

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0013 CAF**

DELIA GUERRERO,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
KIA MOTORS AMERICA, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Delia Guerrero (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Kia Sorento. Complainant asserts that the vehicle is defective because she has had problems with the vehicle's locks and the air conditioning system. In addition, the vehicle makes rumbling or thumping noises. Kia Motors America, Inc. (Respondent) argues 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 December 18, 2014, in Austin, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Also present as a witness for Complainant was her husband, Edward Garcia. Respondent was represented by Stormy Childery, District Parts and Service Manager. Also present at the hearing for Respondent as a witness was James Raney, Service Manager for Kia of South Austin.

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

Complainant purchased a 2014 Kia Sorento from South Point Kia (now Kia of South Austin) in Austin, Texas on December 31, 2013, with mileage of 29 at the time of delivery.⁶ On the date of hearing the vehicle's mileage was 12,323. At this time, Respondent's warranty coverage for the vehicle is still in effect. The vehicle's basic warranty coverage is for five (5) years or 60,000 miles, whichever comes first. Respondent's powertrain warranty provides for coverage for the powertrain for ten (10) years or 100,000 miles.⁷

Complainant testified that she feels that there are several issues with the vehicle in question. The first issue has to do with the vehicle's locks not operating properly. When the vehicle is put into reverse, all of the vehicle's doors are supposed to lock. At times, when she arrives at her destination, only the front two doors unlock, when all of the doors are supposed to unlock. This is an intermittent issue and doesn't happen all the time. This occurred even after she was told that the vehicle had been repaired. The locking mechanism in the vehicle was replaced once and Complainant was told another time that the child proof locks had been turned on. She doesn't think that the child proof locks being activated are the issue, because the problem continues to occur and she has checked to see if the child proof locks are on. When she takes the vehicle to

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. 1, Motor Vehicle Retail Installment Sales Contract, Odometer Disclosure Statement, and Limited Warranty Registration dated December 31, 2013.

⁷ Respondent Ex. 2, Warranty Coverage document, undated.

the dealer for repairs on this concern, it doesn't occur for the dealer's service technicians because it's an intermittent issue.

A second issue with the vehicle has to do with the air conditioning system. This was repaired by the dealer and two days later, the air conditioner cut off on them on a trip to San Antonio. Complainant and her family had to drive back to Austin from San Antonio without air conditioning.

Another issue is that Complainant hears a noise coming from under the vehicle. She originally only heard the noise when making right turns and when slowing down while driving the vehicle. She now hears the noise all the time both when accelerating and when slowing down. The noise is occurring more frequently. Complainant has taken the vehicle to the dealer for this concern several times. Once, James Raney, service manager, heard the noise. On another occasion, Complainant was told that the license plate was making the noise. The dealer put a license plate frame on the vehicle, but the vehicle still makes the noise, so Complainant doesn't believe that the license plate was creating the noise. Also, recently Complainant has heard a "screeching" noise in the locks when she puts the vehicle in park. This occurred after Complainant had filed the Lemon Law complaint. Complainant has been told that the noise is normal for the vehicle, but she doesn't feel that it is normal since it did not start occurring until June or July of 2014, approximately six months after purchasing the vehicle.

Complainant began experiencing the problem with the locks in June of 2014. The vehicle's doors would not lock with the remote locking system. On June 27, 2014, Complainant took the vehicle to Kia of South Austin, Respondent's authorized dealer, for this issue. The dealer's service technician ordered a latch assembly at the time of the visit, since they did not have the necessary part on site.⁸ Complainant raised two other concerns during this repair visit. She indicated that the vehicle's back doors would not unlock when the vehicle was in "park" and that she would occasionally receive a warning light saying that the key was not activated, when the key was in the vehicle at the time.⁹ The warning light turning on did not affect the functioning of the vehicle. The dealer's service technician was unable to duplicate these concerns.¹⁰ The vehicle was in the dealer's possession for the afternoon during this repair visit. The vehicle's mileage at the time of this service visit was 6,562.¹¹

⁸ Complainant Ex. 2, Repair Order dated June 27, 2014.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

On July 9, 2014, Complainant took the vehicle to Kia of South Austin in order to have the lock repaired, since the part ordered during the previous repair visit had been received by the dealer. The vehicle's door latch assembly was replaced.¹² In addition, Complainant informed the dealer's service technician that she was hearing a "thumping" noise from the vehicle when she started it and a "rattling" noise from the passenger's side when she made right turns in the vehicle. The technician was unable to duplicate the noises during this service visit.¹³ The vehicle's mileage when Complainant took it to the dealer on this occasion was 6,785.¹⁴

The July 9, 2014, repair visit did cure the issue of the vehicle's doors not locking. However, the issue of the back doors not unlocking when the vehicle was placed in park was not repaired. This still occurs intermittently. On the occasions when the back doors do not unlock, Complainant has to unlock all of the vehicle's doors using the front driver's side control. When Complainant leaves her house and puts the vehicle in reverse, all of the vehicle's doors lock as designed. When she arrives at her destination she will place the vehicle in park and the doors will unlock. She will then drive to another destination and place the vehicle in park and the doors will not unlock and she has to use the front control to unlock the doors. She feels that this is frustrating and shouldn't be happening. It's not a result of the child proof locks being activated.

The next issue with the vehicle arose in July of 2014 when the air conditioning system stopped blowing air out of the vents. Complainant could hear a sound as if air was coming out of the defroster. She contacted the dealer's service manager, James Raney, about the issue. On July 25, 2014, Complainant took the vehicle to Kia of South Austin for the problems with the air conditioning system. Complainant also mentioned to the service technician that the vehicle was making a rumbling noise on occasion. The mileage on the vehicle when Complainant took it to the dealership on this occasion was 7,174.¹⁵ Complainant did not believe that any repairs were performed on this occasion, although the air conditioner was working when she picked the vehicle up that afternoon.

Soon afterwards, when Complainant was driving home from San Antonio in the vehicle, the air conditioner stopped working again. Complainant and her family had planned on taking the vehicle on a trip to New York in August. However, Complainant decided not to take the vehicle on the trip, since the air conditioner stopped working and because it was still making an unusual noise when she drove it. So on August 1, 2014, Complainant took the vehicle to Kia of South

¹² Complainant Ex. 3, Repair Order dated July 9, 2014.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 4, Repair Order dated July 25, 2014.

Austin for repair. The vehicle's mileage on this occasion was 7,344.¹⁶ The vehicle was returned to Complainant three days later on August 4, 2014. Complainant was provided with a rental vehicle while her vehicle was in the dealer's possession. Complainant informed the dealer's service advisor that the vehicle's air conditioning system would stop working intermittently. In addition, Complainant informed the service advisor that the air flow from the air conditioner would decrease when she exceeded forty mile per hour while driving the vehicle.¹⁷ Complainant was advised by the dealer's service advisor that this behavior was normal when the air conditioning system was set on auto. Finally, Complainant advised the dealer's service advisor that she heard noises from the vehicle's front right side when accelerating after she had slowed down.¹⁸ Complainant was not sure if any repair work on the air conditioning system was done on this occasion. No repair work was done to resolve the noise issue.

Complainant took her trip to New York on August 6, 2014 and was out of town for twelve days. When Complainant returned from her trip, she still heard the vehicle making noises when she drove it. Complainant took the vehicle to Kia of South Austin on August 22, 2014 in order to address the air conditioning and noise concerns. She informed the service advisor that the air conditioner would not blow air at times. In addition, Complainant raised the issue of the vehicle making noises when she drove it. On this occasion, the dealer's service technician determined that the vehicle's air conditioning duct sensor was not working.¹⁹ Since the dealer did not have the required part on the premises to make the repair, the service technician had to order the part. In addition, the service technician was not able to duplicate the sound heard by Complainant. The mileage on the vehicle at the time of this repair visit was 7,818.²⁰ The vehicle was in the dealer's possession for one day. Complainant was told that the required part would take about a week to arrive. However, it took longer than a week for the dealer to receive the part.

On September 8, 2014, Complainant took the vehicle to Kia of South Austin to complete the repairs on the air conditioning system. The vehicle's mileage when Complainant took it to the dealership on this occasion was 8,419.²¹ The dealer's service technician replaced the vehicle's thermostat and high side hose and recharged the system.²² In addition, Complainant informed the dealer's service advisor that she was experiencing problems with the locks again. The rear doors would not unlock when Complainant put the vehicle in park. However, the service

¹⁶ Complainant Ex. 5, Repair Order dated August 4, 2014.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 6, Repair Order dated August 22, 2014.

²⁰ *Id.*

²¹ Complainant Ex. 7, Repair Order dated September 12, 2014.

²² *Id.*

technician could not duplicate this problem.²³ Finally, Complainant indicated to the service advisor that she was still hearing noises on the right side of the vehicle when driving it. The service technician determined that the noise Complainant heard was the license plate rattling, so he readjusted it.²⁴ The vehicle was in the dealer's possession for three days during this visit. Complainant could not recall if she received a loaner or rental vehicle from the dealer on this occasion.

Complainant testified that the air conditioner did go out again in September of 2014. However, Complainant did not take the vehicle in for repairs. She also indicated that she had not been using the vehicle's air conditioner much since September since it had not been very hot outside.

When she drove the vehicle from the dealer's shop on September 12, 2014, Complainant heard the noise again and called Mr. Raney to inform him that the noise was not related to the vehicle's license plate rattling. Complainant had complained to Mr. Raney in the past about her frustrations with the vehicle. He ended up going for a test drive in the vehicle and told Complainant that he heard an unusual noise during the drive.

Complainant filed the Lemon Law complaint on September 19, 2014.²⁵

Complainant testified that she provided Respondent with a final repair attempt of the vehicle in November of 2014. The final inspection and repair attempt was performed at Kia of South Austin. Respondent's representative could not find anything wrong with the vehicle during the final inspection. Complainant thought that she was supposed to ride in the vehicle with a field engineer so she could point out the noise she was hearing during the test drive. However, the field engineer was not at the dealership when she arrived and the dealer's service advisor was not aware that a final inspection and repair were supposed to take place. Instead, Complainant test drove the vehicle with a dealer service technician who heard the noise and informed Complainant that the noise she was hearing was normal. Complainant was provided with a rental vehicle while her vehicle was in Respondent's possession. The mileage on the vehicle at the time of the final inspection and repair was 10,948.²⁶ Respondent's field representative who performed the final inspection and repair attempt indicated that the air conditioning system had a "faint mummer [*sic*] sound from from [*sic*] left of vehicle while letting the vehicle slow it self [*sic*]

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 8, Lemon Law Complaint. Complainant dated the Lemon Law complaint on September 12, 2014. However, the complaint contained in the file was dated as being received by the Texas Department of Motor Vehicles (TxDMV) on September 19, 2014. Since the document appears to have actually been received by TxDMV on September 19, 2014, that is the date that the complaint is considered to have been perfected.

²⁶ Complainant Ex. 9, Repair Order dated November 12, 2014.

down, only heard once. . . .”²⁷ In addition, the field representative was no able to duplicate the issue with back doors not unlocking properly and he determined that the noise Complainant was hearing was a “normal induction sound” on deceleration.²⁸

Complainant testified that she still has the same concerns with the vehicle regarding the noise that it makes when she’s driving and the issue with the rear door locks. However, she was not sure if the air conditioning system was working properly, since they had not used it much prior to the hearing date. However, she believes that the vehicle’s fan for the heater fluctuates depending on whether she’s accelerating or decelerating the vehicle.

During cross examination, Complainant testified that her vehicle was equipped with automatic climate control. She did not know what the automatic climate control is or how to use it. She never asked the dealer’s salesperson or representative about the climate control functions.

Mr. Garcia testified about the final inspection and repair attempt. He was present at the time it took place. Mr. Garcia asked to speak with the engineer. However, the engineer was not present at the dealership at the time. Mr. Garcia was upset that the engineer was not present to discuss their concerns with the vehicle. They had a previous final inspection and repair attempt scheduled, but that had been cancelled due to the field engineer’s family issues. So, this was the second time the inspection was scheduled.

Mr. Garcia could not recall being told when they purchased the vehicle that it had automatic climate control. However, he testified that they never use any functions on the air conditioning system. They just turn the system on or off.

Mr. Garcia indicated that he’s heard the noises that the vehicle makes. He testified that they heard the vehicle making the noises on the way to the hearing. Mr. Garcia said that the noise sounds like an 18 wheeler using its engine brakes, but not as loud. He heard the noise after the September 8, 2014 repair visit when they were told that the noise was caused by the license plate and the noise recurred. The noise occurs intermittently and doesn’t seem to occur at any special time.

Mr. Garcia stated that the vehicle’s locks still act up at times. They were told that it was the child proof locks in the back that was causing their concerns. However, the child proof locks have not been activated. The problem occurs periodically for no reason.

²⁷ *Id.*

²⁸ *Id.*

C. Respondent's Evidence and Arguments

Stormy Childery, District Parts and Service Manager, testified that Respondent did have a field engineer perform the final inspection and repair attempt on Complainant's vehicle. The engineer, Richard Peralta, did drive the vehicle with a technician. Mr. Peralta is assigned to deal with issues that cannot be resolved by dealers. He's been with Respondent for fifteen years and is quite capable. Mr. Childery feels that if there were an issue with Complainant's vehicle, then Mr. Peralta would have found it. Mr. Peralta was unable to duplicate any concerns with the air conditioning system or with the vehicle's door locks. Mr. Peralta determined that the noises that Complainant heard while driving the vehicle were normal induction sounds.

Mr. Childery testified that Complainant's vehicle has automatic climate control for the air conditioning system. This allows the driver to set the temperature they prefer for the vehicle. Once the inside temperature has been achieved, the air conditioner's fan starts going down and down. Then, when the temperature starts going up, the fan will start going up. It's like a thermostat in a house.

Mr. Raney testified that his duties as a service manager require that he oversee the daily operations of the dealer's service department. He was a master craftsman with Cadillac. At one time he had all eight of the ASE (Automotive Service Excellence) certifications. He performed diagnostic work for Cadillac in the Southwest region when he was shop foreman at a Cadillac store. He has managed the parts department at a Kia dealership for five years. He has two years' experience as a service advisor. For the past four years he has been the dealer's service manager.

Mr. Raney testified that on the July 25, 2014 service visit, Complainant's concerns were unable to be duplicated by the service technician. So, no work was performed. Since no work was performed, no one was billed.

Mr. Raney testified that on the September 8, 2104 service visit, the dealer's service technician replaced the vehicle's thermocon which is a temperature sensor in the vehicle's ductwork. It senses the temperature and allows the automatic air conditioner system to adjust the compressor and fan control to allow it to increase or decrease the air coming out of the air conditioner. It's supposed to allow the air conditioner to maintain the desired air temperature. The thermocon was replaced because the dealer's service technician determined during the August 22, 2014 service visit that it was not operating properly. The vehicle could not be repaired on August 22, because the dealer did not have the necessary sensor in stock. The sensor malfunctioning could allow the

air conditioning system to freeze up or to not cool off as much as the vehicle's occupants desired. In addition, on September 8, the technician replaced the side hose because it was leaking Freon.

Mr. Raney also stated that he had driven Complainant's vehicle on several occasions. He stated that during the test drives, he did hear the noise that Complainant didn't like. Mr. Raney described the noise as a low, resonant, vibrating type of noise. It's similar to a low version of an engine brake on a diesel vehicle. Mr. Raney was told by Respondent's field engineer that the noise is caused by turbulence in the vehicle's induction system which is the way air gets into the vehicle's motor. When the driver decelerates the vehicle, it changes the valves and the way air runs through the system. It's a tube with valves in it that change how far the air will get into the motor's cylinders. When the driver changes throttle position is when it varies to get optimum engine performance. When driving with Complainant, Mr. Raney heard the noise described by her. Mr. Raney informed Complainant that he would have the issue investigated to ensure that it didn't cause any harm to the vehicle or cause it to die or stall. The noise is intermittent.

Mr. Raney testified that Complainant had received rental vehicles on three occasions while her vehicle was in the dealer's possession for repairs. The dealer did pay for the vehicles on all those occasions.

During cross examination, Mr. Raney specified that the noise heard by Complainant was not present in all Kia Sorentos. He did not know why her vehicle would make that noise and it was not present in other similar vehicles. He did go on to state that other vehicles make similar noises, just not all Sorentos. There are many factors which can affect the motor and cause it to make noises, i.e., size of a load, type of fuel. However, he testified that the noise is normal.

D. Analysis

In order to prevail in a request for repurchase or replacement relief, Complainant must show by a preponderance of the evidence that Respondent has not conformed a vehicle to an applicable express warranty because they cannot repair a warrantable defect in the vehicle. In addition, Complainant must establish that the nonconformity creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

Complainant raised three concerns regarding the vehicle at issue in this case. The first concern was with the vehicle's back door locks which Complainant indicated do not always operate as designed. The vehicle's doors are designed to lock automatically when the vehicle is put into gear and driven. When the driver stops the vehicle and places the vehicle in park, the doors are all supposed to unlock to allow the passengers to exit the vehicle. The only exception being if

the child safety locks are enabled, then the rear doors will not unlock. Complainant's testimony established that the rear door locks are not operating as designed as they intermittently will not unlock when the vehicle is placed in park. This can be frustrating for the passengers and the driver. However, the rear doors can be unlocked by the driver by using the master lock switch on the driver's side door. So, the driver does not have to physically get out of the car in order to unlock the rear doors when they do not unlock. This can be an inconvenience to Complainant, but is not a major issue and does not substantially impair the use or market value of the vehicle.

The second concern raised by Complainant had to do with the vehicle's air conditioning system not working properly. Respondent indicated that the air conditioning system has been repaired and is working properly. Complainant indicated that she has not used the air conditioner system since the repair. However, her testimony was that on one occasion, on an unspecified date after the repair, the air conditioner did not work. She did not contact the dealer about the air conditioner not working on that occasion, nor did she take the vehicle to the dealer for repairs. Subsequent inspections of the vehicle (Respondent's final repair attempt and the inspection on the date of hearing) indicated that the air conditioning system is working properly. Since the air conditioning system appears to be working properly, the hearings examiner must hold that the concern has been addressed and is no longer a basis for relief, since the defect must continue to exist at the time of hearing in order to provide a basis for relief.

Complainant's third concern regarding the vehicle has to do with the fact that it makes an unusual noise intermittently. Respondent testified that the noise heard by Complainant is caused by turbulence in the vehicle's induction system which is not unusual for some vehicles. There is no doubt that Complainant does hear a noise intermittently when driving the vehicle. However, the presence of a noise is insufficient to prove the existence of a warrantable defect in a vehicle. There has to be a relationship between the complained of noise and a warrantable defect in the vehicle, or alternatively, that a warrantable nonconformity is the source of the complained of noise.

None of the evidence presented in the hearing establishes that Complainant's concerns are the result of a warrantable defect that creates a safety hazard or which substantially impairs the use or market value of the vehicle. Therefore, there are no grounds to grant repurchase or replacement relief for Complainant.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for five (5) years or 60,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for ten (10) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 12,323 and it remains under both the basic and powertrain warranty. As such, 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. Delia Guerrero (Complainant) purchased a new 2014 Kia Sorento on December 31, 2013, from South Point Kia in Austin, Texas, with mileage of 29 at the time of delivery.
2. The manufacturer of the vehicle, Kia Motors America (Respondent) issued a warranty for the vehicle for five (5) years or 60,000 miles, whichever occurs first and a separate powertrain warranty for ten (10) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 12,323.
4. At the time of hearing the warranty was still in effect.
5. Complainant took the vehicle to Respondent's authorized dealer, Kia of South Austin, in order to address her concerns on the following dates:
 - a. June 27, 2014, at 6,562 miles;
 - b. July 9, 2014, at 6,785 miles;
 - c. July 25, 2014, at 7,174 miles;
 - d. August 1, 2014, at 7,344 miles;
 - e. August 22, 2014, at 7,818 miles; and
 - f. September 8, 2014, at 8,419 miles.
6. Complainant took the vehicle to Kia of South Austin on June 27, 2014, because of an issue with the vehicle's door locks not working, the rear door locks not unlocking when the vehicle was put in park, and a warning light illuminating that indicated that the key was not activated. No repairs were performed at the time, since the dealer had to order a part to address the issue of the locks not working. In addition, the other two concerns were not able to be duplicated.
7. On July 9, 2014, Complainant took the vehicle to Kia of South Austin in order to complete the repair on the door locks. A new door latch assembly was installed on the vehicle.

8. Also, on July 9, 2014, Complainant indicated to the dealer's service technician that the vehicle was making an unusual noise when she drove it. However, the dealer's service technician could not duplicate the concern.
9. On July 25, 2014, Complainant took the vehicle to Kia of South Austin because the air conditioner was not blowing air out of the vents and because the vehicle was still making a noise when she drove it. No work was performed by the dealer's service technician to address the issues.
10. On August 1, 2014, Complainant took the vehicle to Kia of South Austin because the air conditioner had stopped working and because she was concerned with the noise she was hearing when driving the vehicle. No repair work was performed on the vehicle during the visit.
11. On August 22, 2014, Complainant took the vehicle to Kia of South Austin because the vehicle's air conditioner was not working properly and because of the noise the vehicle was making when she drove it. The dealer determined that an air sensor in the air conditioning system needed to be replaced. The dealer ordered the necessary part, since they did not have it in stock.
12. During the August 22, 2014 repair visit, the dealer's service technician was unable to duplicate the noise heard by Complainant, so no repair was performed to address that issue.
13. On September 8, 2014, Complainant took the vehicle to Kia of South Austin to complete the repairs on the vehicle's air conditioner. The vehicle's thermostat and high side hose were replaced by the technician.
14. On September 8, 2014, Complainant indicated that she had a concern with the vehicle's rear door locks not unlocking when the vehicle was placed in park. The service technician was unable to duplicate the problem during this visit.
15. Also, on September 8, 2014, Complainant raised the issue of the vehicle making noise when she drove it. The service technician indicated that the noise was due to the vehicle's license plate rattling. However, this was not the cause of the noise.
16. Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles on September 19, 2014.

17. On November 11, 2014, Respondent's field engineer performed a final inspection and repair attempt on Complainant's vehicle. The field engineer felt that no repairs were necessary as the vehicle was operating as designed.
18. On November 5, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
19. The hearing convened on December 18, 2014, in Austin, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Also present as a witness for Complainant was her husband, Edward Garcia. Respondent was represented by Stormy Childery, District Parts and Service Manager. Also present at the hearing for Respondent as a witness was James Raney, Service Manager for Kia of South Austin. 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 §§ 2301.601-2301.613 (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 §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED January 28, 2015



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