

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0156 CAF**

**ANTONIO P. QUESADA,  
Complainant**

**v.**

**GENERAL MOTORS, LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Antonio P. Quesada (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in his 2012 Chevrolet Silverado 1500, a pickup truck manufactured by General Motors, LLC (Respondent). Complainant alleges several defects in the vehicle, including a bent frame or misalignment in the rear of the vehicle which causes the tire to rub against the cargo box, instability when pulling a trailer, an intermittent engine acceleration which causes the vehicle to downshift and jerk forward, and an electrical problem creating issues with, among other things, the horn and the gas gauge. The Hearings Examiner finds that, based on a preponderance of the evidence, Complainant did not timely commence this proceeding within the deadlines established by statute, so that the Lemon Law complaint should be dismissed.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Apart from the issue of the timely commencement of this proceeding, there are no other contested issues of jurisdiction or notice. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened before Hearings Examiner James D. Arbogast on July 22, 2014 at the Texas Department of Transportation District Office in San Antonio, Texas. Complainant represented himself. Respondent was represented by Kevin Phillips, business resource manager for

passed since the date of the original delivery of the motor vehicle to an owner.” Tex. Occ. Code § 2301.606(d).

## **B. Evidence and Arguments**

Complainant purchased the 2012 Silverado 1500 4WD Crew Cab LT from Freedom Chevrolet on February 24, 2012, with mileage of 19 on the date of delivery.<sup>1</sup> The vehicle was covered by Respondent’s 3-year/36,000-mile (whichever comes first) “bumper to bumper” limited warranty covering repairs to correct any defect in materials or workmanship occurring during the warranty period, and Respondent’s 5-year/100,000-mile (whichever comes first) powertrain limited warranty covering defects in the vehicle’s engine, transmission and drive train.<sup>2</sup>

The parties submitted Freedom Chevrolet service invoices documenting three service visits in the four months following delivery of the vehicle. The first visit occurred on April 18, 2012, at which time the vehicle had a mileage of 2,698.<sup>3</sup> During this visit, Complainant reported an issue with the engine misfiring on a cold start. Although no diagnostic codes had been stored or triggered to show engine misfires, the engine control module was reprogrammed with the latest manufacturer programming updates available at that time.<sup>4</sup>

The next service visit occurred on June 6, 2012, at which time the vehicle had a mileage of 5,299.<sup>5</sup> During this visit, Complainant raised an issue with the gas gauge, which he stated inaccurately registered a quarter tank of gas when the vehicle was in fact nearly empty. Freedom Chevrolet technicians ran a diagnostic test and found no triggered diagnostic codes, and could not replicate the defect. Complainant also alleged that the automatic transmission shifted early on hills and while pulling

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<sup>1</sup> Complainant Ex. 6 (window sticker); Complainant Ex. 7 (sales contract); Complainant Ex. 9 (odometer disclosure statement).

<sup>2</sup> Complainant Ex. 6 (window sticker); Respondent Ex. 2 (global warranty vehicle summary).

<sup>3</sup> Respondent Ex. 1 (four Freedom Chevrolet repair invoices for Complainant’s vehicle dated 04/18/2012, 06/06/2012, 06/12/2012, and 02/10/2014); Respondent Ex. 2 (global warranty vehicle summary).

<sup>4</sup> Respondent Ex. 1 (four Freedom Chevrolet repair invoices for Complainant’s vehicle dated 04/18/2012, 06/06/2012, 06/12/2012, and 02/10/2014); Respondent Ex. 2 (global warranty vehicle summary).

<sup>5</sup> Complainant Ex. 20 (06/06/12 invoice).

a trailer, but the invoice states that “this is normal shifting for this vehicle with a 6 speed transmission.”<sup>6</sup>

The next documented service visit occurred on June 12, 2012, at which time the vehicle had a mileage of 6,006 miles.<sup>7</sup> During this visit, Complainant again raised an issue with the fuel gauge registering a quarter tank of fuel just before dropping to empty, and again Freedom Chevrolet could not duplicate the concern, found no diagnostic codes triggered, and found no defect at that time.

Also during the June 12, 2012 visit, several electrical issues raised by Complainant were verified to exist and purportedly repaired by Freedom Chevrolet. Complainant raised an issue with the steering wheel controls not working properly, which was verified, and the steering wheel module coil was replaced. The faulty steering wheel coil also appeared to blow the fuse on the horn, and the fuse was replaced. Another electrical problem involved the instrument cluster lights staying on after the vehicle was no longer running, which was caused by a shorted body control module. The body control module was replaced.<sup>8</sup>

Complainant also raised an issue with the truck jerking forward at low speeds, alleging the “transmission will jerk like going into a lower gear when already at a stop.”<sup>9</sup> The service technician “test drove 2 miles [but] was unable to duplicate concern” and no defects were found.<sup>10</sup> The invoice suggested a possible cause for Complainant’s issue, which is that the “vehicle is in auto [four wheel drive] which will cause abnormal [feeling] driving characteristics.”<sup>11</sup>

There are no documents which evidence any further service visits between this June 12, 2012 service visit and January 30, 2014, when the Lemon Law Complaint was filed.

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<sup>6</sup> Complainant Ex. 20 (06/06/12 invoice). During this service visit, Complainant raised other issues, such as whether the oil pressure gauge was accurate, that are not at issue in this hearing.

<sup>7</sup> Complainant Ex. 10 (06/12/12 invoice).

<sup>8</sup> Complainant Ex. 10 (06/12/12 invoice).

<sup>9</sup> Complainant Ex. 10 (06/12/12 invoice).

<sup>10</sup> Complainant Ex.10 (06/12/12 invoice).

<sup>11</sup> Complainant Ex. 10 (06/12/12 invoice). During this service visit, Complainant raised other issues, such as an issue with a seat cover, that are not at issue in this hearing.

Respondent. Rick Lawver, service manager of Freedom Chevrolet of San Antonio, Texas (Freedom Chevrolet), provided testimony on behalf of Respondent. The hearing concluded and the record closed on that same day.

## II. DISCUSSION

### A. Applicable Law

The Lemon Law provides administrative remedies for a consumer whose vehicle cannot be made to conform to an applicable express warranty. Tex. Occ. Code §§ 2301.601-.613. If the manufacturer of the vehicle “is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value after a reasonable number of attempts,” the manufacturer shall reimburse the owner for reasonable incidental costs resulting from the loss of use of the motor vehicle, and either replace the motor vehicle with a comparable vehicle or repurchase the vehicle less a reasonable allowance for the owner’s use of the vehicle. Tex. Occ. Code § 2301.604. An impairment of market value is “a substantial loss in market value caused by a defect specific to a motor vehicle.” Tex. Occ. Code § 2301.601(1). A serious safety hazard is “a life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.” Tex. Occ. Code § 2301.601(4).

An order issued under the Lemon Law may not require a manufacturer to repurchase or replace a vehicle unless “(1) the vehicle owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.” Tex. Occ. Code § 2301.606(c). The Lemon Law provides several methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Tex. Occ. Code § 2301.605(a).

A Lemon Law proceeding “must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have

The Lemon Law Complaint also does not list any further service visits following the June 12, 2012 visit. For each of the four issues raised by the Lemon Law Complaint, the following four dates are alleged as repair visits to address problems existing as of the date the Complaint was filed: (1) February 24, 2012, with a mileage of 19; (2) March 12, 2012, with the mileage unstated;<sup>12</sup> (3) June 6, 2012, with a mileage of 5,299;<sup>13</sup> and June 12, 2012 with a mileage of 6,006.

The issues raised by the Lemon Law Complaint are (1) unsafe tire rubbing on cargo box due to crooked frame and cargo box; (2) occasionally the engine accelerates, the transmission downshifts and the truck jumps forward at stops; (3) electrical problems, including the horn shorting out; false readings from the gas gauge and backup camera remains on when the truck is going forward; and (4) the seat cover is not attached properly.

These same four alleged defects were also raised in the January 24, 2014 notification letter to Respondent, which stated that "I took my vehicle back to the dealer for repairs on 3/12/2012, 6/6/2012, 6/12/2012 but, to date, the dealer has been unable to correct the problem."<sup>14</sup>

Although Complainant filled in the box on the Lemon Law Complaint indicating the mileage at delivery, Complainant did not indicate the mileage on the date the Lemon Law Complaint was filed, but rather left that box blank. Nor did Complainant indicate the date when 24,000 miles was reached, again leaving that box blank.

On February 10, 2014, within two weeks of the submission of the Lemon Law Complaint, the vehicle was once again brought into Freedom Chevrolet for service. On that date, the mileage was stated as 41,407.<sup>15</sup> Among the issues addressed during this visit were a replacement of both horns and a replacement of the front seat cushion cover and pad. This invoice also noted Complainant was raising the issue of the left rear wheel rubbing on the fender liner, but "found no defects" and suggested that

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<sup>12</sup> This date is stated by the Lemon Law Complaint as the "make ready" date.

<sup>13</sup> The Lemon Law Complaint actually lists a mileage of 529.9 for this date, but the insertion of the decimal point was obviously an inadvertent error. The invoice for this service date states a mileage of 5,299; see Complainant Ex. 20 (06/06/12 invoice).

<sup>14</sup> Complainant Ex. 8 (Notification Letter).

<sup>15</sup> Respondent Ex. 2.

Complainant was "over loading vehicle."<sup>16</sup> During this visit, which lasted from February 10 to February 28, 2014, the vehicle was sent out to a frame shop for additional tests and diagnosis.

During the hearing, Complainant was asked to state the alleged manufacturing defects that remained unrepaired as of the date of hearing. Complainant alleged and discussed the following issues: (1) tire rubbing against cargo box due to crooked frame; (2) occasionally the engine accelerates and the transmission downshifts and the truck jumps forward at stops; (3) the truck sways when a trailer is hitched to the vehicle; and (4) electrical problems, including the horn shorting out and false readings from the gas gauge.<sup>17</sup>

During the inspection and test drive of the vehicle at the hearing, the alleged issues with the engine acceleration and electrical problems did not duplicate. Nor was there any demonstration of, or evidence presented concerning, the allegation that the trailer swayed when hauling a trailer. However, the hearings examiner did observe marks on the wheel well indicating that the left rear tire had rubbed against the cargo box on at least one occasion, and evidence of some misalignment of the body and frame in the rear of the vehicle.<sup>18</sup> On the date of the hearing, the vehicle's mileage was observed to be 51,254.

In response to Complainant's testimony and evidence in support of his Lemon Law claims, Respondent's primary argument was that Complainant failed to timely commence this proceeding. Noting that a Lemon Law proceeding must be commenced not later than six months after the date a vehicle accumulates 24,000 miles, Respondent argued that the vehicle at issue must have reached 24,000 more than six months before the Lemon Law Complaint was filed. Respondent also argued that Complainant failed to establish the statutory prerequisites to show a reasonable number of repair attempts were made, noting that each alleged defect at issue was subject to, at most, only two repair attempts. Finally, Respondent argued that there was insufficient evidence to show that any of the

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<sup>16</sup> Respondent Ex. 2.

<sup>17</sup> Complainant did not raise at the hearing the issue with the seat cover that was raised in the Lemon Law Complaint. Apparently this issue was adequately remedied during the February 2014 repair visit.

<sup>18</sup> Specifically, Complainant showed how one rear tire slightly stuck out past the wheel well, while the other was entirely enclosed by the wheel well. Complainant also pointed out how the leaf springs appeared to be spreading out. Complainant Exs. 2-5 are photographs which also evidence the tire rubbing on the wheel well and the leaf springs apparently slightly out of alignment.

alleged issues with the truck constituted a manufacturing defect for which Lemon Law relief may be granted.

### C. Discussion and Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of the evidence that he is entitled to relief. Because Complainant did not establish that he timely commenced this proceeding, the complaint must be dismissed.

“A proceeding under [the Lemon Law] must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of the original delivery of the motor vehicle to an owner.” Tex. Occ. Code § 2301.606(d). Because this proceeding commenced on January 30, 2014, the date the Lemon Law Complaint was submitted, Lemon Law relief must be denied if the vehicle had more than 24,000 miles on July 30, 2013.

Complainant presented no evidence to establish on what date the vehicle's mileage reached 24,019 (*i.e.*, 19, the mileage on the date of delivery, plus 24,000 miles). Complainant did not fill in the box requiring that information on the Lemon Law Complaint, and at the hearing did not adequately explain why that information was left off of the Lemon Law Complaint. At the hearing, Complainant did not provide an estimate of the date the vehicle reached 24,019 miles.<sup>19</sup> There were no 2013 service invoices, or any other evidence of mileage in 2013, to help better estimate what the mileage was on July 30, 2013.

Using the evidence that was presented by both parties to best estimate when the vehicle reached 24,019 miles, it is likely that the vehicle had reached 24,019 miles well before July 30, 2013.

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<sup>19</sup> To explain in part why he could not provide this estimation, Complainant asserted that the odometer was malfunctioning and could not be trusted to accurately measure the vehicle's actual mileage, making it impossible for him to state when the vehicle reached 24,000 miles. Complainant presented no evidence to support the assertion that the odometer was malfunctioning, and the odometer appeared to be working correctly when the vehicle was driven several miles during the hearing. The hearings examiner does not find the assertion that the odometer is inaccurate to be credible.

Complainant failed to provide the mileage as of the date of the Lemon Law Complaint, but on February 10, 2014, less than two weeks after this proceeding was commenced, the vehicle's mileage was 41,407.<sup>20</sup> We may therefore estimate that the mileage on January 30, 2013 was approximately 41,000.

In order for this proceeding to be timely filed no later than six months after 24,019 miles was reached, we would have to assume the vehicle was only driven an average of 1,413 miles a month or less before July 30, 2013,<sup>21</sup> but then driven an average of 2,830 miles a month or more in the six months between July 30, 2013 and January 30, 2014.<sup>22</sup> In other words, we would have to assume the average monthly mileage doubled in the six months prior to filing the Lemon Law Complaint. There is no evidence to support this assumption, and Complainant did not testify to unusually high mileage in the six months prior to filing the Lemon Law Complaint.

Therefore, Complainant did not establish by a preponderance of the evidence that this proceeding was timely commenced. To the contrary, the evidence established that the vehicle had most likely passed 24,019 miles several months before July 30, 2013. For this reason, Lemon Law relief, in the form of an order to repurchase or replace the truck, must be denied as the proceeding was not commenced timely.<sup>23</sup>

Apart from the failure to timely commence this suit, Complainant also failed to meet his burden of proof to show that any alleged problems with the vehicle are manufacturing defects. For example, Complainant failed to show by a preponderance of the evidence that the evident rubbing of the tire against the cargo box was the result of a manufacturing defect and not, as Respondent argued, the result of overloading the cargo box. It is also unclear whether the possible frame misalignment is the result of manufacturing defects covered by the warranty, or the result of misuse of the vehicle.

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<sup>20</sup> Respondent Ex. 2.

<sup>21</sup> There are 17 months between March 2012 (the first full month after purchase) and July 2013, inclusive.  $24,019$  divided by  $17$  is  $1,412.88$ .

<sup>22</sup> The estimated mileage on the date this proceeding commenced is  $41,000$ .  $41,000$  minus  $24,019$  is  $16,981$ , and  $16,981$  divided by  $6$  is  $2,830.16$ .

<sup>23</sup> Because the determination that this proceeding was not timely commenced requires the Lemon Law Complaint to be dismissed, it is unnecessary to determine whether the other prerequisites of Lemon Law relief, such as a reasonable opportunity to repair, have been met.

However, the parties are reminded that the vehicle remains under warranty. While Complainant may not be granted Lemon Law relief in this hearing, Respondent still has the obligation to repair any manufacturing defects covered by the warranties. Complainant is not precluded by this decision and order from continuing to seek the repair of his vehicle under the provisions of the warranties. *See* Tex. Occ. Code § 2301.204.

### III. FINDINGS OF FACT

1. Antonio P. Quesada (Complainant) purchased a new 2012 Chevrolet Silverado 1500 4WD Crew Cab LT from Freedom Chevrolet of San Antonio, Texas (Freedom Chevrolet) on February 24, 2012, with mileage of 19 on the date of delivery.
2. The manufacturer of the vehicle, General Motors, LLC (Respondent) issued a limited warranty for the vehicle, with bumper-to-bumper coverage for three years or 36,000 miles, whichever comes first, and powertrain (engine, transmission and drive train) coverage for five years or 100,000 miles, whichever comes first.
3. Between February 24, 2012, the date of purchase and January 30, 2014, the date the Lemon Law complaint was filed, there are three documented service visits where the vehicle was serviced at Freedom Chevrolet.
4. The first documented service visit occurred on April 18, 2012, at which time the vehicle had a mileage of 2,698. During this visit, Complainant reported an issue with the engine misfiring on a cold start, and the engine control module was reprogrammed.
5. The second documented service visit occurred on June 6, 2012, at which time the vehicle had a mileage of 5,299. Among other issues, Complainant raised an issue with the gas tank registering a quarter tank before suddenly dropping to nearly empty, but Freedom Chevrolet could not duplicate the alleged defect. Complainant also alleged that the automatic transmission shifted early on hills and while pulling a trailer, but Freedom Chevrolet asserted this was normal for this type of vehicle and transmission.

6. The third documented service visit occurred on June 12, 2012, at which time the vehicle had a mileage of 6,006 miles. During this service visit, among other issues, Complainant raised the following issues:
  - (a) the fuel gauge registered a quarter tank before suddenly dropping to nearly empty, which Freedom Chevrolet was unable to duplicate or verify;
  - (b) several electrical problems with the steering wheel controls, the horn, and the instrument cluster, which were confirmed and purportedly repaired by replacing the steering wheel module coil, the horn fuse, and the body control module; and
  - (c) the truck was alleged to jerk forward at low speeds, as if it were going into a lower gear when it was already at a stop, but Freedom Chevrolet could not duplicate the concern and no defects were found.
  
7. Complainant filed a Lemon Law Complaint with the Texas Department of Motor Vehicles (Department) on January 30, 2014. The Lemon Law Complaint stated four issues with the vehicle:
  - (a) unsafe tire rubbing on cargo box due to crooked frame and cargo box;
  - (b) occasionally the engine accelerates, the transmission downshifts, and the truck jumps forward at stops;
  - (c) electrical problems including the horn shorting out and false readings from the gas gauge; and
  - (d) the seat cover is not attached properly.
  
8. The Lemon Law Complaint reported four repair visits to remedy those four issues: February 24, 2012, mileage 19; March 12, 2012, no mileage stated; June 6, 2012, mileage 5,299; and June 12, 2012, mileage 6,006. Freedom Chevrolet was stated as the servicing dealer for all of these visits.
  
9. Complainant's January 24, 2014 notification letter to respondent states that Complainant took the vehicle to Freedom Chevrolet to remedy alleged defects on March 12, 2012, June 6, 2012, and June 12, 2012.

10. The Lemon Law Complaint did not report the mileage on the vehicle at issue as of the date of filing.
11. The Lemon Law Complaint did not state the date when 24,000 miles was reached on the vehicle.
12. On February 10, 2014, less than two weeks after the Lemon Law Complaint was filed, the vehicle was brought to Freedom Chevrolet for service. On that date, the mileage was 41,407.
13. On July 23, 2014, the Department's Office of Administrative Hearings issued a notice of hearing direct to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing was to be held, particular sections of the statutes and rules involved, and the matters asserted.
14. The hearing convened before Hearings Examiner James D. Arbogast on July 22, 2014 at the Texas Department of Transportation District Office in San Antonio, Texas. Complainant represented himself. Respondent was represented by Kevin Phillips, business resource manager for Respondent. Rick Lawver, service manager of Freedom Chevrolet, provided testimony on behalf of Respondent. The hearing concluded and the record closed on that day. On the day of the hearing, the vehicle's mileage was 51,254.
15. Complainant did not prove by a preponderance of the evidence that a warrantable defect or condition which creates a serious safety hazard in Complainant's vehicle, or which substantially impairs the use or market value of the vehicle.
16. The evidence established that, more likely than not, the vehicle at issue reached a mileage of 24,000 no later than July 30, 2014.

17. Complainant did not prove by a preponderance of the evidence that this proceeding was timely commenced not later than six months after the date on which 24,000 miles had passed since the date of the original delivery of the motor vehicle to Complainant.

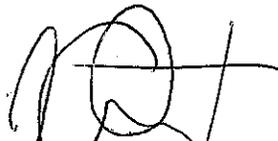
#### IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051 and 2001.052; 43 Tex. Admin. Code § 215.206(2).
4. Complainant bears the burden of proof in this matter.
5. The Lemon Law Complaint was not timely filed, because Complainant did not commence this proceeding within six months after the date on which 24,000 miles have passed since the date of the original delivery of the motor vehicle to Complainant.
4. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
5. Based on the above Findings of Fact and Conclusions of Law, Complainant is not entitled to relief under Texas Occupations Code § 2301.604(a).

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** that Complainant's petitioner for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED August 12, 2014.**



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**JAMES D. ARBOGAST  
HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**