

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0174 CAF**

**MARIA L. MACIAS,**  
**Complainant**

v.

**VOLKSWAGEN OF AMERICA, INC.**  
**and VW CREDIT, INC.,**  
**Respondents**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Maria L. Macias (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2015 Volkswagen Passat. Complainant asserts that the vehicle is defective because there is a squeaking noise that occurs in the right side of the vehicle she's driving. Volkswagen of America, Inc. and VW Credit, Inc. (Respondents) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on July 21, 2016, in El Paso, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Respondents were represented by Russell Ruland, Quality Control Manager. Enrique Portugal, interpreter, provided Spanish interpretation services for Complainant.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>6</sup>

## **B. Complainant's Evidence and Arguments**

Complainant leased a new 2015 Volkswagen Passat from VW Credit, Inc. (co-Respondent) on August 17, 2013, with mileage of ten (10) at the time of delivery.<sup>7,8</sup> The dealer arranging the lease was Rudolph Volkswagen in El Paso, Texas.<sup>9</sup> Volkswagen of America, Inc. (co-Respondent) provided a three (3) year or 36,000 mile new vehicle limited warranty for the vehicle.<sup>10</sup> On the date of hearing the vehicle's mileage was 11,451. At the time of hearing, the new vehicle warranty was still in effect.

Complainant testified that a few months after purchasing the vehicle, she began to notice a squeaking noise emanating from the front passenger area of the vehicle. So, Complainant scheduled a service appointment with Rudolph Volkswagen (Rudolph) in El Paso, Texas for March 25, 2015, in order to have the noise issue addressed. On the date in question, Rudolph's service technician verified hearing a "slight" noise, but did not feel that it warranted a tear down of the vehicle's dash assembly.<sup>11</sup> As a result, no repairs were performed at the time.<sup>12</sup> The

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<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<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 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.

<sup>7</sup> Complainant Ex. 1, Motor Vehicle Lease Agreement – Closed End dated January 2, 2015.

<sup>8</sup> Complainant Ex. 2, Odometer Disclosure Statement dated January 2, 2015.

<sup>9</sup> Complainant Ex. 1, Motor Vehicle Lease Agreement – Closed End dated January 2, 2015.

<sup>10</sup> Complainant Ex. 12, VW USA Warranty and Maintenance for CC, Eos, Tiguan, Passat, Touareg – Model year 2015.

<sup>11</sup> Complainant Ex. 3, Repair Order dated March 25, 2015.

<sup>12</sup> *Id.*

vehicle's mileage when Complainant turned it over to Rudolph on this occasion was 1,159.<sup>13</sup> Complainant testified that the vehicle was in the dealer's possession for about four (4) days on this occasion and that she was provided with a loaner vehicle while her vehicle was being repaired.

Complainant drove the vehicle for awhile, but continued to hear the noise from the same area of the vehicle. She returned the vehicle for repair to Rudolph on April 15, 2015. On this occasion, Rudolph's service manager verified hearing the noise.<sup>14</sup> The technician performed a plastic weld on the right side of the vehicle's instrument panel to see if this would stop the noise from occurring.<sup>15</sup> The mileage on the vehicle at the time of repair was 2,083.<sup>16</sup> Rudolph had the vehicle in their possession for a week. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that she did not hear the squeaking noise for a few weeks after the repair, but then it began to come back. She took the vehicle back to Rudolph for further repair on May 5, 2015. Rudolph's service technician contacted Volkswagen of America's technical support line in order to get assistance in performing a repair to the vehicle.<sup>17</sup> The technician was informed that he should apply foam between the vehicle's dash and firewall, which he did.<sup>18</sup> The vehicle was retained by Rudolph for approximately a week and a half. Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant turned it over to Rudolph was 2,242.<sup>19</sup>

Complainant began to again hear the squeaking noise when driving the vehicle. On June 8, 2015, Complainant took the vehicle to Rudolph to address the noise issue. Rudolph's service technician could not duplicate the concern.<sup>20</sup> He indicated that he did not hear an abnormal noise when driving the vehicle.<sup>21</sup> The vehicle was in the dealer's possession for one day. Complainant was not provided with a loaner vehicle while her vehicle was being repaired. The mileage on the vehicle when she delivered it to Rudolph on this occasion was 2,928.<sup>22</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Complainant Ex. 4, Repair Order dated April 15, 2015.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Complainant Ex. 5, Repair Order dated May 5, 2015.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Complainant Ex. 6, Repair Order dated June 8, 2015.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Complainant testified that the squeaking noise occurred almost constantly. She thought she had to take the vehicle for repair to the location from where she leased it. Complainant contacted Volkswagen of America's call center and was informed that she could take the vehicle to any Volkswagen dealer. So, Complainant took the vehicle to Hoy Family Auto (Hoy) in El Paso, Texas for repair on November 18, 2015. Hoy's service technician verified the noise concern.<sup>23</sup> He found that the epoxy which had been used to perform an earlier repair was cracked and not sticking to the dash trim.<sup>24</sup> The epoxy between the vehicle's defrost trim and the instrument panel was replaced by the technician.<sup>25</sup> The vehicle's mileage on this occasion was 6,809.<sup>26</sup> The vehicle was in Hoy's possession for three (3) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant stated that the noise went away for a few days, but then returned. Complainant took the vehicle back to Hoy for repair on December 2, 2015. Hoy's service technician removed and replaced the upper dash moldings and the dash panel per the advice provided by a technical representative from Volkswagen of America's technical assistance department.<sup>27</sup> The vehicle's mileage on this occasion was 7,050.<sup>28</sup> The vehicle was in the dealer's possession for several weeks. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 12, 2016.<sup>29</sup> In addition, on February 2, 2016, Complainant mailed a letter to Volkswagen Group of America outlining her unhappiness with the vehicle.<sup>30</sup>

Complainant testified that the vehicle was inspected by Volkswagen of America's representative on April 6, 2016, at Hoy. Volkswagen of America's quality technical manager (QTM) determined that the vehicle's instrument dash panel was rubbing on the dash panel support beam.<sup>31</sup> The QTM instructed the technician to add anti-rattle felt tape to the support beam and dash panel.<sup>32</sup> In addition, the vehicle's glove box plastic welding came apart, so the glove box housing was also replaced, as it was thought that the damaged glove box could also be causing

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<sup>23</sup> Complainant Ex. 7, Repair Order dated November 18, 2015.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Complainant Ex. 8, Repair Order dated December 2, 2015.

<sup>28</sup> *Id.*

<sup>29</sup> Complainant Ex. 9, Lemon Law Complaint dated February 12, 2016. Complainant signed and dated the complaint on February 9, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until February 12, 2016, which is the effective date of the complaint.

<sup>30</sup> Complainant Ex. 10, Letter to Volkswagen Group of America dated February 2, 2016.

<sup>31</sup> Complainant Ex. 11, Repair Order dated April 6, 2016.

<sup>32</sup> *Id.*

the noise heard by Complainant.<sup>33</sup> The vehicle's mileage on this occasion was 9,171.<sup>34</sup> The vehicle was in Hoy's possession for about a week. Complainant was provided with a loaner vehicle while the inspection was taking place

Complainant has continued to hear the squeaking noise from the front passenger area of the vehicle. The noise is not constant, but the longer she drives the vehicle, the more the noise occurs. It usually takes driving about ten (10) miles in the vehicle before she starts hearing the noise. After taking a test drive of the vehicle on the date of hearing, Complainant testified that she heard a noise five (5) or six (6) times from the right front side of the vehicle. She also stated that the noise gets worse the longer the vehicle is driven.

During cross examination, Complainant testified that the vehicle was actually at Rudolph for one (1) day, instead of four (4) days on March 25, 2015, as she had originally testified. She also stated that the only time she did not receive a loaner vehicle during any of the repair attempts was on April 15, 2015. Also, when Complainant took the vehicle to Hoy for repair on December 2, 2015, she picked up the vehicle on December 28, 2015 and then returned it to Hoy to complete repairs on January 18, 2016.

### **C. Respondent's Evidence and Arguments**

Russell Ruland is a Quality Technical Manager who has worked for Volkswagen of America for 20 years. He has an AA degree in aircraft maintenance. He has nine (9) Automotive Service Excellence (ASE) certifications. In addition, he has specialized Volkswagen training.

Mr. Ruland testified that he first became involved with Complainant's vehicle during the January 2016 repairs. He spoke to Hoy's service technician over the telephone and advised him to replace the vehicle's dash panel to address the noise issue. Mr. Ruland also went to the dealer to see the vehicle and took a test drive in the vehicle. Mr. Ruland stated that he could not hear any unusual noise during the test drive.

Mr. Ruland performed the final repair attempt on the vehicle for Volkswagen of America on April 6, 2016, at Hoy. Complainant initially did not want to allow any repairs to be performed on the vehicle, but acceded to the request once she was informed that Volkswagen of America was entitled to a final repair attempt. Mr. Ruland was informed by Complainant that there was a rattle from the right side of the vehicle's dash. He was only able to hear the rattle when the air conditioner's fan was on low. He stated that the noise could be annoying. When the dash panel

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

was taken off of the vehicle, Mr. Ruland saw that a piece of metal was rubbing on the bottom of the dash and determined that this could be causing the noise. So, he applied felt tap to the bottom of the dash to prevent the parts rubbing and creating a noise. Mr. Ruland told Hoy's service technician to keep the vehicle at the dealer for awhile to ensure that the noise didn't return. The technicians drove the vehicle for approximately 120 miles to verify the efficacy of the repair.

Mr. Ruland also testified that during the test drive of the vehicle taken on the hearing date that he did not hear any unusual noise. He did point out that the air conditioner's fan was at a speed of four (4) during the drive.

#### **D. Analysis**

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

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant's concern is that she hears a squeaking noise coming from the front passenger side of the vehicle when she's driving. Complainant stated that the noise was still occurring at the time of hearing. (The hearings examiner could not differentiate the noise from normal road noise during the test drive taken at the time of hearing.) It is understandable that the noise heard by Complainant can be annoying. However, the squeaking noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the squeaking noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the noise would affect the purchase price, since most people would not even notice it.

Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 11,451 and it remains under warranty. As such, Volkswagen of America is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Maria L. Macias (Complainant) leased a new 2015 Volkswagen Passat on January 2, 2015, from VW Credit, Inc. (co-Respondent), with mileage of 10 at the time of delivery.
2. The manufacturer of the vehicle, Volkswagen of America, Inc. (co-Respondent), issued a new vehicle limited warranty for the vehicle good for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 11,451.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant hears a squeaking noise from the front passenger side of the vehicle.
6. Complainant took the vehicle to Volkswagen of America's authorized dealers in order to address her concerns regarding the squeaking noise on the following dates:
  - a. March 25, 2015, at 1,559 miles;
  - b. April 15, 2015, at 2,083 miles;
  - c. May 5, 2015, at 2,242 miles;
  - d. June 8, 2015, at 2,928 miles;
  - e. November 18, 2015, at 6,809 miles; and
  - f. December 2, 2015, at 7,050 miles.
7. On March 25, 2015, Rudolph Volkswagen's (Rudolph) service technician verified hearing a "slight" noise from the front passenger side of the vehicle, but did not feel that it warranted tearing down the dash assembly. No work was done at the time.

8. On April 15, 2015, Rudolph's service manager verified hearing a noise in the vehicle. The dealer's service technician performed a plastic weld on the right of the instrument panel.
9. On May 5, 2015, Rudolph's service technician applied foam between the vehicle's dash and firewall in order to address the noise complaint.
10. On June 8, 2015, Rudolph's service technician could not duplicate the noise concern. He did not hear any abnormal noises from the vehicle during a test drive. No repairs were performed at the time.
11. On November 18, 2015, Hoy Family Auto's (Hoy) service technician found that the plastic weld between the vehicle's dash and defrost trim was broken. The technician replaced the epoxy in the area in order to effectuate a repair for the noise complaint.
12. On December 2, 2015, Hoy's technician, after receiving advice from Volkswagen America's technical assistance support department, replaced the vehicle's dash panel assembly. In addition, he replaced the vehicle's upper dash moldings.
13. On February 12, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On April 6, 2016, Volkswagen of America's quality technical manager (QTM), Russell Ruland, performed a final repair attempt on the vehicle to see if there were any repairs that could be performed to address Complainant's concerns regarding the squeaking noise.
15. On April 6, 2016, the QTM decided to add anti-rattle felt tape to the vehicle's support beam and dash panel. In addition, the vehicle's glove box housing was replaced because the welding had come apart.
16. On May 6, 2016, 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.

17. The hearing in this case convened and the record was closed on July 21, 2016, in El Paso, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Respondents were represented by Russell Ruland, Quality Control Manager. Enrique Portugal, interpreter, provided Spanish interpretation services for Complainant.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED August 15, 2016**



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