

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0339 CAF**

**DAVID GARZA AND
TAMMY GARZA,
Complainants**

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BEFORE THE OFFICE

OF

v.

**FORD MOTOR COMPANY,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

David Garza and Tammy Garza filed a “Lemon Law” complaint with the Texas Department of Motor Vehicles (Department) against Ford Motor Company (Ford), for an alleged defect in their 2014 Ford Fusion Hybrid. They seek repurchase relief due to ongoing engine problems that have reduced the vehicle’s fuel economy. Ford argues that the vehicle does not meet the statutory requirements for repurchase relief. The hearings examiner finds that the evidence is insufficient to show the existence of a defect in the vehicle resulting in reduced fuel economy, and absent any defect fuel economy is not a warrantable issue. For this reason the complaint must be dismissed.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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

The evidentiary hearing in this case convened and closed on November 25, 2014 in Austin, Texas, with Hearings Examiner Anne K. Perez presiding. The Garzas appeared and represented themselves. Ford was represented by Melinda Steiner, a Consumer Affairs-Legal Analyst for Ford.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides administrative remedies for a consumer whose vehicle cannot be made to conform to an applicable express warranty. Texas Occupations Code § 2301.604(a) provides that:

- (a) A manufacturer . . . that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:
- (1) replace the motor vehicle with a comparable motor vehicle; or
 - (2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

“Impairment of market value” means a substantial loss in market value caused by a nonconformity in the vehicle, and “serious safety hazard” means a life-threatening malfunction or defect that significantly impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes.¹

B. Undisputed Facts

The Garzas purchased a new 2014 Ford Fusion Hybrid (the vehicle) from Mac Haik Ford Lincoln (Mac Haik) of Georgetown, Texas on February 8, 2014, with mileage of 189 at the time of delivery.² On the date of hearing the vehicle’s mileage was 30,082.

Ford’s express limited warranties applicable to the vehicle include “bumper-to-bumper” coverage of factory-supplied materials and workmanship for three years or 36,000 miles, whichever comes first; powertrain coverage for five years or 60,000 miles, whichever comes first; emissions defects coverage of emissions-related parts for three years or 36,000 miles, whichever comes first; and emissions performance coverage of emissions-related parts for two years or 24,000 miles, whichever comes first.³

C. The Garzas’ Evidence

Mr. Garza testified that at the time of purchase, the vehicle’s Monroney (or window) sticker advertised fuel economy of 47 mpg for both city and highway driving. The sticker further promoted “2.1 gallons

¹ Tex. Occ. Code § 2301.601(1) and (4).

² Complainant Ex. 1.

³ Both of Ford’s emissions warranties provide coverage of specific emissions-related parts for eight years or 80,000 miles, whichever comes first. Complainant Ex. 16, 2014 Model Year Ford Hybrid Car and Electric Vehicle Warranty Guide.

[of fuel] per 100 miles.”⁴ Because the Garzas share a daily round-trip commute of 100 miles (between their home in Burnet, Texas and Seton Hospital of Austin), and Mrs. Garza’s job often requires her to drive hundreds of miles between various medical facilities, Mr. Garza said the desire to achieve good fuel economy was the primary reason they purchased the vehicle.

Mr. Garza indicated that the first problem with the vehicle surfaced in April 2014, only two months after purchase. The instrument cluster showed the “Check Engine Light” was on, and the information display screen showed a message stating: “Check Fuel Fill Inlet.”⁵ They took the vehicle in for service. According to the dealer technician who spoke with Mr. Garza, the error message suggested there was a leak in the fuel evaporation system that could adversely affect fuel mileage. Mr. Garza testified that the technician’s explanation was consistent with the Garzas’ short experience of the vehicle; they were achieving fuel economy somewhere between 33 and 38 mpg, which was much lower than expected. However, the same technician promised that the vehicle’s fuel mileage would improve after a “break-in” period of 10,000 miles. Since the Garzas’ vehicle was only at 5,000 miles they decided to wait for the promised improvement.

Mrs. Garza said the couple has consistently tracked the vehicle’s fuel economy, beginning with the first time the vehicle was refueled on February 13, 2014 (five days after purchase), and on through November 16, 2014, the last tank of gas purchased prior to the hearing. Each time they refueled the vehicle, they calculated actual fuel consumption (mpg) by dividing the mileage (per the trip odometer) by the exact number of gallons necessary to refill the tank. For the period between February 13, 2014 and November 16, 2014, the couple determined that actual fuel economy was 36.59 per gallon.⁶

In June 2014, Mrs. Garza testified that the vehicle’s “Check Engine Light” came on again, along with the “Check Fuel Fill Inlet” message. Mr. Garza called the dealer to see whether they should have the vehicle towed in for service, but he was told that it was safe to drive. The Garzas understood that the servicing dealer performed the same repairs that were necessary in April 2014.

⁴ Complainant Ex. 3, copy of the vehicle’s Monroney sticker.

⁵ According to the Owner’s Manual for the vehicle, the “Check Fuel Fill Inlet” message means that the fuel fill inlet may not be properly closed. See Complainant Ex. 14 at 104.

⁶ Complainant Ex. 4 is a table prepared by Mrs. Garza for the referenced time period. Each line item reflects the date of fuel purchase; the vehicle’s mileage; miles driven/tank; calculated mpg; “car-stated” mpg; number of gallons purchased; cost per gallon; and total purchase amount. Copies of the supporting fuel receipts were admitted as Complainant Ex. 5.

Following the June 2014 service visit, Mrs. Garza said the couple received a survey request from Ford asking them to “grade” Mac Haik’s service performance. The Garzas returned the survey. They were complimentary of the dealer’s service team, but expressed frustration and disappointment regarding their new 2014 Ford Fusion Hybrid vehicle. They wrote that the vehicle has required two valve replacements within the first 10,000 miles; that the necessary repair visits were hugely inconvenient because their home in Burnet was a long distance away from the Georgetown dealership; and that the vehicle’s failure to achieve anywhere near the manufacturer’s advertised fuel mileage was a source of discontent. The couple also mentioned that they had purchased the Ford Fusion hybrid vehicle for “reliability and mileage” but they were disillusioned in both respects.⁷

Within a few days, Mrs. Garza stated, the dealer notified the couple that Ford was “offering a 3-year 45,000 mile maintenance plan if you choose to accept.”⁸ On June 23, 2014, the Garzas responded by providing the vehicle’s fuel log information compiled to date, and requested that Ford revise its proposal “to equal out the expense difference.”⁹ The couple’s letter noted that the vehicle would reach 45,000 miles by the end of the year because of their long work-commute, thus the previously-offered maintenance plan did little to assist them. Their hope was that the vehicle’s fuel log kept between February 13, 2014 and June 23, 2014 would demonstrate to Ford, the actual cost difference between Ford’s “misleading”¹⁰ fuel economy estimates for the hybrid vehicle and the “Real World”¹¹ data that the Garzas had compiled.

The lack of positive response from Ford deepened the Garzas’ dissatisfaction with the vehicle. By August 8, 2014, when the manufacturer sent a form letter to all 2014 Ford Fusion Hybrid vehicle owners stating that Ford had “identified an error with the fuel economy ratings [for the vehicle],”¹² the Garzas felt that they had been actively misled. Adding insult to injury was Ford’s “gesture of goodwill.”¹³ enclosed with the letter was a refund check for \$775.00, characterized by Ford as “the estimated average fuel cost difference between the previous and revised combined miles per gallon

⁷ Complainant Ex. 7 at 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 8. Respondent’s letter indicates that its original fuel economy estimate for the 2014 Ford Fusion Hybrid vehicle of 47 mpg for both city and highway driving, had been reduced to 44 mpg/city and 41 mpg/highway, for a combined fuel economy estimate of 42 mpg.

¹³ *Id.*

estimate for your vehicle.”¹⁴ The Garzas explained why they were miffed. Prior to purchasing the 2014 Ford Fusion Hybrid, they kept their Volkswagen Beetle for 190,000 miles, and that car had achieved better fuel economy than their new Ford Fusion Hybrid. To their mind, Ford not only substantially misrepresented the Fusion Hybrid vehicle’s fuel economy rating, but sold the couple a brand-new car that is already proving to be unreliable. The couple was so angry they did not cash the check.

The vehicle’s performance in July and August of 2014 did not alleviate the Garzas’ disappointment. On July 8, 2014, the vehicle’s “Check Engine Light” came on again, accompanied by the “Check Fuel Fill Inlet” message. On this occasion, the Garzas requested that one of Ford’s Field Service Engineers examine the vehicle but none were available. Dealer service personnel instead called Ford’s technical assistance “hotline” for guidance concerning the repairs performed during this service visit.

Mrs. Garza stated that on August 11, 2014, both the “Check Engine Light” and the “Check Fuel Fill Inlet” message appeared for the fourth time. Once again, the couple returned to Mac Haik, where technicians performed repairs to the vehicle. Mac Haik’s repair orders for the Garzas’ vehicle reflect the following information:¹⁵

Date In & Date Out	Mileage In/Out	Reported Concern	Diagnostic Action & Dealer’s Findings
4-2-14 to 4-3-14	In 5,198 Out 5,207	Check Engine Light is On	Evaporative Emissions System Static Pressure Leak Test – Diagnosis – L; CEL light is on, EEC Test P0456, Evap. System Test, Failed; IDS Recorder/Monitor Found Vapor Management Valve is Stuck Open; Replaced Vapor Management Valve; Re-Ran Evap. System Test, Passed, Retest
6-5-14 to 6-6-14	In 11,063 Out 11,073	Check Fuel Inlet Light Came On and Check Engine Light On	Evap. Or Smoke Test; CEL light is on, EEC Test P0457, Evap. System Test, Failed, Pin Point Test Found Evap. Leak Detection Switching Valve Will Not Close, Circuits Check OK, Replaced Evap. Leak Detection Assembly, Re-Test, Passes Evap. System Test, Completed Drive Cycle
7-7-14 to 7-7-14	In 13,598 Out 13,625	Check Engine Light is On/See History Attached	CEL light is on, EEC Test P0456, Evap. System Test, Failed; IDS Recorder/Monitor Found Vapor Management Valve is Stuck Open; Replaced Vapor Management Valve; Re-Ran Evap. System Test, Passed

¹⁴ *Id.*

¹⁵ The repair orders were admitted as Complainant Exs. 2, 6, 9, 10, and 13. The table summarizes information contained in the invoices (rather than *verbatim* quotes) for clarity and ease of reference. Also, some of the service records reflect routine maintenance and issues unrelated to the complaint. Only repair items relevant to the complaint are included in the table.

8-11-14 to 8-12-14	In 16,535 Out 16,565	Check Engine Light is On	CEL light is on, EEC Test P0457, Evap. System Test, Failed; Smoke Test to Find Vapor Leak, Found Vapor Management Valve is Stuck Open; Canister Purge; Called Hotline Was Told to Replace Vapor Management Valve Again, They said "There has been some intermittent sticking of purge valves on hybrids due to debris being in the valve from manufacturing. In most cases, replacing the purge valve resolves the evaporative leak DTCs." Replaced Vapor Management Valve; Passed Evap. Systems Test, Completed Drive Cycle
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For the Garzas, the fourth service visit was the final straw, of sorts. On August 11, 2014, the couple sent written notice to Ford that the vehicle was defective due to repetitive problems requiring repairs and the manufacturer's misleading fuel economy estimates.¹⁶ Shortly afterwards, the couple filed a Lemon Law compliant. Their petition received by the Department on August 21, 2014, states:

Mileage per Manufacturer Hwy/City (47 mpg) misleading. We have recorded each fuel purchase since [vehicle] purchase and have averaged at best 36 miles per gallon (mpg). Ongoing problem.

Fuel Inlet Filter-EVAP System Test-Failed, IDS Recorder/Monitor found Vapor Management Valve is stuck open.¹⁷

As noted previously, the Garzas kept their last vehicle for 190,000 miles. They foresaw driving the 2014 Fusion Hybrid for a similar number of miles and realizing the long-term savings of Ford's promised fuel economy. Not only that, but both Mr. and Mrs. Garza described themselves as competent, patient drivers: they do not exceed the speed limit, they buy premium fuel, and they are careful about proper vehicle maintenance. They are convinced that there is an engine performance problem with their 2014 Ford Fusion Hybrid that has resulted in reduced fuel economy, completely aside from Ford's August 2014 reduced estimate of the vehicle's overall fuel economy rating from 47 mpg to 42 mpg.

In the end, the Garzas made clear that they feel deceived and misinformed. When they were shopping for a vehicle at Mac Haik they clearly communicated their needs and driving habits. They believed they were buying a reliable vehicle that would achieve fuel economy of 47 mpg during both the city and

¹⁶ Complainant Ex. 14.

¹⁷ Complainant Ex. 11.

highway driving. What they purchased instead was a vehicle with a defective condition that not only affects fuel economy, but also requires multiple, inconvenient service visits.

On cross-examination, the Garzas described their daily 100-mile round-trip commute. Twenty to thirty miles of the trip is over highways traveling at maximum speeds of 60 to 65 mph, with frequent slowdowns for stoplights and traffic encountered in towns along the way. The remainder of their commute is over “city” roads traveling 30 to 40 mph, where there are rolling hills, traffic signals, etc. The couple runs the vehicle’s air conditioner during warm weather. They do not haul any type of load with the vehicle.

D. Ford’s Evidence

Ford offered the testimony of Field Service Engineer Brett Castleberry. Mr. Castleberry stated that he performed an inspection of the Garzas’ vehicle on September 18, 2014, at mileage of 20,539. At that time, the vehicle was driving normally and the “Check Engine Light” was not on. Computer diagnostic testing performed on the vehicle failed to identify any diagnostic trouble codes (DTCs). He also performed a secondary “evaporative emissions test” to confirm that there was no existing problem with the vehicle’s emissions system. The testing revealed no leaks or other concerns.

Regarding fuel economy, Mr. Castleberry stated that his test-drive of the vehicle confirmed the findings set out in Mrs. Garza’s table (Complainant Ex. 4), as well his past experience driving the Ford Fusion Hybrid vehicle. According to Mr. Castleberry, in August 2014 Ford acknowledged that its original fuel economy rating of 47 mpg (overall) for the Fusion Hybrid vehicle was mistaken. He said Ford corrected the error by reducing the vehicle’s overall fuel economy rating to 42 mpg (the combined total of 44 mpg/city and 41 mpg/highway), which now appears on the vehicle’s Monroney sticker. Ford also tried to “make it right” by offering affected consumers a \$775 refund. In Mr. Castleberry’s opinion, the actual fuel economy of 36.59 mpg achieved by the Garzas is not that far below the Ford Fusion Hybrid’s revised average fuel economy rating of 42 mpg. He said the difference between the two numbers is easily attributable to drivability factors that reduce fuel economy. He noted that some of those factors were actually mentioned by the Garzas, *e.g.*, running the vehicle’s air conditioner, and commuting long distances at highway speed (because this provides little opportunity for regenerative braking, which in turn charges the vehicle’s battery and conserves fuel usage).

Mr. Castleberry acknowledged that there have been reported failures in the Fusion Hybrid's vapor management system, which consists of approximately 12 components that collect and store fuel vapors harmful to the environment. While every component in the system is sensitive and even the slightest glitch triggers a malfunction indicator (*e.g.*, the "Check Engine Light"), he insisted that a component failure in this area has little impact on fuel economy.

With respect to the Garzas' vehicle, Mr. Castleberry stated that the repair orders show there were problems with two different components in the vapor management system. The vehicle's leak detection pump failed and was replaced on June 5, 2014, and the vapor management valve (or, canister purge solenoid valve) failed and required replacement on three separate occasions, April 2, July 7, and August 11, 2014. While the malfunction of either component would activate the vehicle's "Check Engine Light," Mr. Castleberry reiterated that these component failures have a negligible effect on fuel economy. Likewise, a component failure in the vehicle's vapor management system is not catastrophic for the environment; the system is programmed to convey particulate matter into a charcoal canister, thus preventing the damaging release of evaporative gases into the atmosphere.

Mr. Castleberry said Ford's engineers are working to determine the reason for reports of component failure in the Fusion Hybrid's vapor management system. He emphasized, however, that when he performed an evaporative emissions test on the Garzas' vehicle on September 18, 2014, the vehicle passed at 100%, *i.e.*, no leaks were present. He noted further that if there was a problem with the vehicle's fuel system, such as too much fuel or vapors being directed to the engine, the diagnostic testing he performed on the vehicle would have detected DTCs related to the engine and/or fuel system. No other problems evidenced by DTCs were detected with the Garzas' vehicle and, as a result, he recommended no repairs on September 18, 2014.

F. Analysis

The Lemon Law provides remedies for a consumer whose vehicle fails to conform to a manufacturer's warranty. Relief in the form of repurchase or replacement is available when the manufacturer is unable to conform a vehicle to an express limited warranty by repairing a defect that creates a serious safety

hazard, or substantially impairs the use or market value of the vehicle after a reasonable number of attempts.¹⁸

Mr. and Mrs. Garza are the primary drivers of the vehicle. They credibly testified that they drive their 2014 Ford Fusion Hybrid vehicle upwards of 100 miles per day, and they have faithfully tracked the vehicle's fuel economy. Their methodology is solid, and the evidence establishes that on average, the vehicle achieves overall fuel economy of 36.59 mpg. This figure is substantially lower than the vehicle's original estimated fuel consumption of 47 mpg (city/highway combined) that Ford represented to the United States Environmental Protection Agency (EPA), and which appeared on the federally-mandated Monroney sticker affixed to the vehicle on February 8, 2014, the date that the Garzas purchased the vehicle. Ford subsequently acknowledged that its original estimate was in error, and in conjunction with the EPA Ford took steps to revise the 2014 Fusion Hybrid's Monroney sticker to reflect estimated fuel consumption of 42 mpg (city/highway combined).

Ford's revised fuel economy estimate does not assuage the Garzas' sense that they were hoodwinked. They are careful consumers, and when it was time for them to purchase a new vehicle they spent many hours researching vehicle performance and fuel economy. They might have gone with another gasoline-powered vehicle with excellent gas mileage ratings, similar to their beloved Volkswagen Beetle, but they chose to trust Ford's representations concerning a new hybrid technology, and to reap long-term savings in fuel costs by driving their new 2014 Ford Fusion Hybrid for the next 10 to 12 years. Following purchase, however, the vehicle's actual fuel mileage was a huge source of disappointment. As if that was not enough, multiple, inconvenient service visits have been necessary to address mechanical problems with the vehicle.

The Garzas' situation is a sympathetic one, but it cannot be addressed through the state's Lemon Law. The evidence shows that a problem with the vehicle's vapor management system has caused repetitive component failure. The leak detection pump failed within two months of purchase, and it has been replaced once. The vapor management valve failed and was replaced three times within six months of purchase. The repetitive failure of components in the vapor management system, and Mr. Castleberry's admission that Ford is aware of the problem and its engineers are working on a solution, suggests that

¹⁸ Tex. Occ. Code § 2301.604.

the Garzas' vehicle may require further repairs to the vapor management system. The problem arose during the period of Ford's basic limited warranty applicable to the vehicle, as well as during the period of both emissions warranties applicable to the vehicle. As a result, Ford will have a continuing obligation to repair the vehicle's vapor management system following expiration of the applicable warranty coverage.

That said, no evidence demonstrates the existence of a relationship between component failure in the vehicle's vapor management system and the vehicle's fuel economy. Mr. Castleberry credibly testified that the function of the vapor management system is to keep harmful evaporative gases from being released into the atmosphere. And, other than the four component failures, both Mr. and Mrs. Garza testified that they have experienced no other problems with the vehicle. The evidence is insufficient to show the existence of an unidentified, underlying defect that is reducing the vehicle's fuel economy.

In the absence of a warrantable defect that adversely affects fuel economy, federal law is controlling and requires dismissal of the Garzas' complaint. The EPA and Federal Trade Commission regulate the calculation, disclosure, and advertising of fuel economy estimates,¹⁹ and federal law regarding fuel economy preempts state regulation that is inconsistent with EPA standards.²⁰ Motor vehicle manufacturers are required to comply with federal statutes and agency regulations regarding disclosures of EPA fuel economy estimates to consumers.²¹ The EPA estimates are designed "to assist consumers in making comparisons of the fuel economy of new vehicles,"²² but they do not predict the fuel economy that an individual driver will achieve because actual fuel economy is affected by a host of factors, among them driving habits, vehicle maintenance, and weather and traffic conditions.²³

Because EPA mpg ratings are expressly labeled as "estimates," the law provides that they are not a warranty of actual fuel economy under federal or state law.²⁴ It follows that Ford does not warrant the fuel mileage of the 2014 Ford Fusion Hybrid or any other vehicle model it manufactures. The fuel mileage ratings listed on a new vehicle's window sticker are established by the EPA, and federal law

¹⁹ 49 U.S.C. § 32901 *et seq.*

²⁰ 49 U.S.C. § 32919.

²¹ 49 U.S.C. §§ 32904 and 32908.

²² *Paduano v. American Honda Motor Co.*, 169 Cal. App.4th 1453, 1464 (2009).

²³ 40 C.F.R. §§ 600.307-08(b)(4).

²⁴ 49 U.S.C. § 32908(d).

dictates that EPA mpg ratings are estimates and do not constitute a warranty of actual fuel economy. The Lemon Law does not extend to defects or conditions not covered by a manufacturer's warranty. For this reason, the complaint must be dismissed.

III. FINDINGS OF FACT

1. David and Tammy Garza purchased a new 2014 Ford Fusion Hybrid (the vehicle) from Mac Haik Ford Lincoln (Mac Haik) of Georgetown, Texas on February 8, 2014, with mileage of 189 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Ford) issued express limited warranties applicable to the vehicle, including "bumper-to-bumper" coverage of factory-supplied materials and workmanship for three years or 36,000 miles, whichever comes first; powertrain coverage for five years or 60,000 miles, whichever comes first; emissions defects coverage of emissions-related parts for three years or 36,000 miles, whichever comes first; and emissions performance coverage of emissions-related parts for two years or 24,000 miles, whichever comes first.
3. On the date of hearing the vehicle's mileage was 30,082.
4. At the time the Garzas purchased the vehicle, the Monroney window sticker for the 2014 Ford Fusion Hybrid estimated fuel economy of 47 mpg in the city and 47 mpg on the highway, for a combined total of 47 mpg.
5. Ford subsequently acknowledged that it had incorrectly estimated the 2014 Ford Fusion Hybrid fuel economy, and in August 2014 the vehicle's Monroney sticker was revised to reflect estimated fuel economy of 44 mpg in the city and 41 mpg on the highway, for a combined total of 42 mpg.
6. The Garzas' vehicle was serviced by Mac Haik Ford Lincoln (Mac Haik) of Georgetown, Texas, on four occasions because of component failure in the vehicle's vapor management system. The service visits occurred as follows:
 - a. On April 2, 2014, at 5,198 miles, the vapor management valve failed and was replaced;
 - b. On June 5, 2014, at 11,063 miles, the leak detection pump failed and was replaced;
 - c. On July 7, 2014, at 13,598 miles, the vapor management valve failed and was replaced; and
 - d. On August 11, 2014, at 16,535 miles, the vapor management valve failed and was replaced.

7. Mac Haik is a franchised dealer of Ford.
8. The problem causing component failure in the vehicle's vapor management system was reported to a franchised dealer of Ford during the period of Ford's basic limited warranty applicable to the vehicle, as well as during the period of both emissions warranties applicable to the vehicle.
9. Between the dates of February 13, 2014 and June 16, 2014, the Garza's vehicle achieved actual fuel economy of 36.59 mpg (city/highway combined).
10. Diagnostic testing of the vehicle performed by Mac Haik did not reveal any problems that would explain the vehicle's reduced fuel efficiency.
11. Component failure in the vehicle's vapor management system has a negligible effect on fuel economy.
12. On September 18, 2014, Ford Service Engineer Brett Castleberry inspected the Garzas' vehicle, at mileage of 20,539. At that time the vehicle's "Check Engine Light" was not on and it performed normally during a test drive. Mr. Castleberry performed computer diagnostic testing of the vehicle and it produced no diagnostic trouble codes. He also performed a secondary "evaporative emissions test" to confirm that there was no existing problem with the vehicle's emissions system. The testing showed no leaks or other concerns.
13. There is not an existing warrantable defect in the vehicle that accounts for reduced fuel economy.
14. Ford does not warrant the vehicle's fuel mileage consistent with EPA mpg estimates.
15. The Garzas filed a Lemon Law complaint with the Department on August 11, 2014.
16. On October 15, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Garzas and Ford, 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.
17. The evidentiary hearing convened and closed on November 25, 2014 in Austin, Texas, with Hearings Examiner Anne K. Perez presiding. Mr. and Mrs. Garza appeared and represented themselves. Ford was represented by Melinda Steiner, a 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. The Garzas 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 United States Environmental Protection Agency (EPA) and Federal Trade Commission regulate the calculation, disclosure, and advertising of fuel economy estimates. 49 U.S.C. § 32901 *et seq.*
6. Ford is required to comply with federal statutes and agency regulations regarding disclosures of fuel economy. 49 U.S.C. §§ 32904 and 32908.
7. Federal law regarding fuel economy preempts any state regulation that is inconsistent with EPA standards. 49 U.S.C. § 32919.
8. The EPA requires the window sticker disclosure for every new vehicle to include a disclaimer stating that actual mileage will vary depending on how the vehicle is driven and maintained. 40 C.F.R. §§600.307-08(b)(4).
9. The vehicle's express limited warranty does not cover fuel mileage and as a result, the Lemon Law does not provide a remedy for the Garzas.
10. The Garzas' vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Because the Garzas reported component failure in the vehicle's vapor management system to a franchised dealer of Ford during the period of Ford's express limited warranty issued for the vehicle, Ford has a continuing obligation to make any repairs necessary to repair the vapor management system beyond the expiration date of the applicable warranty coverage.

ORDER

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

SIGNED January 22, 2015.



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