

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0345 CAF**

**KELCY BOREN,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

AMENDED DECISION AND ORDER

Kelcy Boren (Complainant) filed a 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 his vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defects that create a serious safety hazard and substantially impair the vehicle's value. The vehicle continues to have such defects after being out of service over 30 days for repairs. Consequently, the Complainant's vehicle qualifies for repurchase or replacement.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ were not contested and are discussed only in the Findings of Fact and Conclusions of Law. As outlined below, the Department has jurisdiction over this dispute because the Complainant, a Texas resident, registered the subject vehicle in this state. The hearing in this case convened and the record closed on November 4, 2016, in Tyler, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. Mishae Boren testified for the Complainant. Maria Diaz, represented and testified for 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).

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value and: (A) 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 occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁹

However, a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹⁰ 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.¹¹

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;¹² (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹³ and (3) the

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ “[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).

¹¹ “[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).

¹² TEX. OCC. CODE § 2301.606(c)(1). 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.

¹³ TEX. OCC. CODE § 2301.606(c)(2). 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).

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.¹⁴

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 distributor's . . . warranty agreement applicable to the vehicle."¹⁵ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁶

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁷ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that every required fact is more likely than not true.¹⁸

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.¹⁹ 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 which form the basis of the claim for relief under the lemon law."²⁰ However, the parties may expressly or impliedly consent

¹⁴ TEX. OCC. CODE § 2301.606(d)(2).

¹⁵ TEX. OCC. CODE § 2301.204.

¹⁶ TEX. OCC. CODE § 2301.603(a).

¹⁷ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁸ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁹ "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* 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.").

²⁰ 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.²¹ Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²²

A. Complainant's Evidence and Arguments

On April 26, 2016, the Complainant, purchased a new 2015 Ford F-150 from Roberts Ford Lincoln, a franchised dealer of the Respondent, in Pryor, Oklahoma. The Complainant actually took delivery of the vehicle on May 5, 2016. The vehicle had 27 miles on the odometer at the time of purchase.²³ The vehicle's limited warranty provides bumper to bumper coverage of the vehicle for three years or 36,000 miles, whichever occurs first. On July 20, 2016, the Complainant mailed a written notice of defect to the Respondent. On July 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle displayed warnings for Hill Start Assist and AdvanceTrac Electronic Stability Control, and the vehicle exhibited decreased performance in the vehicle's power steering, acceleration, and power. In relevant part, the Complainant took the vehicle to a dealer for repair according to the repair invoices as outlined below:

Date	Miles	Issue
June 8, 2016	1,504	Hill Start Assist light coming on ²⁴
June 16, 2016	1,956	Vehicle is sluggish, exhibits different codes ²⁵
August 22, 2016	2,313	

The Complainant testified that he first noticed the complained of problems about a month after purchasing the vehicle. The vehicle's warning lights would flash and the vehicle would lose power and feel sluggish in the steering, and the display would shift from Hill Start Assist to AdvanceTrac Electronic Stability Control with a message to see the manual. He explained that sometimes these conditions would occur singularly and sometimes they would occur together. He last experienced these issues on the Wednesday before the hearing (November 2, 2016). The Complainant testified that his vehicle was out for repair over 60 days. Although he was provided a loaner vehicle, he claimed that the vehicle, a Ford Escape, was not comparable to the subject vehicle because the

²¹ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²² See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

²³ Complainant's Ex. 1, Purchase Order; Complainant's Ex. 1, Odometer Disclosure Statement.

²⁴ Complainant's Ex. 11, Invoice 430199.

²⁵ Complainant's Ex. 11, Invoice 430199

loaner vehicle was a compact SUV and not a pickup. The Complainant explained that when the problems happened, they would happen consistently. He explained that the vehicle tended to exhibit problems more often on brick surfaces, and coming around the loop, or coming to a stop. Though the problems typically occur on bumpier roads, they can occur on smooth roads also. Mrs. Boren added that she had been in the vehicle multiple times when the problems occurred. She elaborated that the problems will happen in succession a few times in an episode. The problems occurred once while she was driving the vehicle in October (2016). Mrs. Boren noted that Complainant's Exhibits 19 and 20 reflect the instance occurring in October. The Complainant testified that he purchased the vehicle in Pryor, Oklahoma but registered it in Texas and he resides in Texas. He elaborated out how Hill Start Assist and AdvanceTrac Electronic Stability Control affected safety. The Complainant also pointed out that Brent Hochgraber, a field service engineer of the Respondent (as opposed to a dealer technician), came and repaired the vehicle. The Complainant requested repurchase of the vehicle.

B. Respondent's Evidence and Arguments

The Respondent argued that the Complainant's claim should be denied because it does not meet the requirements for repurchase, in particular, the vehicle was not purchased in Texas, the vehicle did not have four or more repair attempts, and the complained of conditions did not constitute safety defects. Additionally, the Respondent claimed that it should have an opportunity to cure the nonconformity. Ms. Diaz noted that the Respondent received the complaint while working with customer service but the Complainant declined to have a final repair attempt. Ms. Diaz pointed out that the vehicle had no repair orders in May. Although the loaner provided was not the exact same vehicle as the Complainant's the Texas Occupations Code does not define what comparable is.

C. Inspection

At the hearing, the vehicle had 4,649 miles on the odometer before the test drive. The test drive occurred over varying surfaces, including brick and concrete, at speeds up to the 50 mph range. The vehicle did not exhibit any unusual characteristics during the approximately 30 minute long test drive.

D. Analysis

A preponderance of the evidence shows that the Lemon Law applies to the subject vehicle, the vehicle has a serious safety hazard, and the vehicle continues to have a defect after more than 30 days out of service for repair, with the vehicle last exhibiting problems two days before the hearing. Furthermore, the Complainant provided the required notice of defect and the Respondent had an opportunity to cure the defect. Accordingly, the vehicle qualifies for repurchase relief as outlined below.

1. Jurisdiction/Standing

The Lemon Law applies to multiple categories of vehicles in addition to those purchased from a Texas license holder. Section 2301.601(2)(C) of the Texas Occupations Code states “Owner” means a person who is entitled to enforce a manufacturer’s warranty with respect to a motor vehicle, and who . . . is a resident of this state and has registered the vehicle in this state” (emphasis added). The evidence shows that the Complainant resides in Tyler, Texas and registered his vehicle in Smith County, Texas.²⁶ Accordingly, the Complainant’s vehicle clearly falls within the scope of the Lemon Law and the Complainant has standing to prosecute a Lemon Law complaint.

2. Reasonable Repair Attempts

The record shows repair attempts at 1,504 miles and 1,956 miles on June 8, 2016, and June 16, 2016, respectively, for a total of 68 days out of service for repair.²⁷ Invoice 430199 reflects a problem with the hill start assist. However, the Complainant contends that he brought the vehicle in to address all of the complained of issues at the June 8, 2016, visit.²⁸ Invoice 430532 indicates problems with sluggishness and “different codes”, apparently including warnings for both the Hill Start Assist and AdvanceTrac Electronic Stability Control according to the Complainant’s testimony.

²⁶ Complainant’s Ex. 5, Title Application Receipt

²⁷ Complainant’s Ex. 11, Invoice 430199; Complainant’s Ex. 11, Invoice 430532.

²⁸ Complainant’s Ex. 8, Lemon Law Complaint Form.

a. Serious Safety Hazard

Based on the mileage and dates of repairs, the vehicle ostensibly satisfies the repair attempts required for a serious safety hazard. However, the Respondent disputes that the vehicle has a serious safety hazards. As described in the discussion of the applicable law, the Lemon Law defines serious safety hazard as “a life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.” Although not every alleged condition constitutes a serious safety hazard, the record shows that the vehicle has nonconformities that may substantially impede the control or operation of the vehicle. For instance, the unexpected loss of power steering could understandably cause a driver to understeer the vehicle. The evidence shows that AdvanceTrac Electronic Stability Control responds to adverse conditions driving conditions to help maintain traction and avoid skidding, in other words this feature helps maintain control. Conversely, malfunction of this feature would impede the driver’s ability to maintain control under potentially dangerous circumstances. In conclusion, the vehicle satisfies the presumption for serious safety hazards.

b. Out of Service for Repair Over 30 Days

The Respondent appears to contend that the vehicle does not satisfy the over 30 days requirement because the Respondent provided a loaner vehicle to the Complainant. However, the Complainant asserts that the loaner vehicle was not a comparable motor vehicle. Chapter 2301 of the Texas Occupations Code, which includes the Lemon Law, does not define “comparable motor vehicle”. On the other hand, the Department’s rules define “comparable motor vehicle” as “[a] new motor vehicle, with comparable mileage, from the same manufacturer, converter or distributor’s product line and the same model year or newer as the vehicle to be replaced or as reasonably equivalent to the motor vehicle to be replaced.”²⁹ The rules state that this meaning applies to Subchapter G.³⁰ However, Subchapter G only addresses “comparable motor vehicle” in regard to replacement relief and not in respect to loaner vehicles provided during repairs. Accordingly, because the Lemon Law does not define “comparable motor vehicle” for purposes

²⁹ 43 TEX. ADMIN. CODE § 215.201(b)(1).

³⁰ 43 TEX. ADMIN. CODE §§ 215.201-215.210.

of loaner vehicles, the common usage of the word applies.³¹ In part, Dictionary.com defines comparable as: “capable of being compared; having features in common with something else to permit or suggest comparison” and “usable for comparison; similar.”³² In this case, the subject vehicle, an F-150, is a full-size extended cab pickup whereas the Respondent provided an Escape, a compact SUV, as a loaner. The F-150 and Escape are clearly different types of vehicles. Given the common meaning of “comparable”, the difference between the vehicles makes the vehicles not comparable, especially when considering the Complainant’s intended use of his vehicle for work, which may necessitate delivery of oilfield equipment. Accordingly, the provision of the Escape as a loaner vehicle does not reduce the “30 days” out of service.³³ Therefore, given the repairs as described above, the subject vehicle satisfies the presumption for vehicles out of service for repair over 30 days.

3. Substantial Impairment

Under the reasonable purchaser standard, the complained of defects substantially impair the vehicle’s market value. The problems with the AdvanceTrac Electronic Stability Control (a significant safety feature), the Hill Start Assist, and decreased performance in the vehicle’s power steering, acceleration, and power, may reasonably deter a buyer from purchasing the vehicle or substantially reduce the price a buyer would be willing to pay.

4. Notice and Opportunity to Cure

The Lemon Law requires mailed written notice of the defect to the Respondent and an opportunity to cure the defect by the Respondent.³⁴ The record shows that the Complainant provided such notice on July 20, 2016. Further, the Complainant testified that Brent Hochgraber, a field service engineer of the Respondent, made repairs on the subject vehicle. Accordingly, the Respondent received notice of the alleged defects and had an opportunity to cure such defects.

³¹ TEX. GOV’T CODE § 311.011.

³² Comparable. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/comparable?s=t> (accessed: November 8, 2016)

³³ TEX. OCC. CODE § 2301.605(c) (“The 30 days described by Subsection (a)(3)(A) do 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.”).

³⁴ TEX. OCC. CODE § 2301.606(c).

III. Findings of Fact

1. On April 26, 2016, the Complainant, purchased a new 2015 Ford F-150 from Roberts Ford Lincoln, a franchised dealer of the Respondent, in Pryor, Oklahoma. The Complainant actually took delivery of the vehicle on May 5, 2016. The vehicle had 27 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage of the vehicle 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
June 8, 2016	1,504	Hill Start Assist light coming on ³⁵
June 16, 2016	1,956	Vehicle is sluggish, exhibits different trouble codes ³⁶
August 22, 2016	2,313	

4. On July 20, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On July 25, 2016, the Complainant filed a Lemon Law complaint with the Department alleging that the vehicle displayed warnings for Hill Start Assist and AdvanceTrac Electronic Stability Control, and the vehicle exhibited decreased performance in the vehicle's power steering, acceleration, and power.
6. On August 30, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the 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.
7. The hearing in this case convened and the record closed on November 4, 2016, in Tyler, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. Mishae Boren testified for the Complainant. Maria Diaz, represented and testified for the Respondent.

³⁵ Complainant's Ex. 11, Invoice 430199.

³⁶ Complainant's Ex. 11, Invoice 430199

8. The Complainant resides in Tyler, Texas.
9. The Complainant registered the vehicle in Smith County, Texas.
10. The vehicle’s odometer displayed 4,649 miles at the time of the hearing.
11. The vehicle’s warranty was in effect at the time of the hearing.
12. On October of 2016, at 4,002 miles, the vehicle displayed a warning message to “Service AdvanceTrac”.
13. The vehicle exhibited the complained of malfunctions on November 2, 2016.
14. The vehicle operated normally during the test drive at the hearing.
15. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$53,054.38
Delivery mileage	27
Mileage at first report of defective condition	1,504
Mileage on hearing date	4,649
Useful life determination	120,000

Purchase price, including tax, title, license and registration	\$53,054.38		
Mileage at first report of defective condition	1,504		
Less mileage at delivery	-27		
Unimpaired miles	1,477		
Mileage on hearing date	4,649		
Less mileage at first report of defective condition	-		
	1,504		
Impaired miles	3,145		
<i>Reasonable Allowance for Use Calculations:</i>			
Unimpaired miles	1,477	$\div 120,000 \times \$53,054.38$	= \$653.01
Impaired miles	3,145	$\div 120,000 \times \$53,054.38 \times 50\%$	= \$695.23
Total reasonable allowance for use deduction			\$1,348.24
Purchase price, including tax, title, license and registration	\$53,054.38		
Less reasonable allowance for use deduction	-\$1,348.24		
Plus filing fee refund	\$35.00		
TOTAL REPURCHASE AMOUNT	\$51,741.14		

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
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 sufficient 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 proved that the vehicle has defects covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant met the statutory requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The Complainant timely filed the complaint for repurchase or replacement relief. TEX. OCC. CODE § 2301.606(d).
9. The Complainant provided sufficient notice of the defects to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
10. The Respondent had an opportunity to cure the alleged defects. TEX. OCC. CODE § 2301.606(c)(2).
11. The Complainant's vehicle qualifies for replacement or repurchase. TEX. OCC. CODE § 2301.604.

V. Order

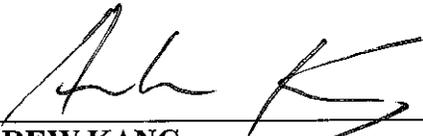
Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **GRANTED**. It is further **ORDERED** that the Respondent shall repair the warrantable defect(s) in the reacquired vehicle identified in this Decision. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall accept the return of the vehicle from the Complainant. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainant. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. The Respondent shall repurchase the subject vehicle in the amount of **\$51,741.14**. The refund shall be paid to the Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to the Respondent, then the full refund shall be paid to the Complainant. At the time of the return, the Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, the Complainant is responsible for providing the Respondent with clear title to the vehicle;
3. Within 20 days after the date this Order becomes final under Texas Government Code § 2001.144,³⁷ the parties shall complete the return and repurchase of the subject vehicle. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to the Complainant's refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainant and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

³⁷ (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.

4. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and
6. The Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 days of the transfer.

SIGNED November 14, 2016



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