

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0173545 CAF**

**PAUL REASON and
DEBORAH REASON,
Complainants**

v.

**NISSAN NORTH AMERICA, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Paul and Deborah Reason (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 Nissan North America, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement or warranty repair.

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 July 14, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Rafael Mariduena, Dealer Technical Specialist, 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

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 consent

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).

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 March 30, 2013, the Complainants, purchased a new 2013 Nissan Altima from South Point Nissan, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 16 miles on the odometer at the time of purchase. The vehicle's limited warranty provides basic coverage of the vehicle for 36 months or 36,000 miles, whichever occurs first, and powertrain coverage for 60 months or 60,000 miles, whichever occurs first. On or about February 22, 2017, the Complainants mailed a written notice of defect to the Respondent. On February 26, 2017, the Complainants filed a Lemon Law complaint with the Department alleging that the airbag system and seat belt warning light malfunctioned; the hood latch did not latch properly; and the continuously variable transmission (CVT) exhibited excessive noise and vibration. In relevant part, the Complainants took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
05/23/13	986	Airbag system (no work done)
06/24/13	3,402	Airbag system – airbag off indicator illuminates
10/17/13	5,951	Airbag system (no repair)
07/25/14	11,340	Reprogram occupant classification system
03/17/15	14,367	Lubricate hood latch
09/26/15	17,475	Airbag light shows to be off with adult in seat; seat belt light comes on with no passenger; groaning when accelerating
03/09/16	19,651	Airbag off light comes on with a passenger sitting in the seat; growling noise when accelerating; hood latch (backordered)
11/23/16	23,753	Hood latch; reprogram airbag control and OCS ECU

Mr. Reason testified that the airbag system/seat belt light issue was intermittent. He explained that when a passenger sits on the seat, the airbag system is supposed to turn off for a light person like a child. However, the airbag system also disengages when his wife or other (adult) passenger sits on the seat. He noted that they had a video of the most recent instance. The dealer kept reflashing the OCS (occupant classification system) and other modules instead of repairing

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).

the whole system. He explained the dealer plugs in a computer and if the dealer finds no codes then the dealer does not do anything. He also stated that the Respondent refused to do anything. He opined that he was in a war with a computer not properly programmed to analyze all components. Mr. Reason stated that they first noticed the issue within the first couple of weeks of owning the vehicle but did not take the vehicle for repair until May 23 (2013) at just under 1,000 miles. He noted that the same problem persisted and the vehicle had a recall 30 days prior to buying the vehicle. He confirmed that he last noticed the issue on the day of the video from June 11, 2017. He testified that the repairs did not improve the airbag system. With regard to the hood latch issue, Mr. Reason explained that he did not have an issue prior to going in for the hood latch recall. After the dealer replaced the latch—Mr. Reason thought the dealer also did something to the CVT—the shaking “went off the charts.” The shaking was evident with the vehicle running and brakes applied but was hardly noticeable when in park. He stated that he would notice the shaking basically every day and he was in the vehicle the day before the hearing. He believed the shaking was related to the CVT. He felt vibration in the shifter knob and seat. Mr. Reason explained that the last recall issue actually exacerbated the problem. He testified that the hood shaking was virtually unnoticeable before replacing the hood latch. With respect to the CVT noise/vibration, Mr. Reason noted a rubber band like feel and not a good, smooth, true response. He understood that this was a characteristic of CVTs in general. He was more aware of this when putting the vehicle in drive or reverse. The vehicle will pause and jerk because it engages, a hesitation or gap from shifting to take off. He believed he first noticed the CVT noise and vibration issues in 2014. He would notice this during acceleration at low speeds, up to 40 mph and maybe 50 mph but not beyond that. The CVT noise and vibration would occur every day. He noticed that the vehicle appeared to hesitate much less in St. Louis, possibly because of the cooler weather. Mr. Reason testified that there were no repairs for this issue; the subject vehicle was compared with another car with more miles and the response was the condition was normal. Mr. Reason contended that in March of 2016 he went to the dealership for such an inspection but a factory technician never appeared. He argued that the way his wife sits in the vehicle should not affect the OCS. He noted that he never experienced vibration issues with other four cylinder vehicles. Mr. Reason asserted that anything that would cause the OCS to not function properly is an excuse for a poorly designed, defective system. With mechanical things, whether computer controlled or not, they are only as good as the person that programmed or designed it. He claimed that the recalls were an admission

of a defect. He expressed that he wanted the entire OCS replaced and stated that he cannot spend his life running to the dealership because of the system's poor design. He articulated that "if I have a wife that moves in her seat, well that's what seats are for, is to sit. If the system is so complicated as to not work, then it's no good." With regard to the hood latch and vibrating hood, he stated that he did not take it to the dealer to make it worse but to make it better.

B. Respondent's Evidence and Arguments

Mr. Mariduena explained that the issues raised by Mr. Reason would have to have been substantiated by a dealer servicing facility or someone associated with the Respondent. The hood recall related to preventing the hood from opening and not to vibration. He pointed out that the vehicle he drove vibrated. With regard to the airbag system/light, the way a person sits on the seat can trigger the light, or if the person is small statured or a child. The system is designed to protect the person in the seat. Mr. Mariduena explained that he could not comment on the subject vehicle's actual vibration (as noted, the vehicle was not available for inspection). However, a four cylinder engine will vibrate (more than a six or eight cylinder engine). When the hearings examiner asked if the Respondent (as opposed to a dealer) inspected the vehicle, Mr. Mariduena answered that they did not have any record of inspection by a representative of the Respondent. The hearings examiner inquired whether all Nissan vehicles used the same OCS. Mr. Mariduena explained that some use a strain gauge sensor between the seat tracks and other use a bladder system in the cushion. Mr. Mariduena confirmed that, after a certain time, the OCS will turn off the airbag if the system senses something wrong (e.g., an underweight occupant). He elaborated that when the vehicle comes to a stop for 60 seconds, the OCS recalibrates and may or may not turn the airbag light off, depending on the classification. He affirmed that when a person moves, the OCS may not be able to sense the correct weight and therefore turn off the airbag. For example, if a person rests on one side of the seat, the OCS may not detect the correct weight. This is why the owner's manual recommends sitting straight up in the seat.

C. Inspection

The vehicle was not available for inspection. The Complainants were granted a good cause waiver of the requirement to make the vehicle available since they were out of state attending to an ill family member.

D. Analysis

A preponderance of the evidence does not show that the subject vehicle has a warrantable defect subject to relief.

1. Filing Deadline for Repurchase/Replacement

As an initial matter, the vehicle cannot qualify for repurchase or replacement because the Complainants did not file their complaint by the time required by law. As outlined in the discussion of the applicable law, to qualify for repurchase or replacement, the Lemon Law requires a complaint to be filed no later than the earlier of 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. In this case, delivery occurred on March 30, 2013, so the filing deadline fell on September 30, 2015. However, the complaint was filed February 26, 2017, approximately a year and five months past the deadline. Consequently, the vehicle cannot qualify for repurchase or replacement.

2. Warrantable Defect

The Lemon Law does not apply to all problems that may occur with a vehicle, but only applies to defects covered by warranty (warrantable defects).²³ However, if the manufacturer's warranty does not cover the complained of condition; the Lemon Law does not provide any relief. The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law specify any standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. Consequently, to qualify for replacement or repurchase or for warranty repair, the vehicle must have a defect covered by warranty.²⁴ In this case, the vehicle's warranty specifies that: "This warranty covers any repairs needed to correct defects in materials or workmanship of all parts and components of each new Nissan vehicle supplied by Nissan subject to the exclusions listed under the heading 'WHAT IS NOT COVERED' or, if the part is covered by one of the separate coverages described in the following sections of this warranty, that specific coverage applies instead of the basic coverage."²⁵ Accordingly, the warranty applies to conditions resulting from a defect in

²³ TEX. OCC. CODE § 2301.603(a).

²⁴ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁵ Complainants' Ex. 1, 2013 Warranty Information Booklet (emphasis added).

materials or workmanship. On the other hand, the warranty does not cover conditions arising from the vehicle's design. Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design defects.²⁶ That is, defects in materials or workmanship (manufacturing defects) differ from characteristics of the design. The courts have explained that a "manufacturing defect is one created by a manufacturer's failure to conform to its own specifications, i.e., the product would not have been defective if it had conformed to the manufacturer's design specifications."²⁷ In other words, a manufacturing defect is an aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. As a result, a defective vehicle differs from a properly manufactured vehicle. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which occurs before manufacturing) or representations by the dealer (which occurs after manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing, so that the same-model vehicles made according to the manufacturer's specifications may ordinarily exhibit the same characteristics. In contrast to manufacturing defects, "[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves."²⁸ If the complained of condition constitutes a design characteristic or even a design defect, the Lemon Law does not apply because the warranty only covers manufacturing defects.

²⁶ *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); see *GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

²⁷ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

²⁸ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

a. Airbag System/Passenger Warning Light

As explained above, the warranty does not cover issues arising from the design of the vehicle, including the operation of the air bag system and the related warning light function. Accordingly, such issues do not qualify for repair under the warranty. As Mr. Reason observed, the issues with the vehicle appear to arise from the design of the vehicle. The record in this case appears to confirm that the complained of operation of the airbag system, the OCS in particular, is a characteristic of the vehicle's design and not a manufacturing defect. The deactivation of the passenger airbag due to the calibration/recalibration of the OCS is inherent to the design of the airbag system and is not a manufacturing defect. This airbag deactivates as a safety feature to prevent small stature passengers from suffering injuries due to airbag deployment. In essence, the OCS disables the airbag by default to do the least harm to small persons. However, the OCS, due to its design, may misclassify occupants, which in turn affect the warning lights. The OCS requires the passenger to remain sufficiently still, with the body on the sensor area, for an adequate time for the sensor to get a reading and calibrate properly. Consequently, passenger position, shifting body weight and motion may prevent the OCS from detecting weight correctly. Although the OCS may not operate as desired by the Complainants, it does appear to operate according to its design, which include deactivation of the airbag when the OCS cannot calibrate because of movement or body position. Because the complained of condition is a design issue, and therefore not covered by warranty, the vehicle is not eligible for relief.

b. Hood Latch/Hood Vibration

The hood latch leading to vibration does not appear to be a warrantable defect resulting from manufacturing but an issue arising from the hood latch replacement that occurred after the vehicle left the factory. Mr. Reason testified that he did not have a hood vibration issue prior to going in for the hood latch recall. As outlined in the discussion of manufacturing defects, manufacturing defects exist when the vehicle leaves the factory. In this case, the complained of condition did not exist until after the dealer's replacement of the hood latch under a recall. This indicates that the hood vibration is not a manufacturing defect, but the result of a repair after manufacturing, which does not qualify for relief here.

c. CVT Noise/Vibration

A preponderance of the evidence does not show that the CVT noise/vibration is a manufacturing defect. The record does not reflect that the CVT noise/vibration is more likely than not a defect as opposed to a normal design characteristic. Mr. Reason testified that he understood that the CVTs have certain characteristics that a conventional transmission does not. He also described the noise/vibration as occurring on acceleration at low speeds/rpms, suggesting the noise may have resulted from the CVT's normal operation (e.g., staying in a high "gear" to maximize fuel economy). However, not having the subject vehicle available for inspection complicates the determination of this issue either way.

III. Findings of Fact

1. On March 30, 2013, the Complainants, purchased a new 2013 Nissan Altima from South Point Nissan, a franchised dealer of the Respondent, in Austin, Texas. The vehicle had 16 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides basic coverage of the vehicle for 36 months or 36,000 miles, whichever occurs first, and powertrain coverage for 60 months or 60,000 miles, whichever occurs first.
3. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
05/23/13	986	Airbag system (no work done)
06/24/13	3,402	Airbag system – airbag off indicator illuminates
10/17/13	5,951	Airbag system (no repair)
07/25/14	11,340	Reprogram occupant classification system
03/17/15	14,367	Lubricate hood latch
09/26/15	17,475	Airbag light shows to be off with adult in seat; seat belt light comes on with no passenger; groaning when accelerating
03/09/16	19,651	Airbag off light comes on with a passenger sitting in the seat; growling noise when accelerating; hood latch (backordered)
11/23/16	23,753	Hood latch; reprogram airbag control and OCS ECU

4. On or about February 22, 2017, the Complainants mailed a written notice of defect to the Respondent.

5. On February 26, 2017, the Complainants filed a Lemon Law complaint with the Department alleging that the airbag system and seat belt warning light malfunctioned; the hood latch did not latch properly; and the continuously variable transmission (CVT) exhibited excessive noise and vibration.
6. On May 11, 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 July 14, 2017, in Austin, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainants, represented and testified for themselves. Rafael Mariduena, Dealer Technical Specialist, represented and testified for the Respondent.
8. The applicable vehicle warranty's basic coverage had expired on March 30, 2016, but the powertrain coverage was in effect at the time of the hearing.
9. The vehicle was not available for inspection at the hearing.

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' vehicle does not qualify for replacement or repurchase. The Complainants did not prove by a preponderance that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204, 2301.603(a) and 2301.604(a).
7. The Complainants did not timely file the complaint for repurchase or replacement relief. The proceeding must have been commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner. TEX. OCC. CODE § 2301.606(d).
8. The Complainants' vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204 and 2301.603.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

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 and § 2301.204 is **DISMISSED**.

SIGNED September 7, 2017



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