

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0021 CAF**

**SUSANNE L. NOVOTNY,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

CORRECTED DECISION AND ORDER

Susanne L. Novotny (Complainant) filed a petition seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2014 Ford F-150 Eco Boost pickup truck. Complainant asserts that the vehicle idles rough and that the brake pedal goes all the way to the floorboard when she depresses it. Ford Motor Company (Respondent) argued that Complainant's vehicle has been repaired and that Complainant failed to provide Respondent with a reasonable number of repair attempts on the vehicle and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that the vehicle does have an existing warrantable defect, and Complainant is eligible for replacement relief.

On April 18, 2017, the hearings examiner issued a Decision and Order granting replacement relief to Complainant for her Lemon Law complaint. On May 8, 2017, Complainant timely filed a Motion for Rehearing requesting modification of the order due to an incorrect calculation on the repurchase price (the alternative option to replacement of the vehicle). Respondent filed a timely response to the Motion on May 18, 2017, indicating that they had no opposition to the Motion.

On May 18, 2017, the Chief Hearings Examiner issued an Order Granting Motion for Rehearing. No hearing was scheduled as the only dispute was in the repurchase calculations and no additional evidence was required.

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 January 25, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Susanne L. Novotny, represented herself in the hearing. Ronald Novotny, Complainant's father, also testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst.

A continuance in the hearing was conducted on February 6, 2017, telephonically. Complainant represented herself in the continuance. Ronald Novotny, Complainant's father, also appeared at the continuance. Maria Diaz, Legal Analyst, represented Respondent in the continued hearing. The hearing record was closed on February 6, 2017.

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 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

Complainant purchased a new 2014 Ford F-150 Eco Boost pickup truck from AutoNation Ford (AutoNation) in Katy, Texas on August 20, 2015.⁶ The vehicle had mileage of 221 at the time of the purchase.⁷ Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent has provided a five (5) year or 60,000 mile powertrain warranty for the vehicle. At the time of hearing, the vehicle's mileage was 35,149. Respondent's warranties for the vehicle were still in effect at the time of the initial hearing.

Complainant testified that the vehicle intermittently idles rough at start up and when at a stop. In addition, the vehicle sometimes jolts when shifting gears as if it's skipping a gear. Complainant

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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, Texas Motor Vehicle Retail Installment Sales Contract dated August 20, 2015.

⁷ Complainant Ex. 2, Odometer Disclosure Statement dated August 19, 2015.

stated that on these occasions it feels like the vehicle's been rear-ended. Complainant also stated that she has had trouble with vehicle's brake pedal going all the way to the floorboard when she depressed the pedal.

Complainant stated that a few months after purchasing the vehicle it was idling rough, had almost died, and was vibrating abnormally. She took the vehicle to AutoNation for repair on February 29, 2016. AutoNation's service technician verified the vibration concern and repositioned and secured the vehicle's transmission lines to address part of the issue.⁸ In addition, the technician determined that the vehicle's front rotors had excessive runout and were causing excessive vibration when Complainant attempted to stop the vehicle; as a result, the technician replaced the front brake pads and calipers and machined the front rotors.⁹ The technician could not duplicate the rough idle issue and performed no repair for this issue.¹⁰ The mileage on the vehicle when Complainant took it to AutoNation was 17,315.¹¹ The vehicle was in AutoNation's possession for three (3) days. Complainant was provided a loaner vehicle at the time.

Complainant stated that the vehicle seemed okay, but that the brakes didn't seem to be completely repaired. Sometime in late May of 2016, Complainant was driving the vehicle and the brakes didn't work. She was coming to a stop at a stoplight and pressed the brake pedal completely to the floorboard. The vehicle didn't stop. So, Complainant pumped the brakes. She was finally able to stop the vehicle just as it started to go through the stoplight. Complainant took the vehicle to AutoNation for repair on June 1, 2016, as a result of the incident. AutoNation's service technician found that the vehicle's master cylinder was leaking and replaced it.¹² Complainant testified that she raised the issue of the vehicle's rough idle at the time, but it was not included on the repair order. The vehicle's mileage on this occasion was 21,930.¹³ The vehicle was in AutoNation's possession until June 15, 2016.¹⁴ Complainant was provided a loaner vehicle for the time that her vehicle was being repaired.

Complainant testified that the vehicle's brakes seemed better after the repair, but that they were not working the same as before the repair. She felt that she needed to start braking sooner than she was used to before the repair in order to stop the vehicle on time. Complainant felt that the vehicle began to shake and idle rough at stop lights. Also, the vehicle's transmission seemed to have a hard shift.

⁸ Complainant Ex. 3, Repair Order dated February 29, 2016.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 4, Repair Order dated June 1, 2016.

¹³ *Id.*

¹⁴ *Id.*

Complainant took the vehicle to AutoNation for repair on September 2, 2016. AutoNation's service technician inspected the vehicle and was unable to verify the problem or find any diagnostic codes on the computers.¹⁵ As a result, no repairs were performed. The vehicle's mileage on this occasion was 27,974.¹⁶ No loaner was provided to Complainant, as the vehicle was in the dealer's possession for one (1) day.

Complainant testified that the vehicle continued to vibrate, idle rough, and seemed to be on the verge of stalling several times. She took the vehicle AutoNation for repair on September 9, 2016. AutoNation's service technician verified the rough idle issue and determined that the vehicle's actuator was faulty.¹⁷ As a result, the technician replaced the throttle body and gasket in order to resolve the issue.¹⁸ The vehicle's mileage on this occasion was 28,003.¹⁹ The vehicle was in AutoNation's possession until September 13, 2016.²⁰ Complainant was not provided a rental vehicle for the period of time that the vehicle was in the dealer's possession.

As a result of the problems with the vehicle, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) with an effective date of September 21, 2016.²¹ Complainant sent written notice to Respondent on September 15, 2016, that she was dissatisfied with the vehicle.²²

Complainant stated that she continued to feel the same problem with the vehicle idling rough and the transmission shifting hard. She then experienced another problem with the vehicle's brakes not working correctly. When she stepped on the brake pedal, it would go to the floorboard. Due to the problem she ran through a stop sign on one occasion. Complainant took the vehicle to AutoNation for repair for the brake and rough idle issues on September 26, 2016. AutoNation's service technician determined that the vehicle's brake booster was not holding a vacuum and that this was causing the rough idle, as well as the brake failure.²³ The technician replaced the brake booster in order to resolve the issues.²⁴ The vehicle's mileage on this occasion was 28,618.²⁵ The vehicle was in AutoNation's possession for one (1) day. Complainant was provided with a loaner vehicle at the time.

Complainant testified that she continued to feel that the vehicle was idling very rough. She took the vehicle to AutoNation for repair on September 28, 2016. AutoNation's service technician could

¹⁵ Complainant Ex. 5, Repair order dated September 2, 2016.

¹⁶ *Id.*

¹⁷ Complainant Ex. 6, Repair Order dated September 9, 2016.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 11, Lemon Law complaint dated September 21, 2016. Although the complaint was signed by Complainant on September 14, 2016, it was not received by Texas Department of Motor Vehicles until September 21, 2016, which is the effective date of the complaint.

²² Complainant Ex. 12, Written Notice to Manufacturer dated September 15, 2016.

²³ Complainant Ex. 7, Repair Order dated September 26, 2016.

²⁴ *Id.*

²⁵ *Id.*

not verify the problem and performed no repair at the time.²⁶ The vehicle's mileage on this occasion was 28,619.²⁷ The vehicle was in AutoNation's possession for one (1) day.²⁸

Complainant testified that on October 2, 2016, she was driving the vehicle in her neighborhood when she felt a huge jolt like the vehicle had been rear ended. After she stopped the vehicle to ensure that it had not been hit, she started it back up and began to experience heavy idling. The idling wouldn't stop, so Complainant took the vehicle to AutoNation for repair on October 3, 2016. AutoNation's service technician verified that the vehicle's transmission was shifting hard and that there was a hard jolt when coming to a stop or accelerating in the vehicle.²⁹ The technician removed and replaced the vehicle's transmission pan, valve body, and shift solenoid in order to address the issue of the hard transmission shifting hard.³⁰ In addition, the technician replaced the vehicle's drive shaft assembly to address the issue of the hard jolt during acceleration and deceleration.³¹ The vehicle's mileage on this occasion was 28,800.³² The vehicle was in AutoNation's possession for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that after the October 3, 2016, repair, she had another problem with the vehicle's brakes. She stated that the brakes were not working again. She pressed the brake pedal to the floor but the vehicle wouldn't stop. She took the vehicle to AutoNation for repair on October 12, 2016. AutoNation's service technician replaced the vehicle's brake master cylinder pursuant to a recall.³³ The vehicle's mileage was 29,123 on this occasion.³⁴ The vehicle was in AutoNation's possession for one (1) day during this repair. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that she was contacted by Maria Diaz, Respondent's Legal Analyst, who requested that Respondent be allowed to perform a final repair attempt on the vehicle. The final repair attempt was performed on November 8, 2016, at AutoNation. Respondent's representative was unable to duplicate the concerns, *i.e.*, the clunking in the rear end when stopping or accelerating, brakes feeling loose, the brake pedal pulsing intermittently, and rough or heavy idling.³⁵ No repairs were performed at the time. The vehicle's mileage at the time was 30,347.³⁶ Complainant was provided with a loaner vehicle for the day while her vehicle was being repaired.

²⁶ Complainant Ex. 8, Repair Order dated September 28, 2016.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complainant Ex. 9, Repair Order dated October 3, 2016.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Complainant Ex. 10, Repair Order dated October 12, 2016.

³⁴ *Id.*

³⁵ Complainant Ex. 13, Repair Order dated November 8, 2016.

³⁶ *Id.*

Complainant stated that the vehicle's brakes seem to be working as they're supposed to. She also stated that the brake pedal seemed to pulse on November 8, 2016, but haven't pulsed since then. She has not had any problems with the brakes stopping the vehicle since before November 8, 2016, the date of the final repair attempt.

Complainant stated that she still feels that the vehicle has a rough idle. The vehicle hasn't stalled. However, she puts the vehicle's transmission in to park and revs the engine three (3) to four (4) times a week so that it doesn't stall.

Complainant also stated that she feels the vehicle jolt hard when decelerating or accelerating. She feels that it seems as if the vehicle has been rear-ended when she feels the jolts. This occurs every three (3) to four (4) days.

Complainant testified that she would also like to be reimbursed for after-market items added to the vehicle. The added items were: a bed liner at a cost of \$421.92; graphics advertising her business at a cost of \$199.18; a rear view camera at a cost of \$313.09; and a rear view mirror attached to the camera at a cost of \$107.99

1. Ronald Novotny's Testimony

Ronald Novotny, Complainant's father, testified that he has ridden in the vehicle and has observed that it has a very rough idle. He also feels that the vehicle hesitates and slips or jolts intermittently. He has personally felt the vehicle hesitate on at least one occasion. Mr. Novotny also indicated that the vehicle sometimes feels like it's going to stall on the driver. However, he's never actually seen it stall.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst, testified for Respondent. She testified that she first became involved in this matter when Respondent received the Lemon Law complaint from the Department on October 11, 2016.

Ms. Diaz contacted Complainant on October 26, 2016, to determine Complainant's concerns with the vehicle and to schedule a final repair attempt. Ms. Diaz and Complainant agreed that Respondent's field service engineer, Brian Jay, would conduct the final repair attempt on November 8, 2016, at AutoNation.

Ms. Diaz testified that Mr. Jay completed an FSE Vehicle Inspection Report in which he indicated that he test drove the vehicle on city streets and on Interstate 10 during the final repair attempt.³⁷ Mr. Jay indicated on the report that the vehicle's brakes performed normally, no unusual noises or

³⁷ Respondent Ex. 1, FSE Vehicle Inspection Report dated November 8, 2016.

vibrations were observed, and the engine's idle speed was normal.³⁸ Mr. Jay concluded that the vehicle was driving normally.³⁹

Mr. Diaz testified that Respondent has provided a three (3) year or 36,000 mile bumper-to-bumper warranty and a five (5) year or 60,000 mile powertrain warranty for the vehicle. In addition, Complainant purchased an extended service plan good for five (5) year or 100,000 miles.

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.

1. Brake Issue

Complainant testified that she was concerned that the vehicle's brakes were not working properly. She stated that on more than one occasion, she has experienced the vehicle not stepping even when pushing the brake pedal to the vehicle's floorboard. Complainant has had the brakes repaired for this issue three (3) times, with the last time being October 12, 2016. During the final repair attempt on November 8, 2016, Respondent's field service engineer, Brian Jay, determined that the vehicle's brakes performed normally. In addition, Complainant testified that she has not experienced a problem with the vehicle's brakes since before the final repair attempt. As such, the hearings examiner must hold that the vehicle's brakes have been repaired and are performing as designed. Since the brakes are not defective, this issue does not provide grounds for repurchase or replacement of Complainant's vehicle.

2. Rough Idle/Stalling Issue

Complainant indicated on the Lemon Law complaint form that the second issue that she was concerned with was that the vehicle's engine was idling "heavy" to the point of stalling and kept missing. The evidence in the hearing does indicate that there is a problem with the vehicle. AutoNation's technicians have discovered several problems in the vehicle and have verified that

³⁸ *Id.*

³⁹ *Id.*

excessive vibration or rough idling on at least four (4) occasions. This does not include the repairs made for the vehicle's hard shifting and jolting during acceleration and deceleration performed on October 3, 2016. It is apparent that the vehicle is defective and that Complainant has provided sufficient opportunity for Respondent to repair the vehicle. The issues with the vehicle's rough idling and stalling makes the vehicle less desirable to drive than other vehicles. As such, Complainant has proven by a preponderance of the evidence the existence of a defect in the vehicle which substantially impairs the vehicle's use or market value and that Respondent has been given a reasonable number of attempts to repair the vehicle.

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 September 15, 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 was performed on November 8, 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 and they have not been able to do so. As such, Complainant has met her burden of proof to establish that the vehicle has 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 replacement of the vehicle is the appropriate remedy in this case. Complainant's request for replacement relief is hereby granted.

III. FINDINGS OF FACT

1. Susanne L. Novotny (Complainant) purchased a new 2014 F-150 Eco Boost pickup truck on August 20, 2015, from AutoNation Ford (AutoNation) in Katy, Texas with mileage of 221 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles and a powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of the initial hearing was 35,149.
4. At the time of hearing the warranties for the vehicle were still in effect.
5. Complainant first experienced a problem with the vehicle soon after purchasing it, she felt that the vehicle idled roughly, vibrated, and that the brakes didn't work properly.

6. Complainants' vehicle was serviced by Respondent's authorized dealer, AutoNation, on the following dates because of Complainant's concerns with the vehicle:
 - a. February 29, 2016, at 17,315 miles;
 - b. June 1, 2016, at 21,930 miles;
 - c. September 2, 2016, at 27,930 miles;
 - d. September 9, 2016, at 28,003 miles;
 - e. September 26, 2016, at 28,618 miles; and
 - f. September 28, 2016, at 28,619 miles.
7. On February 29, 2016, AutoNation's service technician repositioned the vehicle's transmission lines and secured the lines in order to address the vehicle vibrating and the rough idle. The technician also replaced the vehicle's front brake pads and calipers, as well as machined the front rotors.
8. On June 1, 2016, AutoNation's service technician replaced the vehicle's brake master cylinder in order to address the issue of the vehicle's brake pedal going to the floorboard when depressed.
9. On September 2, 2016, AutoNation's service technician was unable to duplicate Complainant's concern regarding the vehicle's rough idle. As a result, the technician performed no repairs on the vehicle.
10. On September 9, 2016, AutoNation's service technician verified that the vehicle's actuator was faulty causing the vehicle to stall and run rough. As a result, the technician replaced the vehicle's throttle body and gasket.
11. On September 15, 2016, Complainant provided written notice to Respondent of her dissatisfaction with the vehicle.
12. On September 21, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On September 26, 2016, AutoNation's service technician replaced the vehicle's brake booster assembly in order to address Complainant's concerns regarding the vehicle idling rough and the brake pedal when depressed going all the way to the vehicle's floorboard.
14. On September 28, 2016, AutoNation's service technician determined that the vehicle was behaving normally, although Complainant indicated that it was idling rough.

15. On October 3, 2016, AutoNation's service technician removed and replaced the vehicle's transmission pan, valve body, shift solenoid, and drive shaft in order to address Complainant's concerns about the vehicle shifting gears hard and jolting when accelerating or decelerating.
16. On October 12, 2016, AutoNation's service technician performed a recall on the vehicle which required that the brake master cylinder be replaced.
17. On November 8, 2016, Respondent performed a final repair attempt on the vehicle at AutoNation's location. Respondent's field service engineer determined that the vehicle was operating as designed.
18. Complainant accrued incidental expenses due to issues with the vehicle as follows:

a.	Bed liner:	\$431.92
b.	Advertising sign	199.18
c.	Rear View Camera	313.09
d.	Rear View Mirror with Back-up Camera Screen	<u>107.99</u>
	Total	\$1,052.18
19. On October 26, 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.
20. The hearing in this case convened on January 25, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Susanne L. Novotny, represented herself in the hearing. Ronald Novotny, Complainant's father, also testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst. A continuance in the hearing was conducted on February 6, 2017, telephonically. Complainant represented herself in the continuance. Ronald Novotny, Complainant's father, appeared at the continuance. Maria Diaz, Legal Analyst, represented Respondent in the continued hearing. The hearing record was closed on February 6, 2017.

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. 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 and to replace Complainant's 2014 Ford F-150 Eco Boost pickup truck under Texas Occupations Code § 2301.604(a).
9. Complainant is entitled to reimbursement of incidental expenses as outlined in Findings of Fact 18. Tex. Occ. Code § 2301.604(a); 43 Tex. Admin. Code § 215.209.

IT IS THEREFORE ORDERED that:

1. Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of Complainant's new 2014 Ford F-150 Eco Boost pickup truck (the reacquired vehicle) with Complainant's choice of any comparable motor vehicle.
2. Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with Complainant under the following terms:
 - (a) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

- (b) The trade-in value of Complainant's 2014 Ford F-150 Eco Boost pickup truck shall be the MSRP at the time of the original transaction, less a reasonable allowance for Complainant's use of the vehicle;
 - (c) The use allowance for replacement relief shall be calculated in accordance with the formula outlined in Texas Administrative Code § 215.208(b)(2) (the use allowance is \$7,740.21);
 - (d) The use allowance paid by Complainant to Respondent shall be reduced by \$35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **\$7,705.21**);
3. Respondent's communications with Complainant finalizing replacement of the reacquired vehicle shall be reduced to writing, and a copy thereof shall be provided to the Department within twenty (20) days of completion of the replacement.
 4. Respondent 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.⁴⁰
 5. Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (*e.g.*, hanging from the rear view mirror). 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 shall provide to the Department written notice of the name, address and telephone number of any transferee (wholesaler or equivalent), regardless of residence.
 7. Respondent shall repair the defect or condition that was the basis of the 2014 Ford F-150 Eco Boost pickup truck's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.

⁴⁰ 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.

8. Upon replacement of Complainant's 2014 Ford F-150 Eco Boost pickup truck, Complainant shall be responsible for payment or financing of the usage allowance of the reacquired vehicle, any outstanding liens on the reacquired vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees. Further, in accordance with 43 Tex. Administrative Code § 215.208(d)(2):
 - (a) If the comparable vehicle has a higher MSRP than the reacquired vehicle, Complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs to the manufacturer, converter or distributor; and
 - (b) If the comparable vehicle has a lower MSRP than the reacquired vehicle, Complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the reacquired vehicle.
9. Complainant shall be responsible for obtaining financing, if necessary, to complete the transaction.
10. The replacement transaction described in this Order shall be completed within 20 calendar days from the receipt of this Order. If the transaction cannot be accomplished within the ordered time period, Respondent shall repurchase Complainant's 2014 Ford F-150 Eco Boost pickup truck pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be \$28,003.73, plus the reimbursement award of \$1,052.18, which would result in a payout of **\$29,055.91**. The refund shall be paid to Complainant and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to Complainant.

Purchase price, including tax, title, license and registration	\$35,708.94
Delivery mileage	221
Mileage at first report of defective condition	17,315
Mileage on hearing date	35,149
Useful life determination	120,000

Purchase price, including tax, title, license and registration					\$35,708.94
Mileage at first report of defective condition				17,315	
Less mileage at delivery				<u>-221</u>	
Unimpaired miles				17,094	
Mileage on hearing date				35,149	
Less mileage at first report of defective condition				<u>-17,315</u>	
Impaired miles				17,834	
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
				<u>17,094</u>	
	120,000	X	\$35,708.94	=	\$5,086.74
Impaired miles					
				<u>17,834</u>	
	120,000	X	\$35,708.94	X .5	= <u>\$2,653.47</u>
Total reasonable allowance for use deduction:					\$7,740.21
Purchase price, including tax, title, license and registration					\$35,708.94
Less reasonable allowance for use deduction					-\$7,740.21
Plus filing fee refund					<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT					\$28,003.73

11. If Complainant's 2014 Ford F-150 Eco Boost pickup truck is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of Respondent's reacquisition of the vehicle, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the trade-in value of Complainant's vehicle.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement 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 May 19, 2017



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