TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0157 CAF

SCOTT SAVELY,	§	**BEFORE THE OFFICE**
Complainant	§	
	§	
v.	§	**OF**
	§	
	§	
FORD MOTOR COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Scott Savely (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in his 2011 Ford F-150. Complainant seeks replacement of the vehicle due to its intermittent loss of power on acceleration. Ford Motor Company (Respondent) argues that the truck's alleged defects do not meet the statutory requirements for repurchase or replacement. The hearings examiner finds that Complainant's Lemon Law claim should be upheld and orders Respondent to replace Complainant's vehicle.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits convened on May 7, 2014 in Austin, Texas before Hearings Examiner Anne K. Perez. Complainant represented himself at the hearing. Respondent was represented by field service engineer Brett Castleberry. The hearing on May 7, 2014 was recessed until May 26, 2014, based on the parties' agreement that: (1) prior to May 26, 2014, Respondent would coordinate the repair of Complainant's vehicle consistent with several existing, applicable Technical Service Bulletins (TSBs) issued by Respondent; and (2) on May 26, 2014 at 1:00 p.m., the evidentiary hearing would reconvene telephonically for the presentation of evidence concerning the recent repairs and current functioning of Complainant's vehicle.[1]

Between May 8 and 22, 2014, the parties sent a series of emails to the Office of Administrative Hearings (OAH). OAH's administrative staff notified both parties of 43 Texas Administrative Code § 215.22's requirement that all written communication from a party to the hearings examiner must be served on the opposing party. In accordance with this rule, Complainant and Respondent's email communications received by OAH were forwarded to the opposing party before they were included in the case file reviewed by the hearing examiner.

[1] Order No. 3 issued on May 9, 2014, formalized the parties' agreements and other details of documentation requirements.

On May 16, 2014, Complainant withdrew his authorization for Respondent's repair of the vehicle pursuant to the TSBs discussed at hearing. As a result, Order No. 4 issued on May 16, 2014 canceled the May 26, 2014 telephonic hearing and ordered Respondent submit a response addressing the technical issues raised in Complainant's May 16, 2014 filing. On May 21, 2014, Respondent complied with Order No. 4's directive. Complainant's final posthearing submission was received on May 22, 2014, and the record closed on May 26, 2014.

II. DISCUSSION

A. Applicable Law

Section 2301.604(a) of the Texas Occupations Code gives a motor vehicle owner the option of seeking the manufacturer's replacement or repurchase of the vehicle if: (1) the manufacturer has been unable to conform the vehicle to an applicable express warranty (2) by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle (3) after a reasonable number of attempts. "Serious safety hazard" means a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.[2] The vehicle owner is required to mail written notice of the alleged defect to the manufacturer and provide the manufacturer with an opportunity to cure the nonconformity.[3]

In addition these requirements, Texas Occupations Code § 2301.605(a) provides several methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty.

B. Complainant's Evidence

Complainant purchased the 2011 Ford F-150 with a 3.5 Liter Ecoboost engine from Covert Ford of Austin, Texas on September 30, 2011, with mileage of 249 at the time of delivery.[4] Respondent issued an express warranty on the vehicle covering defects in factory-supplied materials and workmanship for three years or 36,000 miles, whichever occurs first, and defects in the powertrain (engine, transmission, and drive train) for five years or 60,000 miles, whichever occurs first.[5] On the date of hearing, the truck's mileage was 29,300 and it remains under warranty.

Complainant testified that his truck's engine has a defect that causes it to lose power. The problem occurs intermittently and unexpectedly while the vehicle is traveling at highway speeds in rainy or humid

[2] Tex. Occ. Code § 2301.601(4).
[3] Tex. Occ. Code § 2301.606(c).
[4] Complainant Ex. 13, Buyer's Order for the subject vehicle. This exhibit was presented posthearing and is admitted without objection.
[5] Complainant Ex. 10, 2011 Model Year Ford Warranty Guide.

weather. On more than one occasion, the truck's engine failure created a dangerous situation that could have resulted in injury, or even death.

Complainant stated that the first incident occurred in December 2011. It was a rainy day, and he was driving about 60 miles per hour (mph) on a two-lane highway. He accelerated in order to pass a slower-moving vehicle when suddenly, his truck's engine lost all power. He slowed down by braking abruptly, coasted in behind the car he was attempting to pass, and steered his vehicle on to the highway's shoulder. The vehicle's "Check Engine Light" was on, and while the engine was still "cranked" the truck's ability to accelerate was gone. He turned off the ignition. When he re-started the engine the light went off so he drove home. The next day he took the truck in to Covert Ford and reported what had happened.

Covert Ford's January 3, 2012 invoice, created three months after purchase when the vehicle had a mileage of 3,909, documents that "Customer states check engine light is on" and notes that the dealer detected diagnostic trouble code P0301. The invoice repair description states: "Perform Misfire Monitor Neutral Profile Correction; Function Per SSM 21703; Perform Final Quick Test."[6]

The second incident did not occur until 23 months later, a fact that Complainant attributes to the 2012-2013 draught in central Texas, where he does most of his driving. Complainant testified that in December 2013 he was traveling west on IH-20 in northeast Texas. Traffic was heavy and the weather was misty and humid. He was driving the truck in the left lane and approached a construction zone where the two westbound lanes merge. Complainant accelerated, attempting to pass a slow-moving semi-trailer truck to his right before the highway went down to one lane, but at the crucial moment his engine disengaged and stalled. He was forced to slam on the truck's brakes and finesse his way behind the semi-trailer truck, barely avoiding a high-speed accident. Complainant eventually steered his vehicle over to the highway's shoulder. Once again, his "Check Engine Light" was on. He turned off the ignition. When he re-started the vehicle the engine light went off, and he drove on.

Complainant stated that he brought the truck in to Covert Ford as soon he returned to Austin. He described the vehicle's sudden loss of acceleration power to Gene Simmons, the service manager. Covert Ford's invoice for the repair visit reflects the following information:[7]

Date	Mileage	Reported Concerns	Dealership's Findings and Actions
12-10-2013	**23,013**	**When Trying to Pass on Harsh Acceleration Truck Stumbles and Stops Accelerating**	**Recalibrate; Road Test; Reprogram PCM per TSB 13-08-10.[8]**

[6] Complainant Ex. 1.
[7] Complainant Ex. 2.
[8] Technical Service Bulletin (TSB) 13-8-10 was admitted as Complainant Ex. 4. The TSB provides that "[s]ome 2011-2013 Ford F-150s equipped with 3.5L Gasoline Turbocharged Direct Injection (GTDI) engine and built on or before 7/29/2013 may exhibit a slight buck/jerk at steady cruise with the transmission in 6th gear and engine lugging up grades at 1500-2000 RPM." TSB 13-8-10 instructs dealers to "[r]eprogram the Powertrain Control Module (PCM) to the latest calibration using IDS release 86.02 and higher. Calibration files may also be obtained at the website."

		Check Engine Light is On	**High Resistance in Boost Sensor Connector 3; EFC Test Inspect & Replace Turbo Boost Sensor Per TSB 13-10-10**[9]
		Engine Runs Rough; Misfire on Acceleration	**Coil Boots Arcing; Ignition Diagnosis; Replace All 6 Spark Plugs & Coil Boots; Clear Codes; Road Test**

Complainant testified that that truck's the loss of acceleration reoccurred two weeks later, as he was driving from Austin to Columbus, Mississippi. Once again, it was raining. He was accelerating to enter a two-lane ramp accessing eastbound IH-20 when, without warning, his engine stalled. Similar to prior occasions, the truck's braking and steering mechanisms remained intact, the "Check Engine Light" came on, and there was no power to accelerate. When he pulled over and restarted the vehicle it ran fine. Complainant testified that he continued on to Columbus where his father lives in a nursing home, where he contacted a local dealer, Premier Ford Lincoln of Columbus, and requested the first available appointment. The Columbus dealer's repair order reflects the following information:[10]

Date	Mileage	Reported Concern	Dealer's Findings and Actions
12-26-2013	**24,122**	**Check Engine Light is On; When Driving at Hwy. Speed and Attempt Acceleration the Truck Has No Power**	**Checked and Found Bank O^2 Sensor Bad and Replaced Sensor; Installed 8F9Z 9F472 G: Sensor-Hego; Test Drove & Tested OK**

By the time Complainant returned to Austin in January 2014 he was angry, frustrated, and worried that he was risking his life by continuing to operate the truck. He notified Respondent of the vehicle's problems on January 15, 2014 via certified letter sent to Respondent's executive offices in Dearborn, Michigan.[11] And, on February 4, 2014, he filed a Lemon Law complaint with the Texas Department of Motor Vehicles.

Complainant testified that the fourth incident occurred on January 16, 2014. He was traveling about 40 mph in heavy traffic on the outskirts of Austin. It was raining. As he started up a hill, the truck's engine automatically downshifted before it abruptly lost power. This time the "Check Engine Light" on his dashboard did not come on. Complainant shifted the truck into "neutral" gear and coasted a ways before "popping it back into drive," after which he said the vehicle drove fine.

[9] TSB 13-10-10 was admitted as Complainant Ex. 3. This TSB states that"[s]ome 2011-2013 Ford F-150s built on or before 2/15/2013 and equipped with 3.5L GTDI engine may exhibit an intermittent malfunction indicator light (MIL) illuminated with one or more of the following diagnostic trouble codes (DTCs): P0236, P0238, P025E, and/or P007D. The TSB instructs dealers to follow the outlined service procedures that are designed to diagnose wiring problems.

[10] Complainant Ex. 5.

[11] Complainant Ex. 9.

The next day he brought the truck in to Covert Ford. The dealer's January 17, 2014 invoice reflects the vehicle's mileage of 25,634, documents Complainant's concern as "No Power on Harsh Acceleration & Vehicle Bogs Down When This Happens," and notes that Covert Ford was "unable to verify concern at this time."[12] Although no fault codes were detected during this service visit, Complainant noted that weather conditions on January 17, 2014 were cold and icy, while the truck's problem occurred under rainy and humid conditions the previous day. He was also cognizant that January 16, 2014 was the first time the "Check Engine Light" failed to signal the vehicle's loss of acceleration power, a circumstance he believes is connected to the new oxygen sensor his truck received on December 26, 2013. He agreed to return to Covert Ford the next time it rained so his truck could be tested under proper conditions.

Complainant brought the vehicle back to Covert Ford when the rained on January 23, 2014. The dealer's invoice of the same date reflects the vehicle's mileage of 25,964, documents Complainant's concern as "Truck Bogs Down When Trying to Pass & Hesitates on Acceleration," and notes diagnostic tests and findings as "EEC Test; No Codes: All Systems Pass: Road Test; Unable to Verify Concern."[13]

Complainant stated that the problem reoccurred a fifth time on April 1, 2014. He was driving his truck on a highway in east Texas traveling about 50 mph. It was raining. The highway's speed limit increased to 60 mph, and when Complainant attempted to accelerate his engine lost all power. No other cars were around this time. Having learned from past experience, Complainant said he shifted the truck into "neutral" and coasted a ways before shifting back into "drive." Meanwhile, the vehicle's braking and steering systems remained intact. The engine light did not come on at all. Complainant stated that after this incident, he took his truck in to AutoZone for diagnostic testing independent of an authorized Ford dealer. However, the testing performed by AutoZone uncovered no trouble codes.

Complainant testified that the ordeal with his truck led him perform extensive research, in hopes of diagnosing the problem himself. At the hearing he offered an April 11, 2014 Detroit News article, which details how the National Highway Traffic Safety Administration's (NHTSA) opened an investigation into 2011-2013 Ford F-150 trucks with 3.5L EcoBoost engines after receiving nearly 360,000 complaints of reduced engine power during hard acceleration.[14] The article quotes NHTSA's technical description of the problem:

> When the driver requests more power from the engine, as in accelerating to pass, merge, ascend hills or haul a load the two turbochargers will spin up, compressing the air which is then used to increase the power created by the combustion in the engine. The compressed air, which gains heat by the compression process, is passed through a charge air cooler (CAC), which is designed to lower the temperature of the air in order to make the combustion process even more efficient.[15]

[12] Complainant Ex. 6.
[13] Complainant Ex. 7.
[14] Complainant Ex. 12.
[15] *Id.*

Respondent's analysis of the problem provided to NHTSA was also summarized in the Detroit News:

> [A] misfire condition could occur after steady speeds under significantly humid and rainy conditions. [Under such] conditions, condensation could form and accumulate on the inside of the CAC tubes, which could then be ingested into the engine during particularly hard acceleration near wide-open throttle. An engine misfire of up to three cylinders could occur if the amount of condensed water released from the CAC exceeded the engine's operating threshold for water ingestion.[16]

According to the news publication, NHTSA closed its investigation without requiring Respondent to issue a recall of 2011-2013 Ford F-150 trucks with 3.5L EcoBoost engines. NHTSA reportedly reasoned that reduced power conditions can result from multiple causes, including faulty ignition coils, spark plugs, a catalytic converter, and even a federal regulation requiring that powertrain software disable up to two of the misfiring cylinders to protect the catalytic converter from damage. In addition, NHTSA reportedly accepted Respondent's assurance that technical service bulletins issued by the automaker - one of them instructing dealers to install a deflector shield onto the CAC - have been effective in solving 100% of the complaints for 2013 models and 95% effective for 2011-2012 trucks.[17]

C. Respondent's Evidence

Brett Castleberry, a field service engineer employed by Respondent, testified that he inspected Complainant's vehicle on April 16, 2014, and noted mileage of 28,788. He test drove the vehicle, performed engine-running and engine-off tests, and checked for diagnostic trouble codes and other diagnostic-related faults that would indicate a concern. According to his inspection report Complainant's vehicle was functioning normally in every respect.[18]

Mr. Castleberry acknowledged that repair orders for Complainant's truck indicate the powertrain control module was updated twice, and that spark plugs and coil boots were replaced when diagnostic testing revealed a misfire diagnostic trouble code. Still, he concluded that none of the repairing dealers ever duplicated the reported loss of power on acceleration. He suggested that in each repair, dealer technicians were guessing as to the cause of Complainant's concern based on TSBs issued by Respondent addressing similar concerns.

Mr. Castleberry allowed that Respondent currently has three active[19] TSBs addressing the loss of power on acceleration in Ford F-150 models that provide repair solutions for the problem. The necessary repairs

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[16] *Id.*
[17] *Id.*
[18] Complainant Ex. 11.
[19] It is common practice for an automaker to issue a TSB that supersedes an earlier TSB addressing the same problem. However, sometimes a TSB provides new information intended to supplement an existing TSB, in which case both TSBs may provide applicable repair solutions.

involve replacing the charge air cooler and installing an air deflector on the charge air cooler.[20] He stated that the repair solutions in these TSBs have been validated through research and testing of Ford F-150 trucks operated under high humidity conditions, specifically in the states of Florida and Alabama. In fact, the earliest TSBs addressing this same problem were issued by Respondent at the beginning of 2012. While Mr. Castleberry has worked on a lot of Ford F-150 trucks whose owners perceived a loss of power on acceleration, he said the issue is rarely reported by truck owners in Texas, where the climate is arid.

According to Mr. Castleberry, dealers are aware of frequent complaints about the loss of power on acceleration in Ford F-150 trucks, but this knowledge provides no incentive for a dealer to perform related warranty repairs. For example, Respondent will reimburse a dealer for performing the warranty repairs required by TSB 13-8-1 only if the dealer: (1) duplicates the customer's concern (a loss of power on acceleration) during a service visit, or (2) detects an error code necessitating the warranty repair. As a result, Mr. Castleberry observed that dealer repair orders usually state findings such as: "Owner's concern was not duplicated." And, while automakers are generally cognizant of any issue generating wide-spread consumer complaints, when a manufacturer is faced with a case involving an individual consumer (*e.g.*, a Lemon Law complaint), the manufacturer usually relies on the dealer's repair records for the vehicle.

All of that said, Mr. Castleberry stressed that validation of the customer's concern is a necessary step for both dealers and manufacturers. Variables other than humidity can be a determinative cause for loss of power on acceleration in Ford F-150 trucks. For instance, the problem rarely occurs in trucks that are driven aggressively, or trucks that are used to haul a load, because both conditions force additional air through the charge air cooler and reduce the build-up of moisture.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

Respondent's express warranty applicable to Complainant's vehicle covers defects in the powertrain (engine, transmission, and drive train) for five years or 60,000 miles, whichever occurs first. On the date of hearing, the truck's mileage was 29,300 and it remains under this warranty.

Complainant credibly testified that on five separate occasions, his truck lost power on acceleration while traveling at speeds ranging from 40 to 60 mph. On four of those occasions, he brought the vehicle in almost immediately and reported the problem to an authorized dealer of Respondent. His testimony was consistent with, and documented by, all but one of the service invoices describing his complaint. His

[20]On May 9, 2014, Mr. Castleberry revised his testimony through a written statement asserting that there is only one currently active TSB (TSB 13-8-1) relevant to Complainant's loss of power on acceleration. TSB 13-8-1 (admitted as Respondent's Ex. 1) recommends installation of a revised charge air cooler in 2011-2012 Ford F-150s with a 3.5L GTDI Ecoboost engine. Mr. Castleberry maintained that this revised charge air cooler does not require installation of a shield.

testimony that the truck lost acceleration power for the fifth time on April 1, 2014, only five weeks prior the hearing, was also extremely credible.

Although Complainant does not meet any of the "presumptive tests" in Texas Occupations Code § 2301.605(a) for determining that a reasonable number of repair attempts have been undertaken, the evidence establishes that his vehicle was serviced by an authorized dealer of Respondent on the following dates: January 3, 2012; December 10, 2013; December 26, 2013; January 17, 2014; and January 23, 2014. During each service visit, Complainant informed dealer technicians of his truck's intermittent loss of power on acceleration while traveling at highway speeds in rainy or humid weather. The failure of the defect in Complainant's vehicle to manifest during a service visit or to trigger a specific diagnostic error code, is not considered a determinative factor, particularly given the intermittent nature of the problem. Based on the evidence as a whole, the hearings examiner concludes that a reasonable number of attempts have been undertaken to conform Complainant's vehicle to the applicable express warranty.

The evidence further demonstrates that the defect in Complainant's truck creates a serious safety hazard. A vehicle that unexpectedly loses power on acceleration creates obvious safety issues when the driver is trying to correctly time acceleration to safely enter busy or high speed traffic. The intermittent nature of the condition also increases the safety risk. The sudden loss of power and resulting deceleration of Complainant's vehicle is likely to surprise and confuse other drivers, as well as pedestrians. Confusion is a circumstance that increases the risk of traffic accidents. Complainant has met his burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Moreover, the defect in Complainant's truck substantially impairs its use and market value. The vehicle's intermittent loss of power at highway speeds and in humid weather renders the truck unfit for long-distance travel. Weather conditions on the highway cannot be controlled. The vehicle could also lose acceleration power even while traveling at minimum highway speeds. The truck's reduced capacity for use makes it less marketable than other trucks of the same type,

The record also establishes that Complainant provided written notice of the defect to Respondent, and Respondent was given the opportunity to inspect the vehicle. On April 16, 2014, Complainant's vehicle was inspected by Respondent's field service engineer Brett Castleberry. Mr. Castleberry testified he was aware that several active TSBs addressed the lack of power on acceleration in 2011-2013 Ford F-150 models with 3.5L Ecoboost engines, yet he made no attempt on April 16, 2014, to cure the defective condition reported by Complainant. Although on the date of hearing Complainant authorized the repair of his vehicle pursuant to TSB 13-8-1, Complainant subsequently withdrew that authorization. Respondent was given a final opportunity to cure the defect on April 16, 2014, and no more is required from Complainant.

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case.

Based on the above analysis, the hearings examiner orders Respondent to replace Complainant's vehicle, as further detailed in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. James Savely (Complainant) purchased a new 2011 Ford F-150 with a 3.5 Liter Ecoboost engine from Covert Ford of Austin, Texas on September 30, 2011, with mileage of 249 at the time of delivery.

2. The manufacturer of the vehicle, Ford Motor Company (Respondent) issued a limited warranty for the vehicle, with coverage of factory-supplied materials and workmanship for three years or 36,000 miles, whichever comes first, and powertrain coverage (of the engine, transmission, and drive train) for five years or 60,000 miles, whichever comes first.

3. The engine of Complainant's vehicle has a defect that causes it to lose power on acceleration. The problem occurs intermittently and unexpectedly while the vehicle is traveling at highway speeds in rainy or humid weather.

4. The defective condition of Complainant's truck substantially impairs its use and market value. The vehicle's intermittent loss of power at highway speeds and in humid weather renders the truck unfit for long-distance travel. Weather conditions on the highway cannot be controlled. The vehicle could also lose acceleration power while traveling at minimum highway speeds. The truck's reduced capacity for use makes it less marketable than other trucks of the same type.

5. The defect in Complainant's truck creates a serious safety hazard. A vehicle that unexpectedly loses power on acceleration creates obvious safety issues when the driver is trying to correctly time acceleration to safely enter busy or high speed traffic. The intermittent nature of the condition also increases the safety risk. The sudden deceleration of Complainant's vehicle is likely to surprise other drivers, as well as pedestrians. Confusion is a circumstance that increases the risk of traffic accidents.

6. Complainant reported his truck's loss of power on acceleration to Covert Ford of Austin, Texas, on following dates:

   a. January 3, 2012, at 3,909 miles;
   b. December 10, 2013 at 23,013 miles;
   c. January 17, 2014 at 25,634 miles; and
   d. January 23, 2014 at 25,964 miles.

7. Complainant reported his vehicle's loss of power on acceleration to Premier Ford Lincoln of Columbus, Mississippi on December 26, 2013, at mileage of 24,122.

8. Both Covert Ford of Austin, Texas and Premier Ford Lincoln of Columbus, Mississippi are authorized dealers of Respondent.

9. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's truck to an applicable express warranty, but the nonconformity in the vehicle continues to exist.

10. Complainant provided written notice of the defect to Respondent, and Respondent was given the opportunity to inspect the vehicle on April 16, 2014.

11. Complainant presented no evidence of incidental expenses incurred from loss of use of his vehicle.

12. At the time of hearing, the vehicle's mileage was 29,300.

13. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 4, 2014, seeking repurchase or replacement of his 2011 Ford F-150.

14. On April 10, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed 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.

15. The hearing convened on May 7, 2014 in Austin, Texas before Hearings Examiner Anne K. Perez. Complainant appeared and represented himself. Respondent was represented by field service engineers Brett Castleberry. The hearing was recessed by agreement until May 26, 2014. Subsequent to the filing of posthearing submissions the record closed on May 26, 2014.

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. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.

4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051 and 2001.052; 43 Tex. Admin. Code § 215.206(2).

5. Complainant bears the burden of proof in this matter.

6. Complainant's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).

5. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).

6. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

7. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).

8. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to replace Complainant's 2011 Ford F-150 with a comparable motor vehicle. Tex. Occ. Code § 2301.604(a)(1).

9. Complainant is not entitled to reimbursement of incidental expenses. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

IT IS THEREFORE ORDERED that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's 2011 Ford F-150 (or, the reacquired vehicle) with Complainant's choice of any comparable motor vehicle.

2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainant under the following terms:

   (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

(b) The trade-in value of Complainant's 2011 Ford F-150 vehicle shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;

(c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2); and

(d) The use allowance paid by Complainant to Respondent shall be reduced by $35.00 (the refund for the filing fee).

3. Respondent's communications with Complainant finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.

4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.[21]

5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.

6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

7. Respondent shall repair the defect or condition that was the basis of the 2011 Ford F-150's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.

8. Upon replacement of Complainant's 2011 Ford F-150, Complainant shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):

(a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and

[21] Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

(b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.

9. Complainant shall be responsible for obtaining financing, if necessary, to complete the transaction.

10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainant's 2011 Ford F-150 pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). If repurchase relief occurs, a party may request calculation of the repurchase price by the final order authority.

11. If Complainant's 2011 Ford F-150 is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

SIGNED July 2, 2014.

ANNE K. PEREZ, HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES