

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**

DECISION

At its regularly scheduled meeting of August 1, 2025, the Public Members of the Board met and considered the administrative record and the Proposed Decision Following Remand in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision Following Remand as its final Decision in this matter with the following amendment:

1. In the second sentence of paragraph 7, on page 2, lines 21-22, "pursuant to the Bagley-Keene Open Meeting Act" is deleted. The amended sentence is "Public comments were received by the Board from counsel for protestant and respondent."

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 1<sup>st</sup> DAY OF AUGUST 2025.

  
JACOB STEVENS  
President  
New Motor Vehicle Board

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**CERTIFIED MAIL**

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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**

**PROPOSED DECISION  
FOLLOWING REMAND**

**[Vehicle Code section 3065.4]**

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

**Statement of the Case**

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

2. The protest alleged that respondent failed to comply with section 3065.2 by denying protestant's submission for an increased labor rate on the basis that it was materially inaccurate or

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

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

1 potentially fraudulent in that protestant used time allowances identified as “sold hours” on protestant’s  
2 repair orders<sup>3</sup> to make its calculations. [Protest, ¶ 9]

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

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

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

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

20 7. At a special meeting of the Board on November 1, 2024, the public members of the Board  
21 considered the Proposed Decision. Public comments pursuant to the Bagley-Keene Open Meeting Act  
22 were received by the Board from counsel for protestant and respondent.

23 8. Following consideration of the administrative record and Proposed Decision, the Board  
24 issued an Order of Remand dated November 5, 2024, as follows:

25 “[The matter is remanded] to the Administrative Law Judge (“ALJ”) for additional briefing  
26 and/or to open the record for additional evidence or testimony for the purpose of making a

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

determination pursuant to subdivision (a) of Vehicle Code section 3065.4 ‘for a declaration of the franchisee’s retail labor rate.’

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.”

9. A hearing pursuant to the Board’s remand order was held May 12-14, 2025, before Administrative Law Judge Diana Woodward Hagle at the Board’s offices in Sacramento, California.

10. The remand proceedings are set forth in a document, Addendum to Proposed Decision Following Remand; Amendments to Proposed Decision, which is attached hereto and incorporated by reference as though set forth at length herein.

### **Parties and Counsel**

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

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

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

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

### **ISSUES PRESENTED**

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

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///



**Overview of Section 3065.2**

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

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

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

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

24. The next step is for the franchisor to review the documents the franchisee has submitted (the franchisee's selection of "qualified repair orders"), and to evaluate the calculations made by the franchisee in support of its requested retail labor rate. If the franchisee's requested retail

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

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

labor rate is substantially higher than the franchisee's current warranty labor rate, the franchisor has 30 days from receipt of the franchisee's submission to request a supplemental set of repair orders. Specifically, the franchisor may request "all repair orders closed within the period of 30 days immediately preceding, or 30 days immediately following, the set of repair orders previously submitted by the franchisee." [Veh. Code § 3065.2(d)(4)]

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

26. If a franchisor fails to comply with the requirements of Section 3065.2, "or if a franchisee disputes the franchisor's proposed adjusted retail labor rate," section 3065.4 authorizes the franchisee to file a protest with the Board for a declaration of the franchisee's retail labor rate. [Veh. Code § 3065.4(a)] Until the Board renders a decision, the franchisor must pay the franchisee at the franchisor's proposed adjusted retail labor rate starting the 30<sup>th</sup> day after the franchisor's receipt of the franchisee's initial submission.<sup>8</sup> [Veh. Code § 3065.2(d)(3)]

#### **Text of Sections 3065.2 and 3065.4**

27. Section 3065.2 provides in pertinent part as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If the franchisor determines from the franchisee's set of repair orders submitted pursuant to subdivisions (a) and (b) that the franchisee's submission for a retail labor rate or retail parts rate is substantially higher than the franchisee's current warranty rate, the franchisor may request, in writing, within 30 days after the franchisor's receipt of the notice submitted pursuant to subdivision (a), all repair orders closed within the period of 30 days immediately preceding, or 30 days immediately following, the set of repair orders submitted by the franchisee. If the franchisee fails to provide the supplemental repair



orders, all time periods under this section shall be suspended until the supplemental repair orders are provided.

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

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

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

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

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

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

28. Section 3065.4 provides as follows:

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

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

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

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

A. Upfront pricing in writing for labor and parts for a specific job, together with

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

1 written customer authorization, is required for non-warranty repairs and services. For any  
2 increase in the original estimate, customer authorization must be obtained and memorialized. A  
3 notation is required on the invoice memorializing oral consent for increasing the original  
4 estimate, as set forth in the notation on the work order. [Bus. & Prof. Code § 9884.9(a)(1); 16  
5 Cal. Code Regs., tit. 16, §§ 3352(a), 3353(a)]

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

9 C. Each dealer shall maintain records for at least three years. [Bus. & Prof. Code §  
10 9884.11]

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

## 16 **IDENTIFICATION OF WITNESSES**

### 17 **Protestant’s Witnesses**<sup>10</sup>

#### 18 **Jeff Korenak, Director of Implementation, FrogData LLC**

19 30. Jeff Korenak has been employed by FrogData LLC (FrogData) since 2020. His prior  
20 employment was in sales and management at dealerships in the Upper Midwest and Texas, as well as in  
21 Christian education and insurance sales. In Austin, he was a service advisor for two years at the Audi  
22 store and for two months at the Toyota store next door. [RT VIII 7:4-11:1, 129:16-130:13]

23 31. As Director of Implementation for FrogData’s “WarrantyBoost+” program, he oversees  
24 analysts in the United States and India, does “client relations,” and is involved in labor rate  
25 submissions. He has been involved in about 1,200 warranty rate submissions (about 400 in California),  
26 including about 120-125 Kia submissions (between 25 and 30 in California). [RT VIII 10:15-13:21,

27 \_\_\_\_\_

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

33:3-34:2]

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

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

**Kent Putnam, Putnam Kia Dealer Principal**

34. Kent Putnam is the dealer principal of Putnam Kia and “about 15” other franchised vehicle dealerships in the Putnam Automotive Group (“Group”). He is Chief Executive Officer of KM3G, Inc. He is not involved in the day-to-day operations of the dealership, relying on CFO Andrey Kamenetsky for “pretty much everything.” [Exh P-101; RT VII 121:3-23, 123:22-124:11; see generally RT VII, pp. 119-165]

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

36. Mr. Putnam described significant changes in raising labor rates at Group dealerships in

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

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

1 response to the passage of section 3065.2. [RT VII 135:10-136:19, 141:3-142:18, 145:12-22, 152:12-  
2 153:11]

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

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

8 38. Since about April or May of 2020, Andrey Kamenetsky has been employed by Putnam  
9 Automotive, Inc. as “Group Operations Manager,” responsible for overseeing warranty labor rate  
10 submissions to franchisors for dealerships owned by Kent Putnam. The CFO duties were added in  
11 2022. [RT IX 10:18-12:6, 108:5-25] Previously, beginning in 1993, he worked as a sales associate at  
12 Putnam Toyota, was later promoted to General Sales Manager and, from 2003 to 2020, was a partner  
13 and General Manager at the dealership. [RT IX 7:15-8:9, 10:1-7; see generally RT IX, pp. 6-155]

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

21 **Rad Reyes, Service Manager, Putnam Kia**

22 40. Rad Reyes has been employed by the Putnam Automotive Group for 29 years and has  
23 been the Service Manager of Putnam Kia since its opening in September 2021. [RT V 922:2-8, 923:16-  
24 19] He is also Service Manager of Putnam Toyota. [RT V 924:14-24] Mr. Reyes is in charge of service  
25 advisors and technicians at Putnam Kia. [RT V 925:5-16]

26 41. In great detail, Mr. Reyes described each of the repair orders in Putnam Kia’s  
27 submission and explained the results of his research of the Labor Time Standards (LTS) factory hours  
28 ///

1 for each repair.<sup>12</sup> [See generally RT V, pp. 921-1008, VI, pp. 6-227, VII, pp. 14-118]

2 42. Mr. Reyes described Putnam Kia's pricing policies for non-warranty repair and service  
3 work that service advisors were directed to follow, including pricing for diagnostic-only jobs and  
4 routine maintenance. [RT V 943:15-944:17, 951:6-952:2, 973:10-974:17, 976:24-977:6; VI 74:15-18]  
5 He was unable to explain the reasons why the two Putnam Kia service advisors deviated from those  
6 unwritten policies. [RT VI 55:21-24, 57:6-15, 100:19-101:7, 106:2-22; VII 81:22-82:19; IX 127:2-20]  
7 Neither service advisor was called as a witness.

8 43. Rad Reyes testified regarding his preparation of the list of LTS warranty times of the  
9 repair orders in Putnam Kia's submission (Exhibit 121). [RT VI 8:1-9:19]

10 **Respondent's Witness**<sup>13</sup>

11 **James Nardini, National Manager, Warranty & Technical, Kia U.S.**

12 44. James Nardini is the National Manager for Warranty, Technical, and Service Operations  
13 for Kia U.S., which is the group that manages all of the U.S. Kia dealerships.<sup>14</sup> [RT I 45:11-25] He has  
14 been employed by Kia U.S. since 2021. [RT I 50:11-14] Previously, since 1989, Mr. Nardini worked in  
15 the automotive industry in customer service (Isuzu Motors) and warranty oversight and management  
16 (Porsche Cars North America). [RT I 48:8-49:19] His work experience did not include duties in a  
17 dealership, in a service department as a service advisor (pricing "customer-pay" repairs) or as a  
18 technician. [RT II 331:4-19]

19 45. Among Mr. Nardini's other duties as National Manager for Warranty, Technical, and  
20 Service Operations, he oversees the Warranty Operations Team, the Technical Support Team, and the  
21 service garage. [RT I 46:1-47:17]

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

26 <sup>12</sup> LTS is Kia's Labor Time Standard which is the time allowed by Kia for warranty repair operations.

27 <sup>13</sup> This section also identifies a critical percipient witness not called to testify, Oscar Rodriguez.

28 <sup>14</sup> Kia America includes three distributors, Kia Canada, Kia U.S., and Kia Mexico. [RT I 45:20-25] Mr. Nardini works for the U.S. portion of Kia America, Inc. [RT I 45:16-19]

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

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

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

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

## Preliminary Findings

50. Putnam Kia, a franchisee of Kia, is a motor vehicle dealership located at 2 California Drive, Burlingame, CA 94010. It sells vehicles and performs vehicle repairs and services. Putnam Kia is part of the Putnam Automotive Group, which operates “about 15” other vehicle franchises in Northern California--- Chrysler, Dodge, Jeep, RAM, Honda, Ford, Subaru, Toyota, Chevrolet, Cadillac, Buick, GMC, Mazda, Volvo, Volkswagen, and Nissan. [Stipulation of Facts, ¶¶ 1, 2 and 4; RT Vol VII 121:2-10; Vol IX 118:2-17] It is licensed as an automotive repair dealer by the Bureau of Automotive Repair, State of California; Putnam Kia’s license was issued on July 22, 2021. [Exh P-126]

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

52. Putnam Kia and Kia signed a Dealer Sales and Service Agreement (Dealer Agreement)

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

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

10 53. The Dealer Agreement did not establish an initial reimbursement rate for Putnam Kia’s  
11 warranty work.

### 12 **Kia’s Warranty Program**

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

16 55. Kia’s new vehicle warranties cover parts and labor for certain repairs for specified  
17 periods of time. “There are different coverages. There is the regular coverage. There is power train  
18 coverage. There is emissions coverage. There [are] a lot of different coverage[s] available to the  
19 consumer under the Kia warranties.” [RT I 51:4-16, 76:10-14]

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

24 57. Although Basic Warranty coverage is 60 months/60,000 miles (whichever comes first),  
25 the power train warranty (in the engine, the transaxle, axles, transmission, differentials, and propeller

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

shafts) is longer than the basic coverage; while other components have shorter coverages (audio/entertainment systems, batteries and brake and clutch linings, as examples). [Exhs R-230, pp. 1, 4, 6-8; R-231, pp. pp. 1, 4, 6-8]

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

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

#### **Putnam Kia's Initial Warranty Reimbursement Rate**

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

61. Before the dealership opened, Kia sent Putnam Kia its Warranty Labor Rate Market Analysis survey form, requesting "competitive labor rates" of seven other line-makes in the market: Ford, Honda, General Motors (Chevrolet/Cadillac), Hyundai, Mazda, Nissan and Toyota. Like Kia, these are "mass market" brands, not "luxury" line-makes like Porsche, where labor rates "can be double" those at non-luxury dealerships. [Exh J-2.001-.002; RT I 87:12-89:15, 90:3-91:4; RT V 819:15-820:2; RT IX 28:11-19, 31:7-12]

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



1                                    **Kia's Calculation of Warranty Reimbursement Payments**

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

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

11                                    **Kia's Establishment of "Time Allowances"**

12            65.      Kia's time allowances are published in the "LTS" section of its dealer intranet site  
13 Kdealer+. [RT II 125:11-18]

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

17            67.      To establish labor times for repairs in various components of a vehicle, Kia starts its  
18 inquiry even before the manufacturing process begins. "[A lot of those] processes and procedures that  
19 are associated with the . . . repair of different components on the vehicle . . . are set up initially . . .  
20 before manufacture and during manufacture." As part of the process, technicians working in Kia's  
21 "service garage" perform confirmations of factory-provided "time studies" for specific repairs,  
22 especially "those related to certain types of repairs or extensive repairs." If the factory "labor hours" are  
23 validated by the technicians' reviews, Kia will approve the "labor hours" assigned to the specifically  
24 identified repairs and they become the "time allowances" for those repairs. [RT I 46:1-6, 47:5-17,  
25 67:25-68:15; RT II 335:13-336:16]

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

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

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

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

70. If a technician encounters a difficult or complex diagnostic problem<sup>19</sup> involving an extraordinary length of time to diagnose, or requires technical support from Kia, and the LTS hours assigned to the task will be exceeded, the dealership may request additional “XTT time” from Kia. This stands for extra time on top of standard labor operations. If granted, Kia will compensate the dealer for the “additional time . . . based on the actual hours the technician spends [on the repair].” [Exh R-232, pp. 1-2; RT I 68:16-69:23, 69:21-23, 71:22-74:7; II 247:6-249:3; III 372: 4-15, 23-25] Without XTT approval, the dealership is paid only the LTS time for the repair. [RT III 371:24-72:3, 372:16-22] Putnam Kia has never applied for XTT time, complaining that the procedures for accessing it are too complex [RT III 374:22-375:24; RT VII 21:25-23:25]; even if its complaint may be justified, Kia does offer a simplified procedure if the dealership request is .9 hour or less. [Exh R-232; RT I 73:14-74:7;

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

1 see also II 155:10-156:2, 249:14-23; III 374:10-377:16]

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

6 **Kia's Establishment of Hourly "Labor Rates" for Warranty Work**

7 72. Unlike time allowance hours, it is the hourly "labor rate"<sup>20</sup> which varies among  
8 dealerships, thereby causing differences in the product of the multiplier, the warranty payment. [Exhs  
9 R-237-R-240]

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

13 74. In California, previously established Kia dealerships may request increases in their  
14 warranty reimbursement labor rates in the following ways:

- 15 A. By following the procedure set forth in section 3065.2;  
16 B. By completing Kia's "Warranty Labor Rate Market Analysis" market survey of  
17 dealers in their competitive areas; or  
18 C. By entering into a voluntary written agreement with the franchisor. [Veh. Code  
19 §3065(b); Exh J-2.001-.002; RT I 87:12-22, 88:7-16]

20 75. Kia franchisees in the same district as Putnam Kia which were approved for warranty  
21 labor rate increases pursuant to section 3065.2 were the following:

- 22 A. Kia of Vacaville, former rate unknown, receiving \$176.80/hour (as of April 1,  
23 2022). [Exh P-116.005; RT II 293:18-294:1; RT IV 768:24-769:4];  
24 B. Capitol Kia, formerly receiving \$206.30/hour (as of June 23, 2022), thereafter  
25 receiving \$236.10/hour (as of June 25, 2023). [Exhs P-116.003, R-238; RT II 286:12-  
26

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

287:18]; and

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

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

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

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

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

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

### **FINDINGS REGARDING NON-WARRANTY REPAIRS**

77. Kia dealerships have complete discretion in setting competitive market prices for “customer pay” (“retail pay”) repairs and services.<sup>21</sup> No restrictions or directions are imposed by Kia. The Automotive Repair Act requires repair dealers to keep a copy of a retail repair order invoice for three years and to give one copy to the customer; there is no requirement to provide a copy to the franchisor, nor was any evidence presented that Kia received copies of these invoices. [Bus. & Prof. Code §§ 9884.8, 9884.11; RT I 81:16-24; RT II 332-2-8; RT III 387:6-8; RT VII 137:24-138:2, 147:13-22, 153:23-154:16]

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

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

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

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

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

12           81.     Putnam Kia’s DMS is a computer software program which manages the dealership’s  
13 business. CDK is the DMS used at Putnam Kia. It is used in both warranty and non-warranty service  
14 operations: “[i]t is basically how you write up repair orders, how you sell cars. All the paperwork that is  
15 done is through this system.” [RT V 987:24-988:15] It is the repository where customer records and  
16 repair orders are kept. FrogData extracted accounting copies of repair orders from Putnam Kia’s DMS  
17 for its submission. [RT VIII 11:11-19, 12:13-24, 16:22-17:8, 17:21-19:5, 26:20-27:13, 73:22-74:8,  
18 133:6-24; RT IX 78:3-8]

19           82.     Each iteration of a repair order (work order, invoice, accounting copy) displays different  
20 information depending upon when it was produced. [Bus. & Prof. Code §§ 9884.8, 9884.9(a)(1); Exh  
21 122.001-.012; RT II 149:9-15, VI 131:24-132:7, 136:5-137:12, 144:6-18, 147:2-149:23] Putnam Kia  
22 does not disclose to customers their hourly labor rates or the number of actual hours spent on the repair  
23 or service. [RT VII 146:14-147:6]

24           83.     Typically prepared by the service advisor, a work order describes the customer  
25 complaint(s), an estimate and the customer’s authorization for work that is specifically identified. Each  
26 complaint, service or concern is separately documented on “repair lines,” designated alphabetically (A,  
27 B, C, etc.). Subsequent entries (technician’s narratives of diagnostic and repair work, for example) are  
28 entered on the specific repair lines to which they relate. [Bus. & Prof. Code § 9884.9; Cal. Code Regs.,

1 tit. 16, §§ 3352(a), 3353(a); see for example Putnam Kia Repair Order No. 10280 in Exh P-122]

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

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

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

17 87. Sold Hours (S/HRS), the time allowance for a repair that Putnam Kia records on  
18 the accounting copy of the repair order [Glossary, p. 3], are the labor hours sold to the customer. [Exh  
19 J-7.003; RT I 116:24-117:2] Putnam Kia professes to use sold hours to determine the price charged to  
20 the customer in advance of the work, at the time of the “write up” before any work is actually  
21 performed and before any particular technician is assigned to perform the job. [Exh J-7.003] Unlike  
22 A/HRS times, entries under S/HRS are not based on data from other parts of the repair order and  
23 recorded, but are manually entered by the dealership. [RT II 118:6-11]

24 **Putnam Automotive Group’s Policies Regarding**  
25 **Non-Warranty Repairs**

26 88. Before section 3065.2 went into effect on January 1, 2020, dealerships then in the  
27 Putnam Automotive Group generally priced repairs using retail labor rates between \$220/hour and  
28 \$250/hour, multiplied by time allowances in commercial guides (independent third-party guides).

[Glossary, p. 2; RT VII 135:10-13, 141:15-19, 141:24-142:2]

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

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

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

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

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

1           **Diagnostic-Only Jobs**

2           94.     Similarly, for diagnostic-only jobs, service advisors were instructed to quote to  
3 customers a “flat fee” of \$250.00, with a “sold hour” time of .5 hour (\$500/hour). [RT V 954:24-  
4 955:19] Kent Putnam implied that diagnostic work was priced differently from other repairs. [RT VII  
5 142:3-13]

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

7           95.     On March 22, 2022, Putnam Kia submitted to Kia documents in support of its request  
8 pursuant to section 3065.2 for a higher warranty labor rate. The package consisted of a letter signed by  
9 Kent Putnam,<sup>22</sup> 538 closed repair orders from Putnam’s files, and selected repair orders, each of which  
10 Putnam represented to be “qualified” under the statute. An attached spreadsheet captioned “Putnam Kia  
11 of Burlingame California Dealer # CA323 Labor Analysis 03-16-2022,” showed the data and  
12 calculations based on information from the “qualified” repair orders. [Exh J-3.001-.005; RT VII 128:4-  
13 17, 129:21-130:2]

14          96.     The spreadsheet listed 31 line-items<sup>23</sup> (“Counts”), repair orders upon which Putnam Kia  
15 based its submission. [RT II 137:8-10] It was arranged in columns, each with identifiers. “Labor Sale  
16 Hours” (“Sold Hours”) totaled 21.4 and “Net Labor Charges” totaled \$9,577.01. By dividing the labor  
17 charges by the sold hours, Putnam arrived at a “Labor Rate” of \$447.52. [Exh J-3.002-.003; RT VIII  
18 39:11-40:7] This was an increase of \$222.25/hour over Putnam Kia’s current warranty labor rate of  
19 \$225.27/hour, which had been set fewer than seven months earlier when the Kia franchise that had been  
20 awarded to Mr. Putnam opened in September 2021. [Stipulation of Facts, ¶¶ 6-9, 11; Exhs J-2.001, J-  
21 3.001-.003, R-201]

22          97.     FrogData was exclusively responsible for the submission. No Putnam Kia personnel  
23 participated in the collection of, or any review of, the submitted repair orders or the calculations in  
24 FrogData’s Labor Analysis. [RT IX 14:2-22, 34:21-35:4] Kent Putnam did not work directly with  
25 FrogData in preparing the submission. [RT VII 128:22-129:14] Andrey Kamenetsky did not review any  
26 \_\_\_\_\_

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

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



of the documents in the submission, nor was any evidence presented that Rad Reyes played any part in Putnam Kia’s submission. [RT IX 13:12-18, 14:19-22, 104:2-10]

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

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

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

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

102. FrogData typically performs the following services for its clients:

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

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

C. With the optimal date range identified, selected information from the repair

orders is converted into “a very large spreadsheet format” which is, in turn, broken down into “analysis format.” The focus of FrogData’s analysis is whether the repair is “qualified” or not within the meaning of section 3065.2(j), although Jeff Korenak professed to have no information about Kia’s Warranty Program. The final product is an Excel spreadsheet using information from the dealership’s “qualified” repair orders.

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

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

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

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

103. FrogData provides its dealership clients with not only a “filtered” spreadsheet that may be submitted for warranty labor rate purposes, but also with the entire set of all repair orders FrogData considered, also in Excel format. FrogData does this so that dealerships have source material “to make sure there’s no mistakes.” [RT Vol VIII 45:7-46:16]

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

104. By letter to Kent Putnam dated April 20, 2022, Oscar Rodriguez, Kia’s Warranty Operations Manager, requested that Putnam Kia produce “all repair orders closed within the period of 30 days immediately following the set of repair orders previously submitted by the Dealership.” The reason, according to the letter, was that Putnam Kia’s requested labor rate (\$447.52/hour) was

1 “substantially higher” than its current labor rate (\$225.30/hour). [Exh. J-4.001-.002; Stipulation of  
2 Facts, ¶¶ 13-14; RT IV 577:5-19; see also RT Vol. IX 77:21-78:8]

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

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

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

11 107. Jeff Korenak acknowledged that Andrey Kamenetsky had forwarded Kia’s request to him  
12 to prepare and send a response on Putnam Kia’s behalf. He understood that he was to retrieve and  
13 assemble copies of Putnam Kia’s repair orders falling between certain dates after the original  
14 submission and send them to Kia, along with a transmittal letter. He was “familiar with the  
15 manufacturers requesting . . . [an] additional 30 days, whether it’s preceding or following.” [RT VIII  
16 61:17-62:3; IX 77:21-78:12]

17 108. FrogData’s data team would have gone into Putnam Kia’s DMS and pulled the  
18 accounting copies of closed repair orders for the 30-day period starting February 1, 2022, through  
19 March 2, 2022; this produced sequential repair orders numbered 10637 through 10845.<sup>24</sup> [Stipulation of  
20 Facts, ¶¶ 15-17; RT VIII 64:13-20, 72:11-19, 73:17-74:8] Jeff Korenak then “organized them, you  
21 know, to make sure that everything was there. I would have downloaded them onto a thumb drive, put  
22 it into a FedEx envelope, attached the letter that is [Joint Exhibit] J-5 signed by Kent Putnam, printed  
23 that, put it in a FedEx envelope and sent it to Kia.” [RT VII 132:21-133:2, VIII 61:17-62:8, 63:2-5,  
24 67:9-11, 67:23-68:13] No calculations or analyses, like those done with the earlier Putnam Kia  
25 submission, were performed by FrogData before the repair orders were sent to Kia. There were no  
26 reviews for “qualified” repair orders, no creations of spreadsheets, and “no calculations whatsoever”

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

1 regarding labor rates. [RT VIII 72:11-73:16]

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

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

11 **Kia’s Calculation of a “Proposed Adjusted Retail Labor Rate”**

12 111. By letter dated May 26, 2022, Kia’s Warranty Operations Manager Oscar Rodriguez  
13 denied Putnam’s labor rate request, characterizing the increase to \$447.52/hour from \$225.30/hour as  
14 “materially inaccurate and potentially fraudulent.” He attached a spreadsheet of Kia’s own  
15 calculations, which yielded a significantly lower retail labor rate than Putnam Kia’s submission.<sup>25</sup>  
16 [Stipulation of Facts, ¶¶ 18, 19; Exh J-6.001-.005; RT II 171:12-21; RT IV 584:13-585:11; RT IX  
17 80:10-81:4]

18 112. According to Kia, Putnam Kia’s submission was “materially inaccurate” in three  
19 respects:

20 A. Putnam Kia used “book times” in its calculations that were “in the aggregate, far  
21 fewer than the actual number of hours that generated the charges on the repair orders.” (Kia  
22 understood that “book times” were Putnam Kia’s “sold hours,” which it had entered on the  
23 accounting copy of its repair order as “S/HRS”, while “actual hours” were the technician’s  
24 recorded time to complete the diagnosis, appearing on repair orders as “A/HRS.”) [Exh. J-  
25 6.001-.003; RT IV 588:5-24] An example was a diagnostic-only job for which Putnam Kia  
26 charged the customer \$250.00. Although the technician’s actual time was 3.29 hours

27  
28 <sup>25</sup> Although Oscar Rodriguez signed the letter and “the content was reviewed between Oscar and the [Kia] legal  
teams . . . .,” he was not called as a witness. [RT II 332:9-334:21; V 861:18-863:2]

1 (“A/HRS”), Putnam Kia used .50 hour (“S/HRS”) in its calculations. Using “A/HRS” resulted  
2 in a retail rate of \$75.99/hour, while using “S/HRS” yielded \$500.00/hour. Putnam Kia did not  
3 explain why it chose to use “S/HRS” instead of “A/HRS” in its submission or what criteria it  
4 used to arrive at the “S/HRS” figure. [Exhs J-6.001-.003, R-205; RT IV 588:5-595:18]

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

9 C. Putnam Kia included a transaction which did not include a repair. Although  
10 Putnam Kia ordered a part for a customer and charged \$250 for doing so, the customer declined  
11 repair service. Putnam Kia “booked” (Kia’s term) .10/hour which appeared on the accounting  
12 copy of its repair order as “sold hours” (“S/HRS”) resulting in an hourly rate of \$2,500. [Exhs J-  
13 6.002, R-211.001]

14 113. Kia concluded that Putnam Kia’s submission was “potentially fraudulent” asserting that  
15 the requested rate did not reflect “fair and reasonable compensation” in that it was more than \$200/hour  
16 higher than the highest rate paid to any other California Kia dealer and approximately \$200/hour higher  
17 than the retail rates charged by luxury dealerships in Putnam Kia’s own market. Moreover, Kia found it  
18 “difficult to believe” that a customer would pay \$250 to a dealership just for ordering a part. [Exh. J-  
19 6.002; RT IV 758:12-759:21]

20 114. In addition to making additions to, and at least one subtraction from, Putnam Kia’s  
21 spreadsheet and using slightly different dates,<sup>26</sup> Kia amended Putnam Kia’s spreadsheet by adding an  
22 “A/HRS” column, reflecting information absent from the Putnam submission but present on many of  
23 the supporting repair orders. Kia characterized “A/HRS” times as “the actual number of hours that  
24 generated the charges on the repair orders . . . .,” tracking the language of section 3065.2(a)(2). With  
25 the change and using the added A/HRS resulted in a total of 43.94 hours; Kia’s inclusive date revisions  
26

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

1 also increased the total amount of charges to \$11,815.08. [Stipulation of Facts, ¶ 20; Exh J-6.004-.005]

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

6 116. Kia has been paying Putnam Kia at the rounded-up rate of \$268.90/hour since May 28,  
7 2022. [Section 3065.2(d)(3); Stipulation of Facts, ¶ 23]

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

9 117. By letter on June 15, 2022, Putnam Kia responded to Kia's May 26, 2022, denial letter.  
10 The letter addressed Kia's stated concerns and proposed a settlement, with rates higher than the  
11 \$268.90/hour rate proposed by Kia. Although signed by Kent Putnam, Andrey Kamenetsky authored  
12 the letter with the help of Jeff Korenak. [Exh J-7.001-.013; RT VIII 71:17-24; IX 91:2-8]

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

17 119. Under a caption entitled **"Sold hours vs actual hours and how customer pricing is**  
18 **determined,**" he wrote, "[f]or consistency, the labor rate and hours 'sold' that are charged to the  
19 customer and establish the effective rate are established **at the time of write up before the work is**  
20 **actually performed and before any particular technician is assigned to perform the job . . .** The  
21 actual price charged to the customer in advance of the work being performed **does not change** based on  
22 the 'actual hours' it took to complete, and as such 'actual hours' do not determine the charges the retail  
23 customer pays." [Bolded and underlined portions in original.] [Exh J-7.003]

24 120. Andrey Kamenetsky did not state what data, information or standard that Putnam Kia  
25 uses to establish "sold hours" for a particular repair or service, although he wrote that they "are most

26 ///

27 ///

28 ///

1 similar to how the manufacturer pays on warranty reimbursement . . .”<sup>27</sup> [Exh J-7.006]

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

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

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

17 124. On July 28, 2022, Kent Putnam wrote a letter to Oscar Rodriguez in which he stated  
18 that Putnam Kia had not received a response to its earlier letter of June 15<sup>th</sup> and asked if a response  
19 would be forthcoming from Kia. Oscar Rodriguez was not called as a witness, so there was no  
20 evidence, if any existed, of a response or action by Kia to the letter. James Nardini had no recollection  
21 of seeing the letter. [Exh P-109.001; RT 705:22-706:24]

## 22 **DETERMINATION OF ISSUES**

### 23 **“Actual Hours” are Contemplated by Section 3065.2(a)(2)**

24 125. The full text of section 3065.2(a)(2) is the following: “[t]he franchisee shall calculate its  
25 retail labor rate by determining the total charges for labor from the qualified repair orders submitted  
26 \_\_\_\_\_

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

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

1 and dividing that amount by the total number of hours that generated those charges.” (Emphasis added.)

2 126. The phrase, “the total number of hours that generated those [labor] charges” refers to  
3 “actual hours.” Actual hours are the labor times recorded by one or more technicians to complete the  
4 repair for which the customer was charged. The adjective “actual” is superfluous, presumably  
5 referencing the A/HRS (Actual Hours) input field in DMS software.

6 127. The word “hours,” as it appears in the statute, is used in its usual and ordinary meaning,  
7 as a unit of time. In statutory construction, the “plain meaning rule” is the starting point. “Words used  
8 in a statute . . . should be given the meaning they bear in ordinary use. [citations omitted.] If the  
9 language is clear and unambiguous there is no need for construction.” [*Lundgren v. Deukmejian* (1988)  
10 45 Cal.3d 727, 735; accord, *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (2009) 171  
11 Cal.App.4th 1088, 1093; *Mazda Motor of America, Inc. v. California New Motor Vehicle Board* (2003)  
12 110 Cal.App.4th 1451, 1456]

13 128. How a dealership initially prices a repair or service to the customer is irrelevant to  
14 section 3065.2(a)(2). The subsection is focused exclusively on closed transactions, after technician  
15 times are recorded and known. Only “completed” repair orders shall be used by the franchisee in its  
16 submission, and only “closed” repair orders may be requested by the franchisor if it finds the  
17 franchisee’s proposed labor rate substantially higher than its current warranty rate. A “qualified repair  
18 order” is one which is “closed” and “paid for by the customer.”

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

22 130. Actual labor hours are typically processed with DMS software at dealerships and are  
23 reasonably accurate:

24 A. Technicians contemporaneously record work on a specific job. A time clock will  
25 note the technician’s ID and record the “punch time,” then convert it to six-minute increments.  
26 The system may not be exact to the minute: Putnam does not require a technician to clock on  
27

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



1 and off a job for a bathroom break or to take a phone call, and occasionally technicians record  
2 their time on the wrong repair line or forget the time clock altogether. [RT I 69:24-70:11; II  
3 220:18-23; V 928:23-929:2]

4 B. After completion of the repair, DMS software totals technicians' actual hours for  
5 each repair line, then replicates those numbers under the A/HRS input field on the same repair  
6 line of the accounting copy of the repair order. No evidence was presented that A/HRS entries  
7 are entered in any other manner except by automatic transfer by the DMS from recorded  
8 technician labor times. A/HRS are used in judging employee efficiencies and performance and,  
9 for "flat rate" technicians, to pay them.

10 **"Sold Hours" are Inappropriate to be Used as a Statutory Standard**

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

18 132. Franchisees, in submissions, must show two reasonably verifiable numbers to support a  
19 new and higher warranty labor rate: actual charges for labor paid by customers and the "hours that  
20 generated those labor charges." Actual labor times are electronically processed by DMS software from  
21 a technician (with a unique ID number) to time clock (with a recorded date and time) to entry under  
22 A/HRS on the accounting copies of repair orders. Since A/HRS are based on data from other parts of  
23 the repair order, they may be verified by looking at the time clock entries, the description of the repair,  
24 the parts used, and the technician notes of actions taken and decisions made.

25 133. There is nothing in a repair order which validates S/HRS accuracy. Unlike A/HRS,  
26 entries under S/HRS are not based on data from other parts of the repair order but are entered manually  
27 from unknown sources, appearing on accounting copies of repair orders, but not on Work Orders or  
28 Invoices or any other documents. [Exh P-122.003, .004, .011] There is no identification in the repair

1 order of the person entering the hours, of the date and time of entry, how they were calculated, or of  
2 any other information supporting the accuracy of the entry.

3 134. The parties' definition of Sold Hours (S/HRS) as "[t]he time allowances for a repair that  
4 Putnam Kia records on the Accounting Copy of the Repair Order" [Glossary, p. 3], is unhelpful,  
5 revealing nothing about facts on which those "time allowances" might be based.

6 135. Putnam Kia's argument is that "sold hours" are LTS factory hours, with a labor rate  
7 multiplier of \$440.00/hour, are used to price retail repair estimates. This pricing policy, Putnam Kia  
8 claims, has been the direction of the Putnam Group CEO and senior personnel to service advisors since  
9 the beginning of the Putnam Kia franchise.

10 136. Testimony of Kent Putnam is:

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

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

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

16 A. Yes.

17 Q. What is it?

18 A. 440 an hour."

19 [RT VII 136:4-14]

20 137. Testimony of Andrey Kamenetsky is:

21 Q. [MR. SULLIVAN] "There's also been testimony at this hearing that the Putnam  
22 Auto Group has a policy to use the manufacturer's time allowances when pricing  
23 jobs. Do you recall that testimony?"

24 A. [MR. KAMENETSKY] I do.

25 Q. Okay. And specifically with respect to Putnam Kia, there's been testimony that  
26 the policy is for the dealership to use the Kia LTS time allowances multiplied by  
27 \$440; is that right?

28 A. That is correct."

1 [RT IX 127:2-11]

2 138. However, when pressed by respondent's counsel, Andrey Kamenetsky admitted the  
3 following:

4 Q. [MR. SULLIVAN]: "Okay. But there is, in fact, no written policy to that effect,  
5 correct?"

6 A. [MR. KAMENETSKY]: Correct.

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

9 A. It's a guideline. So it's just that; it's a guideline."

10 Q. You don't monitor it yourself?

11 A. I don't.

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

14 A. Yes."

15 [RT IX 127:12-20]

16 139. Testimony of Rad Reyes follows:

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

19 A. [MR. REYES] Yes.

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

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

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

26 A. So they use the LTS to figure out the labor times. The labor time, which would  
27 be the sold hours. And then the sold hours are multiplied by 440. And then you  
28 also get the price of the parts for the job. And then those are combined, and that

estimate is given to the customer before the work is done.

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

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

[RT VI: 17:4-24]

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

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

- Repair Order No. 10165B [Exhs P-121.002, R-249.001-.002; RT VI 23:20-26:4]
- Repair Order No. 10180B [Exhs P-121.002, R-250.001; RT VI 27:7-29:22]<sup>30</sup>
- Repair Order No. 10352A [Exhs P-121.002, R-254.001; RT VI 55:13-24]<sup>31</sup>
- Repair Order No. 10404A [Exhs P-121.002, R-255.001; RT VI 56:9-58:16]
- Repair Order No. 10415A [Exhs P-121.002, R-256.001; RT VI 58:17-61:16]
- Repair Order No. 10426D [Exhs P-121.002, R-257.003; RT VI 71:15-73:20]
- Repair Order No. 10486A [Exhs P-121.002, R-259.001; RT VI 84:14-86:4]<sup>32</sup>
- Repair Order No. 10529B [Exhs P-121.002, R-260.002; RT VI 89:2-91:8]<sup>33</sup>
- Repair Order No. 10581A [Exhs P-121.002, R-263.001; RT VI 101:24-107:16]

142. Jeff Korenak agreed that in order to determine whether a repair was "qualified" or not,

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

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

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

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

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

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

144. Using “sold hours” is an unreliable, unobjective standard: a dealer can manipulate the entry by “selling” whatever number of hours may be calculated to reach its desired labor rate, irrespective of its actual sales and actual hours and true labor rates. Reducing the number of sold hours allows Putnam Kia to competitively price the charge to a retail customer and at the same time maintain its claim that the hourly labor rate has been increased to \$440. Adopting Putnam Kia’s argument would allow franchisees to dictate the warranty labor rate that franchisors must pay, however divorced from the actual number of hours that generate the charges.

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

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

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

1 147. Non-conforming repair orders include the following:

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

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

7 149. Putnam Kia’s policy is that diagnostic work is charged to customers at a “flat fee” of  
8 \$250.00 and a Sold Hours entry time of 0.5 of an hour, irrespective of the actual time the technician  
9 spends on the diagnostic task. [RT VII 172:12-173:1] Customers, after receiving a diagnosis,  
10 sometimes return days later for the repair or replacement, and the diagnostic fee previously paid may be  
11 either be folded into the estimate for the repair, or not---Putnam Kia appears to have no consistent  
12 policy in this regard. [RT VI 188:3-190:11]

13 150. Several of Putnam Kia’s submitted repair orders were diagnostic-only jobs (and some of  
14 those also presented other “qualified” issues). Service advisor Rad Reyes, sometime in 2023, was given  
15 a list of the repair orders represented by the 31 line-items of the submission and instructed to look up  
16 Kia’s LTS warranty times for each. There were several which had no LTS warranty time that he  
17 discovered: Repair Order Nos. 10148, 10153, 10158, 10180 (one of two entries), 10298, 10300, 10454,  
18 and 10617. [Exh 121.002; RT VI 8:2-9:19, 120:10-121:20]

19 151. The following are examples:

20 A. Repair Order #10298

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

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

24 154. On June 15<sup>th</sup> (three months after the submission), Putnam Kia conceded the error, stating  
25 that “[w]e agree that the vendor FrogData should not have included this RO in our submission . . .”  
26 [Exh J-7.009]

27 155. Even though Mr. Kamenetsky indicated that this repair order should have been  
28 cancelled, it was included in Putnam Kia’s March 22<sup>nd</sup> submission, which led to a clearly out-of-line

1 result.

2	Open/Close Dates:	7 DEC – 10 DEC 21
3	Repair/Service:	Diagnostic - Part ordered then cancelled.
4	Customer Paid:	\$250.00
5	Labor Sale Hours (S/HRS): <sup>34</sup>	0.10
6	Sold Labor Rate:	\$2,500.00/hour
7	Actual Hours (A/HRS): <sup>35</sup>	0.00
8	Labor Rate:	Ineligible for submission.
9	LTS Warranty Time Allowance:	None (“Diagnostic” per Exh P-121.002)

10 B. Repair Order #10158

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

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

17	Open/Close Dates:	12 NOV-23 NOV 21
18	Repair/Service:	“Diagnose and advise”
19	Customer Paid:	\$250.00
20	S/HRS:	0.50
21	Sold Labor Rate (\$250/0.50):	\$500/hour
22	A/HRS:	3.29
23	Actual Labor Rate (\$250/3.29)	\$75.99/hour
24	LTS Warranty Time Allowance:	None (“Diagnostic” per Exh P-121.002)

25 ///

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

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

C. Repair Order #10300

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

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

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

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

**Other Non-Conforming Repair Orders**

A. Repair Order #10571

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

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

///



Open/Close Dates: 21 JAN-27 JAN 22

Repair/Service: Sunroof motor

Customer Paid: \$608.31

S/HRS: 1.30

Sold Labor Rate (\$608.31/1.30): \$467.93/hour

A/HRS: 2.87

Actual Labor Rate (\$608.31/2.87) \$211.95/hour

LTS Warranty Time Allowance: 2.40

B. Repair Order #10153

163. In addition to being not a “qualified” repair because diagnostics without repairs are not covered by Kia’s warranty, this repair order was misleading because it was incomplete, as Putnam Kia failed to reference an undisclosed related repair order, #10246 [Exhs R-270, R-271]. [Exhs J-3.002 (count 3), R-248, P-121.002] Jeff Korenak conceded, “[l]ooks like we missed it.” [RT VIII 153:2-12]

Open/Close Date: 11 NOV – 12 NOV 21

Repair/Service: Diagnostic – check power window.

Customer Paid: \$132.00

S/HRS: 0.30

Sold Labor Rate (\$132/0.30): \$440/hour

A/HRS: 0.98

Actual Labor Rate (\$132/0.98) \$134.69/hour

LTS Warranty Time Allowance: None (“Diagnostic” per Exh P-121.002)

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

164. When presented with a question of statutory construction, the primary task of a court is to determine the legislature’s intent, giving the language its usual and ordinary meaning, in order to promote, rather than defeat, the general purpose of a statute. Courts must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd

1 consequences. [*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977-978; *Malek v. Blue Cross of*  
2 *California* (2004) 121 Cal.App.4th 44, 64]

3 165. Here, legislative intent is unequivocally stated in the first sentence of the statute: the  
4 goal is “to determine a reasonable warranty reimbursement schedule . . .” [Section 3065.2(a)] The  
5 legislature has mandated a step-by-step process that franchisors and franchisees “shall” follow to reach  
6 that legislatively stated goal, with each step building on the previous step. “It is well settled that the  
7 word ‘shall’ is usually construed as a mandatory term. (citation omitted) This is particularly true here to  
8 construe the statute as optional would render it ineffective, a construction that we must avoid.” [*Malek*  
9 *v. Blue Cross of California, supra*, 121 Cal.App.4<sup>th</sup> at p. 48] A legislative analyst reviewing proposed  
10 section 3065.2, commented that “the purpose of the bill . . . is to create a standardized formula for  
11 reimbursement rates. . . .” [Assem. Com. on Transportation, Rep. on Assem. Bill No. 179 (2019-2020  
12 Reg. Sess.) Apr. 22, 2019, pp. 1, 5]

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

18 167. Putnam Kia did not perform the mandatory acts directed by the legislature. As a result,  
19 the spreadsheet submitted to Kia on March 22, 2022, was replete with errors and invalid entries, as  
20 shown by the examples discussed above.

21 168. For preparation of its section 3065.2 submission, Putnam Kia outsourced all statutory  
22 responsibilities to FrogData LLC and its “Warranty Boost+” program. FrogData’s business model  
23 overvalues speed in execution, overreliance on computerization, and minimal or no consultation with  
24 its clients, the dealerships. Evidence supports the conclusion that FrogData had an imperfect  
25 understanding of Kia’s warranty program and California law. With repair orders apparently not  
26 reviewed for errors or omissions, Putnam Kia allowed FrogData to submit to Kia repair orders and  
27 calculations, which Putnam Kia represented met the requirements of section 3065.2.

28 169. The responsibility for accuracy is on the proponent, the franchisee. However, Putnam

Kia's counsel tries to shift the responsibility for accuracy to Kia, addressing his client's "obvious" error of including a line-item with a \$2,500/hour labor rate: the inclusion, he stated, was an "isolated example of a cancelled repair" and that "a [retail labor rate] of \$2,500---this is obviously not reflective of what Putnam is actually charging customers. Nevertheless, this error was easily redressed because the statute permits Kia to do its own calculation [citing section 3065.2(d)(5)]." (Emphasis added.) [Protestant's Post-Hearing Opening Brief, p. 19, lines 19-26]

170. Under no interpretation of section 3065.2 is it possible to articulate a statutory right of Putnam Kia to shift the responsibility for accuracy to Kia---and to the Board---to find and correct errors in its own submission after the date that it has chosen to initiate the statutory process. It is Putnam Kia's responsibility to ensure the accuracy of its own submission.

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

172. To interpret section 3065.2 to allow a franchisee to begin the statutory process absent an expectation that the franchisee make a reasonable examination of the documents and calculations in the submission frustrates the purpose of the statute. The legislature's clear intent has been to ensure the expeditious, accurate and final resolution of a dealership's new warranty labor rate. This is beneficial for both the franchisee and franchisor. But that sought-after finality cannot be accomplished without an expectation for accuracy in the original submission.

173. Kia complied with section 3065.2 by proposing and paying for a proposed adjusted retail rate during the pendency of this matter.

### **CONCLUSIONS OF LAW**

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

A. Kia complied with section 3065.2 by timely responding to protestant's submission in conformity with statutory requirements.

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

4 C. Kia established that by using “sold hours,” Putnam Kia inaccurately claimed that  
5 \$440/hour was the labor rate it generally charged its customers for retail repairs, then submitted that  
6 claim as a basis for a higher warranty labor rate from Kia.

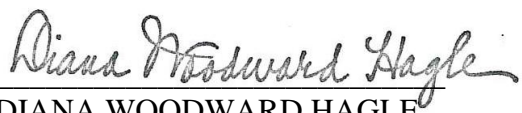
7 D. Integral to the implementation of the statutory scheme of section 3065.2 is the remedy  
8 accorded to the franchisee by the legislature. Section 3065.4 created a new cause of action, giving a  
9 franchisee the right to “ file a protest with the [B]oard for a declaration of the franchisee’s retail labor  
10 rate . . .” Accordingly, \$268.85/hour is declared to be the franchisee’s retail labor rate.

11 **PROPOSED DECISION**

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

15  
16 I hereby submit the foregoing which constitutes my  
17 Proposed Decision Following Remand in the  
18 above-entitled matter, as the result of a hearing  
19 before me, and I recommend this Proposed  
20 Decision Following Remand be adopted as the  
21 Decision of the New Motor Vehicle Board.

22 DATED: July 11, 2025

23  
24 By:   
25 DIANA WOODWARD HAGLE  
26 Administrative Law Judge

27 Steve Gordon, Director, DMV  
28 Kimberly Matthews, Branch Chief,  
Industry Services Branch, DMV

NEW MOTOR VEHICLE BOARD  
2415 1st Avenue, MS L242  
Sacramento, California 95818  
Telephone: (916) 445-1888

**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**

**ADDENDUM TO PROPOSED  
DECISION FOLLOWING REMAND;  
AMENDMENTS TO PROPOSED  
DECISION**

**[Vehicle Code section 3065.4]**

**BOARD ORDER OF REMAND**

1 . At a special meeting of the New Motor Vehicle Board ("Board") on November 1, 2024,  
the Board issued an Order of Remand dated November 5, 2024, as follows:

"[The matter is remanded] to the Administrative Law Judge ("ALJ") for additional briefing  
and/or to open the record for additional evidence or testimony for the purpose of making a  
determination pursuant to subdivision (a) of Vehicle Code section 3065.4 'for a declaration of  
the franchisee's retail labor rate'.

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."

///

///

///

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

2 **Statement of the Case**

3 2. A hearing pursuant to the Board’s remand order was held May 12-14, 2025, before  
4 Administrative Law Judge Diana Woodward Hagle at the Board’s offices in Sacramento, California.

5 **Parties and Counsel**

6 3. Protestant Putnam Kia (“Putnam”) is a Kia dealership located in Burlingame, California,  
7 and is a franchisee of respondent. Putnam is represented by the Law Offices of Gavin M. Hughes by  
8 Gavin M. Hughes, Esquire, and Robert A. Mayville, Jr., Esquire, 4360 Arden Way, Suite 1,  
9 Sacramento, California 95864.

10 4. Respondent Kia America (“Kia”) is the franchisor of protestant and is represented by  
11 Hogan Lovells US LLP by Lauren Deeb, Esquire, and Jonathan R. Stulberg,<sup>2</sup> Esquire, 1999 Avenue of  
12 the Stars, Suite 1400, Los Angeles, California 90067.

13 **ISSUES PRESENTED ON REMAND**

14 5. What is the amount of Putnam’s retail labor rate, pursuant to Vehicle Code section  
15 3065.4(a)?<sup>3</sup>

16 6. What language satisfies the Board’s direction to the administrative law judge to  
17 reconsider stated portions of the Proposed Decision?

18 **APPLICABLE LAW**

19 7. The Proposed Decision Following Remand sets forth sections 3065.2 and 3065.4. At  
20 issue here is section 3065.4(a), which states that a “franchisee may file a protest with the board for a  
21 declaration of the franchisee’s retail labor rate . . .”

22 **WITNESSES AND EVIDENCE PRESENTED AT REMAND HEARING**

23 **For Kia: Suzanne Heinemann**

24 8. Ms. Heinemann is a forensic accountant. She received her bachelor’s degree in business  
25

26 <sup>1</sup> Citations throughout this Addendum refer to oral testimony by exhibit number (Exh) and page(s), and by  
reporter’s transcript on remand (Remand) volume by Roman Numeral, page, and line. Other documents in the  
record are identified by their titles, as specifically denoted in the text.

27 <sup>2</sup> Jonathan Stulberg, Esquire, appeared on behalf of Respondent throughout the hearing and hearing on remand  
but withdrew his representation of Kia in this matter by email dated June 30, 2025.

28 <sup>3</sup> Hereinafter, unless otherwise indicated, all section references are to the California Vehicle Code.

1 administration with a concentration in finance in 1994 from the College of William & Mary,  
2 Williamsburg, VA. She is a Certified Public Accountant (CPA) and is Accredited in Business  
3 Valuation (ABV) through the American Institute of Certified Public Accountants. In 2019, she founded  
4 Analytics West, Manhattan Beach, CA and is a consultant and expert for Cirque Analytics. Over a  
5 career of nearly 30 years, she has testified as an expert witness across a variety of industries, including  
6 automotive industry cases. [Exh. R-273:45-55; Remand I 22:21-27:12]

7 9. Ms. Heinemann was an expert witness for respondent Ford Motor Company in *KPAuto*,  
8 *LLC, dba Putnam Ford of San Mateo v. Ford Motor Company* (Protest No. PR-2759-21).

9 10. Ms. Heinemann's proposed retail labor rate is \$268.85/hour. The chart showing her  
10 calculations is attached as Exhibit 1. [Exh. R-276]

11 **For Putnam: Michael A. Volkman**

12 11. Mr. Volkman is President of Service Department Solutions, Campobello, SC, which he  
13 established in 2014. The company is a consultant to dealerships, concentrating on service and parts  
14 departments. It has performed retail reimbursement rate submissions in California and other states  
15 (typical rate of 100 per year) and warranty audit reviews (typical rate of 3-4 per year). It is a competitor  
16 of FrogData<sup>4</sup>, the company that Putnam retained to calculate its Retail Labor Rate submission to Kia.  
17 [Exh. P-127, p. 3; Remand III 45:6-23]

18 12. Since 1974, Mr. Volkman's career has been mainly or exclusively in the automotive  
19 area. He studied Auto-Diesel Technology at the A. W. Beattie Technical Institute (1974-1976) and  
20 obtained a Bachelor of Vocational Education – Automotive Technology at the University of Pittsburgh,  
21 Pittsburgh, PA (1980-1992). Mr. Volkman was an Automotive Technician at Corsello Chevrolet (1976-  
22 1979), an Automotive Instructor (all mechanical areas) at the General Motors Training Center (1981-  
23 1983), a Service District Manager at Chevrolet Motor Division of GM (1983-1984, and Sales District  
24 Manager and in Business Management for the company 1984-1986). [Exh. P-127, p. 3]

25 13. Mr. Volkman's last employer before establishing Service Department Solutions was the  
26 Chrysler Corporation (1986-2014), where he was a Service and Parts District Manager (1986-1988),  
27

28 <sup>4</sup> Mr. Volkman's testimony relied on reviewing hearing records.

Customer Relations Specialist (1988-1990), and a Technical Advisor/Warranty Manager (1991-2014).  
[Exh. P-127, pp. 3, 6]

14. Mr. Volkman prepared a “Final 90 Day Period at Judges Instruction, California Retail Calculation Schedule, Putnam Kia” (dated May 12, 2025), which is attached as Exhibit 2. [Exh. P-129]. His proposed retail labor rate---as stated in his chart---was \$318.76/hour. At the conclusion of the remand hearing, Mr. Volkman's proposed retail labor rate was \$322.96/hour. [Remand III 393:6-10]

#### **Data Comparison Charts**

15. In order to meaningfully compare and evaluate the calculations of the expert witnesses, they produced charts evaluating repair orders using Actual Hours covering 90 days beginning on November 12, 2021, with Repair Order #10148 and closing on February 10, 2022, with Repair Order #10631 (the closing date is the “Ready” date on repair orders, discussed below---even though the customer may have picked up the vehicle and paid for repairs at a later date). [Exhs P-129, R-276; Remand I 36:2-9; Remand II 159:8-20; Remand III 430:11-14, 431:8-14; 434:6-10]

#### **FINDINGS OF FACT<sup>5</sup>**

16. The experts agreed on 18 transactions, but their opinions differed regarding the inclusion or exclusion of seven transactions [Exh R-277], as well as their values, in calculating a proposed retail labor rate, as follows:

#### **Separate Entries for Diagnostic and Repair Labor Hours**

17. Four of the seven disputed transactions presented the same issue (with some factual variations): what is the proper calculation of a retail labor rate where diagnostic labor time is entered on an RO<sup>6</sup> with no charge to the customer, and subsequent labor time to repair the problem is entered separately---either on the same RO or a different one---with charges? In other words, how do we treat technician hours spent diagnosing and fixing a problem, where the hours appear in two separate entries? The four transactions are the following:

///

<sup>5</sup> References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding and are not intended to be all-inclusive. Findings of fact are organized under topical headings for readability only and are not to be considered relative to only the particular topic under which they appear.

<sup>6</sup> Hereinafter, a repair order will sometimes be referred to as “RO”.



18. **Repair Order #10152 B<sup>7</sup> (Exh R-272) and Repair Order #10183 A (Exh R-208)**

*Consumer Complaint: the fuel door will not open when holding down button.*

RO #10152 B (November 11<sup>th</sup>):

A. On November 11, 2021, the customer reported that the fuel door of their 2013 Kia Sorento would not open automatically when holding down the button, that it was necessary to use the emergency safety latch. A technician's diagnosis was that the fuel door switch was "non-op." The RO recited that the customer was "aware [of] techs [sic] findings" and approved the repair and the ordering of parts, and that the "customer will come back once parts have arrived." The RO did not show either the price of the part or parts, or that the customer paid for them. The technician's labor hours<sup>8</sup> were recorded on the RO as "ISP .28" and the charge to the customer for labor was entered as "0.00". [Exh. R-272, p. 2]

B. The vehicle was "Ready" the next day, November 12th. [Exh. R-272, p. 2]

RO #10183 A (November 17<sup>th</sup>):

A. The customer returned five days later on November 17, 2021, and a new repair order was opened. "[A]s per discussed in last visit . . .", the fuel door switch was installed. The technician's labor hours for the repair were recorded as "0.43" with a labor charge of \$176.00. The customer was charged \$56.10 for the part. [Exh. R-208, pp. 1-2]

B. The vehicle was "Ready" the next day, November 18<sup>th</sup>. [Exh. R-208]

19. **Repair Order #10153 A (Exh R-248) and Repair Order #10246 B (Exh R-271)**

*Consumer Complaint: rear driver side power window won't function.*

RO #10153 A (November 11<sup>th</sup>):

A. On November 11, 2021, the customer reported that the rear driver side power window of their 2015 Kia Optima "will not roll up or down anymore . . . [it] has not been functioning properly for a while now, sometimes it goes up & sometimes it doesnt [sic]." After

---

<sup>7</sup> Each complaint, service or concern is separately documented on "repair lines," designated alphabetically (A, B, C, etc.). Subsequent entries (technician's narratives of diagnostic and repair work, for example) are entered on the specific repair lines to which they relate. [Proposed Decision (hereinafter "PD") ¶79, p. 20:3-7]

<sup>8</sup> Hereinafter, unless otherwise indicated, references to technician "hours" or "labor hours" shall refer to Actual Hours [PD ¶123, p. 30:11-14, ¶175.B., p. 44:2-4].

1 tearing down the door inner panel, the technician found that the “driver rear regulator motor  
2 [had] seized up” and recommended the motor be replaced. [Exh R-248, p. 1]

3 B. The repair order noted that the “customer authorized the replacement . . . part is  
4 being ordered . . . advisor will call customer when part arrived [*sic*]. Customer responsible for  
5 the labor on the next visit \$136.00.” The technician’s labor hours were “0.98” and the labor  
6 charge was “\$132.00.” [Exh R-248, p. 1]

7 C. Also on November 11, 2021, the customer authorized Putnam to perform a tire  
8 pressure check pursuant to the CA Global Warming Solutions Act 2006, which was performed  
9 on November 11th. Labor hours were “0.00” and the labor charge was “0.00.” [RO #10153 B;  
10 Exh R-248, p. 2]

11 D. Although the repair order stated that the customer would be “responsible for the  
12 labor on the next visit \$136.00,” it appears that, in fact, the customer paid Putnam a \$132.00  
13 labor charge and \$176.92 for the part being ordered. [Exh. R-248, p. 1]

14 E. The vehicle was “Ready” the next day, November 12<sup>th</sup>. [Exh R-248]

15 RO #10246 B (December 1<sup>st</sup>):

16 A. The customer returned 19 days later on December 1, 2021, and a new repair  
17 order was opened. After replacing the driver side rear window switch, the technician found the  
18 regulator motor tooth worn out and “highly” recommended replacing “the motor due to prevent  
19 further damage in the future.” The customer “authorized the work” which was “rechecked [and]  
20 completed, no further issue.” Because this was a “Loyal Customer,” as a matter of “Courtesy,”  
21 “no labor charged on the regulator, (Customer paid diag [*sic*] previously).” The technician’s  
22 labor hours were “0.00” and the customer was charged “0.00” for labor. [Exh R-271, p. 1]

23 B. Also on December 1, 2021, the customer authorized Putnam to perform a tire  
24 pressure check pursuant to the CA Global Warming Solutions Act 2006, which was performed  
25 on December 1st. Labor hours were “ISP 0.55” (from 08:25 to 08:58, 33 minutes) and the labor  
26 charge was “0.00.” [RO #10246 C; Exh R-271, pp. 1-2]

27 C. The vehicle was “Ready” on December 22, 2021. [Exh R-271]

28 ///

20. **Repair Order #10291 A and Repair Order #10291 F (Exh R-252)**

*Consumer Complaint: smoke coming from under hood while driving on an incline.*

RO #10291 A (December 7<sup>th</sup>):

A. On December 7, 2021, the customer reported that smoke was coming from under the hood of their 2012 Kia Sorento while driving on an incline (higher RPM's). It had happened three times. The technician was directed to "please inspect for external leaks and report." On December 7<sup>th</sup>, a technician (#400030) found that an "oil leak [was] coming from the back of the rocker cover and dripping on to the exhaust manifold." The technician recommended replacing the rocker cover gasket, which was done. Following the repair, the technician "checked for oil leak. At this time, no leaks coming from the . . . rocker cover." The technician's labor hours were "ISP 0.58" and the charge to the customer for labor was "0.00." No part was either identified or assigned a charge to the customer. [Exh R-252, p. 1]

RO #10291 F (on December 8<sup>th</sup>):

A. A notation, with a dateline of December 7<sup>th</sup>, stated that technician #400030 had "replaced rocker cover gasket as per rec. [sic]." The next day, on December 8<sup>th</sup>, a different technician (#400005) reported that "[d]uring inspection, found rear side valve cover gasket leaks. Recommended to reseal and recheck . . . Customer authorized the work." The technician "[r]eplaced rocker cover gasket due to leaks. Removed the valve cover and replace/reseal the gasket. Rechecked. Let the vehicle idle. No further leaks around the area." The technician's labor hours were "0.23" and the charge to the customer for labor was "\$264.00." The customer was charged \$35.70 for the part, a "gasket-rocker cover." [Exh R-252, p. 4]

B. The vehicle was "Ready" on December 9<sup>th</sup>. [Exh R-252]

21. **Repair Order #10426 B and Repair Order #10426 D (Exh R-257)**

*Consumer Complaint: airbag light came on after vehicle serviced elsewhere six months ago.*

RO #10426 B (December 30<sup>th</sup>):

A. On December 30, 2021, the customer reported that the airbag light of their 2015 Kia Optima Hybrid came on after getting the vehicle serviced elsewhere six months ago. The

1 technician found that the “driver airbag resistance [was] too high” and recommended  
2 replacement of a “clock spring”. The clock spring was replaced “as per rec. [sic] . . . [S]tarted  
3 vehicle and rechecked for airbag light. At this time no airbag light on, vehicle operating as  
4 design [sic].” The technician’s labor hours were recorded as “ISP 0.12”<sup>9</sup> and the charge to the  
5 customer for labor was recorded as “0.00.” No part was either identified or assigned a charge to  
6 the customer. [Exh R-257, pp. 1-2]

7 B. However, it appears that the labor charge to the customer for this repair was  
8 \$220, as stated in repair line D, below. [Exh R-257, p. 3]

9 RO #10426 D (December 30<sup>th</sup>):

10 A. At the same service visit, the customer also stated that the “steering wheel  
11 buttons have not been working,” and a separate repair line was created for this complaint.  
12 Three different technicians checked the complaint on three different dates. Each pressed each  
13 button on the steering wheel, each finding that each button was working as it was designed to  
14 work. Only the first technician’s labor hours were recorded as “0.10”---no hours were recorded  
15 for other two technicians---and the charge for labor was recorded as “\$220.00.” Even though no  
16 part was mentioned in the narrative, this repair line reflected a charge to the customer of  
17 \$202.17 for an “Assy-Clock S” (Part #93490-2T125). [Exh R-257, p. 3]

18 B. However, 55 minutes before the car was “Ready,” the third technician wrote this  
19 notation: “Replaced clock spring see Line B for diagnosis,” even though the clock spring had  
20 been replaced the day before by another technician, per repair line B. [Exh R-257, p. 3]

21 C. The vehicle was “Ready” on January 6<sup>th</sup>. [Exh R-257]

22 **Was the Repair “Qualified” Under the Statute?**

23 22. The issue here is whether an indicator light complaint should have been considered  
24 “qualified” by the parties.

25 23. **Repair Order #10581 A (Exh R-263)**

26 *Consumer Complaint: Downhill indicator light on, with a “rattling/ticking” sound.*  
27

28 <sup>9</sup> And 0.12 does show up in the “Duration” column on page 5 of the exhibit.

1                   RO #10581 A (January 24<sup>th</sup>):

2           A.       On January 24, 2022, the customer reported that the downhill indicator light in  
3           their 2015 Kia Sportage had been on for a few days, then “it went away itself.” The “customer  
4           also mention [sic]: Related to the indicator light on . . . heard the rattling/ticking sound.” The  
5           technician was directed to “perform further diagnose [sic] and report.” [Exh R-263, p. 1]

6           B.       Two different technicians recorded separate, but identical, assessments: they  
7           inspected the vehicle by “check[ing] for DTC” and finding “no DTC on for downhill brake  
8           control (DBC).” They also inspected the fuses, relay and switch, found that no fuses were  
9           blown, and concluded that those items inspected showed “signal and continuity.” During test  
10          drive(s), no DBC light came on, nor did either hear any ticking sound. Both concluded that “at  
11          this time vehicle is operating as design [sic].” [Exh R-263, p. 1]

12          C.       Labor hours were recorded as “0.92” and the labor charge was “\$125.00.”  
13          Although neither technician’s narrative reported replacing a light bulb, the customer paid  
14          \$11.80 for a bulb (#18644-27088L). [Exh R-263, p. 1]

15          D.       The vehicle was “Ready” the next day, on January 25<sup>th</sup>. [Exh R-263]

16                   **Was the Service Diagnostic or a Repair?**

17          24.       The issue here is whether the service for this check engine light complaint was  
18          “diagnostic-only” or a “repair.”

19          25.       **Repair Order #10617 A (Exh R-267)**

20                   *Consumer Complaint: Check engine light on, although no symptom while idle or*  
21                   *driving.*

22                   RO #10617 A (January 27<sup>th</sup>):

23          A.       On January 27, 2022, the vehicle, a 2014 Kia Soul, was towed into the  
24          dealership. The customer reported that the check engine light was on, but the customer had  
25          noticed “no symptom . . . when idle or driving.” The technician was directed to “perform

26          ///

27          ///

28          ///

1 diagnose [*sic*] and advise.”<sup>10</sup> [Exh R-267, p. 1]

2 B. Here is the technician’s narrative verbatim: “Check engine light was not on when  
3 I brought the car in[.] Scanned vehicle got one code in the history P0463 fuel level sensor a  
4 circuit high input[.] Checked using KDS data analysis sensor[.] Is working properly[.] Fuel  
5 level at full[.] Removed back seat to get the fuel level sensor connector plugged in properly[.]  
6 Performed wiggle test[.] Readings on KDS are within specs[.] Sensor is getting proper  
7 voltage[.] Erased DTCS[.] Reset addaptives [*sic*].” [Exh R-267, p. 1]

8 C. The technician’s labor hours were “0.37” and the labor charge was “\$132.00.”  
9 [Exh R-267, p. 1]

10 D. The vehicle was “Ready” on January 31<sup>st</sup>. [Exh R-267]

11 **What is the proper closing date of a repair order?**

12 26. The issue presented here was establishing whether the repair was “closed at the time of  
13 submission” per section 3065.2(j).

14 27. **Repair Order #10631 F (Exh R-214)**

15 *Consumer Complaint: The brake indicator light was on.*

16 *RO #10631 F (January 31<sup>st</sup>):*

17 A. On January 31, 2022, the customer reported that the brake indicator light of their  
18 2014 Kia Forte was on. The technician was directed to “please check the brake pads and inspect  
19 the brake fluid visually . . .” [Exh R-214, p. 3]

20 B. Upon finding the brake fluid to be low, the technician topped off the brake fluid,  
21 started the vehicle and the “brake indicatory light went away.” After further inspection of the  
22 brake pads to find the cause of the low brake fluid, the technician noticed that the front  
23 passenger side caliper was leaking brake fluid. The technician recommended replacing the  
24 passenger side brake caliper and perform a brake fluid service, which the customer authorized.

25 A “brake fluid flush” was performed, as well as a reset and recheck of the “DTC.” After a road  
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27 <sup>10</sup> No explanation for the tow-in was given, although when the vehicle was towed-in, the dealership assessment  
28 was that it was “low on oil and dirty” and the cause was “Maintenance.” The dealership recommended an oil  
change and a new oil filter, which the customer authorized. [Exh R-267, pp. 2-3]

test, the brakes were found to be operating “within specs” and there were “no leaks present at this time.” [Exh R-214, pp. 3-4]

C. The technician’s labor hours were “0.43” and the charge to the customer for labor was “\$572.00.” [Exh R-214, p. 3]

D. The technician reported completing the work on this repair line on February 3<sup>rd</sup>, but the vehicle was not “Ready” until February 24<sup>th</sup>. [Exh R-214]

## **DISCUSSION**

### **Separate Entries for Diagnostic and Repair Labor Hours**

#### **Overview**

28. The experts differed in their views of the proper calculation of an hourly rate where technician hours spent diagnosing and fixing a problem appear in two separate entries. This issue is shown in four transactions described above: RO #10152 B and RO #10183 A; RO # 10153 A and RO # 10246 B; RO #10291 A and F; and RO # 10426 B and D.

29. In each case, the repairs were “qualified” and the diagnosis of the problem related to the repair performed.

30. Calculating only the labor repair (not diagnostic) hours and charges, both experts agreed on the resulting retail labor rates for the four line-items.

#### **Expert Opinions**

31. However, the experts differed in their handling of the diagnostic labor hours where no charges were imposed: Ms. Heinemann added the diagnostic labor hours to the sum of the total hours in the group of RO’s, while Mr. Volkman omitted them. [Exh R-277]

32. Ms. Heinemann characterized separate repair order entries for related diagnostics and subsequent repairs as “pairing.” She identified the related repair orders as “pairs” and included all diagnostic labor hours in her final calculation of the total group of RO’s. It was irrelevant to her calculation that one of the multipliers would have been “0.00” for a specific line-item, since her approach preserved the diagnostic labor hours for the total calculation. [Remand I 72:7-19; 81:9-15; 84:17-85:13; 88:19-89:6]

33. Ms. Heinemann’s calculation adding labor hours would reduce the retail labor rate.

34. Where there is no retail charge to the customer for labor, Mr. Volkman omitted that line-item. His understanding, based on his experience with vehicle manufacturers, is that “you must have a retail charge to the customer to include the calculation because any time times a zero is always a zero.” [Remand III 377:11-20]

35. In Mr. Volkman’s opinion, whenever there is a “0.00” charge on a repair order, Putnam did not charge the customer. [III 378:1-3; 386:10-15] Therefore, for the purpose of calculating a retail labor rate, he would not factor in diagnostic hours where there is no charge to the customer, even though labor hours are recorded on the RO. No calculation can be made when one of the numbers is “0.00”:

“THE WITNESS (MR. VOLKMAN): Except that number times zero is always zero. So it’s nothing.

BY MS. DEEB: That’s just math.

MR. VOLKMAN: I just, that’s all this whole thing is math.” [Remand III 442:14-18]

36. Mr. Volkman’s conclusion omitting from his calculation diagnostic labor hours would reduce the number of labor hours in the calculation, thereby increasing the retail labor rate.

#### Analysis

37. “Diagnostics” is not a separate warranty-covered service so, absent a repair, diagnostic-only entries are not “qualified” under section 3065.2. “According to Kia Service Policy, all established labor operations in the Kia LTS contain nominal diagnostic time . . . *Unless otherwise noted, repair time also includes Diagnostic Time.*” [Italics in original.] [PD ¶145, p. 36:17-20]

38. Diagnostic time is integral to the repair process, and in most repair orders, it is folded into the same repair line and totaled along with repair time to calculate a “reasonable” warranty reimbursement schedule. The question here is whether the recording of the diagnostic hours separately (with no charge to the customer) from the repair hours changes this calculation.

39. Time spent diagnosing a problem is inseparable from repair, and the fact that earlier diagnostic hours are recorded separately from repair hours is irrelevant to this issue. These are not “diagnostic-only” services---they are diagnostics with repairs. And the fact that no charge was made to the customer does not change this conclusion; moreover, at least two of the repair orders had



“bridging” language where the technician referenced the earlier, diagnostic, part of the transaction.

40. Section 3065.2(a)(B)(2) provides:

“The franchisee shall calculate its retail labor rate by determining the total charges for labor from the qualified repair orders submitted and dividing that amount by the total number of hours that generated those charges.” [Emphasis added.]

41. The phrase, “total number of hours” lends support to Ms. Heinemann’s calculation of Putnam’s retail labor rate.

### **Was the Repair “Qualified” Under the Statute?**

#### **Overview**

42. In RO #10581 A, the customer complained about a downhill indicator light. Both parties at the hearing accepted this RO as “qualified” and included it in their calculations: protestant, using 0.50 Sold Hours times the labor charge of \$125.00, calculated the retail labor rate as \$250.00/hour, while respondent, using 0.92 Actual Hours, calculated it at \$135.87/hour. [Exhs J-3 and J-6] The RO was not discussed in the Proposed Decision. [Remand II 181:11-13]

43. However, the experts question whether the line-item should have been considered “qualified” in the first instance.

#### **Expert Opinions**

44. Ms. Heinemann did not question the parties’ mutual concurrence (in Exhibits J-3 and J-6) that this “replacement of a downhill indicator light” was “qualified” and properly included in her calculation of Putnam’s retail labor rate. [Exh R-273, p. 38]

45. According to Mr. Volkman, this RO should have been excluded from the calculation of Putnam’s retail labor rate. He identified many problems with designating this RO as “qualified.” [Exh P-128, p.3; Remand III 400:1-406:5]

46. First, Mr. Volkman pointed out the inconsistency of the narrative: “So, and then there was a repair of a light bulb; right? So there are famous light bulb argument. Can a light bulb that’s burnt out lit? And I would suggest to you it cannot.” [Remand III 400:12-15]

47. Mr. Volkman then continued: “So my expert testimony; right? Part two of that is when you look up the part number of that light bulb [on the RO], that’s for a reverse light . . . [i]t has nothing

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1 to do with the ...[downhill indicator light].<sup>11</sup> The downhill indicator light is activated by a “button you  
2 push” so the system “will hold the vehicle back so you don’t have to ride the brakes all the way.” It  
3 “[h]as nothing to do with the taillight at the back of the car.” The customer is “talking about an  
4 indicator light that the technician says there’s nothing wrong with it. It works as a design [*sic*]. . . . In  
5 this case here, there is no defect identified. He says the system operates as normal. There is no failure  
6 identified. . . . So it would be excluded. It’s a diagnosis with no casual failure.” [Remand III 400:1-  
7 402:25]

8 48. Lastly, Mr. Volkman stated that “I look at the bulb. Under the statute in California,  
9 bulbs are not included because they’re considered maintenance [and] . . . automatically excluded.”  
10 [Remand III 402:20-24]

### 11 Analysis

12 49. It is a fact that Putnam Kia and Kia both determined that this was “qualified” for  
13 purposes of the retail labor rate calculation. [Exhs J-3 and J-6] Repair Order #10581 A was not  
14 discussed in the Proposed Decision.

15 50. Mr. Volkman expressed persuasive reasons supporting his opinion that this was not a  
16 “qualified” repair.<sup>12</sup>

17 51. However, Ms. Heinemann is correct in not questioning uncontradicted positions of the  
18 parties not commented on in the Proposed Decision. Section 3065.2 sets forth a procedure for the  
19 parties to establish a retail labor rate and both parties agreed on the inclusion of this repair order. That  
20 ends the inquiry.

21 52. Accordingly, the calculation will include the information in this RO.

### 22 **Was the Service Diagnostic or a Repair?**

#### 23 Overview

24 53. Repair Order #10617 A presented a customer complaint that the check engine light was  
25 on, but the customer had not noticed any “symptom” while idle or driving. (The vehicle had been  
26

27 <sup>11</sup> No evidence was presented of the part numbers of either the “reverse light” or the “downhill indicator light.”

28 <sup>12</sup> Rad Reyes testified, “this one I can’t really explain, but normally with bulbs, you know, you would just be  
paying for the bulb itself. So, you know, it’s not typical that you would charge labor for a bulb replacement. And  
in this case, I’m not sure why they did.” [VI 106:5-14]

1 towed in, but there was no evidence of a connection to this complaint.) [Exh R-267, p. 1]

2 54. The Proposed Decision indicated that this was a “diagnostic-only” RO, noting that  
3 Service Advisor Rad Reyes could find no LTS warranty time that could be ascertained for the actions  
4 taken by the technician, presumably “get[ting] the fuel level sensor connector plugged in properly”,  
5 erasing “DTCS” [and] resetting “addaptives [sic].” [PD, ¶147, pp. 36:27-37:4; Exh R-267, p. 1]

#### 6 Expert Opinions

7 55. Ms. Heinemann concluded that she was “not aware of any repair related to the  
8 diagnostic performed on RO 10617-A.” Therefore, relying on the testimony of Rad Reyes that no LTS  
9 warranty time could be found for the technician tasks here, and following the language of the Proposed  
10 Decision that “absent a repair, diagnostic-only entries are not ‘qualified’ under section 3065.2” she  
11 concluded that this RO be excluded from her calculation. [Exh R-273, p. 40; see paragraph 37, *supra*]

12 56. Mr. Volkman would include RO #10617 A in the retail labor rate calculation, since he  
13 found the technician’s actions a “wiring repair, actually,” not just a diagnostic-only service. However,  
14 Mr. Volkman based his opinion on his interpretation of the technician’s notes which does not exactly  
15 comport with the narrative: Mr. Volkman stated: “It is a wiring repair. The connector for whatever  
16 reason became unseated. I can’t tell you as to why. He plugged it back in properly.” [Remand III 406:6-  
17 414:14] The narrative never stated that the connector became “unseated”; rather, the technician got “the  
18 fuel level sensor connector plugged in properly.” [Exh R-267, p. 1]

#### 19 Analysis

20 57. The testimony of Rad Reyes, that no LTS Warranty Time could be found, despite his  
21 search, for the technician actions taken here, is conclusive on this issue: the RO should not be included  
22 in the calculation of Putnam’s retail labor rate because it shows a “diagnostic-only” service.

23 58. Even if Mr. Volkman’s interpretation of the narrative is substantially correct, the  
24 technician’s actions still do not rise to the level of a “repair,” as evidenced by no LTS Warranty times.

25 59. Ms. Heinemann’s decision to exclude the RO data is correct.

#### 26 **What is the proper closing date of a repair order?**

#### 27 Overview

28 60. A “qualified” repair order is one which is “closed at the time of submission . . .” The

1 issue here is whether the operative date is the “Ready” date or the date the technician records  
2 completion of repairs of a repair line. The closing date is important because section 3065.2(a)(1)(B)  
3 specifies a “90-consecutive-day period.”

4 61. For the purpose of the remand hearing, the inclusive dates are November 12, 2021,  
5 through February 10, 2022.

6 62. Repair Order #10631 F presented a customer complaint that the brake indicator light  
7 was on. [Exh R-214, p. 3] Although the technician reported the work on this repair line was completed  
8 on February 3<sup>rd</sup> the vehicle was not ready until February 24<sup>th</sup>. [Exh R-214]

9 Expert Opinions

10 63. Ms. Heinemann excluded this repair on the basis that the closing date is the “Ready”  
11 date on the RO, which is February 24<sup>th</sup>, after the final inclusive date of February 10<sup>th</sup>. [Exh R-273, p.  
12 40]

13 64. Mr. Volkman included this repair; his opinion was that the closing date was February  
14 3<sup>rd</sup>, when the technician recorded completing the repair line work, which was before February 10<sup>th</sup>.  
15 [Remand III 414:17-415:18, 430:17-431:21, 432:16-20]

16 Analysis

17 65. Section 3065.2(j) provides guidance in this regard. A “qualified repair order” is one  
18 which must be “closed” at the time of submission “and paid for by the customer . . .”. (Emphasis  
19 added.) The statutory language does not contemplate a “repair line” within a repair order, and a  
20 customer typically would not pay a dealership for service until the vehicle is “Ready”.

21 66. Therefore, the “Ready” date, appearing at the top of the first page of the RO, is the  
22 operative date for purposes of the statute.

23 67. Ms. Heinemann’s view is correct.

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1. Kia America's Proposed Retail Labor Rate is \$268.85/hour.
2. Putnam Kia's Proposed Retail Labor Rate is \$322.96/hour.

## CONCLUSION

Pursuant to section 3065.4, Putnam's retail labor rate is declared to be \$268.85/hour.

I hereby submit the foregoing Addendum to Proposed Decision Following Remand in the above-entitled matter, as the result of a remand hearing before me, and I recommend that the Conclusion be adopted by the New Motor Vehicle Board.

DATED: July 11, 2025

By: Diana Woodward Hagle  
DIANA WOODWARD HAGLE  
Administrative Law Judge

Steve Gordon, Director, DMV  
Kimberly Matthews, Branch Chief,  
Industry Services Branch, DMV

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		
<b>Total</b>						28.56			<b>21.36</b>	<b>\$5,742.70</b>	<b>\$268.85</b>	

**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.

**Final 90 Day Period at Judges Instruction  
California Retail Calculation Schedule  
Putnam Kia  
5/12/2025**

Number		Date		30 DAY ADDITIONAL DATE		LABOR			
10158		11/12/21		03/02/22					
10712		02/10/22							
8		90	DAYS OF REPAIRS		<div>\$318.76</div>				
RO Count	Repair Order	EXH	Repair Lines	Repair Type	Actual Time	Labor Sale	Labor Adj	\$/HR	% DISC
	10148	R-242		Remove No Actual Hours				#DIV/0!	
	10150			Diag - No Retail Sale				#DIV/0!	
X	10153	R-248	A	REGULATOR	0.98	\$132.00		\$134.69	
	10158	R-205		Removed Ruling Diag Out				#DIV/0!	
X	10165	R-249	B	REGULATOR	0.80	\$176.00		\$220.00	
X	10180	R-250	A	ABM	0.85	\$88.00		\$103.53	
	10180	R-250	B	SWITCH				#DIV/0!	
X	10183	R-208	A	SWITCH	0.43	\$176.00		\$409.30	
X	10191	R-251	C	STARTER				#DIV/0!	
X	10291	R-252	F	GASKET	0.23	\$264.00		\$1,147.83	
	10298	R-211		Removed Kia/Dealer Agree				#DIV/0!	
	10300		A	Removed By Ruling				#DIV/0!	
	10320		A	Removed No Actual Time				#DIV/0!	
X	10346	R-212	A	SAFETY PLUG	3.42	\$660.00		\$192.98	
X	10352	R-254	A	VALVE	1.23	\$382.00		\$310.57	
X	10404	R-255	A	RESEAL PAN	0.97	\$401.19		\$413.60	
X	10415	R-256	A	ECU	2.92	\$440.00	\$44.01	\$135.61	0.100
X	10426	R-257	D	CLOCK SPRING	0.10	\$220.00		\$2,200.00	
	10442		C	Removed By Ruling				#DIV/0!	
	10454		A	Removed Ruling Diag Out				#DIV/0!	
X	10486	R-259	A	SENDER	0.65	\$660.00		\$1,015.38	
X	10529	R-260	A	SEAL	1.84	\$440.00		\$239.13	
	10529	R-260	B	PUMP	0.61	\$200.00		\$327.87	
X	10534	R-261	B	PUMP	0.50	\$220.00		\$440.00	
X	10553	R-262	A	LATCH	0.72	\$250.00		\$347.22	
	10568		A	Removed By Ruling				#DIV/0!	
	10581	R-263		Diag - NTF - Bulb				#DIV/0!	
X	10585	R-264	A	LATCH	0.26	\$132.00		\$507.69	
X	10590	R-265	E	RESEAL PAN	0.99	\$431.52		\$435.88	
X	10591	R-266	A	VCMA	1.14	\$264.00		\$231.58	
X	10617	R-267	C	RESET ADAPTIVES	0.37	\$132.00		\$356.76	
X	10631	R-214	F	CALIPER	0.43	\$572.00		\$1,330.23	
	10679		A	Removed Outside Scope				#DIV/0!	
	10680		A	Removed Outside Scope				#DIV/0!	
								#DIV/0!	
20			Averages		19.44	\$6,240.71	\$44.01	\$318.76	

**Exhibit 2**

**AMENDMENTS TO PROPOSED DECISION**<sup>1</sup>

1. Paragraphs 7-10 are added, as follows:

“7. At a special meeting of the Board on November 1, 2024, the public members of the Board considered the Proposed Decision. Public comments pursuant to the Bagley-Keene Open Meeting Act were received by the Board from counsel for protestant and respondent.

8. Following consideration of the administrative record and Proposed Decision, the Board issued an Order of Remand dated November 5, 2024, as follows:

‘[The matter is remanded] to the Administrative Law Judge (“ALJ”) for additional briefing and/or to open the record for additional evidence or testimony for the purpose of making a determination pursuant to subdivision (a) of Vehicle Code section 3065.4 ‘for a declaration of the franchisee’s retail labor rate.’

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.’

9. A hearing pursuant to the Board’s remand order was held May 12-14, 2025, before Administrative Law Judge Diana Woodward Hagle at the Board’s offices in Sacramento, California.

10. The remand proceedings are set forth in a document, Addendum to Proposed Decision Following Remand; Amendments to Proposed Decision, which is attached hereto as an exhibit and incorporated by reference as though set forth at length herein.”

2. Paragraph 120 was deleted.

3. The first sentence of paragraph 164 is amended to read, “Putnam Kia did not perform the mandatory acts directed by the legislature.” [Proposed Decision Following Remand, ¶167]

4. The last sentence of paragraph 165 is deleted and the sentence preceding it is amended to read, “With repair orders apparently not reviewed for errors or omissions, Putnam Kia allowed

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<sup>1</sup> Unless otherwise clear from the narrative, references in this section to Paragraph numbers are to the Proposed Decision dated October 15, 2024.



FrogData to submit to Kia repair orders and calculations, which Putnam Kia represented met the requirements of section 3065.2.” [Proposed Decision Following Remand, ¶168]

5. In the first sentence of paragraph 166, the “burden of insuring that a submission is accurate” was replaced with “responsibility for accuracy.” In the second sentence of paragraph 166, “burden” was replaced with “responsibility for accuracy.” [Proposed Decision Following Remand, ¶169]

6. In the second sentence of paragraph 167, “burden” was replaced with “responsibility for accuracy.” The last sentence of paragraph 167 is deleted. [Proposed Decision Following Remand, ¶170]

7. In paragraph 168, the word “profoundly” in the second sentence is deleted. [Proposed Decision Following Remand, ¶171]

8. Paragraphs 169 through 174, inclusive, are deleted.

9. Paragraphs 172 and 173 were added before the Conclusions of Law, as follows:

“172. To interpret section 3065.2 to allow a franchisee to begin the statutory process absent an expectation that the franchisee make a reasonable examination of the documents and calculations in the submission frustrates the purpose of the statute. The legislature’s clear intent has been to ensure the expeditious, accurate and final resolution of a dealership’s new warranty labor rate. This is beneficial for both the franchisee and franchisor. But that sought-after finality cannot be accomplished without an expectation for accuracy in the original submission.”

“173. Kia complied with section 3065.2 by proposing and paying for a proposed adjusted retail rate during the pendency of this matter.”

10. In subsection C of paragraph 175, the last sentence is deleted. [Proposed Decision Following Remand, ¶174.C.]

11. Subsection D of Paragraph 175 of the Proposed Decision is replaced *nunc pro tunc* to read as follows:

“Integral to the implementation of the statutory scheme of section 3065.2 is the remedy accorded to the franchisee by the legislature. Section 3065.4 created a new cause of action, giving a franchisee the right to “file a protest with the [B]oard for a declaration of the

franchisee’s retail labor rate . . .” Accordingly, \$268.85/hour is declared to be the franchisee’s retail labor rate. [Proposed Decision Following Remand, ¶174.D.]