

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0229 CAF**

IAN WEST,
Complainant

v.

FCA US LLC,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Ian West (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Dodge Ram Laramie pickup. Complainant asserts that the vehicle is defective because the vehicle intermittently vibrates when driven. The vibrations increase as the vehicle's speed increases. FCA US LLC (Respondent) argues that the vehicle does not have a defect and is performing as designed. The hearings examiner concludes that the vehicle has an existing warrantable defect. Therefore, 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 originally convened on July 26, 2016, in Denison, Texas, before Hearings Examiner Edward Sandoval. Complainant, Ian West, represented himself. Also appearing to testify for Complainant was Courtney West, Complainant's wife. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also testifying for Respondent was Matt Witters, Technical Advisor. The hearing was continued in order to allow Complainant to present additional evidence regarding reimbursement costs.

The continuance was convened telephonically on September 14, 2016, before Hearings Examiner Edward Sandoval. Complainant represented himself. Jan Kershaw, Early Resolution Case Manager, represented Respondent. The record was closed the same day.

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

¹ Tex. Occ. Code § 2301.604(a).

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, Section 2301.605 of the Occupation Code specifies that there are three tests which can establish a rebuttable presumption that a reasonable number of attempts have been undertaken by a Respondent to conform a motor vehicle to an applicable express warranty. The first test provides that 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, then Complainant has established that Respondent has been provided with a reasonable number of attempts to repair the vehicle.⁵ The second test applies to a nonconformity that creates a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupation Code. The third test provides that Complainant can establish a rebuttable presumption that a reasonable number of attempts to conform a motor vehicle to an applicable express warranty if a nonconformity continues to exist which substantially impairs the vehicle's use or market value and (1) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner and (2) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁶ However, the Occupations Code also provides that the 30 day period described by this section does not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.⁷

B. Complainant's Evidence and Arguments

1. Ian West's Testimony

Complainant purchased a new 2014 Dodge Ram Laramie pickup truck from Southside Dodge Sales in Fort Worth, Texas, on July 11, 2015.⁸ The vehicle's mileage at the time of delivery was

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).

⁶ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

⁷ Tex. Occ. Code § 2301.605(c).

⁸ Complainant Ex. 1, Motor Vehicle Buyer's Order & Invoice and Motor Vehicle Retail Installment Sales Contract dated July 11, 2015.

186.⁹ Respondent provided a basic limited warranty for the first three (3) years or 36,000 miles on the odometer, whichever comes first.¹⁰ In addition, Respondent provided a five (5) year or 100,000 mile powertrain warranty for the vehicle.¹¹ The vehicle's mileage on the date of hearing was 13,044. The warranties were still in effect at the time of hearing.

Complainant testified that he first felt excessive vibration in the vehicle after he had driven it about 2,300 miles. He stated that he could hear items under the seat rattling due to the vibration that occurred when he was driving the vehicle.

On October 16, 2015, Complainant took the vehicle to Bartlesville Dodge–Chrysler–Jeep–Ram (Bartlesville), Respondent's authorized dealer, in Bartlesville, Oklahoma for repair. Complainant indicated to the dealer's service advisor that he felt a vibration in the vehicle when driving and that he wanted a front end alignment to address the issue. The dealer's service technician performed the requested alignment.¹² The vehicle's mileage at the time of the repair visit was 3,445.¹³

Complainant testified that the vehicle drove slightly better for a while. However, the vehicle again began to vibrate. On December 8, 2015, Complainant took the vehicle to Bartlesville for repair due to the vibration issue. The service technician verified the vibration and balanced all six (6) of the vehicle's tires.¹⁴ The technician determined that the vehicle was still vibrating when it was driven, so he spun the four (4) rear tires and determined that one of the tires was out of round.¹⁵ A replacement tire was ordered, but never arrived. The mileage on the vehicle at the time of this repair was 5,096.¹⁶ The vehicle was in the dealer's possession for fourteen (14) days during this repair. Complainant was not provided with a loaner or rental vehicle while his vehicle was being repaired.

Complainant received the vehicle from the dealer on December 22, 2015. On December 29, 2015, Complainant took the vehicle back to Bartlesville due to his concern with it vibrating. On this occasion, the technician replaced the vehicle's rear tires with new tires and wheels from a new vehicle that was on the dealer's lot.¹⁷ Complainant testified that the vehicle still vibrated even with the new tires, so he took the vehicle back to Bartlesville where the original tires were put back on it. The mileage on the vehicle on this occasion was 6,000.¹⁸

⁹ Complainant Ex. 2, Odometer Disclosure Statement dated July 11, 2015.

¹⁰ Complainant Ex. 9, 2014 Ram Truck 2500/3500 Diesel Warranty Information, p. 1.

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated October 16, 2015.

¹³ *Id.*

¹⁴ Complainant Ex. 4, Repair Order dated December 8, 2015.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 5, Service Repair Summary, undated.

¹⁸ *Id.*

Complainant continued to feel the vehicle vibrate whenever he drove it, so he took the vehicle to Bartlesville for repair on January 4, 2016. The service technician balanced the left inside tire and replaced the left rear tire and both rear rotors in order to address the issue.¹⁹ The vehicle was in Bartlesville's possession until January 27, 2016, a total of 23 days.²⁰ Complainant was not provided with a loaner or rental vehicle while his vehicle was being repaired. The mileage on the vehicle on this occasion was 6,150.²¹

On February 16, 2016, Complainant took the vehicle to Bartlesville so it could be inspected by Respondent's field engineer. The engineer determined that the vehicle was operating as designed and no repairs were performed.²² The vehicle's mileage on this occasion was 7,150.²³ Complainant was provided a rental or loaner vehicle for the two (2) days that his vehicle was being inspected.²⁴

Complainant mailed a notice letter to Respondent on March 28, 2016, advising them of his dissatisfaction with the vehicle.²⁵ On April 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).²⁶

Complainant discussed the possibility of a final repair attempt on the vehicle with Respondent's representative after the filing of the Lemon Law complaint. However, the representative indicated that no final repair attempt would be performed, since Respondent's field engineer had indicated in February of 2016, that the vehicle was performing as designed.

Complainant testified that he purchased several after-market items for the vehicle for which he wants reimbursement. These items are: seat covers for \$519.35,²⁷ floor mats for \$207.90,²⁸ an adaptor Ram Puck System for \$897.20,²⁹ an OEM Ram Puck System for fifth wheel hitch for \$271.29,³⁰ a bug shield for \$62.00,³¹ front Ram mud flaps for \$53.50,³² windshield wipers for

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 7, Letter to Chrysler Group LLC dated March 28, 2016.

²⁶ Complainant Ex. 6, Lemon Law Complaint dated April 8, 2016. Although the complaint was signed by Complainant on April 5, 2016, it was not received by the Department until April 8, 2016, which is the effective date of the complaint.

²⁷ Complainant Ex. 11, Invoice dated July 5, 2015, for Shear Comfort Seat Covers.

²⁸ Complainant Ex. 12, Invoice dated July 13, 2015, for WeatherTech Floor Liners.

²⁹ Complainant Ex. 13, Invoice dated July 3, 2015, from Bob Hurley RV for a fifth wheel conversion kit and rail adaptor kit.

³⁰ Complainant Ex. 14, Invoice dated July 3, 2015, from South Pointe Chrysler Jeep Dodge Ram for Ram Puck System for fifth wheel hitch.

³¹ Complainant Ex. 15, Invoice dated July 5, 2015, for Smoke Bug Shield for Ram 2500/3500.

³² Complainant Ex. 16, Invoice dated July 15, 2015, for Dodge Ram Front Heavy Duty splash mud guard.

\$54.10,³³ rear Ram mud flaps for \$53.50,³⁴ roll-n-lock bedcover for \$1,556.46,³⁵ air bags for \$765.00,³⁶ a Pullrite Superglide 4400 fifth wheel hitch for \$1,840.00,³⁷ a Reese adaptor for 4400 fifth wheel hitch for \$897.00,³⁸ and installation of the fifth wheel hitch for \$240.00.³⁹

During cross-examination, Complainant testified that he did install after-market air bags to the vehicle on July 15, 2015. He doesn't feel that the addition of the air bags affected the vehicle's vibration. Complainant testified that the vehicle vibrates even when it's towing his travel trailer which is a full load for the vehicle.

2. Courtney West's Testimony

Courtney West, Complainant's wife, testified that she has noticed excessive vibration and shaking when riding in the vehicle's passenger seat. She usually doesn't notice the vibration when they are driving the vehicle in town, but mostly when they are on the highway. Ms. West stated that the vibration starts soon after they start driving on the highway and that it is fairly constant. She's never experienced such vibration in a pick up before and she is familiar with heavy duty trucks. Ms. West testified that she first noticed the vehicle vibrating a few months after they purchased the vehicle.

Ms. West stated during cross-examination that the vibration varies on different road surfaces.

C. Respondent's Evidence and Arguments

Matt Witters, Technical Advisor, testified for Respondent. He has a Bachelor's of Science in Automotive Technology. He's worked for Respondent for 16 years. The last nine (9) years he's been in his current position as a technical advisor. He has been an Automotive Service Excellence (ASE) Master Certified technician since 2000. Among Mr. Witters' duties are assisting dealer technicians in repairing or diagnosing difficult issues and acting as a liaison between Respondent's engineers and the franchised dealers.

Mr. Witters testified that he was contacted by Bartlesville's area manager to perform an inspection of Complainant's vehicle because of the complaints regarding excessive vibration when driving the vehicle. On February 17, 2016, Mr. Witters went to the Bartlesville location and took a test drive in the vehicle. He attached a vibration analyzer to the vehicle to determine

³³ Complainant Ex. 20, Invoice dated December 24, 2015, from O'Reilly Auto Parts for windshield wipers.

³⁴ Complainant Ex. 21, Invoice dated July 15, 2015, for Dodge Rear Heavy Duty splash mud guard.

³⁵ Complainant Ex. 22, Invoice dated July 24, 2015, from Tulsa Truck Works for roll-n-lock bedcover.

³⁶ Complainant Ex. 23, Reprinted Invoice dated August 2, 2016, from Bob Hurley RV for airbags, Pullrite Superglide 4400 fifth wheel hitch, and Reese adaptor for 4400 fifth wheel hitch.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Complainant Ex. 24, Invoice dated July 10, 2015, from Bob Hurley RV for installation of fifth wheel hitch.

the extent of the vibration. In addition, Mr. Witters tested five other similar vehicles to compare the vibration from the vehicles to Complainant's vehicle. Mr. Witters determined that the vibration felt in Complainant's vehicle is not dissimilar from the other comparable vehicles which were tested. Mr. Witters said that the readings from the analyzer were almost identical in all vehicles.

Mr. Witters testified that the vehicle is a heavy duty truck and that it has a strong suspension. He feels that this may be causing the vibration felt by Complainant. In addition, Mr. Witters feels that the air bags that Complainant put on the vehicle may additionally stiffen the suspension and cause ride quality issues. The vehicle's suspension creates a harmonic issue. When there's no weight on the truck (*i.e.*, nothing in the bed or being towed) the vehicle will vibrate more. Mr. Witters does not feel that this is a defect in the vehicle.

D. Analysis

1. Vibration Issue

Under Texas' 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.

Complainant purchased the vehicle on July 11, 2015, and presented the vehicle to an authorized dealer of Respondent due to his concerns with an excessive vibration issue on October 16, 2015; December 8, 2015; December 29, 2015; January 4, 2016; and February 16, 2016. 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) goes on to specify 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." Complainant has met the requirements of this test and Respondent has been provided a reasonable number of attempts to conform Complainant's vehicle to the applicable express warranty.

Respondent argues that the vibration felt by Complainant is a design issue and not a defect. However, the evidence reveals that the dealer's service technicians were able to verify a vibration in the vehicle and made several attempts to repair the vehicle. In fact, one of the rear tires and two rear rotors were replaced in an attempt to resolve the vibration issue. In addition, the hearings examiner and the parties felt and observed the vibration when taking a test drive in the vehicle.

The evidence further demonstrates that the defect (excessive vibration in the vehicle which increases as the driving speed increases) in Complainant's vehicle creates a serious safety hazard. The intermittent nature of the condition increases a safety risk and substantially impedes Complainant's ability to control or operate the vehicle for ordinary use or intended purposes. Complainant has met his burden of proof to establish a warrantable and existing defect or condition that creates a serious safety hazard.

Moreover, the defect in Complainant's vehicle substantially impairs its use and market value. An unimpaired vehicle with similar mileage should not behave in such a manner. Complainant cannot rely on the vehicle on long distance drives, as he cannot be aware when it may start acting up.

Finally, Complainant did serve written notice of his dissatisfaction with the vehicle to Respondent when he filed the Lemon Law complaint. Respondent was provided with a final opportunity to repair the vehicle in February of 2016.

When a complainant establishes that relief under the Lemon Law is appropriate, the manufacturer may be required to repurchase the motor vehicle, or replace the motor vehicle with a comparable motor vehicle. Based on the evidence and the arguments presented, the hearings examiner finds that replacement of the vehicle is the appropriate remedy in this case.

2. Reimbursement for Costs of Vehicle Accessories

Regarding the reimbursement issue, 43 Tex. Admin. Code § 215.209(a)(7) provides that a Complainant may recover for the costs of "items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use." When determining the reimbursement amount, the hearings examiner "shall consider the permanent nature, functionality, and value added by the items or accessories." 43 Tex. Admin. Code § 215.209(c). In the present case, Complainant did provide invoices to verify the cost of all of the accessories added to the vehicle after purchase. Some of the items are removable or a result of regular maintenance. As such, the hearings examiner will not grant reimbursement for these items: the front and rear mud flaps, the windshield wipers, the WeatherTech floor mats, and the seat covers. Complainant will be allowed reimbursement for the following items: the bug shield, airbags, roll-n-lock bedcover,

Pullrite Superglide 4400 fifth wheel hitch, adaptor for the Ram Puck System, Reese adaptor for 4400 fifth wheel hitch, OEM Ram Puck System for fifth wheel hitch, and the cost of installation for the OEM Ram Puck System for fifth wheel. The reimbursement will be determined at the original cost of the items, less 10% for the reasonable allowance for use. The total reimbursement due to Complainant is \$5,788.58.

3. Ruling

Based on the above analysis, the hearings examiner orders Respondent to replace Complainant's vehicle as further detailed in the Findings of Fact and Conclusions of Law. Complainant is also entitled to reimbursement in the amount of \$5,788.58 for the additional accessories listed above.

III. FINDINGS OF FACT

1. Ian West (Complainant) purchased a new 2014 Dodge Ram 3500 Laramie pickup truck from Southside Dodge Sales in Fort Worth, Texas, on July 11, 2015. The vehicle's mileage was 186 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a limited warranty for the vehicle for the first three (3) years or 36,000 miles, whichever comes first.
3. The vehicle's mileage on the date of hearing was 13,044.
4. At the time of hearing the vehicle's basic express warranty was still in effect.
5. Complainant feels that the vehicle has excessive vibration when being driven.
6. Complainant took the vehicle to Respondent's authorized dealer, Bartlesville Dodge-Chrysler-Jeep-Ram (Bartlesville), on the following dates in order to address the vibration issue:
 - a. October 16, 2015, at 3,445 miles;
 - b. December 8, 2015, at 5,096 miles;
 - c. December 29, 2015, at 6,000 miles;
 - d. January 4, 2016, at 6,150 miles; and
 - e. February 16, 2016, at 7,150 miles.
7. On October 16, 2015, Bartlesville's service technician performed a front end alignment to the vehicle as requested by Complainant in order to address the vibration issue.

8. On December 8, 2015, Bartlesville's service technician determined that the vehicle's wheels were out of round and balanced all six (6) tires. In addition, a new wheel was ordered to replace one of the vehicle's wheels which was felt to have a flat spot.
9. On December 29, 2015, Bartlesville's service technician swapped the vehicle's rear tires with new tires and wheels from a comparable new truck on the lot to address the vibration issue.
10. On January 4, 2016, Bartlesville's service technician balanced the vehicle's left inside tire, replaced the left rear tire, and both rear rotors in order to correct the vibration issue.
11. On February 16, 2016, Respondent's field engineer determined that the vehicle was operating as intended.
12. On April 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. 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.
14. The hearing in this case originally convened on July 26, 2016, in Denison, Texas, before Hearings Examiner Edward Sandoval. Complainant, Ian West, represented himself. Also appearing to testify for Complainant was Courtney West, Complainant's wife. Respondent was represented by Jan Kershaw, Early Resolution Case Manager. Also testifying for Respondent was Matt Witters, Technical Advisor. The hearing was continued in order to allow Complainant to present additional evidence regarding reimbursement costs. The continuance was convened telephonically on September 14, 2016, before Hearings Examiner Edward Sandoval. Complainant represented himself. Jan Kershaw, Early Resolution Case Manager, represented Respondent. The record was closed the same day.

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's vehicle has an existing defect or condition that creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. Complainant's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle. Tex. Occ. Code § 2301.604(a).
8. 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.
9. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
10. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to replace Complainant's 2014 Dodge Ram 3500 Laramie pickup truck with a comparable motor vehicle. Tex. Occ. Code § 2301.604(a)(1).
11. Complainant is entitled to reimbursement of incidental expenses in the amount of \$5,788.58. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

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 2014 Dodge Ram 3500 Laramie pickup truck (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 2014 Dodge Ram 3500 Laramie 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 \$3,993.35);
 - (c) 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 **\$3,958.35**, 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.⁴⁰
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 2014 Dodge Ram 3500 Laramie's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.

⁴⁰ 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.

8. Upon replacement of Complainant's 2014 Dodge Ram 3500 Laramie, 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.
 - (c) At the time of the exchange of vehicles, Respondent will be responsible for reimbursing Complainant **\$5,788.58** for the cost of accessories added to the reacquired vehicle. This is determined to be the original cost of the accessories less 10% as a reasonable allowance for use, *see* 43 Tex. Admin. Code § 215.209.
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 2014 Dodge Ram 3500 Laramie pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$55,507.01**, plus the reimbursement for accessories in the amount of **\$5,788.58**. 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	\$59,465.36
Delivery mileage	186
Mileage at first report of defective condition	3,445
Mileage on hearing date	13,044
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$59,465.36			
Mileage at first report of defective condition	3,445			
Less mileage at delivery	<u>-186</u>			
Unimpaired miles	3,259			
Mileage on hearing date	13,044			
Less mileage at first report of defective condition	<u>-3,445</u>			
Impaired miles	9,599			
Reasonable Allowance for Use Calculations:				
Unimpaired miles				
	<u>3,259</u>			
	120,000	X	\$59,465.36	= \$1,614.98
Impaired miles				
	<u>9,599</u>			
	120,000	X	\$59,465.36	X .5 = <u>\$2,378.37</u>
Total reasonable allowance for use deduction:				\$3,993.35
Purchase price, including tax, title, license and registration	\$59,465.36			
Less reasonable allowance for use deduction	-\$3,993.35			
Plus filing fee refund	<u>\$35.00</u>			
TOTAL REPURCHASE AMOUNT	\$55,507.01			

11. If Complainant's 2014 Dodge Ram 3500 Laramie 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 repurchase 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 November 18, 2016



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