

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0368 CAF**

DAVID F. DIXON,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

David F. Dixon (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2013 Lincoln MKX. Complainant asserts that the vehicle's voice command feature (SYNC) doesn't work properly. Ford Motor Company (Respondent) argued that the issue is not a serious safety defect nor does it substantially impair the use or market value of the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for replacement 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 on December 16, 2015 in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainant, David F. Dixon, represented himself at the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs. Also present for Respondent was Zachary LaTour, Field Service Engineer. A continuance in the hearing was conducted telephonically on December 22, 2015. Present at the continuance were David F. Dixon, Complainant, representing himself. Also present was Maria Diaz, representing Respondent, and Zachary LaTour testifying for Respondent. The hearing record was closed on December 22, 2015.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by

repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

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

B. Complainant's Evidence and Arguments

Complainant purchased a 2013 Lincoln MKX from Rogers Auto Sales (Rogers) in Midland, Texas on April 9, 2014, with mileage of 168 at the time of delivery.⁶ On the date of hearing the vehicle's mileage was 14,641. At this time, Respondent's basic warranty coverage for the vehicle remains in effect. The basic "bumper-to-bumper" warranty provided coverage for four (4) years or 50,000 miles, whichever comes first.

Complainant testified that when he purchased the vehicle, Rogers' salesman informed him of the vehicle's SYNC system. However, the salesman did not help Complainant synch his cell phone to the system. Instead, the salesman informed Complainant that he should follow the owner's manual when he synched up the phone. As a result, Complainant did not completely understand how the system was supposed to work.

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁶ Complainant Ex. 1, Motor Vehicle Buyer's Order dated April 9, 2014.

Complainant testified that for the next few months the SYNC system did not work properly. He noticed that oftentimes when he pushed the activation button nothing happened. He would observe a message on the SYNC screen that the system was “listening” but nothing else would occur. Sometimes the system would indicate that an action was “successful.” However, most times nothing happened. Complainant assumed that the system was working as designed, so he did not take the vehicle for repair. Complainant finally discovered there was an issue with the SYNC system in his vehicle when he observed how a relative’s SYNC system worked in another vehicle.

Complainant took the vehicle to Rogers on December 11, 2014, because of his concern with the SYNC system. Complainant informed Rogers’ service advisor that he could not use the voice commands on the system.⁷ Rogers’ service technician performed a reset on the accessory protocol interface module (APIM) which houses the vehicle’s SYNC hardware and software and determined that the system was working properly.⁸ The vehicle’s mileage on this occasion was 7,432.⁹ The vehicle was in the dealer’s possession for one (1) day.¹⁰ Rogers provided Complainant with a loaner vehicle while his vehicle was being repaired.

Complainant testified that after the repair, the SYNC system worked correctly for a while. However, his cell phone still wouldn’t always connect to the system. After a few weeks the voice commands on the system stopped working. So, Complainant took the vehicle back to Rogers for repair on February 3, 2015. Complainant informed the service advisor that his cell phone sometimes wouldn’t connect to the SYNC system and that the voice commands had stopped working. Rogers’ service technician performed a “hard reboot” of the system by disconnecting the vehicle’s battery in order to address both issues.¹¹ In addition, the technician reprogrammed the vehicle’s USB drive and updated the APIM.¹² The technician then determined that the SYNC system was operating as designed.¹³ During this same repair visit, the vehicle’s alternator was replaced in order to address an electrical issue with the vehicle. The vehicle’s mileage when it was taken to the dealership on this occasion was 8,663.¹⁴ The vehicle was in the dealer’s possession for nine (9) days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

⁷ Complainant Ex. 2, Repair Order dated December 11, 2014.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complainant Ex. 3, Repair Order dated February 3, 2015.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

The vehicle's SYNC system worked well when Complainant picked up the vehicle. However, the next time Complainant started the vehicle, the voice commands did not work. In addition, the phone connection with the system was intermittent. So, on April 13, 2015, Complainant took the vehicle to Rogers for repair to the system. Rogers' service technician determined that the APIM did not respond to voice commands.¹⁵ The technician replaced the vehicle's APIM in order to resolve the issue.¹⁶ The vehicle's mileage when it was delivered to the dealer on this occasion was 9,821.¹⁷ The vehicle was in the dealer's possession for five (5) days. Complainant received a loaner vehicle while his vehicle was being repaired.

The vehicle's SYNC system worked well for a while. However, Complainant again began having problems connecting his cell phone to the system and the voice commands failed to work. On July 7, 2015, Complainant took the vehicle to Rogers for repair to the system. Rogers' service technician verified the issue and determined that the system's amplifier was not working correctly.¹⁸ The technician replaced the vehicle's digital signal processing (DSP) module in order to address the issue.¹⁹ The vehicle's mileage when it was delivered to the dealer on this occasion was 10,808.²⁰ 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 the July 7, 2015, repairs, the SYNC system performed normally for a few days. However, it soon began exhibiting the same problems regarding not connecting with Complainant's cell phone and the voice command not working properly. So, On August 5, 2015, Complainant took the vehicle to Rogers to address the issues. Rogers' service technician could not determine what the problem was with the system. However, during the time that the vehicle was in Rogers' possession, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) and wrote a letter to Respondent informing them of his dissatisfaction with the vehicle. Respondent sent a field service engineer (FSE) to inspect the vehicle to determine the cause of the problem with the vehicle's SYNC system. The FSE could not duplicate the problems with the system. However, he recommended that Complainant drive the vehicle for about a month without connecting his cell phone to the system to see if the problem might be caused by Complainant's phone, a Nokia Lumia 920. Complainant was also informed to use the voice commands as much as possible to test the system. The vehicle's mileage when it was

¹⁵ Complainant Ex. 4, Repair Order dated April 13, 2015.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Complainant Ex. 5, Repair Order dated July 7, 2015.

¹⁹ *Id.*

²⁰ *Id.*

delivered to the dealer on this occasion was 12,193.²¹ The vehicle was in the dealer's possession for nine (9) days. Complainant was provided with loaner vehicle while his vehicle was being repaired.

On August 5, 2014, Complainant wrote a letter to Respondent advising them of the problems with the vehicle's SYNCH system.²² On August 18, 2015, Complainant filed a Lemon Law complaint with the TxDMV.²³

Complainant followed the FSE's instructions and did not connect his cell phone to the SYNC system for over thirty (30) days. The system worked fine during this period of time. Since Complainant had also been told by Rogers' service advisor that the I-Phone worked with the SYNC system, he decided to buy one. Complainant connected his new I-Phone 6 to the system and within four (4) days the voice commands failed to work. Complainant took the vehicle to Rogers on September 25, 2015, to repair the issue. The vehicle's mileage on this occasion was 13,240.²⁴ No work was performed to attempt to repair the issue.

Complainant feels that the issue with the SYNC system could be symptomatic of a larger problem with the vehicle. He feels that if the technicians continued to perform a hard reboot to the vehicle (i.e., disconnecting the vehicle's battery to reset the system), then this could also lead to a major problem down the road. He also feels that the trade-in value of the vehicle has been affected since he feels obligated to inform any purchaser of the vehicle of the problems he's experienced. In addition, he feels that the system not working correctly could be a safety issue because when the system is not working he has to take his eyes off the road to look at the touch screen in order to operate the system. The problems with the SYNC system did not occur immediately upon Complainant connecting his cell phone to the system but usually occurred after he had driven about 1,000 miles in the vehicle. However, when Complainant connected the I-Phone 6 to the system, it took only about four (4) days for the system to act up.

During cross examination, Complainant testified that he has not attempted to trade-in or sell the vehicle.

C. Respondent's Evidence and Arguments

²¹ Complainant Ex. 6, Repair Order dated August 5, 2015.

²² Complainant Ex. 8, Letter to Ford Motor Company dated August 5, 2015.

²³ Complainant Ex. 7, Lemon Law Complaint dated August 18, 2015. Complainant signed the complaint on August 22, 2015, which was in error, since the complaint was actually received by Texas Department of Motor Vehicles on August 18, 2015, which is the effective date of the complaint.

²⁴ Complainant Ex. 9, Repair Order dated September 25, 2015.

1. Maria Diaz' Testimony

Maria Diaz, Legal Analyst for Consumer Affairs, received Complainant's letter to Respondent on August 10, 2015. She contacted Complainant the following day and was informed that the vehicle was at Rogers. Ms. Diaz informed Complainant that she would assign an FSE to inspect the vehicle and perform a final repair attempt. Ms. Diaz scheduled the final repair attempt for August 13, 2015.

2. Zachary LaTour's Testimony

Zachary LaTour, Field Service Engineer, has been working in the automotive industry since 2007. He's worked for Respondent as an FSE for the past two (2) years. Mr. LaTour is a Ford Master Certified mechanic. He has Automotive Service Excellence (ASE) certifications in manual and automatic transmissions, steering suspension, and engine repair. He has a Bachelor's degree in automotive service management.

Mr. LaTour first became involved in this case when he was contacted by Ms. Diaz to perform an inspection and final repair attempt on Complainant's vehicle. The final repair attempt was performed on August 13, 2015, at Rogers in Midland, Texas. When Mr. LaTour arrived at the dealership, he interviewed both the service technicians and service manager to determine what the problem was with the vehicle. The technicians and service manager explained about the problems Complainant had been experiencing with the SYNC system and the fact that the problems were intermittent. Mr. LaTour was also informed that both the APIM and DSP had been replaced in the system. Mr. LaTour used a scan tool and a laptop to perform self-tests on the modules involved with the SYNC system. He did not uncover any diagnostic trouble codes while performing the self-tests. Mr. LaTour connected two (2) different cell phones (a Galaxy Note 3 and an I-Phone 5c) to the SYNC system and they both seemed to operate correctly. After checking the system completely, Mr. LaTour was unable to duplicate Complainant's concern with the system. He then recommended that Complainant be advised not to connect his cell phone to the SYNC system for a while to see if the problem could be with phone. Mr. LaTour did not recommend that any repairs be performed to the system at the time. He was later informed that when Complainant purchased a new phone and connected it to the system, the system malfunctioned again.

During cross-examination Mr. LaTour testified that he wanted to verify if the issues Complainant was encountering was with Complainant's cell phone or the vehicle. Once it could be determined

the problem was with the vehicle, then Respondent's representatives could attempt to fix the problem. He attempted to stress this with the dealer's service technicians, but it appears that they did not fully understand this. If the problem could be duplicated, then Respondent would know that the problem was with the vehicle and try to resolve Complainant's concerns. Mr. LaTour stated that he would not have wanted Complainant to get a new phone until it was established that the problem lay with Complainant's cell phone, but this information was not relayed to Complainant. If the problem had recurred before Complainant purchased a new phone, Mr. LaTour stated he would have started from scratch to determine what was causing the problem with the SYNC system.

D. Analysis

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

It is clear from the evidence presented at the hearing that the vehicle's SYNC system does not operate properly. Complainant has attempted to connect two (2) different cell phones to the system and the system began to malfunction shortly after each phone was connected. In addition, the system did not work properly during the vehicle inspection by the parties and the hearings examiner on December 16, 2015, the date of the initial hearing. The loss of usage of the SYNC system has a negative impact on the value of the vehicle. Such systems are often selling points for vehicles in the present day. Many consumers will not purchase new vehicles that don't contain such systems. As such, Complainant has proven by a preponderance of the evidence the existence of a defect in the vehicle which substantially impairs the vehicle's use or market value.

Complainant purchased the vehicle on April 9, 2014, and presented the vehicle to Rogers Ford Sales, an authorized dealer of Respondent, due to his concerns with the vehicle's SYNC system on: December 11, 2014; February 3, 2015; April 13, 2015; July 7, 2015; and August 5, 2015. 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 met the requirements of this test since he took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter dated August 5, 2015, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt was performed on August 13, 2015, by Respondent’s representative who determined that no repairs were necessary at that time.

Although the Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met his burden of proof to establish that the vehicle has a warrantable and existing defect or condition that substantially impairs the vehicle’s use and market value.

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

III. FINDINGS OF FACT

1. David F. Dixon (Complainant) purchased a new 2013 Lincoln MKX on April 9, 2014, from Rogers Ford Sales (Rogers), in Midland, Texas, with mileage of 168 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent) issued a bumper-to-bumper warranty for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle’s mileage on the date of hearing was 14,641.
4. At the time of hearing the vehicle’s basic warranty was still in effect.

5. After purchasing the vehicle, Complainant noticed that the vehicle's voice command feature (SYNC) did not work properly. He had trouble connecting his phone to the system and the voice commands did not work.
6. Complainant took the vehicle to Respondent's authorized dealer, Rogers, in order to address his concerns with the vehicle's voice command feature (SYNC) system, on the following dates:
 - a. December 11, 2014, at 7,432 miles;
 - b. February 3, 2015, at 8,663 miles;
 - c. April 13, 2015, at 9,821 miles;
 - d. July 7, 2015, at 10,808 miles; and
 - e. August 5, 2015, at 12,193 miles.
7. Respondent, through its authorized dealer, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
8. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's problems with the SYNC system make it less desirable to drive than comparable vehicles.
9. Complainant provided written notice of the defect to Respondent on August 8, 2015, and Respondent was given the opportunity to perform a final repair on the vehicle on August 13, 2015.
10. On August 18, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On September 25, 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 hearing in this case convened on December 16, 2015 in Odessa, Texas before Hearings Examiner Edward Sandoval. Complainant, David F. Dixon, represented himself

at the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs. Also present for Respondent was Zachary LaTour, Field Service Engineer. A continuance in the hearing was conducted telephonically on December 22, 2015. Present at the continuance were David F. Dixon, Complainant, representing himself. Also present was Maria Diaz, representing Respondent, and Zachary LaTour testifying for Respondent. The hearing record was closed on December 22, 2015.

IV. CONCLUSIONS OF LAW

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

IT IS THEREFORE ORDERED that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's 2013 Lincoln MKX (the reacquired vehicle) with Complainant's choice of any comparable motor vehicle.
2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainant under the following terms:
 - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);
 - (b) The trade-in value of Complainant's 2013 Lincoln MKX shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;
 - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$3,663.75);
 - (d) The use allowance paid by Complainant to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$3,628.75**, which is the amount that Complainant must be responsible for at the time of the vehicle exchange).
3. Respondent's communications with Complainant finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
4. Respondent shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department.²⁵

²⁵ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.

5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.
7. Respondent shall repair the defect or condition that was the basis of the 2013 Lincoln MKX's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
8. Upon replacement of Complainant's 2013 Lincoln MKX, Complainant shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):
 - (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
 - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
9. Complainant shall be responsible for obtaining financing, if necessary, to complete the transaction.
10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainant's 2013 Lincoln MKX pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$36,823.05**. The refund shall be

paid to Complainant and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainant.

Purchase price, including tax, title, license and registration	\$40,451.80
Delivery mileage	168
Mileage at first report of defective condition	7,432
Mileage on hearing date	14,641
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$40,451.80
Mileage at first report of defective condition				7,432	
Less mileage at delivery				<u>-168</u>	
Unimpaired miles				7,264	
Mileage on hearing date				14,641	
Less mileage at first report of defective condition				<u>-7,432</u>	
Impaired miles				7,209	
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
				<u>7,264</u>	
	120,000	X	\$40,451.80	=	\$2,448.68
Impaired miles					
				<u>7,209</u>	
	120,000	X	\$40,451.80	X .5	= <u>\$1,215.07</u>
Total reasonable allowance for use deduction:					\$3,663.75
Purchase price, including tax, title, license and registration					\$40,451.80
Less reasonable allowance for use deduction					<u>-\$3,663.75</u>
Plus filing fee refund					<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT					\$36,823.05

11. If Complainant's 2013 Lincoln MKX is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED January 25, 2016.



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