

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0362 CAF**

**WILLIAM M. GAMBLE,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

William M. Gamble (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Chevrolet Spark LS. Complainant asserted five issues on the Lemon Law Complaint Form. These issues were: the vehicle intermittently turned off when being driven; the vehicle burned oil at a high rate; the vehicle had sluggish performance; the vehicle would shake and stutter during acceleration and deceleration; and the engine made abnormal noises during operation. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on November 18, 2015, in San Antonio Texas, before Hearings Examiner Edward Sandoval. Complainant, William Gamble was present to testify in the hearing. He was represented by his wife, Dominique Gamble. Respondent was represented by Kevin Phillips, Business Resource Manager. David Rice, Shop Foreman with Tom Benson Chevrolet; Roy McClure, Service Director with Tom Benson Chevrolet; and Craig LaVigne, Respondent's District Manager, all appeared to testify for 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

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five 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.⁶

B. Complainant's Evidence and Arguments

1. Dominique Gamble's Testimony

Complainant purchased a 2014 Chevrolet Spark LS from Freedom Chevrolet (Freedom) in San Antonio, Texas on June 21, 2014, with mileage of 3,059 at the time of delivery.^{7,8} On the date of hearing the vehicle's mileage was 31,839. At this time, Respondent's warranty coverage for the vehicle remains in place, with "bumper-to-bumper" coverage for three years or 36,000 miles, whichever comes first.⁹ In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 100,000 miles.¹⁰

In November of 2015, Ms. Gamble had driven the vehicle to work. During the course of the day, Ms. Gamble went to where the vehicle was parked and started it. The vehicle started and then

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated June 21, 2014.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated June 21, 2014.

⁹ Complainant Ex. 17, 2014 Chevrolet Limited Warranty and Owner Assistance Information manual.

¹⁰ *Id.*

turned off immediately. She attempted to start the vehicle again. The vehicle started immediately and stayed on. As a result of this incident, Ms. Gamble made an appointment to take the vehicle to Freedom for repair.

On November 12, 2014, Complainant took the vehicle to Freedom in order to address the issue of the vehicle turning off on its own. Freedom's service technician could not duplicate the problem. Complainant's concern was not included on the repair order prepared by the service advisor. The vehicle's mileage at the time of the repair visit was 11,779.¹¹ The vehicle was in the dealer's possession for one (1) day. Complainant was not provided with a loaner or rental vehicle.

On December 20, 2014, Ms. Gamble was driving the vehicle with two passengers. She was leaving the parking lot of a bakery when the vehicle turned off. Ms. Gamble was able to steer the vehicle into the center lane, put the vehicle in park, and restarted it. The vehicle started up without any problem. Ms. Gamble immediately called Freedom to inform the dealer of the issue and to schedule an appointment to take the vehicle for repair. There was also another incident around the same time where the vehicle turned off while Ms. Gamble was driving her mother to the airport. Again, the vehicle restarted immediately afterwards.

On December 23, 2014, Ms. Gamble took the vehicle to Freedom for repair as a result of the prior incidents. Freedom's service technician could not find any trouble codes stored on the vehicle's computers nor could he duplicate the concern.¹² The technician also performed a recall on the vehicle which involved replacing a positive crankcase ventilation (PCV) valve and cleaning the vehicle's throttle body.¹³ This recall was done since the PCV valve could wear prematurely which could cause excessive oil consumption. The vehicle's mileage on this repair visit was 14,922.¹⁴ The vehicle was in the dealer's possession for nine (9) days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

After Ms. Gamble picked up the vehicle from Freedom, there were no immediate problems. She felt that the vehicle had a rough ride, but she was informed by the dealer's service technicians that a rough ride was normal due to the continuous variable transmission (CVT) in the vehicle. In January of 2015, the vehicle's sensors indicated that the vehicle's oil life had dropped to 54%. In addition, the vehicle turned off again while it was being driven by Ms. Gamble. Complainant decided he wanted a second opinion, so he took the vehicle to Tom Benson Chevrolet (Benson) in San Antonio for repair.

¹¹ Complainant Ex. 3, Repair Order dated November 12, 2014.

¹² Complainant Ex. 4, Repair Order dated December 23, 2014.

¹³ *Id.*

On January 8, 2015, Complainant took the vehicle to Benson and indicated that he was concerned with the vehicle turning off unexpectedly when it was being driven. In addition, he indicated that he was concerned with the oil consumption of the vehicle. Benson's service technician checked the vehicle and could not find any trouble codes regarding why the vehicle was turning off and could not duplicate the problem.¹⁵ In addition, the technician determined that the oil level was where it should be and that there was no problem with the vehicle's oil consumption at the time.¹⁶ The vehicle's mileage on this repair visit was 15,631.¹⁷ The vehicle was in the dealer's possession for three (3) days during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Ms. Gamble testified that the vehicle did not drive any differently after the January 2015 repair visit. However, the vehicle did not turn off while being driven between January and March of 2015.

On March 31, 2015, Complainant took the vehicle to Benson for repair. This repair visit was for routine maintenance. However, Complainant felt that the vehicle was driving rough. This issue was raised with the dealer's service advisor; however, it was not included on the repair order. No other work was performed at the time except for an oil change and multi-point inspection.¹⁸ The vehicle's mileage was 20,994 at the time of the visit.¹⁹

Ms. Gamble testified that the vehicle began to clunk and shudder when accelerating. In addition, the vehicle was slow to accelerate and the engine's RPM's seemed to be higher than when Complainant first purchased the vehicle. In addition, sometime before June 11, 2015, Complainant was driving the vehicle when it turned off. He was able to start it up immediately after the vehicle died. During this same period of time, the vehicle's oil change warning light illuminated.

On June 11, 2015, Complainant took the vehicle to Freedom to address the issue of the vehicle's engine shutting off and for an oil change. Freedom's service technician determined that the vehicle needed service, but no work was done to address the engine dying.²⁰ The vehicle's mileage at the time of this repair visit was 29,060.²¹ The vehicle was in the dealer's possession

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated January 8, 2015.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 7, Repair Order dated March 31, 2015.

¹⁹ *Id.*

²⁰ Complainant Ex. 8, Repair Order dated June 11, 2015.

²¹ *Id.*

for two (2) days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

On June 13, Complainant took the vehicle to Benson to address his concerns with the vehicle. Complainant informed Benson's service advisor that he heard a ticking noise from the engine area.²² In addition, Complainant stated that on acceleration the vehicle sputtered and dragged and, at times, would start and die.²³ Also, Complainant felt that the vehicle's oil change light illuminated too soon after an oil change.²⁴ Benson's service technician updated the vehicle's transmission control module for the shutter and drag issues.²⁵ The technician replaced a bolt on the ignition coil to address the stall or no start issues.²⁶ The technician also checked the engine ticking noise and the oil life monitor, but could not find any problems in those areas, so no work was done to address those issues.²⁷ The vehicle's mileage on this repair visit was 29,076.²⁸ The vehicle was in the dealer's possession for three (3) days. However, Complainant did not receive a rental vehicle.

Complainant picked up the vehicle from Benson on June 17, 2015. While driving home, Complainant noticed that the vehicle began to shake during acceleration and during stops. As a result, he called Benson and scheduled another appointment to repair the vehicle.

On June 22, 2015, Complainant took the vehicle to Benson for further repair. Complainant informed Benson's service advisor that he felt a vibration in the vehicle when accelerating from a stop and when going uphill.²⁹ In addition, Complainant indicated that on acceleration from highway speeds, the engine's RPM's revved high and when the transmission shifted, he felt a clunk.³⁰ Benson's service technicians determined that the vehicle was operating within factory specifications and that no repairs were necessary.³¹ The vehicle's mileage at the time of this repair visit was 29,271.³² The vehicle was in the dealer's possession for one (1) day.

On July 13, 2015, Complainant took the vehicle to Benson and raised the same issues as he had on June 22, 2015, *i.e.*, vibration when accelerating and going uphill and RPM's revving high on

²² Complainant Ex. 9, Repair Order dated June 13, 2015.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complainant Ex. 11, Repair Order dated June 22, 2015.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

acceleration and a clunking noise when the transmission shifted.³³ Benson's service technician determined that the vehicle had an internal transmission failure.³⁴ As a result, the transmission was replaced.³⁵ The vehicle was in the dealer's possession for 50 days during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

On July 17, 2015, Complainant mailed a letter to Respondent notifying them of his dissatisfaction with the vehicle.³⁶ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on August 3, 2015.³⁷

Ms. Gamble testified that she and Mr. Gamble drove to Houston in the vehicle in September of 2015 and they encountered the same problems with the vehicle shuddering during acceleration. The vehicle has not died nor stalled since June of 2015. She feels that the vehicle still has a problem with sluggishness and shuddering. Complainant took the vehicle to an independent auto repair service (Belden's Automotive SP) on November 12, 2015. Belden's technician indicated that there were no fault codes present in the vehicle, but he did feel shuddering related to the transmission.³⁸ He suspected that there was an internal fault in the transmission or in the transmission control module.³⁹ The vehicle did not stall or die during any test drives.⁴⁰ The vehicle's mileage at the time was 31,518.⁴¹

During cross examination, Ms. Gamble testified that the vehicle had not been involved in any accidents. There is a scratch on the front of the vehicle and a nick on the windshield. The vehicle still has its original tires and has not had a flat. There are no after-market items on the vehicle and no software changes. The vehicle has not been towed. The vehicle has never left either her or her husband stranded. Although the vehicle had in excess of 3,000 miles on the odometer at the time of purchase, Complainant was informed that it was still considered to be a new vehicle. The vehicle has not died since prior to August of 2015.

³³ Complainant Ex. 12, Repair Order dated July 13, 2015.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Complainant Ex. 14, Letter to General Motors LLC dated July 17, 2015.

³⁷ Complainant Ex. 15, Lemon Law Complaint dated August 3, 2015. Complainant signed and dated the complaint on July 30, 2015. However, the complaint was not received by the Texas Department of Motor Vehicles until August 3, 2015, which is the effective date of the complaint.

³⁸ Complainant Ex. 13, Invoice from Belden's Automotive SP dated November 12, 2015.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

2. William Gamble's Testimony

Complainant, William Gamble, testified that he took the vehicle on March 31, 2015, to Benson to have repairs performed. He informed the service advisor that the vehicle was slow to accelerate and was driving rough. However, this information was not included on the repair order.

In June of 2015, Mr. Gamble was driving the vehicle on Interstate 37 on his way to work, when the vehicle died. He was able to pull over to the shoulder of the freeway and stop the vehicle. The vehicle started right up after he pulled over.

Mr. Gamble feels that the vehicle stutters and takes a while to accelerate. This is an everyday occurrence. He feels that the vehicle was driving the same after the transmission was replaced in August of 2015.

C. Respondent's Evidence and Arguments

1. David Rice's Testimony

David Rice is the shop foreman for Tom Benson Chevrolet in San Antonio, Texas. He has been in the automotive industry for 36 years. He worked as a technician for 23 years at a Cadillac dealership. He worked at another dealership for two (2) years as a shop foreman. He then worked as a shop foreman for two (2) years and as a service manager for two years (2) for Freedom Chevrolet. In September of 2009, he started working for Benson as a shop foreman.

On June 13, 2015, Complainant presented the vehicle to Benson for repair. During this repair visit, the technician performed two (2) repairs recommended by Respondent's technical service bulletins (TSB). One TSB was an attempt to address issues of the vehicle's harsh engagement and the second was to address the issue of the engine stalling.

Mr. Rice testified that Complainant's vehicle is not designed for speed, but for fuel economy. The vehicle has a 1.2 liter engine which is the smallest engine that Respondent makes.

On June 22, 2015, Complainant returned the vehicle for further repair. One of the recommendations by Benson's service technician was to replace the vehicle's air filter. However, Complainant refused the repair. Mr. Rice feels that replacing the air filter on such a small engine would be critical for the engine's performance. It's possible that there could be noticeable improvement in the engine's performance if the filter was to be replaced.

On July 13, 2015, Complainant did not raise the issue of the vehicle dying. He just mentioned vibration and clunk noise. The transmission was replaced during this repair visit. Mr. Rice feels that the vehicle was defect free after the transmission was replaced. He did not feel that there was anything abnormal with the vehicle's performance.

Mr. Rice feels that since the vehicle has a CVT transmission, you'll probably feel more of a shudder than in other larger vehicles. The CVT transmission is used in order to increase fuel economy for the vehicle and will shift more often at lower speeds. The driver may hear a rattle or tick noise as the transmission shifts gears which is common for the vehicle. He feels that the vehicle is safe and functioning fine without any defects.

During cross examination, Mr. Rice testified that dealers will get bulletins which can be a quick fix or to address concerns raised by customers. Sometimes the TSB's are done for customer satisfaction, even though the problems may not be able to be duplicated by the technicians. However, the bolt replacement on the ignition ground coil which was done on June 13, 2015, seems to have resolved the issue of the vehicle dying.

On July 13, 2015, the vehicle's transmission was replaced. The problems raised by Complainant (a vibration on acceleration from a stop and going uphill and a "clunk" when the vehicle's transmission shifts at high speed) were able to be duplicated. Respondent's technical assistance technician advised the dealer's technician to replace the transmission after looking at the scan tool readings on the transmission.

2. Roy McClure's Testimony

Roy McClure is the service director for Tom Benson Chevrolet. He has 30 years' experience in the automotive industry. He's been the service director for Benson since February of 2013. He's worked for several dealerships over the years as a technician and service director. As a service director, Mr. McClure oversees all of the dealer's technicians, service advisors, cashiers; he liaisons with the customer assistance center and deals with customers on a daily basis.

Mr. McClure has never driven Complainant's vehicle. He testified that the service advisors are required to write down on the repair order all complaints raised by any customers. Mr. McClure feels that the vehicle has been repaired so that the vehicle doesn't die any longer. In addition, the vibration and shudder concerns were addressed when the vehicle's transmission was replaced. If a repair is going to take longer than a day, the dealer will provide a rental vehicle to the customer.

3. Craig LaVigne's Testimony

Craig LaVigne is Respondent's District Manager for After-Sales. He's worked for Respondent for 25 years. He was involved in a test drive of Complainant's vehicle after the transmission was replaced. He feels that the vehicle was repaired at that time. He also testified that the vehicle was built for fuel economy and not for speed. After Complainant filed the Lemon Law complaint, Mr. LaVigne did not feel that a final repair attempt on the vehicle was necessary, since he had ridden in the vehicle and felt that it was repaired and functioning as designed.

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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

1. Vehicle Turning Off

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty." In the present case, the evidence indicates that Complainant's primary concern was that the vehicle's engine would turn off when it was being driven. This would definitely be a safety concern for any owner of a vehicle. However, relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.⁴² In the present case, the evidence reveals that the issue was addressed during the repair performed on June 13, 2015, and that the vehicle has not died or turned off while being driven since prior to this repair. As such, the hearings examiner must hold that the concern regarding the vehicle turning off when being driven has been repaired. As such, repurchase or replacement relief for Complainant is not warranted for this issue.

⁴² Tex. Occ. Code § 2301.605.

2. Vehicle Burning Oil Excessively

Complainant's second concern listed on the complaint form was that the vehicle seemed to be burning oil excessively. Complainant raised this issue only during two repairs (January 8, 2015 and June 13, 2015). The first complaint regarding this issue was raised by Complainant when the vehicle had been driven 15,631 miles. 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) specifies 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." The evidence presented at the hearing establishes that Complainant has not met the requirements of this test since Complainant has presented the vehicle for repair for the excessive oil consumption issue only two times since the date of purchase, with the first such repair being performed when the vehicle's mileage exceeded 12,000 from the date of original delivery to the owner. (The recall performed on December 23, 2014, does not count as a repair attempt, since the repair was performed as part of a recall campaign and was preventative in nature.) As such, Complainant has not met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle for this issue. As such, repurchase or replacement relief for Complainant is not warranted for this issue.

3. Vehicle's Sluggish Performance and Shaking and Stutter During Acceleration

These issues were combined since it appears that Complainant was raising similar issues regarding the vehicle "sputtering" and "dragging" at times, particularly during acceleration. (None of the repair orders indicates that Complainant specifically complained about the vehicle's "sluggish" performance, although this was included on the Lemon Law Complaint Form.) Complainant's testimony indicated that the issues were first raised during the March 31, 2015, repair at which time the vehicle's mileage was 20,994. Benson's technician, in conjunction with Respondent's technical service technician, determined that the vehicle's transmission was suffering from an internal failure which was causing the concerns raised by Complainant. As a result, the vehicle's transmission was replaced on the July 31, 2015, repair visit. Respondent argued that the vehicle was repaired and that any subsequent issues with sluggish performance was due to the fact that the vehicle has a very small engine and is designed for fuel economy and not speed. In addition, Respondent testified that there will be some rattles or shuddering in the vehicle due to the constant variable transmission which is used in this model vehicle. From the

evidence presented in the hearing, the hearing examiner must hold that the concerns have either been repaired or are normal for this vehicle. As such, repurchase or replacement relief for Complainant is not warranted for these issues.

4. Vehicle Makes Abnormal Noises

Complainant's testimony indicated that this issue was first raised during the June 13, 2015, repair at which time the vehicle's mileage was 29,076. At the time that Complainant spoke to Benson's service advisor regarding the concerns with the vehicle, Complainant indicated that he was hearing a ticking noise from the vehicle's engine area. The evidence revealed that Benson's technician determined that the ticking noise was normal. Complainant never raised the issue again. However, Complainant also indicated on June 22, 2015 and July 13, 2015, that the transmission made a "clunking" noise when shifting at high speeds. Subsequent to these complaints, the vehicle's transmission was replaced during the July 31, 2015, repair visit. Since the transmission's replacement, Complainant has not raised the issue of the transmission "clunking." It appears that this issue was repaired also. As such, repurchase or replacement relief for Complainant is not warranted for this issue.

Respondent's express warranty applicable to Complainant's vehicle provides "bumper-to-bumper" coverage for 3 years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for 5 years or 100,000 miles. On the date of hearing, the vehicle's mileage was 31,839 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. William Gamble (Complainant) purchased a new 2014 Chevrolet Spark LS on June 21, 2014, from Freedom Chevrolet (Freedom) in San Antonio, Texas, with mileage of 3,059 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a bumper-to-bumper warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 31,839.

4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized dealers in order to address his concerns with the vehicle intermittently turning off when being driven; the vehicle burning oil at a high rate; the vehicle having sluggish performance; the vehicle shaking and stuttering during acceleration and deceleration; and the engine making abnormal noises during operation on the following dates:
 - a. November 12, 2014, at 11,779 miles;
 - b. December 23, 2014, at 14,922 miles;
 - c. January 8, 2015, at 15,631 miles;
 - d. March 31, 2015, at 20,994 miles;
 - e. June 11, 2015, at 29,060 miles;
 - f. June 13, 2015, at 29,076 miles;
 - g. June 22, 2015, at 29,271 miles; and
 - h. July 13, 2015, at 29,622 miles.
6. On November 12, 2014, Complainant's informed the Freedom's service advisor that after he had started the vehicle, it immediately shut off. Complainant was informed by the service technician that the problem could not be duplicated. No repair was performed for this issue.
7. On December 23, 2014, Freedom's service technician was unable to duplicate the problem of the vehicle shutting off on its own. No repair was performed on the vehicle for this issue.
8. On December 23, 2014, Freedom's service technician performed a recall on the vehicle where he replaced the vehicle's positive crankcase ventilation (PCV) and cleaned the vehicle's throttle body pursuant to a recall issued by Respondent.
9. On January 8, 2015, Tom Benson Chevrolet's (Benson) service technician addressed the issue of the vehicle shutting off on its own and the vehicle's oil consumption. The technician could not duplicate the issue of the vehicle shutting off and determined that the oil consumption was normal.
10. On March 31, 2015, Benson's service technician performed an oil change. Complainant had raised the issue of the vehicle driving rough, but no work was performed on this issue.

11. On June 11, 2015, Freedom's service technician determined that the vehicle needed service, but did no work to address the concern. The vehicle was taken to Freedom because the vehicle's engine had turned off while being driven and for an oil change.
12. On June 13, 2015, Complainant raised several issues regarding the vehicle with Benson's service advisor. These were: a ticking noise from the engine; the vehicle sputtered and dragged during acceleration; the vehicle turning off while being driven; and the oil change light illuminated.
13. During the June 13, 2015, Benson's technician updated the vehicle's transmission control module to address the issue of the sputtering and dragging issue. In addition, the technician replaced a bolt on the vehicle's ignition coil to address the issue of the vehicle shutting off. The technician determined that the oil life monitor was operation normally and that the ticking noise was not abnormal.
14. On June 22, 2015, Benson's technician investigated the issues of a vibration in the vehicle when accelerating from a stop and going uphill and a clunking noise in the transmission when it shifted at high speed. The technician could not determine any problems with the vehicle and performed no repairs.
15. On July 13, 2015, Benson's technician looked into the same issues that were raised in Finding of Fact 13. The technician determined that there was an internal transmission failure and replaced the vehicle's transmission.
16. On August 3, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On September 30, 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.
18. The hearing in this case convened and the record was closed on November 18, 2015, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant, William Gamble was present to testify in the hearing. He was represented by his wife, Dominique Gamble. Respondent was represented by Kevin Phillips, Business Resource Manager. David Rice, Shop Foreman with Tom Benson Chevrolet; Roy McClure, Service Director

with Tom Benson Chevrolet; and Craig LaVigne, Respondent's District Manager, all appeared to testify for 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.