

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0072 CAF**

REGINA C. HUNTER,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
GENERAL MOTORS LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Regina C. Hunter (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2010 GMC Terrain. Complainant asserts the vehicle makes an unusual grinding noise and bogs down when she attempts to accelerate. General Motors LLC (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does not have a currently existing warrantable defect, and Complainant is not eligible for 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 the record was closed on April 29, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Bruce Morris, Field Service Engineer, and Matthew Tillson, District Manager for After Sales, testified for Respondent.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.603 provides:

- (a) A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.
- (b) Subsection (a) applies after the expiration date of a warranty if:
 - (1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or
 - (2) a rebuttable presumption relating to the vehicle is created under Section 2301.605.

Occupations Code § 2301.606(d) provides that “[a] proceeding under this subchapter must be commenced not later than six months after the earliest of:

- (1) the expiration date of the express warranty term; or
- (2) the dates on which 24 months or 24,000 miles have passed since the date of original deliver of the motor vehicle to an owner.”

Occupations Code § 2301.204(a) provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2010 GMC Terrain from David Taylor Cadillac (David Taylor) in Houston, Texas on March 5, 2010, with mileage of thirty (30) at the time of delivery.¹ Respondent’s original warranty provided coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent also provided a powertrain warranty for five (5) years or 100,000 miles. At this time, Respondent’s basic express warranty and powertrain warranty for the vehicle have expired. On the date of hearing the vehicle’s mileage was 83,382.

Complainant testified that she first began hearing a rattling, grinding noise from the vehicle’s engine in September of 2013. Complainant contacted Respondent’s authorized dealer, Sterling McCall Buick–GMC (Sterling McCall), on September 15, 2014, to schedule an appointment to determine what was causing the noise she was hearing. Claimant testified that before the appointment actually took place, Complainant received a recall notice in the mail from Respondent advising her that there could be a problem with the vehicle’s cam shaft actuator. She took the recall notice with her when she took the vehicle to the dealer for repairs.

On September 22 or 23, 2013, Complainant took the vehicle to Sterling McCall for repair. She told the dealer’s service advisor that the vehicle was running loudly and using more fuel than usual.² The dealer’s service technician replaced the vehicle’s camshaft actuator and replaced a valve. Complainant was provided with a loaner vehicle while her vehicle was being repaired. The vehicle’s mileage at the time of repair was 55,550.³

¹ Complainant Ex. 1, Retail Installment Contract, Purchase Order, and Odometer Statement dated March 5, 2010.

² Complainant Ex. 2, Repair Order Detail dated September 24, 2013.

³ *Id.*

Complainant testified that after the repairs done in September of 2013, the vehicle made less noise than before the repairs, but was still noisy. However, she continued to drive the vehicle until May of 2014. On May 8, 2014, Complainant testified that when she was driving the vehicle and stepped on the brakes, the vehicle didn't want to stop. So, Complainant decided to take the vehicle to Sterling McCall. She testified that she took the vehicle to the dealer because of engine noise and because of the brake issue. It was determined by the dealer's service technician that the vehicle's master cylinder was out and needed to be replaced. In addition, Complainant informed the dealer's service advisor that the vehicle was hesitating, *i.e.*, it "bogged down" when she tried to accelerate.⁴ The vehicle's mileage when she first took it to Sterling McCall on this occasion was 65,848.⁵ Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant took the vehicle to the dealer three times during May of 2014.

Complainant testified that the vehicle was returned to her on May 9, 2014, and that she returned the vehicle to Sterling McCall on May 10, 2014, because the brakes still were not working correctly. As a result, the dealer's service technician had to rebleed the brake system.⁶ Complainant also complained that the vehicle was idling rough and that she heard a loud rattling noise from the engine compartment.⁷ However, the technician could not duplicate the noise.⁸ The vehicle's mileage on this occasion was 65,876.⁹ Complainant was provided with a loaner vehicle during this visit.

On October 10, 2014, Complainant was driving the vehicle when it began "sputtering" like it didn't have any gas. The vehicle then died at a stop light. The vehicle's dash board lit up before it died. Complainant was able to start the vehicle and had her husband follow her in his vehicle to Sterling McCall. Complainant informed the dealer's representative that the vehicle had died on her and that it was sputtering. In addition, she informed the representative that the engine was very loud when the air conditioner was turned on and that she could hear a whining noise when she accelerated in the vehicle.¹⁰ The dealer's service technician determined that the vehicle's

⁴ Complainant Ex. 3, Repair Orders dated May 2, 2014, May 8, 2014, and May 10, 2014, p. 3. There was confusion regarding the repair orders in question. Complainant testified that she first took the vehicle to Sterling McCall on May 8, 2014. However, she submitted a repair order dated May 2, 2014, to the hearings examiner as well as repair orders dated May 8 and May 10, 2014. The May 2, 2014, repair order indicated that the work performed on that date was the work that Complainant testified was performed on May 8, 2014. It appears that the dealer prepared three invoices for the period beginning May 2, 2014, through May 13, 2014. It also appears that the first repair visit during this period was from May 2, 2014 through May 7, 2014. The second repair visit was from May 8, 2014 through May 9, 2014. The third repair visit was from May 10, 2014 through May 13, 2014.

⁵ *Id.* at p. 1.

⁶ *Id.* at p. 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Complainant Ex. 4, Repair Order dated October 10, 2014.

timing had jumped and that the camshaft timing chain needed to be replaced. In addition, the technician replaced both actuators in the vehicle, the water pump chain, and tensioner.¹¹ The vehicle's mileage on this occasion was 73,654.¹² Complainant was provided with a loaner vehicle for the period of time that the vehicle was being repaired.

After the October 10, 2014 repairs, the vehicle's engine was quieter. However, Complainant felt that the vehicle was still sputtering. She observed that the tachometer was indicating that the engine's RPM's were fluctuating when the vehicle was idling. When Complainant went to work on October 17, 2014, she observed oil from the vehicle on her garage floor. She contacted Sterling McCall and the dealer's technician indicated that it was probably oil that had just spilled. On that same date, Complainant received a letter from Respondent that there may be oil leaking into her vehicle's crankcase. Complainant contacted Sterling McCall and the representative indicated that her vehicle did not have oil leaking into the crankcase and the letter did not apply to her vehicle. Complainant then attempted to contact the dealer's general manager, but was unable to contact him.

Complainant was contacted by a representative of Respondent, Courtney, who advised Complainant to take the vehicle to another dealer in order to see if repairs needed to be made to the vehicle. Complainant took the vehicle to West Point Service Center (West Point) on October 27, 2014. The vehicle's mileage when Complainant took it to West Point was 74,238.¹³ The West Point service technician determined that there was fuel in the vehicle's crankcase. The vehicle's fuel pump, balance shaft chain, and oil pan were replaced by the service technician.¹⁴ They basically had to redo the work that was performed by Sterling McCall on October 17, 2014. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant wrote a complaint letter on October 30, 2014, to Respondent outlining her dissatisfaction with the vehicle.¹⁵ In addition, Complainant wrote a letter to the owner of the Sterling McCall dealership.

Complainant testified that she was still hearing noise from the engine after the October repairs were completed. So, she called Respondent's call center and spoke to Courtney again. Matthew Tillson, District Manager for After Sales, was informed of Complainant's issues with the vehicle.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated October 27, 2014.

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Letters dated October 30, 2015 and October 30, 2014. Although the first letter is dated October 30, 2015, this was obviously a mistake on Complainant's part, since the hearing was conducted prior to October 30, 2015. The letters were both mailed on October 30, 2014.

Mr. Tillson contacted Complainant to discuss her concerns. In November of 2014, he took a test drive in the vehicle with Complainant and then had the vehicle inspected. As a result, two motor mounts were replaced, the tensioner belt was replaced and the tire sensor was replaced. Also, a strut had to be repaired in January of 2015.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on November 4, 2014.¹⁶

Complainant testified that she continues to hear the whining, grinding noise from the vehicle's engine. She primarily hears the noise when she is slowing down or coming to a stop in the vehicle. She also indicated that she heard the noise from the engine during the test drive which took place at the time of hearing.

During cross examination, Complainant testified that the vehicle's right front strut and mount were replaced in January of 2015. She still hears a humming noise when she turns on the vehicle's fan. Since January of 2015, Complainant has not taken the vehicle to a dealer for further repairs.

Complainant stated that she estimated that she accrued 24,000 miles on the vehicle sometime in October of 2011. Complainant filed the Lemon Law complaint in November of 2014. The first time that Complainant complained about engine noise was on September 17, 2013. The vehicle's mileage at the time was 55,550.

Complainant is the only driver of the vehicle. The vehicle's service engine warning light has only illuminated once, when the vehicle died on October 10, 2014. The vehicle's malfunction indicator lamp has illuminated once, also on October 10, 2014. The vehicle passed the state inspection in May of 2014. It has passed inspection every year that Complainant has owned the vehicle. Complainant has driven the vehicle out of state several times. She's driven to Tennessee twice a year since she purchased the vehicle. She's also driven to Mississippi and is planning a trip to South Carolina. All repairs to the vehicle have been performed in Texas.

The vehicle was hit in a parking lot once in 2011. The damage to the vehicle was repaired by Respondent's dealer. Beyond that, she has not had any accidents in the vehicle. The vehicle has its original windshield, but the windshield has a couple of chips in it. The vehicle has not had any flat tires and still has the original tires from when she purchased the vehicle. There has not been any interior or undercarriage damage to the vehicle. She's not experienced any loss of control

¹⁶ Complainant Ex. 9, Lemon Law Complaint dated November 4, 2014.

while driving the vehicle. However, the car did stall on her once. The vehicle has not been towed nor has it stalled due to the engine noises.

Complainant did install after-market speakers and an equalizer in the vehicle. She has not had the engine modified nor has she installed any after-market anti-theft devices.

C. Respondent's Evidence and Arguments

1. Matthew Tillson's Testimony

Matthew Tillson, District Manager for After Sales, has worked for Respondent for thirty-three years. He's been in his current position for the past four years. He works with Respondent's authorized dealers regarding service and parts issues. He deals with customer complaints about vehicles and tries to address those issues. If a technical issue arises, then he will refer the problem to Respondent's technicians.

Mr. Tillson testified that he became involved with the Complainant's concerns in November of 2014. On November 17, 2014, Mr. Tillson met with Complainant at West Point and test drove the vehicle with her to determine what issues needed to be addressed. At the time, the vehicle's mileage was 75,050. Complainant indicated that she felt that the vehicle bogged down when she tried to accelerate, there was a noise when the air conditioner was on, the engine was noisy, the vehicle's RPM's dropped when she was turning while at a stop, the vehicle was using too much oil, the tire pressure monitor system warning light was on, and she was concerned with the vehicle's charging system.

On November 18, 2015, Mr. Tillson and Bruce Morris, Respondent's field service engineer, inspected the vehicle and took it for a test drive in order to determine what actions needed to be taken to address Complainant's concerns. Regarding the issue of the vehicle bogging down, it was determined that this was because she was driving the vehicle in ECO mode which causes the vehicle to stay in a higher gear longer than normal. It was suggested that she not use the ECO mode when she was driving in stop and go traffic. In addition, the vehicle's throttle body was dirty, so it was cleaned using a system cleaner. In addition, the intake and intake valves were cleaned. However, no actual repairs were made to address the issue of the vehicle bogging down.

Also, Mr. Tillson and Mr. Morris determined that the growling noise Complainant was hearing from the air conditioner was being caused by the belt tensioner. As a result, the tensioner and the belt were replaced.

Mr. Tillson and Mr. Morris determined that the engine did seem to be noisy. So, they replaced two motor mounts which were transmitting engine vibrations into the passenger compartment. However, they felt that the engine itself was not making any unusual noises.

Complainant indicated to Mr. Tillson that the engine's RPM's dropped when turning at a stop. Mr. Tillson and Mr. Morris felt that this was a normal condition which was caused by an extra load on the engine at idle. The engine compensates for the extra load by increasing the RPM's. In addition, they did not find an oil leaks nor did the engine spark plugs show any sign of the vehicle burning oil.

The vehicle's tire pressure sensors were checked. It was determined by Mr. Tillson and Mr. Morris that the sensors needed to be reset.

Finally, Mr. Tillson and Mr. Morris determined that the vehicle's charging system was operating as designed.

Mr. Tillson contacted Complainant and discussed his and Mr. Morris' findings regarding Complainant's concerns. Complainant was not charged for any of the repairs that were performed. Replacement of the engine mounts and the belt tensioner, as well as determining that the vehicle's ECO button was causing the bogging down were the only repairs performed during the November 18, 2014, repair. The tire pressure monitoring system was reset, but Complainant had to return to the dealer in January to get a tire pressure sensor replaced. Mr. Tillson feels that the vehicle was fully repaired in November of 2014. In addition, Respondent paid for the vehicle's strut to be replaced in January of 2015, even though the vehicle was out of warranty.

2. Bruce Morris' Testimony

Bruce Morris, Field Service Engineer, has 28 years of automotive repair experience. He's also been an instructor at Universal Technical Institute (UTI). He has 24 Automotive Service Excellence (ASE) certifications and 10 General Motor certifications.

Mr. Morris testified that he was present with Mr. Tillson when Complainant's vehicle was inspected on November 18, 2014. After the repairs were done to the vehicle, he determined that it was operating as designed.

Mr. Morris testified that the vehicle's fuel pump will make a clicking noise. However, the noise is normal for the type of engine in Complainant's vehicle. He determined that the vehicle's air

conditioner's belt tensioner and belt needed to be replaced, since the tensioner was weak and making a clattering noise. He also inspected the vehicle for oil leaks, but found none. The vehicle had two motor mounts which were sagging and letting the motor move more than it should, so he had them replaced.

In addition, Mr. Morris testified that the vehicle has a four cylinder engine which creates approximately 195 to 200 horsepower. The air conditioner compressor does create a burden on the engine. So, the engine will perform "load shedding" which will cut power to unnecessary or extraneous functions when the driver presses down on the accelerator.

Mr. Morris also testified that the vehicle has an ECO mode function which can be turned on or off. The function helps the vehicle obtain better fuel economy. When the function is turned on, the vehicle will stay in fifth and sixth gears for a longer period of time than normal. This can affect the vehicle's acceleration in stop and go traffic. Mr. Morris believes that the ECO mode is what was causing the bogging down effect raised by Complainant.

Mr. Morris testified that the repairs performed on the vehicle on September 24, 2014, were covered by Respondent's powertrain warranty. On this occasion the camshaft actuator and valve were replaced.

Mr. Morris testified that the service technician at Sterling McCall probably performed the vehicle's timing chain replacement incorrectly on October 10, 2014. A bulletin was distributed by Respondent around the same time as the repairs were being performed advising the technicians to be aware of a problem of fuel getting into the crankcase. However, it appears that the technician missed this issue outlined by the bulletin. This had to be corrected by the technician at West Point on October 27, 2014. The repair work had to be redone, since the fuel pump hadn't been replaced as required by Respondent's bulletin. Also, the oil pan had to be replaced because they found a leak which had not been discovered earlier. Mr. Morris believes that the October 27, 2014, repair was a definitive repair for the internal engine components.

Mr. Morris indicated that the vehicle's owner's manual discusses ECO mode on the vehicle. However, he doesn't believe that the dealers' sales people are informing buyers of the fact that keeping the vehicle in ECO mode can affect the vehicle's acceleration. Keeping the ECO mode can affect the vehicle's gas mileage. If ECO mode is on, then the driver will experience worse gas mileage in stop and go traffic.

After taking a test drive in the vehicle on the hearing date, Mr. Morris testified that he did not observe the vehicle bogging down or hesitating. In ECO mode, when going up a hill, the vehicle

waited to downshift. He did not hear any growling noise from the engine. He did not observe any warning lights illuminated on the vehicle. He felt that the vehicle was operating within its normal characteristics. Mr. Morris noted that the vehicle had a noise cancellation system installed. The system could possibly be affected by the after-market speakers in the vehicle depending on the type of music played and how loud she plays it. Mr. Morris did not hear any unusual noises from the vehicle during the test drive.

D. Analysis

In the present case, the evidence indicated that Complainant filed the Lemon Law complaint on November 4, 2014. At the time that she filed the complaint, Complainant indicated that the vehicle's mileage was 74,238.¹⁷ The Lemon Law requires that a complaint be filed not later than six months after the earliest of the expiration date of the express warranty term or the date on which 24 months or 24,000 miles have passed since the date of original delivery of the vehicle to an owner. Occupations Code § 2301.606(d). In order for Complainant to have the possible remedy of repurchase or replacement of a vehicle, the complaint must be filed within the time frame specified. If the complaint is not filed within the required time frame, then the only possible remedy for a Complainant would be an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, as long as the owner of the vehicle reported the nonconformity to the manufacturer, converter, or distributor during the term of the warranty. Occupations Code § 2301.603.

The evidence presented at the hearing indicates that Complainant purchased the vehicle on March 5, 2010. The vehicle's mileage at the time of purchase was 30. The vehicle's basic warranty was for three years or 36,000 miles. The evidence indicates that the vehicle's mileage surpassed 24,000 miles sometime in October of 2011. As such, the only remedy available to Complainant is repair of the vehicle, since the complaint that is the basis of this action was made three years after the vehicle surpassed 24,000 miles.

In order to determine whether Complainant has a remedy under this section of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Complainant's Lemon Law complaint raised the issue of loud grinding noises in the engine area of the vehicle and the issue of the vehicle bogging down when Complainant tries to accelerate. The evidence indicates that Respondent has attempted to address Complainant's concerns with the vehicle. In order to alleviate the noise issue, Respondent's authorized dealers have replaced

¹⁷ Complainant Ex. 9, Lemon Law complaint dated November 4, 2014.

the vehicle's camshaft actuator, an engine valve, the timing chain, the fuel pump, two engine mounts, the air conditioner's belt tensioner and belt, and a strut and mount. Complainant still indicates that she hears a noise in the vehicle when coming to a stop. During a test drive of the vehicle taken at the time of hearing, Complainant indicated that she heard the noise, while Respondent's representative indicated that he did not hear the noise. The hearings examiner did not hear the noise during the test drive.

In addition, Complainant indicated that the vehicle bogged down when she attempted to accelerate when driving the vehicle. The evidence indicates that this problem was caused by Complainant driving the vehicle in ECO mode in stop and go traffic. The ECO mode changes the vehicle's shift patterns and can cause a delay in the vehicle downshifting which can appear to the driver as a hesitation or bogging down.

Based on all of the evidence provided at the hearing and the test drive, the hearings examiner must conclude that Complainant has not met her burden to establish that the vehicle has a defect or nonconformity which has not been repaired by Respondent. As such, no relief can be ordered at this time. However, if a problem that was previously covered under Respondent's warranties recurs, Respondent is under an obligation to repair the vehicle under the terms of the vehicle's warranties.

Respondent's basic warranty applicable to Complainant's vehicle provided coverage for three (3) years or 36,000 miles whichever came first. However, this warranty is no longer in effect. Respondent's powertrain warranty provides coverage for five (5) years or 100,000 miles from the date of original purchase, whichever comes first. This warranty has also expired, since it's been more than five years since Complainant purchased the vehicle. In addition, Complainant purchased an extended service contract good for five (5) years or 75,000 miles. Respondent is liable to repair the vehicle whenever there is any other problem covered by the extended service contract.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Regina C. Hunter (Complainant) purchased a new 2010 GMC Terrain on March 5, 2010, from David Taylor Cadillac in Houston, Texas, with mileage of 30 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 83,382.

3. The manufacturer of the vehicle, General Motors LLC (Respondent), issued an express warranty for the vehicle for three (3) years or 36,000 miles and a powertrain warranty for five (5) years or 100,000 miles
4. At the time of hearing the express warranty and the powertrain warranty for the vehicle were no longer in effect.
5. Complainant took the vehicle to Respondent's authorized dealer, Sterling McCall Buick-GMC (Sterling McCall) in Houston, Texas, in order to address her concerns with the vehicle on the following dates:
 - a. September 22 or 23, 2013, at 55,550 miles;
 - b. May 2, 2014, at 65,848 miles;
 - c. May 8, 2014, at 65,855 miles;
 - d. May 10, 2014, at 65,876 miles; and
 - e. October 16, 2014, at 73,654 miles.
6. On September 22 or 23, 2013, the dealer's service technician replaced the vehicle's camshaft actuator and a valve in order to address Complainant's concerns regarding engine noise in the vehicle.
7. On May 2, 2014, the dealer's service technician replaced the vehicle's master cylinder and repaired the brake pressure modulator in order to repair the brakes which were not working properly.
8. On May 8, 2014, Complainant returned the vehicle for additional brake repairs. On this occasion, the service technician replaced the anti-lock braking system (ABS) module. In addition, Complainant complained about the vehicle bogging down during acceleration. The service technician was not able to duplicate the concern regarding the vehicle bogging down.
9. On May 10, 2014, further repairs were done to the vehicle to ensure that the brakes would perform properly. On this date, the technician performed a rebleed on the brake system.
10. In addition, on May 10, 2014, Complainant complained about the vehicle idling rough and that she heard a loud rattling sound from the engine. No repairs were performed on this issue because the technician could not duplicate the concerns.

11. On October 16, 2014, the dealer's service technician performed a timing chain replacement for the vehicle in order to address the noise concerns with the vehicle that Complainant raised.
12. On October 27, 2014, Complainant took the vehicle to Respondent's authorized service center, West Point Service Center in Houston, Texas, in order to address an oil leak and dissatisfaction with the repair work performed previously by Sterling McCall.
13. West Point's service technician found fuel in the vehicle's crankcase and oil leaking from the oil pan. He replaced the vehicle's fuel pump and balance shaft chain pursuant to a repair bulletin issued by Respondent.
14. On October 30, 2014, Complainant mailed Respondent a letter outlining her dissatisfaction with the vehicle.
15. On November 4, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On November 18, 2014, Respondent performed a final repair attempt on the vehicle to see if there were any repairs that could be performed to address Complainant's concerns.
17. During the final repair attempt, West Point's technician changed the vehicle's air conditioner's belt tensioner and belt. In addition, two of the vehicle's motor mounts were replaced. Finally, the tire pressure monitoring system was reset.
18. On January 2, 2015, West Point's service technician replaced the vehicle's right front strut and mount in order to further address Complainant's concerns regarding the noise issue.
19. On February 25, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
20. The hearing in this case convened and the record was closed on April 29, 2015, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Respondent was represented by Kevin Phillips, Business Resource

Manager. Bruce Morris, Field Service Engineer, and Matthew Tillson, District Manager for After Sales, testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204 (Warranty Performance).
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 currently has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are still covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED May 7, 2015



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