

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0029 CAF**

**ERICA SCHELL and
MARC SCHELL,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Erica Schell and Marc Schell (Complainants) 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 their vehicle manufactured by General Motors LLC (Respondent). A preponderance of the evidence shows that the subject vehicle has warrantable defect that creates a serious safety hazard after a reasonable number of repair attempts. Consequently, the Complainants' vehicle qualifies for repurchase.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 April 25, 2017, in New Braunfels, Texas, before Hearings Examiner Andrew Kang. The record closed on May 17, 2017, the date the Complainants filed their reply brief. Mrs. Schell represented and testified for the Complainants. Kevin Phillips, represented and testified for the Respondent. John Ferrell, Field Service Engineer, and David Rice, Shop Foreman at Alamo City Chevrolet, also 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 *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[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.’”).

¹¹ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

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 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 Complainants.¹⁷ The Complainants must prove all facts required for relief by a preponderance, that is, the Complainants must present sufficient evidence to show that each required fact is more likely than not true.¹⁸ If any required fact appears equally likely or unlikely, then the Complainants has not met the burden of proof.

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

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 factual 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).

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

A. Complainants' Evidence and Arguments

On August 22, 2015, the Complainants, purchased a new 2015 Chevrolet Suburban from Tom Benson Chevrolet, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 166 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 100,000 miles. On September 12, 2016, the Complainants mailed a written notice of defect to the Respondent. On September 20, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the subject vehicle made loud vibrations/noises, shifted hard (lurched), self-accelerated, and idled low (almost stalling); the audio, navigation, air conditioning (AC), and electrical panel (infotainment screen) would go out and not function; and the Complainant had concerns that the air bag may not function because of electrical issues. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

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).

Date	Miles	Issue
December 9, 2015	8,592	Transmission shifting issues, loud noise/vibration, AC issues
February 29, 2016	13,626	Vibration or noise when transmission bucking/jerking; radio and back up camera screen go blank
June 9, 2016	19,194	Transmission jerking; navigation screen goes blank and comes back when starting to drive
August 17, 2016	23,015	Transmission jerks; vehicle accelerates itself; vibration at all speeds; navigation screen freezes; checked air bags; no air from AC
September 1, 2016	23,016	Transmission jerking; vibration at all speeds; navigation screen freezes; AC blowing hot air; vibration at idle; recall for front air bag
January 3, 2017	28,801	Audio goes in and out and loses power on display; trouble accelerating and near stall; AC does not work; transmission not shifting and revving past 3,000 rpms; navigation not working; in park or drive engine revs and oil pressure reaches 80 psi
February 6, 2017	30,326	AC will not blow air through roof vents; delayed transmission shift; engine idle low; infotainment screen goes blank or parts of screen do no work; high pitch whine during acceleration

Mrs. Schell testified that the issues were intermittent and would just happen: the navigation may suddenly go blank and the AC may also stop working. The AC shows it is on but nothing actually blows or comes out. Driving with the AC out is very difficult, because they have to drive with the windows up due to the trucks carrying aggregates, and is a safety issue in the summer. The loud vibrations range from a high pitched noise to a winding noise, can be like a wind tunnel, can be mild. Vibrations occur mostly when starting to slow down and noises occur when trying to accelerate. The vehicle shifts hard randomly and occurs frequently when dropping off the children at school – when moving to the next spot, the vehicle jumps. The vehicle almost hit several children. The vehicle idles very low when coming to a stop light or stop sign and feels like it wants to die. The AC, audio, navigation, all electrical, she believed were related. Sometimes one goes out after another. Before the air bag recall, she expressed concern about the air bags to the dealer. Mrs. Schell clarified that when she said the electrical went out, the infotainment display would go blank and not the instrument panel. She first noticed the noises around 6,000 miles. She believed she brought up the transmission and noise issues at the first oil change but the dealership did not note it. She first noticed the vibration and hard shifting when first driving the vehicle off the dealer's lot. She could not recall when she first noticed the low

idle issue. Mrs. Schell stated she first notice the audio problem in December 2015 and the navigation problem around the same time, documented at the December 9, 2016, service visit, and the AC as well. She could not remember when the sudden, self-acceleration, lurching first occurred. She last noticed the noise issue during the test drive at the hearing, the hard shifting the day before the hearing, the low idle the day before the hearing. The audio had not gone out recently but the infotainment display blacked out on **April 23, 2017**. She could not recall exactly when the navigation last went out but in late January, 2017, the navigation “glitched”, went in and out, and finally found their location. The AC last went out on **April 23, 2017**, when the infotainment display blacked out; when the display came online, she turned on the AC, which took a long time, but finally started working. She testified that the vehicle suddenly accelerates when making turns, when wanting to slow down. This probably last occurred when going to school; she distinguished this acceleration from the lurching when dropping off her children. She affirmed that the acceleration felt like speeding up when giving the vehicle gas. She further described the lurching as like shifting too hard, catapulting the vehicle. She last noticed the lurching on the morning of the hearing. Mrs. Schell testified that the repairs only improved the issues minimally and the problems would revert back.

On cross-examination, Mr. Phillips confirmed that if a dealership could not repair an intermittent problem because the vehicle did not exhibit the problem, the repair order would not reflect a repair.

On cross-examination, Mr. Ferrell explained that he did not previously hear the whining noise, which he otherwise would have addressed.

B. Respondent’s Evidence and Arguments

On cross-examination, Mrs. Schell confirmed that she had not seen the check engine light, air bag light, ABS light, or various other malfunction indicators. She also affirmed that when idling low, the engine never stopped to where she had to re-key and start the engine.

Mr. Phillips reviewed the vehicle’s history, nothing that the Respondent did not pay for any warranty repairs before 12,000 miles. Mr. Phillips pointed out that the warranty does not cover slight noise or normal characteristics. Mr. explained that service bulletins and recalls differed – when the factory releases service bulletins, many customers experience no problems,

but some provide feedback, leading to the bulletin to provide an enhancement as opposed to addressing a defect.

Mr. Rice confirmed that all vehicles vibrate and make noise. He recounted the diagnostics performed on the vehicle and finding no trouble codes. Mr. Rice noted that if a technician looked at issue and the work was not charged to the Respondent, the dealer would have paid the technician. The vehicle worked fine during a test drive at the dealership and the screen did not flicker or go blank. He noted that the vehicle had aftermarket floor mats, that, when moving, may get caught on a pedal causing acceleration, which is why the manufacturer puts tabs the vehicle to secure the factory floor mats.

Mr. Ferrell testified that the systems are designed to be separate so if, for example, the radio goes out, it is highly unlikely to affect the air bags. During the test drive at the hearing, Mr. Ferrell only noticed one issue, the whine noise when accelerating at highway speed. He believed this should be looked at more closely. Mr. Ferrell stated that the complaints of concerns were somewhat vague and did not provide much direction for the technician to find the root cause. The AC was repaired before Mr. Ferrell's arrival and he checked for diagnostic trouble codes but found no concerns. He checked the performance of the AC. Mr. Ferrell noted that in one inspection he noticed the controls set to 70 degrees on auto mode. He explained that the settings influence how the vehicle calculates airflow and desired temperature, so that, for example, the customer may not feel the AC is working because the air is coming from the floor vents but not the front vents. When on auto, the air may come from vents at the instrument panel or the floor vents. Mr. Ferrell used a Picoscope to analyze the vehicle's highway vibration. He found one tire with excessive road force. However, a technician accidentally damaged the tire, so the tire was replaced. He noted that two wheels had damage, which appeared more cosmetic, but could adversely affect the ride. Mr. Ferrell checked for idle concerns and used the Picoscope to measure the vehicle at a stop. He found the vehicle had far less vibration than 1.5 times per rpm. With regard to the navigation, the GPS antenna had been broken at the dealership and therefore replaced. Mr. Ferrell found no error codes for the ECM or TCM and the transmission performed properly during a test drive. The airbags did not present any diagnostic trouble codes. Mr. Ferrell also could not find any acceleration concerns.

C. Inspection and Test Drive

Before the test drive at the hearing, the vehicle's odometer displayed 35,279 miles. Two of the wheels (front left and rear right) had abrasions. The vehicle was test driven primarily on I-35. The vehicle did not exhibit any unusual vibration and the navigation and air conditioning functioned normally. The vehicle consistently exhibited a subtle, high-pitched whine during acceleration. The vehicle otherwise appeared to operate normally. The test drive ended with 35,303 miles on the odometer. Mr. Ferrell concluded that, other than the whining noise, the vehicle looked good.

D. Analysis

As Mrs. Schell observed, given the nature of intermittent problems, a problem, though existent, may not exhibit itself in the limited time the dealership has the vehicle for repair. In this case, a preponderance of the evidence shows the existence of warrantable defects: the transmission rough shifting/lurching, the AC not functioning, the infotainment/navigation screen blacking out or only partially functioning, and whining noise when accelerating. The vehicle continued to exhibit all of these conditions after the last repair visit. As shown in the record, the transmission lurching nearly resulted in multiple instances of collisions with pedestrians, which fits the definition of a serious safety hazard. The repair history shows the requisite number of repair attempts for the transmission lurching issue, which is a serious hazard. Accordingly, a preponderance of the evidence shows that the transmission lurching, supports repurchase relief. The other issues at least support repair relief.

III. Findings of Fact

1. On August 22, 2015, the Complainants, purchased a new 2015 Chevrolet Suburban from Tom Benson Chevrolet, a franchised dealer of the Respondent, in San Antonio, Texas. The vehicle had 166 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for three years or 36,000 miles, whichever occurs first and powertrain coverage for five years or 100,000 miles.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
December 9, 2015	8,592	Transmission shifting issues, loud noise/vibration, AC issues
February 29, 2016	13,626	Vibration or noise when transmission bucking/jerking; radio and back up camera screen go blank
June 9, 2016	19,194	Transmission jerking; navigation screen goes blank and comes back when starting to drive
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September 1, 2016	23,016	Transmission jerking; vibration at all speeds; navigation screen freezes; AC blowing hot air; vibration at idle; recall for front air bag
January 3, 2017	28,801	Audio goes in and out and loses power on display; trouble accelerating and near stall; AC does not work; transmission not shifting and revving past 3,000 rpms; navigation not working; in park or drive engine revs and oil pressure reaches 80 psi
February 6, 2017	30,326	AC will not blow air through roof vents; delayed transmission shift; engine idle low; infotainment screen goes blank or parts of screen do no work; high pitch whine during acceleration

4. On September 12, 2016, the Complainants mailed a written notice of defect to the Respondent.
5. On September 20, 2016, the Complainants filed a Lemon Law complaint with the Department alleging that the subject vehicle made loud vibrations, shifted hard (lurched), self-accelerated, and idled low (almost stalling); the audio, navigation, air conditioning, electrical panel (infotainment screen) would go out and not function; and the air bag may not function because of electrical issues.
6. On January 13, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants 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 factual matters asserted.
7. The hearing in this case convened on April 25, 2017, in New Braunfels, Texas, before Hearings Examiner Andrew Kang. The record closed on May 17, 2017, the date the

Complainants filed their reply brief. Mrs. Schell represented and testified for the Complainants. Kevin Phillips, represented and testified for the Respondent. John Ferrell, Field Service Engineer, and David Rice, Shop Foreman at Alamo City Chevrolet, also testified for the Respondent.

8. The vehicle's odometer displayed 35,279 miles at the time of the hearing.
9. The vehicle's bumper to bumper and powertrain warranty coverages were in effect at the time of the hearing.
10. During the test drive at the hearing, vehicle consistently exhibited a subtle, high-pitched whine during acceleration. The vehicle otherwise appeared to operate normally.
11. The vehicle continued to lurch after the last repair attempt.
12. The vehicle's lurching caused multiple near collisions.
13. The vehicle's AC continued to malfunction after the last repair attempt
14. The vehicle's navigation/infotainment system continued to malfunction after the last repair attempt.
15. The vehicle continued to exhibit a high pitched whine during acceleration after the last repair attempt.
16. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license & registration	\$60,826.03
Delivery mileage	166
Mileage at first report of defective condition	8,592
Mileage on hearing date	35,279
Useful life determination	120,000

6. The Complainants provided sufficient notice of the defects to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).
7. The Respondent had an opportunity to cure the alleged defects. TEX. OCC. CODE § 2301.606(c)(2).
8. The Complainants timely filed the complaint for repurchase or replacement relief. TEX. OCC. CODE § 2301.606(d).
9. The Complainants' vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle continue to exist after a reasonable number of repair attempts. TEX. OCC. CODE § 2301.604(a).

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' 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 Complainants. The Respondent shall have the right to have its representatives inspect the vehicle upon the return by the Complainants. 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 **\$49,826.43**. The refund shall be paid to the Complainants 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 Complainants. 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 Complainants 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 § 2001.144,²³ 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 Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by the Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
 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.

²³ (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.

SIGNED July 17, 2017



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