

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0334 CAF**

<b>RUTHIE HARPER,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>JAGUAR LAND ROVER NORTH</b>	§	
<b>AMERICA LLC,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Ruthie Harper (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Land Rover RR Sport HSE. Complainant asserts that the vehicle has a mold smell coming from the vehicle’s air conditioning vents. Jaguar Land Rover North America LLC (Respondent) argued that there is no defect with the vehicle 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 repurchase or 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 convened and the record closed on October 25, 2016, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons LLP. Mr. Chambless did not testify in the hearing.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>1</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the

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<sup>1</sup> Tex. Occ. Code § 2301.604(a)(1) and (2).

manufacturer.<sup>2</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>3</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>4</sup>

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

Complainant purchased a new 2014 Land Rover RR Sport HSE from Land Rover Austin (Land Rover) in Austin, Texas on May 12, 2014, with mileage of 41 at the time of delivery.<sup>5</sup> Respondent's bumper-to-bumper warranty for the vehicle provides coverage for four (4) years or 50,000 miles, whichever comes first.<sup>6</sup> On the date of hearing the vehicle's mileage was 13,611. At this time, Respondent's warranty for the vehicle is still in effect.

Complainant testified that a few months after purchasing the vehicle, she began noticing a mold odor in the vehicle whenever she turned on the air conditioner. As time progressed, the odor became stronger.

Complainant took the vehicle to Land Rover on August 31, 2015, to address the issue. Land Rover's service technician reflashed (updated) the vehicle's HVAC module.<sup>7</sup> The vehicle's mileage on this occasion was 8,723.<sup>8</sup> The vehicle was in the dealer's possession for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant could still smell the mold odor after the repair and so decided to return the vehicle for repair. She took the vehicle back to Land Rover for repair for the issue on September 23,

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<sup>2</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>4</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) provides an alternative method 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.

<sup>5</sup> Complainant Ex. 1, Purchase Order dated May 12, 2014.

<sup>6</sup> Complainant Ex. 12, Land Rover Passport to Service, p. 4.

<sup>7</sup> Complainant Ex. 2, Repair Order dated August 31, 2015.

<sup>8</sup> *Id.*

2015. Land Rover's technician removed the vehicle's dashboard and replaced the vehicle's evaporation core assembly.<sup>9</sup> Complainant was advised that the vehicle would be as good as new after the repair. The vehicle's mileage on this occasion was 8,881.<sup>10</sup> The vehicle was in Land Rover's possession until October 2, 2015. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the interior of the vehicle smelled better after the repair. However, the mold odor began to reappear and seemed to intensify over the next couple of months. In addition, Complainant began to hear a rattle from the dashboard. As a result, Complainant took the vehicle to Land Rover to address the issues on December 1, 2015. Land Rover's technician reattached the vehicle's upper dash trim to address the rattle issue. In addition, the technician installed a "fragrance" to cover the mold odor. The vehicle's mileage on this occasion was 9,728.<sup>11</sup>

Complainant felt that the odor seemed worse during early 2016. She took the vehicle to Land Rover on May 9, 2016, to have the issue addressed again. Land Rover's technician updated the vehicle's climate control module.<sup>12</sup> The technician advised Complainant that the complete matrix box should be replaced at this time.<sup>13</sup> Land Rover's service advisor, Rey Sepulveda, advised Complainant that the technician had run a system check and did not find mold in the vehicle.<sup>14</sup> Complainant declined further repair to the vehicle and decided to take the issue to Respondent's corporate office. The vehicle's mileage on this occasion was 12,636.<sup>15</sup> The vehicle was in Land Rover's possession for a month. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complainant with the Texas Department of Motor Vehicles (Department) on July 8, 2016.<sup>16</sup> Complainant also mailed a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>17</sup>

On August 10, 2016, Respondent's consumer affairs specialist, Matthew Migliozi, emailed Complainant asking her to take the vehicle to Land Rover to allow Respondent's field service

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<sup>9</sup> Complainant Ex. 3, Repair Order dated September 23, 2015.

<sup>10</sup> *Id.*

<sup>11</sup> Complainant Ex. 4, Repair Order dated December 1, 2015.

<sup>12</sup> Complainant Ex. 5, Repair Order dated May 9, 2016.

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

<sup>14</sup> Complainant Ex. 6, Email Chain between Complainant and Rey Sepulveda.

<sup>15</sup> Complainant Ex. 5, Repair Order dated May 9, 2016.

<sup>16</sup> Complainant Ex. 7, Lemon Law complaint dated July 8, 2016. Although the complaint was signed on July 1, 2016, the effective date of the complaint is the date that it was received by the Texas Department of Motor Vehicles, which was July 8, 2016.

<sup>17</sup> Complainant Ex. 8, Undated Letter to Jaguar Land Rover North America LLC.

engineer to perform a final repair attempt on the vehicle.<sup>18</sup> The final repair attempt was performed on September 26, 2016, at Land Rover. Respondent's field service engineer determined that the odor was being caused by a problem in the vehicle's evaporator core, so he replaced the evaporator core box assembly and replaced the vehicle's cabin air filter.<sup>19</sup> The vehicle's mileage on this occasion was 13,421.<sup>20</sup> The vehicle was in the dealer's possession for two (2) days. Complainant was provided with a loaner vehicle while the final repair attempt was performed.

Complainant testified that when she retrieved the vehicle after the final repair attempt, she could still smell a moldy, musty odor. In addition, the vehicle's air conditioner would not blow out cold air. She also observed some material coming out of the air conditioning vents. Complainant decided to perform a mold test on the vehicle. She purchased a test kit and obtained a dust sample from the vehicle's air conditioning vent using a Q-tip. She submitted the sample to a testing lab on October 14, 2016, and was informed of the results on October 17, 2016.<sup>21</sup> The lab report indicated that the sample tested positive for cladosporium which is an allergen source.<sup>22</sup>

Complainant testified that she is concerned with her health when she's driving the vehicle. Her complaint is not solely based on the odor, but the fact that she feels sick when she drives the vehicle. She stated that she starts feeling congested, her throat gets sore, and she develops a runny nose when she drives the vehicle. Complainant feels that the vehicle's value has been diminished due to the issue. She would not feel good about selling the vehicle and having someone else deal with the issue. Complainant stated that in September of 2016 she stopped driving the vehicle regularly.

During cross-examination, Complainant testified that although she provided a dust sample from the vehicle's air conditioning vent for analysis, she did not sample her home, work, or other vehicles. She stated that she followed the protocol provided by the kit for obtaining a dust sample.

Complainant also stated that the odor is worse during the first 10 to 15 minutes after starting the vehicle. She hasn't tried to sell the vehicle. Complainant also stated that she cannot drive the vehicle without feeling sick or allergic. She's concerned with her health when driving the vehicle.

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<sup>18</sup> Complainant Ex. 9, Email Chain between Complainant and Matthew Migliozi.

<sup>19</sup> Complainant Ex. 10, Repair Order dated September 26, 2016.

<sup>20</sup> *Id.*

<sup>21</sup> Complainant Ex. 13, Certificate of Mold Analysis dated October 17, 2016.

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

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

John Chambless, attorney, represented Respondent at the hearing. He did not offer any testimony.

### **D. Analysis**

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 has not met the burden of proof to establish that her vehicle has a defect which creates a serious safety hazard or which substantially impairs its use or market value. Complainant testified that there is a mold odor which she smells when she drives the vehicle. The fact that there is an odor that occurs when the vehicle is driven does not indicate the presence of a defect in the vehicle, since the odor could be created by outside forces. Since the evidence does not indicate the presence of a manufacturer's defect which causes the odor in question, the hearings examiner must hold that Complainant is not entitled to the requested relief.

Respondent's bumper-to-bumper warranty applicable to Complainant's vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 13,611 and the basic warranty coverage is still in effect. Respondent is still under an obligation to repair any issues with the vehicle that are covered under the warranty, including any odor issues.

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

### **III. FINDINGS OF FACT**

1. Ruther Harper (Complainant) purchased a new 2014 Land Rover RR Sport HSE on May 12, 2014, from Land Rover Austin, in Austin, Texas, with mileage of 41 at the time of delivery.

2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent), issued a 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 13,611.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Complainant feels that the vehicle's interior has a mold smell that she can detect when she's driving the vehicle.
6. Complainant took the vehicle to Respondent's authorized dealer in order to address her concerns with the vehicle, on the following dates:
  - a. August 31, 2015, at 8,723 miles;
  - b. September 23, 2015, at 8,881 miles;
  - c. December 1, 2015, at 9,728 miles; and
  - d. May 9, 2016, at 12,636 miles.
7. On August 31, 2015, the dealer's service technician reflashed the vehicle's HVAC module in order to address the mold odor issue.
8. On September 23, 2015, the dealer's service technician replaced the vehicle's evaporation core assembly.
9. On December 1, 2015, the dealer's service technician sprayed a scent or deodorizer in order to resolve the odor issue.
10. On May 9, 2016, the dealer's service technician updated the vehicle's climate control module and advised Complainant that the vehicle's matrix box should be replaced. Complainant declined the repair to change the matrix box.
11. On July 8, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On September 26, 2016, Respondent's field service engineer performed a final repair attempt on the vehicle and replaced the vehicle's evaporator core box assembly and cabin filter.

13. On August 18, 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 convened and the record closed on October 25, 2016, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons LLP.


#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 the vehicle has a verifiable 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.
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 Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

**SIGNED November 29, 2016**



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