

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0295 CAF**

COY SCRUGGS and PENNY SCRUGGS, Complainants	§ § § § § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
JAGUAR LAND ROVER NORTH AMERICA, LLC, Respondent		

DECISION AND ORDER

Coy Scruggs and Penny Scruggs filed a “Lemon Law” complaint with the Texas Department of Motor Vehicles (Department) against Jaguar Land Rover North America, LLC (Jaguar), for alleged defects in their 2012 Jaguar XFR. The Scruggs seek repurchase relief due to alleged defects in the vehicle causing noise from the driver side door panel and window, as well as the front and rear suspension systems. Jaguar argues that the Scruggs have not shown the existence of a nonconformity that substantially impairs the use or market value of the vehicle. The hearings examiner finds that there is insufficient evidence of a presently existing warrantable defect in the vehicle. Accordingly, the request for repurchase relief must be denied and the complaint dismissed.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits in this case convened on October 10, 2014 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Penny Scruggs appeared and represented herself and Coy Scruggs. Respondent appeared and was represented by attorney John W. Chambless II. The hearing adjourned and the record closed that same day.

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 a defect in the vehicle. Second, the nonconformity 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 the defect.¹ Fourth, the owner must have mailed written notice of the alleged nonconformity to the manufacturer.² Lastly, the manufacturer must have been given an opportunity to cure the defect.³

“Impairment of market value” means a substantial loss in market value caused by a defect specific to a motor vehicle.⁴ A rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty if a defect that substantially impairs the use or market value of the vehicle continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (2) the two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.⁵

B. Undisputed Facts

On February 9, 2012, the Scruggs purchased a new 2012 Jaguar XFR (the vehicle) from Sonic Houston JLR, L.P. of Houston, Texas, with mileage of ten (10) at the time of delivery.⁶ Jaguar, the manufacturer, issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for four years or 50,000 miles, whichever occurs first.⁷ On the date of

¹ Tex. Occ. Code § 2301.604(a).

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.601(1).

⁵ Tex. Occ. Code § 2301.605(a)(1).

⁶ Complainant Ex. 1, Buyer’s Order. While the Buyer’s Order lists February 6, 2012, as the purchase date, the “Buyer’s Tag Receipt”(Complainant Ex. 4) indicates that the vehicle was delivered to the Scruggs on February 9, 2012. The later date is consistent with the testimony of Ms. Scruggs.

⁷ Jaguar Ex. 1, Passport to Service, at 6; Complainant Ex. 14, Jaguar Platinum Coverage, at 1.

hearing the vehicle's mileage was 17,696, and coverage under Jaguar's basic limited warranty was in effect.

The Scruggs' Lemon Law complaint against Jaguar was filed with the Department on January 8, 2014.⁸

The complaint lists the following problems with the vehicle:

- Noise coming from driver door panel;
- Noise coming from front/rear suspension area;
- Console will not open/close correctly;
- Trunk will not open/close correctly;
- Both front tires/suspension wearing;
- Driver window squeaks when rolling up and down; and
- Rear spoiler loose and is worse now; poor job and looks cosmetically bad.⁹

C. Scruggs' Evidence and Arguments

Ms. Scruggs testified that she is the primary driver of the vehicle, which started exhibiting problems within a few months of purchase. In May 2012, she could hear a rattle noise coming from the driver's side door panel (or B pillar) "level with" her head. When she brought the car in for service to Jaguar Houston North, a Jaguar-authorized repair facility, the dealer sprayed the panel with some type of lubrication.¹⁰ Ms. Scruggs described the dealer's use of "overspray" in the car's interior as cosmetically undesirable. The noise from the B pillar also returned within a couple of days but she continued driving the vehicle. The problem worsened, however, and she returned to the dealer on November 13, 2012. She recalled that dealer service advisor Charles White confirmed her account of noise from the driver's side pillar during a test drive that day. Unfortunately, the dealer's November 012 repair attempt involved spraying the driver's door panel with "antifriction coating," a substance that

⁸ Complainant Ex. 2.

⁹ Ms. Scruggs testified that the vehicle's trunk and rear spoiler have been successfully repaired. The denial of repurchase relief in this case is based solely on consideration of other complaint items that have not been successfully repaired, according to Ms. Scruggs. While this decision discusses problems that are not technically in issue, consideration of the vehicle's entire repair history provides context and background information, and tends to explain the basis of the Scruggs' complaint.

¹⁰ Complainant Ex. 5.

reportedly “remains all over the interior of [Ms. Scruggs’] car.”¹¹ Similar to the dealer’s initial repair attempt, the second service visit lessened the noise but only for a few days.

Ms. Scruggs returned to the servicing dealer a couple of months later, on January 21, 2013. In addition to consistent noise coming from the driver’s side door panel, she reported that the center console had become difficult to open and close, and the car’s left front headlamp was malfunctioning.¹² On this occasion, Ms. Scruggs noted that the dealer “subbed the work out” to Rapid Body Shop. The subcontractor made adjustments to all four vehicle doors and door seals, not just the driver’s door. Her car was out of service for 10 days. When she picked the vehicle up she discovered that the console cover was scratched¹³ and there was scotch tape on all the car doors. In addition, she testified that the adjustments made by Rapid Body Shop resulted in cosmetic damage to the car’s original paint finish. It was following this service visit that the front passenger door began exhibiting problems, *e.g.*, while opening or closing the door, the door would catch the door trim.

During a service visit on April 12, 2013, Ms. Scruggs said she once again reported noise from the driver’s side door panel, in addition to new problems: a creaking noise from both the front suspension area and the sunroof.¹⁴ She said the repair attempt on this occasion temporarily alleviated the noise. However, on April 29, 2013 she returned because Rapid Body Shop had improperly mounted the passenger door, and opening or closing the passenger door was chipping the vehicle’s paint original finish.¹⁵ Ms. Scruggs said she also reported the “rattle” noise coming from the driver’s side B panel, but for the second time this concern was not listed on the repair order. During the April 29, 2013 service visit, the dealer repaired the front passenger door by moving the trim and replacing the door top finisher. Although the car was released to Ms. Scruggs on May 1, 2013, she was back by May 9, 2013 because the dealer’s recent repair to the front passenger door had caused the back passenger window’s rear outer seal to disconnect from the holder window. This time, Jaguar Houston North subcontracted the

¹¹ Complainant Ex. 6.

¹² Complainant Ex. 7. The left front headlamp assembly was successfully repaired and was never in issue.

¹³ Ms. Scruggs understood that the scratched console cover would be replaced by the dealer, but at the time of hearing the repair still had not taken place.

¹⁴ Complainant Ex. 8. The repair order does not list as a customer concern, noise coming from the driver’s side door panel.

¹⁵ Complainant Ex. 9. Ms. Scruggs indicated that she was provided with alternate transportation each time her car was out of service.

necessary repairs to All Pro Wet Sand and Buff, rather than Rapid Body Shop. She said the vehicle was finally released to her on May 15, 2013.¹⁶

Ms. Scruggs testified that the noise issues “came and went” over the next 10 months. She explained that it is difficult for her to be without a car, so she often waited until regularly-scheduled maintenance visits to discuss the vehicle’s ongoing problems with the dealer. On March 6, 2014, she brought the car in to Jaguar Houston North for an oil change and a coolant issue.¹⁷ At that time, she reported hearing what sounded like “road noise” but louder, coming from the front suspension area while traveling at low speeds or over speed bumps. She described hearing similar noise from the car’s rear suspension area while backing out from her steep driveway and onto the roadway.¹⁸ She asked the dealer if perhaps the car’s wheels needed to be aligned, and recalled being advised to replace the struts.¹⁹ She was reportedly informed that the front driver’s tire had “some lumps on it.” Although service technicians performed a wheel alignment and balanced the vehicle’s tires during the March 6, 2014 service visit, neither measure reduced noise from the front suspension area. She returned the vehicle to the dealer, and was notified that the passenger front tire had also developed “lumps” or “warping.” At hearing she characterized the front suspension noise as a currently existing problem.

On June 18, 2014, Ms. Scruggs testified that the vehicle was serviced for noise coming from the front and rear suspension areas, from the driver’s seat belt pillar, and from the driver’s window during operation. During this service visit, Jaguar Houston North’s service advisor Michael Hopkins accompanied Ms. Scruggs on a test-drive of the vehicle, and he reportedly confirmed the validity of her noise complaints. She said it was Mr. Hopkins who advised her to contact “corporate” and “open a case” to address the vehicle’s ongoing issues.

On July 1, 2014, Ms. Scruggs sent written notice to Jaguar that her 2012 Jaguar XFR was defective. Her letter to Jaguar notes that Jaguar Houston North tried to address noise coming from the vehicle’s

¹⁶ Although the the May 9, 2013 repair order is not in evidence, Ms. Scruggs credibly testified about the nature and scope of repairs performed during this service visit.

¹⁷ Complainant Ex. 10.

¹⁸ The March 6, 2014 repair order does not document Ms. Scruggs’ concern regarding noise from the rear suspension area.

¹⁹ The vehicle’s front struts were actually replaced the previous year, during the April 12, 2013 service visit. *See* Complainant Ex. 8.

driver side door, and from the front and rear suspension areas, but that the dealer's repair attempts were unsuccessful.²⁰

On July 23, 2014, a Jaguar factory representative visited Jaguar Houston North to examine the Scruggs' vehicle. According to Ms. Scruggs, the manufacturer's representative inspected the car for ongoing issues (noise from the driver's side B pillar, and noise from the front and rear suspension areas); recurring, intermittent issues (noise from the sunroof and the driver's door window); issues that were viewed as successfully repaired (although the center console button currently works it is still "sticky"); and a new issue (the trunk lid was not rising properly). Ms. Scruggs, the Jaguar representative, and a dealer service technician were present during a test-drive of the vehicle. The factory representative reportedly stated that the vehicle's front tires were the source of noise from the front suspension area. And, the participating service technician opined that noise from the vehicle's rear suspension area was probably related to the brakes. Ms. Scruggs left the vehicle with the dealer for three days while various repairs were performed, and retrieved the car on July 26, 2014.

Ms. Scruggs testified that despite all the repair attempts, her car still exhibits noise from the driver's side B pillar, as well from the front and rear suspension areas. The creaking noise from the sunroof has also returned. When the weather is hot and humid, the driver's window intermittently "squeaks" while being rolled down. Ms. Scruggs characterized these issues as major concerns. She voiced the belief that any discerning buyer would be deterred by such problems, as well as other plainly apparent, undesirable aspects of the vehicle: (1) a botched attempt to adjust all four doors and door seals left chips in the original paint finish; (2) repairs to the doors utilized still-visible scotch tape; (3) a cosmetically unappealing overspray covers the vehicle's interior; and (4) the front-end suspension problem has ruined the vehicle's front tires. Ms. Scruggs asserts that Jaguar Houston North's (or its subcontractor) slipshod repair attempts caused damage to the Scruggs' vehicle and significantly reduced its market value. According to Ms. Scruggs, Jaguar should be held responsible for the substandard work of its authorized dealer, Jaguar Houston North. The financial loss in this situation is rightfully borne by Jaguar, not the Scruggs.

²⁰ Complainant Ex. 3. A certified mail receipt reflects that Jaguar received the Scruggs' written notice on July 7, 2014.

The repair orders generated by Jaguar Houston North for the vehicle reflect the following information:²¹

Date In/Out	Mileage In/Out	Reported Concern	Diagnostic Action And Dealer's Findings
5-7-12 to 5-8-12	1,934 to 1,936	Rattle (in) Driver Door Panel	Door seal creaking; Lubricated door seals & roadtested; noise gone. [Concerns listed in repair order but not raised in complaint: (1) Paint is gray at some points, & glaze on driver's sideview mirror can be seen in the dark (Dealer's comment: CATS Coating was not removed on some areas of paint); (2) Can seatbelt chime be disabled? (Dealer's comment: No)].
11-13-12 to 11-16-12	5,344 to 5,344	Noise from Driver's B Pillar beside driver's head	Confirmed creaking noise from B Pillow area; accessed SSM43136 & confirmed noise to be from aperture/margin squash seals; performed SSM door to body profile measurement, which was ok & applied antifriction coating AC602/2 to all door margins, aperture & primary seals
1-21-13 to 1-31-13	6,495 to 6,495	1) Rattle near Driver's B Pillar; 2) Center console button is difficult to press & release	1) Sublet to Rapid Body Shop for adjustments to doors due to door seals making noise; 2) Button is stiffer than counterpart but doesn't warrant repair at this time, due to still functioning properly [Concerns listed in repair order but not raised in complaint: Adaptive front lighting system, amber light intermittently comes on/off (Dealer repair: internal circuit failure, replaced left-hand side headlamp assembly)]
4-12-13 to 4-26-13	7,702 to 7,702	(1) Driver's front door difficult to close; (2) Creaking noise from right/left suspension area while turning	(1) Sublet to Rapid Body Shop to perform adjustments to driver's front door; vehicle was test-driven & no noises were heard; (2) Heard creak from left & right front suspension at slow speeds going over bumps; noise coming from front strut insulators; replaced both front strut spring insulators; no other noise heard after repair. [Customer concerns listed on repair order but not raised in complaint: (1) Creaking noise from sunroof when turning or going over speed bumps; (Dealer repair: cleaned sunroof seal of accumulated dirt & debris, then lubricated; road-tested, all ok); (2) Creaking noise coming from both rear doors; (Dealer repair: door aperture seals were cleaned & lubricated; road-tested, all ok)]
4-29-13	7,814		[Concerns listed in repair order but not raised

²¹ The repair orders were admitted as Complainants Exs. 5-12. The table's "Reported Concern" column lists only items raised in the complaint that are still in dispute. The column titled "Diagnostic Action and Dealer's Findings" summarizes repair issues falling into three categories: (1) repair attempts involving complaint items that remain in dispute; (2) complaint items that have been successfully repaired; and (3) issues that arose after the complaint was filed and have not been successfully repaired, according to Ms. Scruggs.

to 5-1-13	to 7,814		in complaint: (1) Passenger side door trim catches on passenger rear door; paint is missing & needs to be touched up (Dealer repair: Door trim moved back & contacted rear trim while opening & closing door; replaced right front door top finisher)]
3-6-14 to 3-12-14	14,378 to 14,378	Button on console sticks	Removed wood veneer cover from coin tray, cleaned out gunk & lubed button assembly; reinstalled cover & button works properly. [Concerns listed in repair order but not raised in complaint: (1) Noise in sunroof & door when vehicle body flexes; (Dealer repair: Apply threadlock to roof opening panel cassette); (2) When passenger door closes it hits chrome (Dealer repair: Renew outer finisher on front & doors); (3) Low coolant light (Dealer repair: Leak behind water pump pulley; replace water pump, tube, & O-ring); (4) Balance/align tires]
6-18-14 to 6-27-14 ²²	16,125 to 16,154	(1) Driving over speed bumps there is rough noise from rear of vehicle; (2) Noise from driver's seat belt pillar when vehicle flexes; (3) Rear spoiler coming apart on passenger side; (4) Driver's window makes noise;	(1) Test-drove many times, could not duplicate concern at this time; (2) Test-drove & verified noise; Removed both sides of A-pillar & B-pillar trim (front & rear inner weather strip moldings); Using Jaguar-approved squeaks & rattle kit, lubed all inner weather strip moldings for A & B-pillars & reinstalled; test-drove, could not hear squeaks at this time; (3) Tape/adhesion promoter weak; remove rear spoiler & old 3M tape, install new 3M tape w/adhesion promoter (4) Window runs a little dry, applied silicone lube to it; noise gone
7-23-14 to 7-26-14	16,398 to 16,398	(1) Noise from front end when turning into parking lot at slow speeds; (2) Driver's window makes noise; (3) Rear spoiler coming off again; (4) Rear trunk difficult to open, will not rise up;	(1) Wear in spring isolator; renew front shock absorber/spring upper mount; (2) Replaced left front door glass regulator; (3) Reinstalled by Caliber Collision; (4) Weak trunk shocks; Replaced both rear trunk shocks; [Concerns listed in repair order but not raised in complaint: (1) Noise in roof area when going over bumps; (Dealer repair: weather seals making noise; replaced weather seals on four doors); (2) 12-volt adapter cover scratched in last service visit; (Dealer repair: Parts on order); (3) Right rear armrest on door panel cut in last service visit; (Dealer repair: Sublet Car Care Cosmetics); (4) Silicone spray on all 4 door panels; (5) Lots of road noise still present after alignment performed; (Dealer repair: Gave estimate on new tires)]

²² Ms. Scruggs testified that the repair order contains erroneous information: her vehicle was not ready until June 27, 2014, and when she took delivery of the car the mileage was at 16,154, not 16,125.

On cross-examination, Ms. Scruggs stated that she owns a Corvette and a Ford F-250 truck, in addition to the Jaguar. The Jaguar was purchased with her grandchildren in mind, *i.e.*, the sedan is roomy enough to transport children. The noise from the front and rear suspension can be heard when she drives over a speed bump or dip in the road, which causes the vehicle to “flex.” She agreed that the vehicle has low-profile, high-performance tires that wear more quickly than regular tires. However, she denied she was ever advised to purchase a different type of tires for the vehicle, or that she was told the car’s tires were “cupped,” *i.e.*, a wear pattern caused by improper inflation. Ms. Scruggs admitted that she has not requested an appraisal of her vehicle, nor has she consulted the Kelly Blue Book or a similar resource to determine the vehicle’s current market value.

D. Jaguar’s Evidence and Arguments

Jaguar did not offer witness testimony. The manufacturer presented a copy of its “Passport to Service,” which is a “handbook [for vehicle owners] contain[ing] information and records essential for the understanding of Jaguar warranties and for the implementation of any necessary warranty rectification.”²³ With respect to its “New Vehicle Limited Warranty” applicable to the Scruggs’ vehicle covering defects in factory-supplied materials and workmanship for four years or 50,000 miles, whichever occurs first,²⁴ Jaguar noted that certain exclusions apply. More specifically, the section titled “Other Items and Conditions Not Covered By This Warranty” in Jaguar’s warranty booklet details the following exclusion:

Normal noises or vibration. Your vehicle is a mechanical device, and all mechanical devices make some sort of noise and/or vibration. These noises and vibrations can differ from vehicle to vehicle, and Jaguar recognizes those noises as normal and characteristic of the product. Normal noise and/or vibration, as well as deterioration caused by normal wear and tear, each as determined by Jaguar or its representative, are not covered by our New Vehicle Limited Warranty.

According to Jaguar, the fact that Ms. Scruggs complained of vehicle noise offensive to her, and the fact that an authorized Jaguar dealer attempted to address her concerns, does not in and of itself prove that the complained-of noise constitutes a warrantable defect, or that the noise is the result of a nonconformity in the vehicle. The manufacturer suggested that noise from the vehicle’s front suspension area is generated by the car’s low-profile, high-performance tires rather than any defect in

²³ Jaguar Ex. 1 at 3.

²⁴ *Id.* at 6.

the vehicle. Jaguar also noted that Ms. Scruggs is someone who is plainly sensitive to noise, given that she asked the dealer to disable the vehicle's seatbelt chime within three months of purchase. That Ms. Scruggs would find noise generated by the car's low-profile, high-performance tires is not surprising to Jaguar.

Jaguar does not argue that noise is absent from the Scruggs' vehicle. However, the question is whether the complained-of noise constitutes a defective condition, or whether noise is the result of a nonconformity that substantially impairs the use or market value of the vehicle. The manufacturer asserts that neither the repair orders nor Ms. Scruggs' testimony support such a finding. Lastly, Jaguar argues that it bears no financial responsibility for consumer dissatisfaction with repairs performed by a Jaguar authorized dealer, much less a subcontractor utilized by the dealer.

E. Analysis

In order to prevail in a request for repurchase relief, the Scruggs must show by a preponderance of the evidence that Jaguar has not conformed the vehicle to an applicable express warranty because Jaguar cannot repair a warrantable defect in the vehicle. In addition, the Scruggs must show that the nonconformity creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Neither of these statutory elements were established by the required standard of proof.

Ms. Scruggs is the primary driver of the vehicle. She credibly testified that she hears noise from the front and rear suspension areas, from the driver's door panel (or B panel), and intermittently from the driver's window. Her testimony is accepted as true, and in many cases Houston Jaguar North's repair orders corroborate her testimony about noise in the vehicle. Nonetheless, the presence of noise, without more, is insufficient to prove the existence of a warrantable defect in the vehicle. The Scruggs are required to demonstrate that a relationship exists between the complained-of noise and a warrantable defect in the vehicle, or alternatively, that a warrantable nonconformity is the source of the complained-of noise. The required standard of proof is both reasonable and defensible, irrespective of the fact that Jaguar's warranty applicable to the vehicle excludes from coverage "normal noise and/or vibration" typical of a mechanical device.

Ms. Scruggs testified that the vehicle's front-end suspension problems have ruined the vehicle's front tires. While the sincerity of this belief is not questioned, the evidence necessary to support her conclusion is missing from the record. No evidence establishes that noise from the front suspension area is sufficient to diagnose a "front-end suspension problem," and the repair orders in evidence do not reference a defect in the suspension system. Likewise, no evidence establishes that "lumpiness" or "warping" of the front tires was the result of a "front-end suspension problem." Again, the existence of a cause and effect relationship between the vehicle's front suspension and the deterioration of the front tires is required to support the conclusion reached by Ms. Scruggs. The necessary evidence is absent from this record.

What the evidence does show is that Ms. Scruggs' brought the vehicle in for service at Jaguar Houston North on multiple occasions, complaining of noise. Although the dealer's primary concern may have been Ms. Scruggs' satisfaction, many of Jaguar Houston North's repair attempts made a bad situation worse, particularly when it subcontracted the necessary vehicle repairs to Rapid Body Shop. That Ms. Scruggs was unhappy and dissatisfied with the outcome of the subcontractor's repairs that damaged the vehicle's original paint finish and misaligned the front passenger door, is more than understandable. Moreover, Rapid Body Shop's substandard workmanship created the need for additional repairs to the vehicle, substantially inconveniencing Ms. Scruggs. Between the performance of aesthetically displeasing alterations and repairs that should not have been necessary, Ms. Scruggs' reduced level of enjoyment and ownership satisfaction in her "almost-new" luxury car is easy to understand.

In the end, however, the Lemon Law does not provide a mechanism for relief when a dealer mishandles the repair of a consumer's vehicle. No evidence establishes that noise in the Scruggs' vehicle is the result of a warrantable defect that creates a safety hazard or substantially impairs the use or market value of the vehicle. Therefore, the request for repurchase relief must be denied.

III. FINDINGS OF FACT

1. On February 9, 2012, Coy Scruggs and Penny Scruggs (Scruggs) purchased a new 2012 Jaguar XFR (the vehicle) from Sonic Houston JLR, L.P. of Houston, Texas, with mileage of ten (10) at the time of delivery.
2. Jaguar Land Rover North America, LLC (Jaguar) manufactured the Scruggs' vehicle.

3. Jaguar issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for four years or 50,000 miles, whichever occurs first.
4. Jaguar's basic limited warranty for the vehicle excludes coverage of "normal noise and/or vibration" typical of a mechanical device.
5. On the date of hearing the vehicle's mileage was 17,696, and coverage under Jaguar's basic limited warranty was in effect.
6. Jaguar Houston North of Houston, Texas is an authorized dealer of Jaguar.
7. In May 2012, Penny Scruggs noticed a "rattle" noise coming from the driver's side door panel (or B pillar).
8. Between May 2012 and June 2014, the vehicle was serviced for noise coming from the vehicle's driver's side B pillar on six occasions by Jaguar Houston North:
 - a. May 7, 2012, at 1,934 miles;
 - b. November 13, 2012, at 5,344 miles;
 - c. January 21, 2013, at 6,495 miles;
 - d. April 12, 2013, at 7,702 miles;
 - e. April 29, 2013, at 7,814 miles; and
 - f. June 18, 2014, at 16,125 miles.
9. Jaguar Houston North addressed the issue of noise from the vehicle's driver's side door panel by lubricating the door seals; applying antifriction coating to the door margins, aperture, and primary seals; allowing a subcontractor to make adjustments to the vehicle's doors; and removing both sides of A-pillar & B-pillar trim, and lubing the inner weather strip moldings of both pillars using Jaguar-approved squeaksand rattle kit prior to reinstallation.
10. Noise from the vehicle's driver side door panel occurs intermittently.
11. The evidence does not establish that noise coming from the vehicle's driver's side door panel is the result of a warrantable defect, as opposed to "normal noise and/or vibration" typical of a mechanical device and excluded from Jaguar's basic limited warranty coverage of the vehicle.
12. On January 21, 2013, and again on March 6, 2014, the vehicle's center console button was serviced by Jaguar Houston North for stiffness and difficulty opening and closing.
13. The vehicle's center console button was successfully repaired by Jaguar Houston North on March 6, 2014.
14. Between April 2013 and July 2014, the vehicle was serviced for noise from the front suspension area on two occasions by Jaguar Houston North:
 - a. April 12, 2013, at 7,702 miles; and
 - d. July 23, 2014, at 16,398 miles.

15. Jaguar Houston North addressed the issue of noise from the vehicle's front suspension area by replacing both front strut spring insulators and renewing the front shock absorber/spring upper mount.
16. The evidence does not establish that noise from the vehicle's front suspension area is a warrantable defect, or the result of a warrantable defect.
17. The evidence does not establish that noise coming from the front suspension area caused the vehicle's front tires to become "warped," or to develop "lumps."
18. Jaguar Houston North serviced the vehicle on June 18, 2014, at 16,125 miles, for noise from the rear suspension area, but the dealer was unable to duplicate the complained-of noise.
19. The evidence does not establish that noise from the rear suspension area is a warrantable defect, or the result of a warrantable defect.
20. Between March 2014 and July 2014, the vehicle's driver side window was serviced for noise during operation on two occasions by Jaguar Houston North:
 - a. June 18, 2014, at 16,125 miles; and
 - b. July 23, 2014, at 16,398 miles.
21. Noise from the vehicle's driver side window during operation occurs intermittently, especially during hot and humid weather.
22. With respect to the vehicle's driver side window, Jaguar Houston North's two repair attempts involved applying a silicone lubricant to the window and replacing the driver's door glass regulator.
23. At the time of hearing, noise from the vehicle's driver side window during operation was not present.
24. On January 8, 2014, the Scruggs filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
25. On July 1, 2014, the Scruggs provided written notice to Jaguar of alleged defects in the vehicle.
26. On August 19, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Scruggs and Jaguar, 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.
27. The hearing on the merits convened on October 10, 2014 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Penny Scruggs appeared and represented herself and Coy

Scruggs. Jaguar appeared and was represented by attorney John W. Chambless II. The hearing adjourned and the record closed that same 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. The Scruggs 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, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. The Scruggs failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
6. The Scruggs' vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Scruggs' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED December 2, 2014.



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