TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0159231

STACY SELLERS and MICHAEL SELLERS, Complainants	§	**BEFORE THE OFFICE**
v.	§	**OF**
FORD MOTOR COMPANY, Respondent	§	**ADMINISTRATIVE HEARINGS**

ORDER NUNC PRO TUNC CORRECTING DECISION AND ORDER

This Order Nunc Pro Tunc corrects a clerical error in the Decision and Order issued in this case on July 27, 2017. In the Procedural History and in Findings of Fact Paragraph 8, the Decision and Order erroneously identified the hearing date and record closing date as June 15, 2017. The hearing actually convened on **June 16, 2017**, and the record closed that same day. Accordingly, this Order Nunc Pro Tunc corrects the Decision and Order to reflect the actual hearing date and record closing date.

SIGNED July 31, 2017

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

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DECISION AND ORDER

Stacy Sellers and Michael Sellers (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 Ford Motor Company (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that creates a serious safety hazard after a reasonable number of repair attempts. Consequently, the Complainants' vehicle qualifies for replacement.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing[1] and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on June 15, 2017, in New Braunfels, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Maria Diaz, Consumer Legal Analyst, represented and testified for the Respondent.

[1] TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot "conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts."[2] In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a "reasonable number of attempts" at repair.[3] In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines "serious safety hazard" as a life threatening malfunction or nonconformity that: (1) substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.[4]

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers "whether a defect or nonconformity hampers the intended normal operation of the vehicle." For instance, "while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired."[5]

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[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]

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[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]

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.[10]

The existence of 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.[11] 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.[12]

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;[13]

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[9] TEX. OCC. CODE § 2301.605(a)(3).

[10] TEX. OCC. CODE § 2301.605(c).

[11] *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.'").

[12] *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.").

[13] 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.

(2) the manufacturer was given an opportunity to cure the defect or nonconformity;[14] and (3) the 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.[15]

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."[16] The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."[17]

3. Burden of Proof

The law places the burden of proof on the Complainants.[18] 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.[19] 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.[20] The complaint should state "sufficient facts to enable the department and the party complained against to know

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[14] 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).

[15] TEX. OCC. CODE § 2301.606(d)(2).

[16] TEX. OCC. CODE § 2301.204.

[17] TEX. OCC. CODE § 2301.603(a).

[18] 43 TEX. ADMIN. CODE § 215.66(d).

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

[20] "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

the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."[21] However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.[22] Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.[23]

A. Complainants' Evidence and Arguments

On July 6, 2015, the Complainants, purchased a new 2015 Ford F-350 from Jordan Ford Ltd., a franchised dealer of the Respondent, in San Antonio, Texas. The Complainants actually took delivery of the vehicle on July 8, 2015. The vehicle had 26 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. On January 3, 2017, the Complainants mailed a written notice of defect to the Respondent. On January 9, 2017, the Complainants filed a Lemon Law complaint with the Department alleging that the vehicle exhibited electronic malfunctions including flashing and shutting down the vehicle. The Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
04/28/16	13,199	Check engine light on, network communications error
05/10/16	13,866	Instrument cluster and electronics black out, engine died, clean exhaust filter warning light; loose connections
08/22/16	17,870	Check engine light, service soon light, crank case vent, remote start will not work
12/27/16	23,641	Will not crank/start; RCM fault
4/21/17 (invoice)	27,901	Hill descent, Advance Trac, and traction control lights flashing; instrument cluster lights going out

The Respondent had an opportunity to inspect and repair the vehicle on February 14, 2017.

Mrs. Sellers testified that the control panel would flash. She would exit the vehicle and lock the doors. After unlocking the doors, the battery appears dead and the vehicle will not start. This condition occurred intermittently. A warning light may flash, such as hill descent or traction control, and the truck will shut completely off like the battery died, but the battery is not the

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be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

[21] 43 TEX. ADMIN. CODE § 215.202(a)(2).

[22] 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

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

problem. She first noticed this issue after having the vehicle for nine months. Lights flashed, warning lights came on, and the vehicle reacted as if not in gear. After shifting back to park, she tried to restart the vehicle but it would not start. The dealership (Jordan Ford) sent personnel to charge the vehicle, but it would not charge. The vehicle was at the dealership close to 60 days. The Complainants had a rental vehicle. Since then, the Complainants have returned the vehicle to the dealership every six to eight weeks for electronic issues. The dealership kept the vehicle for more than 30 days each time. The vehicle has been in for the dash lights, RCM (restraint control module), and RCM wires falling out because they were not long enough. At the time of the hearing, the vehicle was at the dealership for the electronics because the fuel gauge, electronics for the fuel gauge, did not work and the fuel gauge lights and fuel gauge lights did not work together, and truck sputtered. Mrs. Sellers last noticed electrical issues two days before the hearing, when pulling into the driveway, the miles to empty showed 14 miles, then 73 miles, then 53, then 20. After filling with gas, the miles to empty went to 275 then 220. Mr. Sellers testified that the repair orders show a consistent wiring issue, the wiring harness not being sufficient in length, so they will wear out after a period of time. The Complainants watched for the traction control light, which indicates that the RCM is not working. Mrs. Sellers stated she caught it twice in a picture. The dash lights change from bright to dim; sometimes the key fob is "thrown off"; and the vehicle has died four or five times. The truck shuts off so she cannot get in the truck, the truck will not crank/start, and nothing works. The problem is not a battery issue; the dealership checked the batteries. But the battery had unexplained corrosion. Work order W26191 shows when going down the highway, the cluster blanked out and the warning lights came on. This work order reflects when the problem first happened. The dealership had the truck for three months. Mrs. Sellers confirmed the dealer always provided a loaner vehicle (through Enterprise) during the repairs. After getting the vehicle back she had to return the vehicle back to the dealership for a couple of months and the vehicle "ran more codes". She brought the vehicle in again when the check engine light came on and the vehicle shut off, as shown in work order W38903. Mrs. Sellers testified that the vehicle has been in for repair for something electronic consistently every six to eight weeks since May of 2016 up to the day before the hearing.

B. Respondent's Evidence and Arguments

The Respondent contended that the vehicle did not qualify for repurchase or replacement. In particular, the Respondent cited that the vehicle did not have two repair attempts in the first 12,000 miles. Technicians found the vehicle to be working as intended. Although the vehicle was brought in for a number of service visits, they only resulted in two actual repairs. The field service engineer drove the vehicle 102 miles but could not duplicate the issues. At the time of the Respondent's inspection of the vehicle, no repairs were needed and the vehicle did not have a nonconformity that impaired the safety, value, or use of the vehicle.

C. Inspection

The vehicle was not inspected at the hearing because it remained under repair at a dealership. Accordingly, good cause existed for not having the vehicle available at the hearing.

D. Analysis

The record shows an ongoing pattern of electrical problems. Most significantly, the vehicle's electrical problems have caused the vehicle to become inoperable, leading to a loss of control. Consequently, the electrical malfunctions constitute a serious safety hazard (a condition that "substantially impedes a person's ability to control or operate a vehicle for ordinary use or intended purposes"). Because the vehicle exhibits a serious safety hazard, the presumption for reasonable repairs of a safety hazard apply. The presumption for safety hazards only requires one repair attempt in the first 12 months or 12,000 miles, whichever comes first, and another attempt within 12 months or 12,000, whichever comes first, after the first attempt. As explained in the discussion of the applicable law above, the Lemon Law does not require that an actual repair occur. A repair visit without an actual repair can still constitute a repair attempt. However, the first relevant repair attempt occurred at 13,199 (13,173 miles after delivery). Because the Lemon Law requires the repair attempt to have occurred at the earlier of 12 months or 12,000 miles, the vehicle does not satisfy the presumption for reasonable repairs. Nevertheless, even if the repair attempts do not fit one of the express statutory presumptions, the particular circumstances of the case may warrant finding that the vehicle had a reasonable number of repair attempts. Here, the vehicle had two repair attempts in the first 12 months but exceeded 12,000 miles by 1,173 mile. Moreover, the vehicle has had at least five relevant repairs between 13,199 and 27,901 miles (a span of 14,702 miles) and between April 28, 2016, and approximately April 21, 2017 (a period of less than a year).

Most importantly, the vehicle has a clearly demonstrated safety hazard, it simply stops functioning. Given the seriousness of the defect and the number of repairs within a relatively short time span, the vehicle has had a reasonable number of repair attempts.

III. Findings of Fact

1. On July 6, 2015, the Complainants, purchased a new 2015 Ford F-350 from Jordan Ford Ltd., a franchised dealer of the Respondent, in San Antonio, Texas. The Complainants actually took delivery of the vehicle on July 8, 2015. The vehicle had 26 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.

3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
04/28/16	13,199	Check engine light on, network communications error
05/10/16	13,866	Instrument cluster and electronics black out, engine died, clean exhaust filter warning light; loose connections
08/22/16	17,870	Check engine light, service soon light, crank case vent, remote start will not work
12/27/16	23,641	Will not crank/start; RCM fault
4/21/17[24]	27,901	Hill descent, Advance Trac, and traction control lights flashing; instrument cluster lights going out

4. The Respondent had an opportunity to inspect and repair the vehicle on February 14, 2017.

5. On January 3, 2017, the Complainants mailed a written notice of defect to the Respondent.

6. On January 9, 2017, the Complainants filed a Lemon Law complaint with the Department alleging that the vehicle exhibited electronic malfunctions including flashing and shutting down the vehicle.

7. On March 30, 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

[24] This is the invoice date and not the open date.

under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.

8. The hearing in this case convened and the record closed on June 15, 2017, in New Braunfels, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented and testified for themselves. Maria Diaz, Consumer Legal Analyst, represented and testified for the Respondent.

9. The vehicle's odometer had 30,993 miles at the time of the hearing.

10. The vehicle's warranty was in effect at the time of the hearing.

11. The vehicle continues to have a defect that causes serious malfunctions, including stopping the or nearly stalling the vehicle, preventing the vehicle from starting, and causing the vehicle's instrumentation to malfunction.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.

3. The Complainants filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.

4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).

5. The Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).

6. The Complainants or a person on behalf of the Complainants provided sufficient notice of the alleged defect(s) to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

7. The Respondent had an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).

8. The Complainants timely filed the complaint commencing this proceeding. TEX. OCC. CODE § 2301.606(d).

9. The Complainants' vehicle qualifies for replacement or repurchase. A warrantable defect that creates a serious safety hazard 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 in the reacquired vehicle identified in this Order. **IT IS THEREFORE ORDERED** that:

1. The Respondent shall, in accordance with Texas Administrative Code § 215.208(d)(1)(A), promptly authorize the exchange of the Complainants' vehicle (the reacquired vehicle) with the Complainants' choice of any comparable motor vehicle.

2. The Respondent shall instruct the dealer to contract the sale of the selected comparable vehicle with the Complainants 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 the Complainants' vehicle shall be the MSRP at the time of the original transaction, less a reasonable allowance for the Complainants' 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 $11,688.28);

      d. The use allowance paid by the Complainants to the Respondent shall be reduced by $35.00 (the refund for the filing fee) (after deducting the filing fee, the use allowance is reduced to **$11,653.28**, which is the amount that the Complainants must be responsible for at the time of the vehicle exchange).

3. The Respondent's communications with the Complainants 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. The 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.[25]

5. The Respondent shall affix the disclosure label to the reacquired vehicle in a conspicuous location (e.g., hanging from the rear view mirror). Upon the 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, the 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. The Respondent shall repair the defect or condition that was the basis of the vehicle's reacquisition and issue a new 12 month/12,000 mile warranty on the reacquired vehicle.

8. Upon replacement of the Complainants' vehicle, the Complainants 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, the Complainants 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, the Complainants 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. The Complainants 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 days after the date this Order becomes final under Texas Government Code § 2001.144.[26] If the

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[25] 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, Phone (512) 465-4076.

[26] (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order,

replacement transaction cannot be accomplished within the ordered time period, the parties shall complete the return and repurchase of the subject vehicle, within 20 days after the date this Order becomes final under Texas Government Code § 2001.144, pursuant to the repurchase provisions set forth in 43 Texas Administrative Code § 215.208(b)(1) and (2). The repurchase price shall be **$51,898.75**. The refund shall be paid to the Complainants and the lien holder, if any, as their interests appear. If clear title is delivered, the full refund shall be paid to the Complainants. At the time of the repurchase, 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. 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).The calculations for the repurchase price are as follows:

Purchase price, including tax, title, license & registration	$63,552.03
Delivery mileage	26
Mileage at first report of defective condition	13,199
Mileage on hearing date	30,993
Useful life determination	120,000

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 Order.

Purchase price, including tax, title, license & registration				$63,552.03				
Mileage at first report of defective condition	13,199							
Less mileage at delivery	-26							
Unimpaired miles	13,173							
Mileage on hearing date	30,993							
Less mileage at first report of defective condition	-13,199							
Impaired miles	17,794							
Reasonable Allowance for Use Calculations:								
Unimpaired miles	13,173	÷	120,000	×	$63,552.03	×	=	$6,976.42
Impaired miles	17,794	÷	120,000	×	$63,552.03	50%	=	$4,711.85
Total reasonable allowance for use deduction								$11,688.28
Purchase price, including tax, title, license & registration					$63,552.03			
Less reasonable allowance for use deduction					$11,688.28			
Plus filing fee refund					$35.00			
Plus incidental expenses					$0.00			
TOTAL REPURCHASE AMOUNT					**$51,898.75**			

11. If the Complainants' vehicle 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 the 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 the Complainants' vehicle.

SIGNED July 27, 2017

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