

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0266 CAF**

**JEANNE R. HAMMOND,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jeanne R. Hammond (Complainant) filed a complaint (Complaint) with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in her vehicle manufactured by Ford Motor Company (Respondent). The hearings examiner concludes that the subject vehicle has a warrantable defect, but the defect does not create a serious safety hazard or substantially impair the vehicle's use or market value. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement but does qualify for repair relief.

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 June 21, 2016, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented, and testified for, herself. Maria Diaz, Consumer Legal Analyst, represented the Respondent.

¹ 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.”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 Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

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).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, 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.”⁶

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.⁷

Alternatively, 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.⁸

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

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.⁹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹⁰

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 or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹¹ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹² and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹³

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or

⁹ “[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).

¹⁰ “[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).

¹¹ 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). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

¹² TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹³ TEX. OCC. CODE § 2301.606(d)(2).

distributor's . . . warranty agreement applicable to the vehicle."¹⁴ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁵

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁶ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that all of the required facts are more likely than not true.¹⁷ For example, the Complainant must show the fact that a warrantable defect more likely than not exists. For any required fact, if the evidence weighs in favor of the Respondent or if the evidence equally supports the Complainant and the Respondent, the Respondent will prevail. If the Complainant fails to prove one (or more) of the required facts, the Complainant cannot prevail.

4. The Complaint Limits the Issues in this Case

The Complaint identifies the issues to be addressed in this proceeding.¹⁸ The pleadings should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."¹⁹

A. Complainant's Evidence and Arguments

On July 2, 2015, the Complainant, purchased a new 2015 Ford Focus from Mac Haik Ford, a franchised dealer of the Respondent, Ford Motor Company, in Desoto, Texas.²⁰ The vehicle had

¹⁴ TEX. OCC. CODE § 2301.204.

¹⁵ TEX. OCC. CODE § 2301.603(a).

¹⁶ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁷ *E.g.*, *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁸ "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted." TEX. GOV'T CODE § 2001.052. *See also* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

¹⁹ 43 TEX. ADMIN. CODE § 215.202(b).

²⁰ Complainant's Ex. 1, Vehicle Purchase Order.

10 miles on the odometer at the time of purchase.²¹ The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.²²

On May 1, 2016, the Complainant mailed a written notice of defect to the Respondent. On May 4, 2016, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles alleging that the vehicle did not accelerate properly (the transmission shuddered), the SYNC System did not perform properly (did not display properly), and the vehicle did not shut off when turned off.

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

Date	Miles	Issue
November 24, 2015	5,174	Clutch shudder; vehicle may continue to run after the engine is shut off ²³
January 29, 2016	8,199	Transmission shuddering badly at take off ²⁴
March 30, 2016	10,204	Install clutch ordered on RO 479898; phone will not link to radio ²⁵
April 25, 2016	10,625	Car does not pull off smoothly, shudders at times; SYNC System malfunctions and does not show correct display information ²⁶
May 11, 2016	10,913	Intermittent problems accelerating, shudders and hesitates to go especially from a stop ²⁷
May 19, 2016	11,103	Media plays wrong song from what is listed; compass not showing; poor acceleration from takeoff and while driving ²⁸
June 3, 2016	11,438	When accelerating, revs high before going into gear, engine seems louder since clutch replacement; sometimes when turning off does not turn off right away; SYNC at times will not pick up information from her phone; compass has no N, E, W, S symbols ²⁹

²¹ Complainant's Ex. 2, Odometer Disclosure Statement.

²² Complainant's Ex. 11, 2015 Model Year Ford Warranty Guide at 8.

²³ Complainant's Ex. 4, Invoice 476178.

²⁴ Complainant's Ex. 5, Invoice 479898.

²⁵ Complainant's Ex. 6, Invoice 483462.

²⁶ Complainant's Ex. 7, Invoice 484841.

²⁷ Complainant's Ex. 8, Invoice 485856.

²⁸ Complainant's Ex. 9, Invoice 486283.

²⁹ Complainant's Ex. 10, Invoice 487206.

The Complainant described the transmission shudder as a hesitation, feeling like pulling back before going forward, when accelerating. The shudder feels like slipping because the engine will rev then the vehicle will go. She first started experiencing this issue in October or November of 2015. She last experienced the shudder the day before the hearing. The Complainant stated that the shudder would occur intermittently, about four to five times a week. She acknowledged that the condition improved after replacing the clutch in March but the repair did not completely resolve the condition.

The Complainant testified that the SYNC display issue occurred mainly with Bluetooth when streaming. The display will freeze so the display will show a song no longer playing. When calling, the display will show call information that will stay. Additionally, the compass is entirely missing. She believed the issues began in January or February (of 2016). The issue appeared fairly random but she considered the condition dangerous because it defeats the purpose of hands free safety. She added that, not being from the area, she would not know her directions without the compass or GPS. She elaborated that she would stream GPS directions from her phone through the SYNC System. She noted that when first turning on, the display freezes, but hardly happens when operating for a while. This issue would occur once or twice a day. However, the compass never displays. She recalled that the compass stopped functioning the same time as the transmission shudder started. The Complainant explained that when taking calls through Bluetooth, the display would freeze, but the calls themselves were unaffected. She last experienced the display freezing the day before the hearing. The Complainant stated that the repairs did not improve this issue.

With regard to the engine not shutting off immediately, the Complainant stated that after turning the key (to the off position), she can hear the engine knock two or three times before it stops running. She first noticed this condition in November or possibly October (2015). This condition would occur three or four times a week but not every day. She last noticed this happening two days before the hearing. The repairs did not improve the condition.

On rebuttal, the Complainant testified that she had four invoices for the SYNC System not working properly. She also argued that the clutch should not have worn out by December (2015). She also explained that although the repair order stated that the transmission operated normally at

128 rpm, she contended that something was going on in November (2015) that could not be duplicated until January (2016).

B. Respondent's Evidence and Arguments

On cross-examination, the Complainant acknowledged that the compass issue was not included in the Complaint because the issue started happening after filing the Complaint. The Respondent argued that vehicle did not meet the requirement for a defect to continue to exist after two repair attempts in the first 12 months/12,000 miles and a subsequent two repair attempts in the 12 months/12,000 miles after the second repair attempt. Ms. Diaz stated that pursuant to a technical service bulletin (TSB), the powertrain control module (PCM) and transmission control module (TCM) were updated and the transmission was found to be operating normally—under 250 rpm. The vehicle only required repair for the transmission on one service visit. The issue of the engine running after taking the key out could not be duplicated. After updating the SYNC System, the issue of not pairing could not be duplicated. At the June 3, 2016, final repair attempt, the technician could not find anything different from normal and had nothing to repair. The Respondent maintained that the vehicle does not have a nonconformity that substantially impairs the vehicle, the vehicle was not out of service for at least 30 days, and did not have the number of repair attempts needed (for the statutory presumption). Ms. Diaz explained that the vehicle's transmission, a DPS6 (PowerShift) transmission differed from a traditional transmission in that it did not have a torque converter and instead had two clutches, like a manual transmission, except the driver does not have to shift gears. Ms. Diaz pointed out that the clutch was replaced because clutches are wear items (parts that normally require replacement at some point). Clutches wear and have to be replaced. Other characteristics of the transmission, vibrations, firm gear shifts, mechanical sounds, are all normal. The transmission has an operating threshold of 250 rpm. If the rpms exceed 250, then the transmission requires work. The owner's manual, quick start guide, and the Respondent's website all contained information on how the transmission works. Ms. Diaz noted that the SYNC issue only had three repair visits and the issue could not be duplicated in the two later visits. She also added that the Complaint did not include the compass issue and the repair orders reflect this issue for the first time in repair order 486283 (on May 19, 2016, at 11,103 miles). Ms. Diaz explained that a recall was performed for the engine shutoff issue and it could not be duplicated thereafter.

C. Inspection and Test Drive

The vehicle had 11,608 miles on the odometer upon inspection before the start of the test drive at the hearing. The SYNC display initially showed the information of the last song played from the Complainant's phone and did not show the current song information until after the Complainant manipulated the controls. However, the vehicle correctly displayed the song information for all subsequent songs without intervention. The Complainant pointed out that the compass should appear on the information display in the instrument cluster, but did not appear. The hearings examiner noticed one instance of apparent transmission shudder. Additionally, the Complainant noticed some shudder accelerating out of a turn. The vehicle had 11,620 mile on the odometer at the end of the test drive. The vehicle's engine appeared to turn momentarily, for a fraction of a second, after turning the ignition off but did not appear to be dieseling.

D. Analysis

1. Acceleration - Transmission Shudder

The Lemon Law does not apply to all problems a consumer may have with a vehicle, such as issues arising from the design of the vehicle. Rather, the Lemon Law only deals with warrantable defects. To qualify for replacement or repurchase or for warranty repair, the law requires the existence of a warrantable defect (a defect covered by an applicable warranty).³⁰ The subject vehicle's warranty states that it applies to "parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship."³¹ In this case, the evidence shows that the characteristics associated with the vehicle's transmission are not warrantable manufacturing defects, but result from the design of the vehicle's PowerShift transmission. Accordingly, this condition cannot support replacement/repurchase or warranty repair relief.

A manufacturing defect is an unintended condition that occurs when the vehicle varies from the manufacturer's intended design (such as incorrect assembly or the use of a substandard part).³² A manufacturing defect occurs during manufacturing and exists when it leaves the

³⁰ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

³¹ Complainant's Ex. 11, 2015 Model Year Ford Warranty Guide at 9 (emphasis added).

³² See *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004).

manufacturer. That is, a manufacturing defect is an aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of an out-of-specification part. As a result, a defective vehicle differs from a properly manufactured vehicle. Issues that do not arise from manufacturing, such as the design of the vehicle or improper dealer repairs, are not warrantable defects.

In contrast, design characteristics result from the vehicle's design itself and not from any error in the manufacturing process, so that the same-model vehicles made according to the manufacturer's specifications will normally have the same characteristics. Moreover, since design characteristics are inherent to the design, such characteristics cannot be repaired, but would require redesigning the vehicle to address the issue. The evidence in this case indicates that the vehicle's transmission issues arise from the vehicle's intended design, specifically the design of the PowerShift transmission.

The complained of characteristics appear inherent to the design of the vehicle and not the result of a manufacturing defect. The evidence shows that Ford's PowerShift transmission exhibits such characteristics due to its particular design incorporating aspects of manual transmissions. Furthermore, various reference resources of the Respondent actually state that the vehicle will exhibit characteristics such as mechanical noises, firm gearshifts, and vibrations.

Although the vehicle's complained of characteristics may be undesirable or even problematic, these characteristics arise from the vehicle's intended design (specifically, the PowerShift transmission) and not from any manufacturing defect. Accordingly, with regard to transmission related issues, the vehicle does not qualify for repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204.

2. SYNC System – Improper Display

a. Call and Music Information

The SYNC System is a “Hands-Free Communications and Entertainment System”³³ that enables the driver to make calls or play media files through the vehicle.³⁴ SYNC System

³³ Complainant's Ex. 11, 2015 Model Year Ford Warranty Guide at 14.

³⁴ See Respondent's Ex. 1, Manufacturer Response.

information appears on a display on the center stack. The Complainant testified that the SYNC System would intermittently not display the current call or media file information without user intervention. The Complainant stated that the SYNC issue did not actually affect the calls themselves but just the display of current call information. During the inspection at the hearing, when streaming audio files from the Complainant's phone, the SYNC System would display the last file played but would not update to show the current audio file being played, unless the user manipulated the controls. Although a malfunction with the SYNC System appears to exist, this issue does not rise to the level of a serious safety hazard or a substantial impairment of use or value as defined by the Lemon Law. A preponderance of the evidence does not reflect that the failure to display current call or media information either substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion. Moreover, under the reasonable prospective purchaser standard, this non-conformity would not deter the vehicle's purchase nor result in a substantially lower offer price. Additionally, the repair history shows, at most, three repair attempts for SYNC display issue. The Complainant pointed out that she had four invoices relating to the SYNC System. However, one of those visits dealt with a different SYNC issue, Bluetooth pairing (which appears to have been resolved), and not the information display. In contrast, the Complaint in this case identified the SYNC System problem as "Does not display correctly." In sum, the SYNC System's failure to display correct information cannot support repurchase or repair relief. However, since a non-conformity does appear to exist, the vehicle qualifies for repair of this problem. Parties should note that the Respondent's obligation to repair applies even after the warranty expires since the Complainant reported the nonconformity to the Respondent or franchised dealer of the Respondent during the term of the warranty.³⁵

b. Compass

The Complaint did not include the compass as an issue for consideration in this case. Accordingly, this order will not decide the substantive compass issue. Under the Department's rules, the Complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances

³⁵ TEX. OCC. CODE § 2301.603(b).

which form the basis of the claim for relief under the lemon law.”³⁶ However, neither the Complaint nor the written notice of defect mentioned the compass. With regard to the SYNC System, the Complaint only states: “Sync system not performing properly. Does not display correctly.” Although the Complainant may have considered the compass to be a part of the SYNC System, the record indicates that the compass is unrelated. As outlined previously, the SYNC System connects the vehicle to a cell phone, allowing the driver to make calls or play various media through the vehicle’s SYNC System.³⁷ However, the compass does not relate to connection with a cell phone or making calls or playing media files. Additionally, the compass is located in the information display on the instrument cluster, which shows vehicle information, such as the odometer reading. The compass does not appear on the center stack display that shows phone, media, and radio information associated with the SYNC System. Given these considerations, the Complaint did not provide adequate notice of the compass issue.

3. Engine Shut Off

The Respondent argued that the issue of the engine running after being turned off was successfully repaired by performing recall 15C06B, which addresses the possibility of the engine continuing to run after turning the ignition off and removing the key, and that the issue could not be subsequently duplicated. However, the Complainant alleged that the issue has continued. At the end of the test drive, the Complainant pointed to a momentary turning of the engine after shutting the ignition off as an instance of the issue. Although the engine may have turned for a fraction of a second after turning the key to the off position, this did not appear to be a nonconformity. The engine turned off almost simultaneously with the ignition and the engine did not run at all with the key removed. Moreover, the engine did not continue to run as if it were dieseling. Given these considerations, a preponderance of the evidence does not show that the engine shut off issue is a nonconformity.

³⁶ 43 TEX. ADMIN. CODE § 215.202(b) (emphasis added).

³⁷ The warranty manual describes SYNC as a “Hands-Free Communications and Entertainment System.” Complainant’s Ex. 11, 2015 Model Year Ford Warranty Guide at 14. *See also* Respondent’s Ex. 1, Manufacturer Response.

III. Findings of Fact

1. On July 2, 2015, the Complainant, purchased a new 2015 Ford Focus from Mac Haik Ford, a franchised dealer of the Respondent, Ford Motor Company, in Desoto, Texas. The vehicle had 10 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
November 24, 2015	5,174	Clutch shudder; vehicle may continue to run after the engine is shut off
January 29, 2016	8,199	Transmission shuddering badly at take off
March 30, 2016	10,204	Install clutch ordered on RO 479898; phone will not link to radio
April 25, 2016	10,625	Car does not pull off smoothly, shudders at times; SYNC System malfunctions and does not show correct display information
May 11, 2016	10,913	Intermittent problems accelerating, shudders and hesitates to go especially from a stop
May 19, 2016	11,103	Media plays wrong song from what is listed; compass not showing; poor acceleration from takeoff and while driving
June 3, 2016	11,438	When accelerating, revs high before going into gear, engine seems louder since clutch replacement; sometimes when turning off does not turn off right away; SYNC at times will not pick up information from her phone; compass has no N, E, W, S symbols

4. On May 1, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On May 4, 2016, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles alleging that the vehicle did not accelerate properly (the transmission shuddered), the SYNC System did not perform properly (did not display properly), and the vehicle did not shut off when turned off.
6. On June 10, 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.

7. The hearing in this case convened and the record closed on June 21, 2016, in Mesquite, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented, and testified for, herself. Maria Diaz, Consumer Legal Analyst, represented the Respondent.
8. The vehicle's odometer displayed 11,608 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing
10. During the inspection and test drive at the hearing, the vehicle's SYNC System display continued to show information for the last audio file played and would not show the currently playing audio file without user intervention; the vehicle exhibited some transmission shudder; and the engine turned for less than a second after turning the ignition off.
11. The subject vehicle's SYNC System display intermittently would not automatically show the current call or media information from a paired phone.
12. The vehicle's PowerShift transmission may normally exhibit characteristics such as mechanical noises, firm gearshifts, and vibrations.

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 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 did not meet the statutory requirement for a reasonable number of repair attempts for the SYNC System display issue. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
7. The Complainant or a person on behalf of the Complainant did not provide adequate notice of the compass defect to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
8. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
10. The Respondent has a continuing obligation to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's franchised dealer before the warranty expired. TEX. OCC. CODE §§ 2301.204, 2301.603.

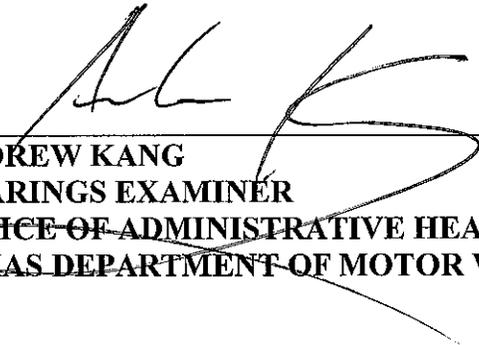
V. Order

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 **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's SYNC System to the applicable warranty. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³⁸ Within 20 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant to have

³⁸ (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.

rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED July 11, 2016



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