

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0103 CAF**

**JOSEPH K. BRADSHAW,
Complainant**

v.

**HYUNDAI MOTOR AMERICA,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Joseph K. Bradshaw (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Hyundai Equus Ultima. Complainant asserts that the vehicle's driver's side rear view mirror will not reset properly, that the back-up camera intermittently blacks out, and that the Lane Departure Warning System (LDWS) was disabled or altered. Hyundai Motor America (Respondent) argued that the issue is not a serious safety defect nor does it substantially impair the use or market value of the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainant is eligible for replacement relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened telephonically on March 14, 2017, before Hearings Examiner Edward Sandoval. Complainant, Joseph K. Bradshaw, represented himself at the hearing. Maria Vlasak, Complainant's employee, and Austin Bradshaw, Complainant's son, testified for Complainant. Respondent was represented by Dave Whittington, Arbitration Advocate.

A continuance in the hearing was conducted telephonically on March 29, 2017. Present at the continuance were Joseph K. Bradshaw, Complainant, representing himself. Dave Whittington represented Respondent in the continuance. The hearing record was closed on March 29, 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 2014 Hyundai Equus Ultima from Freeman Mazda-Hyundai (Freeman), in Irving, Texas on June 30, 2015, with mileage of 459 at the time of delivery.⁶ The bumper-to-bumper warranty provided by Respondent provides coverage for five (5) years or

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, Motor Vehicle Buyer's Order dated June 30, 2015.

60,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 24,677. At this time, Respondent's basic warranty coverage for the vehicle remains in effect.

1. Joseph K. Bradshaw's Testimony

Complainant testified that in August of 2015, he began noticing the vehicle's driver's side mirror would not reset itself correctly when he started the vehicle. The side mirrors are designed to turn inward when the vehicle is turned off. When the vehicle is restarted, the mirrors are supposed to open up into their normal position. Complainant stated that instead of resetting correctly, the driver's side mirror would rotate upward and point at the sky rendering it unusable. He said that this occurred approximately 80% to 90% of the time when he started the vehicle.

Complainant took the vehicle to Delray Acura-Hyundai (Delray) for repair on October 6, 2015. Delray's service technician determined that the driver's side mirror assembly needed replacement and ordered the replacement assembly.⁷ The vehicle's mileage on this occasion was 4,052.⁸ The vehicle was in the dealer's possession for eight (8) days.⁹ Delray provided Complainant with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he contacted Delray's service manager on October 14, 2015, to inform him that the side view mirror was still acting up. The service manager informed Complainant that whenever the mirror didn't return to its designated position, he should turn the vehicle off in order to let the circuit reset.

Complainant took the vehicle back to Delray on October 30, 2015. The mirror assembly was installed in the vehicle on this occasion.¹⁰ The vehicle's mileage when it was taken to Delray was 7,222.¹¹ The vehicle was in the dealer's possession for 19 days for the repair.¹² Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle's driver's side view mirror continued to malfunction. He took the vehicle to Delray on January 21, 2016, for further repair. Delray's service technician

⁷ Complainant Ex. 3, Repair Order dated October 6, 2015.

⁸ *Id.*

⁹ *Id.* The repair order indicates that the vehicle was in the dealer's possession for one (1) day. However, Complainant testified that the dealer had possession of the vehicle for eight (8) days. Since this section is a summary of Complainant's testimony, the hearings examiner will go with Complainant's testimony over the written repair order.

¹⁰ Respondent Ex. 4, Repair Order dated October 30, 2015.

¹¹ *Id.*

¹² *Id.*

verified the concern.¹³ The technician replaced the vehicle's left side mirror assembly and master switch assembly to correct the issue.¹⁴ The vehicle's mileage when it was delivered to the dealer on this occasion was 9,581.¹⁵ The vehicle was in Delray's possession for 27 days.¹⁶ Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant stated that the driver's side view mirror still was not working properly and would intermittently fail to return to its designed position. On August 24, 2016, Complainant took the vehicle to Delray to address the issue of the malfunctioning side mirror and an issue with the back-up camera going black when the driver was backing up in the vehicle. Delray's service technician could not duplicate the issue regarding the side view mirror.¹⁷ However, the technician was able to verify the issue with the back-up camera.¹⁸ The technician replaced the camera in order to address the concern.¹⁹ The vehicle's mileage when it was delivered to Delray on this occasion was 16,865.²⁰ The vehicle was in the dealer's possession for 20 days.²¹ Complainant was provided with loaner vehicle while his vehicle was being repaired.

Complainant testified that the driver's side mirror continued to malfunction. He took the vehicle to Delray for repair on September 28, 2016. Complainant again indicated that the vehicle's driver's side rear view mirror and the back-up camera were not acting properly.²² Delray's technician was unable to duplicate the problem with the back-up camera.²³ He did state, however, that the vehicle's screen would go black for a second when shifting the transmission into reverse, but that it wasn't for a "long time."²⁴ The technician verified the problem with side rear view mirror and replaced the mirror assembly.²⁵ The vehicle's mileage on this occasion was 17,675.²⁶ The vehicle was in Delray's possession for 16 days.²⁷ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

¹³ Respondent Ex. 5, Repair Order dated January 21, 2016.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Respondent Ex. 7, Repair Order dated August 24, 2016. The repair order indicates that the technician inspected the vehicle's right side rear view mirror. However, Complainant's testimony was that the problem with the vehicle was with the left side mirror. He stated that he did not mention the right side mirror at all.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 7, Repair Order dated September 28, 2016.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

On November 2, 2016, Complainant took the vehicle to Delray for repair for the back-up camera. Complainant told the dealer representative that the navigation screen would go black for two (2) to three (3) seconds when he placed the vehicle's transmission in reverse.²⁸ There was no record as to what action was taken by the Delray's technician. The vehicle's mileage on this occasion was 18,120.²⁹ The vehicle was in Delray's possession for one day. Complainant was provided with a loaner vehicle during the repair visit.

On February 4, 2016, Complainant mailed a Motor Vehicle Defect Notification to Respondent advising them of electrical problems with the vehicle, including the issue with the driver's side rear view mirror.³⁰ On November 29, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).³¹ Complainant stated that he was not contacted by Respondent regarding a final repair attempt on the vehicle.

Complainant testified that he filed a complaint regarding the vehicle with the Better Business Bureau in Florida where Complainant resides. A hearing was conducted on the matter in January of 2017. The arbitrator ordered additional repair for the vehicle. Complainant decided not to accept the decision.

Complainant testified that he took the vehicle to Jenkins Hyundai (Jenkins) in Ocala, Florida on December 29, 2016, because of safety concerns regarding the vehicle's back-up camera and to have the vehicle's Lane Departure Warning System (LDWS) inspected. He felt that the system had been disabled by one of Delray's service technicians on a prior date in their attempt to repair the vehicle's back-up camera and the driver's side rear view mirror. Jenkins' representative refused to take the vehicle in for warranty work because of "ongoing litigation" (the Lemon Law hearing). So, no work was done regarding the back-up camera issue. However, Jenkins' technician did inspect the vehicle's LDWS and did not find any diagnostic codes indicating there was a problem with the system.³² The vehicle's mileage on this occasion was 20,878.³³

²⁸ Respondent Ex. 8, Repair Order dated November 2, 2016.

²⁹ *Id.*

³⁰ Complainant Ex. 9, Motor Vehicle Defect Notification dated February 4, 2016.

³¹ Complainant Ex. 8, Lemon Law Complaint dated November 29, 2016. Complainant signed the complaint on November 21, 2016, the complaint was actually received by Texas Department of Motor Vehicles on November 29, 2016, which is the effective date of the complaint.

³² Respondent Ex. 9, Repair Order dated December 29, 2016.

³³ *Id.*

2. Austin Bradshaw's Testimony

Austin Bradshaw, Complainant's son, testified that he has driven the vehicle in the past. He has observed that the driver's side rear view mirror doesn't reset itself periodically. He has taken the vehicle to dealers for repair in the past and was present when Complainant purchased the vehicle.

Mr. Bradshaw also stated that the LDWS doesn't work properly. He stated that the audio alarm functions properly, but the seat belt doesn't work as designed. He said that the driver's seat belt is supposed to tug the driver whenever the vehicle leaves its lane, but this has not happened as expected.

In addition, Mr. Bradshaw stated that he took the vehicle for repair to Jenkins in December of 2016 and the dealer refused to perform any repairs to the vehicle because of "ongoing litigation." However, the dealer's technician did run a diagnostic scan of the vehicle's computer for the LDWS issues, but was unable to find any error codes.

3. Maria Vlasak's Testimony

Maria Vlasak, Complainant's employee, testified that she has been a driver and a passenger in the vehicle. She stated that sometimes when placing the vehicle's transmission in to reverse, the back-up camera screen will go black for about two (2) to three (3) minutes. She stated that this has occurred about 80% of the time when she's been in the vehicle.

Ms. Vlasak also stated that the driver's side rear view mirror doesn't always reset properly. The mirror will point down and then will turn up so that it points at the sky. Ms. Vlasak stated that this has occurred about 70% of the time when she's been in the vehicle.

C. Respondent's Evidence and Arguments

Dave Whittington, Arbitration Advocate, testified for Respondent. He's worked in the automotive industry since 1980. He began his career as a service technician and owned his own automotive repair shop for a period of time. He's been in his present position with Respondent for the last 15 years.

Mr. Whittington testified that Complainant's complaint was assigned to him in December of 2016, prior to a Better Business Bureau (BBB) hearing in January of 2017. The BBB arbitrator issued an interim repair decision, which Complainant did not accept.

Mr. Whittington stated that he has never seen the vehicle. He also stated that the only time that Respondent has had a technician look at the vehicle was in December of 2016. He feels that the vehicle is operating as designed. Mr. Whittington indicated that the vehicle's left side view mirror has been repaired three (3) times and the right side mirror has been repaired once. Mr. Whittington does not know whether Respondent has made a request for a final repair attempt on the vehicle.

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. Lane Departure Warning System (LDWS) Issue

Complainant testified that the vehicle's LDWS had been inactivated and was not working properly. Although this complaint was on Complainant's Lemon Law form, Complainant's testimony was that the system was acting improperly and that he thought that it had been disabled by a dealer's service technician. In addition, the issue was raised on only the December 29, 2016, repair order at which time the system was inspected and determined to be working properly. Since the allegation was that the LDWS was disabled and not that it was defective, the hearings examiner must hold that there is no defect with the system. The issue will not be grounds for replacement or repurchase relief.

2. Driver's Side Mirror Issue

It is clear from the evidence presented at the hearing that the vehicle's side view mirrors are defective. The driver's side mirror assembly has been replaced three (3) times and the mirror is still not performing as designed. The testimony being that the driver's side mirror was still not returning to the designed location as recently as March 29, 2017. The driver's side mirror malfunction has a negative impact on the value of the vehicle. Many consumers will not be willing to purchase a vehicle whose mirrors act in the way described by Complainant. In addition, the loss of the use of the side mirror can affect Complainant's usage of the vehicle as it

makes the vehicle less desirable to drive. As such, Complainant has proven by a preponderance of the evidence the existence of a second defect in the vehicle which substantially impairs the vehicle's use or market value.

Complainant purchased the vehicle on June 30, 2015 and presented the vehicle to Respondent's authorized dealers due to his concerns with the vehicle's driver's side view mirror on: October 6, 2015; October 30, 2015; January 21, 2016; August 24, 2016; and September 28, 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 since he took the vehicle for repair the requisite number of times within the specified time frame. As such, Complainant has established that a reasonable number of attempts to repair the vehicle were made by Respondent.

3. Back Up Camera Issue

The third issue raised by Complainant has to do with the vehicle's back-up camera going black periodically. The evidence indicates that the camera does not always perform properly. The camera was replaced once by a dealer technician on August 24, 2016. The issue with the camera was raised by Complainant on two (2) other occasions (September 28, 2016 and November 2, 2016). The repair orders indicate that the technician could not duplicate the problem on September 28, 2016 and were unclear as to what action (if any) was take on November 2, 2016. Back-up cameras in newer vehicles are a selling point for consumers. The fact that the vehicle's back-up camera is not working properly would indicate that the vehicle's value has been diminished. As such, Complainant has proven by a preponderance of the evidence the existence of a second defect in the vehicle which substantially impairs the vehicle's use or market value.

Although Complainant did not meet the requirements of Occupations Code § 2301.605(a)(1) requiring four (4) repair visits with the first (2) repairs performed within the first year or 12,000 miles of ownership for this issue, the fact is that Complainant did meet the requirement for the issue with the driver's side view mirror.

In addition, the evidence presented at the hearing indicates that Complainant provided Respondent with a final opportunity to cure the defect. Complainant informed Respondent via a complaint form dated February 4, 2016, of the issues with the vehicle and providing them with

an opportunity to cure of which Respondent did not avail themselves.

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 that the vehicle has two (2) warrantable and existing defects or conditions that substantially impair 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. Joseph K. Bradshaw (Complainant) purchased a new 2014 Hyundai Equus Ultima on June 30, 2015, from Freeman Mazda-Hyundai (Freeman), in Irving, Texas with mileage of 459 at the time of delivery.
2. The manufacturer of the vehicle, Hyundai Motor America (Respondent), issued a bumper-to-bumper warranty for five (5) years or 60,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 24,677.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle's driver's side rear view mirror doesn't always reset correctly, the back-up camera sometimes will black out, and the Lane Departure Warning System (LDWS) has been disabled or altered by a dealer's service technician.
6. Complainant took the vehicle to Respondent's authorized dealers in order to address his concerns with the vehicle on the following dates:
 - a. October 6, 2015, at 4,052 miles;
 - b. October 30, 2015, at 7,222 miles;
 - c. January 21, 2016, at 9,581 miles;
 - d. August 24, 2016, at 16,895 miles;
 - e. September 28, 2016, at 17,675 miles; and
 - f. November 2, 2016, at 18,120 miles.

7. The vehicle's LDWS was inspected by Respondent's authorized dealer on December 29, 2016, after Complainant filed the Lemon Law complaint. No repairs were performed as no active diagnostic codes were found.
8. Respondent's authorized dealers have attempted to repair the issue with the side view mirrors on October 6, 2015; October 30, 2015; January 21, 2016; August 24, 2016; and September 28, 2016.
9. The driver's side mirror assembly has been replaced by Respondent's authorized dealers three (3) times: October 30, 2015; January 21, 2016; and September 28, 2016.
10. The driver's side view mirror still does not act as designed and will intermittently move so that it points to the sky rather than back towards traffic.
11. Respondent's authorized dealers attempted to repair the issue regarding the vehicle's back-up camera on August 24, 2016; September 28, 2016; and November 2, 2016.
12. The vehicle's back up camera was replaced by a dealer service technician on August 24, 2016.
13. The dealers' service technicians were unable to duplicate any problems with the back-up camera on the September 28, 2016 or November 2, 2016 repair visits.
14. The back-up camera still goes black periodically.
15. Respondent, through its authorized dealer, undertook a reasonable number of attempts to conform Complainant's vehicle to an applicable express warranty, but the nonconformity regarding the vehicle's driver's side mirror and back-up camera continues to exist.
16. The defective condition of Complainant's vehicle substantially impairs its use and market value. The vehicle's problems with the driver's side mirror refusing to reset and the back-up camera going black make it less desirable to drive than comparable vehicles.
17. Complainant provided written notice of the defect to Respondent on February 4, 2016, and Respondent did not avail themselves of a final repair attempt on the vehicle.
18. On November 29, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

19. On January 6, 2017, 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 telephonically on March 14, 2017, before Hearings Examiner Edward Sandoval. Complainant, Joseph K. Bradshaw, represented himself at the hearing. Maria Vlasak, Complainant's employee, and Austin Bradshaw, Complainant's son, testified for Complainant. Respondent was represented by Dave Whittington, Arbitration Advocate. A continuance in the hearing was conducted telephonically on March 29, 2017. Present at the continuance were Joseph K. Bradshaw, Complainant, representing himself. Dave Whittington represented Respondent in the continuance. The hearing record was closed on March 29, 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 under Texas Occupations Code § 2301.604(a).
9. Based on the above Findings of Fact and Conclusions of Law, Respondent is required to replace Complainant's 2014 Hyundai Equus Ultima. Tex. Occ. Code § 2301.604(a)(1).

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 2014 Hyundai Equus Ultima (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 Hyundai Equus Ultima 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 \$5,962.73);
 - (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 **\$5,927.73**, which is the amount that Complainant must be responsible for at the time of the vehicle exchange).

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.³⁴
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 Hyundai Equus Ultima's reacquisition and issue a new 12-month/12,000-mile warranty on the reacquired vehicle.
8. Upon replacement of Complainant's 2014 Hyundai Equus Ultima, 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.

³⁴ 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.

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 Hyundai Equus Ultima pursuant to the repurchase provisions set forth in 43 Tex. Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **\$45,800.27**. 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	\$51,728.00
Delivery mileage	532
Mileage at first report of defective condition	4,052
Mileage on hearing date	24,677
Useful life determination	120,000


Purchase price, including tax, title, license and registration						\$51,728.00
Mileage at first report of defective condition						4,052
Less mileage at delivery						<u>-532</u>
Unimpaired miles						3,520
Mileage on hearing date						24,677
Less mileage at first report of defective condition						<u>-4,052</u>
Impaired miles						20,625
Reasonable Allowance for Use Calculations:						
Unimpaired miles						
	<u>3,520</u>					
	120,000	X	\$51,728.00	=		\$1,517.35
Impaired miles						
	<u>20,625</u>					
	120,000	X	\$51,728.00	X .5	=	<u>\$4,445.38</u>
Total reasonable allowance for use deduction:						\$5,962.73
Purchase price, including tax, title, license and registration						\$51,728.00
Less reasonable allowance for use deduction						-\$5,962.73
Plus filing fee refund						<u>\$35.00</u>
TOTAL REPURCHASE AMOUNT						\$45,800.27

10. If Complainant's 2014 Hyundai Equus Ultima 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 11, 2017



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