

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0166 CAF**

**JAMES A. DUGGAN,**  
**Complainant**

v.

**FORD MOTOR COMPANY,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

James A. Duggan (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in his 2013 Ford F-150. Complainant seeks replacement of the vehicle due to its chronic failure to start. 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 in this matter convened on May 8, 2014 in San Antonio, Texas before Hearings Examiner Anne K. Perez. Mr. Duggan represented himself at the hearing. Ford Motor Company was represented by field service engineers Brett Castleberry and Kurt Kindler. The hearing was adjourned on May 8, 2014, but the record was held open by agreement to allow time for further settlement negotiations.

On May 13, 2014, Mr. Duggan and Mr. Castleberry participated in a telephonic posthearing conference with the hearings examiner. At that time, the parties indicated that settlement negotiations were unsuccessful, and Complainant reiterated his request for a decision ordering replacement of the subject vehicle. The record closed on May 13, 2014.

**II. DISCUSSION**

**A. Applicable Law**

The manufacturer of a motor vehicle must repurchase or replace the vehicle with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express

warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>1</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>2</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>3</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, or an authorized agent or franchised dealer of the manufacturer, and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>4</sup>

## **B. Complainant's Evidence**

Complainant purchased the 2013 Ford F-150 from Northside Ford of San Antonio, Texas on October 12, 2013, with mileage of 28 at the time of delivery.<sup>5</sup> On the date of hearing, the vehicle's mileage was 14,300. Respondent's limited warranty coverage for the vehicle remains in place, with basic coverage (of factory-supplied materials and factory 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.<sup>6</sup>

Complainant testified that shortly after the vehicle's purchase the battery stopped maintaining a sufficient level of charge to start the engine. The truck's failure to start rarely occurs first thing in the morning, except in very cold weather. Complainant explained that he lives with his spouse Jessica Zamora in a rural area, so by the time he drops their children off at school and arrives at work he has been driving his truck for about an hour. Typically, he said, when he pulls into his employer's parking lot and turns off the engine, the truck's digital dashboard displays a "Low Battery" or similar warning, occasionally accompanied by an audio alarm. If he immediately tries to restart the vehicle its engine is "dead;" the lights inside the truck's cab come on but "there's not enough juice to power the engine up." Additionally, since the date of purchase the truck's radio works only when the engine is running.

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<sup>1</sup> Tex. Occ. Code § 2301.604(a)(1) and (2).

<sup>2</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>4</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>5</sup> Complainant's Lemon Law Complaint Form (Complaint).

<sup>6</sup> Complainant's Ex. 5, 2013 Model Year Ford Warranty Guide.

Complainant testified that his job entails a lot of driving so it is essential that he have a dependable vehicle. When he walks out the door he needs get on the road immediately. He cannot take the time to “jump-start” his truck every time he turns the engine off, nor can he assume the availability of another vehicle with a full battery to assist in the task. For several months now, he has dealt with this dilemma by keeping a battery charger on his truck every night, thereby ensuring that it is operable the following day.

Complainant brought his truck to Jennings Anderson Ford in Boerne, Texas on four occasions, each time complaining of low battery and failure to start. The dealer’s records reflect the following information:<sup>7</sup>

<b>Dates at Dealership</b>	<b>Mileage</b>	<b>Reported Concern</b>	<b>Dealership’s Findings and Actions</b>
<b>11-14-2013 for one day</b>	<b>2,281</b>	<b>Vehicle cranking very slow; barely started this morning. Right after vehicle is turned off and doors are still closed, the radio will play for a second and display battery power to low power save mode and turn off</b>	<b>Battery failed. Replaced battery, retested, and system passed</b>
<b>01-07-2014 for one day</b>	<b>6,282</b>	<b>Slow cranking, weak battery</b>	<b>Tested starting and charging system. Battery failed. Replaced battery. Retested and system passed.</b>
<b>01-30-2014 for three days<sup>8</sup></b>	<b>8,462</b>	<b>Battery goes down after vehicle sits overnight. Battery has been replaced twice and is good for approximately 3 weeks, then starts going down after vehicle sits overnight. Slow cranking yesterday morning, drove 45 minutes then 10 minutes later required jump-start</b>	<b>Verified concern. Found alternator to be shorted. Replaced alternator. Retested and system passed.</b>
<b>03-18-2014 for two days</b>	<b>11,236</b>	<b>Battery light comes on intermittently. Light was on 03-18-2014 a.m. first start</b>	<b>Tested starting and charging system. Battery and alternator passed load test. Unable to duplicate concern at this time.</b>

On February 11, 2014, Complainant provided Respondent with written notice of the vehicle’s repetitive battery issues and failure to start. Following Respondent’s final but unsuccessful attempt to repair the vehicle on March 18, 2014, Complainant stated, he began documenting the truck’s continuing problems in earnest, using a videotape recorder.<sup>9</sup> Videotape evidence presented by Complainant is summarized in the table below:

<sup>7</sup> The servicing dealer’s repair orders were admitted as Complainant’s Exs. 1-4. Where possible, quotations from the invoices are summarized for clarity and ease of reference.

<sup>8</sup> Complainant testified that the dealer’s repair order, which indicates that the vehicle was released to him on February 1, 2014, is in error. He was not notified by Jennings Anderson Ford that repairs were complete until the morning of February 3, 2014, and he retrieved his truck from the dealership that same day.

<sup>9</sup> Complainant’s Ex. 6 is DVD containing 19 separate video recordings of the digital dashboard in Complainant’s truck, each

Videotape Date/Time	Observations from Video Footage	Subject Vehicle's Digital Dashboard Readings		
		Mileage	Temperature	Message Displayed
01-28-14 @ 1:17 pm	Engine won't start	8,311.4	30° F	Low Battery Audio Off; Turn Power Off to Save Battery
02-05-14 @ 7:50 am	Engine won't start		37° F	Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off; Turn Power Off to Save Battery
02-05-14 @ 10:05 am	Engine won't start	8,556.4	36° F	Battery Saver Audio Off; Turn Power Off to Save Battery
03-22-14 @ 8:10 pm		Over 11,000	89° F	Low Battery Audio Off; Turn Power Off to Save Battery
03-31-14 @ 8:11 am	Engine won't start just after turned off	11,753.7	62° F	Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off
03-31-14 @ 2:29 pm	Warnings display just as ignition turned off		84° F	Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off
03-31-14 @ 7:57 pm		11,841	79° F	Turn Power Off to Save Battery; Low Battery Audio Off
04-02-14 @ 7:36 pm	Engine won't start	11,950.7		Turn Power Off to Save Battery
04-04-14 @ 8:53 pm	Engine won't start	12,068.3		Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off
04-05-14 @ 1:29 pm	Engine won't start & radio won't play	12,184.6	36° F	Battery Saver Audio Off; Turn Power Off to Save Battery
04-08-14 @ 8:05 pm	Engine won't start	12,453	61° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-09-14 @ 8:10 am	Engine won't start	12,483.4	45° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-09-14 @ 8:02 pm	Radio won't play with engine off	12,509.6	67° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-15-14 @ 8:22 am	Engine won't start	13,181.1	43° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery

one lasting 30-40 seconds. Most of the video segments capture the truck's current odometer reading and the temperature outside the vehicle, but due to battery failures Complainant said many of the digital time and date readings are incorrect (however, each video segment bears a time and date stamp). A flash drive containing the same video files was admitted as Complainant's Ex. 7.

04-15-14 @ 8:05 pm	Engine won't start & radio won't play	13,199.4	58° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-17-14 @ 8:03 am	Engine won't start & radio won't play	13,273.8	59° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-17-14 @ 8:08 am	Engine started	13,273.8	59° F	Low Battery Audio Off; Turn Power Off to Save Battery
04-17-14 @ 8:33 pm	Won't start after engine turned off. Radio won't play	13,296.6	60° F	Battery Saver Start Engine or Turn Ignition Off; Turn Power Off to Save Battery
04-18-14 @ 7:25 pm	Radio won't play with engine off	13,319.3	72° F	Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off; Turn Power Off to Save Battery
04-20-14 @ 5:57 pm	Engine won't start	13,360.2	73° F	Battery Saver Start Engine or Turn Ignition Off; Low Battery Audio Off; Turn Power Off to Save Battery

Complainant testified that on the evening prior to hearing, he charged the battery in order to load the truck onto a trailer, just to be certain it would be available for inspection at the hearing site. Sure enough, he testified, when he tried to start his truck the next morning the engine would not turn over.

Ms. Zamora testified that she has experienced, first-hand, the same problems described by Complainant. She is a nurse and works the night shift at a hospital in Boerne, Texas, located some distance away from the couple's home. One evening she was driving the truck to work and stopped at a convenience store at 2:00 a.m. When she reentered the vehicle the engine would not start. Ms. Zamora described her fear that night: it was very late, the store's parking lot was deserted, and she was stranded in a rural area with very little traffic. She recalled, "If my co-worker had not been able to come and get me I don't know what I would have done."

### C. Respondent's Evidence

Brett Castleberry, a field service engineer employed by Respondent, testified that he inspected Complainant's vehicle at Jennings Anderson Ford on March 18, 2014. On the date of inspection he observed none of the problems documented in Complainant's videotape, nor did the dealer's service technicians communicate to Mr. Castleberry that they were aware of the truck's pervasive battery failure. Based on the limited information available to him on March 18, 2014, Mr. Castleberry said, he prepared an inspection report stating that the vehicle was operating as designed with no concerns present. Upon viewing Complainant's videotape at hearing, Mr. Castleberry said there was credible evidence of an existing nonconformity in the vehicle. He expressed regret that he did not see the videotape prior to hearing and declined to offer his inspection report in evidence.

Mr. Castleberry inspected Complainant's vehicle at the hearing location. After confirming that the engine would not start, he measured the truck's battery voltage using a digital voltmeter. He testified that when a vehicle's engine is not running the battery's voltage should measure about 12.8 or 12.9 volts, and this figure should never fall below 12.5 volts. According to Mr. Castleberry's digital voltmeter, the voltage in Complainant's truck's battery was 5.3 volts on the date of hearing.

Mr. Castleberry acknowledged that there exists a defect, probably electrical in nature, in Complainant's vehicle that is causing a substantial, continuous drain on the battery. He stated that the problem can be repaired but Respondent would need to have the truck in its possession to perform the appropriate diagnostic tests, using methods that were not employed by the servicing dealer. Mr. Castleberry recognized that the truck's continuing problems have been a huge source of frustration and inconvenience for Complainant and his family, but expressed the hope that Complainant would allow Respondent one more repair attempt.<sup>10</sup>

#### **D. Analysis**

Complainant has established that he is entitled to relief under Texas Occupations Code § 2301.604. It is undisputed that Respondent's limited warranty coverage for the 2013 Ford F-150 remains in place, and the truck's nonconformity, a recurring failure to start, is a warrantable defect. After a reasonable number of attempts Respondent has been unable to repair the vehicle so that it conforms to the applicable express warranty. The truck's repetitive failure to start has substantially impaired the vehicle's use: Complainant must keep a battery charger on his truck overnight to ensure that it is operable the following day. This factor also reduces the vehicle's market value.

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 Duggan (Complainant) purchased a new 2013 Ford F-150 from Northside Ford of San Antonio, Texas on October 12, 2013, with mileage of 28 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent) issued a limited warranty for the vehicle, with basic coverage (of factory-supplied materials and factory 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.

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<sup>10</sup> During the May 13, 2014 telephonic posthearing conference, Complainant declined to allow Respondent another repair attempt.

3. Shortly after Complainant's purchase of the vehicle, the battery stopped maintaining a sufficient level of charge to start the engine. The truck's radio has never worked unless the engine is running.
4. The truck's inability to start usually occurs after it has been driven for about an hour. Typically, when Complainant turns off the engine the truck's digital dashboard displays a "Low Battery" or similar warning, occasionally accompanied by an audio alarm. If Complainant immediately tries to restart the engine it does not turn over.
5. Complainant's job involves a lot of driving. He has neither the time nor the resources to "jump-start" his vehicle every day, and the truck's recurring failure to start has been a huge inconvenience for him and his family. For the past several months, Complainant has been forced to keep a battery charger on his truck every night, thereby ensuring its operability the next day.
6. The vehicle was serviced by Jennings Anderson Ford (Jennings) in Boerne, Texas for low battery and failure to start on the following dates:
  - a. November 14, 2013 at 2,281 miles;
  - b. January 7, 2014 at 6,282 miles;
  - c. January 30, 2014 at 8,462 miles; and
  - d. March 18, 2014 at 11,236 miles.
7. Jennings is the authorized agent or a franchised dealer of Respondent.
8. Jennings attempted to repair Complainant's vehicle by replacing the battery twice, on November 14, 2013 and January 7, 2014, and by replacing the alternator once, on January 30, 2014.
9. Although neither Jennings' technicians nor Respondent's field service engineer validated Complainant's March 18, 2014 report of the truck's chronically low battery and habitual failure to start, the existence of this nonconformity both prior to and after March 18, 2014 is well-documented.
10. The truck's repetitive failure to start is a warrantable defect or nonconformity.
11. The vehicle's recurring failure to start has substantially impaired its use, requiring Complainant to keep a battery charger on his truck overnight to ensure that it is operable the following day.
12. The truck's habitual inability to start has reduced the market value of Complainant's vehicle.
13. Respondent, through Jennings, undertook a reasonable number of attempts to conform Complainant's truck to the applicable express warranty, but the nonconformity in the vehicle continues to exist.

14. On February 11, 2014, Complainant provided Respondent with written notice of the vehicle's repetitive battery issues and failure to start, after which Respondent had an opportunity to attempt further repair of the vehicle.
15. Complainant presented no evidence of incidental expenses incurred from loss of use of his vehicle.
16. At the time of hearing, the vehicle's mileage was 14,300.
17. Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 21, 2014, seeking repurchase or replacement of his 2013 Ford F-150.
18. 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.
19. The hearing convened on May 8, 2014 in San Antonio, Texas before Hearings Examiner Anne K. Perez. Complainant appeared and represented himself. Respondent was represented by field service engineers Brett Castleberry and Kurt Kindler. The hearing was adjourned on May 8, 2014, but the record was held open to allow time for further settlement negotiations. Following a telephonic posthearing conference on May 13, 2014 the record closed that day.

#### 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 nonconformity that substantially impairs the use of the vehicle. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing nonconformity that substantially impairs the market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. 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.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
10. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to replace Complainant's 2013 Ford F-150 with a comparable motor vehicle. Tex. Occ. Code § 2301.604(a)(1).
11. 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 2013 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 2013 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.<sup>11</sup>
  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 2013 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 2013 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
    - (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.

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<sup>11</sup> 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) 465-7914.

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 2013 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 2013 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 June 10, 2014.**

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