

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0288 CAF**

**ROSABELL MENDEZ and
SAM MENDEZ,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Rosabell and Sam Mendez (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2015 Cadillac SRX. Complainants assert that the vehicle is defective because it will sometimes make a popping noise when the driver is turning or reversing the vehicle. In addition, they complained of hearing an unusual noise from the rear of the vehicle. General Motors LLC (Respondent) argued that the vehicle has been repaired, 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 Complainants are 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 September 16, 2016, in Corpus Christi, Texas, before Hearings Examiner Edward Sandoval. Complainants, Rosabell and Sam Mendez, represented themselves at the hearing. Also testifying for Complainants via telephone was Lisa Mendez Elliott, Mr. Mendez' sister. Respondent was represented by Rose Crookston, District Manager for After-Sales. John Ferrell, Field Service Engineer, also testified for Respondent.

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 condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

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.⁶

B. Complainant's Evidence and Arguments

Complainants purchased a new 2015 Cadillac SRX from Ron Carter Cadillac–Hyundai–Saab. (Ron Carter) in Houston, Texas on September 9, 2015, with mileage of 3,183 at the time of delivery.^{7,8} Respondent provided a new vehicle bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles, whichever occurs first. On the date of hearing the vehicle's mileage was 18,366. At the time of hearing, the new vehicle warranty was still in effect.

1. Rosabell Mendez' Testimony

Rosabell Mendez, co-Complainant, testified that the vehicle makes a popping noise whenever she places the transmission in reverse and when she makes a turn when driving it. The noise comes from the front of the vehicle. In addition, Ms. Mendez stated that she heard a noise from the back of the vehicle that sounded like Styrofoam rubbing together.

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Vehicle Purchase Order dated September 9, 2015.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated September 9, 2015. The disclosure statement and purchase order both indicate that the vehicle's mileage was 3,183 at the time of purchase. However, two subsequent repair orders (September 25, 2015 and October 13, 2015) both have mileage for the vehicle which is less than 3000 miles. It appears that the mileage on the disclosure statement and purchase order is incorrect.

After first hearing the popping noise from the front end of the vehicle, Ms. Mendez scheduled a service appointment with AutoNation in Corpus Christi, Texas for September 25, 2015, in order to have the noise issue addressed. On the date in question, AutoNation's service technician determined that the vehicle's front lower control arm bushings were worn and replaced them.⁹ The vehicle's mileage on this repair visit was 2,051.¹⁰ The vehicle was in the dealer's possession for about two (2) weeks on this occasion and Ms. Mendez was provided with a loaner vehicle while her vehicle was being repaired.¹¹

Ms. Mendez testified that after getting the vehicle back from the dealer, she was able to drive it for about a week without hearing any unusual noises. However, the popping noise returned soon thereafter. She returned the vehicle for repair to AutoNation on October 13, 2015. On this occasion, the service technician determined that the lower control arm bolt was not torqued to specifications.¹² The technician torqued the bolt to meet the manufacturer's specifications and test drove the vehicle to verify that the noise was no longer present.¹³ The mileage on the vehicle at the time of repair was 2,654.¹⁴ The vehicle in the dealer's possession for ten (10) days.¹⁵ Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Ms. Mendez testified that she did not hear the popping noise for a few weeks after the repair, but then it returned. She took the vehicle back to AutoNation for further repair on December 21, 2015. AutoNation's service technician verified the noise and determined that a bolt for the front suspension bearing was loose.¹⁶ The technician tightened the bolt and test drove the vehicle to ensure that the repair had corrected the noise issue.¹⁷ The vehicle was in AutoNation's possession for two (2) days. Ms. Mendez was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Ms. Mendez took the vehicle in for repair was 5,390.¹⁸

Ms. Mendez stated that she did not hear the popping noise again for about two (2) to three (3) months. The noise began to occur again in March of 2016. In addition, Ms. Mendez stated that she began to hear a noise from the rear of the vehicle that sounded like Styrofoam rubbing together. On March 9, 2016, Ms. Mendez took the vehicle to AutoNation to address the issues. The service technician verified hearing a noise from the rear of the vehicle, but determined that the only noises he could hear from the front of the vehicle were normal noises caused by the

⁹ Complainant Ex. 3, Repair Order dated September 25, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated October 13, 2015.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Repair Order dated December 21, 2015.

¹⁷ *Id.*

¹⁸ *Id.*

movements of the strut piston.¹⁹ The technician adjusted the vehicle's third lamp housing to address the issue of the noise from the rear of the vehicle.²⁰ No repairs were done to address the noise Ms. Mendez heard from the front of the vehicle, since the technician felt that the vehicle was making normal noises.²¹ The mileage on the vehicle when Ms. Mendez took it to AutoNation on this occasion was 9,199.²² The vehicle was in the dealer's possession for nine (9) days. Ms. Mendez was provided with a loaner vehicle while her vehicle was being repaired.

The noises continued to occur after Ms. Mendez picked up the vehicle. So, she took the vehicle to AutoNation for repair on May 5, 2016. The service technician verified the noise concerns.²³ He determined that the noise from the front end of the vehicle was due to the left front control arm bushing being worn.²⁴ In addition, he determined that the vehicle's lift gate was the source of the noise from the rear of the vehicle.²⁵ The technician replaced the front bushing and applied super lube on the rear lift gate striker and both side contact points in order to correct the issues.²⁶ The vehicle's mileage on this occasion was 12,020.²⁷ The vehicle was in AutoNation's possession for six (6) days. Ms. Mendez was provided with a loaner vehicle while her vehicle was being repaired.

Ms. Mendez testified that since the repair performed in May of 2016, she has not heard the noise from the rear of the vehicle again. She still hears the popping noise from the front end occasionally.

On May 11, 2016 and on May 17, 2016, Complainants mailed letters to Respondent outlining their unhappiness with the vehicle.²⁸ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 23, 2016.²⁹

2. Sam Mendez' Testimony

Sam Mendez, co-Complainant, testified that he drives the vehicle about ten percent of the time. Ms. Mendez is the primary driver. He has heard an intermittent popping noise from the vehicle when driving in reverse. He also stated that he can feel a vibration from the vehicle's floorboard

¹⁹ Complainant Ex. 6, Repair Order dated March 9, 2016.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Complainant Ex. 7, Repair Order dated May 5, 2016.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Complainant Ex. 9, Letter to Whom it May Concern dated May 11, 2016 and Letter to General Motors LLC dated May 17, 2016.

²⁹ Complainant Ex. 8, Lemon Law Complaint dated May 23, 2016. Complainants signed and dated the complaint on May 15, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until May 23, 2016, which is the effective date of the complaint.

when the noise occurs. The popping noise occurs two (2) to three (3) times during the course of the day.

For a period of time, Mr. Mendez also was hearing a squeaking noise from the rear of the vehicle. It sounded like a Styrofoam ice chest squeaking. However, this was repaired in May. He's not heard the squeaking noise from the rear of the vehicle since then.

Mr. Mendez testified that on another occasion he heard a sound come from the vehicle like something wrenching when he made a turn in to a strip mall parking lot. However, he heard this noise only one time.

Mr. Mendez stated that he was contacted by Respondent and told to make an appointment for the vehicle to be repaired. However, the vehicle was not acting up at the time, so he didn't understand why the repair was being performed. Ms. Mendez did take the vehicle to AutoNation where John Ferrell inspected the vehicle.

3. Lisa Mendez Elliott's Testimony

Lisa Mendez Elliott is Mr. Mendez' sister. She testified that she drove the vehicle for one week in July of 2016. Complainants went to Las Vegas and left the vehicle with Ms. Elliott while they were on their trip.

One day while Ms. Elliott was driving the vehicle, she stepped on the brake and heard a popping sound. Ms. Elliott testified that the sound was very loud and that it surprised her. Ms. Elliott heard the popping noise only once during the week.

During cross-examination, Ms. Elliott testified that the popping noise occurred when she was driving the vehicle in reverse and stepped on the brake to change gears.

C. Respondent's Evidence and Arguments

1. John Ferrell's Testimony

John Ferrell is a field service engineer (FSE) who has worked for Respondent since 1998. He has nine (9) Automotive Service Excellence (ASE) certifications and is a GM World Class Technician. He's been working as an FSE for one (1) year. Prior to his hire as an FSE, he worked as a technician for different GM dealers.

Mr. Ferrell testified that he first inspected Complainants' vehicle on June 20, 2016. He was assigned to perform a final repair attempt on the vehicle on that day at AutoNation in Corpus Christi. Mr. Ferrell inspected the vehicle and spoke to AutoNation's service manager, Tom

Flores, about the issues Complainants were experiencing. Mr. Ferrell was informed that when Ms. Mendez left the vehicle at AutoNation that day, she indicated that the problem was no longer present. However, Mr. Ferrell continued with his inspection of the vehicle. He test drove the vehicle several miles, but could not duplicate the noise concern. Mr. Flores informed Mr. Ferrell that the vehicle had been repaired the last time that Complainants had taken it to AutoNation. Mr. Flores said that a rock was discovered under the vehicle's front subframe. AutoNation's technician removed the rock and replaced a control arm bushing. No repairs were performed or suggested by Mr. Ferrell on June 20, 2016.

Mr. Ferrell was again assigned to inspect the vehicle on September 7, 2016, at AutoNation. Mr. Ferrell did not know why he was assigned to see the vehicle again. He inspected the vehicle to determine if there was a popping noise coming from the front of the vehicle and a squeaking noise from the rear end. Mr. Ferrell drove the vehicle with Mr. Flores and could not duplicate the concerns. Mr. Ferrell also checked the vehicle's tire alignment and determined that it was properly aligned. However, he did make a front toe adjustment to the vehicle.

2. Rose Crookston's Testimony

Rose Crookston, District Manager for After-Sales, has worked for Respondent for forty (40) years. She's been in her current position for the past seven (7) years. Ms. Crookston does not have a technical background.

Ms. Crookston testified that the vehicle does not have a safety issue. The vehicle has never left Complainants stranded anywhere. She indicated that Respondent wants to repair the vehicle if there's something wrong with it, but the concern raised by Complainants has been intermittent and has not been verified since the final repair in May of 2016.

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants 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, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

Complainants' concern is that they intermittently hear a popping noise coming from the front of the vehicle when they are driving. Complainants stated that the popping noise was still occurring at the time of hearing. The popping noise could not be recreated on the test drive taken at the hearing. Respondent has not been able to recreate the noise during the last two vehicle inspections. In addition, it does not seem to affect the vehicle's driveability. While it is understandable that the noise heard by Complainants can be annoying, the hearings examiner must hold that the popping 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 Complainants' ability to control or operate the vehicle and it does not create a substantial risk of fire or explosion.

In addition, the hearings examiner must hold that the noise does not *substantially* impair the use or market value of the vehicle. There is no evidence as to what is causing the noise or whether it might be a fairly normal noise caused by road conditions.

The noise that came from the rear of the vehicle that Complainants raised as an issue has been repaired, as testified by both Complainants. As a result, the issue will not be addressed in this decision

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

On the date of hearing, the vehicle's mileage was 18,366 and it remains under warranty. As such, Respondent 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. Rosabell and Sam Mendez (Complainants) purchased a new 2015 Cadillac SRX on September 9, 2015, from Ron Carter Cadillac-Hyundai-Saab (Ron Carter) in Houston, Texas with mileage of 3,183 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a new vehicle bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 18,366.
4. At the time of hearing the vehicle was still under warranty.

5. Complainants intermittently hear a popping noise from the front of the vehicle. In addition, they indicated that there was a squeaking noise coming from the rear of the vehicle.
6. Complainants took the vehicle to Respondent's authorized dealer, AutoNation in Corpus Christi, Texas, in order to address their concerns regarding the noises the vehicle was making on the following dates:
 - a. September 25, 2015, at 2,051 miles;
 - b. October 13, 2015, at 2,654 miles;
 - c. December 21, 2015, at 5,390 miles;
 - d. March 9, 2016, at 9,199 miles; and
 - e. May 5, 2016, at 12,020 miles.
7. On September 25, 2015, AutoNation's service technician replaced the vehicle's front lower control arm bushings in order to address the complaint regarding a popping noise from the front end of the vehicle.
8. On October 13, 2015, AutoNation's service technician determined that the lower control arm bolt was not torqued to specifications. The technician then torqued the bolt to the correct manufacturer specifications in order to address the popping noise issue.
9. On December 21, 2015, AutoNation's service technician verified a popping noise from the front of the vehicle and found a bolt for the front suspension bushing was loose which he tightened to address the noise issue.
10. On March 9, 2016, AutoNation's service technician adjusted the vehicle's rear third lamp housing to address a squeaking noise emanating from the rear of the vehicle. In addition, he determined that the noise from the front of the vehicle which Complainants indicated was a problem was normal noise from the vehicle's struts. No repairs were performed to address the noise from the front of the vehicle at the time.
11. On May 5, 2016, AutoNation's service technician found that the vehicle's left front control arm bushing was worn which was causing a noise whenever the driver made a turn or put the vehicle in reverse. The technician replaced the bushing to correct the issue.
12. Also, on May 5, 2016, the technician determined that the vehicle's rear lift gate was making a noise, so he applied super lube to the gate latch and both side contact points. This corrected the issue of noise coming from the rear of the vehicle.

13. On May 23, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On June 20, 2016 and on September 7, 2016, Respondent's field service engineer (FSE), John Ferrell, performed inspections on the vehicle to see if there were any repairs that could be performed to address Complainant's concerns regarding the noises. Mr. Ferrell could not duplicate the issue and performed no repairs to the vehicle either time.
15. On August 16, 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.
16. The hearing in this case convened and the record was closed on September 16, 2016, in Corpus Christi, Texas, before Hearings Examiner Edward Sandoval. Complainants, Rosabell and Sam Mendez, represented themselves at the hearing. Also testifying for Complainants via telephone was Lisa Mendez Elliott, Mr. Mendez' sister. Respondent was represented by Rose Crookston, District Manager for After-Sales. John Ferrell, Field Service Engineer, also testified for Respondent.

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. Complainants 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. Complainants bear the burden of proof in this matter.

6. Complainants 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. Complainants' 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 Complainants' petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED October 4, 2016



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