

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0070 CAF**

**KABLE RISNER,  
Complainant**

**v.**

**FCA US LLC,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Kable Risner (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 vehicle manufactured by FCA US LLC (Respondent). The hearings examiner concludes that the subject vehicle has a warrantable defect that substantially impairs the vehicle's market value. Consequently, the Complainant's vehicle qualifies for repurchase/replacement relief.

**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 and the record closed on February 24, 2016, in Conroe, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself, and his spouse, Stephanie Risner, testified for the Complainant. Jan Kershaw, represented the Respondent. Tymothen (Tym) Mancini, Technical Advisor, 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**

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the 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 (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.<sup>6</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>7</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>8</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>9</sup> (2) the manufacturer was given an opportunity to cure the defect or nonconformity;<sup>10</sup> and (3) the owner filed the Lemon Law

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<sup>6</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>7</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>8</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>9</sup> TEX. OCC. CODE § 2301.606(c)(1).

<sup>10</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).

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>11</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>12</sup>

## 3. The Complaint Limits the Issues in this Case

The law limits the scope of this case to the issues identified in the complaint and any amendments.<sup>13</sup> The pleadings must state facts "sufficient to identify with reasonable definiteness the matters at issue."<sup>14</sup>

### A. Complainant's Evidence and Arguments

On August 29, 2014, the Complainant, purchased a new 2014 Dodge Ram 350 from Henson Motor Company, a franchised/authorized dealer of the Respondent, FCA US LLC, in Madisonville, Texas.<sup>15</sup> The vehicle had 117 miles on the odometer at the time of purchase.<sup>16</sup> The vehicle's basic limited warranty coverage lasts for 36 months or 36,000 miles, whichever occurs first. The Complainant alleged: (1) the dealer failed to properly install pillar appliques, (2) the vehicle exhibited wind noise under certain conditions, (3) the tire pressure monitoring system (TPMS) malfunctioned, and (4) the windshield washer did not work after replacement of a steering column warning harness.

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<sup>11</sup> TEX. OCC. CODE § 2301.606(d)(2).

<sup>12</sup> TEX. OCC. CODE § 2301.204.

<sup>13</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.

<sup>14</sup> 43 TEX. ADMIN. CODE § 215.34.

<sup>15</sup> Complainant's Ex. 3, Purchase Agreement.

<sup>16</sup> Complainant's Ex. 2, Odometer Disclosure Statement.

**1. Applique**

The Complainant testified that the dealer replaced the applique pursuant to what the dealer represented as a recall. The applique as replaced had sand under the applique and areas where it bubbled. However, the Complainant noted that the original applique looked good. He affirmed that he did not originally have an issue with the applique but that the issue occurred when the dealer replaced the applique. Ms. Kershaw explained that there was no recall for the applique.

**2. Wind Noise**

The Complainant testified that he first noticed the wind noise shortly before the October 6, 2014, repair visit. The Complainant explained the noise was not constant. He believed the noise may have depended on cross winds. He typically experienced the noise going 70 mph or faster, with noise getting worse with increasing speed. He did not hear the noise during local driving and did not notice any air penetrating into the cabin. The Complainant stated that the vehicle clearly exhibited the wind noise issue at the dealership.

**3. Tire Pressure Monitoring System**

The Complainant first noticed the TPMS problem in June of 2015. He stated that the TPMS originally worked well, but in June of 2015, a front tire showed 0 psi and has not functioned properly since. The Complainant stated that the vehicle clearly exhibited the TPMS issue at the dealership. The Complainant also provided video evidence showing discrepancies between the tire pressure on the information display and the tire pressure measured with a tire pressure gauge at 23,645 miles.<sup>17</sup>

**4. Windshield Washer**

The Complainant testified windshield washer did not work after the repair of a steering column wiring harness under a recall. The Complainant explained that the windshield washer malfunctioned intermittently.

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<sup>17</sup> Complainant's Ex. 13, Check front tires.mp4; Complainant's Ex. 14, Front tires.mp4; Complainant's Ex. 15, left inside dual.mp4; Complainant's Ex. 16, left outside dual.mp4; Complainant's Ex. 17, right inside dual.mp4; Complainant's Ex. 18, right outside dual.mp4.

In relevant part, the Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
October 6, 2014	2,056	Wind noise <sup>18</sup>
July 13, 2015	15,623	Wind noise, pressure of two front tires do not appear on information display <sup>19</sup>
August 21, 2015	17,354	Tire pressure sensor replacement, wind noise, trim tape on pillars curling <sup>20</sup>
October 5, 2015	18,218	Door edge appliques not as smooth as new, front TPMS sensors do not read pressure, wind noise <sup>21</sup>
November 19, 2015	20,171	Wind noise, wavy door sill moldings, TPMS did not warn of flat tire <sup>22</sup>
November 23, 2015	20,260	Wind noise, tire pressure sensors do not read correctly, exterior trim <sup>23</sup>

On October 15, 2015, the Complainant mailed a written notice of defect to the Respondent. On October 20, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the vehicle made wind noise, the TPMS did not work properly, a dealership improperly replaced the applique on the pillars, and the windshield washer did not work.

### B. Respondent's Evidence and Arguments

On cross-examination, the Complainant affirmed that he had aftermarket tires installed roughly one month after buying the vehicle. However, he noted that he has the same problem even after reinstalling stock tires on the vehicle about October 2015. The Respondent provided an excerpt of the owner's manual stating that "TPMS malfunctions may occur for a variety of reasons, including the installation of replacement tires or wheels on the vehicle that prevent the TPMS from functioning properly."<sup>24</sup> Additionally, the owner's manual cautions that:

<sup>18</sup> Complainant's Ex. 5A, Invoice 229213.

<sup>19</sup> Complainant's Ex. 5B, Invoice 64044.

<sup>20</sup> Complainant's Ex. 5C, Invoice 67113.

<sup>21</sup> Complainant's Ex. 5D, Invoice 70611.

<sup>22</sup> Complainant's Ex. 5E, Invoice 74272.

<sup>23</sup> Complainant's Ex. 5F, Invoice 74511.

<sup>24</sup> Respondent's Ex. 1, Understanding Your Instrument Panel.

The TPMS has been optimized for the original equipment tires and wheels. TPMS pressures and warning have been established for the tire size equipped on your vehicle. Undesirable system operation or sensor damage may result when using replacement equipment that is not of the same size, type, and/or style. Aftermarket wheels can cause sensor damage.<sup>25</sup>

The Complainant confirmed that the tire pressure sensors were replaced. He explained that replacing factory wheels with aftermarket wheels posed a risk of damaging the tire pressure sensors. In addition, certain tires will break up the wireless signal from the sensors so that the tire pressure may not display correctly. Mr. Mancini confirmed that the vehicle had all six tire pressure monitors replaced during the August 21, 2015, repair visit. In closing, the Respondent asserted that the vehicle did not qualify for repurchase or replacement. The Complainant only raised the wind noise issue within the first 12 months or 12,000 miles, the wind noise was intermittent and despite driving in various directions during the test drive, the vehicle did not exhibit the wind noise, indicating that the wind resulted more from external conditions rather than a manufacturing defect in the vehicle. The Respondent noted that the Complainant did not raise the TPMS issue in the first 12 months or 12,000 miles, the TPMS sensor have not been replaced since the stock tires have been reinstalled, the windshield washer worked during the test drive, and the applique did not affect the value of the vehicle.

### **C. Inspection and Test Drive**

An inspection of the vehicle showed that the applique on the vehicle's pillars had bubbles and scratches. The TPMS appeared to show the correct pressure of all six tires. The vehicle's odometer displayed 24,356 miles at the start of the test drive. The vehicle did not exhibit any unusual wind noise despite traveling in different directions, with varying wind angles, under different conditions ranging from stop and go city driving to high speed highway driving. The windshield washer functioned properly during the test drive. However, the Complainant noted that the windshield washer would malfunction intermittently.

### **D. Analysis**

The vehicle has an existing warrantable defect that qualifies for repurchase or replacement. Repurchase/replacement and warranty repair relief only apply to warrantable defects. The

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<sup>25</sup> Respondent's Ex. 1, Understanding Your Instrument Panel.

vehicle's warranty specifies that: "The Basic Limited Warranty covers the cost of all parts and labor needed to repair any item on your truck when it left the manufacturing plant that is defective in material, workmanship or factory preparation." Consistent with the warranty, a manufacturing defect occurs when the vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a substandard part. A manufacturing defect occurs during the manufacturing process and exists when it leaves the manufacturer. Therefore, problems arising outside of the manufacturing process, such as improper dealer repairs, are not warrantable defects. In this case, the evidence shows that the issues with the applique, wind noise, and windshield washer are not warrantable defects. However, the TPMS issue is a warrantable defect subject to repurchase or replacement relief.

### **1. Pillar Applique**

The misapplied applique is not a warrantable defect. The Complainant testified that the original (manufacturer installed) applique looked good. In other words, the applique, when it left the manufacturer did not have a defect. Rather, the dealer's replacement of the applique appears to have caused the problems with the applique.

### **2. Wind Noise**

The high-pitched wind noise appears to be a consequence of environmental factors and not the result of a manufacturing defect. The Complainant expressed the belief that the noise may relate to cross-winds. The vehicle did not exhibit the complained of high-pitched wind noise during the test drive, despite a wide range of speeds, traveling in different directions with the wind blowing at different angles, indicating that particular environmental conditions proximately caused the wind noise rather than the condition of the vehicle. Accordingly, the wind noise is not a warrantable defect.

### **3. Tire Pressure Monitoring System**

Although installing aftermarket wheels and tires may cause TPMS issues, the evidence in this case indicates that the TPMS problems more likely than not constitute a warrantable defect subject to repurchase or replacement relief. Mr. Mancini testified that the concern with aftermarket tires relates to interference with the tire pressure monitors' signal, so reinstalling the original tires should have eliminated this concern, but the TPMS issue continued to persist. Mr. Mancini also explained that the concern with replacing the original wheels relates to damaging the tire pressure

sensors during the changeover to aftermarket wheels. However, a franchised dealer replaced the tire pressure sensors after the Complainant already had aftermarket wheels installed. Significantly, federal law prohibits a dealer or vehicle repair business from causing any part of a TPMS to be non-operative.<sup>26</sup> Essentially, a dealer cannot knowingly allow a vehicle to leave without a functioning TPMS. Accordingly, the vehicle's TPMS should have been functioning properly after the dealer replaced the tire pressure sensors on the aftermarket wheels. Moreover, since the aftermarket wheels were already in place when the dealer replaced the sensors, this situation did not present the risk of damage that may occur in removing the sensors from the factory wheels and installing them on the aftermarket wheels. Therefore, the TPMS malfunction appears more likely than not to arise from a warrantable defect.

Under the reasonable prospective purchaser standard, the malfunctioning TPMS substantially impairs the value of the vehicle. Federal law requires TPMS as part of a scheme "to reduce traffic accidents and deaths and injuries resulting from traffic accidents."<sup>27</sup> A prospective purchaser may reasonably be deterred from buying the vehicle or may pay significantly less for the vehicle because of the malfunctioning of a federally mandated safety feature such as TPMS.

Although the TPMS issue does not meet one of the statutory presumptions, the vehicle nevertheless had a reasonable number of repair attempts. A reasonable number of repair attempts can occur based on different circumstances and fewer attempts than specified in the statutory presumptions.<sup>28</sup> In this case, the TPMS problems did not present themselves until June of 2015, and the Complainant took the vehicle for repair on July 13, 2015, at 15,623 miles. The vehicle had 2,056 miles on October 6, 2014. Between October 6, 2014, and July 13, 2015, a span of 280 days, the vehicle accrued 13,567 miles or approximately 48.5 miles per day. Accordingly, the vehicle reached 12,117 miles (12,000 miles after delivery) approximately 72 days before July 13, 2015 (May 2, 2015). In other words, the first instance of the TPMS issue did not occur until

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<sup>26</sup> "A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative." 49 U.S.C. §§ 30122(b).

<sup>27</sup> 49 U.S.C. §§ 30101-30170; 49 CFR § 571.138

<sup>28</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).

approximately a month after the first 12,000 miles passed since delivery. The Complainant could not have possibly taken the vehicle to repair the TPMS issues within the first 12,000 miles since the TPMS problems did not exist until after 12,000 miles had already passed. However, the repair orders show a total of five repair visits for TPMS issues from July 13, 2015, at 15,623 miles to November 23, 2015, at 20,260 miles, a span of 133 days and 4,637 miles. Given the timing of the first instance of the TPMS issue and five TPMS repair attempts within 133 days and 4,637 miles, the vehicle has had a reasonable number of repair attempts. Video evidence showed that the TPMS malfunction occurred at 23,645 miles,<sup>29</sup> after the last repair attempt at 20,260 miles.

#### **4. Windshield Washer**

The evidence indicates that any issue with the windshield washer is not a warrantable defect. The Complainant testified that the windshield washer did not malfunction until after the recall repair by a dealer, that is, the windshield washer did not have a manufacturing defect when it left the factory. Rather, a dealer appears to have caused any problem with the windshield washer. Furthermore, the windshield washer functioned properly during the test drive.

### **III. Findings of Fact**

1. On August 29, 2014, the Complainant, purchased a new 2014 Dodge Ram 350 from Henson Motor Company, a franchised/authorized dealer of the Respondent, FCA US LLC, in Madisonville, Texas. The vehicle had 117 miles on the odometer at the time of purchase.
2. The vehicle's basic limited warranty coverage lasts for 36 months or 36,000 miles, whichever occurs first.
3. The vehicle's warranty was in effect at the time of the hearing.

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<sup>29</sup> Complainant's Ex. 13, Check front tires.mp4; Complainant's Ex. 14, Front tires.mp4; Complainant's Ex. 15, left inside dual.mp4; Complainant's Ex. 16, left outside dual.mp4; Complainant's Ex. 17, right inside dual.mp4; Complainant's Ex. 18, right outside dual.mp4.

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

Date	Miles	Issue
October 6, 2014	2,056	Wind noise <sup>30</sup>
July 13, 2015	15,623	Wind noise, pressure of two front tires do not appear on information display <sup>31</sup>
August 21, 2015	17,354	Tire pressure sensor replacement, wind noise, trim tape on pillars curling <sup>32</sup>
October 5, 2015	18,218	Door edge appliques not as smooth as new, front TPMS sensors do not read pressure, wind noise <sup>33</sup>
November 19, 2015	20,171	Wind noise, wavy door sill moldings, TPMS did not warn of flat tire <sup>34</sup>
November 23, 2015	20,260	Wind noise, tire pressure sensors do not read correctly, exterior trim <sup>35</sup>

5. On October 15, 2015, the Complainant mailed a written notice of defect to the Respondent.
6. On October 20, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the vehicle made wind noise, the TPMS did not work properly, a dealership improperly replaced the applique on the pillars, and the windshield washer did not work.
7. On December 8, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, FCA US 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.
8. The hearing in this case convened and the record closed on February 24, 2016, in Conroe, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself,

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<sup>30</sup> Complainant's Ex. 5A, Invoice 229213.

<sup>31</sup> Complainant's Ex. 5B, Invoice 64044.

<sup>32</sup> Complainant's Ex. 5C, Invoice 67113.

<sup>33</sup> Complainant's Ex. 5D, Invoice 70611.

<sup>34</sup> Complainant's Ex. 5E, Invoice 74272.

<sup>35</sup> Complainant's Ex. 5F, Invoice 74511.

and his spouse, Stephanie Risner, testified for the Complainant. Jan Kershaw, represented the Respondent. Tymothy (Tym) Mancini, Technical Advisor, testified for the Respondent.

9. The vehicle's odometer displayed 24,356 miles at the time of the hearing.
10. The vehicle operated normally during the test drive at the hearing. The vehicle was driven at varying speeds in different directions with a crosswind, headwind, and backwind without exhibiting any unusual wind noise. The windshield washer operated normally.
11. The first instance of the TPMS malfunction occurred after 12,000 miles from delivery.
12. The vehicle had a total of five repairs attempts for the TPMS issue from July 13, 2015, at 15,623 miles to November 23, 2015, at 20,260 miles.
13. Video evidence showed that the TPMS issue occurred even after all of the repair attempts.
14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$60,960.84
Delivery mileage	117
Mileage at first report of defective condition	15,623
Mileage on hearing date	24,356
Useful life determination	120,000

Purchase price, including tax, title, license and registration										\$60,960.84
Mileage at first report of defective condition	15,623									
Less mileage at delivery	-117									
<b>Unimpaired miles</b>	<b>15,506</b>									
Mileage on hearing date	24,356									
Less mileage at first report of defective condition	-15,623									
<b>Impaired miles</b>	<b>8,733</b>									
<i>Reasonable Allowance for Use Calculations:</i>										
Unimpaired miles	15,506	÷	120,000	×	\$60,960.84	=	\$7,877.16			
Impaired miles	8,733	÷	120,000	×	\$60,960.84	×	50%	=	\$2,218.21	
<b>Total reasonable allowance for use deduction</b>										<b>\$10,095.37</b>
Purchase price, including tax, title, license and registration										\$60,960.84
Less reasonable allowance for use deduction										-\$10,095.37
Plus filing fee refund										\$35.00
<b>TOTAL REPURCHASE AMOUNT</b>										<b>\$50,900.47</b>

#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles 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'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.

#### 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:

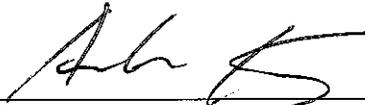
1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there 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 **\$50,900.47**. 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 days after the date this Order becomes final under Texas Government Code § 2001.144,<sup>36</sup> 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, starting on the 31st day after the date this Order becomes final, the Respondent is subject to a contempt

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<sup>36</sup> (1) If a party does not timely file a motion for rehearing, this Order becomes final when the period for filing a motion for rehearing expires, or (2) if a party timely files a motion for rehearing, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Decision and Order.

- 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 April 20, 2016**

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