

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0188 CAF**

**SHELIA K. LUNSFORD,  
Complainant**

v.

**FORD MOTOR COMPANY,  
Respondent**

§  
§  
§  
§  
§  
§

**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Shelia K. Lunsford ( Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2013 Ford C-Max Hybrid. Complainant asserts that the vehicle will not start due to a battery drain issue. Ford Motor Company (Respondent) argues that Complainant's concerns have been addressed and the vehicle has been repaired. Respondent also contends that Complainant failed to undertake a reasonable number of repair attempts. The hearings examiner concludes that the vehicle has a currently existing warrantable defect and Complainant is eligible for repurchase 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 closed on July 9, 2015, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented via telephone by Maria Diaz, Consumer Affairs Legal Analyst.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

---

<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

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.<sup>5</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a 2013 Ford C-Max Hybrid, from Texas Motors Ford (Texas Motors) of Fort Worth, Texas on April 12, 2014. The vehicle had mileage of 4 at the time of delivery.<sup>6</sup> Respondent's basic bumper to bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.<sup>7</sup> The vehicle's mileage on the date of the hearing is estimated to be 22,661. Therefore, Respondent's basic express warranty for the vehicle is still in effect.

Complainant testified that the vehicle fails to start intermittently, due to the battery draining, leaving her stranded. For instance, she would drive to work, but when she tried to drive home at the end of the day, the car would not start because the battery was dead. During these no-start events, Complainant cannot even unlock the vehicle with the key remotely. Since early May, the vehicle has been parked in Complainant's sister's driveway with the battery dead. Due to the prohibitive costs of towing the vehicle, Complainant was unable to bring it to the hearing location. Complainant has continued to carry insurance and make payments on the vehicle. The vehicle's current mileage is unattainable in its current condition because the vehicle needs to be started in order to read the odometer.

Complainant testified that the vehicle's battery was dead when she went to Texas Motors for a test drive prior to purchase on April 12, 2014. The dealer's sales person had to jump start the vehicle and explained to Complainant that because it was the previous year's model, the battery may have died due to months of inactivity. This explanation allayed Complainant's fears and Complainant purchased the vehicle.

On April 28, 2014, Complainant's roommate at the time, Laurie McElveen, tried to start the vehicle, but it would not start. Complainant called roadside assistance and someone came out to jump start the vehicle. Complainant returned the vehicle to Texas Motors that same day and informed them that the battery had died. The concern could not be verified by the dealer's

---

<sup>5</sup> 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.

<sup>6</sup> Complainant Ex. 1, Simple Finance Charge and Odometer Disclosure Statement dated April 12, 2014.

<sup>7</sup> Complainant Ex. 10, 2013 Model Year Ford Hybrid Car and Electric Vehicle Warranty Guide.

service technician, but the Integrated Diagnostic System (IDS) failed on three occasions during reprogramming.<sup>8</sup> The reprogramming was undertaken after a technician discovered an error code. The vehicle's mileage at the time was 1,091.<sup>9</sup>

Complainant continued to have starting issues with the vehicle at random. It was suggested to her that perhaps she was leaving a cell phone charger or GPS system plugged in when the vehicle was parked and they were draining the battery. She was blaming herself for the issue. However, she changed her mind when the issue became more common.

Complainant moved to Sulphur Springs, Texas in July of 2014. The problem persisted, with the vehicle failing to start approximately once every six weeks. Eventually, Complainant took the vehicle to Brian Toliver Ford (Toliver) of Sulphur Springs, Texas. Her first visit to Toliver was on September 25, 2014. The dealer's service technician performed a battery check and determined that the battery was in good condition.<sup>10</sup> Complainant also got an oil change on this visit. The vehicle's mileage on this occasion was 10,616.<sup>11</sup>

After this visit, the vehicle's battery proceeded to die three more times before Complainant returned the vehicle to Toliver for repair. Each of these times, Complainant had the vehicle jump started by Tommy Evans Firestone.<sup>12</sup> On December 12, 2014, Complainant returned the vehicle to Toliver because she was stranded after the vehicle's battery died. She was also written up at work for being late. During this visit, several codes were pulled up on the Power Control Module (PCM).<sup>13</sup> The codes were cleared and the vehicle returned to Complainant. The vehicle's mileage at the time of this visit was 18,097.<sup>14</sup> Three days later, the vehicle experienced another no-start event.

Complainant testified that she returned the vehicle to Toliver on January 5, 2015, to have the no-start issue addressed. A service technician took the vehicle for a test drive. He stopped to buy coffee and when he returned to the vehicle, it would not start. The technician determined that a parasitic draw off of the coolant pump was causing the no-start issue.<sup>15</sup> To correct the issue, the technician reinstalled the coolant pump.<sup>16</sup> The technician also reprogrammed the Accessory Protocol Interface Module (APIM), Instrument Panel Cluster (IPC) and PCM.<sup>17</sup> The diagnostic trouble codes were cleared, as well. The vehicle performed without issue after the repairs. Complainant retrieved the vehicle on January 13, 2015. The vehicle's mileage on this occasion was 18,342.<sup>18</sup> The vehicle was in the dealer's possession for approximately eight days during this

---

<sup>8</sup> Complainant Ex. 2, Repair Order dated April 28, 2014.

<sup>9</sup> *Id.*

<sup>10</sup> Complainant Ex. 4, History Listing, p. 3.

<sup>11</sup> *Id.*

<sup>12</sup> Complainant Ex. 3, Tommy Evans Firestone Invoices.

<sup>13</sup> Complainant Ex. 4, History Listing, p. 2.

<sup>14</sup> *Id.*

<sup>15</sup> Complainant Ex. 4, History Listing, p.1.

<sup>16</sup> *Id.*

<sup>17</sup> Complainant Ex. 4, History Listing, pp. 1-2.

<sup>18</sup> Complainant Ex. 4, History Listing, p. 1.

repair visit. Complainant was provided with a rental vehicle while her vehicle was being repaired.<sup>19</sup>

The vehicle failed to start once again on January 27, 2015. During her previous visit to Toliver, Complainant was informed that if she had issues with the vehicle starting, she was not to jump start the vehicle, but instead have it towed to the dealership. So, Complainant had the vehicle towed to Toliver. The dealer's service technician checked the battery and determined that there was nothing wrong with it. The technician also noted that the headlight position was turned to the "on" position, suggesting that Complainant may have been the cause of the no-start event.<sup>20</sup> Nevertheless, the technician reprogrammed the PCM once again.<sup>21</sup> It was also determined that there was an issue with a yellow indicator staying on after locking the vehicle's door.<sup>22</sup> The technician repaired and replaced the Airbag Control Module (ACM) and FDIC.<sup>23</sup> The vehicle was allowed to sit for three days. After these three days, the vehicle started without issue and the repair was verified. The vehicle's mileage on this occasion was 18,954.<sup>24</sup> The vehicle was in the dealer's possession until February 13, 2015. Complainant was provided with a rental vehicle only for the period from February 3, 2015 through February 13, 2015.<sup>25</sup>

On February 19, 2015, Complainant returned the vehicle to Toliver with the same no-start issue. The technician determined that the battery was operating normally. Complainant also explained that she was hearing a sizzling noise coming from the dashboard and that the dash felt like it was getting very hot. The technician could not verify the concerns. The vehicle's mileage on this occasion was 19,245.<sup>26</sup> The vehicle was in the dealer's possession for at least six (6) days during this repair attempt. Complainant was provided with a rental vehicle for the period of time that the dealer had possession of the vehicle.<sup>27</sup>

After picking the vehicle up from Toliver, Complainant took a trip to Arkansas to visit family. The vehicle would not start when she tried to return to Texas, but her son-in-law was able to jump start the vehicle. Complainant returned the vehicle to Toliver on February 27, 2015. The battery was checked by the dealer's service technician who determined that it was in good condition.<sup>28</sup>

---

<sup>19</sup> Complainant Ex. 11, Rental Car Invoices, p. 1.

<sup>20</sup> Complainant Ex. 5, Repair Order dated January 27, 2015.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Complainant Ex. 11, Rental Car Invoices, p. 2.

<sup>26</sup> Complainant Ex. 7, Repair Order dated February 19, 2015.

<sup>27</sup> Complainant Ex. 11, Rental Car Invoices, p. 3.

<sup>28</sup> Complainant Ex. 8, Repair Order dated February 27, 2015. The mileage was listed as 18,954 on the invoice. However, this is less than the mileage indicated on the February 19, 2015 invoice (19,245), so it must be assumed that the mileage on this invoice is incorrect.

Complainant provided written notification of her dissatisfaction to the manufacturer by a letter dated February 27, 2015.<sup>29</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 6, 2015.

Complainant took the vehicle to Toliver on March 17, 2015; because it would not start. The dealer's service technician found a "system voltage low" error code, but the wiring was not damaged and the vehicle operated normally.<sup>30</sup> The vehicle remained at Toliver until one of Respondent's field service engineers could inspect it and perform a final repair attempt. The inspection occurred on March 31, 2015. Complainant retrieved the vehicle on April 1, 2015. The mileage at the time of this visit was 19,547.<sup>31</sup>

In early May of 2015, Complainant went to her sister's home for coffee. When she tried to leave, Complainant discovered the vehicle would not start. She decided not to have the vehicle jump started and left it at her sister's home. The vehicle has been sitting in her sister's driveway, the battery dead, ever since.

Complainant has been driving a 2015 Toyota Tacoma, which she purchased new on December 11, 2014, during the periods in which the C-Max has been out of commission and she was not provided a rental vehicle.<sup>32</sup> Complainant has been driving the Toyota Tacoma ever since the car failed to start in May of 2015.

In addition to repurchase relief, Complainant has also requested reimbursement for the incidental expense of "alternate transportation" pursuant to Texas Administrative Code § 215.209(a)(1), with respect to the purchase of the Toyota Tacoma.

### **C. Respondent's Evidence and Arguments**

Respondent testified that they received written notice of the Complainant's dissatisfaction with the vehicle on March 9, 2015, and scheduled a final repair attempt for later that month. David Green, a field service engineer for Respondent, performed the final repair attempt on March 31, 2015. His vehicle inspection report indicates that he performed Technical Service Bulletin (TSB) 14-0155 to test for a discharged 12 volt battery. The TSB required Mr. Green to inspect the wiring, update several modules, and conduct a battery load test. After performing TSB 14-0155 and test driving the vehicle, Mr. Green was unable to duplicate any of Complainant's concerns.<sup>33</sup>

It is Respondent's position that no warrantable defect exists. However, Respondent did admit that certain C-Max Hybrid models have had battery draw issues. Respondent also argues that

---

<sup>29</sup> Complainant Ex. 12, Letter dated February 27, 2015, entitled Written Notification to Manufacturer.

<sup>30</sup> Complainant Ex. 9, Repair Order dated March 17, 2015.

<sup>31</sup> *Id.*

<sup>32</sup> Complainant Ex. 16, Mt. Pleasant Toyota Purchase Agreement dated December 11, 2014.

<sup>33</sup> Respondent Ex. 1, Vehicle Inspection Report dated March 31, 2015.

these visits should not be counted toward the reasonable number of repair attempts required under Texas Occupations Code § 2301.605(a)(1).

#### **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.

Texas Occupations Code § 2301.605(a) specifies that a rebuttable presumption that a reasonable number of repair attempts have been made is established if “two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.”

Complainant purchased the vehicle on April 12, 2014. On April 28, 2014, Complainant took the vehicle to Texas Motors Ford, Respondent’s authorized dealer, due to her concern with the vehicle’s dead battery and the no-start issue. There were three IDS failures recorded on this visit. However, the no-start issue could not be duplicated. The vehicle’s mileage was 1,091. After moving to Sulphur Spring, Texas, Complainant took the vehicle to Brian Toliver Ford on September 25, 2014. A battery check was performed, but no problems were found. The vehicle’s mileage was 10,616. Despite no repairs being made during these visits, the vehicle was taken to the dealer for repair due to an issue that the evidence clearly shows has persisted since the day of purchase. Six more repair attempts were made within the next 12,000 miles. Complainant has established that she undertook a reasonable number of repair attempts on the vehicle.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant mailed written notification of the defect to Respondent on February 27, 2015. A final repair attempt was performed by Respondent on March 31, 2015. David Green, Respondent’s field service engineer, determined that no repairs were necessary.

The defect in Complainant’s vehicle renders it inoperable until roadside assistance can jump start it. This substantially impairs its use. The vehicle’s no-start problem makes it less desirable to own than comparable vehicles. For instance, a reasonable person would dread the possibility of not starting in the morning when they attempt to leave for work. This substantially impairs its value.

Although Respondent has been provided numerous opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. The vehicle is currently sitting in Complainant's sister's driveway, inoperable and with a drained battery. As such, Complainant has met her burden of proof to establish a warrantable and existing defect or condition that substantially impairs the vehicle's use and market value.

However, because the vehicle is currently inoperable, it is impossible to determine the exact mileage at the time of the hearing. An estimate must be made in order to calculate the repurchase price. Complainant testified that the vehicle has been inoperable since the "beginning of May." However, mileage calculations require a specific date, which must be determined in an equitable fashion. One popular way of dividing up months is to use an "early," "mid", and "late" scheme. Because there are three time periods in this scheme, it is logical to divide up the month into three equal sets of dates. The "beginning of May" would fall into the "early" period, which would span May 1, 2015, to May 10, 2015. Because Complainant is responsible for this ambiguity, estimates should inure to Respondent's favor.<sup>34</sup> Therefore, the estimated date will be May 10, 2015. In order to extrapolate the current mileage, the average miles driven per day from purchase up through the final repair attempt will be multiplied by the number of days between the final repair attempt and May 10, 2015. This number will then be added to the mileage listed on the final repair order.

With regards to the final repair attempt, Mr. Green noted that the mileage at the time of inspection was 21,566.<sup>35</sup> This does not comport with Brian Toliver Ford's repair order for the same visit, which lists the mileage as 19,547.<sup>36</sup> It is possible that the technicians test drove the vehicle for over 2,000 miles in the fourteen day period in which it was in their possession; however, that does not seem likely. It is more plausible that a clerical error was made. Because Complainant should not be penalized for an error made by Respondent or Respondent's authorized dealer, the measurement of 19,547 miles will be used when calculating total mileage.

Complainant drove the vehicle an average of 57.66 miles per day from the date of purchase until March 17, 2015.<sup>37</sup> Between March 17, 2015, and May 10, 2015, 54 days passed. At 57.66 miles per day, Complainant would have driven approximately 3,114 miles between the day of the last repair visit and May 10, 2015. The vehicle's total mileage on the date of the hearing is estimated to be 22,661.

Complainant also requests reimbursement for the incidental expense of "alternate transportation." This relief cannot be granted because an exact amount cannot be reasonably

---

<sup>34</sup> *In re* The Appeal of Travelers Indem. Co. of Conn. from A Decision of the Tex. Workers' Comp. Ins. Facility, 2004 WL 4171928, at \*24 n.32 (Tex. State Office of Admin. Hearings August 1, 2004).

<sup>35</sup> Respondent Ex. 1, Vehicle Inspection Report dated March 31, 2015.

<sup>36</sup> Complainant Ex. 9, Repair Order dated March 17, 2015.

<sup>37</sup> A total of 339 days passed from the date of purchase (April 12, 2014) to the last repair visit where the mileage was recorded as 19,547 (March 17, 2015).

calculated based on verified receipts because instead of renting a vehicle, Complainant purchased a new vehicle.<sup>38</sup>

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

### III. FINDINGS OF FACT

1. Complainant, Shelia K. Lunsford, purchased a 2013 Ford C-Max Hybrid, from Texas Motors Ford of Fort Worth, Texas on April 12, 2014. The vehicle had mileage of 4 at the time of delivery.
2. The vehicle's mileage on the date of hearing is estimated to be 22,661.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued an express warranty for the vehicle for three (3) years or 36,000 miles.
4. At the time of hearing, the vehicle's warranty was still in effect.
5. On the date of purchase, the vehicle's battery was dead on the showroom floor. When Complainant asked to test drive the vehicle, the dealer's representative had to jump start the vehicle.
6. On April 28, 2014, Complainant took the vehicle back to Texas Motors Ford for repair due to the vehicle not starting. The vehicle's mileage was 1,091.
7. Complainant moved to Sulphur Springs, Texas in July of 2014.
8. Complainant's vehicle was serviced by Respondent's authorized dealer, Brian Toliver Ford (Toliver) of Sulphur Springs, Texas, on the following dates because of Complainant's concerns with the vehicle not starting:
  - a. September 25, 2014, at 10,616 miles;
  - b. December 12, 2014, at 18,097 miles;
  - c. January 5, 2015, at 18,342 miles;
  - d. January 27, 2015, at 18,954 miles;
  - e. February 19, 2015, at 19,245 miles;
  - f. February 27, 2015, at unknown miles; and
  - g. March 17, 2015, at 19,547 miles.

---

<sup>38</sup> 43 TEX. ADMIN. CODE § 215.209(a).



9. On September 25, 2014, the dealer's service technician checked the vehicle's battery and determined that it was in good condition.
10. On December 12, 2014, the dealer's service technician and determined that there were several trouble codes on the vehicle's computers. The technician cleared the codes.
11. On January 5, 2015, the dealer's service technician determined that the vehicle had a parasitic draw coming from the coolant pump. As a result, he reinstalled the pump and reprogrammed the Accessory Protocol Interface Module (APIM), the Instrument Panel Cluster (IPC), and the Powertrain Control Module (PCM).
12. On January 27, 2015, the dealer's service technician reprogrammed the PCM and replaced the FDIC.
13. On February 19, 2015, the dealer's service technician checked the vehicle's battery and determined that it was in good condition.
14. On February 27, 2015, the dealer's service technician checked the vehicle's battery and determined that it was in good condition.
15. On March 17, 2015, the dealer's service technician determined that the vehicle had a trouble code indicating low system voltage. The technician tested the battery and determined it was in good condition. In addition, he checked the vehicle's wiring pursuant to a Technical Service Bulletin (TSB) and reprogrammed some modules that needed updating.
16. David Green, a field service engineer for Respondent, performed a final repair attempt on the vehicle on March 31, 2015. After performing TSB 14-0155 and test driving the vehicle, Mr. Green was unable to duplicate any of Complainant's concerns.
17. The vehicle has been inoperable since early May of 2015. It has been parked in Complainant's sister's driveway with a dead battery.
18. On March 6, 2015 Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
19. On April 24, 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 closed on July 9, 2015, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented via telephone by Maria Diaz, Consumer Affairs Legal Analyst.

**IV. CONCLUSIONS OF LAW**

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2013 Ford C-Max Hybrid at the price of \$24,194.66. Tex. Occ. Code § 2301.604(a)(1).

**IT IS THEREFORE ORDERED that:**

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;

2. Respondent shall repurchase the subject vehicle in the amount of **\$24,194.66**. The refund shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$26,812.29
Delivery mileage	4
Mileage at first report of defective condition	1,091
Mileage on hearing date	22,661
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$26,812.29
Mileage at first report of defective condition				1,091	
Less mileage at delivery				<u>-4</u>	
Unimpaired miles				1,087	
Mileage on hearing date				22,661	
Less mileage at first report of defective condition				<u>-1,091</u>	
Impaired miles				21,570	
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
				<u>1,087</u>	
	120,000	X	\$26,812.29	=	\$242.87
Impaired miles					
				<u>21,570</u>	
	120,000	X	\$26,812.29	X .5	= <u>\$2,409.75</u>
Total reasonable allowance for use deduction:					\$2,652.63
Purchase price, including tax, title, license and registration					\$26,812.29
Less reasonable allowance for use deduction					-\$2,652.63
Plus filing fee refund					<u>\$35.00</u>
<b>TOTAL REPURCHASE AMOUNT</b>					<b>\$24,194.66</b>

3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the

failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;<sup>39</sup>
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

### 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-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

**SIGNED July 28, 2015**



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

<sup>39</sup> Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.