

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0006 CAF**

MICHAEL A. GOMEZ,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
BMW OF NORTH AMERICA LLC,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Michael A. Gomez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 BMW 320i. Complainant asserts that the vehicle shudders at idle, doesn't accelerate properly, and has turned off while he was driving on at least two occasions. BMW of North America LLC (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for repurchase 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 on February 8, 2017, in El Paso, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant, Michael A. Gomez, represented himself at the hearing. Also testifying for Complainant was Natalia Moreno, his girlfriend. Respondent was represented by Stephen Soncini, After-Sales Area Manager. Also participating in the hearing for Respondent were Christian Ugarte, BMW of El Paso's Service and Parts Director; Rafael Chavez, BMW of El Paso's Shop Foreman; Roy Tealer, BMW of El Paso's Service Advisor; and Victor Cheung, Respondent's Technical Support Engineer.

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 value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these conditions, 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.⁵

B. Complainant's Evidence and Arguments

1. Michael A. Gomez's Testimony

Complainant purchased a new 2015 BMW 320i from BMW of El Paso (BMW) in El Paso, Texas on December 27, 2014.⁶ The vehicle's mileage was 13 at the time of delivery.⁷ Respondent provided a new vehicle limited warranty for the vehicle, which provides coverage for four (4) years or 50,000 miles from the date of delivery, whichever comes first.⁸ On the date of hearing the vehicle's mileage was 29,345.

Complainant testified that four (4) to five (5) months after purchasing the vehicle it began to shudder at idle. He took the vehicle to BMW, Respondent's authorized dealership, for repair on June 30, 2015. Complainant indicated to the dealer's service advisor that he had two problems with the vehicle: rough idle and poor acceleration.⁹ The dealer's service technician was unable to

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). 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.

⁶ Complainant Ex. 1, Motor Vehicle Retail Installment Agreement, Service and Warranty Manual Information, and Odometer Disclosure Statement dated December 27, 2014.

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 2, Repair Order dated June 30, 2015.

duplicate the concerns and determined that the vehicle was operating as designed.¹⁰ However, he did indicate that the vehicle's computer indicated a fill-up with low octane fuel which could have caused the rough idle.¹¹ The vehicle's mileage on this occasion was 7,104.¹² The vehicle was in the dealer's possession for one (1) day during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

The shuddering began to get more noticeable as time passed. The vehicle would shake, the engine's RPM's would drop, and the vehicle would sound as if it was going to turn off. On at least one occasion the vehicle did turn off while Complainant was driving it. Complainant took the vehicle to BMW for repair on September 4, 2015. The dealer's service technician test drove the vehicle for about 10 miles, but could not duplicate the concerns.¹³ The vehicle's mileage when it was taken to the dealership on this occasion was 9,537.¹⁴ Complainant was provided with a loaner vehicle while his vehicle was in the dealer's shop for the day.

Complainant picked up the vehicle on the afternoon of September 4, 2015. He started to drive away from the dealership, but immediately began to feel the vehicle shuddering. He went back to BMW and spoke to the service advisor, Roy Tealer. Complainant testified that Mr. Tealer observed the issue of the vehicle shuddering and called a technician to inspect the vehicle. They decided to take the vehicle back in order to perform repairs on it. The dealer's service technician updated the vehicle's software in order to address the issue.¹⁵ The vehicle was in the dealer's possession until September 14, 2015.¹⁶ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle was driving better after he picked it up from the dealer on September 14, 2015. It seemed to have been repaired. In late January of 2016, the vehicle turned off while he was driving it and seemed to have no acceleration. The vehicle also began to shudder again. Complainant stated that in January, he was driving the vehicle and stopped at a stop sign. He attempted to take a left turn and half way into the intersection, the vehicle turned off. Complainant restarted the vehicle immediately and the vehicle began to shudder.

On January 29, 2016, Complainant took the vehicle to BMW for repair because of the shuddering, lack of acceleration, and turning off when he was driving it. The dealer's service

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 3, Repair Order dated September 4, 2015.

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated September 4, 2015 (Version 3).

¹⁶ *Id.*

technician could not duplicate the problems and determined that the vehicle was operating as designed.¹⁷ The vehicle's mileage when it was delivered to the dealer on this occasion was 14,527.¹⁸ The vehicle was returned to Complainant on January 30, 2016.¹⁹ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant was unhappy with the vehicle, since he continued to experience the same issues of which he had originally complained. Complainant contacted Christian Ugarte, BMW of El Paso's Service and Parts Director, to complain and to ask for the diagnostics for the repair performed in September of 2015, which seemed to resolve the concerns temporarily. Mr. Ugarte indicated that there was no diagnostic record as the repair was done through "technician knowledge" and not by diagnostic computer.

As the problem with the vehicle shuddering continued to occur, Complainant took the vehicle to BMW for repair on May 13, 2016. Complainant brought up the shuddering issue and the fact that the vehicle had died twice.²⁰ The technician was unable to duplicate the concerns.²¹ He did indicate, however, that there could be a fuel grade issue, as the technician's computer indicated that medium grade fuel had been used in the vehicle, rather than premium fuel.²² The vehicle's mileage on this occasion was 18,630.²³ The vehicle was in the dealer's possession for four (4) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle continued to shudder and lack acceleration after the repair. He stated that the problems got worse over the next three (3) months.

On August 4, 2016, Complainant wrote a letter to Respondent advising them of the problems with the vehicle.²⁴ Complainant filed a Lemon Law complaint to the Texas Department of Motor Vehicles (Department) on September 5, 2016.²⁵

Respondent performed a final repair attempt on Complainant's vehicle on October 26, 2016, at BMW of El Paso. Respondent's technician was not able to duplicate the issues raised by

¹⁷ Complainant Ex. 6, Repair Order dated January 29, 2016.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 13, Repair Order dated May 13, 2016.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 14, Letter to BMW of North America, LLC dated August 4, 2016.

²⁵ Complainant Ex. 16, Lemon Law complaint dated September 5, 2016. Although the complaint was signed by Complainant on August 30, 2016, the complaint was actually received by the Texas Department of Motor Vehicles on September 5, 2016, which is the effective date of the complaint.

Complainant and determined that the vehicle was performing as designed.²⁶ The vehicle's mileage at the time of the final repair was 25,466.²⁷ Complainant was provided with a rental vehicle while the final repair attempt was performed.

Complainant testified that the vehicle still shudders, usually at idle, but also occurs occasionally while he's driving. He feels that there is still a lack of acceleration. Complainant could not recall if the vehicle has died since May of 2016. He also testified that he's always used the proper fuel for the vehicle which is 91 octane. He switched from buying fuel from Diamond Shamrock stations to buying fuel from Mobil, Chevron, and Shell stations.

Complainant also testified that he incurred incidental expenses of \$65 due to the issues with the vehicle. He paid \$55 for a constable to serve a subpoena on Roy Tealer, Service Advisor for BMW of El Paso. In addition, there were witness fees of \$10.

2. Natalia Moreno's Testimony

Natalia Moreno is Complainant's girlfriend. She testified that she is familiar with the vehicle. She has driven it about 10 to 15 times. Ms. Moreno testified that she has experienced issues with the vehicle. She stated that when she's started the vehicle in the morning it sometimes shakes. The last time she drove the vehicle was sometime in October of 2016. The vehicle shakes for a few seconds and then it will stop. She never experienced any problems with the vehicle's acceleration.

C. Respondent's Evidence and Arguments

1. Victor Cheung's Testimony

Victor Cheung, Technical Support Engineer, has worked for Respondent for 31 years. He is Automotive Service Excellence (ASE) certified in all automotive areas.

Mr. Cheung testified that he inspected Complainant's vehicle on October 26, 2016, at BMW of El Paso, at which time he performed a final repair attempt on the vehicle. Mr. Cheung was informed that the vehicle would shudder in the morning, would turn off while being driven, and was slow to accelerate.

²⁶ Complainant Ex. 15, Repair Order dated October 26, 2016.

²⁷ *Id.*

Mr. Cheung ran a diagnostic program on the vehicle and was unable to find any fault codes in the vehicle's computers related to the engine. Mr. Cheung also ran diagnostics on the vehicle's transmission and did not find any fault codes. He then performed a fuel quality test plan from the vehicle's computers to track the quality of fuel that was being used in the vehicle. The plan indicated that there had been 26 tanks of high grade fuel, 61 tanks of medium grade fuel, and 1 tank of low grade fuel used in the vehicle. Mr. Cheung then test drove the vehicle about 31 miles on the highway and on city streets. He determined that there was not a problem with the vehicle. He did not experience any shaking or shuddering during the test drive nor did Mr. Cheung observe a problem with the vehicle's acceleration. He also parked the vehicle and backed it up about 20 times and did not have any problems with the vehicle.

Mr. Cheung stated that the vehicle has a four (4) cylinder engine. The engine has less horsepower and more vibration than a six (6) cylinder engine. There is, in general, a more noticeable vibration with a four cylinder engine. Mr. Cheung did not feel anything abnormal while driving the vehicle. He stated that if he had observed a problem, he would have had it repaired.

2. Christian Ugarte's Testimony

Christian Ugarte, BMW of El Paso's Service and Parts Director, has worked for Respondent for seven (7) years. He's been in his present position for 18 months. Mr. Ugarte has been in the automotive industry for 22 years. He has never worked as an automotive technician.

Mr. Ugarte testified that he corresponded with Complainant about the vehicle in early 2016. At one point, a repair was made to the vehicle (September of 2016). When Complainant asked about the repair which was not included on an invoice or repair order, Mr. Ugarte spoke to the technician who performed the repair. The technician informed Mr. Ugarte that he could not recall the specifics of the repair, but believed that it involved a loose vacuum hose.

Mr. Ugarte also testified that he spoke to BMW of El Paso's shop foreman about Complainant's vehicle in February of 2016. The shop foreman told Mr. Ugarte that there was no problem with the vehicle. However, he also indicated that Complainant was using poor quality fuel which was affecting the way the vehicle was behaving.

Mr. Ugarte stated that he refused to allow his employees to perform further work on Complainant's vehicle due to the fact that Complainant had filed a Lemon Law complaint with the state. However, he has never disallowed work for the vehicle for any warranty related issues.

3. Rafael Chavez, Jr.'s Testimony

Rafael Chavez, Jr., BMW of El Paso's Shop Foreman, has worked for 37 years as an automotive technician. He worked for 15 years as a technician for Mercedes-Benz, Porsche, and Audi. Mr. Chavez has worked for Respondent since 1995 with the last eight (8) years working as a shop foreman with BMW of El Paso. He is a certified L7 technician for Respondent.

Mr. Chavez testified that he has seen Complainant's vehicle and did not find any issues with it. He did not feel any shuddering in the vehicle when he test drove it. He was unable to find any fault codes when performing diagnostics on the vehicle. He feels that there may be some fuel related problems which can cause the vehicle to stall and the check engine light (CEL) to illuminate. Mr. Chavez stated that the problems voiced by Complainant were never able to be duplicated by the dealer's technicians. Mr. Chavez also stated that the technicians can't fix a problem if there is no fault code or if they're unable to duplicate the concern.

4. Roy Tealer's Testimony

Roy Tealer, BMW of El Paso's Service Advisor, has worked for the dealership for four (4) years. He has never worked as an automotive technician or in the automotive industry prior to his employment with BMW of El Paso.

Mr. Tealer testified that he was the service advisor on most of Complainant's repair visits to the dealer. Mr. Tealer recalled that on September 4, 2015, Complainant picked up the vehicle and returned it to the dealer immediately. Complainant mentioned that the vehicle was "vibrating" and had not been repaired. Mr. Tealer called a technician to look at the vehicle. Mr. Tealer stated that he took Complainant's word regarding the problem and readmitted the vehicle for further repair. Mr. Tealer also stated that he relies on the technician's explanation of an issue on the repair order and that in Complainant's case, the issue always seemed to come back to the quality of the fuel being used in the vehicle.

Mr. Tealer denied telling Complainant that he saw the problem with the vehicle. He also denied apologizing to Complainant for the vehicle "doing it again" or saying that the "problem was not due to the gas." Mr. Tealer stated that he may have said that the vehicle was giving Complainant a headache.

Mr. Tealer was present when Mr. Ugarte refused to perform non-warranty work on Complainant's vehicle. He doesn't recall if Complainant asked Mr. Ugarte to put the refusal in writing.

D. Analysis

Under the 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.

The first issue to be discussed is whether the vehicle has a defect or condition which creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Although Respondent has indicated that the vehicle is operating normally, Complainant testified that the vehicle has died at least twice while he was driving it and one occasion was when he was in the middle of an intersection making a left turn. In addition, the hearing officer observed during the test drive of the vehicle that the vehicle seemed to shudder or vibrate unusually on at least three (3) occasion. The vehicle's shuddering issues make it less desirable to drive than comparable vehicles. In addition, the vehicle dying while being driven indicates that there is a serious safety hazard with the vehicle. The evidence thus indicates that the vehicle has a defect or nonconformity which substantially impairs its use and market value.

Complainant purchased the vehicle on December 27, 2014, and presented the vehicle to BMW of El Paso, an authorized dealer of Respondent, due to his concerns with the vehicle, on the following dates: June 30, 2015; September 4, 2015; January 29, 2016; and May 13, 2016. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." The evidence presented at the hearing establishes that Complainant has met the requirements of this test. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

In addition, the evidence presented at the hearing indicates that Complainant also provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via letter dated August 4, 2016, of the issues with the vehicle and providing them with an opportunity to cure of which Respondent availed themselves. The vehicle was inspected and a final repair attempt performed on October 26, 2016, by Respondent's representative who determined that no repairs were necessary at that time.

Although Respondent has been provided several opportunities to repair the vehicle and to ensure that it operates properly, they have not been able to do so. As such, Complainant has met his burden of proof to establish a warrantable and existing defect or condition that substantially impairs the vehicle's use and market value.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainant's request for repurchase relief is hereby granted. In addition, Complainant will be awarded reimbursement for incidental expenses totaling \$65.00.

III. FINDINGS OF FACT

1. Michael A. Gomez (Complainant) purchased a new 2015 BMW 320i on December 27, 2014, from BMW of El Paso in El Paso, Texas, with mileage of 13 at the time of delivery.
2. The manufacturer of the vehicle, BMW of North America LLC (Respondent), issued a new vehicle limited warranty good for four (4) years or 50,000 miles from the date of delivery to the owner, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 29,345.
4. At the time of hearing the vehicle's new vehicle limited warranty was still in effect.
5. Approximately four (4) to five (5) months after purchasing the vehicle, Complainant began noticing that the vehicle would shudder on occasion, would suffer from a lack of acceleration, and had the vehicle turn off while he was driving it at least twice.
6. Complainant took his vehicle to Respondent's authorized dealer, BMW of El Paso, in order to address his concerns with the vehicle's lack of acceleration, shuddering, and turning off while being driven, on the following dates:

- a. June 30, 2015, at 7,104 miles;
 - b. September 4, 2015, at 9,537 miles;
 - c. January 29, 2016, at 14,527 miles; and
 - d. May 13, 2016, at 18,630 miles.
7. Respondent, through its authorized dealers, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity in the vehicle continues to exist.
8. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's intermittent shuddering makes it less desirable to drive than comparable vehicles. In addition, the vehicle dying while being driven creates a serious safety hazard for Complainant.
9. Complainant provided written notice of the defect to Respondent on August 4, 2016, and Respondent was given the opportunity to inspect the vehicle and perform a final repair attempt on October 26, 2016.
10. Complainant accrued incidental expenses due to the Lemon Law complaint as follows:
- | | | |
|----|--------------------------|----------------|
| a. | Service fee to constable | \$55.00 |
| b. | Witness fees | <u>\$10.00</u> |
| | Total | \$65.00 |
11. On September 5, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On December 2, 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.
13. The hearing in this case convened on February 8, 2017, in El Paso, Texas before Hearings Examiner Edward Sandoval and closed that same day. Complainant, Michael A. Gomez, represented himself at the hearing. Also testifying for Complainant was Natalia Moreno, his girlfriend. Respondent was represented by Stephen Soncini, After-Sales Area

Manager. Also participating in the hearing for Respondent were Christian Ugarte, BMW of El Paso's Service and Parts Director; Rafael Chavez, BMW of El Paso's Shop Foreman; Roy Tealer, BMW of El Paso's Service Advisor; and Victor Cheung, Respondent's Technical Support Engineer.

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's vehicle has an existing nonconformity that substantially impairs the use and market value of the vehicle and which creates a serious safety hazard. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainant is entitled to relief under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to repurchase Complainant's 2015 BMW 320i. Tex. Occ. Code § 2301.604(a)(1).

IT IS THEREFORE ORDERED that:

1. Respondent shall accept the return of the vehicle from Complainant. Respondent shall have the right to have its representatives inspect the vehicle upon the return by 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 this final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$32,843.14**. In addition, Complainant is entitled to reimbursement of the lemon law filing fee in the amount of **\$35.00**, as well as reimbursement for incidental costs of **\$65.00**. The total refund of **\$32,943.14** shall be paid to Complainant and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainant. At the time of return, 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, Complainant is responsible for providing Respondent with clear title to the vehicle;

Purchase price, including tax, title, license and registration	\$38,678.01
Delivery mileage	13
Mileage at first report of defective condition	7,104
Mileage on hearing date	29,345
Useful life determination	120,000

Purchase price, including tax, title, license and registration						\$38,678.01
Mileage at first report of defective condition						7,104
Less mileage at delivery						<u>-13</u>
Unimpaired miles						7,091
Mileage on hearing date						29,345
Less mileage at first report of defective condition						<u>-7,104</u>
Impaired miles						22,241
Reasonable Allowance for Use Calculations:						
Unimpaired miles						
						<u>7,091</u>
	120,000	X	\$38,678.01	=		\$2,285.55
Impaired miles						
						<u>22,241</u>
	120,000	X	\$38,678.01	.5	X	= <u>\$3,584.32</u>
Total reasonable allowance for use deduction:						\$5,869.87
Purchase price, including tax, title, license and registration						\$38,678.01
Less reasonable allowance for use deduction						<u>-\$5,869.87</u>
Plus filing fee refund						<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT						\$32,843.14

3. Within twenty (20) calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31st calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);

4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the reacquired vehicle prior to resale and issue a disclosure statement on a form provided or approved by the Department;²⁸
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous. Upon Respondent's first retail sale of the reacquired vehicle, the disclosure statement shall be completed and returned to the Department.
6. Within sixty (60) days of transfer of the reacquired vehicle, Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent shall repair the warrantable defect in the reacquired vehicle identified in this Decision.

SIGNED March 15, 2017.



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

²⁸ Correspondence and telephone inquiries regarding disclosure labels should be addressed to: Texas Department of Motor Vehicles, Enforcement Division-Lemon Law Section, 4000 Jackson Avenue Building 1, Austin, Texas 78731, ph. (512) 465-4076.