

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

In addition to these conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁵

B. Complainant's Evidence and Arguments

1. Glen Starr's Testimony

Complainant purchased a new 2013 Dodge Ram 3500 from DeMontrond Auto Country, Inc. (DeMontrond) in Conroe, Texas, on January 27, 2014.⁶ The vehicle's mileage at the time of delivery was 15.⁷ Respondent provided a bumper-to-bumper limited warranty for the vehicle for

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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 dated January 27, 2014.

⁷ Complainant Ex. 4, Allstate Vehicle Service Contract dated January 27, 2014.

the first three (3) years or 36,000 miles from the date of delivery, whichever comes first.⁸ In addition, Respondent provided a five (5) year or 100,000 mile powertrain warranty for the vehicle.⁹

Complainant testified that he feels that the vehicle is defective because the engine suffers from fuel starvation. When he steps on the vehicle's accelerator the vehicle doesn't respond appropriately. In addition, the check engine light (CEL) has illuminated and the vehicle has died while Complainant was driving.

Complainant testified that he purchased the vehicle in order to haul hay and livestock for his small farm. He purchased the vehicle in January of 2014 and soon thereafter he had an auxiliary fuel tank installed on it by an independent company.¹⁰ Complainant did not think that the vehicle's warranty would be affected by the installation of the auxiliary tank. He continued to follow all the requirements of the vehicle's maintenance schedule when he was driving it.

In June of 2014, Complainant was driving the vehicle in Conroe, Texas when he heard a loud, buzzing noise from the front of the vehicle. He pulled over and opened the hood and discovered antifreeze throughout the engine compartment. So, on June 14, 2014, Complainant took the vehicle to DeMontrond for repair. DeMontrond's service technician determined that the vehicle's cooling fan had been improperly installed and that the fan had torn up the fan shroud.¹¹ The technician replaced the radiator, cooling fan, and fan shroud.¹² Coolant was also added to the vehicle. However, Complainant drove off and returned to the dealer two more times before the correct amount of coolant was added to the vehicle. The vehicle's mileage on this occasion was 7,118.¹³ The vehicle was in the dealer's possession for four (4) days.¹⁴ Complainant was not provided with a rental or loaner vehicle while his vehicle was being repaired.

In October of 2014, Complainant noticed that the vehicle would hesitate when he stepped on the accelerator. In addition, the vehicle's CEL illuminated. So, Complainant took the vehicle to DeMontrond for repair on October 7, 2014. Complainant informed the service advisor that the vehicle had a long crank time and that the truck was "starving for fuel."¹⁵ DeMontrond's service

⁸ Complainant Ex. 7, 2013 Ram Truck 1500/2500/3500 Warranty Information Manual, p. 1.

⁹ *Id.*

¹⁰ Complainant Ex. 5, CC-Plus Invoice dated January 31, 2014.

¹¹ Complainant Ex. 10, Repair Order dated June 14, 2014.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex 11, Repair Order dated October 7, 2014.

technician performed a software update to the vehicle's powertrain control module (PCM).¹⁶ In addition, the technician replaced both of the vehicle's fuel filters.¹⁷ Since Complainant had also complained about the vehicle pulling to the right, the technician cross rotated the front tires and performed a two (2) wheel alignment to the vehicle.¹⁸ The vehicle's mileage when it was taken to the dealership on this occasion was 10,763.¹⁹ The vehicle was in the dealer's possession for two (2) days on this occasion. Complainant was not provided with a loaner or rental vehicle while his vehicle was being repaired. Complainant was not informed of any problems with the vehicle's fuel system on this occasion.

On Friday, October 17, 2014, Complainant was driving the vehicle and attempted a turn on to a highway. When Complainant stepped on the accelerator, the vehicle failed to accelerate. The vehicle would not accelerate above 20 mph. He stopped at a red light and then stepped on the accelerator and, this time, the vehicle worked properly. Complainant arrived at his property and started to smell something hot which he determined to be the vehicle. He allowed the vehicle to sit for an hour before driving it again. When he drove the vehicle, the CEL illuminated. Complainant took the vehicle to DeMontrond the following day, Saturday, October 18, 2014, and after a scan was run on the vehicle, was told that the vehicle had a lot of error codes and it would be better if he returned the vehicle the following Monday.

After visiting DeMontrond on October 18, Complainant went to CC Plus, the company that installed the auxiliary fuel tank on the vehicle. He asked a representative of CC Plus if the vehicle's fuel system could have a problem. He was advised by the representative that it might be a good idea to add a fuel additive to the fuel in case there was condensation in the fuel tanks. Complainant also asked if there was a fuel filter between the auxiliary fuel tank and the main tank. He was told that there was not an additional fuel filter. So, Complainant had CC Plus add a fuel filter between the tanks. He also had them add a filter housing and cartridge to the discharge side of the auxiliary fuel pump.

When Complainant left CC Plus, he stopped at an Auto Zone and purchased a diesel fuel additive. He filled up both fuel tanks and put in the additive. The label on the additive indicated that it was good for all diesel vehicles. The vehicle's owner's manual does indicate that a fuel additive is not necessary for the vehicle.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

On Monday, October 20, 2015, Complainant took the vehicle to DeMontrond for repair. One of DeMontrond's service technicians called Complainant that evening and informed him that the vehicle had regular gas in the diesel fuel and that it was going to cost \$1500 to perform a fuel flush to clean out the system. Complainant did not approve the repair. Instead, the following day, Complainant called DeMontrond and spoke to Mike Renfro, service manager, who verified that there was gas in the diesel fuel. Complainant went to the location where he purchased the fuel on Saturday and purchased some to offer as a sample to Mr. Renfro. In addition, Complainant provided Mr. Renfro with a sample of the fuel additive he had placed in the fuel tanks on Saturday. Complainant asked Mr. Renfro how he knew there was gas in the fuel. Mr. Renfro indicated that he could see that there was a different color to the fuel. Complainant asked Mr. Renfro if he had performed any test to verify the existence of gas in the fuel and Mr. Renfro indicated that he had not. Mr. Renfro did indicate to Complainant that he would ask Respondent's technicians if the fuel additive could have caused the problem with the fuel, but as of the date of hearing Mr. Renfro has not provided any information regarding the issue to Complainant.

Although Complainant did not approve the fuel flush, DeMontrond's technician performed other repairs on the vehicle. The technician replaced the vehicle's fuel rail and a fuel filter.²⁰ The vehicle's mileage when it was delivered to the dealer on this occasion was 11,267.²¹ The vehicle was in the dealer's possession for approximately 22 days.²² The vehicle was returned to Complainant on November 11, 2014. Complainant did not receive a loaner or rental vehicle while his vehicle was being repaired.

On November 12, 2014, Complainant drove the vehicle to Lake Jackson, Texas. On his return home, the vehicle died while he was in stop and go traffic. The CEL did not illuminate on this occasion. Complainant had to allow the vehicle to coast to the median of the road and place the transmission in park before the engine would start back up. Complainant testified that it took several attempts before the vehicle started. He then drove to a store on the side of the road and stopped the vehicle. Again, it took several attempts to restart the vehicle. Complainant felt that the engine was not getting the correct amount of fuel to allow it to start correctly.

On November 13, 2014, Complainant took the vehicle to DeMontrond for repair. The service technician was unable to reproduce the start-up issue during this visit.²³ The vehicle's mileage when it was delivered to the dealer on this occasion was 11,515.²⁴ The vehicle was in the dealer's

²⁰ Complainant Ex. 12, Repair Order dated October 20, 2014.

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 13, Repair Order dated November 13, 2014.

²⁴ *Id.*

possession for several days. Complainant was not provided with a rental vehicle while his vehicle was being repaired.

Also on November 13, 2014, Complainant contacted Respondent's customer call center. He advised the representative that he was having problems with his vehicle and asked that they help with his issues. Complainant informed the representative that he needed a loaner or rental vehicle capable of hauling hay. He was informed that there were no such vehicles available in the area. The representative informed Complainant that there was a computer entry regarding Complainant's vehicle that there was "red farm" fuel in the vehicle's fuel system. Complainant denied that he ever put such fuel in the vehicle.

A few days later Complainant received a call from a different representative for Respondent. Complainant explained his issues with the vehicle to the representative. She confirmed to Complainant that there was an entry in Respondent's computer system that the vehicle had red farm fuel in its fuel system. The representative also indicated that the case was being escalated.

On November 21, 2014, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.²⁵

Complainant testified that on November 26, 2014, he received a call from DeMontrond's service advisor that the fuel additive in the fuel system was considered to be a contaminant by Respondent and that the repairs would not be covered under warranty. The warranty was considered to be suspended for this issue. Complainant was then informed that in order to repair the vehicle the fuel system needed to be cleaned out and all of the fuel system components would have to be replaced. The estimate for the cost of repairs was in excess of \$15,000. Complainant did not wish to pay for the cost of the repairs, so he was advised by DeMontrond's advisor that he could contact his insurance company to pay for the repairs. Complainant's insurance company's representative informed Complainant that in order to pay for the repairs, they would have to test the fuel.

Sometime in mid to late January of 2015, an insurance adjustor went to DeMontrond, where the vehicle was still being stored, in order to get a sample of fuel from the vehicle. Complainant, the adjustor, and a dealer representative attempted to siphon fuel from the fuel tank, but were unable to do so. A technician was enlisted to help obtain a sample of fuel from the bottom of the vehicle. Complainant was later informed that the lab to which the fuel sample was sent contained no fuel contamination.²⁶

²⁵ Complainant Ex. 15, Letter to Chrysler Group Customer Care dated November 21, 2014.

²⁶ Complainant Ex. 14, E-mail from Emily Harmon to Complainant dated January 28, 2015.

On March 2, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV).²⁷

Complainant allowed Respondent to perform a final repair attempt on the vehicle on May 5, 2015, at Henson Dodge (Henson) in Madisonville, Texas. Complainant was informed by Respondent's representatives that they pulled a sample of red dyed diesel fuel from the vehicle's auxiliary tank's nozzle. Complainant testified that he has never put red dyed fuel in either of the vehicle's fuel tanks. He testified that using red dyed fuel for other than farm purposes is illegal. The purchases of such fuel are recorded and can be traced. No repairs were performed during the final repair attempt.

The vehicle stayed at Henson until June or July of 2015. Complainant then had the vehicle delivered to Wiesner Commercial Trucking Center in Conroe, Texas. Stewart Graham, Operations Manager, inspected the vehicle, but could not find any red dyed fuel in the auxiliary tank. However, he did find red dyed fuel in the auxiliary tank's fuel cartridge. Complainant observed that the auxiliary fuel tank was almost empty, when it should have been full.

During cross-examination, Complainant testified that he was not present during installation of the auxiliary fuel tank. He was given instructions on how to use the system. He did not immediately put fuel in the auxiliary tank. He does not know if the CC Plus representative tested the tank before indicating to Complainant that the vehicle was ready for pick up. Complainant did indicate that he looked inside the auxiliary tank before he filled it up for the first time. He could see the bottom of the tank and saw that it was made of aluminum.

Complainant testified that he does have a state permit for red dyed fuel. He denied ever having used the permit to purchase red dyed fuel.

Complainant testified that after the June 14, 2014, repair to the vehicle's radiator, cooling fan, and fan shroud, he never experienced another problem with those items.

The vehicle's PCM software was updated on October 7, 2014. In addition, the vehicle's fuel filters were replaced.

²⁷ Complainant Ex. 17, Lemon Law Complaint dated March 2, 2015. Complainant signed the complaint on February 24, 2015. However, the complaint was actually received by Texas Department of Motor Vehicles on March 2, 2015, which is the effective date of the complaint.

Prior to the October 20, 2014, repair, Complainant installed an additional fuel filter between the auxiliary fuel tank and the main fuel tank. He declined to have the fuel system flushed during this repair, although he was told that he needed to have it flushed due to the presence of gas in the diesel fuel. He was not informed that there was water or contaminants in the fuel on this occasion. However, the fuel filters were replaced again.

2. Stewart Graham's Testimony

Stewart Graham is the Operations Manager for Wiesner Commercial Trucking Center (Wiesner) in Conroe, Texas. Wiesner works on all types of trucks. They are not authorized to perform repairs on Respondent's vehicles.

Mr. Graham receives technical training one (1) to two (2) times per year. He first received a certification in automotive and truck repairs in the early 1980's. His last formal training session was performed in August of 2015. He has certifications for every component on medium duty trucks. He does not have specific training on Chrysler vehicles, but is familiar with high pressure fuel systems.

Mr. Graham testified that the vehicle was delivered to Wiesner on June 22, 2015. Complainant informed Mr. Graham that the vehicle was having issues with acceleration and start up. Mr. Graham was told that contaminated fuel in the fuel system was a problem and that a contaminated fuel sample had been taken from the vehicle. Mr. Graham performed additional testing on the fuel in the vehicle. He took fuel samples from the auxiliary tank, from the filter housing to the engine, and from the main tank. Mr. Graham observed that the fuel was an amber color. He testified that diesel fuel can be one of several different colors depending on additives to the fuel. Mr. Graham used Wix fuel testing kits and sent the fuel samples to the lab specified by Wix. The results of the tests took a few weeks to be delivered to Mr. Graham. The results indicated that the sample taken from the vehicle's fuel engine filter was cloudy "due to suspended water."²⁸ In addition, the results indicated that the water and sediment exceeded the standard maximum specifications.²⁹ The test results from the sample taken from the main tank indicated that there was also something wrong with the sample as it exceeded maximum specifications for #2 diesel fuel temperature.³⁰ Mr. Graham testified that he did not perform an injector flow return test on the vehicle because he did not want to open the engine due to warranty issues. Mr. Graham saw the vehicle's fuel filters and did not think that they were damaged. ~~He felt that they were operating as designed. He feels that all the fuel filters are~~

²⁸ Complainant Ex. 19, Wix Fuel Sample Analysis, p. 1.

²⁹ *Id.*

³⁰ *Id.*, p. 5.

working appropriately. Mr. Graham indicated that he does not know what is damaged in the vehicle.

Mr. Graham testified that the red dyed diesel fuel can be used for regular diesel engines. The only difference between the red dyed fuel and regular diesel fuel is the color. Red dyed fuel should not damage a vehicle's engine. Mr. Graham did not find red dyed fuel in the vehicle's main tank, auxiliary tank, or engine. However, he did find such fuel in the auxiliary fuel tank's hose and in the auxiliary tank's filter housing.

C. Respondent's Evidence and Arguments

Tymothy Mancini, Technical Advisor, testified for Respondent. He has a Bachelor's of Applied Science in automotive technology. He worked as a technician for an independent automotive repair facility in Chicago, Illinois. FCA US LLC hired Mr. Mancini as a technician in 2011. He has been trained and ranked as the highest skill level in all areas of automotive specialization for Respondent. He has training with diesel engines and specific training for Cummins diesel engines.

In May of 2015, Mr. Mancini was scheduled to perform a final repair attempt on Complainant's vehicle. The final repair attempt was performed on May 12, 2015, at Henson Motor Co., Inc. (Henson) in Madisonville, Texas. During the repair attempt, Mr. Mancini reviewed the vehicle's service history to determine the issues with the vehicle. When Mr. Mancini started the vehicle he detected a strong fuel order. He immediately turned off the vehicle upon detecting the fuel order. He checked the after-market auxiliary fuel tank which had been connected to the vehicle's fuel system. He thought the tank was an issue of concern. Mr. Mancini pulled fuel samples from the vehicle's auxiliary tank, fuel filter, and injector return. He discovered red dyed diesel fuel that contained contaminants in the fuel that was in the vehicle's auxiliary tank.³¹ In addition, Mr. Mancini discovered debris in the bottom of the vehicle's forward most fuel filter.³² Mr. Mancini feels that contaminated red dyed fuel became intermixed with the regular diesel fuel and damaged the vehicle's fuel injectors, thereby causing the issues with the vehicle's engine performance. Mr. Mancini does not know where the red dyed fuel came from, but he was sure that it became intermixed with the vehicle's regular fuel due to the fuel color of the samples he obtained from the fuel filter and injector return. Mr. Mancini denied putting red dyed fuel in the vehicle's auxiliary tank and has no idea where it came from.

³¹ Respondent Ex. 2, Pictures of Vehicle, p. 6.

³² *Id.*, pp. 11-13.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

The evidence presented in the hearing establishes that the damage caused to the vehicle's engine was due to the presence of contaminants in the vehicle's fuel and not the result of a manufacturer's defect. Although Complainant denies putting red dyed diesel fuel in the vehicle's fuel system or that he introduced contaminated fuel into the vehicle's fuel system, there is no doubt that the fuel has been contaminated by an outside influence. This was verified by the independent fuel test performed by Complainant. Respondent's warranty does not cover repairs for any damage caused by abuse or negligence. In addition, although Respondent denied introducing contaminated fuel into the vehicle's fuel system, no evidence was provided to show how or when contaminants might have been introduced into the vehicle's fuel system. Given the evidence provided in the hearing and the fact that Complainant bears the burden of proof to establish the existence of a defect in the vehicle, the hearings examiner must hold that repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of the initial hearing on this matter, August 24, 2015, the vehicle's mileage was 11,554. The vehicle's basic express warranty is still in effect. Respondent is under an obligation to repair the vehicle whenever there is any other problem, beyond the fuel system issues, covered by the vehicle's warranties.

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

III. FINDINGS OF FACT

1. Glen Starr (Complainant) purchased a new 2013 Dodge Ram 3500 from DeMontrond Auto Country, Inc. (DeMontrond) in Conroe, Texas, on January 27, 2014, with mileage of 15 at the time of delivery.

2. The manufacturer of the vehicle, FCA US LLC (Respondent) issued a bumper-to-bumper warranty for three (3) years or 36,000 miles, whichever occurs first, and a powertrain warranty for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 11,554.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle would not accelerate properly and would have a hard time cranking. In addition, the vehicle died on him on one occasion.
6. Complainant took the vehicle to Respondent's authorized dealer for repair, on the following dates:
 - a. June 14, 2014, at 7,118 miles;
 - b. October 7, 2014, at 10,763 miles;
 - c. October 20, 2014, at 11,267 miles; and
 - d. November 13, 2014, at 11,515 miles.
7. On June 10, 2014, DeMontrond's service technician determined that the vehicle's cooling fan shroud had been installed incorrectly which had caused damage to the radiator. So, he replaced the vehicle's radiator cooling fan, radiator, and fan shroud.
8. On October 7, 2014, DeMontrond's service technician replaced both fuel filters in the vehicle to address the issue of an extended crank time for the engine to start.
9. On October 20, 2014, DeMontrond's service technician determined that the vehicle's fuel was contaminated and that the fuel system needed to be flushed. Complainant declined the suggested repair.
10. Also, on October 20, 2014, the technician determined that the fuel rail assembly needed replacement as well as the fuel filter. Complainant approved these repairs.
11. ~~On November 13, 2014, DeMontrond's service advisor was unable to duplicate the "long crank" condition described by Complainant.~~

12. On March 2, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On May 12, 2015, Respondent performed a final repair attempt on the vehicle.
14. During the final repair attempt, Respondent's technical advisor determined that the vehicle's fuel system contained contaminated fuel which suspended Respondent's warranty for any repairs to the fuel system.
15. On May 18, 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.
16. The hearing in this case convened on November 4, 2015 in Houston, Texas before Hearings Examiner Edward Sandoval. Jeremy Hall, attorney with the Hall Law Firm LLC, represented Complainant at the hearing. Complainant, Glen Starr, appeared and testified at the hearing. Also testifying for Complainant was Stewart Graham, service manager for Wiesner Commercial Trucking center. Patti Starr, Complainant's wife was present as an observer. Respondent was represented by Matthew Beatty, attorney with Beatty, Bangle, Strama PC. Testifying for Respondent was Tymothy Mancini, Technical Advisor. Observing for Respondent was Brittney Mollman, attorney with Beatty, Bangle, Strama PC. A continuance in the hearing was conducted in Houston, Texas on December 11, 2015. Jeremy Hall, attorney with the Hall Law Firm LLC, represented Complainant at the continuance. Complainant, Glen Starr, appeared and testified at the continuance. Patti Starr, Complainant's wife, was present as an observer. Matthew Beatty, attorney with Beatty, Bangle, Strama PC, represented Respondent at the continuance. Testifying for Respondent was Tymothy Mancini, Technical Advisor. The hearing record was closed on December 11, 2015.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has

jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle does not have an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle does not have an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranty. Tex. Occ. Code §§ 2301.204, 2301.603.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement/repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED January 25, 2016.


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