

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0075 CAF**

**RODRICK N. THOMAS,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Rodrick N. Thomas (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 Ford Motor Company (Respondent). The hearings examiner concludes that the subject vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle's use or market value. Consequently, the Complainant's vehicle qualifies for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 April 5, 2016, in Lubbock, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Maria Diaz, Consumer Legal Analyst, represented the Respondent.

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

¹ TEX. GOV'T CODE § 2001.051.

that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² 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.³ 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.⁴

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.”⁵

c. Reasonable Number of Repair Attempts

The Lemon Law provides three ways to establish a rebuttable presumption that a reasonable number of repair attempts have been undertaken.⁶ The first applies generally,⁷ the

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

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

⁶ TEX. OCC. CODE § 2301.605(a).

⁷ TEX. OCC. CODE § 2301.605(a)(1).

second applies to serious safety hazards,⁸ and the third applies to vehicles out of service for repair for at least 30 days.⁹ In this case, the presumption for serious safety hazards is the most relevant. For serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.¹⁰

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.¹¹ 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.¹²

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;¹³ (2) the manufacturer was given an

⁸ TEX. OCC. CODE § 2301.605(a)(2).

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(a)(2).

¹¹ “[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).

¹² “[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).

¹³ TEX. OCC. CODE § 2301.606(c)(1). Note: the Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV’T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit by email.” mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016).

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

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."¹⁶

A. Complainant's Evidence and Arguments

On November 27, 2013, the Complainant, purchased a new 2014 Ford Focus from Gene Messer Ford, a franchised dealer of the Respondent, Ford Motor Company, in Lubbock, Texas.¹⁷ The vehicle had 11 miles on the odometer at the time of purchase.¹⁸ The vehicle's limited warranty's bumper to bumper coverage lasts for three years or 36,000 miles, whichever occurs first and the powertrain coverage lasts for five years or 60,000 miles, whichever occurs first.¹⁹

The Complaint identified five issues with the vehicle: transmission shudder; spontaneously shifting into reverse; sudden acceleration; rough idling; and inaccurate miles per gallon (mpg) distance to empty, and fuel economy far below the EPA estimates. The Complainant testified that the subject vehicle would shudder when taking off from a standstill, noting that the vehicle would hesitate and make a noise before actually moving. He reported the shuddering during the service visit to apply window tint. While driving in a parking garage at five mph, the vehicle spontaneously lurched in reverse, despite the gearshift being in drive, hitting a pedestrian. The Complainant could hear the engine revving like as if put in reverse. When the Complainant took the vehicle to the

¹⁴ 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).

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204.

¹⁷ Complainant's Ex. 1, Purchase Order.

¹⁸ Complainant's Ex. 4, Odometer Disclosure Statement.

¹⁹ Complainant's Ex. 5, 2014 Model Year Ford Warranty Guide.

dealer, the dealer found a transmission seal leaking. Replacement of the leaking seal resolved the spontaneous shifting for a while, but the problem gradually worsened. At a subsequent visit, the dealer diagnosed the cause of the spontaneous shifting as a faulty transmission control module (TCM) and replaced the TCM. The Complainant experienced spontaneous gear shifting as late as last month. Video evidence (recorded after the last warranty repair) indicated that the gear displayed on the dash changed, despite the gear shift lever remaining in drive.²⁰ The Complainant stated that the vehicle previously exhibited sudden acceleration; the vehicle tended to “peel out” or the tires would skip. He had first reported the acceleration issue at the service visit to apply window tint. The repair for the sudden acceleration issue did ameliorate the problem but also caused the vehicle to bog down when accelerating. The Complainant stated that the rough idle caused shaking on start-up and when coming to a stop. The dealer found and repaired an oil leak, but the vehicle continued to have the rough idling issue. The Complainant also had an issue with the vehicle’s fuel economy. The vehicle’s display showed an average fuel economy of 18 mpg, which the Complainant believed to reflect the actual mileage, not a computer issue, based on his fuel economy calculations from tracking fuel usage and miles driven. The subject vehicle’s latest Vehicle Health Report from Ford Motor Company, with maintenance information as of December 31, 2015, shows the Engine, Transmission & Emissions status as “URGENT SERVICE REQUIRED.” In particular, the report indicated that “a powertrain, all-wheel drive or four-wheel drive fault has been detected” and that “[t]he On-board Diagnostics System has detected a problem with the engine, transmission or an emission-related component or system.”²¹ In conclusion, the Complainant expressed a preference for repurchase relief.

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

²⁰ Complainant’s Ex. 23, 11.08.15 Ford Service Facebook Video; Complainant’s Ex. 24, IMG_6291.MOV.

²¹ Complainant’s Ex. 19, Vehicle Health Report, December 31, 2015.

Date	Miles	Issue
December 5, 2013	99	Transmission shudder, sudden acceleration ²²
May 4, 2015	13,642	Spontaneous/sudden acceleration ²³
September 24, 2015	19,260	Transmission control module recall, transmission shudder, hesitation, fuel mileage not reading correctly ²⁴
October 5, 2015	19,968	Vehicle will go into reverse when in drive ²⁵
October 27, 2015	19,388	Vehicle shifting into reverse on its own, transmission shudder
November 4, 2015	19,680	Vehicle went into park at 65 mph ²⁶
November 9, 2015	19,898	Transmission goes into neutral, park, and reverse while driving ²⁷

The Complainant also testified that he brought the vehicle to AutoNation Ford in Houston in May of 2014 at approximately 6,000 miles to address the spontaneous shift into reverse. However, the dealer declined to service the vehicle and did not document the visit. The Respondent's final opportunity for repair occurred on October 27, 2015.²⁸

On October 15, 2015, the Complainant mailed a written notice of defect to the Respondent.²⁹ On October 29, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department).

B. Respondent's Evidence and Arguments

The Respondent argued that the vehicle did not qualify for repurchase because it did not receive at least two repairs for the same condition in the first 12,000 miles. Moreover, the Respondent's field service engineer (FSE) could not duplicate the spontaneous shifting or

²² Complainant's Ex. 8, Repair Order Detail - Internal Copy 524034; Complainant's Ex. 21, Service Timeline. Note: the dealer did not attempt any repairs or document the transmission shudder or sudden acceleration issues but provided the Complainant the handout titled "PowerShift 6 Speed Operating Characteristics". Complainant's Ex. 17, PowerShift 6 Speed Operating Characteristics.

²³ Complainant's Ex. 10, Invoice 549473; Complainant's Ex. 10A, Repair Order Detail - Internal Copy 549473.

²⁴ Complainant's Ex. 12, Invoice 555798; Complainant's Ex. 12A, Repair Order Detail - Internal Copy 555798.

²⁵ Complainant's Ex. 13, Invoice 556260; Complainant's Ex. 14, Shop Notes Repair Order 556260. Note: the dealer appears to have incorrectly recorded the mileage for this service visit.

²⁶ Complainant's Ex. 15, Invoice 557715.

²⁷ Complainant's Ex. 16, Invoice 557899.

²⁸ Respondent's Ex. 1, Vehicle Inspection Report.

²⁹ Complainant's Ex. 6, letter from Complainant to Respondent dated October 15, 2015.

excessive transmission shudder at the October 27, 2015, final opportunity for repair. However, the dealer's technician and the FSE found a leak of what appeared to be engine oil. Other than identifying the source of the leak and making any repair necessary to resolve the leak, the FSE did not find any concerns requiring repair.³⁰

C. Inspection and Test Drive

The vehicle's odometer had 20,197 miles before the start of the test drive. Upon turning on the engine, the vehicle's information display showed two warning messages: a transmission malfunction service now and a steering assist fault service required. Additionally, the check engine light remained on throughout the test drive. At some point during the test drive, the hill start assist unavailable warning appeared on the display. While accelerating onto the highway, the accelerator was completely depressed to the floor, but the vehicle maintained a steady speed of 45 mph for approximately 40 seconds at 6,000 rpm before finally upshifting and increasing speed. The vehicle also exhibited some shuddering and hesitation.

D. Analysis

Although the vehicle's PowerShift transmission may normally exhibit some unusual characteristics inherent to the transmission's design, the spontaneous shifting falls outside the scope of normal operation and constitutes a warrantable defect subject to repurchase/replacement relief. The analysis here only addresses the spontaneous shifting since this issue determines the outcome of this case.

1. Warrantable Defect

The record shows that the vehicle has an existing warrantable defect – the vehicle spontaneously shifts out of drive despite physically placing the gear shift lever in drive. Although the vehicle has a non-conventional transmission with unusual normal characteristics (such as clicking metal sounds, gear whine, grinding, reverse gear whine, and characteristics similar to the drive, sound and feel of a manual transmission),³¹ the spontaneous shifting and associated loss of

³⁰ Respondent's Ex. 1, Vehicle Inspection Report.

³¹ Complainant's Ex. 17, PowerShift 6 Speed Operating Characteristics.

control falls outside of any normal characteristic of the vehicle. Further, the record shows that this issue has continued to occur after the last repair attempt.

2. Serious Safety Hazard

The record clearly shows that the spontaneous shifting issue “substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes” thereby constituting a serious safety hazard.³² This malfunction has already resulted in a collision with a pedestrian when the transmission changed into reverse, despite the gear shift lever remaining in drive. Moreover, the vehicle’s spontaneous shifting can cause (and has caused) uncontrollable losses of speed to the point the vehicle does not move.³³

3. Reasonable Number of Repair Attempts

Although the facts in this case do not precisely fit a statutory presumption for reasonable repair attempts, the vehicle nevertheless had a reasonable number of repair attempts given that: (1) the visit to AutoNation in Houston constitutes a repair attempt even though no repair occurred,³⁴ (2) the second repair attempt for spontaneous shifting occurred roughly 13,000 miles after the initial attempt, which does not significantly exceed the 12,000 mile limit (3) after the initial repair attempt, the vehicle had at least three additional repair attempts for the spontaneous shifting issue over a span of less than a month and less than 700 miles, and (4) the vehicle has demonstrated an unreasonable risk of harm. The statutory presumption for reasonable repair attempts applicable to serious safety hazards requires at least one repair attempt in the first 12 months or 12,000 miles and another attempt in the subsequent 12 months or 12,000 miles. In this case, the statutory presumption does not exactly apply. However, even if a statutory presumption does not apply, the case law explains that the Department may still find that “different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”³⁵ Here, the record shows a total of at least four repair attempts for the spontaneous shifting issue with the first

³² TEX. OCC. CODE § 2301.601(4).

³³ Complainant’s Ex. 23, 11.08.15 Ford Service Facebook Video; Complainant’s Ex. 24, IMG_6291.MOV.

³⁴ “[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).

³⁵ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

attempt occurring about 6,000 miles and the second attempt occurring about 13,000 miles after the first attempt, which does not differ materially from the 12,000 mile mark in the statutory presumption. After the initial attempt, the vehicle had at least three subsequent repair attempts for this issue from October 5, 2015, at 19,968 miles to November 9, 2015, at 19,898 miles. Moreover, the collision with a pedestrian caused by the vehicle's spontaneous shifting clearly demonstrates an unreasonable risk of harm. Given these circumstances, the vehicle has had a reasonable number of repair attempts.

III. Findings of Fact

1. On November 27, 2013, the Complainant, purchased a new 2014 Ford Focus from Gene Messer Ford, a franchised dealer of the Respondent, Ford Motor Company, in Lubbock, Texas. The vehicle had 11 miles on the odometer at the time of purchase
2. The vehicle's limited warranty's bumper to bumper coverage lasts for three years or 36,000 miles, whichever occurs first and the powertrain coverage lasts for five years or 60,000 miles, whichever occurs first.
3. The vehicle's warranty was in effect at the time of the hearing.
4. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
December 5, 2013	99	Transmission shudder, sudden acceleration
May 4, 2015	13,642	Spontaneous/sudden acceleration
September 24, 2015	19,260	Transmission control module recall, transmission shudder, hesitation, fuel mileage not reading correctly
October 5, 2015	19,968	Vehicle will go into reverse when in drive
October 27, 2015	19,388	Vehicle shifting into reverse on its own, transmission shudder
November 4, 2015	19,680	Vehicle went into park at 65 mph
November 9, 2015	19,898	Transmission goes into neutral, park, and reverse while driving

The Complainant also testified that he brought the vehicle to AutoNation Ford in Houston in May of 2014 at approximately 6,000 miles to address the spontaneous shift into reverse. However, the dealer declined to service the vehicle and did not document the visit. The Respondent's final opportunity for repair occurred on October 27, 2015.

5. On October 15, 2015, the Complainant mailed a written notice of defect to the Respondent.
6. On October 29, 2015, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) identifying five issues with the vehicle: transmission shudder; spontaneously shifting into reverse; sudden acceleration; rough idling; and inaccurate miles per gallon (mpg) distance to empty, and fuel economy far below the EPA estimates.
7. On January 5, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, Ford Motor Company, 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 April 5, 2016, in Lubbock, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented himself. Maria Diaz, Consumer Legal Analyst, represented the Respondent.
9. The vehicle's odometer displayed 20,197 miles at the time of the hearing.
10. The vehicle spontaneously shifts out of drive despite having the gear shift lever physically in drive.
11. The spontaneous shifting has caused the vehicle to unexpectedly and uncontrollably go into reverse and to change speeds.
12. The spontaneous shifting caused a collision with a pedestrian in a parking garage in May 2015.
13. The spontaneous shifting issue poses an unreasonable risk of harm.
14. The vehicle had one repair attempt for the spontaneous shifting issue in May of 2014 at approximately 6,000 miles and at least three subsequent repair attempts for the same issue from October 5, 2015, at 19,968 miles to November 9, 2015, at 19,898 miles.
15. The vehicle continued to exhibit problems with spontaneously shifting out of drive after the last repair attempt.

16. During the inspection and test drive at the hearing, the vehicle's information display initially showed two warning messages: a transmission malfunction service now and a steering assist fault service required. Additionally, the check engine light remained on throughout the test drive. At some point during the test drive, the hill start assist unavailable warning appeared on the display. While accelerating onto the highway, with the accelerator completely depressed to the floor, the vehicle maintained a speed of only 45 mph for approximately 40 seconds at 6,000 rpm before finally upshifting and increasing speed. The vehicle also exhibited some shuddering and hesitation.

17. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$22,195.91
Delivery mileage	11
Mileage at first report of defective condition	6,000
Mileage on hearing date	20,197
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$22,195.91		
Mileage at first report of defective condition	6,000		
Less mileage at delivery	-11		
Unimpaired miles	5,989		
Mileage on hearing date	20,197		
Less mileage at first report of defective condition	-6,000		
Impaired miles	14,197		
<i>Reasonable Allowance for Use Calculations:</i>			
Unimpaired miles	5,989	÷ 120,000 × \$22,195.91	= \$1,107.76
Impaired miles	14,197	÷ 120,000 × \$22,195.91 × 50%	= \$1,312.98
Total reasonable allowance for use deduction			\$2,420.74
Purchase price, including tax, title, license and registration	\$22,195.91		
Less reasonable allowance for use deduction	-\$2,420.74		
Plus filing fee refund	\$35.00		
TOTAL REPURCHASE AMOUNT	\$19,810.17		

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 provided sufficient notice of the defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
8. The Complainant's vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard 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

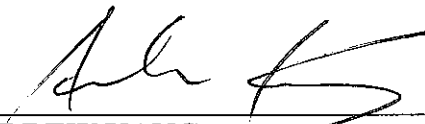
- vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$19,810.17**. 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 § 2001.144,³⁶ 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 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

³⁶ (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.

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 days of the transfer.

SIGNED April 8, 2016



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