

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0173705 CAF**

HECTOR RUIZ,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
GENERAL MOTORS LLC,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Hector Ruiz (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2016 Chevy Tahoe LTZ. Complainant asserted that the vehicle is defective because the passenger seat vibrates and creates a squeaking noise when he’s driving. General Motors LLC (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for 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 and the record closed on October 24, 2017, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant appeared and represented himself at the hearing. Respondent was represented by Rose Crookston, District Manager for After-Sales. Also testifying for Respondent were Bobby Shreeve, Field Service Engineer, and Robert Perez, Service Manager for Fiesta Chevrolet.

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 manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five 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.⁶

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁷

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2016 Chevy Tahoe LTZ (the vehicle) from Bert Ogden Chevrolet (Ogden) in Mission, Texas on February 11, 2016, with mileage of 20 at the time of delivery.^{8,9} Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. On the date of hearing the vehicle’s mileage was 17,613. Respondent’s warranty was still in effect at the time of hearing.

Complainant testified that soon after purchasing the vehicle he noticed that when he drove it, it seemed to vibrate excessively. He took the vehicle for repair to Fiesta Chevrolet in Edinburg, Texas on April 20, 2016. Complainant testified that the technician replaced all four (4) of the

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Tex. Occ. Code § 2301.601(4).

⁸ Complainant Ex. 1, Purchase Order and Motor Vehicle Retail Installment Contract dated February 11, 2016.

⁹ Complainant Ex. 2, Odometer Disclosure Statement dated February 11, 2016.

vehicle's tires in order to address the concern.¹⁰ The vehicle's mileage when Complainant took it to the dealer on this occasion was 2,203.¹¹

After the repair, Complainant noticed that the vehicle's passenger seat vibrated and made a squeaking noise. He returned the vehicle to Fiesta for repair on August 19, 2016. On this occasion, the service technician verified during a test drive that the vehicle was vibrating excessively at highway speeds.¹² The technician determined that the vehicle's tires had excessive road force.¹³ The technician shifted three (3) of the tires on their rims, replaced one tire, and balanced the wheels in order to address the vibration issue.¹⁴ The vehicle was in Fiesta's possession for three (3) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle at the time was 6,939.¹⁵

Complainant testified that he continued to see the seat vibrate and to hear the resulting noise. He stated that he returned the vehicle to Fiesta for repair on August 30, 2016. During the repair visit, Fiesta's technician balanced the vehicle's tires and adjusted a bar on the passenger seat back frame to address Complainant's concerns regarding the squeaking noise.¹⁶ The vehicle was returned to Complainant on September 2, 2016.¹⁷ Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant turned it over Fiesta was 7,072.¹⁸

Complainant continued hearing the noise from the passenger's seat and to see the seat vibrate when he drove the vehicle. He returned the vehicle to Fiesta on September 13, 2016. Fiesta's technician had special ordered a passenger seat back cushion frame for the vehicle on the prior repair visit and installed the part on Complainant's vehicle on this occasion.¹⁹ The vehicle was in the dealer's possession for seven (7) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle when he delivered it to Fiesta on this occasion was 7,311.²⁰

¹⁰ Respondent Ex. 1, Fiesta Chevrolet, History – Specific Vehicle dated October 23, 2017. Although Complainant testified that all four (4) of the vehicle's tires were replaced, the print out provided by Respondent indicated that only two (2) tires were replaced and the vehicle's (2) rear tires which were not replaced were installed on the front of the vehicle.

¹¹ *Id.*

¹² Complainant Ex. 3, Repair Order dated August 19, 2016.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 4, Repair Order dated August 30, 2016.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 5, Repair Order dated September 13, 2016.

²⁰ *Id.*

Complainant continued to experience the same issues with the vehicle and took it to Fiesta for repair on January 16, 2017. Fiesta's technician test drove the vehicle and felt a "slight wheel vibration".²¹ The technician checked the road force on the vehicle's tires and balanced them.²² The vehicle was in Fiesta's possession for one (1) day. Complainant could not recall if he was provided with a loaner vehicle while his vehicle was being repaired. The vehicle's mileage on this occasion was 9,911.²³

Complainant testified that he continued to experience the same problems with the vehicle. He took it back to Fiesta for repair on February 23, 2017. Fiesta's technician determined that the front passenger seat frame had some play which was causing the noise.²⁴ He special ordered a new lower seat frame for the vehicle.²⁵ The vehicle's mileage on this occasion was 10,717.²⁶ The vehicle was in Fiesta's possession for several days. Complainant received a loaner vehicle from Fiesta while his vehicle was being repaired. He picked up the subject vehicle from Fiesta in order to go out of town and returned it to the dealer on March 27, 2017. When Complainant returned the vehicle to Fiesta, the technician replaced the front passenger seat cushion frame in order to address the noise concerns.²⁷ The vehicle's mileage on this occasion was 11,644.²⁸ The vehicle was in Fiesta's possession for four (4) days while the repair was being performed. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 6, 2017.²⁹ Complainant testified that he also sent an e-mail to Respondent regarding his dissatisfaction with the vehicle. However, he did not retain a copy of the e-mail.

On April 3, 2017, three (3) days after the seat cushion frame was replaced, Complainant returned the vehicle to Fiesta because he was still hearing the noise from the passenger seat and he observed that it was still vibrating. The technician verified hearing a "rattle" noise from the seat during a test drive of the vehicle.³⁰ The technician installed a shim to the inboard track of the seat in order to address the concern.³¹ The vehicle was in Fiesta's possession for eight (8) days during

²¹ Complainant Ex. 6, Repair Order dated January 16, 2017.

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 8, Repair Order dated February 23, 2017.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complainant Ex. 9, Repair Order dated March 27, 2017.

²⁸ *Id.*

²⁹ Complainant Ex. 7, Lemon Law Complaint dated March 6, 2017. Complainant signed and dated the complaint on February 8, 2017. However, the complaint was not received by the Texas Department of Motor Vehicles until March 6, 2017, which is the effective date of the complaint.

³⁰ Complainant Ex. 10, Repair Order dated April 3, 2017.

³¹ *Id.*

this repair visit. Complainant was provided a loaner vehicle while his vehicle was being repaired. The vehicle's mileage on this occasion was 11,794.³²

Complainant took the vehicle to Fiesta on June 20, 2017, in order to have Respondent's field service engineer (FSE) inspect it and attempt to repair it. The FSE test drove the vehicle and replaced the vehicle's right front wheel, ring gear and pinion, rack and pinion steering gear bushings, and passenger seat frame assembly in order to address Complainant's concerns.³³ The vehicle's mileage on this occasion was 13,264.³⁴ The vehicle was in Fiesta's possession until July 24, 2017.³⁵ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle drives well besides the vibration and noise. The noise occurs on a daily basis. If the seat is moved or touched while the vibration is occurring, then the noise will stop for about 24 hours. After that, the noise begins occurring again. Also, the noise does not occur if someone is occupying the passenger seat or he drives over 40 mph. Complainant stated that he feels that the noise creates a safety hazard. He hears it consistently and doesn't want it occurring. Complainant feels that the noise is not "part of the package".

C. Respondent's Evidence and Arguments

1. Robert Perez' Testimony

Robert Perez, Service Manager for Fiesta, testified for Respondent. Mr. Perez has worked twenty (20) years in the automotive industry. He's worked the last ten (10) years for Fiesta, most of that time as the shop foreman. In addition, Mr. Perez is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Perez stated that he's been aware of Complainant's concerns regarding the vibration and noise in the vehicle since April of 2016 when Complainant first took the vehicle to Fiesta for repair. Mr. Perez went over the repair attempts performed on the vehicle at Fiesta. He indicated that he has heard a faint noise (squeak) from the front passenger's seat. However, when the vehicle's radio and air conditioning are turned on, he doesn't hear anything. Mr. Perez indicated that the noise is minute and not doesn't affect the operation of the vehicle.

³² *Id.*

³³ Complainant Ex. 11, Repair Order dated June 20, 2017.

³⁴ *Id.*

³⁵ *Id.*

2. Bobby Shreeve's Testimony

Bobby Shreeve, Field Service Engineer, also testified for Respondent. Mr. Shreeve has worked in the automotive industry for twenty (20) years. He's worked for Respondent for one (1) year as a field service engineer. Mr. Shreeve is an ASE Master Certified Technician. He's also a GM World Class Technician.

Mr. Shreeve testified that he inspected the vehicle on June 20, 2017 at Fiesta during Respondent's final repair attempt. Mr. Shreeve attached a Pico Scope on the vehicle which is used to measure a vehicle's vibration. He noticed the front passenger seat vibrating during a test drive of the vehicle and the Pico Scope recorded slightly excessive vibration in the vehicle during the test drive. Mr. Shreeve also noticed a "slight" noise from the passenger seat during the test drive when the vehicle's radio was turned off, the windows up, and the air conditioner blowing at the minimum level.³⁶ During the final repair attempt Mr. Shreeve replaced the vehicle's right front wheel, ring and pinion, steering gear bushings, and passenger seat frame. Mr. Shreeve indicated that after the repairs he could not hear any noise from the passenger seat. He does not feel that the noise from the passenger seat is safety concern.³⁷

3. Rose Crookston's Testimony

Rose Crookston, District Manager for After-Sales, also testified for Respondent. She indicated that she does not feel that the noise and vibration concerns are a safety issue. She also does not feel that the vehicle's value has been decreased. Ms. Crookston stated that the concerns are a "customer dissatisfier" and that Complainant has focused on them. The vehicle works fine in every other respect and has never left Complainant stranded or has it failed to start.

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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is

³⁶ Respondent Ex. 2, Vehicle Legal Inspection dated June 20, 2017, p. 2.

³⁷ *Id.*

still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant indicated that the front passenger seat vibrates and makes a squeaking noise when he drives the vehicle. It is understandable that the noise can be annoying and Complainant testified as much. However, the vibration and noise do not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the vibration and noise do not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the concerns would affect the purchase price, since most people would not even notice them.

The hearing examiner must hold that there is no evidence of a defect with the vehicle and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 17,613 and it remains under warranty. As such, Respondent is still under an obligation to repair any issues that arise with the vehicle that are covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Hector Ruiz (Complainant) purchased a new 2016 Chevy Tahoe LTZ on February 11, 2016, from Bert Ogden Chevrolet (Ogden) in Mission, Texas, with mileage of 20 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle providing coverage for three (3) years or 36,000 miles.
3. The vehicle's mileage on the date of hearing was 17,613.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.

5. Complainant noticed that when he drove the vehicle the front passenger seat vibrated and made a squeaking noise.
6. Complainant took the vehicle to Respondent's authorized dealer, Fiesta Chevrolet (Fiesta) in Edinburg, Texas, in order to address his concerns with the vehicle on the following dates:
 - a. April 20, 2016, at 2,203 miles;
 - b. August 19, 2016, at 6,939 miles;
 - c. August 30, 2016, at 7,072 miles;
 - d. September 13, 2016, at 7,311 miles;
 - e. January 16, 2017, at 9,911 miles; and
 - f. February 23, 2017, at 10,717 miles.
7. On April 20, 2016, Fiesta's service technician replaced two (2) of the vehicle's tires in order to address Complainant's concern regarding feeling excessive vibration when he drove the vehicle.
8. On August 19, 2016, Fiesta's service technician shifted three of the vehicle's tires on their rims and replaced the left rear tire in order to address Complainant's concern regarding feeling vibration in the vehicle.
9. On August 30, 2016, Fiesta's service technician road force balanced the vehicle's tires in order to address the vibration concern in the vehicle. The technician also adjusted a bar on the passenger seat frame to address the noise concern.
10. On September 13, 2016, Fiesta's service technician replaced the vehicle's front passenger seat back cushion frame to address the noise concern raised by Complainant.
11. On January 16, 2017, Fiesta's service technician road force balanced the vehicle's tires in order to resolve Complainant's concerns regarding vibration and noise from the passenger seat.
12. On February 23, 2017, Fiesta's service technician diagnosed that the noise heard from the vehicle's passenger seat may have been caused by the lower seat frame having play and special ordered a replacement.
13. On March 6, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

14. On March 27, 2017, Fiesta's service technician replaced the vehicle's passenger seat cushion frame in order to address Complainant's noise concern.
15. On April 3, 2017, Complainant took the vehicle to Fiesta where the service technician installed a shim on the vehicle's passenger seat inboard track to keep the seat from vibrating and making noise.
16. On June 20, 2017, Respondent's field service engineer, Bobby Shreeve, performed an inspection and final repair attempt on the vehicle.
17. During the final repair attempt on the vehicle, Mr. Shreeve replaced the vehicle's right front wheel, ring and pinion, steering gear brushings, and the passenger seat frame in order to address Complainant's concerns regarding the vehicle vibration and the noise from the front passenger seat.
18. On June 7, 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.
19. The hearing in this case convened and the record closed on October 24, 2017, in Pharr, Texas before Hearings Examiner Edward Sandoval. Complainant, Hector Ruiz, appeared and represented himself at the hearing. Respondent was represented by Rose Crookston, District Manager for After-Sales. Also testifying for Respondent were Bobby Shreeve, Field Service Engineer, and Robert Perez, Service Manager for Fiesta Chevrolet.

IV. CONCLUSIONS OF LAW

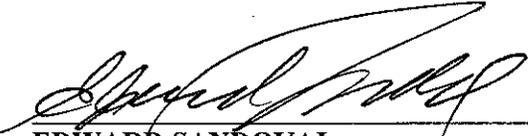
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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 failed to prove that the vehicle has an existing warrantable defect that creates a serious safety hazard or which substantially impairs its use or market value. Tex. Occ. Code § 2301.604(a).
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED November 9, 2017.


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