

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0333 CAF**

TRISTAN WOMACK,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Tristan Womack (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2013 Ford Focus SE. Complainant asserts that the vehicle “chugs” when accelerating from a stop, hesitates, and jumps. Ford Motor Company (Respondent) argued that Complainant has not met the repurchase requirements set forth in the Occupations Code and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for 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 on December 3, 2014 in Houston, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also present for Complainant was her husband, Randall Womack. Respondent was represented by Sonya Hall, Consumer Affairs Legal Analyst.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these 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.⁵

B. Complainant's Evidence and Arguments

1. Tristan Womack's Testimony

Complainant purchased a 2013 Ford Focus SE from Big Star Ford (Big Star), in Manvel, Texas on November 10, 2012, with mileage of 119 at the time of delivery.⁶ On the date of hearing the vehicle's mileage was 36,728. At this time, Respondent's basic warranty coverage for the vehicle remains has expired. The basic "bumper to bumper" warranty provided coverage for three years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 60,000 miles.⁷

Complainant testified that within the first two months after purchasing the vehicle she noticed that the vehicle seemed to "chug" (i.e., hesitate and jump) when accelerating from a stop. She mentioned to the dealer her concerns with the issue on several occasions and was told that the vehicle just drove that way because the vehicle's transmission was automatic, but shifted like a standard transmission, and because she drove a lot in stop and go traffic. Complainant thought that the problem was due to a defect in the vehicle. Complainant took the vehicle to Big Star,

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ 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.

⁶ Complainant Ex. 12, Motor Vehicle Retail Installment Sales Contract, Motor Vehicle Buyer's Order, GAP Addendum, Conditional Delivery Agreement, Declarations Page, Window Stickers, Advantage Care Agreement, Disclosure Agreement, Auto Shield Theft Protection Agreement, and Roadside Assistance Agreement dated November 10, 2012.

⁷ Complainant Ex. 11, 2013 Model Year Ford Warranty Guide.

Respondent's authorized dealership, for routine maintenance on March 30, 2013, at 6,913 miles; July 24, 2013, at 12,666 miles; and on October 30, 2013, at 17,328 miles.⁸ On all three of these dates Complainant advised the dealer's service advisers of her concerns with the vehicle and the way its transmission was shifting. She was concerned that the transmission was being damaged by the vehicle's behavior. The dealer's representatives advised Complainant that the behavior was normal because the transmission was an automatic that shifted like a standard. On each occasion Complainant gave the representatives details on the vehicle's behavior and was told that the behavior was normal for the vehicle.

On February 21, 2014, Complainant was driving the vehicle when it began to chug again. She immediately took the vehicle to Big Star to show them how the vehicle was operating. One of the dealer's representatives rode in the vehicle with Complainant and determined that the vehicle was not operating correctly and agreed that the vehicle needed repair. The vehicle's mileage when it was taken to the dealership on this occasion was 23,640.⁹ During this repair, the service technician reprogrammed the "PCM/TCM [powertrain control module and transmission control module] and performed adaptive learning for [the] transmission"¹⁰ Complainant was also informed that she needed to drive the vehicle about 1000 miles in order to allow the vehicle's transmission to adapt to her style of driving. Complainant waited at the dealership for the vehicle and it was returned to her the same day.

On March 7, 2014, Complainant took the vehicle to Big Star for scheduled maintenance. The vehicle was still chugging, so she spoke to the dealer's transmission technician regarding the vehicle. She was told that she was still supposed to drive 1000 miles before the vehicle "relearned."

On July 2, 2014, Complainant attempted to drive the vehicle to a doctor's appointment. However, the vehicle would not shift into reverse despite her attempts to do so. In addition, the vehicle's check engine light illuminated. Complainant phoned her husband (Randall Womack) for help and he was able to get the vehicle to shift into reverse. Mr. Womack drove the vehicle to Respondent's authorized dealer, Ron Carter Ford (Ron Carter) in Alvin, Texas. Mr. Womack informed the service advisor of the chugging issue and the vehicle's failure to shift correctly. He paid for a rental vehicle while their vehicle was in the dealer's possession. Mr. Womack retrieved the vehicle the next day. Complainant and her husband were told by the dealer's representatives that the vehicle had been inspected, that a service technician had driven it, and the transmission appeared to be operating normally. No repairs were performed, but the technician performed a "relearn" on the transmission.¹¹ In addition, Complainant was informed that the check engine

⁸ Complainant Ex. 1, Repair Orders dated March 30, 2013; July 24, 2013; and October 30, 2013.

⁹ Complainant Ex. 2, Repair Order dated February 21, 2014.

¹⁰ *Id.*

¹¹ Complainant Ex. 3, Repair Order dated July 2, 2014.

light had gone off inadvertently. The vehicle's mileage when it was delivered to the dealer on this occasion was 30,323.¹² The vehicle was returned to Complainant on July 3, 2014.

On July 7, 2014, Complainant was driving home from work in highway traffic when the vehicle down shifted on its own. In addition, the check engine light came on. Complainant was able to drive the vehicle to Big Star at 30 to 40 miles per hour (MPH) with the vehicle's hazard lights on. The dealer's service technician determined that the loss in power was due to an engine misfire and fouled spark plug.¹³ In addition, the technician performed adaptive learning for the transmission again for the chugging issue which Complainant raised.¹⁴ The vehicle's mileage when it was delivered to the dealer on this occasion was 30,311.¹⁵ The vehicle was in the dealer's possession for twenty-one days. Complainant was provided with a rental vehicle while her vehicle was being repaired. The rental vehicle was another Ford Focus and it drove fine. Complainant did not have any of the issues with the rental vehicle that she was experiencing with her own vehicle.

On August 3, 2014, Complainant decided to drive the vehicle to Sunday dinner to see how it was performing. While driving to a restaurant on a highway at 55 to 60 MPH the vehicle revved up to about 5500 RPM's. It was as if the transmission had slipped into neutral. Although the vehicle was still on, it was not getting any power from the engine. Complainant had to allow the vehicle to coast to the side of the road. The vehicle recovered once Complainant was able to pull over to the side of the road. The vehicle then was able to accelerate and Complainant was able to drive it. The vehicle chugged all the way back to Complainant's home. When she got home, she parked the vehicle in their driveway. She attempted to back up the vehicle to turn it around so that a tow truck could pick the vehicle up. At that point, the vehicle's transmission would not go into reverse and she was unable to back up. Whenever she tried to go in reverse, the vehicle would not move and the engine's RPM's were racing as if the vehicle were in neutral. The next day, August 4, 2014, Complainant had the vehicle towed to Big Star. The vehicle's mileage when it was delivered to the dealer on this occasion was 30,723.¹⁶ The dealer representative called Complainant that afternoon and told her that he was unable to get a code for the vehicle and unable to duplicate her concern. Complainant told the representative that she did not feel that the vehicle was safe and she did not want to pick it up. The dealer's service manager took the vehicle home that evening to see if the problem would replicate overnight. However, the vehicle acted normally. On August 5, 2014, Tuesday, Complainant went to Big Star to discuss the matter with the service manager who informed her that he was concerned with the issue with the car not going into reverse. However, Complainant told the service manager that she was not

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated July 7, 2014.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Repair Orders dated August 4, 2014 and August 5, 2014.

so concerned with that issue, but with the fact that when the vehicle shifted wrong in an extreme way the check engine light came on and the vehicle would not go into gear when she driving in the middle of the highway. She told the service manager that he had to drive the vehicle on the highway to see what the vehicle was doing. So, he kept the vehicle another day to drive it on the highway. When driving the vehicle the following day, the check engine light came on. The service manager drove the vehicle back to the dealership to obtain the diagnostic code. At that time, it was determined that the vehicle needed a new shift motor. As a result, the shift motor was replaced and the technician performed an "adaptive learning retest."¹⁷ Complainant picked up the vehicle on August 6, 2014, and drove it home. Complainant was provided with rental vehicles during the time that the dealer had possession of her vehicle.

On August 5, 2014, Complainant called the National Highway Traffic Safety Administration (NHTSA) to determine what recourse she had regarding the vehicle as she felt that the vehicle was unsafe to drive. Complainant was told that they could file a report for her. However, she never pursued the complaint with the NHTSA.

On August 7, 2014, Complainant was driving the vehicle to work on her usual route. When she came to a stop light near her work, the car wouldn't accelerate from the light. The vehicle didn't rev, but it chugged. Complainant was able to coast the vehicle to the side of the road. She was able to drive the vehicle to Big Star with the hazard lights on. As long as she didn't have to accelerate or slow down the vehicle, it drove fine. Otherwise, it would chug. The dealer's service technician was able to obtain a diagnostic code from the vehicle. He determined that the vehicle's computer (TCM) needed to be replaced.¹⁸ The TCM was replaced during this visit. The vehicle's mileage on this occasion was 30,810.¹⁹ Initially, Complainant was informed that the repair would take three to four weeks because the TCM was on back order. Later that afternoon, the dealer's representative called Complainant that a TCM for another vehicle had arrived and that they were going to install it in Complainant's vehicle.

On August 7, 2014, Complainant wrote a letter to Respondent advising them of the problems with the vehicle. In addition, Complainant indicated in the letter that Respondent should contact her to arrange a date and time for inspection of the vehicle and a final repair.²⁰ The following day, Complainant mailed the Lemon Law complaint to the Texas Department of Motor Vehicles (TxDMV). The complaint was received by TxDMV on August 13, 2014.

Since the repair on August 7, 2014, the vehicle has continued to chug and not shift correctly. There appears to be a hesitation when shifting the vehicle. When accelerating from a stop and at

¹⁷ *Id.* Repair Order dated August 5, 2014.

¹⁸ Complainant Ex. 7, Repair Order dated August 7, 2014.

¹⁹ *Id.*

²⁰ Complainant Ex. 9, Letter to Ford Motor Company dated August 7, 2014.

the second shift, there's a chugging as if Complainant was driving a vehicle with a standard transmission and she was popping the clutch when shifting which makes the vehicle jump.

After receiving Complainant's letter regarding the vehicle, Respondent contacted Complainant to schedule a final repair attempt. Respondent had one of its field service technicians inspect the vehicle on August 26, 2014. The inspection was performed at Big Star. Complainant's complaint regarding the vehicle was that it shuddered at low speeds. The mileage on the vehicle when it was inspected was 31,732.²¹

In August of 2014, Complainant received a letter from Respondent informing her that she was the recipient of an extended warranty for her vehicle under Customer Satisfaction Program 14MO1. This program provided for an extended warranty for the vehicle's clutch and transmission input shaft seals and transmission software calibration for seven years or 100,000 miles from the warranty start date.²²

During cross examination, Complainant testified that she had received a partial refund of the rental car charges that she paid on July 2, 2014. She had complained that she was required to pay for a rental vehicle while her vehicle was in the dealer's possession. As a result, the rental car company refunded half of the rental charges (\$68.98) for the two day rental. Complainant purchased a GoPro Cam because she had been told that the final repair did not indicate any issues with the vehicle. Complainant was not convinced that the field service engineer had adequately tested the vehicle by driving it on the highway. So, she purchased the camera to record the vehicle acting abnormally. Complainant also testified that the vehicle's transmission continues to shift erratically.

During rebuttal testimony Complainant indicated that she's afraid to drive the vehicle and plans her trips to ensure that she can pull over to the side of the ride in case the vehicle has an issue while she's driving. In addition, due to her concerns, she won't pull out in traffic oftentimes. She will over exaggerate the time she needs to pull out in order to ensure that she can do so safely.

2. Randall Womack's Testimony

Mr. Womack testified that on July 2, 2014, Complainant called him at work and told him that the vehicle would not shift into reverse. Complainant had a doctor's appointment scheduled that morning, so Mr. Womack indicated that he would take care of the vehicle while Complainant went to the appointment. He went to the house and called Big Star and requested a wrecker.

²¹ Complainant Ex. 10, Repair Order dated August 26, 2014.

²² Complainant Ex. 19, Undated Letter outlining Customer Satisfaction Program 14MO1.

Instead of sending a wrecker, the representative for Big Star gave him the phone number for the towing service that they used and advised Mr. Womack to call for the wrecker. When Mr. Womack arrived home, he tried out the car and it shifted into reverse for him. So, he drove the vehicle to Ron Carter which was near the house. Mr. Womack told the dealer's service advisor that the vehicle would not go into reverse and that the check engine light illuminated. When he picked up the vehicle, the dealer representative informed him that they had inadvertently turned off the check engine light and were unable to obtain a diagnostic code from the vehicle. In addition, they had driven the vehicle to see if they could duplicate the concerns but were unable to do so.

Mr. Womack also testified that he was told by the dealer's service technicians that if the vehicle's check engine light illuminated and they turned the vehicle off, then the codes would be lost. This occurs even if the check engine light is still on.

In early August of 2014, Mr. Womack and Complainant were driving the vehicle on their way to dinner when the engine revved up to 5500 RPM. Complainant pulled the vehicle over to the shoulder of the road. She stopped the vehicle for a minute before the transmission would grab. Complainant drove the vehicle back to their house and it chugged and shook all the way to the house. She drove it about 20 to 30 MPH while driving to their house. The following day, Mr. Womack had the vehicle towed to Big Star while he got a rental vehicle.

In addition, Mr. Womack feels that the vehicle is behaving as it did when it was first purchased. He's afraid that they're going to through the whole cycle again until the vehicle has to spend another thirty days in the dealer's shop.

C. Respondent's Evidence and Arguments

Sonya Hall, Consumer Affairs Legal Analyst, testified for Respondent. Ms. Hall first became involved in the attempts to resolve Complainant's complaint after Respondent received Complainant's letter dated August 7, 2014. Ms. Hall contacted Complainant on August 18, 2014, in order to schedule an inspection and a final repair attempt for the vehicle. Ms. Hall informed Complainant that a field service engineer would be inspecting the vehicle in order to address the concerns that Complainant raised in her letter. Ms. Hall scheduled an appointment with Complainant for August 26, 2014, in order to have the vehicle inspected.

Complainant did leave the vehicle at Respondent's authorized dealer on August 26, 2014, and the vehicle was inspected by Steve Kyle, Field Service Engineer. Complainant was provided with a rental vehicle while the inspection was being performed. Respondent kept the vehicle at the

dealership for only one day on this occasion. Mr. Kyle determined that the vehicle was operating as designed.²³

There have been no recalls for Complainant's vehicle. However, Respondent has received complaints regarding the vehicle model. The complaints have been due to the transmission shudder and hesitation. Respondent has issued a Technical Service Bulletin (TSB) in order to address how to proceed with repairs to the vehicles. In addition, the warranty for the clutch assembly, transmission input shaft seals, and transmission software calibration has been extended to seven years or 100,000 miles from the warranty start date.

The TSB provides directions to dealers' technicians to proceed with repairs that have been raised by certain issues. The TSB is issued when a complaint has been raised and someone has come up with a way to diagnose or proceed with the repair. A TSB is sent out so that it's available for a technician to access the information and figure out how to move on with the repair based on the prior analysis or prior work. There have been at least three TSB's for this model vehicle. The first, TSB 13-9-4, was superseded by TSB 14-0131, which in turn, was superseded by TSB 14-0197.

TSB 14-0197 addresses the issue concerning shudder on DPS6 automatic transmissions for 2012 to 2014 Ford Focuses and 2011 to 2015 Ford Fiestas. The transmission is a dual clutch, six speed, automatic transmission. Essentially, the transmission is a manual transmission which shifts automatically. The transmission was designed in an attempt to obtain better fuel mileage.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. 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 November 10, 2012 and presented the vehicle to Big Star Ford, an authorized dealer of Respondent due to her concerns with the transmission, among other issues, on the following dates: March 30, 2013; July 24, 2013; October 30, 2013; February 21, 2014; July 2, 2014; July 7, 2014; August 4, 2014; August 5, 2014; and August 7, 2014.

²³ Respondent Ex. 1, FSE Vehicle Inspection Report dated August 26, 2014.

Occupations Code § 2301.604(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) specifies 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." The evidence presented at the hearing establishes that Complainant has met the requirements of this test. Complainant's credible and uncontroverted testimony established that when she took the vehicle to Big Star on March 30, 2013; July 24, 2013; and October 30, 2013, she indicated to the dealer's service representatives that she was concerned with the fact that the vehicle seemed to "chug" and hesitate when she drove it and that she was concerned with the transmission. Rather than inspect the vehicle to determine if Complainant's concerns were warranted, the dealer's representatives merely told Complainant that the vehicle's behavior was normal. Since the decision not to investigate Complainant's concern was due to the dealer's representatives' decisions, all three visits must be considered as valid repair attempts that were not addressed by Respondent's authorized representatives. As such, the fault in not repairing the vehicle on these occasions lies with the dealership. Although the mileage on the vehicle at the second visit was 12,666, Complainant took possession of the vehicle with mileage of 119. The Lemon Law provides that the mileage needed to establish the presumption that a reasonable number of repair attempts has been undertaken is considered to be the first 12,000 miles from the date of original delivery to the owner. The second repair attempt on July 24, 2013, was conducted when the vehicle had mileage of 12,547 from date of delivery. This is slightly over the 12,000 mile cutoff and cannot be considered to be fatal to Complainant's claim. In addition, the next two repair attempts were performed within the next year and the next 12,000 miles from the date of the second repair attempt of July 24, 2013. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter dated August 7, 2014, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected on August 26, 2014, by Respondent's representative who determined that no repairs were necessary at that time.

The evidence indicates that the defect in Complainant's vehicle substantially impairs its use and market value. The vehicle's chugging and hesitation makes it less desirable to drive than comparable vehicles. In addition, it can cause the driver to decide that the vehicle is not roadworthy for extended trips which can affect its marketability due to the reduced capacity for use.

The evidence further demonstrates that the defect in Complainant's vehicle creates a serious safety hazard. The intermittent nature of the condition increases the safety risk and substantially impedes Complainant's ability to control or operate the vehicle for ordinary use or intended purposes. Complainant testified that she has changed her driving habits due to concerns for her safety while driving the vehicle.

Although the Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met her burden of proof to establish a warrantable and existing defect or condition that substantially impairs the vehicle's use and market value and creates a serious safety hazard.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted.

III. FINDINGS OF FACT

1. Tristan Womack (Complainant) purchased a new 2013 Ford Focus SE on November 10, 2013 from Big Star Ford, in Manvel, Texas, with mileage of 119 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent) issued a bumper to bumper warranty for three years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 36,728.
4. At the time of hearing the vehicle's basic warranty had expired.
5. After purchasing the vehicle, Complainant noticed that the vehicle would chug and hesitate when she was driving it.
6. Complainant took her vehicle to Respondent's authorized dealers in order to address her concerns with the vehicle's transmission (among other issues), on the following dates:
 - a. March 30, 2013, at 6,913 miles;
 - b. July 24, 2013, at 12,666 miles;
 - c. October 30, 2013, at 17,328 miles;
 - d. February 21, 2014, at 23,640 miles;

- e. July 2, 2014, at 30,323 miles;
 - f. July 7, 2014, at 30,311 miles;
 - g. August 4, 2014, at 30,723 miles;
 - h. August 5, 2014, at 30,734 miles; and
 - i. August 7, 2014, at 30,810 miles.
7. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
 8. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's chugging and hesitation makes it less desirable to drive than comparable vehicles. In addition, it can cause the driver to decide that the vehicle is not roadworthy for extended trips which can affect its marketability due to the reduced capacity for use.
 9. The defective condition of Complainant's vehicle creates a serious safety hazard. A vehicle that hesitates upon acceleration creates safety issues when the driver is trying to correctly time acceleration to make turns or entering busy or high speed traffic.
 10. Complainant provided written notice of the defect to Respondent on August 7, 2014, and Respondent was given the opportunity to inspect the vehicle on August 26, 2014.
 11. Complainant accrued incidental expenses due to issues with the vehicle as follows:

a.	Rental vehicle on July 2, 2013	\$68.98
b.	Window kit purchased on April 2, 2013	\$96.34
c.	Mailing of letter to Ford on August 8, 2014	\$11.60
d.	Mailing of Lemon Law complaint to TxDMV on August 9, 2014	\$ 5.60
e.	Gas for rental vehicles on August 5, 2014 and August 6, 2014	\$14.90
f.	Copies of information sent to TxDMV	\$ 3.25
g.	Mailing of documents to Ford for hearing on November 26, 2014	\$19.99
h.	Vehicle registration for December 2014	<u>\$62.75</u>
	Total	\$283.41

12. On August 13, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On October 15, 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.
14. The hearing convened on December 3, 2014, in Houston, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant represented herself at the hearing. Also present for Complainant was her husband, Randall Womack. Respondent was represented by Sonya Hall, Consumer Affairs Legal Analyst.

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

7. Complainant's vehicle has an existing defect or condition that creates a serious safety hazard. 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 repurchase Complainant's 2013 Ford Focus SE. Tex. Occ. Code § 2301.604(a)(1).
11. Complainant is entitled to reimbursement of incidental expenses as outlined in Findings of Fact 11. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in this final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$22,506.45**. In addition, Complainant is entitled to reimbursement of incidental expenses in the amount of **\$283.41**. The total refund of **\$22,789.86** shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$27,432.51
Delivery mileage	119
Mileage at first report of defective condition	6,913
Mileage on hearing date	36,728
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$27,432.51				
Mileage at first report of defective condition	6,913				
Less mileage at delivery	<u>-119</u>				
Unimpaired miles	6,794				
Mileage on hearing date	36,728				
Less mileage at first report of defective condition	<u>-6,913</u>				
Impaired miles	29,815				
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>6,794</u>				
	120,000	X	\$27,432.51	=	\$1,553.14
Impaired miles					
	<u>29,815</u>				
	120,000	X	\$27,432.51	X .5	= <u>\$3,407.92</u>
Total reasonable allowance for use deduction:					\$4,961.06
Purchase price, including tax, title, license and registration	\$27,432.51				
Less reasonable allowance for use deduction	-\$4,961.06				
Plus filing fee refund	<u>\$35.00</u>				
TOTAL REPURCHASE AMOUNT	\$22,506.45				

3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);.

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), 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;²⁴
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous location. 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, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

SIGNED December 31, 2014.


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

²⁴ 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, Phone (512) 465-4076.