

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0305 CAF**

**MYESHIA MITCHELL,  
Complainant**

v.

**CHRYSLER GROUP LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Myeshia Mitchell (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged defects in her 2012 Dodge Challenger. Complainant asserts that the vehicle has electrical issues which constitute a safety hazard. Chrysler Group LLC (Respondent) argued that there are no defects with the vehicle and that it is operating appropriately. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for repurchase or replacement relief.

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

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and closed on October 2, 2014, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by her friend, Rodney Clayton. Complainant appeared and testified on her own behalf. Also present for Complainant were Tonette Mitchell, Complainant's mother, and Astrid McClendon, a friend. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also present at the hearing for Respondent was Stuart Ritchey, Technical Advisor.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code 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

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

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 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 and Arguments**

Complainant purchased a 2012 Dodge Challenger from Helfman Dodge in Houston, Texas on April 26, 2012, with mileage of 23 at the time of delivery.<sup>5</sup> On the date of hearing the vehicle's mileage was 46,456. At this time, Respondent's warranty coverage for the vehicle has expired, since the "bumper to bumper" coverage was for three years or 36,000 miles, whichever comes first. However, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 100,000 miles.<sup>6</sup> This warranty remains in effect at this time.

Complainant testified that she first noticed an issue with the vehicle on December 16, 2012. She had gone shopping with a friend and had parked the vehicle in a mall parking lot. When Complainant returned to the vehicle, she discovered that the vehicle's windows were down, the headlights were on, the inside lights were on, the vehicle did not recognize the key fob, and the vehicle would not start. Since she could not start the vehicle, Complainant had it towed to Respondent's authorized dealership, Helfman Dodge.

The vehicle was inspected by one of the dealer's service technicians on the following day. The technician determined that the vehicle was not detecting the key fob and replaced the keys and reprogrammed a door module (PEM). The technician determined that the problem with the key fob also caused the vehicle's lights to flash and not allow the doors to lock or unlock. The technician also replaced the vehicle's master window switch in order to repair the issue regarding

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<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). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>5</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Agreement, Sales Contract, Guaranteed Auto Protection (GAP) Agreement, and Odometer Disclosure Statement dated March 3, 2012.

<sup>6</sup> Respondent Ex. 1, VIP Summary Report.

the window's being found open. The vehicle's mileage when Complainant took it to the dealership on this occasion was 14,495.<sup>7</sup> The vehicle was returned to Complainant on December 18, 2012. She was provided with a rental vehicle while her vehicle was being repaired.

About three months later, Complainant took the vehicle to the dealership for repairs on March 25, 2013. Complainant told the dealer's service advisor that the vehicle's left window did not always drop to allow the door to open. She also complained about the vehicle's U-Connect (the vehicle's Bluetooth connection with Complainant's cell phone) having static when she used it. Another issue Complainant had with the vehicle was that the driver's seat would jerk when moving it back and forth. Finally, Complainant told the service advisor that the rear spoiler on the vehicle was loose. A service technician was unable to duplicate Complainant's concern regarding the window not dropping to allow the door to open. In addition, there were no diagnostic codes on the vehicle's computer system regarding the window issue. As such, he was not able to perform any repairs for this issue. However, the technician was able to determine that there was a problem with the driver's seat. He was unable to complete the repair on the seat during this visit because the dealership did not have the necessary parts. As a result, the part was ordered and Complainant was advised she would have to take the vehicle back to the dealer when the part arrived. Also, Complainant was advised that the static on the U-Connect system could be caused by the use of an earpiece which was not part of the system. No other action was taken regarding the issue with the U-Connect system. Finally, technician retorqued and tightened the fasteners for the vehicle's spoiler. Upon further inspection, the spoiler did not appear to be loose. The mileage on the vehicle when Complainant took it to the dealership on this occasion was 19,745.<sup>8</sup> The vehicle was returned to Complainant on the following day, March 26, 2013. Complainant was provided with a rental vehicle during this visit. Complainant was advised by the service advisor that they would call her when the parts to repair the vehicle's driver's seat arrived so that the vehicle could be repaired.

Approximately a week later, the dealer received the part for the repair of the driver's seat for Complainant's vehicle. Complainant took the vehicle to Helfman Dodge, Respondent's authorized dealer, on April 3, 2013, to complete the repair. During this visit the dealer's service technician replaced the driver's side seat adjuster assembly. The mileage on the vehicle at the time of this repair visit was 19,943.<sup>9</sup> The vehicle was in the dealer's possession until April 4, 2013. Complainant received a rental vehicle during this repair visit.

A few days later, on April 9, 2013, Complainant took the vehicle to Helfman Dodge because the left outer rear lamp bulb was out. The bulb was replaced by a service technician. This repair was not covered by the vehicle's warranty since it was considered to be a maintenance issue.

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<sup>7</sup> Complainant Ex. 2, Repair Order dated December 17, 2012.

<sup>8</sup> Complainant Ex. 3, Repair Order dated March 25, 2013.

<sup>9</sup> Complainant Ex. 4, Repair Order dated April 3, 2013.

The vehicle's mileage when Complainant took it to the dealership on this occasion was 20,119.<sup>10</sup> Since the vehicle was not kept for very long, Complainant was not provided with a loaner vehicle. Complainant did not raise other complaints regarding the vehicle during this visit.

Complainant did not have any issues with the vehicle for a few months after this last visit. On August 24, 2013, Complainant again took the vehicle to Respondent's authorized dealer for a repair. On this occasion, another bulb had gone out. This time it was the front right turn signal. The bulb was replaced by a technician. In addition, Complainant had to pay for the repair, since the issue was not covered by the manufacturer's warranty. Complainant also indicated to the dealer's service advisor that she felt that there might be an electrical issue with the vehicle. The service advisor's only response was that there was no way to tell when a light bulb might go out. The mileage on the vehicle on this occasion was 27,894.<sup>11</sup> Complainant was not provided with a loaner vehicle, since the vehicle was only in for repairs for one day. Complainant did not raise any other issues with the vehicle during this visit.

On September 3, 2013, Complainant took the vehicle to the dealership to repair the vehicle's hood seal. The seal was hanging out from under the hood. The dealer's service technician determined that the hood seal was falling apart. As a result, the hood seal was replaced. The mileage on the vehicle on this date was 30,000.<sup>12</sup> During this visit, Complainant did not raise any other issues with the vehicle. Complainant was provided with a rental vehicle while her vehicle was being repaired.

On October 22, 2103, Complainant called Respondent's 800 number to express her dissatisfaction with the vehicle's "electrical issues." Complainant advised Respondent's representative that she had purchased Respondent's vehicles in the past and had not experienced any problems with them. In addition, Complainant indicated that she felt that the dealership was showing a lack of customer service. An inspection of the vehicle by Respondent was scheduled to determine if there was an electrical problem.

On October 28, 2013, Complainant took the vehicle to the dealership for the scheduled inspection. Complainant raised several concerns regarding the vehicle to the service advisor. Complainant advised the service advisor that the right rear brake light was not working, that the U-Connect would shut off on its own while being used, that the radio's steering controls wouldn't work, and that there was a water leak in the vehicle's trunk. A service technician replaced the bulb for the brake light and replaced the light sockets. However, he could not duplicate any of the other concerns raised by Complainant. Even though the technician could not duplicate Complainant's concern regarding the U-Connect, the technician still updated the system. No other repairs were performed according to the repair order. However, Complainant

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<sup>10</sup> Complainant Ex. 5, Repair Order dated April 9, 2013.

<sup>11</sup> Complainant Ex. 6, Repair Order dated August 24, 2013.

<sup>12</sup> Complainant Ex. 7, Repair Order dated September 3, 2013.

indicated that the trunk was tightened to repair the leak, but she was not sure when. The mileage on the date that the vehicle was turned over to the dealer was 31,198.<sup>13</sup> The vehicle was returned to Complainant on November 5, 2013. Complainant was provided with a rental vehicle during the period that her vehicle was in possession of the dealer.

On January 20, 2014, Complainant took the vehicle to Respondent's authorized dealer, Gulfgate Dodge-Chrysler-Jeep, in Houston, Texas. Complainant advised the dealer's service advisor that the vehicle's heater was blowing cold air, instead of warm air as designed. In addition, Complainant indicated that she thought that the vehicle was making excessive noise, like air leaking in the left front door by the mirror area when she traveled at high speeds. A service technician investigated the vehicle and could not duplicate Complainant's concern regarding the heater. He also did not find any diagnostic codes regarding the heater on the vehicle's computer system. In addition, the technician test drove the vehicle to verify the complaint that it was making excessive noise at high speeds. He determined that there was no excessive wind noise. The mileage on the vehicle during this repair visit was 34,847.<sup>14</sup> Complainant was provided with a rental vehicle while her vehicle was in the dealer's possession. She received the vehicle back on January 21, 2014.

On May 5, 2014, Complainant took the vehicle to Respondent's authorized dealer, River Oaks Chrysler-Plymouth-Jeep (River Oaks), in Houston, Texas. Complainant advised the dealer's service advisor that she was hearing a "whistling" noise from under the hood when the vehicle was idling. A service technician inspected the vehicle and determined that there was contaminated coolant in the vehicle's water pump and that this had damaged the water pump. As a result, the water pump was replaced and the coolant system was flushed. This repair was covered by Respondent's powertrain warranty. The mileage on the vehicle when Complainant delivered it to the dealer was 39,353.<sup>15</sup> The dealer retained possession of the vehicle until May 7, 2014. Complainant was provided with a rental vehicle while her vehicle was in the dealer's possession.

Later that month, while driving the vehicle, Complainant thought she detected an odor as if something was burning in the engine area. She took the vehicle to River Oaks on May 29, 2014. She informed the service advisor of her concerns regarding the burning smell. A dealer service technician inspected the vehicle to determine the cause of the odor. The technician bled the cooling system to ensure that the coolant was circulating properly. The car did not overheat while in the dealer's shop. The technician did not find any diagnostic codes on the computer system, so no other repairs were performed. The mileage on the vehicle when Complainant delivered it to the dealer on this occasion was 40,557.<sup>16</sup> The vehicle was returned to

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<sup>13</sup> Complainant Ex. 8, Repair Order dated October 28, 2013.

<sup>14</sup> Complainant Ex. 9, Repair Order dated January 20, 2014.

<sup>15</sup> Complainant Ex. 10, Repair Order dated May 5, 2014.

<sup>16</sup> Complainant Ex. 11, Repair Order dated May 29, 2014.

Complainant on May 30, 2014. Complainant was provided with a rental vehicle while the dealer had possession of her vehicle. Even though the service technician could not determine what was causing the odor, Complainant thought she could still smell the odor. After a few days, the odor went away.

About two months later, the vehicle's check battery light illuminated. So, on July 10, 2014, Complainant took her vehicle back to River Oaks. She informed the dealer's service advisor that the battery light was on. She also told the service advisor that the vehicle had a hard time accelerating. One of the dealer's service technicians inspected the vehicle and determined that the vehicle's alternator had shorted internally and needed to be replaced. So, the technician replaced the alternator and checked the battery. He determined that the battery had not been affected by the faulty alternator and was performing adequately. The mileage on the vehicle when it was taken to the dealer was 42,412.<sup>17</sup> Complainant was provided with a rental vehicle while her vehicle was in the dealer's possession. The vehicle was returned to Complainant on July 11, 2014.

The day after the vehicle was returned to Complainant, she attempted to start the vehicle. However, it did not start. She waited about 30 minutes then tried to start it again. This time the vehicle did start and Complainant was able to drive it. However, the very next day the vehicle failed to start again. As a result, Complainant took the vehicle to the dealer (River Oaks) on July 16, 2014. Complainant informed the service advisor that the vehicle would not start. In addition, she informed the service advisor that the driver's side window would not drop to allow her to open the driver's door. The vehicle was inspected by a service technician who determined that the battery was low on charge and needed to be replaced. So, the battery was replaced at that time. In addition, the technician checked the vehicle's computer system for any diagnostic codes to determine if there was an issue with the window. He did not find any diagnostic codes and so took no further action on Complainant's concern regarding the window. The mileage on the vehicle when Complainant turned it over to River Oaks was 42,698.<sup>18</sup> River Oaks kept the vehicle until July 18, 2014. Complainant was provided with a loaner vehicle while her vehicle was in the dealer's possession.

On July 10, 2014, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle. This letter was to provide notice to the Respondent that Complainant intended to file a complaint with the Texas Department of Motor Vehicles under Section 2301 of the Texas Occupations Code (the Texas Lemon Law). Through this letter Complainant also advised

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<sup>17</sup> Complainant Ex. 12, Repair Order dated July 10, 2014.

<sup>18</sup> Complainant Ex. 13, Repair Order dated July 16, 2014.

Respondent of their final opportunity to repair the vehicle. Complainant went on to file the Lemon Law complaint on July 15, 2014.<sup>19</sup>

On September 3, 2014, Complainant took the vehicle to River Oaks for repairs. She informed the service advisor that the car would not start on occasion. (The vehicle had failed to start the night before, although it started that morning.) As a result, the service advisor indicated on the repair order that Complainant said that the car would make a clicking noise when Complainant attempted to start it. The dealer's service technician replaced the vehicle's wireless ignition node and reprogrammed Complainant's key fobs. In addition, he programmed the tire pressure sensors to the module. No other repairs were performed at the time. The mileage on the vehicle when Complainant turned it over to the dealer was 45,224.<sup>20</sup> River Oaks kept the vehicle until September 9, 2014. Complainant was provided with a rental vehicle while her vehicle was in the dealer's possession.

During direct examination by her representative, Complainant indicated that she did not feel comfortable driving the vehicle on a daily basis. In addition, she testified that she had raised all of her concerns with the vehicle to Respondent's authorized dealers and had been doing so since December of 2012.

During cross examination, Complainant stated that she had no issues with the vehicle during the first 12,000 miles that she owned it. The only service performed on the vehicle during that period of time was an oil change. However, she did notice that sometimes the dashboard lights would flicker. However, she did not take the vehicle to the dealer for that issue. Complainant feels that the vehicle still has intermittent issues with the vehicle's heater and she has concerns whether the vehicle will start on any given day. In addition, she doesn't feel that the vehicle is reliable.

### **C. Respondent's Evidence and Arguments**

Stuart Ritchey, Technical Advisor, has worked for Respondent for approximately 28 years. He's worked as a technical advisor since 1994. He's also been certified by the National Institute for Automotive Service Excellence (ASE) in all disciplines for passenger cars.

On the date of hearing Mr. Ritchey participated in a test drive in Complainant's vehicle, along with the hearings examiner, Complainant, and Complainant's representative, Rodney Clayton.

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<sup>19</sup> Complainant Ex. 15, Lemon Law Complaint. Complainant testified that she filed the Lemon Law complaint on July 10, 2014. However, the complaint contained in the file was dated July 15, 2014, and was dated as being received by the Texas Department of Motor Vehicles (TxDMV) on July 16, 2014. Since the document appears to have actually been received by TxDMV on July 15, 2014, (see date on the bottom of page two of the complaint) that is the date that the complaint is considered to have been perfected.

<sup>20</sup> Complainant Ex. 14, Repair Order dated September 3, 2014.

Mr. Ritchey explained that when Complainant was driving the vehicle and commented regarding a hesitation that she felt when attempting to accelerate the vehicle was due to the transmission downshifting which causes a lag time. He feels that the vehicle's behavior was normal in that respect. Complainant had also raised the issue that the vehicle's heater would occasionally blow cold air instead of hot air. Mr. Ritchey had Complainant turn on the heater in the vehicle and did determine that it was operating normally. He testified that when the engine is cold, the air coming out of the heater will not be as hot as if the engine had been operating for a time. The longer the engine is on, the hotter the air will get. The thermostat on the vehicle will not open up and start blowing hot air until the engine gets to approximately 195 degrees. The outside air temperature and the length of time that the engine runs both affect how warm the air blowing from the heater will get. There are "blend doors" in the HVAC system which direct which way the air flows in the system. There is also a blend door which adjusts how much heat or cold you want inside the vehicle. If you were to turn on the recirculation button on the HVAC system, and the door was hanging open then it would allow cool air inside the vehicle. That could affect the temperature on the heater, but it should also affect the air conditioner and not allow the air to get cool. Mr. Ritchey testified that in his viewpoint, at the time of hearing, the vehicle was acting normally. He did not see or hear anything wrong with it. The heater and air conditioner were working properly, there was no hesitation when driving the vehicle, he didn't hear a wind noise, and it started appropriately.

#### **D. Analysis**

Under Texas' 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. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on April 26, 2012 and presented the vehicle to an authorized dealer of Respondent due to her concerns with the vehicle on the following dates: December 17, 2012; March 25, 2013; April 3, 2013; April 9, 2013; August 24, 2013; September 3, 2013; October 28, 2013; January 20, 2014; May 5, 2014; May 29, 2014; July 10, 2014; July, 16, 2014; and September 3, 2014. Occupations Code § 2301.605(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more 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 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.”

In addition, Section 2301.605(a)(2) provides that when a noncomformity creates a serious safety hazard, a rebuttable presumption that a reasonable number of repair attempts has been attempted by Respondent if “at least one attempt to repair the noncomformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the original delivery to the owner; and at least one other attempt to repair the noncomformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.”

Complainant has not met the requirements of either of these tests. Complainant did not present the vehicle for repairs to an authorized dealer for Respondent within the first 12,000 miles from purchase. The first indication that Complainant had a concern with the vehicle was when she took the vehicle for repairs on December 17, 2012, when the vehicle’s mileage was 14,472 from the date of delivery (the vehicle had 23 miles on it when Complainant received it, actual mileage on the vehicle on the date in question was 14,495). The evidence presented also shows that although Complainant did present the vehicle to Respondent’s authorized dealer for repairs four times within the first 24,000 miles, one of those repairs was to complete a prior repair (April 3, 2013; the seat assembly which had been ordered due to the repair visit on March 25, 2013, arrived at the dealer’s location) and another repair visit was to replace a light bulb (April 9, 2013).

As such, the hearings examine holds that Complainant has been unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent.

Also, Complainant testified that she feels that the vehicle constitutes a serious safety hazard. Occupations Code, Section 2301.601(4) defines a serious safety hazard as “life-threatening malfunction or noncomformity that:

- (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or
- (B) creates a substantial risk of fire or explosion.”

No evidence was presented at the hearing to establish that the vehicle constitutes a serious safety hazard as defined in the Code. The issues complained of by Complainant do not impede her ability to control or operate the vehicle nor do they create a substantial risk of fire or explosion.

Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, there are no grounds to grant repurchase or replacement relief for Complainant.

Respondent's express warranty applicable to Complainant's vehicle provides "bumper to bumper" coverage for 3 years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for 5 years or 100,000 miles. On the date of hearing, the vehicle's mileage was 46,456 and it remains under the powertrain warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the applicable warranty.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Myeshia Mitchell (Complainant) purchased a new 2012 Dodge Challenger on April 26, 2012 from Helfman Dodge in Houston, Texas, with mileage of 23 at the time of delivery.
2. The manufacturer of the vehicle, Chrysler Group LLC (Respondent) issued a warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 46,456.
4. At the time of hearing the vehicle was still covered by Respondent's powertrain warranty.
5. Complainant took the vehicle to Respondent's authorized dealers in order to address her concerns on the following dates:
  - a. December 17, 2012, at 14,495 miles;
  - b. March 25, 2013, at 19,745 miles;
  - c. April 3, 2013, at 19,943 miles;
  - d. April 9, 2013, at 20,119 miles;
  - e. August 24, 2013, at 27,894 miles;
  - f. September 3, 2013, at 30,000 miles;
  - g. October 28, 2013, at 31,198 miles;
  - h. January 20, 2014, at 34,847 miles;
  - i. May 5, 2014, at 39,353 miles;
  - j. May 29, 2014, at 40,557 miles;
  - k. July 10, 2014, at 42,412 miles;
  - l. July 16, 2014, at 42,698 miles; and
  - m. September 3, 2014, at 45,224 miles.

6. Complainant took the vehicle to Respondent's authorized dealer on December 17, 2012, because the vehicle's windows were down, the headlights were on, the inside lights were on, the vehicle did not recognize the key for, and the vehicle would not start after she left it in a mall parking lot while she was shopping. The dealer's service technician reprogrammed the vehicle's door module and replaced the keys as the only repairs for these issues.
7. On March 25, 2013, Complainant took the vehicle to Respondent's authorized dealer because the vehicle's left driver's window would not always drop as designed when the door was being opened in order to allow her to enter the vehicle. She also complained that she would hear static when using the vehicle's U-Connect system, the driver's seat sometimes jerked when moving it back and forth, and the rear spoiler was loose. No repair was performed on the window issue, since it could not be duplicated. However, a part was ordered by the dealer to repair the driver's seat and the fasteners for the spoiler were tightened. In regards to the U-Connect system, Complainant was advised that the static could be caused by her use of an earpiece. No other repairs were performed.
8. On April 3, 2013, the vehicle's driver's side seat assembly was replaced; thereby, completing the repair originally diagnosed on the March 25, 2013, repair visit.
9. On the April 9, 2013 and August 24, 2013 service visits, two different light bulbs were replaced.
10. On the September 3, 2014 service visit, the vehicle's hood seal was replaced.
11. On October 28, 2013, Complainant took the vehicle to the dealer because the rear brake light was not working, the U-Connect would shut off on its own while being used, the radio's steering controls would not work, and there was a water leak in the vehicle's trunk. The brake light and light sockets were replaced by the dealer's service technician, but none of the other complaints could be duplicated and no other repairs were performed according to the work order. The leak in the trunk was repaired on an unspecified date.
12. On January 20, 2014, Complainant took the vehicle to the dealer because she felt that the heater was not blowing warm air as designed and because she thought she heard excessive noise when driving at high speeds from the left front of the vehicle. Complainant's concerns could not be duplicated and no repairs were performed at the time.

13. On May 5, 2014, Complainant took the vehicle to the dealer because she heard a “whistling” noise from under the hood when the vehicle was idling. It was determined that the vehicle’s water pump was damaged. The water pump was replaced and the coolant system flushed.
14. On May 29, 2014, Complainant took the vehicle to the dealer because she thought she detected a burning smell from the engine. The cooling system was bled to ensure that the coolant was circulating properly, but no other repairs were performed at the time since the car was not overheating and there were no diagnostic trouble codes on the vehicle’s computers.
15. On July 10, 2014, Complainant took the vehicle to the dealer because the check battery light was on. The service technician determined that the vehicle’s alternator had shorted internally and replaced the alternator. However, he determined that the battery was not damaged and was performing adequately.
16. On July 16, 2014, Complainant took the vehicle back to the dealer because it had failed to start on at least two occasions since the last visit. In addition, Complainant again voiced her concerns regarding the driver’s side window not dropping as designed when the door was unlocked. The service technician replaced the battery as it was determined that it was low on charge. In regards to the window issue, no action was taken since the problem could not be duplicated.
17. Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles on July 15, 2014.
18. On September 3, 2014, after the filing of the Lemon Law complaint, Complainant took the vehicle to the dealer because it failed to start the night before. The service technician replaced the vehicle’s wireless ignition node and reprogrammed the vehicle’s key fobs. No other repairs were performed at that time.
19. On September 2, 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.

20. The hearing convened on October 2, 2014, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant was represented in the hearing by Rodney Clayton, friend. Complainant was present at the hearing to testify. Tonette Mitchell, mother, and Astrid McClendon, friend, also appeared to testify on behalf of Complainant. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also present at the hearing for Respondent was Stuart Ritchey, Technical Advisor. The hearing adjourned and the record closed that same day.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (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, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant 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.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. Complainant's 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 Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED November 7, 2014**

  
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**EDWARD SANDOVAL**  
**CHIEF HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**