluded as a diagnostic only repair. The Proposed Order lists RO 10617 in a list of other
28 ROs which had no LTS warranty time but does not confirm whether it is a diagnostic only repair itself.
[Proposed Decision at ¶ 147.]

1 administrative record was reopened to take further expert testimony at the direction of the ALJ. Limiting
2 Mr. Volkman to only say things about admitted exhibits which were stated by other witnesses is an abuse
3 of discretion because it excludes relevant evidence without a basis in law, runs counter to the remand
4 hearing as a “truth seeking enterprise,”¹⁹ and is inconsistent with Mr. Volkman being qualified as an
5 expert pursuant to Evidence Code 720 to provide expert testimony concerning this and other repair
6 orders.²⁰

7 As noted above, the RO should be included in any calculation of a retail labor rate discussed
8 above. Including the RO increases the actual hours by 0.37 hours and increases the labor charges by
9 \$132.00. [Exh. R-267.]

10 C. **RO 10631, Line F should be included in a retail labor rate calculation based on the**
11 **open date of the RO.**

12 During the merits hearing, the Parties agreed RO 10631 would be the final repair order in the
13 range to be considered by the experts. [REMAND Vol. I, 130:24-25.] The Parties and the ALJ removed
14 other ROs from the range through RO 10712 which did not have supporting witness testimony.
15 [REMAND Vol. I, 129:3-130:12.] As a result, Mr. Volkman included RO 10631, Line F in the ROs he
16 used for his calculation.

17 During the second day of the remand hearing, the ALJ revisited whether the RO should be
18 included in the range of ROs to be considered and appeared to conclude it would be excluded as not
19 completed within the 90-day time period of November 12, 2021, through February 10, 2022. [REMAND
20 Vol. II, 155:23-156:24.] The ALJ further read legislative history purporting to show the Legislature
21 intended the 90-day period to be based on the closed date of the ROs. [REMAND Vol. II, 175:12-176:4.]

22 The legislative history read into the record does not resolve the issue of whether ROs should be
23 included in a Section 3065.2 labor rate submission based on their open or closed date. The statute
24 references “Any 100 consecutive qualified repair orders completed, including any nonqualified repair
25 orders completed in the same period” or “All repair orders completed in any 90-consecutive-day period.”
26 (Veh. Code, § 3065.2, subd. (a)(1) (A) and (B).) Reading these two subdivisions together shows the
27

28 ¹⁹ REMAND Vol. II, 156:22-24.

²⁰ REMAND Vol. III, 353:1-3.

1 phrase “completed” refers to the repair orders being completed—i.e., not open and pending further
2 repairs or entries. It does not refer to the 90-consecutive-day period being based on the completed date
3 of the repair. If it did, it would conflict with the reference to “100 consecutive qualified repair orders
4 completed” in subdivision (a)(1)(A) because sets of repair orders based on closed date are not
5 consecutive—ROs are numbered consecutively based on their open date. Use of the word “completed”
6 in subdivision (a)(1)(A) must mean the same thing it means in subdivision (a)(1)(B). It means any of
7 the repair orders in the range to be used in the calculation must be complete (i.e., not open) and not that
8 the set of repairs orders be somehow based on closed dates of the ROs. The obvious reason for the
9 closed repair requirement is to avoid any after the fact adjustment made to open ROs provided at the
10 time of the submission. This concern is addressed through the use of completed/closed ROs.

11 Moreover, RO 10631, Line F was included *both* in Putnam’s initial submission [Exh. J-3.003]
12 and Kia’s proposed adjusted retail labor rate calculation [Exh. J-6.005]. In fact, Kia’s Post-Hearing Brief
13 also included RO 10631, Line F in Kia’s calculation of a Putnam’s retail labor rate. [Kia’s Post-Hearing
14 Brief, Exhibit A, final entry.] Kia has only raised the idea RO 10631, Line F should be excluded from
15 a labor rate calculation on *remand*. At all times prior to this remand hearing, Kia agreed RO 10631, Line
16 F was a qualified repair that should be included in the calculation of a retail labor rate for Putnam.

17 If there was any issue with including RO 10631, Line F in the 90-day period specified by Section
18 3065.2, Kia was obligated to raise the issue in Kia’s Denial. [Veh. Code, § 3065.2, subd. (d)(1).] Kia
19 failed to do so and is therefore precluded from adding to, expanding, supplementing, or otherwise
20 modifying any element of its Denial concerning RO 10631, Line F. [*Id.*] Kia lacks justification to
21 change its legal position concerning RO 10631, Line F *for the first time* during this remand hearing.²¹

23 ²¹ Putnam Kia is loath to reference the Board’s June 28, 2024, decision in Protest No. PR-2759-21,
24 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company (Putnam Ford)* for all the
25 reasons expressed during the initial merits hearing’s post-hearing briefing as well as during the remand
26 hearing—the Putnam Ford hearing concerned a different dealership with different witnesses and
27 circumstances. The decision remains pending a petition for writ of administrative mandate. However,
28 even in the *Putnam Ford* protest, the ALJ precluded Ford from raising the opened versus closed date
argument because “That is an issue that should have been readily apparent from the face of the
Submission, and there is inadequate justification for not timely raising it in the contest letter.”
[*Putnam Ford* Decision at p. 50, fn. 7.] Similarly, Kia failed to raise this issue in its Denial. [Exh. J-
6.]

1 Further, even if the completed date is the proper way to limit the 90-day period in Section 3065.2,
2 the repairs on the vehicle were completed prior to February 10, 2022. The actual time entries for the
3 technician to perform and complete the repair on RO 10631 all occurred on February 3, 2022—seven
4 days prior to February 10, 2022.²² [Exh. R-214.005.]

5 Ms. Heinemann admitted that but for the fact it was allegedly not completed in the 90-day period,
6 RO 10631, Line F would be a qualified repair. [REMAND Vol. II, 278:20-279:12.] Including the RO,
7 as advocated for by Putnam, increases the actual hours by 0.43 hours and increases the labor charges by
8 \$572.00 in any calculation of a retail labor rate discussed above. [Exh. R-214.]

9 **CONCLUSION**

10 Protestant was denied a full and fair opportunity to present evidence directly relevant to the
11 Board's Remand Order. Specifically, Protestant was precluded from presenting evidence concerning
12 Putnam's purported failure to conform its submission to the requirements of Section 3065.2. Further,
13 these findings from the Proposed Decision are a direct violation of the plain language of Section 3065.2
14 because they improperly invalidate the statutory requirement that Kia meet its burden to demonstrate its
15 calculation of an alternative labor rate was done in compliance with the requirements of Section 3065.2.

16 In addition, Protestant objects to the labor rate calculation its expert was required to provide in
17 the middle of the hearing. The required calculation is not in conformity with the requirements of Section
18 3065.2 and is contrary to Mr. Volkman's approximately 49 years of industry experience. Nevertheless,
19 if the Board is seeking to declare a retail labor rate based on actual hours, correcting the statutory
20 noncompliance in Kia's Denial and proposed adjusted retail labor rate supports a \$350.35 per hour retail
21 labor rate. To the extent the Board ignores Kia's proposed adjusted retail labor rate and Kia's burdens
22 of proof pursuant to Vehicle Code section 3065.4 and instead determines a retail labor rate from the rates
23 calculated by the expert witnesses after they were ordered to consider a specific range of ROs and use
24 actual hours to make the calculations (and keeping in mind the anticipated determinations by the ALJ as
25


26
27 ²² References to EMP# 400005 in versions 2 and 3 of Line F with a February 11, 2022 date are entries
28 made by the service advisor, Budi Admadja, who appears at the top right on each page of the RO.
[Exh. R-214.003-.004.] The repairs described in version 1 of the RO were completed by the technician
on February 3, 2022. [Exh. R-214.003.]

1 to ROs 10581, 10617, and 10631 as set forth above; *see, supra*, Part II), the retail labor rate of \$303.30
2 per hour or in the alternative \$301.47 per hour should be adopted.

3
4
5 By the signature below and pursuant to the Order Establishing Post-Remand Hearing Summary
6 paragraph 4, counsel for Protestant attests to the factual accuracy and legal sufficiency of the foregoing
7 brief.

8
9
10 Dated: June 11, 2025

LAW OFFICES OF
GAVIN M. HUGHES

11
12 By 
13 Gavin M. Hughes
14 Robert A. Mayville, Jr.
15 Attorneys for Protestant
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APPENDIX 1

| <u>State</u> | <u>Statutory Citation</u> | <u>Relevant language concerning the hours divided into the customer charges (emphasis added)</u> | <u>The type of hours Kia uses for submissions in the state to determine hourly rates</u> |
|--------------|---|---|--|
| Alabama | Code of Alabama, Title 8, Chapter 20, Section 8-20-7, subd. (f)(3) | “The dealer shall calculate its labor rate by determining the total charges for labor from the qualified repairs submitted and <u>dividing that amount by the total number of hours that produced the charges.</u> ” | Sold Hours |
| Arkansas | Arkansas Code, Title 23, Subtitle 4, Chapter 112, Subchapter 3, Section 23-112-310, subd. (d)(1)(A) | “A manufacturer, distributor, distributor branch or division, or factory or division branch <u>shall not pay to any of its motor vehicle dealers a labor rate per hour or parts rate for warranty work that is less than that charged by the dealer to its retail customers</u> , provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area.” | Sold Hours |
| California | California Vehicle Code, Section 3065.2, subd. (a)(2) | “The franchisee shall calculate its retail labor rate by determining the total charges for labor from the qualified repair orders submitted and <u>dividing that amount by the total number of hours that generated those charges.</u> ” | Sold Hours (except when considering Putnam Kia’s Submission) |
| Connecticut | Connecticut General Statutes, Title 42, Section 42-133s, subd. (c) | “The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor all nonwarranty customer-paid service repair orders covering repairs made during the month prior to the submission and <u>dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales.</u> ” | Sold Hours |
| Florida | Florida Statutes, Title XXIII, Chapter 320, | “The dealer’s hourly labor rate for retail customer repairs, determined by <u>dividing the amount of the dealer’s total labor sales for retail</u> | Sold Hours |

| | | | |
|----------|---|---|------------|
| | Section 320.696, subd. (4)(b) | <u>customer repairs by the number of total labor hours that generated those sales for the month preceding the request</u> , excluding the work in paragraph (c)” | |
| Georgia | Code of Georgia, Title 10, Chapter 1, Article 22, Part 3, Section 10-1-641, subd. (a)(2)(C) | “The retail rate for labor shall be calculated by determining the dealer's total labor sales from the submitted repair orders and <u>dividing that amount by the total number of hours that generated those sales.</u> ” | Sold Hours |
| Hawaii | Hawaii Revised Statutes Title 25, Chapter 437, Section 437-56 | [Hawaii’s statute is parts only but is pending amendment to also include labor pursuant to Hawaii-2025-SB1119] | n/A |
| Illinois | Illinois Statutes, Chapter 815, Section 710/6 (815 ILCS 710/6), subd. (b) | “In no event shall compensation to a motor vehicle dealer for labor times and labor rates be less than <u>the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs.</u> ” | Sold Hours |
| Indiana | Indiana Code, Title 9, Section 9-32-13-15.5, subd. (b) | “The dealer's retail rate for labor shall be determined by <u>dividing the total labor sales for warranty like repairs by the number of hours that generated those sales</u> in one hundred (100) customer paid sequential repair orders or ninety (90) consecutive days of customer paid repair orders.” | Sold Hours |
| Iowa | Iowa Code, Chapter 322A.5, subd. 2.b.(2) | “In determining the schedule of compensation for labor-related warranty services, the franchiser may calculate the franchisee’s retail labor rate by <u>dividing the total amount of retail sales attributable to labor for warranty-like services by the number of hours of labor spent to generate the retail sales</u> in the retail service orders submitted pursuant to subparagraph (3).” | Sold Hours |
| Kentucky | Kentucky Revised Statutes, Chapter 190, | “In the determination of what constitutes ‘reasonable compensation’ under this section, | Sold Hours |

| | | | |
|---------------|---|--|------------|
| | Section 190.046, subd. (2)(a) | the principal factor to be considered shall be <u>the amount of money that the dealer is charging its other customers for the same type service or repair work.</u> | |
| Louisiana | Louisiana Revised Statutes, Title 32, Section 1262, subd. A.(5) | “The dealer shall calculate the labor rate by determining the total charges for labor from the qualifying repairs submitted and <u>dividing that amount by the total number of hours that produced the total charges.</u> ” | Sold Hours |
| Maryland | Maryland Transportation Code, Title 15, Subtitle 2, Section 15-212, subd. (c)(2)(i) | “(2) Reasonable compensation under this section may not be less than: (i) With respect to labor for warranty or recall repairs, <u>the dealer’s current labor rate for nonwarranty repairs of a like kind for retail customers;</u> ” | Sold Hours |
| Massachusetts | Massachusetts General Laws, Title XV, Chapter 93B, Section 9, subd. (b)(2)(ii) | “The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor 100 sequential nonwarranty, customer-paid service repair orders or 60 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, covering repair orders made not more than 180 days before the submission and <u>dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales.</u> ” | Sold Hours |
| Michigan | Michigan Compiled Laws, Chapter 445, Act 118 of 1981, Section 445.1577a, Sec. 17a, subd. (2)(c) | “A new motor vehicle dealer's retail rate for labor is calculated by determining the dealer's total labor sales from the submitted repair orders and <u>dividing that amount by the total number of hours that generated those sales.</u> ” | Sold Hours |
| Missouri | Missouri Revised Statutes, Title XXVI, Chapter 407, | “In the determination of what constitutes reasonable compensation for labor and service pursuant to this section, the principal factor to be given | Sold Hours |

| | | | |
|------------|---|---|------------|
| | Section 407.828, subd. 2. | consideration <u>shall be the prevailing wage rates being charged for similar labor and service by the franchisee for similar labor and service to retail customers for nonwarranty labor and service.</u> | |
| Nevada | Nevada Revised Statutes, Chapter 482, Section 482.36385, subd. 3. | “The dealer’s compensation for parts and labor to satisfy a warranty or a recall service or repair must not be less than <u>the amount of money charged to its various retail customers for parts and labor that are not covered by a warranty.</u> ” | Sold Hours |
| New Jersey | New Jersey Revised Statutes, Title 56, Section 56:10-15, subd. a. | “The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, <u>in an amount equal to the prevailing retail price charged by such motor vehicle franchisee for such services</u> and parts in circumstances where such services are rendered or such parts supplied other than pursuant to warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchisor for identical merchandise or services in the geographic area in which the motor vehicle franchisee is engaged in business.” | Sold Hours |
| New Mexico | New Mexico Statutes, Chapter 57, Article 16, Section 57-16-7, subd. D. | “A manufacturer shall compensate a dealer for labor and diagnostic work for recall or warranty repairs <u>at the rates charged by the dealer to its retail customers for such work.</u> ” | Sold Hours |
| New York | New York Laws Vehicle and Traffic, Title 4, Article 17-A, Section 465, subd. 1. | “...for labor reimbursement, reasonable compensation shall not be less than the <u>price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers.</u> ” | Sold Hours |

| | | | |
|----------------|--|--|------------|
| North Carolina | North Carolina Code, Chapter 20, Article 12, Section 20-305.1, subd. (a) | “The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than <u>the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind</u> , provided such amount is competitive with other franchised dealers within the dealer's market.” | Sold Hours |
| North Dakota | North Dakota Century Code, Title 51, Chapter 51-07, Section 51-07-29, subd. 5. | “The average labor rate must be determined by <u>dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales.</u> ” | Sold Hours |
| Ohio | Ohio Revised Code, Title 45, Chapter 4517, Section 4517.52, subd. (B)(2) | “The franchisee calculates its retail labor rate by determining the franchisee's total labor sales from the service repair orders submitted under division (B)(1) of this section and <u>dividing that amount by the total number of labor hours that generated those sales.</u> ” | Sold Hours |
| Oklahoma | Oklahoma Statutes, Title 47, Section 47-565v2, subd. A.9.b | “The new motor vehicle dealer or new powersports vehicle dealer shall calculate its retail labor rate by <u>dividing the amount of the new vehicle dealer's total labor sales from the qualified repair orders by the total labor hours charged for those sales.</u> ” | Sold Hours |
| Pennsylvania | Pennsylvania Board of Vehicles Act, Chapter 3, Section 307, subd. (a)(3)(i)(A) | “A declaration of the average labor rate calculated by <u>dividing the amount of the dealer's total labor sales by the number of total labor hours that generated the sales.</u> ” | Sold Hours |
| South Carolina | South Carolina Code of Laws, Title 56, Chapter | “If the dealer has requested retail reimbursement pursuant to item (4), the schedule of compensation for | Sold Hours |

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| | 15, Section 56-15-60, subd. (C)(3) | labor-related warranty services must be determined by <u>dividing the total amount of retail sales attributable to labor for warranty-like services by the number of hours of labor spent to generate the retail sales</u> in the retail service orders submitted pursuant to item (4).” | |
| South Dakota | South Dakota Codified Laws, Title 32, Chapter 06B, Section 32-6B-61 | “The hourly labor rate paid to the dealer for warranty services may not be less than <u>the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service.</u> ” | Sold Hours |
| Tennessee | Tennessee Code, Title 55, Chapter 17, Part 1, Section 55-17-121, subd. (b) | “In no event shall a manufacturer or distributor pay to its dealers <u>a labor rate per hour for warranty repairs or servicing less than the dealer's retail labor rate for similar repairs</u> , unless the manufacturer or distributor can show to the commission that the dealer's retail labor rate is improper in light of all economic circumstances.” | Sold Hours |
| Texas | Texas Occupations Code, Title 14, Subtitle A, Chapter 2301, Subchapter I, Section 2301.402, subd. (c) | “(c) In computing the amount of money a dealer charges a retail customer under Subsection (b), the manufacturer or distributor shall use the greater of: (1) <u>the average labor rate charged</u> during the preceding six months by the dealer on 100 sequential nonwarranty repair orders, exclusive of routine maintenance; or (2) <u>the average labor rate charged</u> for 90 consecutive days during the preceding six months by the dealer for nonwarranty repairs, exclusive of routine maintenance. | Sold Hours |
| Virginia | Code of Virginia, Title 46.2, Chapter 15, Section 46.2-1571, subd. A.1. | “Compensation of a dealer for recall or warranty parts, service, and diagnostic work <u>shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service,</u> | Sold Hours |

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|---------------|---|--|-------------------------------|
| | | <p><u>and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or performed in the dealer's service department, and the determination of compensation in accordance with the provisions of this section shall be deemed reasonable due to the substantial number of repair orders reviewed, unless the manufacturer can show that the amounts are not reasonable."</u></p> | |
| Washington | <p>Revised Code of Washington, Title 46, Chapter 46.96, Section 46.96.105, subd. (1)(b)</p> | <p>"A manufacturer shall compensate a dealer for labor and diagnostic work <u>at the rates charged by the dealer to its retail customers for such work</u> and for any documentation work required by the manufacturer to authorize or verify the work including, but not limited to, photographs, paperwork, and electronic data entry."</p> | Sold Hours |
| West Virginia | <p>West Virginia Code, Chapter 17A, Article 6A, Section 17A-6A-8a, subd. (e)</p> | <p>"The average labor rate shall be determined by <u>dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales.</u>"</p> | Sold Hours |
| Wisconsin | <p>Wisconsin Statutes, Chapter 218, Section 218.0125, subd. (3m)(c)1.</p> | <p>"The effective nonwarranty labor rate is determined, using the submitted substantiating orders under sub. (4m) (a) 2., <u>by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work.</u>"</p> | Manufacturer's Time Allowance |

APPENDIX 2

**REVISED LABOR RATE CALCULATION FROM KIA'S DENIAL
LETTER**

| <u>RO # from Exh. J-6.004-.005</u> | <u>RO Date from Exh. J-6.004-.005</u> | <u>Actual Hours¹</u> | <u>Net Labor Charges</u> | <u>Line by Line Actual Hour Labor Rate</u> |
|---|--|--|-------------------------------------|---|
| 10165, Line B | 11/15/2021 | 0.8 | \$176.00 | \$220.00 |
| 10180, Line A | 11/17/2021 | 0.85 | \$88.00 | \$103.53 |
| 10180, Line B | 11/17/2021 | 0.02 | \$484.00 | \$24,200.00 |
| 10183, Line A | 11/17/2021 | 0.43 | \$176.00 | \$409.30 |
| 10191, Line C | 11/18/2021 | 0.02 | \$264.00 | \$13,200.00 |
| 10291, Line F | 12/7/2021 | 0.23 | \$264.00 | \$1,147.83 |
| 10320, Line A | 12/13/2021 | 0.3 | \$125.00 | \$416.67 |
| 10346, Line A | 12/16/2021 | 3.42 | \$660.00 | \$192.98 |
| 10352, Line A | 12/16/2021 | 1.23 | \$382.00 | \$310.57 |
| 10404, Line A | 12/28/2021 | 0.97 | \$401.19 | \$413.60 |
| 10415, Line A | 12/29/2021 | 2.92 | \$395.99 | \$135.61 |
| 10426, Line D | 12/30/2021 | 0.1 | \$220.00 | \$2,200.00 |
| 10486, Line A | 1/10/2022 | 0.65 | \$660.00 | \$1,015.38 |
| 10529, Line A | 1/17/2022 | 1.84 | \$440.00 | \$239.13 |
| 10529, Line B | 1/17/2022 | 0.61 | \$200.00 | \$327.87 |
| 10534, Line B | 1/17/2022 | 0.5 | \$220.00 | \$440.00 |
| 10553, Line A | 1/19/2022 | 0.72 | \$250.00 | \$347.22 |
| 10581, Line A | 1/24/2022 | 0.92 | \$125.00 | \$135.87 |
| 10585, Line A | 1/24/2022 | 0.26 | \$132.00 | \$507.69 |
| 10590, Line E | 1/25/2022 | 0.99 | \$431.52 | \$435.88 |
| 10591, Line A | 1/25/2022 | 1.14 | \$264.00 | \$231.58 |
| 10631, Line F | 1/31/2022 | 0.43 | \$572.00 | \$1,330.23 |
| 10679 | 2/8/2022 | 0.15 | \$95.00 | \$633.33 |
| 10680 | 2/14/2022 | 0.57 | \$161.55 | \$283.42 |
| 10712 | 2/10/2022 | 0.73 | \$100.00 | \$136.99 |
| <u>TOTALS AND CALCULATED RATE:</u> | | 20.80 | \$7,287.25 | \$350.35 |

¹ As described in the accompanying brief, the Actual Hour entries in Kia's Denial are incorrect as to ROs 10180, Line B; RO 10191, Line C; 10585, Line A; RO 10590, Line E; and RO 10591, Line A. The entries are corrected herein to the actual hours listed in the ROs.

APPENDIX 3

**ACTUAL HOUR BASED RETAIL LABOR RATE CALCULATION PER
ALJ DIRECTION AND INCLUDING HIGH AND LOW OUTLIERS**

| <u>RO #</u> | <u>RO Open Date</u> | <u>Actual Hours</u> | <u>Net Labor Charges</u> | <u>Line by Line Actual Hour Labor Rate</u> |
|---|----------------------------|----------------------------|---------------------------------|---|
| 10152, Line B | 11/11/2021 | 0.28 | \$0.00 | \$0.00 |
| 10153, Line A | 11/11/2021 | 0.98 | \$132.00 | \$134.69 |
| 10165, Line B | 11/15/2021 | 0.80 | \$176.00 | \$220.00 |
| 10180, Line A | 11/17/2021 | 0.85 | \$88.00 | \$103.53 |
| 10180, Line B | 11/17/2021 | 0.02 | \$484.00 | \$24,200.00 |
| 10183, Line A | 11/17/2021 | 0.43 | \$176.00 | \$409.30 |
| 10191, Line C | 11/18/2021 | 0.02 | \$264.00 | \$13,200.00 |
| 10246, Line B | 12/1/2021 | 0.55 ¹ | \$0.00 | \$0.00 |
| 10291, Line A | 12/7/2021 | 0.58 | \$0.00 | \$0.00 |
| 10291, Line F | 12/7/2021 | 0.23 | \$264.00 | \$1,147.83 |
| 10320, Line A | 12/13/2021 | 0.27 ² | \$125.00 | \$462.96 |
| 10346, Line A | 12/16/2021 | 3.42 | \$660.00 | \$192.98 |
| 10352, Line A | 12/16/2021 | 1.23 | \$382.00 | \$310.57 |
| 10404, Line A | 12/28/2021 | 0.97 | \$401.19 | \$413.60 |
| 10415, Line A | 12/29/2021 | 2.92 | \$395.99 | \$135.61 |
| 10426, Line B | 12/30/2021 | 0.12 | \$0.00 | \$0.00 |
| 10426, Line D | 12/30/2021 | 0.1 | \$220.00 | \$2,200.00 |
| 10486, Line A | 1/10/2022 | 0.65 | \$660.00 | \$1,015.38 |
| 10529, Line A | 1/17/2022 | 1.84 | \$440.00 | \$239.13 |
| 10529, Line B | 1/17/2022 | 0.61 | \$200.00 | \$327.87 |
| 10534, Line B | 1/17/2022 | 0.50 | \$220.00 | \$440.00 |
| 10553, Line A | 1/19/2022 | 0.72 | \$250.00 | \$347.22 |
| 10581, Line A | 1/24/2022 | 0.92 | \$125.00 | \$135.87 |
| 10585, Line A | 1/24/2022 | 0.26 | \$132.00 | \$507.69 |
| 10590, Line E | 1/25/2022 | 0.99 | \$431.52 | \$435.88 |
| 10591, Line A | 1/25/2022 | 1.14 | \$264.00 | \$231.58 |
| <u>TOTALS AND CALCULATED RATE:</u> | | 21.40 | \$6,490.70 | \$303.30 |

¹ Actual hours from Line C of the RO.

² Actual hours from Line B of the RO.

APPENDIX 4

**ACTUAL HOUR BASED RETAIL LABOR RATE CALCULATION PER
ALJ DIRECTION AND EXCLUDING HIGH AND LOW OUTLIERS**

| <u>RO #</u> | <u>RO Open Date</u> | <u>Hours</u> | <u>Net Labor Charges</u> | <u>Line by Line Labor Rate</u> |
|---|----------------------------|---------------------|-------------------------------------|---|
| 10153, Line A | 11/11/2021 | 0.98 | \$132.00 | \$134.69 |
| 10165, Line B | 11/15/2021 | 0.80 | \$176.00 | \$220.00 |
| 10180, Line A | 11/17/2021 | 0.85 | \$88.00 | \$103.53 |
| 10180, Line B | 11/17/2021 | 1.1 ¹ | \$484.00 | \$440.00 |
| 10183, Line A | 11/17/2021 | 0.43 | \$176.00 | \$409.30 |
| 10191, Line C | 11/18/2021 | 0.6 ² | \$264.00 | \$440.00 |
| 10291, Line F | 12/7/2021 | 0.23 | \$264.00 | \$1,147.83 |
| 10320, Line A | 12/13/2021 | 0.27 ³ | \$125.00 | \$462.96 |
| 10346, Line A | 12/16/2021 | 3.42 | \$660.00 | \$192.98 |
| 10352, Line A | 12/16/2021 | 1.23 | \$382.00 | \$310.57 |
| 10404, Line A | 12/28/2021 | 0.97 | \$401.19 | \$413.60 |
| 10415, Line A | 12/29/2021 | 2.92 | \$395.99 | \$135.61 |
| 10426, Line D | 12/30/2021 | 0.1 | \$220.00 | \$2,200.00 |
| 10486, Line A | 1/10/2022 | 0.65 | \$660.00 | \$1,015.38 |
| 10529, Line A | 1/17/2022 | 1.84 | \$440.00 | \$239.13 |
| 10529, Line B | 1/17/2022 | 0.61 | \$200.00 | \$327.87 |
| 10534, Line B | 1/17/2022 | 0.50 | \$220.00 | \$440.00 |
| 10553, Line A | 1/19/2022 | 0.72 | \$250.00 | \$347.22 |
| 10581, Line A | 1/24/2022 | 0.92 | \$125.00 | \$135.87 |
| 10585, Line A | 1/24/2022 | 0.26 | \$132.00 | \$507.69 |
| 10590, Line E | 1/25/2022 | 0.99 | \$431.52 | \$435.88 |
| 10591, Line A | 1/25/2022 | 1.14 | \$264.00 | \$231.58 |
| <u>TOTALS AND CALCULATED RATE:</u> | | 21.53 | \$6,490.70 | \$301.47 |

¹ Sold hours for reasons discussed in the brief. All other entries herein are actual hours unless otherwise noted.

² Sold hours for reasons discussed in the brief.

³ Actual hours from Line B of the RO.

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I declare that on June 11, 2025, I caused to be served a true and complete copy of:

KM3G INC., dba PUTNAM KIA OF BURLINGAME,

v.

Protest No. PR-2803-22

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Executed this 11 June 2025 in Sacramento, California.

Robert Mayville Jr.
Robert A. Mayville, Jr.

VIA EMAIL

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THE STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

KM3G, INC. d/b/a PUTNAM KIA OF
BURLINGAME,

Protestant,

vs.

KIA AMERICA, INC.,

Respondent.

PROTEST NO. PR-2803-22

**RESPONDENT'S POST-REMAND
HEARING SUMMARY**

Respondent Kia America, Inc. ("KUS") respectfully submits its Post-Remand Hearing Summary ("Summary") in this Protest brought by KM3G, Inc. d/b/a Putnam Kia of Burlingame ("Putnam Kia").¹

¹ Pursuant to the Order Establishing Post-Remand Hearing Summary ("Order"), this Summary addresses only the eight Disputed RO Lines identified on Exh. R-277 based on evidence and testimony submitted during the Remand Hearing to establish Putnam Kia's proposed labor rate using actual hours. [See Order, ¶¶ 1-2].

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Respondent presented Ms. Suzanne Heinemann, a Certified Public Accountant with experience as an expert in forensic accounting and in the automotive industry. Ms. Heinemann was qualified as an expert by the ALJ to offer her opinion regarding the calculation of Putnam Kia's proposed warranty labor reimbursement rate. [See I 41:1-42:17]. Ms. Heinemann prepared a calculation of Putnam Kia's proposed labor rate based on the findings and guidance in the ALJ's Proposed Decision and instructions at the Remand Hearing. [See Exh. R-276]. In her expert capacity and based on her careful consideration of the Proposed Decision and administrative record, Ms. Heinemann calculated the labor rate for Putnam Kia to be **\$268.85**.

³ For convenient reference, Ms. Heinemann's charts have been attached to this Post-Remand Hearing Brief.

Those eight Disputed RO Lines quickly became four during Mr. Volkman’s examination. First, Mr. Volkman conceded during his direct examination that Ms. Heinemann’s inclusion of RO 10320 A and use of the actual time recorded under the tire pressure line was proper for purposes of calculating Putnam Kia’s proposed labor rate. [III 393:12-394:7]. When asked to apply the ALJ’s explicit instructions and/or factual findings from the ALJ’s Proposed Decision, Mr. Volkman, on cross-examination, also conceded that Ms. Heinemann’s determinations as to three (3) more of the Disputed RO Lines were proper, thereby requiring further adjustments to his proposed calculation. Therefore, but for Mr. Volkman’s disregard of the guidance and instructions provided by the ALJ and the Proposed Decision, the experts agreed on thirty-one (31) of the possible thirty-five (35) repair order lines – leaving only four (4) repair order lines (10152 B; 10246 B; 10291 A; and 10426 B) in dispute.

As discussed in detail below, the remaining four disputed repair orders all relate to “paired” customer-paid warranty-like repairs where the labor time was split between two repair order lines, with one line recording the diagnosis and the other line recording the performance of the repair. Ms. Heinemann, consistent with the guidance provided in the Proposed Decision that a warranty-like repair needs to include both the diagnostic and repair to be a complete repair, included all related repair lines associated with a given repair in her calculation (i.e., “paired” RO lines), as long as both the diagnosis and subsequent repair were performed within the relevant 90-day period (i.e., November 12, 2021 to February 10, 2022).

Mr. Volkman conceded the “paired” diagnosis and repair lines were “related” to each other and that the diagnosis and repair were simply recorded on separate lines. Nevertheless, he excluded a “paired” RO line if it did not have an independent labor charge, even though there is no disagreement that Putnam Kia charged the customer in connection with the repair comprising the “paired” RO lines. Mr. Volkman’s approach defies the Proposed Decision’s guidance and ignores his own understanding that a complete warranty-like repair includes the “three Cs” – Customer Complaint, Cause (i.e., diagnosis) and Correction (i.e., repair). By not including all time associated

1 with a complete repair, Mr. Volkman improperly excludes actual time spent by the technician to
2 address the customer's complaint – i.e., the time that generated the labor charges paid by the
3 customer to resolve the diagnosed mechanical issue. In doing so, Mr. Volkman ignores the mandate
4 of Section 3065.2 that the total labor charges are to be divided by the “**total**” number of hours that
5 generated those charges” – which includes both diagnostic and repair time – and opens the
6 submission process up to improper manipulation by dealers, such as Putnam Kia, seeking to
7 artificially manufacture a higher labor rate by splitting time spent on repairs into diagnosis lines and
8 repair lines but only including labor charges for one of the lines.

9 To discourage such manipulation and ensure that a dealer's labor rate is based on all actual
10 hours incurred by the technicians in performing all aspects of the repair, “paired” repair order lines
11 must be viewed in totality to identify not only the total labor charges associated with the repair, but
12 all time spent by the dealership to “complete” both the diagnosis and performance of the repair.

13 **II. ADDITIONAL REPAIR ORDER LINES “CONCEDED” BY VOLKMAN**

14 When defending his determinations of the eight (8) Disputed RO Lines on cross-
15 examination, it became apparent that Mr. Volkman refused to comply with the ALJ's explicit
16 orders, instructions, and Proposed Decision in calculating a proposed labor rate for Putnam Kia.
17 Whether it was including ROs closed outside the 90-day period or blatantly ignoring undisputed
18 evidence and factual findings in the hearing record and Proposed Decision, Mr. Volkman sought to
19 “cherry pick” certain ROs that would get Putnam Kia the highest labor rate. But, when pushed on
20 his positions and opinions, Mr. Volkman conceded to Ms. Heinemann's determination of four (4) of
21 the eight repair order lines previously in dispute. In particular, Mr. Volkman admitted during his
22 testimony that he would have to:

- 23 (i) **Include RO 10320 A**, as Ms. Heinemann did, and use the actual time recorded under
24 the tire pressure line, for purposes of calculating Putnam Kia's proposed labor rate.
25 [*See* III 393:12-394:7];
26
27

- 1 (ii) **Exclude RO 10631 F**, as Ms. Heinemann did, by following the ALJ’s instructions to
2 use the “Ready” date on the repair order as the “closed” or “completed” date instead
3 of the repair order’s “Opened” date. [See III 430:17-434:24 (“Q. Okay. And so,
4 based on that [Ready date of February 24, 2022] it would need to be excluded from
5 your calculation; correct?” A. “That’s correct.”)];
- 6 (iii) **Exclude RO 10617 A**, as Ms. Heinemann did, by applying the ALJ’s instructions
7 and the Proposed Decision’s findings that “diagnostics” without a related repair are
8 not qualified under Veh. Code § 3065.2 and that RO 10617 A was a “diagnosis” only
9 RO line. [See III 476:13-478:16; Proposed Decision, ¶¶ 145, 147 (“‘Diagnostics’ is
10 not a separate warranty-covered service so, absent a repair, diagnostic-only entries
11 are not “qualified” under section 3065.2”); see also II 168:21-171:10]; and
- 12 (iv) **Include RO 10581 A**, as Ms. Heinemann did, on the basis that all prior evidence,
13 testimony, and the parties’ prior positions supported the finding that the repair in RO
14 10581 A was a “warranty-like” repair. Mr. Volkman admitted that if he followed the
15 ALJ’s instruction to only use evidence contained within the administrative record, as
16 opposed to his personal beliefs, RO 10581 A should be included in the calculation as
17 a qualified repair. [See III 471:25-475:20 (“Q. Yes. Okay. So you’re going outside
18 the record in your belief and experience as a technician to say that you disagree with
19 Kia saying . . . that would be covered under warranty. And you disagree with Putnam
20 Kia, who performed it, that it’s a qualified repair?” A. “That’s correct.”)].

21
22 As demonstrated at the hearing and above, no remaining dispute exists between Mr.
23 Volkman and Ms. Heinemann as to RO lines 10320 A, 10631 F, 10617 A, and RO 10581 A.
24 Moreover, unlike Mr. Volkman’s calculation for Putnam Kia’s labor rate, Ms. Heinemann’s
25 calculation in Exhibit R-276 does not require any additional adjustments.
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1 Mr. Volkman does not disagree with Ms. Heinemann's position that one needs to consider
2 both repair order lines associated with a repair for purposes of calculating Putnam Kia's labor rate.
3 Nor does he take issue with the concept of including both "paired" repair order lines in his
4 calculation. In fact, like Ms. Heinemann, Mr. Volkman includes both the diagnostic line from RO
5 10553 A and its subsequent repair found at RO 10585 A in his calculation of Putnam Kia's
6 proposed labor rate, further supporting the notion that "paired" repair order lines must be considered
7 together. [Exh. P-129.001]. Yet, despite clearly acknowledging the importance of looking at the
8 "complete" repair for determining whether it is "qualified" and conceding that the "pairs" concern
9 the same mechanical issue on the same car and for the same customer,⁴ Mr. Volkman excludes the
10 four disputed "paired" repair order lines in his calculation for the sole reason that the disputed
11 "paired" RO lines did not include an independent labor charge. [III 468:1-469:20 ("At any time I
12 did not see a labor dollar billed to the retail customer, I excluded it.")].

13 However, that exclusion is not supported by any provision of Veh. Code § 3065.2 and would
14 be, in any event, contrary to the substance of these "pairs", which clearly show that, when you
15 looked at the repair in its totality as opposed to its individual parts, the customer was in fact charged
16 for labor for the repairs at issue (either on the diagnosis or repair line, just not on both).

17 Under Mr. Volkman's theory, however, the dealership was required to split up the labor
18 charges between both repair lines for them both to be included. Failure to do so, in Mr. Volkman's
19 view, results in the exclusion of actual hours being removed from the calculation – a result that is
20 nonsensical and could lead to the exact type of manipulation and material inaccuracies found in
21 Putnam Kia's original submission.

22 For instance, if a dealer is allowed to exclude a diagnostic RO line that is related to an
23 otherwise qualified repair solely because it did not include a separate labor charge for the diagnosis,
24 a dealer will start splitting all repairs into separate RO lines and only charge the customer on one of
25

26
27 ⁴ See III 469:23-471:19 ("So we don't beat a dead horse, I would agree, [Exhibits] 272, 271, 252, and 257 are related.")

1 the lines. This could lead to service advisors recording labor charges on the diagnosis line instead of
2 the repair line, and vice versa, depending on which line would get them a higher labor rate. [See,
3 e.g., Exh. R-248.001 (RO 10153 A) (labor charges recorded on diagnosis line) and Exh. R-252.004
4 (RO 10291 F) (labor charges recorded on repair line)]. This could also lead to technicians recording
5 more time on the diagnostic line than on the repair line to artificially lower the actual hours that go
6 into the calculation. To avoid such manipulation by the dealer, one must take into consideration the
7 “total” number of actual hours spent on a repair (regardless of whether those hours are contained on
8 one or two RO lines) in calculating a true and accurate labor rate.

9 Ms. Heinemann’s method of including both the diagnosis and repair lines in her calculation
10 to account for of the “total” time that generated all of the charges to the customer is sensible and
11 supported by the guidance provided in the Proposed Decision and the ALJ’s instructions at the
12 Remand Hearing. The ALJ should adopt Ms. Heinemann’s calculation as set forth in Exhibit R-276
13 and include the following “paired” RO lines:

14 **A. Repair Order Line 10426 B [Kia Optima Hybrid VIN 87578]**

15 RO Line 10426 B relates to the diagnosis of a customer’s concern about an airbag light.
16 [Exh. R-257.001]. The customer brought the car into Putnam Kia’s service garage on December 30,
17 2021. [Id.]. The technician performed the diagnosis and repair the same day. [Exh. R-257.001; 003].
18 According to the narrative at RO 10426 B, the technician inspected the customer’s concerns and
19 recommended the replacement of a clock spring. [Exh. R-257.001]. The technician recorded 0.12
20 hours for this inspection as indicated by the value recorded in the A/HRS column under line item B
21 [see id.], which is also confirmed by the technician’s “punch” times. [Exh. R-257.005]. The
22 subsequent repair is on the same repair order at RO 10426 D. [Exh. R-257.003]. According to the
23 narrative for the repair, the technician replaced the clock spring and ensured the steering wheel
24 buttons were working as designed. [Id.]. The narrative explicitly states, “see Line B for diagnosis.”
25 [Id.]. The technician spent 0.10 hours on the repair as indicated by the value recorded in the A/HRS

column under line item D [see id.] and confirmed by the technician's "punch" times. [Exh. R-257.005].

Mr. Volkman agrees that the diagnosis at RO 10426 B and the repair at RO 10426 D are related. [III 471:15-19.] However, unlike Ms. Heinemann, he did not include the 0.12 hours of diagnosis time recorded at RO 10426 B because that line does not show an independent labor charge. [III 468:1-469:20]. Instead, the repair's total labor charges of \$220 are found at RO 10426 D. [Exh. R-257.003].

For the reasons stated above, Putnam Kia's labor rate calculation should look at the totality of the repair and include 0.12 A/HRS for the diagnosis from RO 10426 B as set forth in Ms. Heinemann's calculation.

| Repair RO # Time | Diagnostic RO # Time | Total Time | Labor Charges |
|-----------------------|---------------------------|------------|---------------|
| 10426 D 0.10 | 10426 B 0.12 | 0.22 | \$220 |

B. Repair Order Line 10291 A [Kia Sorento VIN 63287]

RO Line 10291 A relates to the diagnosis of a customer's concern about smoke coming from under the engine hood. [Exh. R-252.001]. The customer brought the car into Putnam Kia's service garage on December 9, 2021. [Id.]. The technician performed the diagnosis and repair the same day. [Exh. R-252.001; .004]. According to the narrative at RO 10291 A, the technician inspected the customer's concerns and recommended replacing the rocker cover for the gasket. [Exh. R-252.001]. The technician spent 0.58 hours on the inspection as indicated by the A/HRS column under line item A [see id.], which is also confirmed by the technician's "punch" times. [Exh. R-252.004]. The related repair is shown at RO 10291 F. [Exh. R-252.001; .004]. According to the narrative for RO 10291 F, the technician replaced the rocker cover for the gasket. [Exh. R-252.004]. The narrative notes this issue was found "during inspection." [Id.]. The technician spent 0.23 hours on the repair

1 as indicated by the value recorded in the A/HRS column under line item F [*see id.*] and confirmed
2 by the technician's "punch" times. [*Id.*].

3 Mr. Volkman agrees the diagnosis at RO 10291 A and the repair at RO 10291 F are related.
4 [III 471:11-14]. However, unlike Ms. Heinemann, he did not include the 0.58 hours of diagnosis
5 time recorded for RO 10291 A because that line does not show an independent labor charge. [III
6 468:1-469:20.] Instead, the repair's total labor charges of \$264 are found at RO 10291 F. [Exh. R-
7 252.004].

8 For the reasons stated above, Putnam Kia's labor rate calculation should include 0.58
9 A/HRS for the diagnosis from RO 10291 A as set forth in Ms. Heinemann's calculation.

| Repair RO # Time | Diagnostic RO # Time | Total Time | Labor Charges |
|-----------------------|---------------------------|------------|---------------|
| 10291 F 0.23 | 10291 A 0.58 | 0.81 | \$264 |

14 C. Repair Order Line 10246 B [Kia Optima VIN 91097]

15 RO Line 10246 B relates to the repair of a driver side rear window switch and regulator
16 motor. [Exh. R-271.001]. This repair, coupled with its diagnosis [Exh. R-248], shows the customer
17 bringing the car into Putnam Kia's service garage on November 11, 2021, and returning on
18 December 1, 2021. [Exhs. R-271.001; R-248.001]. According to the narrative at RO 10246 B, the
19 technician replaced the driver side rear window switch and the regulator motor. [Exh. R-271.001].
20 The technician spent 0.55 on the repair and on checking the customer's tire pressure, which is
21 indicated by the value recorded in the A/HRS column under line item C⁵ and confirmed to relate to
22 the repair line B by the technician's "punch" times. [Exh. R-271.002].

24 ⁵ See Exh. R-273.026-27 for a discussion as to why Ms. Heinemann determined that 0.55 hours at RO 10246 C
25 should be used as A/HRS for the repair line RO 10246 B. Among other reasons, Ms. Heinemann relied on the
26 testimony of Rad Reyes from Day 7 of the Hearing Transcript (Vol. VII) (90:20-92:22) that "this is probably
27 another instance where [the technician] probably clocked onto the incorrect line. Because there is a 0.55 on the tire
28 pressure line, which we know it doesn't take that long to check tire pressure."; *see also* III 439:5-443:14 for Mr.
Volkman's testimony on cross-examination where he agreed that the 0.55 found on RO 10246 C (the tire pressure

1 The diagnosis for this repair is shown at RO 10153 A. [Exh. R-248.001]. According to the
2 narrative for the diagnosis, the technician inspected the vehicle and found the rear regulator motor
3 had seized up. [*Id.*]. The technician recommended the replacement of the motor, which the customer
4 authorized, and an order was placed for the part. [*Id.*]. The narrative from the related repair line –
5 RO 10246 B – further provides that the customer paid the labor charges at the time of diagnosis.
6 [See Exh. R-271.001 (“No labor charged on the regulator. (Customer paid diag previously)”)]. The
7 technician spent 0.98 hours on the inspection, as indicated by the value recorded in the A/HRS
8 column under line item A on Exh. R-248.001, which is also confirmed by the technician’s “punch”
9 times. [Exh. R-248.002].

10 Mr. Volkman agrees the repair at RO 10246 B and the diagnosis at 10153 A are related. [III
11 471:7-10]. However, unlike Ms. Heinemann, he did not include the 0.55 hours of repair time
12 recorded at RO 10246 B in his calculation because that line does not show an independent labor
13 charge.⁶ [III 468:1-469:20]. Instead, the repair’s total labor charges of \$132 are found at RO 10153
14 A. [Exh. R-252.004].

15 For the reasons stated above, Putnam Kia’s labor rate calculation should include 0.55
16 A/HRS for the repair from RO 10246 B as set forth in Ms. Heinemann’s calculation.

| Repair RO # Time | Diagnostic RO # Time | Total Time | Labor Charges |
|-----------------------|---------------------------|------------|---------------|
| 10246 B 0.55 | 10153 A 0.98 | 1.53 | \$132 |

20
21 **D. Repair Order Line 10152 B [Kia Sorento VIN 77151]**

22 RO Line 10152 B relates to the diagnosis of a worn out fuel door switch. [Exh. R-272.002].
23 The diagnosis, coupled with its repair [Exh. R-208.001], shows the customer bringing the car into
24

25 check line) could be used as the actual hours for RO 10246 B (the repair line), just like Mr. Volkman had done for
the tire pressure check line and repair line on RO 10320 A and RO 10320 B.

26 ⁶ FrogData, LLC also agreed that RO 10246 B should have been included in the original submissions calculation
27 and testified during the hearing that it “[l]ooks like we missed it.” [Exh. R-273.026; see Hearing Transcript Day 8
(Vol. VIII) 153:2-12].

Putnam Kia's service garage on November 11, 2021, and returning on November 17, 2021. [Exhs. R-272.002; R-208.001]. According to the narrative at RO 10152 B, the technician inspected the customer's concerns and recommended replacing the fuel door switch. [Exh. R-272.002]. The technician recorded 0.28 hours for the inspection, as indicated by the A/HRS column under line item B [see id.], which is also confirmed by the technician's "punch" times. [Id.]. The related repair is shown at RO 10183 A. [Exh. R-208.001]. According to the narrative for the repair, the technician installed the fuel door switch as "discussed in last visit." [Id.]. The technician spent 0.43 hours on the repair, as indicated by the value recorded in the A/HRS column under line item A [see id.], which is also confirmed by the technician's "punch" times. [Exh. R-208.002].

Mr. Volkman agrees that the diagnosis at RO 10152 B and the repair at RO 10183 A are related. [III 471:1-6]. However, unlike Ms. Heinemann, he did not include the 0.28 hours of diagnosis time recorded at RO 10152 B in his calculation because that line does not show an independent labor charge. [III 468:1-469:20]. Instead, the repair's total labor charges of \$176 are found at RO 10183 A. [Exh. R-208.001].

For the reasons stated above, Putnam Kia's labor rate calculation should include 0.28 A/HRS for the diagnosis from RO 10152 B as set forth in Ms. Heinemann's calculation.

| Repair RO # Time | Diagnostic RO # Time | Total Time | Labor Charges |
|-----------------------|---------------------------|------------|---------------|
| 10183 A 0.43 | 10152 B 0.28 | 0.71 | \$176 |

IV. CONCLUSION

For the foregoing reasons, KUS respectfully submits that Ms. Heinemann's expert opinion and calculated warranty labor rate of \$268.85 is the proper labor rate for Putnam Kia as required under section 3065.2(a)(1) and should be adopted by the ALJ and Board in this action.

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Dated: June 11, 2025

/s/ Lauren A. Deeb

Lauren A. Deeb
Jonathan R. Stulberg

Attorneys for Respondent
KIA AMERICA, Inc.

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and employed in Los Angeles County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address is
4 Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

5 On June 11, 2025, I served a copy of the within document:

6 **RESPONDENT'S POST-REMAND HEARING SUMMARY**

- 7 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully
8 prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- 9 ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set
10 forth below.
- 11 ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the
12 person(s) at the e-mail address(es) set forth below.

12 Gavin M. Hughes
13 Robert A. Mayville, Jr
14 LAW OFFICES OF GAVIN M. HUGHES
15 3436 American River Drive, Suite 10
16 Sacramento, CA 95864
17 Telephone: (916) 900-8022
18 gavin@hughesdealerlaw.com
19 mayville@hughesdealerlaw.com

Attorneys for Protestant

KM3G, INC. d/b/a PUTNAM KIA
OF BURLINGAME

17 New Motor Vehicle Board
18 1507 – 21st Street, Suite 330
19 Sacramento, CA 95811
20 Telephone: (916) 445-1888
21 Email: nmvp@nmvp.ca.gov

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. I declare that I am employed in the office of a member of the bar of this court at
23 whose direction the service was made.

24 Executed on June 11, 2025, at Los Angeles, California.

25
26 /s/ Jonathan Stulberg
27 Jonathan Stulberg

Putnam Kia

Warranty Labor Rate Calculation

November 12, 2021 - February 10, 2022 [2]

| RO Data | | | | | | | | | | Warranty Labor Rate Calculation | | |
|-------------------|---------------|-----------|------------|------------|---------------|-------|----------------------|---------------------|--------------|---------------------------------|-----------------|-------------------------|
| Hearing Exhibit # | RO # Line # | Relations | Opened | Closed | Labor Charges | A/Hrs | Tire Pressure Line # | Tire Pressure A/Hrs | | Actual Hours | Labor Charges | Actual Hours Labor Rate |
| R-242 | 10148 U | 10180 A | 11/11/2021 | 11/12/2021 | \$88.00 | 0.00 | Z | 0.42 | | Excluded - Insufficient Data | | |
| R-242 | 10148 V [1] | 10180 B | 11/11/2021 | 11/12/2021 | \$0.00 | 0.00 | Z | 0.42 | | Excluded - Insufficient Data | | |
| R-272 | 10152 B [1] | 10183 A | 11/11/2021 | 11/12/2021 | \$0.00 | 0.28 | D | 0.02 | 0.28 | \$0.00 | \$0.00 | |
| R-248 | 10153 A | 10246 B | 11/11/2021 | 11/12/2021 | \$132.00 | 0.98 | B | 0.00 | 0.98 | \$132.00 | \$134.69 | |
| R-205 | 10158 A | 10300 A | 11/12/2021 | 11/23/2021 | \$250.00 | 3.29 | C | 0.00 | | Excluded - Not Qualified | | |
| R-249 | 10165 B | | 11/15/2021 | 12/8/2021 | \$176.00 | 0.80 | E | 0.01 | 0.80 | \$176.00 | \$220.00 | |
| R-250 | 10180 A | 10148 U | 11/17/2021 | 11/18/2021 | \$88.00 | 0.85 | D | 0.00 | 0.85 | \$88.00 | \$103.53 | |
| R-250 | 10180 B | 10148 V | 11/17/2021 | 11/18/2021 | \$484.00 | 0.02 | D | 0.00 | | Excluded - Insufficient Data | | |
| R-208 | 10183 A | 10152 B | 11/17/2021 | 11/18/2021 | \$176.00 | 0.43 | B | 0.05 | 0.43 | \$176.00 | \$409.30 | |
| R-251 | 10191 C | | 11/18/2021 | 12/29/2021 | \$264.00 | 0.02 | B | 0.08 | | Excluded - Insufficient Data | | |
| R-271 | 10246 B [1] | 10153 A | 12/1/2021 | 12/22/2021 | \$0.00 | 0.00 | C | 0.55 | 0.55 | \$0.00 | \$0.00 | |
| R-252 | 10291 A [1] | 10291 F | 12/7/2021 | 12/9/2021 | \$0.00 | 0.58 | E | 0.00 | 0.58 | \$0.00 | \$0.00 | |
| R-252 | 10291 F | 10291 A | 12/7/2021 | 12/9/2021 | \$264.00 | 0.23 | E | 0.00 | 0.23 | \$264.00 | \$1,147.83 | |
| R-211 | 10298 A | | 12/7/2021 | 12/10/2021 | \$250.00 | 0.00 | N/A | N/A | | Excluded - Not Qualified | | |
| R-253 | 10300 A | 10158 A | 12/8/2021 | 12/9/2021 | \$440.00 | 0.00 | B | 2.56 | | Excluded - Not Qualified | | |
| R-243 | 10320 A | | 12/13/2021 | 12/15/2021 | \$125.00 | 0.00 | B | 0.27 | 0.27 | \$125.00 | \$462.96 | |
| R-212 | 10346 A | | 12/16/2021 | 12/31/2021 | \$660.00 | 3.42 | F | 0.00 | 3.42 | \$660.00 | \$192.98 | |
| R-254 | 10352 A | | 12/16/2021 | 12/23/2021 | \$382.00 | 1.23 | C | 0.24 | 1.23 | \$382.00 | \$310.57 | |
| R-255 | 10404 A | | 12/28/2021 | 12/30/2021 | \$401.19 | 0.97 | B | 0.00 | 0.97 | \$401.19 | \$413.60 | |
| R-256 | 10415 A | | 12/29/2021 | 1/28/2022 | \$395.99 | 2.92 | B | 0.00 | 2.92 | \$395.99 | \$135.61 | |
| R-257 | 10426 B [1] | 10426 D | 12/30/2021 | 1/6/2022 | \$0.00 | 0.12 | C | 0.00 | 0.12 | \$0.00 | \$0.00 | |
| R-257 | 10426 D | 10426 B | 12/30/2021 | 1/6/2022 | \$220.00 | 0.10 | C | 0.00 | 0.10 | \$220.00 | \$2,200.00 | |
| R-258 | 10454 A | | 1/4/2022 | 1/5/2022 | \$100.00 | 1.02 | D | 0.02 | | Excluded - Not Qualified | | |
| R-259 | 10486 A | | 1/10/2022 | 1/17/2022 | \$660.00 | 0.65 | B | 0.00 | 0.65 | \$660.00 | \$1,015.38 | |
| R-260 | 10529 A | | 1/17/2022 | 1/21/2022 | \$440.00 | 1.84 | C | 0.00 | 1.84 | \$440.00 | \$239.13 | |
| R-260 | 10529 B | | 1/17/2022 | 1/21/2022 | \$200.00 | 0.61 | C | 0.00 | 0.61 | \$200.00 | \$327.87 | |
| R-261 | 10534 B | | 1/17/2022 | 1/25/2022 | \$220.00 | 0.50 | C | 0.20 | 0.50 | \$220.00 | \$440.00 | |
| R-262 | 10553 A | 10585 A | 1/19/2022 | 1/20/2022 | \$250.00 | 0.72 | B | 0.00 | 0.72 | \$250.00 | \$347.22 | |
| R-244 | 10571 A | | 1/21/2022 | 1/27/2022 | \$608.31 | 2.87 | C | 0.00 | | Excluded - Not Qualified | | |
| R-263 | 10581 A | | 1/24/2022 | 1/25/2022 | \$125.00 | 0.92 | D | 0.04 | 0.92 | \$125.00 | \$135.87 | |
| R-264 | 10585 A | 10553 A | 1/24/2022 | 1/25/2022 | \$132.00 | 0.26 | B | 0.02 | 0.26 | \$132.00 | \$507.69 | |
| R-265 | 10590 E | | 1/25/2022 | 1/28/2022 | \$431.52 | 0.99 | D | 0.00 | 0.99 | \$431.52 | \$435.88 | |
| R-266 | 10591 A | | 1/25/2022 | 1/26/2022 | \$264.00 | 1.14 | C | 0.00 | 1.14 | \$264.00 | \$231.58 | |
| R-267 | 10617 A | | 1/27/2022 | 1/31/2022 | \$132.00 | 0.37 | C | 0.13 | | Excluded - Not Qualified | | |
| R-214 | 10631 F | | 1/31/2022 | 2/24/2022 | \$572.00 | 0.43 | G | 0.00 | | Excluded - Not Closed in Period | | |
| Total | | | | | | 28.56 | | | 21.36 | \$5,742.70 | \$268.85 | |

Notes & Sources:

[1] These repair order lines were not included in Putnam's warranty labor reimbursement rate calculation submitted to Kia on March 22, 2022. See EXH J-3.

[2] Based on the Court's May 12, 2025 Order, Putnam Kia's warranty labor reimbursement rate is calculated based on ROs closed or completed during the period from November 12, 2021 to February 10, 2022.

Respondent's Chart of Disputed Repair Orders

| RO Data | | | | | | Proposed Decision | Heinemann Expert Report | Volkman Expert Report |
|-------------------|---------------|-----------|---------------|-------|---------------------|-----------------------------------|--|-----------------------|
| Hearing Exhibit # | RO # Line # | Relations | Labor Charges | A/Hrs | Tire Pressure A/Hrs | | | |
| R-272 | 10152 B | 10183 A | \$0.00 | 0.28 | 0.02 | See, e.g. ¶ 160 See also ¶ 145 | Includes - Paired Diagnosis <u>Citation</u> R-273: p. 19 of 59 R-274: pp. 12-13 of 41 | Excludes |
| R-271 | 10246 B | 10153 A | \$0.00 | 0.00 | 0.55 | See ¶¶ 145, 160, See ¶ 157 | Includes - Paired Diagnosis; ISP Estimate <u>Citation</u> R-273: pp. 26-27 of 59 R-274: p. 13 of 41 | Excludes |
| R-252 | 10291 A | 10291 F | \$0.00 | 0.58 | 0.00 | See, e.g. ¶ 160 See also ¶ 145 | Includes - Paired Diagnosis <u>Citation</u> R-273: pp. 27-28 of 59 R-274: p. 14 of 41 | Excludes |
| R-243 | 10320 A | | \$125.00 | 0.00 | 0.27 | See, e.g. ¶ 157 | Includes - ISP Estimate <u>Citation</u> R-273: pp. 30-31 of 59 | Excludes |
| R-257 | 10426 B | 10426 D | \$0.00 | 0.12 | 0.00 | See, e.g. ¶ 160 See also ¶ 145 | Includes - Paired Diagnosis <u>Citation</u> R-273: pp. 33-34 of 59 R-274: p. 14 of 41 | Excludes |
| R-263 | 10581 A | | \$125.00 | 0.92 | 0.04 | | Includes - Undisputed as Qualified Repair <u>Citation</u> R-273: p. 38 of 59 R-274: pp. 4, 9-11 of 41 | Excludes |
| R-267 | 10617 A | | \$132.00 | 0.37 | 0.13 | See ¶ 147 See also ¶ 145 | Excludes - Diagnosis Only <u>Citation</u> R-273: p. 40 of 59 R-274: pp. 5, 11-12 of 41 | Includes |
| R-214 | 10631 F | | \$572.00 | 0.43 | 0.00 | See ¶ 125 | Excludes - Not Closed in Period <u>Citation</u> R-274: p. 40 of 59 R-274: pp. 14-15 of 41 | Includes |

VIA EMAIL

LAW OFFICES OF GAVIN M. HUGHES
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ROBERT A. MAYVILLE, JR. State Bar #311069
3436 American River Drive, Suite 10
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mayville@hughesdealerlaw.com

ATTORNEYS FOR PROTESTANT

New Motor Vehicle Board

Received
9-15-22

FILED

New Motor Vehicle Board

Date: 9-15-22

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

KM3G INC., d/b/a PUTNAM KIA OF
BURLINGAME,

Protestant,

v.

KIA AMERICA INC.,

Respondent.

PROTEST NO: PR-2803-22

PROTEST
[Vehicle Code Section 3065.4]

Protestant, KM3G, Inc., d/b/a Putnam Kia of Burlingame, a California corporation, qualified to do business in California, through its attorneys, files this Protest under provisions of California Vehicle Code Section 3065.4 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Kia vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at 2 California Dr., Burlingame, CA 94010; Protestant's telephone number is (650) 732-3099.

2. Respondent, KIA America Inc., ("KUS"), distributes Kia products and is the franchisor of Protestant.

3. Protestant is represented in this matter by the Law Offices of Gavin M. Hughes, whose

1 address and telephone number are 3436 American River Drive, Suite 10, Sacramento, California
2 95864; (916) 900-8022.

3 4. The terms of Protestant's Kia franchise obligate Protestant to provide warranty service
4 on eligible Kia vehicles, for which Protestant is reimbursed in an amount determined by Respondent.

5 5. Protestant's current warranty labor reimbursement rate is significantly below
6 Protestant's effective labor rate charged to retail customers.

7 6. Protestant submitted to Respondent a request for adjusted labor retail rate in compliance
8 with the requirements of Vehicle Code section 3065.2 ("Request") on or about March 22, 2022.

9 7. On April 20, 2022, pursuant to Vehicle Code section 3065.2, subdivision (d)(4), KUS
10 requested supplemental repair orders closed 30 days immediately following the repair orders submitted
11 with the Request.

12 8. Protestant provided the 30 days of supplemental repair orders on or about April 27,
13 2022.

14 9. By letter dated May 26, 2022, KUS advised Protestant it was denying the Request
15 ("Denial"). In the Denial, KUS alleged Protestant's requested labor rate to be materially inaccurate and
16 potentially fraudulent. Respondent claimed Section 3065.2 requires the labor retail rate be calculated
17 using actual technician hours expended on each job as opposed to the hours sold to service customers,
18 used by Protestant.

19 10. Industry standard is to use guide hours for customer repair jobs as well as for warranty
20 reimbursement. Respondent does not determine warranty reimbursement based on actual technician
21 hours expended on each warranty repair nor does Protestant charge service customers by actual service
22 technician hours.

23 11. The language from Section 3065.2 (h) is unambiguous regarding the franchisor's
24 obligation to calculate rates as set forth therein: "When a franchisee submits for the establishment or
25 modification of a retail labor rate, retail parts rate, or both, pursuant to this section, a franchisee's retail
26 labor rate or retail parts rate shall be calculated only using the method prescribed in this section. When
27 a franchisee submits for the establishment or modification of a retail labor rate, retail parts rate, or
28 both, pursuant to this section, a franchisor shall not use, or require a franchisee to use, any other

1 method, including, but not limited to, any of the following[.]” (Cal. Veh. Code § 3065.2, subd. (h)
2 (emphasis added.))

3 12. By letter to Respondent dated June 15, 2022, Protestant advised Respondent its denial
4 of the Request did not comply with the requirements of Section 3065.2. Protestant also endeavored to
5 provide further clarification concerning the method used to calculate the warranty labor rate set forth in
6 the Request.

7 13. Protestant continued efforts to informally resolve the dispute. However, these efforts
8 have been unsuccessful.

9 14. KUS’s conduct demonstrates willful disregard for the explicit requirements of Section
10 3065.2.

11 Protestant and its attorneys desire to appear before the Board and/or its designated hearing
12 officer for the purpose of presenting oral and documentary evidence concerning the matters herein
13 alleged. Protestant estimates the hearing in this matter will take seven (7) days to complete.

14 WHEREFORE, Protestant prays as follows:

15 1. That the Board sustain this protest and order Respondent to immediately begin
16 providing Protestant the warranty labor reimbursement rate requested.


17 2. That the Board order Respondent compensate Protestant for the difference between the
18 requested labor reimbursement rate and the current rate, effective 30 days from Protestant’s Request
19 dated March 22, 2022.

20 3. That a pre-hearing conference be set and the parties notified thereof.

21 4. That Protestant be awarded such other and further relief as the Board deems just and
22 proper.

23
24 Dated: September 15, 2022

LAW OFFICES OF
GAVIN M. HUGHES

25
26 By: 
27 Gavin M. Hughes
28 Robert A. Mayville, Jr.
Attorneys for Protestant

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 I, John David Wooten, declare that I am employed in the County of Sacramento, State of
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.
4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.

5 I declare that on September 15, 2022, I caused to be served a true and complete copy of:

6
7 ***PROTEST [Vehicle Code Section 3065.4]***

8 **KM3G INC., dba PUTNAM KIA OF BURLINGAME,**

9
10 **v.**

11 **KIA AMERICA INC.,**

12
13 By Electronic Mail:

14
15 Oscar Rodriguez
16 Warranty Operations Manager
17 Kia America, Inc.
18 111 Peters Canyon Road
19 Irvine, CA 92606
20 ORodriguez@Kiausa.com

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

22 Executed this 15 September 2022 Sacramento, California.

23 
24 John David Wooten