

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0177528 CAF**

<b>TABATHA THORNTON,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>FCA US LLC,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Tabatha Thornton (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2015 Jeep Renegade. Complainant asserts that: (1) the vehicle's brakes engage themselves and the vehicle dips forward at stops; (2) the brake rotors are damaged and grooved; (3) the engine idles loudly and makes intermittent grinding noise; and (4) intermittent electrical problems affect the vehicle's radio and fan controls. FCA US LLC (Respondent) argued that the vehicle is operating as designed and that no relief is warranted. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is not eligible for repurchase or replacement relief. However, she is entitled to repair 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 on February 1, 2018, in Paris, Texas before Hearings Examiner Edward Sandoval. Complainant, Tabatha Thornton, represented herself at the hearing. Also present to testify for Complainant was her husband, Christopher Thornton. Respondent was represented by Jan Kershaw, Early Resolution Case Specialist. Testifying for Respondent were Heath Crenwelge, Service and Parts Area Manager, and Robert Stickles, Fixed Operations Director.

A continuance in the hearing was conducted telephonically on February 16, 2018. Present at the continuance were Tabatha Thornton, Complainant, representing himself. Also present were Jan Kershaw representing Respondent and Heath Crenwelge testifying for Respondent. The hearing record was closed on February 16, 2018.

## 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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

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.<sup>5</sup>

### B. Complainant's Evidence and Arguments

#### 1. Tabitha Thornton's Testimony

Complainant purchased a new 2015 Jeep Renegade from Dodge City of McKinney (Dodge City), in McKinney, Texas on February 17, 2016.<sup>6</sup> The vehicle's mileage was 13 at the time of delivery.<sup>7</sup> Respondent provided a new vehicle limited warranty for the vehicle, which provides bumper-to-bumper warranty coverage for the vehicle for three (3) years or 36,000 miles from the

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</sup> 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.

<sup>6</sup> Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract and Buyer's Order dated February 17, 2016.

<sup>7</sup> *Id.*, p. 4.

date of delivery, whichever comes first.<sup>8</sup> On the date of hearing the vehicle's mileage was 33,646. Respondent's warranty was still in effect at the time of hearing.

Complainant testified that she is the primary driver of the vehicle. She stated that she began noticing an issue with the vehicle's brakes before the vehicle had been driven 11,000 miles. She began to hear a screeching and grinding noise from the brakes.

Complainant's husband, Christopher Thornton, took the vehicle to Dodge City for repair to the brakes on September 7, 2016. Mr. Thornton also informed Dodge City's service advisor that the vehicle had died while being driven on the highway and that it was idling rough.<sup>9</sup> The dealer's service technician test drove the vehicle and felt it was vibrating at highway speeds.<sup>10</sup> The technician resurfaced the vehicle's front brake rotors in order to resolve the issue.<sup>11</sup> The technician also indicated that he could not duplicate the concern regarding the vehicle dying and did not perform any repairs for the issue.<sup>12</sup> The vehicle's mileage on this occasion was 11,923.<sup>13</sup> The vehicle was in the dealer's possession for two (2) to three (3) days during this repair visit. Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant stated that the vehicle has not died again while she's been driving it.

Complainant testified that the vehicle's brakes were okay for about a week after the repair and then they started making noises again. Complainant also stated that on September 27, 2016, she stepped on the vehicle's brakes to stop quickly and the vehicle's rear end seemed to raise off the ground. She was informed of this by a driver following behind her.

Mr. Thornton took the vehicle to Dodge City for repair on October 15, 2016. The dealer's service advisor indicated on the work order that the issues raised were that the brake rotors had grooves in them and that the vehicle's fuel mileage seemed to have decreased.<sup>14</sup> Dodge City's service technician informed Mr. Thornton that grooves in the rotors was a normal condition and, after test driving the vehicle, that the vehicle's fuel consumption seemed to be about 31.3 mpg.<sup>15</sup> No repairs to the vehicle were performed by the service technician.<sup>16</sup> The vehicle's mileage when it was taken to the dealership on this occasion was 14,597.<sup>17</sup> Complainant testified that the vehicle

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<sup>8</sup> Respondent Ex. 1, Warranty Coverage at a Glance, p. 1.

<sup>9</sup> Complainant Ex. 3, Repair Order dated September 7, 2016.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Complainant Ex. 4, Repair Order dated October 15, 2016.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

was in Dodge City's possession for three (3) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Mr. Thornton took the vehicle back to Dodge City for repair on November 4, 2016, since the brakes continued to make noise. Complainant testified that in addition to the brake noise concern, the vehicle's radio volume control was not working and the vehicle's back-up camera would stay on an extended period of time before eventually turning off. Dodge City's service technician received authorization from Robert Stickles, Fixed Operations Director, to replace the vehicle's front rotors and brake shoes in order to address Complainant's concerns regarding the brake noise.<sup>18</sup> The technician checked the vehicle's fuel consumption as Complainant complained that the vehicle's fuel mileage was poor and determined that the vehicle "ran fine."<sup>19</sup> The technician also updated the vehicle's anti-lock braking system (ABS), body control module (BCM), and radio frequency hub (RFH) software.<sup>20</sup> The mileage on the vehicle on this occasion was 16,092.<sup>21</sup> Complainant was provided with a rental or loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle seemed fine for a while. However, in February of 2017, the vehicle's radio started acting up again, the back-up camera was not working properly (it would continue to show the rear of the vehicle for a period of time after Complainant shifted the transmission to drive) and the cooling fan and the brakes began making noise. Mr. Thornton took the vehicle to Dodge City for repair for these issues on February 11, 2017. Dodge City's service technician determined that the vehicle's radiator cooling fan was loose and causing an intermittent noise from the engine.<sup>22</sup> The technician replaced the cooling fan, reset the brake adaptives, performed a quick learn on the brakes, and updated the radio/multimedia's software.<sup>23</sup> The vehicle's mileage when it was delivered to the dealer on this occasion was 22,449.<sup>24</sup> The vehicle was in Dodge City's possession for four (4) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the issue with the back-up camera was resolved during this visit as the problem has not recurred. In addition, the vehicle's grinding noise was resolved as it was determined that it was caused by the vehicle's radiator cooling fan being loose.

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<sup>18</sup> Complainant Ex. 5, Repair Order dated November 4, 2016.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 6, Repair Order dated February 11, 2017.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

On March 23, 2017, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>25</sup> Complainant filed a Lemon Law complaint to the Texas Department of Motor Vehicles (Department) on June 27, 2017.<sup>26</sup>

Complainant testified she was contacted in August of 2017, by Jan Kershaw, Respondent's Early Resolution Case Manager, who requested that Respondent be allowed to perform a final repair attempt on the vehicle. Complainant informed Ms. Kershaw that the vehicle was already at Dodge City for repair because the air conditioner controls were not operating properly and because intermittently there was a clattering noise when she started the vehicle.

Complainant took the vehicle to Dodge City for repair on August 7, 2017. The final repair attempt performed by Respondent's representative was performed during this repair visit. During this visit Complainant raised the issue of the vehicle's brakes "grabbing hard," the transmission shifting hard, the radio controls freezing up, the air conditioner controls not working, an abnormal screech noise from the engine on start up, and an abnormal rough idle.<sup>27</sup> The dealer's service technician as well as Respondent's representative determined that the vehicle's brakes, transmission, and engine were working as designed at the time.<sup>28</sup> The technicians did not hear any unusual sounds from the vehicle's engine at the time.<sup>29</sup> The technicians did replace the vehicle's radio/multi-media module in order to address Complainant's concerns regarding the radio and air conditioner's controls.<sup>30</sup> The vehicle's mileage on this occasion was 28,622.<sup>31</sup> The vehicle was in Dodge City's possession for 15 days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant provided a series of videos on a USB flash drive to substantiate her claims regarding the issues with the vehicle.<sup>32</sup> One of the videos showed an incident on October 24, 2017, where the vehicle was idling roughly and was very loud. Another video showed where on January 20, 2017, where the radio controls did not work. Also, two videos showed where the air conditioner's controls didn't work properly (February 26, 2017 and January 27, 2018).

Complainant testified that the vehicle's air conditioning controls are still not working properly. Sometimes she can't adjust the air conditioner's fan speed using the controls. However, she's not

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<sup>25</sup> Complainant Ex. 7, Letter to FCA US LLC Customer Care dated March 23, 2017.

<sup>26</sup> Complainant Ex. 1, Lemon Law complaint dated June 27, 2017. Although the complaint was signed by Complainant on June 14, 2017, the complaint was actually received by the Texas Department of Motor Vehicles on June 27, 2017, which is the effective date of the complaint.

<sup>27</sup> Complainant Ex. 9, Repair Order dated August 7, 2017.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Complainant Ex. 11, USB flash drive.

had any further problems with the back-up camera or the radio controls. Complainant also stated that she intermittently hears a clattering noise at start-up. This occurs one (1) or (2) times per week and is worse in cold weather. Complainant feels that the vehicle constantly idles rough. Complainant feels that the brakes are not working properly and that they grab the road excessively. In addition, she feels that the brakes make a squeaking noise periodically.

During cross-examination, Complainant testified that she feels the vehicle's transmission shift and feels that it's a hard shift. She also stated that the vehicle's brakes have never failed, although she makes an effort not to try a fast stop in the vehicle. Complainant also stated that the vehicle has never left her stranded anywhere.

## **2. Christopher Thornton's Testimony**

Christopher Thornton, Complainant's husband, testified in the first hearing. He stated that he was the individual who most often took the vehicle to Dodge City for repair, since it's about an hour and a half away from their home.

Mr. Thornton stated that the brakes seemed to be overly sensitive. He will attempt to lightly apply the brakes and they make a quick stop like he stomped on the pedal. Mr. Thornton stated that he inspected the brakes himself and that the rotors had grooves on them which he feels is abnormal. He also stated that the brakes make a low level, constant squeaking noise.

Mr. Thornton also stated that the vehicle has electrical problems. He's personally observed that the air conditioner controls do not always work properly. The air conditioner sometimes fails to respond to the controls. He also saw on one occasion that the back-up camera continued to operate for a time after the vehicle's transmission had been shifted to drive.

Mr. Thornton also testified that the vehicle's transmission sometimes seemed to jerk. It had been shifting smoothly before an update was performed on it, but now it jerks on occasion.

## **C. Respondent's Evidence and Arguments**

### **1. Jan Kershaw's Testimony**

Jan Kershaw, Early Resolution Case Manager, represented Respondent and testified in the hearing. Ms. Kershaw stated that the vehicle's bumper-to-bumper warranty was good for three (3) years or 36,000 miles. In addition, Respondent provided a powertrain warranty for the vehicle good for five (5) years or 100,000 miles.

Ms. Kershaw testified that she did not hear any abnormal noises from the vehicle during the test drive taken during the hearing. She did not hear a screech noise on vehicle start up nor did she hear or feel a rough idle during the drive.

## **2. Heath Crenwelge's Testimony**

Heath Crenwelge, Service and Parts Area Manager, testified for Respondent. Mr. Crenwelge testified that he does not have a technical background. He has worked for Respondent for 21 years. He's been in his current position for the last three (3) years. His job requires that he handle all relationships between the manufacturer and the dealers and address any issues that may arise.

Mr. Crenwelge testified that he became involved with Complainant's concerns in August of 2017. He went through all of Complainant's complaints regarding the vehicle. He then test drove the vehicle for approximately 30 minutes. He could not duplicate any of Complainant's concerns with the vehicle. He had no problems with the vehicle's radio or air conditioning controls. He did not feel anything unusual from the engine or transmission during the drive. However, he did authorize replacement of the vehicle's radio/multi-media system despite his failure to reproduce the problems with the radio and air conditioner.

## **3. Robert Stickles' Testimony**

Robert Stickles, Fixed Operations Director, testified for Respondent. He stated that he has a degree in automotive technology from Lincoln Technical School. Mr. Stickles has worked with Chrysler since 1991. He was an Automotive Service Excellence (ASE) Master Technician until 2007. He's been working for Dodge City for the past three (3) years and has a Level IV FCA certification.

Mr. Stickles testified that he has seen and test driven the vehicle. He has not discovered anything abnormal with the vehicle during any of his inspections of it. Regarding the issue of the grooves in the brake rotors, Mr. Stickles stated that this was normal as the hard brake pad will wear into the rotor. He stated that there would be a concern if the rotors were cracked, but not if they were just grooved. Mr. Stickles also testified that the vehicle has an ABS (anti-lock brake system). When activated the ABS will make noise and the brakes will grab better.

Mr. Stickles also stated that the vehicle's transmission shifts can sometimes feel jerky. The vehicle is equipped with a nine (9) speed adaptive transmission. The driver can usually feel the transmission shifts in vehicles equipped with this particular transmission. The adaptive transmission adjusts to the driver's driving style. As such, it usually is not consistent in shifting

gears. The transmission is constantly changing to adapt to the driver, although the changes become less the more an individual drives the vehicle.

Mr. Stickles did not hear any abnormal or unusual sounds during his inspections of the vehicle. He feels that there are no issues with the vehicle that need repair.

#### **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. Faulty Brakes Issue: Brakes Engaging and Rotors Damaged**

Complainant's primary concern regarding the vehicle has to do with the brakes. The evidence presented at the hearing indicates that the brake rotors have grooves in them, that the brakes sometimes make an abnormal noise, and that there was one (1) occasion where Complainant performed a hard stop in the vehicle and the rear end seemed to lift inordinately. The evidence also indicates, however, that the vehicle's brakes seem to be working normally. The one occasion where the rear end seemed to rise inordinately occurred in September of 2016 and had not recurred as of the date of hearing. In addition, the brakes were inspected during Respondent's final repair attempt and were found to be operating normally. The other concerns raised by Complainant, *i.e.*, the grooves in the rotors and brake noise, are not indicative of a defect with the vehicle's brakes. They do not adversely affect the brake system. In addition, there was no evidence that the vehicle's brakes have ever failed to stop the vehicle in any situation. Therefore, the hearing examiner must hold that the brake concerns are not grounds to award Complainant repurchase or replacement relief.

##### **2. Engine idling loudly and making a grinding noise**

Complainant's concerns with the vehicle idling loudly was verified by a video taken on October 24, 2017. The video presented as evidence in the hearing shows the front of the vehicle and there seems to be a loud knocking noise coming from the engine. Complainant raised the issue of the engine's loud idle one (1) time (on the February 11, 2017 repair order) prior to filing the Lemon

Law complaint. At the time, it was determined that the loud idle was a result of the radiator cooling fan being loose. However, it is apparent that this was not the cause of the current loud idle.

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 not met the requirements of this test for this issue, since only one (1) repair attempt was made for the issue. Therefore, the hearings examiner must hold that this issue does not warrant replacement or repurchase relief. However, Respondent will be responsible for determining the cause of the loud idle and repairing it.

### **3. Electrical Problems Affecting the Radio and Air Conditioner**

Complainant’s concerns regarding the vehicle’s problems with the radio and air conditioner controls was also verified through the videos provided as evidence by Complainant. Complainant did indicate that the issues with the radio controls seemed to have been repaired by replacing the radio/multimedia system in February of 2017. However, the air conditioner controls intermittently fail to work. Complainant raised the issue of the concerns with the radio and air conditioner controls on one (1) occasion (on the February 11, 2017 repair order) prior to filing the Lemon Law complaint. The technician updated the radio/multimedia system’s software in an attempt to repair the issues. In addition, the entire system was replaced during Respondent’s final repair attempt. Since Complainant did not provide Respondent with a reasonable number of repair attempts for these issues, they do not warrant repurchase or replacement relief. Respondent will be responsible for determining the cause of the system’s failure to respond to the controls and to repair it.

### **4. Hard transmission Shifts**

Complainant did not include the issue of hard transmission shifts on the Lemon Law complaint, but did raise it as a concern during the hearing. The only time Complainant raised the concern for repair was during the final repair attempt in August of 2017. Since Complainant did not include the issue on the complaint form and only raised it as an issue during the final repair attempt, the hearings examiner must hold that the issue does not provide sufficient ground to award repurchase or replacement relief.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 33,646 and it remains under this warranty. As such, the Respondent is under an obligation to repair the vehicle under the terms of the express warranty and correct the issue with the vehicle.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defects causing the vehicle to idle loudly and preventing the radio/multimedia system to respond to the controls. Such repairs must be completed within 20 days from this order becoming final.

### III. FINDINGS OF FACT

1. Tabatha Thornton (Complainant) purchased a new 2015 Jeep Renegade on February 17, 2016, from Dodge City of McKinney (Dodge City) in McKinney, Texas, with mileage of 13 at the time of delivery.
2. The manufacturer of the vehicle, FCA US LLC (Respondent), issued a new vehicle limited warranty which provided coverage for the vehicle for three (3) years or 36,000 miles from the date of delivery to the owner, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 33,646.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Complainant raised four (4) issues regarding the vehicle: (1) that the brakes were engaging themselves and dipping forward at stops; (2) the brake rotors were damaged and grooved; (3) the engine idled loudly and made intermittent grinding noise; and (4) intermittent electrical problems affecting the vehicle's radio and fan controls.
6. Complainant took the vehicle to Respondent's authorized dealer, Dodge City, in order to address her concerns with the vehicle, on the following dates:
  - a. September 7, 2016, at 11,923 miles;
  - b. October 15, 2016, at 14,597 miles;
  - c. November 4, 2016, at 16,092 miles; and
  - d. February 11, 2017, at 22,449 miles.

7. On September 7, 2016, Dodge City's service technician resurfaced the vehicle's front brake rotors in order to address Complainant's concerns with the brakes.
8. On October 15, 2016, Dodge City's service technician inspected the vehicle's brake rotors and determined that the grooves which had developed were a normal condition for the vehicle.
9. On November 4, 2016, Dodge City's service technician replaced the vehicle's front brakes and rotors in order to address Complainant's concerns regarding the brakes squeaking. The technician also installed updates to the vehicle's anti-lock brake system (ABS), body control module (BCM), and radio frequency hub (RFH).
10. On February 11, 2017, Dodge City's service technician reset the brake adaptives and performed a "quick learn" on them.
11. Also, on February 11, 2017, Dodge City's technician replaced the vehicle's radiator cooling fan module in order to address concerns regarding the vehicle idling loudly and a clattering noise at start up.
12. A third repair was performed on Complainant's vehicle on February 11, 2017, when the technician reprogrammed the radio and performed a software update on it.
13. On June 27, 2017, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On August 7, 2017, Respondent sent a representative to Dodge City to perform a final repair attempt on the vehicle, at which time he replaced the vehicle's radio and determined that the vehicle's brakes, transmission, and air conditioner were working fine and that there was no abnormal noise coming from the vehicle's engine.
15. On October 24, 2017, Complainant experienced an occasion where the vehicle's engine idled roughly and was very noisy.
16. On January 27, 2018, Complainant experienced an occasion where the vehicle's air conditioning controls failed to work.
17. On September 11, 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.

18. The hearing in this case convened on February 1, 2018, in Paris, Texas before Hearings Examiner Edward Sandoval. Complainant, Tabatha Thornton, represented herself at the hearing. Also present to testify for Complainant was her husband, Christopher Thornton. Respondent was represented by Jan Kershaw, Early Resolution Case Specialist. Testifying for Respondent were Heath Crenwelge, Service and Parts Area Manager, and Robert Stickles, Fixed Operations Director. A continuance in the hearing was conducted telephonically on February 16, 2018. Present at the continuance were Tabatha Thornton, Complainant, representing himself. Also present were Jan Kershaw representing Respondent and Heath Crenwelge testifying for Respondent. The hearing record was closed on February 16, 2018.

#### 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 proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity. Tex. Occ. Code § 2301.204.
7. Respondent has been unable to repair the nonconformities in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
9. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
10. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. However, Complainant is entitled to repair relief. Therefore, it is further **ORDERED** that within twenty (20) days of this order becoming final Respondent shall repair the vehicle so that it conforms to Respondent's warranty.

**SIGNED March 28, 2018**



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