

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0203 CAF**

**NANCY HANLEY
and MICHAEL T. HANLEY,
Complainants**

v.

**KIA MOTORS AMERICA, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Nancy and Michael T. Hanley (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2015 Kia K900. Complainants assert that the vehicle is defective because the door locks intermittently will lock them out of the vehicle. On those occasions, Mr. and Mrs. Hanley cannot unlock the vehicle using the vehicle's key fobs. Kia Motors America, Inc. (Respondent) argues the vehicle is operating as designed, does not have any defects, and that no relief is warranted. The hearings examiner concludes that Complainant did not allow Respondent to undertake a reasonable number of repair attempts for the vehicle. Complainant is thus 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 initial hearing in this case convened on August 24, 2015, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant, Michael T. Hanley, was present and represented Complainants. Also present was Nancy Hanley, co-Complainant, who testified in the hearing. Respondent, Kia Motors America, Inc., was represented by Stephen Navarro, associate attorney with Naman, Howell, Smith, and Lee, PLLC. Richard Peralta, Field Technical Representative; Stormy Childery, District Parts and Service Manager; and Matthew Alexander, Parts and Service Manager for World Car Kia in New Braunfels, Texas appeared to offer testimony on behalf of Respondent. Averie Maldonado, associate attorney with Naman, Howell, Smith, and Lee, PLLC, observed.

The hearing reconvened and the record closed on October 12, 2015, in New Braunfels, Texas, before Hearings Examiner Edward Sandoval. Complainant, Michael T. Hanley, was present and represented Complainants. Also present was Nancy Hanley, co-Complainant, who testified in the hearing. Respondent, Kia Motors America, Inc., was represented by Stephen Navarro, associate attorney with Naman, Howell, Smith, and Lee, PLLC. Richard Peralta, Field Technical Representative; Stormy Childery, District Parts and Service Manager; and Matthew Alexander,

Parts and Service Manager for World Car Kia in New Braunfels, Texas appeared to offer testimony on behalf of Respondent.

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, Section 2301.605 of the Occupation Code specifies that there are three tests which can establish a rebuttable presumption that a reasonable number of attempts have been undertaken by a Respondent to conform a motor vehicle to an applicable express warranty. The first test provides that 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, then Complainant has established that Respondent has been provided with a reasonable number of attempts to repair the vehicle.⁵ The second test applies to a nonconformity that creates a serious safety hazard as defined in Section 2301.601(4) of the Occupation Code and provides that if the same nonconformity creates a serious safety hazard and continues to exist after being subject to repair two or more times and: (1) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever comes first, following the date of the original delivery to the owner; and (2) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁶ The third test provides that Complainant can establish a rebuttable presumption that a reasonable number of attempts to conform a motor vehicle to an applicable express warranty if a nonconformity continues to exist which substantially impairs the vehicle's use or market value and (1) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner and (2) at least two repair attempts were made in the 12 months or 12,000 miles following

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).

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

the date of original delivery to an owner.⁷ However, the Occupations Code also provides that the 30 day period described by this section does not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.⁸

B. Complainant's Evidence and Arguments

1. Michael T. Hanley's Testimony

Complainants leased a new 2015 Kia K900 from World Car Kia (World Car) in New Braunfels, Texas, on July 26, 2014.⁹ The lease was assigned to Hyundai Lease Titling Trust.¹⁰ The vehicle's mileage at the time of delivery was 29.¹¹ On the date of the initial hearing the vehicle's mileage was 10,832. Respondent provided a basic limited warranty for the vehicle for the first five (5) years or 60,000 miles from the date of first service, whichever comes first.¹² In addition, Respondent provided a ten (10) year or 100,000 mile powertrain warranty for the vehicle.¹³

Mr. Hanley testified that about three weeks after purchasing the vehicle, he drove to his personal mailbox, which is about six miles from his home, to pick up his mail. Mr. Hanley left the vehicle's engine running while he got out of the vehicle to get the mail. He had the vehicle's key fob in his pocket when he left the vehicle. After getting his mail, Mr. Hanley went back to the vehicle and attempted to open the door. However, he was unable to open the door, because it was locked. When Mr. Hanley attempted to use the key fob to automatically unlock the door, the fob wouldn't work. The vehicle's mirrors were folded in which occurs when the vehicle's doors are locked. Mr. Hanley tried to get in the vehicle, but was unable to do so. He attempted to open the vehicle's trunk, but it wouldn't open. Mr. Hanley's phone was locked in the vehicle, so he couldn't call anyone for help. Finally, a neighbor came by the mailboxes and allowed Mr. Hanley to use their phone. Mr. Hanley called his wife who sent her spare key fob to Mr. Hanley with a contractor who was performing work at their house. The spare key fob wouldn't unlock the vehicle either. Mr. Hanley then used the contractor's telephone to call World Car to see if they could help him. The representative from World Car advised Mr. Hanley to call roadside assistance to have them come by to unlock the vehicle.

While waiting for roadside assistance, Mr. Hanley spoke to another neighbor, Chuck Davey, who was picking up his mail. Mr. Davey attempted to help Mr. Hanley open the vehicle's doors, but they were unsuccessful. Finally, Mr. Davey figured out how to use the key to manually open the

⁷ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

⁸ Tex. Occ. Code § 2301.605(c).

⁹ Complainant Ex. 1, Closed End Motor Lease and Purchase Order dated July 26, 2014.

¹⁰ *Id.*, p. 2.

¹¹ Complainant Ex. 2, Odometer Disclosure Statement dated July 26, 2014.

¹² Respondent Ex. 2, 2015 Warranty and Consumer Information Manual, p. 5.

¹³ *Id.*

door. Mr. Davey was able to get the door open and Mr. Hanley was able to drive the vehicle back to his home.

Mr. Hanley parked the vehicle in his garage when he returned home and locked the vehicle's doors. Mr. Hanley attempted to open the vehicle's doors that evening, but was unable to do so. The key fob again refused to unlock the doors. Mr. Hanley eventually was able to open a rear passenger door using the key fob and get in the vehicle through that door to manually unlock the door.

As a result of the incidents, Mr. Hanley contacted World Car to have the vehicle repaired. On August 20, 2014, a representative from World Car drove a rental vehicle to Mr. Hanley's home for his use and picked up Complainants' vehicle. The vehicle was then taken to World Car for repair. The dealer's service technician was unable to recreate the problem with the lock experienced by Mr. Hanley but replaced the vehicle's door lock actuator pursuant to instructions from Respondent's technical advisors.¹⁴ The vehicle's mileage on this occasion was 649.¹⁵ The vehicle was in the dealer's possession until August 26, 2014. Complainants were provided with a rental vehicle while their vehicle was being repaired.

After the August 20, 2014, repair visit, Complainants experienced a few occasions when the key fob would not unlock the vehicle's doors. On one occasion, Mr. Hanley drove the vehicle to his personal mailbox and left the car running while he checked his mail. Mr. Hanley left the driver's side window rolled halfway down, so that when the key fob wouldn't unlock the door, he was able to reach in the vehicle and unlock the door manually.

On November 6, 2014, Mr. Hanley and his wife went to dinner at a restaurant. When they left the restaurant, the key fob wouldn't unlock the vehicle's doors. He was able to gain access to the vehicle through the rear passenger door which did unlock using the key fob.

Mr. Hanley called World Car and indicated to the dealer's representative that he was still having problems with the vehicle's door locks. On November 10, 2014, a representative from World Car drove a rental vehicle to Mr. Hanley's home and picked up Complainants' vehicle. The vehicle was taken to World Car where a service technician attempted to diagnose and repair the problem. However, the technician was unable to duplicate the problem.¹⁶ The vehicle's mileage at the time of the repair was 2,429.¹⁷ The vehicle was returned to Complainants on November 20, 2014.¹⁸ Complainants were provided with a rental vehicle while their vehicle was being repaired.

¹⁴ Complainant Ex. 5, Repair Order dated August 20, 2014.

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Repair Order dated November 10, 2014.

¹⁷ *Id.*

¹⁸ *Id.*

On November 21, 2014, Complainants drove the vehicle to a memorial service. They took some friends to the service as passengers in the vehicle. When Complainants returned to the vehicle upon the conclusion of the service, the vehicle's key fobs would not unlock the vehicle's doors. After a couple of tries the rear passenger door unlocked and one of the passengers was able to enter the vehicle and unlock the front doors. Mr. Hanley called World Car after the incident and spoke to Matthew Alexander, Parts and Service Manager for World Car Kia, regarding his frustration with the problems he was experiencing with the vehicle. Mr. Alexander asked Mr. Hanley if he wanted to return the vehicle to the dealer to see if the dealer's service technicians could ascertain what was causing the problems. Mr. Hanley indicated that taking the vehicle back to the dealer for repair seemed to be an exercise in futility and declined the offer. Mr. Hanley indicated that he wanted to see if there was a pattern that could be leading to the issue. However, Mr. Hanley has been unable to determine if there is a pattern. Mr. Hanley indicated that the vehicle's key fobs will not operate properly about every five weeks or so.

On March 23, 2015, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).¹⁹ On March 2, 2015, Complainants mailed a letter to Respondent informing them of their dissatisfaction with the vehicle.²⁰

On May 1, 2015, Ola Sprague, Respondent's Consumer Affairs Analyst, sent an e-mail to Mr. Hanley asking if he was still experiencing problems with the vehicle's door locks.²¹ Mr. Hanley responded via e-mail that he was still experiencing problems with the vehicle's locks. In addition, Mr. Hanley volunteered in his e-mail that the Texas Department of Motor Vehicles' (TxDMV) representative, John DuFour, indicated that he would not schedule an inspection of the vehicle because of the intermittent nature of the problem.²²

During cross examination, Mr. Hanley testified that he did read the vehicle's owner's manual in order to learn how the vehicle's features worked. Mr. Hanley did not compile a log of the incidents when the key fob failed to unlock the vehicle's doors, so he could not provide specific dates for some of the incidents. In addition, Mr. Hanley did not mention to the dealer's service technician of the lock out issue when he took the vehicle to World Car for a repair to the vehicle's driver's side keyhole cap on October 16, 2014. However, he did mention the issue during a maintenance visit to World Car on April 23, 2015. Mr. Hanley also testified that on August 19, 2015 or August 20, 2015, the vehicle's key fob again failed to unlock the vehicle's doors. However, Mr. Hanley was able to unlock the door using the manual option provided by Respondent, i.e., using the key.

¹⁹ Complainant Ex. 8, Lemon Law complaint dated March 23, 2015.

²⁰ Complainant Ex. 9, Letter to Kia Motors America dated March 2, 2015.

²¹ Complainant Ex. 10, E-mail exchange dated May 4, 2015.

²² *Id.*

2. Nancy E. Hanley's Testimony

Nancy E. Hanley testified that on August 20, 2014, she observed that the vehicle's key fobs would not unlock the vehicle's doors. Mr. Hanley had experienced a problem with the doors refusing to respond to the key fob earlier in the day and had parked the vehicle in their garage. The vehicle was not running when they attempted to use the key fob to unlock the vehicle's doors that evening. They pressed the button on the key fob and it did not activate the door locks. The rear passenger side door did unlock and Ms. Hanley got into the vehicle and unlocked the front doors. The problem did not occur again that evening. The next day, World Car representatives picked up the vehicle to repair it. Ms. Hanley testified that Mr. Alexander was good about keeping her and Mr. Hanley apprised of the service technicians' attempts to repeat the problem. However, Mr. Alexander informed Ms. Hanley that they could not duplicate the problem.

On November 6, 2014, Mr. and Ms. Hanley were at a restaurant eating dinner. When they left the restaurant, the key fob would not unlock the vehicle's doors. After about four to five minutes, the rear door unlocked and she was able to enter the vehicle and unlocked the front doors.

Ms. Hanley testified that on November 21, 2014, she and her husband were at a funeral service and when they left the service, the key fobs failed to unlock the vehicle's doors. After a few seconds, the passenger's side rear door unlocked and a friend was able to get in the vehicle and manually unlock the front doors.

Ms. Hanley stated that the vehicle scares her because she doesn't want to be locked out of the vehicle and be stuck for however long it takes for the key fobs to unlock the vehicle's doors or for someone to arrive to help her.

C. Respondent's Evidence and Arguments

1. Richard Peralta's Testimony

Richard Peralta, Field Technical Representative, appeared at the hearing to offer testimony on behalf of Respondent. Mr. Peralta is a Kia Master Technician. He has nine (9) Automobile Service Excellence (ASE) certifications. He has worked in the automotive repair industry for thirty years. He's worked for Respondent for the last 17 years and the last eleven (11) years as a master technician.

Mr. Peralta testified that prior to the hearing date, he reviewed the repair orders for Complainants' vehicle. Mr. Peralta testified that based on his experience as an automotive technician and looking at the repair orders, the vehicle was operating as designed on August 20, 2014, the first repair attempt on the vehicle.

Mr. Peralta testified that the dealer's service technician was not able to duplicate Complainant's concern during the August 20, 2014 repair. As a result, the technician contacted Respondent's technical assistance line. This is the first step a technician takes when dealing with unusual or difficult issues. The technical assistance technician advised the dealer's technician to replace the left front door lock actuator to deal with the issue, although the problem had not been duplicated.

Mr. Peralta testified that during the November 10, 2014, repair attempt on the vehicle, the dealer's technician tried different ways to address Complainant's concern. He reopened the technical assistance case. He performed a mechanical inspection of the vehicle. He tested and checked the vehicle's antenna which interacts with the key fob to lock or unlock the vehicle's doors. He inspected the vehicle's pin fits to ensure that all of the electrical components were properly connected. However, the technician could not find any problems with the vehicle.

Mr. Peralta was involved in the November 10, 2014, repair attempt. He recommended looking inside the driver's door to see if there were any bad connections or bad wiring. The dealer's technician did not find any problems with the harness, connectors, or actuator. As a result, Mr. Peralta concluded that the vehicle was operating as designed and that there is no defect with the vehicle.

During cross examination Mr. Peralta testified that although a full vehicle inspection was done by the dealer's service technician on April 23, 2015, the key fobs and door lock actuators weren't inspected, as they are not normally looked at during a vehicle inspection. The repair order did not indicate a request by Complainant to have the technician look at the key fob and lock actuators.

In addition, Mr. Peralta stated that if a technician cannot duplicate a problem, it's very difficult to determine what needs to be repaired in a vehicle. Mr. Peralta stated that if the vehicle's door is locked and the engine is running, then the key fob is not supposed to work. However, Mr. Peralta went on to state that the driver's side door is not supposed to lock with the engine running. If the vehicle's doors are locked and the key fob won't unlock them, then Respondent has provided a mechanical method of unlocking the door which is outlined in the owner's manual.

2. Matthew Alexander's Testimony

Matthew Alexander is the parts and service director for World Car Kia. His job duties include ensuring the service department is fully staffed, training of the staff, controlling parts inventory, dealing with accelerated customer issues, and day-to-day personnel decisions. He has worked for fifteen (15) years in the automotive industry and is a Kia Master Certified technician. He has prior expired Automotive Service Excellence (ASE) certifications and was an ASE Master Technician.

Mr. Alexander testified that he was involved with the repair attempts on Complainant's vehicle. He spoke to Complainant in August of 2015, regarding Complainant's concern. Mr. Alexander had an employee drive a rental vehicle to Complainant's home on August 20, 2014, to pick up Complainant's vehicle for repair.

Mr. Alexander testified that he was familiar with the August 20, 2014 repairs to Complainant's vehicle. He feels that the dealer's service technician did everything necessary to attempt to duplicate the problem with the vehicle. However, the technician was unable to duplicate the problem. He feels that the vehicle was operating as it was designed.

Mr. Alexander testified that he was also familiar with the November 10, 2014, repair attempt. He feels that the technician again did everything he could to duplicate Complainant's concern, but was unable to do so. He testified that the technician did not have any problem occur with the vehicle's key fob or door lock. Mr. Alexander kept Complainant and Complainant's wife informed about their attempts to recreate the door lock problem.

Mr. Alexander testified that he is aware of the incident of which Complainant testified which occurred on November 21, 2014, where Complainant was unable to unlock the vehicle's driver's side door with the key fob after a funeral service. However, no repair was attempted by Complainant as a result of the incident. He feels that it's possible that Complainant may have been pushing the key fob button too rapidly and that this was preventing the door from unlocking properly. Mr. Alexander feels that the vehicle is operating as designed.

During cross examination, Mr. Alexander testified that he had a conversation with Complainant regarding the vehicle's door lock not working properly. During this conversation, Complainant indicated to Mr. Alexander that he was not going to pursue repair to the vehicle any longer. Mr. Alexander also testified that he feels that there could be a safety issue if someone was locked in the vehicle and the lock did not work properly.

D. Analysis

Under Texas' 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.

Complainant purchased the vehicle on July 26, 2014, and presented the vehicle to an authorized dealer of Respondent due to his concern with the door locks not responding to the key fob on August 20, 2014 and November 10, 2014. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) goes on to specify that a rebuttable presumption that a reasonable number of attempts to repair have been made 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 has not met the requirements of this test. Complainant has only allowed Respondent two (2) repair attempts for the issue. As such, Complainant was unable to establish that a reasonable number of attempts to repair the vehicle were made by Respondent.

Complainant also argued that the door lock's failure to respond to the key fob created a safety hazard which would entail fewer repair attempts by Respondent under the Occupations Code. Occupations Code § 2301.601(4) defines "serious safety hazard" as "a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or creates a substantial risk of fire or explosion." In the present case, the evidence indicates that the door locks' failure to respond to the key fob is not a "life-threatening malfunction or nonconformity." In addition, Respondent has provided a method in which Complainant can use the manual key to unlock the vehicle's doors and that Complainant has availed himself of this method of opening the vehicle at least once when the key fob has failed to work. The hearings examiner must hold that the issue in question does not create a serious safety hazard as defined in the Occupations Code.

Given the evidence provided in the hearing, 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 five (5) years or 60,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for ten (10) years or 100,000 miles. On the date of the initial hearing on this matter, August 24, 2015, the vehicle's mileage was 10,832. The vehicle's basic express warranty is still in effect. Respondent is under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranties.

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

III. FINDINGS OF FACT

1. Nancy E. Hanley and Michael T. Hanley (Complainants) leased a new 2015 Kia K900 from World Car Kia (World Car) in New Braunfels, Texas, on July 26, 2014. The vehicle's mileage was 29 at the time of delivery.
2. The current lessor of the vehicle is Hyundai Lease Titling Trust.
3. The manufacturer of the vehicle, Kia Motors America, Inc. (Respondent), issued a limited warranty for the vehicle for the first five (5) years or 60,000 miles from the date of first service, whichever comes first.
4. The vehicle's mileage on the date of hearing was 10,832.
5. At the time of hearing the vehicle's basic express warranty was still in effect.
6. Complainant took the vehicle to Respondent's authorized dealer, World Car, on the following dates, in order to address a door lock issue:
 - a. August 20, 2014, at 649 miles; and
 - b. November 10, 2014, at 2,429 miles.
7. On August 20, 2014, the dealer's service technician was unable to recreate Complainant's concern with the vehicle's door locks. However, the decision was made to replace the vehicle's driver's side door lock actuator in order to address Complainant's concern.
8. On November 10, 2014, the dealer's service technician was unable to recreate Complainant's concern. As a result, no repairs were performed on the vehicle.
9. On March 12, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. Respondent did not perform a final repair attempt on the vehicle since the Department's case advisor indicated that the concern was intermittent and would be hard to duplicate and he did not feel that a repair attempt should be scheduled.
11. On May 5, 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.

12. The initial hearing in this case convened on August 24, 2015, in San Antonio, Texas, before Hearings Examiner Edward Sandoval. Complainant, Michael T. Hanley, was present and represented Complainants. Also present was Nancy Hanley, co-Complainant, who testified in the hearing. Respondent, Kia Motors America, Inc., was represented by Stephen Navarro, associate attorney with Naman, Howell, Smith, and Lee, PLLC. Richard Peralta, Field Technical Representative; Stormy Childery, District Parts and Service Manager; and Matthew Alexander, Parts and Service Manager for World Car Kia in New Braunfels, Texas appeared to offer testimony on behalf of Respondent. Averie Maldonado, associate attorney with Naman, Howell, Smith, and Lee, PLLC, observed. The hearing reconvened and the record closed on October 12, 2015, in New Braunfels, Texas, before Hearings Examiner Edward Sandoval. Complainant, Michael T. Hanley, was present and represented Complainants. Also present was Nancy Hanley, co-Complainant, who testified in the hearing. Respondent, Kia Motors America, Inc., was represented by Stephen Navarro, associate attorney with Naman, Howell, Smith, and Lee, PLLC. Richard Peralta, Field Technical Representative; Stormy Childery, District Parts and Service Manager; and Matthew Alexander, Parts and Service Manager for World Car Kia in New Braunfels, Texas appeared to offer testimony on behalf of Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. Tex. Occ. Code § 2301.605(a).

7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's powertrain warranty. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

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

SIGNED November 24, 2015



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