

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0350 CAF**

**LEVI VILLARREAL,  
Complainant**

v.

**DRV, LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Levi Villarreal (Complainant) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his recreational vehicle manufactured by DRV, LLC (Respondent). The hearings examiner concludes that the vehicle continues to have warrantable defects that substantially impair the value of the vehicle after being out of service over 30 days for repair. Consequently, the Complainant's vehicle qualifies for repurchase/replacement or warranty repair.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice of hearing<sup>1</sup> and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on December 7, 2015, in Brownwood, Texas, before Hearings Examiner Andrew Kang. The record closed on January 8, 2016, the deadline for responding to the Complainant's written submission on attorney fees. Sara LeMoine Knox represented the Complainant. The Complainant and Desiree Villarreal, the Complainant's spouse, testified for the Complainant. Chad Olinger, Director of Customer Relations, represented and testified for the Respondent.

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<sup>1</sup> TEX. GOV'T CODE § 2001.051.

## II. Discussion

### A. Applicable Law

#### 1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”<sup>2</sup> In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.<sup>3</sup> In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

##### a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.<sup>4</sup>

##### b. Substantial Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. Under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”<sup>5</sup>

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<sup>2</sup> TEX. OCC. CODE § 2301.604(a).

<sup>3</sup> TEX. OCC. CODE § 2301.604(a).

<sup>4</sup> TEX. OCC. CODE § 2301.601(4).

<sup>5</sup> *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

**c. Reasonable Number of Repair Attempts**

The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.<sup>6</sup> The first applies generally,<sup>7</sup> the second applies to serious safety hazards,<sup>8</sup> and the third applies to vehicles out of service for repair for at least 30 days.<sup>9</sup> In this case, the presumption for vehicles out of service at least 30 days applies. For vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) 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 occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>10</sup>

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.<sup>11</sup> Furthermore, the Department adopted a decision implying that if the consumer takes the vehicle for a service visit then that visit would constitute a repair attempt unless the consumer was at fault for failure to repair the vehicle.<sup>12</sup>

**d. Other Requirements**

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;<sup>13</sup> (2) the manufacturer was given an

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<sup>6</sup> TEX. OCC. CODE § 2301.605(a).

<sup>7</sup> TEX. OCC. CODE § 2301.605(a)(1).

<sup>8</sup> TEX. OCC. CODE § 2301.605(a)(2).

<sup>9</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>10</sup> TEX. OCC. CODE § 2301.605(a)(3).

<sup>11</sup> "[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite 'reasonable number of attempts.'" *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

<sup>12</sup> "[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute." *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

<sup>13</sup> TEX. OCC. CODE § 2301.606(c)(1).

opportunity to cure the defect or nonconformity;<sup>14</sup> and (3) the owner filed the Lemon Law complaint within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.<sup>15</sup>

## 2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair under Section 2301.204 of the Texas Occupations Code if the vehicle has a "defect . . . that is covered by a manufacturer's . . . warranty agreement applicable to the vehicle."<sup>16</sup>

## 3. Incidental Expenses

When granting repurchase or replacement relief, the Lemon Law allows reimbursement of certain reasonable, documented, incidental expenses resulting from the loss of use of the vehicle because of the complained of defects. These expenses include, but are not limited to:

(1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle's failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use.<sup>17</sup>

### A. Complainant's Evidence and Arguments

On July 25, 2014, the Complainant, purchased a new 2014 Mobile Suites 38 RESB3 from ExploreUSA RV Supercenter, an authorized dealer of the Respondent, DRV, LLC, in Kyle, Texas.<sup>18</sup> The vehicle's limited warranty covers the vehicle for one year from the original purchase date or the date first placed in service, whichever occurs first, except that the warranty covers the

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<sup>14</sup> TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer satisfies the "opportunity to cure" requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

<sup>15</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>16</sup> TEX. OCC. CODE § 2301.204.

<sup>17</sup> 43 TEX. ADMIN. CODE § 215.209.

<sup>18</sup> Complainant's Ex. 1, Purchase Contract.

structure (aluminum wall studs, floor joists, and roof rafters) for three years from the original purchase date or the date first placed in service, whichever occurs first. The warranty applies to “defects in materials and workmanship supplied and attributable to DRV during normal use.” The warranty specifically excludes: “[e]quipment, products, components, appliances or accessories not originally manufactured by DRV;” “[d]amage caused by or related to: environmental conditions (salt, hail, chemicals in the atmosphere), rust, damage caused by accidents, misuse, negligence, abuse, condensation, overloading, vandalism, road hazards, rock chips, alterations, modifications, failure to perform normal maintenance which results in secondary damage to the unit;” “[m]inor adjustments to doors, drawers after 90 days of original retail sale date;” “[r]outine maintenance including, but not limited to, caulking, recaulking and waxing, tightening screws, latches, locks, brakes, combustion systems, changing light bulbs or fuses, and maintaining the heating or air conditioning system;” “[n]ormal deterioration, tears or punctures of soft goods due to wear, fading of furniture or drapes, fading of tents, carpet wear.”<sup>19</sup>

The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
April 26, 2015	Replace antenna, replace rear countertop, leaks in underbelly, A/C will not stay on, reflector missing, slide trim popped loose, refrigerator lock fell off, TV damaged, TV mounting bracket broke, breaker trips when running slides, stress cracks on front cap, brakes not working, hydraulic leak, <sup>20</sup>
July 8, 2015	Install Fantastic Vents <sup>21</sup>
July 13, 2015	Entry door lock inoperable, water heater valve leaking, door hinges crooked/bent, wood under water heater has water damage, screws on front cap trim required painting, towel hooks on bathroom door pulled out, <sup>22</sup>

The Respondent’s final opportunity to repair the vehicle began on August 8, 2015.<sup>23</sup>

<sup>19</sup> Complainant’s Ex. 2, 2014 Model Year Three (3) Year Limited Warranty.

<sup>20</sup> Complainant’s Ex. 5, Service Drive Check-In; Complainant’s Ex. 6, E-mail from Matt Graham to Desiree Villarreal with Service Drive Check-In; Complainant’s Ex. 7, Work Order A3954.

<sup>21</sup> Complainant’s Ex. 8, Work Order A4473.

<sup>22</sup> Complainant’s Ex. 9, Work Order A4504.

<sup>23</sup> Respondent’s Ex. 1, Warranty Claim C72464.

On July 25, 2015, the Complainant mailed a written notice of defect to the Respondent.<sup>24</sup> The Respondent apparently sent copies of the repair orders with the notice of defect. On July 31, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department). On August 28, 2015, the Complainant filed an amended complaint with the Department. The Complaint as amended alleged that the vehicle had: damage to the rear countertop, trim on outside slide panels broken off, a hydraulic hose leak, a water filter leak, damage from the water filter leak, the entry door not working, the refrigerator not working (needing a new compressor), electrical breaker tripping with both air conditioning units on, stress cracks on the front cap, broken compartment door hinges, blown fuses and tripped breakers when opening/closing slides, a towel hook come off the bathroom door, a water heater leak, rusted refrigerator doors, leaking underbelly piping, non-working motorized antenna, improperly working Fantastic vent in bathroom, squealing Fantastic vent in kitchen, a water leak at the entrance with water pooling at the carpet, a damaged television from a fall on the rear countertop, a missing rear reflector, and a non-working wall clock.

Despite the attempted repairs, the record shows that various defects continue to exist. The Complainant testified that the trim came loose inside and outside; the wall came completely undone in the bathroom; spider cracks appeared on the side panels of slide outs and the area where the gooseneck attaches to the truck; the gooseneck dropped a quarter inch; hydraulic fluid still leaked; and water leaked where the main water supply entered the vehicle. Mrs. Villarreal testified that water leaked in when it rained; the keyless entry still did not work; the compressor went out in the refrigerator; doors broke a week after repair; microwave oven squeals; a Fantastic vent squealed when powering off; a technician left a varnish thumbprint on a window shade. Mrs. Villarreal also noted that the dealer remounted the same TV after it fell off its mount on the wall. She expressed concern that the TV may have sustained damage. The Complainant and Mrs. Villarreal also provided photos of various alleged defects, including the scratched TV screen, trim on the left and right sides, water manifold, hydraulic lines, varnish thumbprint on a window shade, water filter, and underbody trim.<sup>25</sup>

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<sup>24</sup> Complainant's Ex. 19, Notice of Defect to Respondent, July 25, 2015.

<sup>25</sup> Complainant's Ex. 10, Complainant's Ex. 11 Complainant's Ex. 12 Complainant's Ex. 13 Complainant's Ex. 14 Complainant's Ex. 15 Complainant's Ex. 16 Complainant's Ex. 17 Complainant's Ex. 18.

In relevant part, the Complainant provided documentation of the following incidental expenses for mailing and obtaining alternate accommodations due to the loss of use of the Complainant's recreational vehicle:

Date	Expense	Amount
07/28/15	First class mail <sup>26</sup>	\$2.08
07/28/15	Priority mail express 2-day, return receipt, utility mailer <sup>27</sup>	23.98
05/01/15	RV rent <sup>28</sup>	500.00
05/23/15	Fredericksburg Hotel <sup>29</sup>	274.94
05/25/15	Fredericksburg Hotel <sup>30</sup>	89.02
06/02/15	Courtyard San Angelo <sup>31</sup>	190.67
06/08/15	Grand Inn Big Lake Texas <sup>32</sup>	500.00
06/14/15	Courtyard San Angelo <sup>33</sup>	191.10
07/01/15	RV rent <sup>34</sup>	500.00
08/09/15	Courtyard Arlington <sup>35</sup>	17.12
08/10/15	Courtyard Arlington <sup>36</sup>	143.35
08/12/15	Courtyard Denton <sup>37</sup>	357.17
	<b>Total</b>	<b>\$2,789.43</b>

### B. Respondent's Evidence and Arguments

Mr. Olinger noted that the original complaint centered on the TV and countertop. Mr. Olinger acknowledged the problems as serious, but not life-threatening. Mr. Olinger explained that the manufacturer cannot always control the timing and process of repair. He noted that the Respondent did not disapprove any warranty repairs on the Complainant's vehicle. Mr. Olinger

<sup>26</sup> Complainant's Ex. 21, Postal Receipt, First Class Mail, 7/28/2015.

<sup>27</sup> Complainant's Ex. 22, Postal Receipt, Priority Mail, 7/28/2015.

<sup>28</sup> Complainant's Ex. 23, Receipt No.311951.

<sup>29</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>30</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>31</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>32</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>33</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>34</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>35</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>36</sup> Complainant's Ex. 23, American Express Transaction Details.

<sup>37</sup> Complainant's Ex. 23, American Express Transaction Details.

stated that the manufacturer was not responsible for the entire 107 days the vehicle was out of service. Mr. Olinger testified that Mrs. Villarreal disagreement on how to fix it the countertop delayed its repair. Mr. Olinger described the disagreement as a month and a half process on the phone as to how to address the countertop. Mrs. Villarreal insisted that the countertop must not be taken apart. Mr. Olinger offered to: replace the damaged countertop with a new top; find a woodworker to repair the top; or provide a cash settlement for the Villarreals to find someone on their own to address the countertop. Mrs. Villarreal did not like any of the options. Mrs. Villarreal affirmed that she had an issue with not having a guarantee that the countertop would be the same as when purchased. Mr. Olinger opined that the real problem was a service problem and not a warranty problem and that the dealer disappointed the Complainant and the Respondent.

### C. Inspection

An inspection of the vehicle showed: the keyless entry not functioning; hydraulic fluid leaking; spider cracks in the gel coat; water marks left by water leaked under the water filter; basement doors rubbing (out of alignment); trim pulling off and screws coming out of the trim; bottom/belly sagging; rust on the frame; non-functioning wall clock; a crooked faceplate; loose trim at the entertainment center; odor from refrigerator compressor fluid/lubricant permeating food; refrigerator had a crack; a loose faucet handle; bulging wood panels with staples coming out; bubbling laminate on trim; and bowed trim in closet. Mr. Olinger noted that the sagging belly could result from water or the weight of insulation by itself. Mr. Olinger stated that many variables affect trim length, such as humidity, heat/cold, and whether cut too long. Mr. Olinger explained that the wall bulging may be due to movement and not a structural defect.

### D. Analysis

As further explained below, the Complainant's vehicle qualifies for repurchase or replacement relief. However, the complaint limits the scope of this proceeding.<sup>38</sup> Accordingly, issues not included in the complaint will not be addressed here.

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<sup>38</sup> The complaint identifies the issues to be addressed in this proceeding. *See* TEX. OCC. CODE § 2301.204; TEX. GOV'T CODE §§ 2001.051-2001.052.

## 1. Repurchase Replacement Relief

The Lemon Law only applies to warrantable defects. In this case the vehicle's warranty covers "defects in materials and workmanship supplied and attributable to DRV during normal use."<sup>39</sup> The warranty does not cover appliances and other components manufactured by third parties, such as the refrigerator and microwave oven.<sup>40</sup> Though the warranty does not apply to all of the alleged defects, the vehicle nevertheless has warrantable defects that support the granting of repurchase relief.

Mr. Olinger noted that the issues were all repairable and that the dealer and Mrs. Villarreal contributed to delays in repair; however, the Lemon Law applies a different standard for determining whether a vehicle qualifies for relief: if a warrantable defect that substantially impairs the use or value of the vehicle still exists after being 30 days out of service for repair, then the vehicle qualifies for replacement or repurchase. In this case, the record shows that multiple warrantable defects continue to exist after being out of service well over 30 days (specifically, 107 days) with at least two repair attempts in the 12 months after delivery. Despite the defects being repairable, the current condition of the vehicle (given the variety and number of existing defects) would deter a reasonable prospective purchaser from buying the vehicle or would substantially reduce the price such buyer would pay for the vehicle. Accordingly, the vehicle qualifies for repurchase or replacement.

## 2. Incidental Expenses

When granting repurchase or replacement, the Department's rules provide for reimbursement of certain incidental expenses (verified by receipts or similar documents) resulting from the loss of use of the motor vehicle.<sup>41</sup> The Department's rules also allows reimbursement of attorney fees; however, this only applies if the Complainant retained counsel after notification that the Respondent has counsel.<sup>42</sup> The record shows that the Complainants had reimbursable expenses; however, the food expenses and attorney fees do not qualify for reimbursement.

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<sup>39</sup> Complainant's Ex. 2, 2014 Model Year Three (3) Year Limited Warranty.

<sup>40</sup> Complainant's Ex. 2, 2014 Model Year Three (3) Year Limited Warranty. The warranty specifies that the following are not covered under warranty: "Equipment, products, components, appliances or accessories not originally manufactured by DRV."

<sup>41</sup> 43 TEX. ADMIN. CODE § 215.209.

<sup>42</sup> 43 TEX. ADMIN. CODE § 215.209(a)(6).

**a. Meals**

The rules allow reimbursement of “meals . . . necessitated by the vehicle’s failure during out-of-town trips.”<sup>43</sup> In other words, if a vehicle’s failure strands a complainant while out of town, forcing a complainant to eat meals while stranded, then such meals would be reimbursable. However, the meals in this case do not result from the Complainant’s vehicle failing while out of town. Consequently, the meal expenses are not reimbursable.

**b. Attorney Fees**

The rules only allow reimbursement of attorney fees if the Respondent had legal representation in this case prior to the Complainant retaining an attorney. The filings in this case do not include any notice of appearance by an attorney for the Respondent. Consequently, the attorney fees in this case are not reimbursable.

**c. Rental Recreational Vehicle and Hotéis**

The rules allow reimbursement for “alternate transportation”, that is, a substitute for the vehicle which cannot be used.<sup>44</sup> In this case, the rental recreational vehicle and hotels constitute substitutes for the Complainant’s out-of-service recreational vehicle. Accordingly, expenses for alternate accommodations, in place of the Complainant’s out-of-service recreational vehicle, are reimbursable.

**III. Findings of Fact**

1. On July 25, 2014, the Complainant, purchased a new 2014 Mobile Suites 38 RESB3 from ExploreUSA RV Supercenter, an authorized dealer of the Respondent, DRV, LLC, in Kyle, Texas.
2. The vehicle’s limited warranty covers the vehicle for one year from the original purchase date or the date first placed in service, whichever occurs first, except that the warranty covers the structure (aluminum wall studs, floor joists, and roof rafters) for three years from the original purchase date or the date first placed in service, whichever occurs first. The warranty applies to “defects in materials and workmanship supplied and attributable to

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<sup>43</sup> 43 TEX. ADMIN. CODE § 215.209(a)(4).

<sup>44</sup> 43 TEX. ADMIN. CODE § 215.209(a)(1).

DRV during normal use.” The warranty specifically excludes: “[e]quipment, products, components, appliances or accessories not originally manufactured by DRV;” “[d]amage caused by or related to: environmental conditions (salt, hail, chemicals in the atmosphere), rust, damage caused by accidents, misuse, negligence, abuse, condensation, overloading, vandalism, road hazards, rock chips, alterations, modifications, failure to perform normal maintenance which results in secondary damage to the unit;” “[m]inor adjustments to doors, drawers after 90 days of original retail sale date;” “[r]outine maintenance including, but not limited to, caulking, recaulking and waxing, tightening screws, latches, locks, brakes, combustion systems, changing light bulbs or fuses, and maintaining the heating or air conditioning system;” “[n]ormal deterioration, tears or punctures of soft goods due to wear, fading of furniture or drapes, fading of tents, carpet wear.”

3. The vehicle’s one year warranty expired on July 25, 2015. The vehicle’s three year structure warranty was in effect at the time of the hearing.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
April 26, 2015	Replace antenna, replace rear countertop, leaks in underbelly, A/C will not stay on, reflector missing, slide trim popped loose, refrigerator lock fell off, TV damaged, TV mounting bracket broke, breaker trips when running slides, stress cracks on front cap, brakes not working, hydraulic leak, <sup>45</sup>
July 8, 2015	Install Fantastic Vents <sup>46</sup>
July 13, 2015	Entry door lock inoperable, water heater valve leaking, door hinges crooked/bent, wood under water heater has water damage, screws on front cap trim required painting, towel hooks on bathroom door pulled out, <sup>47</sup>

5. The final repair attempt occurred on August 8, 2015.
6. The vehicle was out of service for repair for 107 days.

<sup>45</sup> Complainant’s Ex. 5, Service Drive Check-In; Complainant’s Ex. 6, E-mail from Matt Graham to Desiree Villarreal with Service Drive Check-In; Complainant’s Ex. 7, Work Order A3954.

<sup>46</sup> Complainant’s Ex. 8, Work Order A4473.

<sup>47</sup> Complainant’s Ex. 9, Work Order A4504.

7. The Complainant incurred \$2,789.43 in reimbursable incidental expenses as shown below:

<b>Date</b>	<b>Expense</b>	<b>Amount</b>
07/28/15	First class mail	\$2.08
07/28/15	Priority mail express 2-day, return receipt, utility mailer	23.98
05/01/15	Recreational vehicle rent	500.00
05/23/15	Fredericksburg Hotel	274.94
05/25/15	Fredericksburg Hotel	89.02
06/02/15	Courtyard San Angelo	190.67
06/08/15	Grand Inn Big Lake Texas	500.00
06/14/15	Courtyard San Angelo	191.10
07/01/15	Recreational vehicle rent	500.00
08/09/15	Courtyard Arlington	17.12
08/10/15	Courtyard Arlington	143.35
08/12/15	Courtyard Denton	357.17
	<b>Total</b>	<b>\$2,789.43</b>

8. On July 25, 2015, the Complainant mailed a written notice of defect to the Respondent.
9. On July 31, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department). On August 28, 2015, the Complainant filed an amended complaint with the Department. The Complaint as amended alleged that the vehicle had: damage to the rear countertop, trim on outside slide panels broken off, a hydraulic hose leak, a water filter leak, damage from the water filter leak, the entry door not working, the refrigerator not working (needing a new compressor), electrical breaker tripping with both air conditioning units on, stress cracks on the front, broken compartment door hinges, blown fuses and tripped breakers when opening/closing slides, a towel hook come off the bathroom door, a water heater leak, rusted refrigerator doors, leaking underbelly piping, non-working motorized antenna, improperly working Fantastic vent in bathroom, squealing Fantastic vent in kitchen, a water leak at the entrance with water pooling at the carpet, a damaged television from a fall on the rear countertop, a missing rear reflector, and a non-working wall clock.
10. On October 1, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, DRV, LLC, 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. The Office of Administrative Hearings subsequently issued an order resetting the hearing.

11. The hearing in this case convened on December 7, 2015, in Brownwood, Texas, before Hearings Examiner Andrew Kang. The record closed on January 8, 2016, the deadline for responding to the Complainant's written submission on attorney fees. Sara LeMoine Knox represented the Complainant. The Complainant and Desiree Villarreal, the Complainant's spouse, testified for the Complainant. Chad Olinger, Director of Customer Relations, represented and testified for the Respondent.
12. An inspection of the vehicle showed: the keyless entry not functioning; hydraulic fluid leaking; spider cracks in the gel coat; water marks left by water leaked under the water filter; basement doors rubbing (out of alignment); trim pulling off and screws coming out of the trim; bottom/belly sagging; rust on the frame; non-functioning wall clock; a crooked faceplate; loose trim at the entertainment center; odor from refrigerator compressor fluid/lubricant permeating food; refrigerator had a crack; a loose faucet handle; bulging wood panels with staples coming out; bubbling laminate on trim; and bowed trim in closet.

13. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$102,632.08
Date of delivery	07/25/14
Date of first report of defective condition	04/26/15
Date of hearing	12/07/15
Days out of service	107
Useful life determination	3,650
Incidental expenses	2,789.43

Purchase price, including tax, title, license and registration				\$102,632.08
<i>Unimpaired Days:</i> Date of first report of defective condition less date of delivery	04/26/15	-	7/25/14	= 275
<i>Impaired Days:</i> Date of hearing less date of first report of defective condition	12/07/15	-	4/26/15	= 225
Less days out of service for repair				<u>-107</u>
				118
<i>Reasonable Allowance for Use Calculations:</i>				
Unimpaired days	275	÷	3,650	× \$102,632.08 = \$7,732.55
Impaired days	118	÷	3,650	× \$102,632.08 × 50% = \$1,658.98
<b>Total reasonable allowance for use deduction</b>				<b>\$9,391.54</b>
Purchase price, including tax, title, license and registration				\$102,632.08
Less reasonable allowance for use deduction				-\$9,391.54
Plus filing fee refund				\$35.00
Plus reimbursement for incidental expenses				2,789.43
<b>TOTAL REPURCHASE AMOUNT</b>				<b>\$96,064.97</b>

#### 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. The Complainant timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant met the statutory requirement for a reasonable number of repair attempts. TEX. OCC. CODE § 2301.605(a)(1).
8. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that substantially impairs the market value of the vehicle continues to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604.
9. The Respondent shall reimburse the Complainant for incidental expenses under 43 TEX. ADMIN. CODE § 215.209.

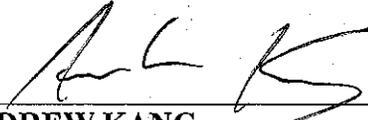
#### V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the 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. The Respondent shall repurchase the subject vehicle in the amount of **\$\$96,064.97**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the 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, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
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 31st calendar day from receipt of this order, the 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 the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division -- Lemon Law Section;
5. The 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's Enforcement Division -- Lemon Law Section; and
6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division -- Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

**SIGNED February 8, 2016**



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**ANDREW KANG  
HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**